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TAXES CONSOLIDATION ACT, 1997

AN ACT TO CONSOLIDATE ENACTMENTS RELATING TO INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX, INCLUDING CERTAIN ENACTMENTS RELATING ALSO TO OTHER TAXES AND DUTIES.

[30*th November,* 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

INTERPRETATION AND BASIC CHARGING PROVISIONS

PART 1

Interpretation

Interpretation of this Act.

[ITA67 s3; FA74 s86 and Sch2 PtI; CTA76 s155(1) and (2); CGT(A)78 s1(1); FA80 s9]

1.—(1) In this Act, except where the context otherwise requires, ''repealed enactments'' has the meaning assigned to it by *section 1098*.

(2) In this Act and in any Act passed after this Act, except where the context otherwise requires—

''the Capital Gains Tax Acts'' means the enactments relating to capital gains tax in this Act and in any other enactment;

''the Corporation Tax Acts'' means the enactments relating to corporation tax in this Act and in any other enactment, together with the Income Tax Acts in so far as those Acts apply for the purposes of corporation tax;

''the Income Tax Acts'' means the enactments relating to income tax in this Act and in any other enactment;

''the Tax Acts'' means the Income Tax Acts and the Corporation Tax Acts.

(3) References in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended or extended by any subsequent enactment.

(4) In this Act a reference to a Part, section or Schedule is to a Part or section of, or Schedule to, this Act, unless it is indicated that reference to some other enactment is intended.

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(5) In this Act a reference to a subsection, paragraph, subparagraph, clause or subclause is to the subsection, paragraph, subparagraph, clause or subclause of the provision (including a Schedule) in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Interpretation of Tax Acts.

[ITA67 s1(1); CTA76 s155(3) to (5) and s171; F(MP)A68 s3(2) and Sch PtI; FA74 s1; FA75 s33(1); FA77 s41(1); FA97 s146(1) and Sch9 PtI par1(1)]

2.—(1) In the Tax Acts, except where otherwise provided or the context otherwise requires—

''Appeal Commissioners'' has the meaning assigned to it by *section 850*;

''body of persons'' means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate;

''capital allowance'' means any allowance (other than an allowance or deduction to be made in computing profits or gains) under—

(*a*) *Part 9*,

(*b*) *section 658*,

(*c*) *Chapter 1* of *Part 24*, or

(*d*) *Part 29*,

and ''capital allowances'' shall be construed accordingly;

''Clerk to the Appeal Commissioners'' means the person for the time being authorised by the Appeal Commissioners to act as such;

''Collector-General'' means the Collector-General appointed under *section 851*;

''inspector'' means an inspector of taxes appointed under *section 852*;

''local authority'' means—

(*a*) the corporation of a county or other borough,

(*b*) the council of a county, or

(*c*) the council of an urban district;

''ordinary share capital'', in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the company;

''profession'' includes vocation;

''resident'' and ''ordinarily resident'', in relation to an individual, shall be construed in accordance with *Part 34*;

''statute'' has the same meaning as in section 3 of the Interpretation Act, 1937;

''tax credit'' means a credit under *section 136*;

''year of assessment'' means a year for which income tax is imposed by any Act imposing duties of income tax;

''the year 1997-98'' means the year of assessment beginning on the 6th day of April, 1997, and any corresponding expression in which 2 years are similarly mentioned means the year of assessment beginning on the 6th day of April in the first-mentioned of those 2 years;

a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.

(2) Except where the context otherwise requires, in the Tax Acts, and in any enactment passed after this Act which by an express provision is to be construed as one with those Acts, ''tax'', where neither income tax nor corporation tax is specified, means either of those taxes.

(3) *Subsection (2)* is without prejudice to *section 76* (which applies income tax law for certain purposes of corporation tax), and accordingly the use of ''income tax'' rather than ''tax'' in any provision of the Income Tax Acts is not a conclusive indication that that provision is not applied to corporation tax by *section 76*.

(4) In the Tax Acts (other than *sections 24*, *25* and *239*), except where the context otherwise requires—

(*a*) references to income tax paid by a person by deduction shall be construed as including references to a tax credit to which the person is entitled, and

(*b*) references to repayment of income tax shall be construed as including references to payment of a tax credit.

Interpretation of Income Tax Acts.

[ITA67 s1(1) and s2; FA69 s65 and Sch5; FA74 s1; CGTA75 s2(5); FA91 s2(3) and Sch1 PtI par1; FA93 s2(2) and Sch1 PtI; FA94 s2(2); FA96 s132(1) and Sch5 PtI par1(1)]

3.—(1) In the Income Tax Acts, except where otherwise provided or the context otherwise requires—

''higher rate'', in relation to tax, means the rate of tax known by that description and provided for in *section 15*;

''incapacitated person'' means any minor or person of unsound mind;

''relative'' includes any person of whom the person claiming a deduction had the custody and whom he or she maintained at his or her own expense while that person was under the age of 16 years;

''standard rate'', in relation to tax, means the rate of tax known by that description and provided for in *section 15*;

''tax'' means income tax;

''taxable income'' has the meaning assigned to it by *section 458*;

''total income'' means total income from all sources as estimated in accordance with the Income Tax Acts;

''trade'' includes every trade, manufacture, adventure or concern in the nature of trade.

(2) (*a*) Subject to *subsection (3)*, in the Income Tax Acts, ''earned income'', in relation to an individual, means—

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(i) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether or not the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay,

(ii) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual, and

(iii) any income charged under Schedule D and immediately derived by the individual from the carrying on or exercise by the individual of his or her trade or profession, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

(*b*) In cases where the profits of a wife are deemed to be profits of the husband, any reference in this subsection to an individual includes either the husband or the wife.

(3) Without prejudice to the generality of *subsection (2)*, in the Income Tax Acts, except where otherwise expressly provided, ''earned income'' includes—

(*a*) any annuity made payable to an individual under the terms of an annuity contract or trust scheme for the time being approved by the Revenue Commissioners for the purposes of *Chapter 2* of *Part 30* to the extent to which such annuity is payable in return for any amount on which relief is given under *section 787*, and

(*b*) any payment or other sum which is or is deemed to be income chargeable to tax under Schedule E for any purpose of the Income Tax Acts.

(4) References to profits or gains in the Income Tax Acts shall not include references to chargeable gains within the meaning of the Capital Gains Tax Acts.

Interpretation of Corporation Tax Acts.

[CTA76 s1(5)(a) to (d), s155(5), (9), (10), (11), (12) and (13); FA86 s57(1); FA90 s29(4); FA93 s42; FA97 s37(1)]

4.—(1) In the Corporation Tax Acts, except where the context otherwise requires—

''accounting date'' means the date to which a company makes up its accounts, and ''period of account'' means the period for which a company does so;

''allowable loss'' does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of the gain;

''branch or agency'' means any factorship, agency, receivership, branch or management;

''chargeable gain'' has the same meaning as in the Capital Gains Tax Acts, but does not include a gain accruing on a disposal made before the 6th day of April, 1976;

''charges on income'' has the meaning assigned to it by *section 243(1)*;

''close company'' has the meaning assigned to it by *sections 430* and *431*;

''company'' means any body corporate and includes a trustee savings bank within the meaning of the Trustee Savings Banks Act, 1989, but does not include—

(*a*) a health board,

(*b*) a grouping within the meaning of *section 1014*,

(*c*) a vocational educational committee established under the Vocational Education Act, 1930,

(*d*) a committee of agriculture established under the Agriculture Act, 1931, or

(*e*) a local authority, and for this purpose ''local authority'' has the meaning assigned to it by section 2(2) of the Local Government Act, 1941, and includes a body established under the Local Government Services (Corporate Bodies) Act, 1971;

''distribution'' has the meaning assigned to it by *Chapter 2* of *Part 6* and *sections 436* and *437*;

''the financial year'' followed by a reference to the year 1996 or any other year means the year beginning on the 1st day of January of such year;

''franked investment income'' and ''franked payment'' shall be construed in accordance with *section 156*;

''group relief'' has the meaning assigned to it by *section 411*;

''interest'' means both annual or yearly interest and interest other than annual or yearly interest;

''preference dividend'' means a dividend payable on a preferred share or preferred stock at a fixed rate per cent or, where a dividend is payable on a preferred share or preferred stock partly at a fixed rate per cent and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent;

''profits'' means income and chargeable gains;

''standard credit rate'' for a year of assessment means 21 per cent, and accordingly ''standard credit rate per cent'' for a year of assessment means 21;

''standard rate per cent'' for a year of assessment means 26 where the standard rate for that year is 26 per cent and similarly as regards any reference to the standard rate per cent for a year of assessment for which the standard rate is other than 26 per cent;

''trade'' includes vocation and includes also an office or employment.

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(2) Except where otherwise provided by the Corporation Tax Acts and except where the context otherwise requires, words and expressions used in the Income Tax Acts have the same meaning in the Corporation Tax Acts as in those Acts; but no provision of the Corporation Tax Acts as to the interpretation of any word or expression, other than a provision expressed to extend to the use of that word or expression in the Income Tax Acts, shall be taken to affect its meaning in those Acts as they apply for the purposes of corporation tax.

(3) References in the Corporation Tax Acts to distributions or payments received by a company apply to any distributions or payments received by another person on behalf of or in trust for the company but not to any distributions or payments received by the company on behalf of or in trust for another person.

(4) References in the Corporation Tax Acts to—

(*a*) profits brought into charge to corporation tax are references to the amount of those profits chargeable to corporation tax before any deduction from those profits for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description,

(*b*) total income brought into charge to corporation tax are references to the amount, calculated before any deduction mentioned in *paragraph (a)*, of the total income from all sources included in any profits brought into charge to corporation tax, and

(*c*) an amount of profits on which corporation tax falls finally to be borne are references to the amount of those profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against those profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

(5) For the purposes of the Corporation Tax Acts, except where otherwise provided, dividends shall be treated as paid on the date when they become due and payable.

(6) Except where otherwise provided by the Corporation Tax Acts, any apportionment to different periods to be made under the Corporation Tax Acts shall be made on a time basis according to the respective lengths of those periods.

Interpretation of Capital Gains Tax Acts.

[CGTA75 s2(1), (3) and (4); CTA76 s140(2) and Sch2 PtII par1; FA80 s61(a); FA90 s29(3); FA97 s146(1) and Sch9 PtI par9(1)]

5.—(1) In the Capital Gains Tax Acts, except where the context otherwise requires—

''Appeal Commissioners'' has the meaning assigned to it by *section 850*;

''body of persons'' has the same meaning as in *section 2*;

''branch or agency'' means any factorship, agency, receivership, branch or management, but does not include the brokerage or agency of a broker or agent referred to in *section 1039*;

''local authority'' has the meaning assigned to it by section 2(2) of the Local Government Act, 1941, and includes a body established under the Local Government Services (Corporate Bodies) Act, 1971;

''allowable loss'' has the meaning assigned to it by *section 546*;

''capital allowance'' means any allowance under the provisions of the Tax Acts which relate to allowances in respect of capital expenditure, and includes an allowance under *section 284*;

''chargeable gain'' has the same meaning as in *section 545*;

''charity'' has the same meaning as in *section 208*;

''class'', in relation to shares or securities, means a class of shares or securities of any one company;

''close company'' has the meaning assigned to it by *section 430*;

''company'' means any body corporate, but does not include a grouping within the meaning of *section 1014*;

''control'' shall be construed in accordance with *section 432*;

''inspector'' means an inspector of taxes appointed under *section 852*;

''land'' includes any interest in land;

''lease''—

(*a*) in relation to land, includes an underlease, sub-lease or any tenancy or licence, and any agreement for a lease, underlease, sub-lease or tenancy or licence and, in the case of land outside the State, any interest corresponding to a lease as so defined, and

(*b*) in relation to any description of property other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, property,

and ''lessor'', ''lessee'' and ''rent'' shall be construed accordingly;

''legatee'' includes any person taking under a testamentary disposition or an intestacy or partial intestacy or by virtue of the Succession Act, 1965, or by survivorship, whether such person takes beneficially or as trustee, and a person taking under a donatio mortis causa shall be treated as a legatee and such person's acquisition as made at the time of the donor's death and, for the purposes of this definition and of any reference to a person acquiring an asset as legatee, property taken under a testamentary disposition or on an intestacy or partial intestacy or by virtue of the Succession Act, 1965, includes any asset appropriated by the personal representatives in or towards the satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy or by virtue of the Succession Act, 1965;

''market value'' shall be construed in accordance with *section 548*;

''minerals'' has the same meaning as in section 3 of the Minerals Development Act, 1940;

''mining'' means mining operations in the State for the purpose of obtaining, whether by underground or surface working, any minerals;

''part disposal'' has the meaning assigned to it by *section 534*;

''personal representative'' has the same meaning as in *section 799*;

''prescribed'' means prescribed by the Revenue Commissioners;

''profession'' includes vocation;

''resident'' and ''ordinarily resident'', in relation to an individual, shall be construed in accordance with *Part 34*;

''settled property'' means any property held in trust other than property to which *section 567* applies, but does not include any property held by a trustee or assignee in bankruptcy or under a deed of arrangement;

''settlement'' and ''settlor'' have the same meanings respectively as in *section 10*, and ''settled property'' shall be construed accordingly;

''shares'' includes stock, and shares or debentures comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the shares or debentures conferred by such letter or instrument remains provisional until accepted and there has been no acceptance;

''trade'' has the same meaning as in the Income Tax Acts;

''trading stock'' has the same meaning as in *section 89*;

''unit trust'' means any arrangements made for the purpose, or having the effect, of providing facilities for the participation by the holders of units, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever;

''units'', in relation to a unit trust, means any units (whether described as units or otherwise) into which are divided the beneficial interests in the assets subject to the trusts of a unit trust;

''unit holder'', in relation to a unit trust, means a holder of units of the unit trust;

''wasting asset'' has the meaning assigned to it by *section 560* and *paragraph 2* of *Schedule 14*;

''year of assessment'', in relation to capital gains tax, means a year beginning on the 6th day of April;

''the year 1997-98'' means the year of assessment beginning on the 6th day of April, 1997, and any corresponding expression in which 2 years are similarly mentioned means the year of assessment beginning on the 6th day of April in the first-mentioned of those 2 years.

(2) (*a*) References in the Capital Gains Tax Acts to a married woman living with her husband shall be construed in accordance with *section 1015(2)*.

(*b*) For the purposes of *paragraph (a)*, the reference in *section 1015(2)* to a wife shall be construed as a reference to a married woman.

(3) Any provision in the Capital Gains Tax Acts introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

Construction of references to child in Tax Acts and Capital Gains Tax Acts.

[FA77 s36; FA92 s16]

6.—For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the contrary intention appears—

(*a*) references in any of those Acts to a child (including references to a son or a daughter) include references to—

(i) a stepchild, and

(ii) a child who is—

(I) adopted under the Adoption Acts, 1952 to 1991, or

(II) the subject of a foreign adoption (within the meaning of section 1 of the Adoption Act, 1991) which is deemed to have been effected by a valid adoption order made under the Adoption Acts, 1952 to 1991,

and

(*b*) the relationship between a child referred to in *paragraph (a)(ii)* and any other person, or between other persons, that would exist if such child had been born to the child's adoptor or adoptors in lawful wedlock, shall be deemed to exist between such child and that other person, or between those other persons, and the relationship of any such child and any person that existed prior to the child being so adopted shall be deemed to have ceased,

and ''adopted child'' shall be construed in accordance with this section.

Application to certain taxing statutes of Age of Majority Act, 1985.

[FA86 s112(1) and (2)]

7.—(1) Notwithstanding subsection (4) of section 2 of the Age of Majority Act, 1985 (in this section referred to as ''the Act of 1985''), subsections (2) and (3) of that section shall, subject to *subsection (2)*, apply for the purposes of the Income Tax Acts and any other statutory provision (within the meaning of the Act of 1985) dealing with the imposition, repeal, remission, alteration or regulation of any tax or other duty under the care and management of the Revenue Commissioners, and accordingly section 2(4)(*b*)(vii) of the Act of 1985 shall cease to apply.

(2) Nothing in *subsection (1)* shall affect a claimant's entitlement to a deduction under *section 462* or *465*.

Construction of certain taxing statutes in accordance with Status of Children Act, 1987.

[FA88 s74(1) and (2)]

8.—(1) In this section, ''the Acts'' means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts,

(*c*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and

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(*d*) the statutes relating to stamp duty,

and any instruments made thereunder.

(2) Notwithstanding any provision of the Acts or the dates on which they were passed, in deducing any relationship between persons for the purposes of the Acts, the Acts shall be construed in accordance with section 3 of the Status of Children Act, 1987.

Subsidiaries.

[CTA76 s156]

9.—(1) For the purposes of the Tax Acts, except where otherwise provided, a company shall be deemed to be—

(*a*) a ''51 per cent subsidiary'' of another company if and so long as more than 50 per cent of its ordinary share capital is owned directly or indirectly by that other company,

(*b*) a ''75 per cent subsidiary'' of another company if and so long as not less than 75 per cent of its ordinary share capital is owned directly or indirectly by that other company,

(*c*) a ''90 per cent subsidiary'' of another company if and so long as not less than 90 per cent of its ordinary share capital is directly owned by that other company.

(2) In *paragraphs (a)* and *(b)* of *subsection (1)*, ''owned directly or indirectly'' by a company means owned whether directly or through another company or other companies or partly directly and partly through another company or other companies.

(3) In this section, references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section, the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with *subsections (5)* to *(10)*.

(5) Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

(6) In this section—

(*a*) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if there are more than 3, any 3 or more of them, are referred to as a ''series'';

(*b*) in any series—

(i) that company which owns ordinary share capital of another through the remainder is referred to as ''the first owner'';

(ii) that other company the ordinary share capital of which is so owned is referred to as ''the last owned company'';

(iii) the remainder, if one only, is referred to as an ''intermediary'' and, if more than one, are referred to as ''a chain of intermediaries'';

(*c*) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an ''owner'';

(*d*) any 2 companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

(9) Where—

(*a*) each of 2 or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related, or

(*b*) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related,

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

(*a*) directly,

(*b*) through an intermediary which is not a member, or intermediaries which are not members, of that series,

(*c*) through a chain or chains of intermediaries of which one or some or all are not members of that series, or

(*d*) in a case where the series consists of more than 3 companies, through an intermediary which is a member, or intermediaries which are members, of the series, or through a

chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists,

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

Connected persons.

[FA96 s131(1) to (8)]

10.—(1) In this section—

''close company'' has the meaning assigned to it by *sections 430* and *431*;

''company'' has the same meaning as in *section 4(1)*;

''control'' shall be construed in accordance with *section 432*;

''relative'' means brother, sister, ancestor or lineal descendant and, for the purposes of the Capital Gains Tax Acts, also means uncle, aunt, niece or nephew;

''settlement'' includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property;

''settlor'', in relation to a settlement, means any person by whom the settlement was made, and a person shall be deemed for the purposes of this section to have made a settlement if the person has made or entered into the settlement directly or indirectly and, in particular (but without prejudice to the generality of the preceding words), if the person has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the context otherwise requires, any question whether a person is connected with another person shall be determined in accordance with *subsections (3)* to *(8)* (any provision that one person is connected with another person being taken to mean that they are connected with one another).

(3) A person shall be connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.

(4) A person in the capacity as trustee of a settlement shall be connected with—

(*a*) any individual who in relation to the settlement is a settlor,

(*b*) any person connected with such an individual, and

(*c*) a body corporate which is deemed to be connected with that settlement, and a body corporate shall be deemed to be connected with a settlement in any accounting period or, as the case may be, year of assessment if, at any time in that period or year, as the case may be, it is a close company (or only not a close company because it is not resident in the State) and the participators then include the trustees of or a beneficiary under the settlement.

(5) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person shall be connected with any person with whom such person is in partnership, and with the spouse or a relative of any individual with whom such person is in partnership.

(6) A company shall be connected with another company—

(*a*) if the same person has control of both companies, or a person (in this paragraph referred to as ''the first-mentioned person'') has control of one company and persons connected with the first-mentioned person, or the first-mentioned person and persons connected with the first-mentioned person, have control of the other company, or

(*b*) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom such member is connected.

(7) A company shall be connected with another person if that person has control of the company or if that person and persons connected with that person together have control of the company.

(8) Any 2 or more persons acting together to secure or exercise control of, or to acquire a holding in, a company shall be treated in relation to that company as connected with one another and with any person acting on the direction of any of them to secure or exercise control of, or to acquire a holding in, the company.

Meaning of ''control'' in certain contexts.

11.—For the purposes of, and subject to, the provisions of the Corporation Tax Acts which apply this section, ''control'', in relation to a company, means the power of a person to secure—

[CTA76 s158]

(*a*) by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or

(*b*) by virtue of any powers conferred by the articles of association or other document regulating that or any other company,

that the affairs of the first-mentioned company are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.

PART 2

The Charge to Tax

CHAPTER 1

Income tax

The charge to income tax.

12.—Income tax shall, subject to the Income Tax Acts, be charged in respect of all property, profits or gains respectively described or comprised in the Schedules contained in the sections enumerated below—

[ITA67 s4; FA80 s55]

Schedule C — *Section 17*;

Schedule D — *Section 18*;

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Schedule E — *Section 19*;

Schedule F — *Section 20*;

and in accordance with the provisions of the Income Tax Acts applicable to those Schedules.

Extension of charge to income tax to profits and income derived from activities carried on and employments exercised on the Continental Shelf.

[FA73 s33(1)(a), (b) and (c), (2) to (5) and (7)]

13.—(1) In this section and in *Schedule 1*—

''designated area'' means an area designated by order under section 2 of the Continental Shelf Act, 1968;

''exploration or exploitation activities'' means activities carried on in connection with the exploration or exploitation of so much of the sea bed and subsoil and their natural resources as is situated in the State or in a designated area;

''exploration or exploitation rights'' means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets.

(2) Any profits or gains from exploration or exploitation activities carried on in a designated area or from exploration or exploitation rights shall be treated for income tax purposes as profits or gains from activities or property in the State.

(3) Any profits or gains arising to any person not resident in the State from exploration or exploitation activities carried on in the State or in a designated area or from exploration or exploitation rights shall be treated for income tax purposes as profits or gains of a trade carried on by that person in the State through a branch or agency.

(4) Where exploration or exploitation activities are carried on by a person on behalf of the holder of a licence granted under the Petroleum and Other Minerals Development Act, 1960, the holder of the licence shall, for the purpose of any assessment to income tax, be deemed to be the agent of that person.

(5) Any emoluments from an office or employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be treated for income tax purposes as emoluments in respect of duties performed in the State.

(6) *Schedule 1* shall apply for the purpose of supplementing this section.

Fractions of a pound and yearly assessments.

[ITA67 s5 and s6; FA70 s3]

14.—(1) The due proportion of income tax shall be charged for every fractional part of one pound, but no income tax shall be charged on a lower denomination than one penny.

(2) Every assessment and charge to income tax shall be made for a year commencing on the 6th day of April and ending on the following 5th day of April.

Rate of charge.

[FA91 s2; FA97 s2(1) and (2)]

15.—(1) Subject to *subsection (2)*, income tax shall be charged for each year of assessment at the rate of tax specified in the Table to this section as the standard rate.

(2) Where a person who is charged to income tax for any year of assessment is an individual (other than an individual acting in a

fiduciary or representative capacity), such individual shall, notwithstanding anything in the Income Tax Acts but subject to *section 16(2)*, be charged to tax on such individual's taxable income— Pt.2 S.15

(*a*) in a case in which such individual is assessed to tax otherwise than in accordance with *section 1017*, at the rates specified in *Part 1* of the Table to this section, or

(*b*) in a case in which such individual is assessed to tax in accordance with *section 1017*, at the rates specified in *Part 2* of that Table,

and the rates in each Part of that Table shall be known respectively by the description specified in *column (3)* in each such Part opposite the mention of the rate or rates, as the case may be, in *column (2)* of that Part.

TABLE

PART 1

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first £9,900	26 per cent	the standard rate
The remainder	48 per cent	the higher rate

PART 2

Part of taxable income (1)	Rate of tax (2)	Description of rate (3)
The first £19,800	26 per cent	the standard rate
The remainder	48 per cent	the higher rate

Income tax charged by deduction.

[FA74 s5(2) and (3)]

16.—(1) In estimating under the Income Tax Acts the total income of any person, any income chargeable with tax by means of deduction at the standard rate in force for any year shall be deemed to be income of that year, and any deductions allowable on account of sums payable under deduction of tax at the standard rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year, notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

(2) Where a person is required to be assessed and charged with tax in respect of any property, profits or gains out of which such person makes any payment in respect of any annual interest, annuity or other annual sum, or any royalty or other sum in respect of the user of a patent, such person shall, in respect of so much of the property, profits or gains as is equal to that payment and may be deducted in computing such person's total income, be charged at the standard rate only.

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Schedule C.

[ITA67 s47 and s51]

17.—(1) The Schedule referred to as Schedule C is as follows:

SCHEDULE C

1. Tax under this Schedule shall be charged in respect of all profits arising from public revenue dividends payable in the State in any year of assessment.

2. Where a banker or any other person in the State, by means of coupons received from another person or otherwise on that other person's behalf, obtains payment of any foreign public revenue dividends, tax under this Schedule shall be charged in respect of the dividends.

3. Where a banker in the State sells or otherwise realises coupons for any foreign public revenue dividends and pays over the proceeds of such realisation to or carries such proceeds to the account of any person, tax under this Schedule shall be charged in respect of the proceeds of the realisation.

4. Where a dealer in coupons in the State purchases coupons for any foreign public revenue dividends otherwise than from a banker or another dealer in coupons, tax under this Schedule shall be charged in respect of the price paid on the purchase.

5. Nothing in *paragraph 1* shall apply to any annuities which are not of a public nature.

6. The tax under this Schedule shall be charged for every one pound of the annual amount of the profits, dividends, proceeds of realisation or price paid on purchase charged.

(2) *Section 32* shall apply for the interpretation of Schedule C.

Schedule D.

[ITA67 s52 and s53; FA69 s33(1) and Sch4 Pt I, s65(1) and Sch5 Pt I]

18.—(1) The Schedule referred to as Schedule D is as follows:

SCHEDULE D

1. Tax under this Schedule shall be charged in respect of—

(*a*) the annual profits or gains arising or accruing to—

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

(*b*) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one pound of the annual amount of the profits or gains.

2. Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of *paragraph 1* be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule.

(2) Tax under Schedule D shall be charged under the following Cases:

Case I — Tax in respect of—

(*a*) any trade;

(*b*) profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns—

(i) quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,

(ii) mines of coal, tin, lead, copper, pyrites, iron and other mines, and

(iii) ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of any lands, tenements or hereditaments;

Case II — Tax in respect of any profession not contained in any other Schedule;

Case III — Tax in respect of—

(*a*) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Case V of Schedule D;

(*b*) all discounts;

(*c*) profits on securities bearing interest payable out of the public revenue other than those charged under Schedule C;

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(*d*) interest on any securities issued, or deemed within the meaning of *section 36* to be issued, under the authority of the Minister for Finance, in cases where such interest is paid without deduction of tax;

(*e*) income arising from securities outside the State except such income as is charged under Schedule C;

(*f*) income arising from possessions outside the State;

Case IV — Tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule;

Case V — Tax in respect of any rent in respect of any premises or any receipts in respect of any easement;

and subject to and in accordance with the provisions of the Income Tax Acts applicable to those Cases respectively.

(3) This section is without prejudice to any other provision of the Income Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases mentioned in *subsection (2)*, and tax so directed to be charged shall be charged accordingly.

Schedule E.

[ITA67 s109 and Sch2 rule2]

19.—(1) The Schedule referred to as Schedule E is as follows:

SCHEDULE E

1. In this Schedule, ''annuity'' and ''pension'' include respectively an annuity which is paid voluntarily or is capable of being discontinued and a pension which is so paid or is so capable.

2. Tax under this Schedule shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension or stipend payable out of the public revenue of the State, other than annuities charged under Schedule C, for every one pound of the annual amount thereof.

3. Tax under this Schedule shall also be charged in respect of any office, employment or pension the profits or gains arising or accruing from which would be chargeable to tax under Schedule D but for *paragraph 2* of that Schedule.

4. *Paragraphs 1* to *3* are without prejudice to any other provision of the Income Tax Acts directing tax to be charged under this Schedule, and tax so directed to be charged shall be charged accordingly.

5. *Subsection (2)* and *sections 114*, *115* and *925* shall apply in relation to the tax to be charged under this Schedule.

(2) Tax under Schedule E shall be paid in respect of all public offices and employments of profit in the State or by the officers respectively described below—

(*a*) offices belonging to either House of the Oireachtas;

(*b*) offices belonging to any court in the State;

(*c*) public offices under the State;

(*d*) officers of the Defence Forces;

(*e*) offices or employments of profit under any ecclesiastical body;

(*f*) offices or employments of profit under any company or society, whether corporate or not corporate;

(*g*) offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;

(*h*) offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls or duties;

(*i*) all other public offices or employments of profit of a public nature.

Schedule F.

[CTA76 s83(2) and (3)]

20.—(1) The Schedule referred to as Schedule F is as follows:

SCHEDULE F

1. In this Schedule, ''distribution'' has the meaning assigned to it by *Chapter 2* of *Part 6* and *sections 436* and *437.*

2. Income tax under this Schedule shall be chargeable for any year of assessment in respect of all dividends and other distributions in that year of a company resident in the State which are not specially excluded from income tax and, for the purposes of income tax, all such distributions shall be regarded as income however they are to be dealt with in the hands of the recipient.

3. For the purposes of the Tax Acts, any such distribution in respect of which a person is entitled to a tax credit shall be treated as representing income equal to the aggregate of the amount or value of that distribution and the amount of that credit, and accordingly income tax under this Schedule shall be charged on that aggregate.

(2) No distribution chargeable under Schedule F shall be chargeable under any other provision of the Income Tax Acts.

CHAPTER 2

Corporation tax

The charge to corporation tax and exclusion of income tax and capital gains tax.

[CTA76 s1(1), (2) and (3); FA97 s59(1)]

21.—(1) Corporation tax shall be charged on the profits of companies at the rate of—

(*a*) 38 per cent for—

(i) the financial year 1996, and

(ii) that part of the financial year 1997 beginning on the 1st day of January, 1997, and ending on the 31st day of March, 1997,

and

(*b*) 36 per cent for—

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(i) that part of the financial year 1997 beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1997, and

(ii) each subsequent financial year.

(2) The provisions of the Income Tax Acts relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—

(*a*) the company is resident in the State, or

(*b*) the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax.

(3) Subject to *section 649*, a company shall not be chargeable to capital gains tax in respect of gains accruing to it so that it is chargeable in respect of them to corporation tax.

Reduced rate of corporation tax for certain income.

[CTA76 s28A(1) to (8) and FA96 s44; FA 97 s60(1)(a) and (2)]

22.—(1) (*a*) Notwithstanding *section 21*, so much of the profits of a company for an accounting period as does not exceed the lower of either—

(i) the specified amount in relation to the accounting period, or

(ii) the income of the company for the accounting period,

shall be charged to corporation tax as if the rate of corporation tax for the financial year were—

(I) as respects accounting periods ending before the 1st day of April, 1997, 30 per cent, and

(II) as respects accounting periods ending on or after that date, 28 per cent.

(*b*) For the purposes of *paragraph (a)*, where an accounting period of a company begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into 2 parts, one beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and the other beginning on the 1st day of April, 1997, and ending on the day on which the accounting period ends, and both parts shall be treated for the purpose of this section as if they were separate accounting periods of the company.

(2) For the purposes of *subsection (1)* and subject to *subsections (3)* and *(4)*, the specified amount in relation to an accounting period of a company shall be an amount determined by the formula—

$$£50{,}000 \times \frac{N}{12} \times \frac{1}{A}$$

where—

N is the number of months in the accounting period, and

A is one plus the number of associated companies which the company has in the accounting period. Pt.2 S.22

(3) (*a*) Where, in the case of a company which has one or more associated companies in an accounting period—

(i) the accounting period of the company ends on a date on which accounting periods of all of the associated companies end, and

(ii) the company and all of the associated companies jointly elect in writing that this subsection shall apply,

then—

(I) the specified amount under *subsection (2)* shall be computed as if, in relation to the accounting period, the company and all of the associated companies were a single company (with no associated companies) with an accounting period ending on that date and beginning on the earliest date on which the accounting period of the company, or of any of the associated companies, begins, and

(II) the specified amount computed under *subparagraph (I)* shall be allocated to the accounting period of the company and to the accounting periods of its associated companies in such manner as is specified in the election, and the amount so allocated to a company shall be deemed to be the specified amount in relation to the accounting period of the company.

(*b*) Notwithstanding *paragraph (a)*—

(i) the aggregate of amounts allocated under *subparagraph (II)* of that paragraph for an accounting period shall not exceed the specified amount computed under *subparagraph (I)* of that paragraph, and

(ii) the amount allocated to an accounting period of a company shall not exceed the amount which would have been the specified amount in relation to the accounting period if the company had no associated companies in the accounting period.

(4) Where, in the case of a company which has one or more associated companies in an accounting period, the end of the accounting period of the company and the end of an accounting period of each of its associated companies do not coincide—

(*a*) *subsection (3)* shall apply as respects any period (in this subsection referred to as a ''relevant period'') which falls in the accounting period of the company and an accounting period of each of the associated companies as if the relevant period were an accounting period of the company and of the associated companies,

(*b*) the amount allocated to any company in respect of a relevant period shall be deemed to be the specified amount in relation to that period, and

(*c*) where an amount has been allocated to a company in respect of a relevant period falling in an accounting period of the company, the specified amount for the accounting period of the company shall be the aggregate of—

(i) any specified amounts in relation to relevant periods falling in the accounting period, and

(ii) the amounts which would be the specified amounts in relation to any periods (which are not relevant periods) within the accounting period if each of those periods was treated as an accounting period;

but the specified amount in relation to an accounting period of a company shall not exceed the amount which would be the specified amount in relation to the accounting period if the company had no associated companies in the accounting period.

(5) (*a*) In this subsection, ''control'' shall be construed in accordance with *section 432*.

(*b*) In applying this section to any accounting period of a company, an associated company which—

(i) has not carried on any trade or business at any time in that accounting period or, if an associated company during part only of that accounting period, at any time in that part of that accounting period, or

(ii) has no income within the charge to corporation tax in the State in the accounting period,

shall be disregarded and, for the purposes of this section, a company shall be treated as an associated company of another company at a particular time if at that time one of the 2 companies has control of the other company or both companies are under the control of the same person or persons.

(6) In determining how many associated companies a company has in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and 2 or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.

(7) For the purposes of this section, the income of a company for an accounting period shall be taken to be an amount determined by the formula—

$$I - M$$

where—

I is the amount of the company's profits for the accounting period on which corporation tax falls finally to be borne exclusive of the part of the profits attributed to chargeable gains, and that part shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be

deducted from or set against or treated as reducing profits of more than one description, and

M is the amount of the company's income from the sale of goods for the purpose of *section 448*.

(8) (*a*) A company shall include in the return required to be delivered under *section 951*—

(i) a statement specifying—

(I) the amount of its profits to be charged to corporation tax at the rate specified in *subsection (1)*, and

(II) the number of companies which are its associated companies in relation to the accounting period,

and

(ii) a copy of any election made under *subsection (3)* or *(4)*.

(*b*) A company which has specified an amount under *paragraph (a)* shall not be entitled to alter the amount so specified.

Application of *section 13* for purposes of corporation tax.

[CTA76 s140(1) and Sch2 PtI par34]

23.—*Section 13* shall apply for the purposes of corporation tax as it applies for the purposes of income tax.

Companies resident in the State: income tax on payments made or received.

[CTA76 s3]

24.—(1) No payment made by a company resident in the State shall by virtue of this section or otherwise be treated for any purpose of the Income Tax Acts as paid out of profits or gains brought into charge to income tax, nor shall any right or obligation under the Income Tax Acts to deduct income tax from any payment be affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.

(2) Subject to the Corporation Tax Acts, where a company resident in the State receives any payment on which it bears income tax by deduction, the income tax on that payment shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment is to be taken into account for corporation tax (or would be taken into account but for any exemption from corporation tax), and accordingly in respect of that payment the company, unless wholly exempt from corporation tax, shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

(3) References in this section to payments received by a company apply to any payments received by another person on behalf of or in trust for the company, but not to any payments received by the company on behalf of or in trust for another person.

Pt.2
Companies not resident in the State.

[CTA76 s8(1), (2) and (3)]

25.—(1) A company not resident in the State shall not be within the charge to corporation tax unless it carries on a trade in the State through a branch or agency, but if it does so it shall, subject to any exceptions provided for by the Corporation Tax Acts, be chargeable to corporation tax on all its chargeable profits wherever arising.

(2) For the purposes of corporation tax, the chargeable profits of a company not resident in the State but carrying on a trade in the State through a branch or agency shall be—

(*a*) any trading income arising directly or indirectly through or from the branch or agency, and any income from property or rights used by, or held by or for, the branch or agency, but this paragraph shall not include distributions received from companies resident in the State, and

(*b*) such chargeable gains as but for the Corporation Tax Acts would be chargeable to capital gains tax in the case of a company not resident in the State;

but such chargeable profits shall not include chargeable gains accruing to the company on the disposal of assets which, at or before the time when the chargeable gains accrued, were not used in or for the purposes of the trade and were not used or held or acquired for the purposes of the branch or agency.

(3) Subject to *section 729*, where a company not resident in the State receives any payment on which it bears income tax by deduction, and that payment forms part of, or is to be taken into account in computing, the company's income chargeable to corporation tax, the income tax on that payment shall be set off against any corporation tax assessable on that income by an assessment made for the accounting period in which the payment is to be taken into account for corporation tax, and accordingly in respect of that payment the company shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

General scheme of corporation tax.

[CTA76 s6(1) to (3); FA97 s59(2) and Sch6 PtI par1]

26.—(1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.

(2) A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly, and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.

(3) Corporation tax for any financial year shall be charged on profits arising in that year; but assessments to corporation tax shall be made on a company by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall where necessary be apportioned between the financial years in which the accounting period falls.

(4) *Subsection (3)* shall apply as respects accounting periods ending on or after the 1st day of April, 1997, as if—

(*a*) the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, and

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(*b*) the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998,

were each a financial year.

Basis of, and periods for, assessment.

27.—(1) Except where otherwise provided by the Corporation Tax Acts, corporation tax shall be assessed and charged for any accounting period of a company on the full amount of the profits arising in that period (whether or not received in or remitted to the State) without any deduction other than one authorised by the Corporation Tax Acts.

[CTA76 s9]

(2) An accounting period of a company shall begin for the purposes of corporation tax whenever—

(*a*) the company, not then being within the charge to corporation tax, comes within it whether by the coming into force of any provision of the Corporation Tax Acts, or by the company becoming resident in the State or acquiring a source of income, or otherwise, or

(*b*) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for the purposes of corporation tax on the first occurrence of any of the following—

(*a*) the expiration of 12 months from the beginning of the accounting period,

(*b*) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period,

(*c*) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax,

(*d*) the company beginning or ceasing to be resident in the State, and

(*e*) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of this section, a company resident in the State, if not otherwise within the charge to corporation tax, shall be treated as coming within the charge to corporation tax at the time when it commences to carry on business.

(5) Where a company carrying on more than one trade makes up accounts of any of those trades to different dates and does not make up general accounts for the whole of the company's activities, *subsection (3)(b)* shall apply with reference to the accounting date of such one of the trades as the Revenue Commissioners may determine.

(6) Where a chargeable gain or allowable loss accrues to a company at a time not otherwise within an accounting period of the company, an accounting period of the company shall then begin for the

purposes of corporation tax and the gain or loss shall accrue in that accounting period.

(7) (*a*) Notwithstanding anything in *subsections (1)* to *(6)*, where a company is wound up, an accounting period shall end and a new one shall begin with the commencement of the winding up, and thereafter an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

(*b*) For the purposes of *paragraph (a)*, a winding up shall be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding up petition if no such resolution has previously been passed and a winding up order is made on the petition, or on the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act, 1963.

(8) Where it appears to the inspector that the beginning or end of any accounting period of a company is uncertain, he or she may make an assessment on the company for such a period, not exceeding 12 months, as appears to him or her appropriate, and that period shall be treated for all purposes as an accounting period of the company unless—

(*a*) the inspector on further facts coming to his or her knowledge sees fit to revise it, or

(*b*) on an appeal against the assessment in respect of some other matter, the company shows the true accounting periods,

and, if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the true accounting periods, and such other assessments may be made for any such periods or any of them as might have been made at the time when the assessment appealed against was made.

CHAPTER 3

Capital gains tax

Taxation of capital gains and rate of charge.

[CGTA75 s3(1) to (3); FA92 s60(1)(a)]

28.—(1) Capital gains tax shall be charged in accordance with the Capital Gains Tax Acts in respect of capital gains, that is, in respect of chargeable gains computed in accordance with those Acts and accruing to a person on the disposal of assets.

(2) Capital gains tax shall be assessed and charged for years of assessment in respect of chargeable gains accruing in those years.

(3) Except where otherwise provided by the Capital Gains Tax Acts, the rate of capital gains tax in respect of a chargeable gain accruing to a person on the disposal of an asset shall be 40 per cent, and any reference in those Acts to the rate specified in this section shall be construed accordingly.

PT.2
Persons chargeable.

[CGTA75 s4(1) to (4) and (6) to (8), s51(1) and Sch4 par2(2); FA77 s54(1)(a) and Sch2 PtI]

29.—(1) In this section—

''designated area'' means an area designated by order under section 2 of the Continental Shelf Act, 1968;

''exploration or exploitation rights'' has the same meaning as in *section 13*;

''shares'' includes stock and any security;

''security'' includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;

references to the disposal of assets mentioned in *paragraphs (a)* and *(b)* of *subsection (3)* and in *subsection (6)* include references to the disposal of shares deriving their value or the greater part of their value directly or indirectly from those assets, other than shares quoted on a stock exchange.

(2) Subject to any exceptions in the Capital Gains Tax Acts, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to such person in a year of assessment for which such person is resident or ordinarily resident in the State.

(3) Subject to any exceptions in the Capital Gains Tax Acts, a person who is neither resident nor ordinarily resident in the State shall be chargeable to capital gains tax for a year of assessment in respect of chargeable gains accruing to such person in that year on the disposal of—

(*a*) land in the State,

(*b*) minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals,

(*c*) assets situated in the State which at or before the time when the chargeable gains accrued were used in or for the purposes of a trade carried on by such person in the State through a branch or agency, or which at or before that time were used or held or acquired for use by or for the purposes of the branch or agency.

(4) *Subsection (2)* shall not apply in respect of chargeable gains accruing from the disposal of assets situated outside the State and the United Kingdom to an individual who satisfies the Revenue Commissioners that he or she is not domiciled in the State; but—

(*a*) the tax shall be charged on the amounts received in the State in respect of those chargeable gains,

(*b*) any such amounts shall be treated for the purposes of the Capital Gains Tax Acts as gains accruing when they are received in the State, and

(*c*) any losses accruing to the individual on the disposal of assets situated outside the State and the United Kingdom shall not be allowable losses for the purposes of the Capital Gains Tax Acts.

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(5) For the purposes of *subsection (4)*, all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the State shall be treated as received in the State in respect of any gain, and *section 72* shall apply as it would apply if the gain were income arising from possessions outside of the State.

(6) Any gains accruing on the disposal of exploration or exploitation rights in a designated area shall be treated for the purposes of the Capital Gains Tax Acts as gains accruing on the disposal of assets situated in the State.

(7) Any gains accruing to a person who is neither resident nor ordinarily resident in the State on the disposal of assets mentioned in *subsections (3)(b)* and *(6)* shall be treated for the purposes of capital gains tax as gains accruing on the disposal of assets used for the purposes of a trade carried on by that person in the State through a branch or agency.

(8) Any person aggrieved by a decision of the Revenue Commissioners on any question as to domicile or ordinary residence arising under the Capital Gains Tax Acts may, by notice in writing to that effect given to the Revenue Commissioners within 2 months from the date on which notice of the decision is given to such person, make an application to have such person's claim for relief heard and determined by the Appeal Commissioners.

(9) Where an application is made under *subsection (8)*, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

Partnerships.

[CGTA75 s4(5)]

30.—Where 2 or more persons carry on a trade, business or profession in partnership—

(*a*) capital gains tax in respect of chargeable gains accruing to those persons on the disposal of any partnership assets shall be assessed and charged on them separately, and

(*b*) any partnership dealings in assets shall be treated as dealings by the partners and not by the firm as such.

Amount chargeable.

[CGTA75 s5(1)]

31.—Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting—

(*a*) any allowable losses accruing to that person in that year of assessment, and

(*b*) in so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1974-75).

INCOME TAX AND CORPORATION TAX: THE MAIN PROVISIONS

PART 3

Provisions Relating to the Schedule C Charge and Government and Other Public Securities

CHAPTER 1

Principal provisions relating to the Schedule C charge

Interpretation (*Chapter 1*).

32.—In this Chapter—

[ITA67 s51]

''banker'' includes a person acting as a banker;

''coupons'' and ''coupons for any foreign public revenue dividends'' include warrants for or bills of exchange purporting to be drawn or made in payment of any foreign public revenue dividends;

''dividends'', except in the phrase ''stock, dividends or interest'', means any interest, annuities, dividends or shares of annuities;

''foreign public revenue dividends'' means dividends payable elsewhere than in the State (whether they are or are not also payable in the State) out of any public revenue other than the public revenue of the State;

''public revenue'', except where the context otherwise requires, includes the public revenue of any Government whatever and the revenue of any public authority or institution in any country outside the State;

''public revenue dividends'' means dividends payable out of any public revenue.

Method of charge and payment.

33.—(1) Tax under Schedule C shall be charged by the Commissioners designated for that purpose by the Income Tax Acts, and shall be paid on behalf of the persons entitled to the profits, dividends, proceeds of realisation or price paid on purchase which are the subject of the tax—

[ITA67 s48]

(*a*) in the case of tax charged under *paragraph 1* of that Schedule, by the persons and bodies of persons respectively entrusted with payment;

(*b*) in the case of tax charged under *paragraph 2*, *3* or *4* of that Schedule, by the banker or other person, or by the banker or by the dealer in coupons, as the case may be.

(2) *Schedule 2* shall apply in relation to the assessment, charge and payment of tax under Schedule C.

Stock, dividends or interest belonging to the State.

34.—(1) No tax shall be chargeable in respect of the stock, dividends or interest transferred to accounts in the books of the Bank of Ireland in the name of the Minister for Finance in pursuance of any statute, but the Bank of Ireland shall transmit to the Revenue Commissioners an account of the total amount of such stock, dividends or interest.

[ITA67 s49(1) and (2); F(MP)A68 s3(3) and Sch PtII]

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(2) No tax shall be chargeable in respect of the stock, dividends or interest belonging to the State in whatever name they may stand in the books of the Bank of Ireland.

Securities of foreign territories.

[ITA67 s50; F(MP)A68 s3(2) and Sch PtI]

35.—(1) (*a*) No tax shall be chargeable in respect of the dividends on any securities of any territory outside the State which are payable in the State, where it is proved to the satisfaction of the Revenue Commissioners that the person owning the securities and entitled to the dividends is not resident in the State; but, except where provided by the Income Tax Acts, no allowance shall be given or repayment made in respect of the tax on the dividends on the securities of any such territory which are payable in the State.

(*b*) Where the securities of any territory outside the State are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call on the trustees at any time to transfer the securities to such person absolutely free from any trust, that person shall for the purposes of this section be deemed to be the person owning the securities.

(2) Relief under this section may be given by the Revenue Commissioners either by means of allowance or repayment on a claim being made to them for that purpose.

(3) Any person aggrieved by a decision of the Revenue Commissioners on any question as to residence arising under this section may, by notice in writing to that effect given to the Revenue Commissioners within 2 months from the date on which notice of the decision is given to such person, make an application to have such person's claim for relief heard and determined by the Appeal Commissioners.

(4) Where an application is made under *subsection (3)*, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

CHAPTER 2

Government and other public securities: interest payable without deduction of tax

Government securities.

[ITA67 s466; FA97 s146(1) and Sch9 PtI par1(31)]

36.—(1) The Minister for Finance may direct that any securities already issued or to be issued under that Minister's authority shall be deemed to have been, or shall be, issued subject to the condition that the interest on those securities shall be paid without deduction of tax.

(2) The interest on all securities issued, or deemed to have been issued, subject to the condition referred to in *subsection (1)* shall be paid without deduction of tax, but all such interest shall be chargeable under Case III of Schedule D and, where any funds under the

control of any court or public department are invested in any such securities, the person in whose name the securities are invested shall be the person so chargeable in respect of the interest on those securities. Pt.3 S.36

(3) Where interest on any security is paid under this section without deduction of tax, every person by whom such interest is paid, every person who receives such interest on behalf of a registered or inscribed holder of the security, and every person who has acted as an intermediary in the purchase of the security, shall, on being so required by the Revenue Commissioners, furnish to them—

(*a*) the name and address of the person to whom such interest has been paid, or on whose behalf such interest has been received, and the amount of the interest so paid or received, or, as the case may require,

(*b*) the name and address of the person on whose behalf such security was purchased and the amount of such security.

Securities of certain State-owned companies.

37.—(1) In this section, ''securities'' means any bonds, certificates of charge, debentures, debenture stock, notes, stock or other forms of security.

[FA97 s144]

(2) The securities specified in the Table to this section shall be deemed to be securities issued under the authority of the Minister for Finance under *section 36*, and that section shall apply accordingly.

(3) Notwithstanding anything in the Tax Acts, in computing for the purposes of assessment under Schedule D the amount of the profits or gains of a company (being a company referred to in the Table to this section) for any accounting period, the amount of the interest on any securities which, by direction of the Minister for Finance given under *section 36*, as applied by *subsection (2)*, is paid by the company without deduction of tax for such period shall be allowed as a deduction.

TABLE

Securities issued by ACC Bank plc.

Securities issued on or after the 13th day of July, 1954, by the Electricity Supply Board.

Securities issued on or after the 13th day of July, 1954, by Córas Iompair Éireann.

Securities issued on or after the 18th day of July, 1957, by Bord na Móna.

Securities issued on or after the 2nd day of July, 1964, by Aer Lingus, Teoranta.

Securities issued on or after the 2nd day of July, 1964, by Aer Rianta, Teoranta.

Securities issued on or after the 2nd day of July, 1964, by Aerlínte Éireann, Teoranta.

Securities issued on or after the 25th day of May, 1988, by Bord Telecom Éireann.

Securities issued on or after the 25th day of May, 1988, by Irish Telecommunications Investments plc.

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Securities issued on or after the 24th day of May, 1989, by Radio Telefís Éireann.

Securities issued on or after the 24th day of May, 1989, by ICC Bank plc.

Securities issued on or after the 28th day of May, 1992, by Bord Gáis Éireann.

Certain State-guaranteed securities.

[FA70 s59(1), (2) and (3); FA97 s146(1) and Sch9 PtI par4(3)]

38.—(1) This section shall apply to any securities (other than securities specified in the Table to *section 37*) which are issued by a body corporate and in respect of which the payment of interest and the repayment of principal are guaranteed by a Minister of the Government under statutory authority.

(2) Any securities to which this section applies shall be deemed to be securities issued under the authority of the Minister for Finance under *section 36*, and that section shall apply accordingly.

(3) Notwithstanding anything in the Tax Acts, in computing for the purposes of assessment under Case I of Schedule D the amount of the profits or gains of a body corporate by which the securities to which this section applies are issued, for any period for which accounts are made up, the amount of the interest on such securities which, by direction of the Minister for Finance under *section 36*, as applied by this section, is paid by the body corporate without deduction of tax for such period shall be allowed as a deduction.

Securities of certain European bodies.

[FA73 s92(1) and (2)(a); FA89 s98(1)]

39.—(1) This section shall apply to any stock or other form of security issued in the State by the European Community, the European Coal and Steel Community, the European Atomic Energy Community or the European Investment Bank.

(2) Any stock or other form of security to which this section applies shall be deemed to be a security issued under the authority of the Minister for Finance under *section 36*, and that section shall apply accordingly.

Securities of International Bank for Reconstruction and Development.

[FA94 s161(1) and (2)(a)]

40.—(1) This section shall apply to any stock or other form of security issued by the International Bank for Reconstruction and Development.

(2) Any stock or other form of security to which this section applies shall be deemed to be a security issued under the authority of the Minister for Finance under *section 36*, and that section shall apply accordingly.

Securities of designated bodies under the Securitisation (Proceeds of Certain Mortgages) Act, 1995.

[FA96 s39(1) and (3)]

41.—Any stock or other form of security issued by a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995, shall be deemed to be a security issued under the authority of the Minister for Finance under *section 36*, and that section shall apply accordingly.

CHAPTER 3

Government and other public securities: exemptions from tax

Exemption of interest on savings certificates.

[ITA67 s463]

42.—The accumulated interest payable in respect of any savings certificate issued by the Minister for Finance, under which the purchaser, by virtue of an immediate payment of a specified sum, becomes entitled after a specified period to receive a larger sum consisting of the specified sum originally paid and accumulated interest on that specified sum, shall not be liable to tax so long as the amount

of such certificates held by the person who is for the time being the holder of the certificate does not exceed the amount which that person is for the time being authorised to hold under regulations made by the Minister for Finance.

Certain securities issued by Minister for Finance.

[ITA67 s464; FA92 s42(1)(a); FA97 s45]

43.—(1) Any security which the Minister for Finance has power to issue for the purpose of raising any money or loan may be issued with a condition that neither the capital of nor the interest on such security shall be liable to tax so long as it is shown in the manner to be prescribed by the Minister for Finance that such security is in the beneficial ownership of a person who is not, or persons who are not, ordinarily resident in the State, and accordingly every security issued with such condition shall be exempt from tax.

(2) (*a*) Notwithstanding *subsection (1)*, where a security has been issued with the condition referred to in that subsection and the security is held by or for a branch or agency through which a company carries on a trade or business in the State, which is such a trade or business, as the case may be, that, if the security had been issued without that condition, interest on, or other profits or gains from, the security accruing to the company would be chargeable to corporation tax under Case I or, as respects interest and other profits or gains accruing on or after the 21st day of April, 1997, from the security, Case IV of Schedule D, or in accordance with *section 726*, then, such interest and profits or gains shall be charged to tax as if the security had been issued without such condition.

(*b*) *Paragraph (a)* shall apply as respects securities acquired by a company after the 29th day of January, 1992, whether they were issued before or after that date.

Exemption from corporation tax of certain securities issued by Minister for Finance.

[FA85 s69]

44.—(1) In this section—

''control'' shall be construed in accordance with *subsections (2)* to *(6)* of *section 432*, with the substitution in *subsection (6)* of that section for ''5 or fewer participators'' of ''persons resident in a relevant territory'';

''foreign company'' means a company which is—

(*a*) not resident in the State, and

(*b*) under the control of a person or persons resident in a relevant territory;

''qualifying company'' means a company—

(*a*) (i) which is resident in the State and not resident elsewhere,

(ii) whose business consists wholly or mainly of—

(I) the carrying on of a relevant trade or relevant trades, or

(II) the holding of stocks, shares or securities of a company which exists wholly or mainly for the purpose of the carrying on of a relevant trade or relevant trades,

and

(iii) of which not less than 90 per cent of its issued share capital is held by a foreign company or foreign companies, or by a person or persons directly or indirectly controlled by a foreign company or foreign companies,

or

(*b*) which is a foreign company carrying on a relevant trade through a branch or agency in the State;

''relevant territory'' means the United States of America or a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made;

''relevant trade'' means a trade carried on wholly or mainly in the State, but does not include a trade consisting wholly or partly of—

(*a*) banking within the meaning of the Central Bank Act, 1971,

(*b*) assurance business within the meaning of section 3 of the Insurance Act, 1936,

(*c*) selling goods by retail, or

(*d*) dealing in securities,

but goods shall be deemed for the purposes of this definition not to be sold by retail if they are sold to—

(i) a person who carries on a trade of selling goods of the class to which the goods so sold to such person belong,

(ii) a person who uses goods of that class for the purposes of a trade carried on by such person, or

(iii) a person, other than an individual, who uses goods of that class for the purposes of an undertaking carried on by such person.

(2) Any security which the Minister for Finance has power to issue for the purpose of raising any money or loan may be issued with a condition that any interest arising on such security shall not be liable to corporation tax so long as the security is held continuously from the date of issue in the beneficial ownership of a qualifying company to which the security was issued.

Exemption of non-interest-bearing securities.

[ITA67 s465; FA74 s86 and Sch2 PtI; FA84 s28 and FA90 s138]

45.—(1) The excess of the amount received on the redemption of a unit of non-interest-bearing securities issued by the Minister for Finance under section 4 of the Central Fund Act, 1965, over the amount paid for the unit on its issue shall, except where the excess is to be taken into account in computing for the purposes of taxation the profits of a trade, be exempt from tax.

(2) *Subsection (1)* shall not apply to issues of securities to which *subsection (3)* applies made after the 25th day of January, 1984, unless a tender for any such securities was submitted on or before that date.

(3) The securities to which this subsection applies are—

(*a*) non-interest-bearing securities issued by the Minister for Finance at a discount, including Exchequer Bills and Exchequer Notes, and

(*b*) Agricultural Commodities Intervention Bills issued by the Minister for Agriculture and Food.

(4) (*a*) In this subsection, ''owner'', in relation to securities, means at any time the person who would be entitled, if the securities were redeemed at that time by the issuer, to the proceeds of the redemption.

(*b*) Notwithstanding *subsection (2)*, where the owner of a security to which *subsection (3)* applies—

(i) sells or otherwise disposes of the security, or

(ii) receives on redemption of the security an amount greater than the amount paid by such owner for that security either on its issue or otherwise,

then, any profit, gain or excess arising to the owner from such sale, disposal or receipt shall be exempt from tax where the owner is not ordinarily resident in the State; but this subsection shall not apply in respect of corporation tax chargeable on the income of an Irish branch or agency of a company not resident in the State.

Exemption of premiums on Investment Bonds.

[F(No.2)A68 s8; FA74 s86 and Sch2 PtI]

46.—The excess of the amount received on the redemption of a unit of securities created and issued by the Minister for Finance under the Central Fund (Permanent Provisions) Act, 1965, and known as Investment Bonds, over the amount which was paid for the unit on its issue shall, except where the excess is to be taken into account in computing for the purposes of taxation the profits of a trade, be exempt from tax.

Certain securities of ACC Bank plc.

[ITA67 s468(3)]

47.—Debentures, debenture stock and certificates of charge issued by ACC Bank plc, shall not be liable to tax so long as it is shown in the manner to be prescribed by the Minister for Finance that they are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the State.

Exemption of premiums on certain securities.

[FA69 s63; FA70 s59(1) and (6); FA73 s92(1) and (2)(b); FA74 s86 and Sch2 PtI; FA84 s28; FA89 s98(1); FA90 s138; FA94 s161(1) and (2)(b); FA97 s34]

48.—(1) The securities to which this subsection applies are—

(*a*) securities created and issued by the Minister for Finance under the Central Fund (Permanent Provisions) Act, 1965, or under any other statutory powers conferred on that Minister, and any stock, debenture, debenture stock, certificate of charge or other security issued with the approval of the Minister for Finance given under any Act of the Oireachtas and in respect of which the payment of interest and repayment of capital is guaranteed by the Minister for Finance under that Act, but excluding securities to which section 4 of the Central Fund Act, 1965, or *section 45(1)* or *46* applies,

(*b*) securities (other than securities specified in the Table to *section 37*) issued by a body corporate and in respect of

which the payment of interest and the repayment of principal is guaranteed by a Minister of the Government under statutory authority,

(*c*) any stock or other form of security issued in the State by the European Community, the European Coal and Steel Community, the European Atomic Energy Community or the European Investment Bank, and

(*d*) any stock or other form of security issued by the International Bank for Reconstruction and Development.

(2) The excess of the amount received on the redemption of a unit of securities to which *subsection (1)* applies over the amount paid for the unit on its issue shall, except where the excess is to be taken into account in computing for the purposes of taxation the profits of a trade, be exempt from tax.

(3) *Subsection (2)* shall not apply to issues of securities to which *subsection (4)* applies made after the 25th day of January, 1984, unless a tender for any such securities was submitted on or before that date.

(4) The securities to which this subsection applies are—

(*a*) non-interest-bearing securities issued by the Minister for Finance at a discount, including Exchequer Bills and Exchequer Notes,

(*b*) Agricultural Commodities Intervention Bills issued by the Minister for Agriculture and Food, and

(*c*) strips within the meaning of section 54(10) of the Finance Act, 1970 (inserted by section 161 of the Finance Act, 1997).

(5) (*a*) In this subsection, ''owner'', in relation to securities, means at any time the person who would be entitled, if the securities were redeemed at that time by the issuer, to the proceeds of the redemption.

(*b*) Notwithstanding *subsection (3)*, where the owner of a security to which *subsection (4)* applies—

(i) sells or otherwise disposes of the security, or

(ii) receives on redemption of the security an amount greater than the amount paid by the owner for that security either on its issue or otherwise,

any profit, gain or excess arising to the owner from such sale, disposal or receipt shall be exempt from tax where the owner is not ordinarily resident in the State; but this subsection shall not apply in respect of corporation tax chargeable on the income of an Irish branch or agency of a company not resident in the State.

Exemption of certain securities.

[ITA67 s474; FA92 s42(1)(c); FA97 s47, s146(1) and Sch9 PtI par1(32)]

49.—(1) This section shall apply to any stock or other security on which interest is payable without deduction of tax by virtue of a direction given by the Minister for Finance in pursuance of *section 37*, *38*, *39*, *40* or *41*.

(2) Any stock or other security to which this section applies may be issued with either or both of the following conditions—

(*a*) that neither the capital of nor the interest on the stock or other security shall be liable to tax so long as it is shown in the manner directed by the Minister for Finance that the stock or other security is in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the State, and

(*b*) that the interest on the stock or other security shall not be liable to tax so long as it is shown in the manner directed by the Minister for Finance that the stock or other security is in the beneficial ownership of persons who, though domiciled in the State, are not ordinarily resident in the State,

and accordingly, as respects every such stock or other security so issued, exemption from tax shall be granted.

(3) (*a*) Notwithstanding *subsection (2)*, where a security to which this section applies has been issued with either or both of the conditions referred to in that subsection and the security is held by or for a branch or agency through which a company carries on a trade or business in the State, which is such a trade or business, as the case may be, that, if the security had been issued without either of those conditions, interest on, or other profits or gains from, the security accruing to the company would be chargeable to corporation tax under Case I or, as respects interest and other profits or gains accruing on or after the 21st day of April, 1997, from the security, Case IV of Schedule D, or in accordance with *section 726*, then, such interest and profits or gains shall be charged to tax as if the security had been issued without either of those conditions.

(*b*) *Paragraph (a)* shall apply as respects securities acquired by a company after the 15th day of May, 1992, whether they were issued before or after that date.

Securities of Irish local authorities issued abroad.

50.—(1) In this section, ''local authority'' includes any public body recognised as a local authority for the purpose of this section by the Minister for the Environment and Local Government.

[ITA67 s470; FA92 s42(1)(b); FA97 s46]

(2) Securities issued outside the State by a local authority in the State for the purpose of raising any money which the local authority is authorised to borrow, if issued under the authority of the Minister for Finance, shall not be liable to tax, except—

(*a*) where they are held by persons domiciled in the State or ordinarily resident in the State, or

(*b*) as respects securities acquired by a company after the 15th day of May, 1992, whether they were issued before or after that date, where they are held by or for a branch or agency through which a company carries on a trade or business in the State which is such a trade or business, as the case may be, that, if this section had not been enacted, interest on, or other profits or gains from, the securities accruing to the company would be chargeable to corporation tax under Case I or, as respects interest

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and other profits or gains accruing on or after the 21st day of April, 1997, from the securities, Case IV of Schedule D, or in accordance with *section 726*.

CHAPTER 4

Miscellaneous provisions

Funding bonds issued in respect of interest on certain debts.

[ITA67 s475; CTA76 s140(1) and Sch2 PtI par 26]

51.—(1) In this section, ''funding bonds'' includes all bonds, stocks, shares, securities and certificates of indebtedness.

(2) This section shall apply to all debts owing by any government, public authority or public institution whatever or wherever and to all debts owing by any body corporate whatever or wherever.

(3) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on a debt to which this section applies, the issue of those bonds shall be treated for the purposes of the Tax Acts as if it were the payment of an amount of the interest equal to the value of the bonds at the time of the issue of the bonds, and the redemption of the bonds shall not be treated for any of the purposes of the Tax Acts as payment of the interest or any part of the interest.

PART 4

Principal Provisions Relating to the Schedule D Charge

CHAPTER 1

Supplementary charging provisions

Persons chargeable.

[ITA67 s105]

52.—Income tax under Schedule D shall be charged on and paid by the persons or bodies of persons receiving or entitled to the income in respect of which tax under that Schedule is directed in the Income Tax Acts to be charged.

Cattle and milk dealers.

[FA69 s19; FA96 s132(1) and Sch5 PtI par4]

53.—(1) In this section—

''farm land'' means land in the State wholly or mainly occupied for the purposes of husbandry, other than market garden land within the meaning of *section 654*;

''occupation'', in relation to any land, means having the use of that land.

(2) The occupation by a dealer in cattle, or a dealer in or a seller of milk, of farm land which is insufficient for the keep of the cattle brought on to the land shall be treated as the carrying on of a trade, and the profits or gains thereof shall be charged under Case I of Schedule D.

Interest, etc. paid without deduction of tax under Schedule C.

[ITA67 s55]

54.—(1) This section shall apply to all interest, dividends, annuities and shares of annuities payable out of any public revenue of the State or out of any public revenue of Great Britain or of Northern Ireland or of Great Britain and Northern Ireland.

(2) Where any interest, dividends, annuities or shares of annuities to which this section applies or the profits attached to any such interest, dividends or annuities are to be charged under the provisions applicable to Schedule C but are in fact not assessed for any year under that Schedule, tax on such interest, dividends, annuities, shares of annuities or profits may be charged and assessed on and

shall be payable by the person entitled to receive such interest, dividends or other annual payments for that year under the appropriate Case of Schedule D. Pt.4 S.54

Taxation of strips of securities.

[FA97 s33]

55.—(1) In this section—

''chargeable period'' has the same meaning as in *section 321(2)*;

''market value'' shall be construed in accordance with *section 548*;

''nominal value'', in relation to a unit of a security, means—

(*a*) where the interest on the unit of the security is expressed to be payable by reference to a given value, that value, and

(*b*) in any other case, the amount paid for the unit of the security on its issue;

''opening value'', in relation to a unit of a security from which at any time strips of the unit have been created by a person, means—

(*a*) in the case of a person who is carrying on a trade which consists wholly or partly of dealing in securities of which the unit of the security is an asset in respect of which any profits or gains are chargeable to tax under Case I of Schedule D, an amount equal to the market value of the unit of the security at the time the strips were created, and

(*b*) in the case of any other person, an amount equal to the lesser of—

(i) the market value of the unit of the security at the time the strips were created, and

(ii) the nominal value of the unit of the security;

''relevant day'', in relation to a person who holds a strip, means—

(*a*) where the person is not a company within the charge to corporation tax, the 5th day of April in a year of assessment, and

(*b*) where the person is a company within the charge to corporation tax, the day on which an accounting period of the company ends;

''securities'' has the same meaning as in *section 815(1)*, and a unit of a security shall be construed accordingly;

''strip'', in relation to a unit of a security, means an obligation of the person who issued the security to make a payment, whether of interest or of principal, which has been separated from other obligations of that person to make payments in respect of the unit of the security.

(2) Where at any time a person who owns a unit of a security creates strips of that unit—

(*a*) the unit of the security shall be deemed to have been sold at that time by that person for an amount equal to its market value at that time,

(*b*) that person shall be deemed to have acquired at that time each strip for the amount which bears the same proportion to the opening value of the unit of the security as the market value of the strip at that time bears to the aggregate of the market value at that time of each of the strips of the unit of the security, and

(*c*) each strip shall be deemed to be a non-interest-bearing security any profits or gains arising on a disposal or redemption of which shall, subject to *subsection (5)*, be chargeable to tax under Case III of Schedule D unless charged to tax under Case I of that Schedule.

(3) Where a person, other than a person carrying on a trade which consists wholly or partly of dealing in securities in respect of which any profits or gains are chargeable to tax under Case I of Schedule D, acquires a strip in respect of a unit of a security referred to in *section 607*, otherwise than in accordance with *subsection (2)*, the person shall be deemed to have acquired the strip for an amount equal to the lesser of—

(*a*) the amount which bears the same proportion to the nominal value of the unit of the security as the market value of the strip at the time of issue of the security would have borne to the aggregate of the market value at that time of each of the strips of the unit of the security if the strip had been created at the time of issue of the security, and

(*b*) the amount paid by the person for the acquisition of the strip.

(4) Where at any time strips of a unit of a security are reconstituted into a unit of the security by any person—

(*a*) each of the strips shall be deemed to have been sold at that time by that person for an amount equal to its market value at that time, and

(*b*) that person shall be deemed to have acquired at that time the unit of the security for an amount equal to the aggregate of the market value at that time of each of the strips.

(5) Where a person holds a strip on a relevant day, that person shall on that day be deemed to have disposed of and immediately reacquired the strip at the market value of the strip on that day.

(6) Where under *subsection (5)* a person is deemed to have disposed of a strip on a relevant day, the amount to be included in the profits or gains chargeable to tax under Case III of Schedule D for the chargeable period in which the relevant day falls shall be the aggregate of the amounts of any profits or gains arising on such deemed disposals in the chargeable period after deducting the aggregate of the amounts of any losses arising on such deemed disposals in that chargeable period and, in so far as they have not been allowed as a deduction from profits or gains in any previous chargeable period, any losses arising on such deemed disposals in any previous chargeable period.

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Tax on quarries, mines and other concerns chargeable under Case I(*b*) of Schedule D.

56.—(1) Subject to this section, *Chapter 3* of this Part and *section 108* shall apply in relation to the concerns which by virtue of *section 18* are chargeable under Case I(*b*) of Schedule D.

[ITA67 s56(1) to (3)]

(2) Tax under Case I of Schedule D shall be assessed and charged on the person or body of persons carrying on such concern or on the agents or other officers who have the direction or management of the concern or receive the profits of the concern.

(3) (*a*) The computation in respect of any mine carried on by a company of adventurers shall be made and stated jointly in one sum, but any adventurer may be assessed and charged separately if that adventurer makes a declaration of that adventurer's proportion or share in the concern for that purpose.

(*b*) Any adventurer so separately assessed and charged may set off against that adventurer's profits from one or more of such concerns the amount of that adventurer's loss sustained in any other such concern as certified by the inspector.

(*c*) In any such case one assessment and charge only shall be made on the balance of profit and loss, and shall be made in the assessment district where the adventurer is chargeable to the greatest amount.

Extension of charge to tax under Case III of Schedule D in certain circumstances.

57.—(1) This section shall apply to any sum received or benefit derived by an employee in respect of which there would be a charge to tax by virtue of *Chapter 3* of *Part 5* if the office or employment held by the employee were one the profits or gains from which were chargeable to tax under Schedule E.

[FA76 s22]

(2) Where a person holds an office or employment and—

(*a*) the profits or gains arising to the person from that office or employment are chargeable to tax under Case III of Schedule D by virtue of *section 18*, and

(*b*) the person receives a sum in respect of expenses or derives a benefit, being a sum or benefit to which this section applies,

the profits or gains from that office or employment assessable to tax shall include the specified amount and shall be charged to tax accordingly.

(3) The specified amount referred to in *subsection (2)* shall be the amount which by virtue of *Chapter 3* of *Part 5* would be chargeable to tax in respect of the sum or benefit to which this section applies if the profits or gains from the office or employment referred to in that subsection were chargeable to tax under Schedule E.

Charge to tax of profits or gains from unknown or unlawful source.

58.—(1) Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made—

[FA83 s19(1) and (2); DITPA96 s11]

(*a*) the source from which those profits or gains arose was not known to the inspector,

(*b*) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or

(*c*) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.

(2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of *subsection (1)* or charged to tax by virtue of or following any investigation by any body (in this subsection referred to as ''the body'') established by or under statute or by the Government, the purpose or one of the principal purposes of which is—

(*a*) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,

(*b*) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(*c*) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the purposes mentioned in *paragraphs (a)* and *(b)*,

shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as ''miscellaneous income'', and in respect of such profits and gains so assessed—

(i) the assessment—

(I) may be made solely in the name of the body, and

(II) shall not be discharged by the Appeal Commissioners or by a court by reason only of the fact that the income should apart from this section have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity,

and

(ii) (I) the tax charged in the assessment may be demanded solely in the name of the body, and

(II) on payment to it of the tax so demanded, the body shall issue a receipt in its name and shall forthwith—

(A) lodge the tax paid to the General Account of the Revenue Commissioners in the Central Bank of Ireland, and

(B) transmit to the Collector-General particulars of the tax assessed and payment received in respect of that tax.

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Charge to tax of income from which tax has been deducted.

59.—Where income (in this section referred to as ''the relevant income'')—

(*a*) from which tax is deductible by virtue of Schedule C or D, or

(*b*) from which tax is deductible by virtue of *section 237* or *238*,

is to be taken into account in computing the total income of an individual for any year of assessment, then, for the purpose of charging that total income to tax at the rate or rates of tax charged for that year of assessment, the following provisions shall apply:

[FA74 s4; CTA76 s 140(1) and Sch2 PtI par41 and s164 and Sch3 PtI; FA96 s132(2) and Sch5 PtII]

(i) the relevant income shall be regarded as income chargeable to tax under Case IV of Schedule D and shall be charged accordingly, and

(ii) in determining the amount of tax payable on that total income, credit shall be given for the tax deducted from the relevant income and the amount of the credit shall be the amount of tax deducted from the relevant income.

CHAPTER 2

Foreign dividends

Interpretation (*Chapter 2*).

60.—In this Chapter—

[ITA67 s459]

''dividends to which this Chapter applies'' means any interest, dividends or other annual payments payable out of or in respect of the stocks, funds, shares or securities of any body of persons not resident in the State, but does not include any payment to which *section 237* or *238* applies, and references to dividends shall be construed accordingly;

''banker'' includes a person acting as a banker;

references to coupons in relation to any dividends include warrants for or bills of exchange purporting to be drawn or made in payment of those dividends.

Dividends entrusted for payment in the State.

61.—Where dividends to which this Chapter applies are entrusted to any person in the State for payment to any persons in the State—

(*a*) the dividends shall be assessed and charged to tax under Schedule D by the Revenue Commissioners, and

[ITA67 s460; F(MP)A68 s 3(3) and Sch PtII]

(*b*) *Parts 1*, *4* and *5* of *Schedule 2* shall extend to the tax to be assessed and charged under this section.

Dividends paid outside the State and proceeds of sale of dividend coupons.

62.—Where—

[ITA67 s461]

(*a*) a banker or any other person in the State, by means of coupons received from another person or otherwise on that other person's behalf, obtains payment of any dividends to which this Chapter applies elsewhere than in the State,

(*b*) a banker in the State sells or otherwise realises coupons for any dividends to which this Chapter applies and pays over the proceeds of such realisation to or carries such proceeds to the account of any person, or

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(*c*) a dealer in coupons in the State purchases coupons for any dividends to which this Chapter applies otherwise than from a banker or another dealer in coupons,

then, the tax under Schedule D shall extend—

(i) in the case mentioned in *paragraph (a)*, to the dividends,

(ii) in the case mentioned in *paragraph (b)*, to the proceeds of the realisation, and

(iii) in the case mentioned in *paragraph (c)*, to the price paid on such purchase,

and *Parts 1*, *4* and *5* of *Schedule 2* shall apply in relation to the assessment, charge and payment of the tax.

Exemption of dividends of non-residents.

[ITA67 s462; F(MP)A68 s3(2) and Sch PtI]

63.—(1) (*a*) No tax shall be chargeable in respect of dividends to which this Chapter applies which are payable in the State where it is proved to the satisfaction of the Revenue Commissioners that the person owning the stocks, funds, shares or securities and entitled to the income arising from those stocks, funds, shares or securities is not resident in the State but, except where provided by the Income Tax Acts, no allowance shall be given or repayment made in respect of the tax on dividends to which this Chapter applies which are payable in the State.

(*b*) Where the dividends referred to in *paragraph (a)* are from stocks, funds, shares or securities which are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call on the trustees at any time to transfer the stocks, funds, shares or securities to such person absolutely free from any trust, such person shall for the purposes of this section be deemed to be the person owning the stocks, funds, shares or securities.

(2) Relief under this section may be given by the Revenue Commissioners either by means of allowance or repayment on a claim being made to them for that purpose.

(3) Any person aggrieved by a decision of the Revenue Commissioners on any question as to residence arising under this section may, by notice in writing to that effect given to the Revenue Commissioners within 2 months from the date on which notice of the decision is given to such person, make an application to have such person's claim for relief heard and determined by the Appeal Commissioners.

(4) Where an application is made under *subsection (3)*, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

Pt.4
Interest on quoted Eurobonds.

[ITA67 s462A; FA94 s15]

64.—(1) In this section—

''appropriate inspector'' means the inspector authorised by the Revenue Commissioners for the purposes of this section;

''quoted Eurobond'' means a security which—

(*a*) is issued by a company,

(*b*) is quoted on a recognised stock exchange,

(*c*) is in bearer form, and

(*d*) carries a right to interest;

''recognised clearing system'' means any system for clearing quoted Eurobonds or relevant foreign securities which is for the time being designated for the purposes of this section by order of the Revenue Commissioners as a recognised clearing system;

''relevant foreign securities'' means—

(*a*) any such stocks, funds, shares or securities as give rise to dividends to which this Chapter applies, or

(*b*) any such securities as give rise to foreign public revenue dividends within the meaning of *section 32*;

''relevant person'' means—

(*a*) the person by or through whom interest is paid, or

(*b*) a banker or any other person, or a dealer in coupons, referred to in *section 62*,

as the case may be.

(2) *Section 246(2)* shall not apply to interest paid on any quoted Eurobond where—

(*a*) the person by or through whom the payment is made is not in the State, or

(*b*) the payment is made by or through a person in the State, and—

(i) the quoted Eurobond is held in a recognised clearing system, or

(ii) the person who is the beneficial owner of the quoted Eurobond and who is beneficially entitled to the interest is not resident in the State and has made a declaration of the kind mentioned in *subsection (7)*.

(3) In a case within *subsection (2)(b)*, the person by or through whom the payment is made shall deliver to the appropriate inspector—

(*a*) on demand by the appropriate inspector, an account of the amount of any such payment, and

(*b*) not later than 12 months after making any such payment and unless within that time that person delivers an

account with respect to the payment under *paragraph (a)*, a written statement specifying that person's name and address and describing the payment.

(4) Where by virtue of any provision of the Tax Acts interest paid on any quoted Eurobond is deemed to be income of a person other than the person who is the beneficial owner of the quoted Eurobond, *subsection (2)(b)(ii)* shall apply as if it referred to that other person.

(5) *Sections 62* and *63* and, in so far as it relates to *section 62*, *Schedule 2* shall apply in relation to interest on quoted Eurobonds as they would apply in relation to dividends to which this Chapter applies—

(*a*) if in *paragraph (a)* of *section 62* the following were substituted for ''applies elsewhere than in the State'':

''applies and—

(i) the payment of those dividends was not made by or entrusted to any person in the State, or

(ii) the stocks, funds and securities in respect of which those dividends are paid are held in a recognised clearing system'',

(*b*) if in *section 63* the following were substituted for *subsection (1)(a)*:

''(1) (*a*) No tax shall be chargeable in respect of dividends to which this Chapter applies which are payable in the State where the person who is the beneficial owner of the stocks, funds, shares or securities and who is beneficially entitled to the dividends is not resident in the State and has made a declaration of the kind mentioned in *section 64(7)*.'',

and

(*c*) if in *paragraph 14(1)* of *Part 4* of *Schedule 2 clauses (a)* and *(b)* were deleted.

(6) An order referred to in the definition of ''recognised clearing system''—

(*a*) may contain such transitional and other supplemental provisions as appear to the Revenue Commissioners to be necessary or expedient, and

(*b*) may be varied or revoked by a subsequent order.

(7) The declaration referred to in *subsection (2)(b)(ii)* or in *subsection (1)(a)* of *section 63* (as construed by reference to *subsection (5)(b)*) shall be a declaration in writing to a relevant person which—

(*a*) is made by a person (in this section referred to as ''the declarer'') to whom any interest in respect of which the declaration is made is payable by the relevant person, and is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time the declaration is made the person who is beneficially entitled to the interest is not resident in the State,

(*d*) contains as respects the person mentioned in *paragraph (c)*—

(i) the name of the person,

(ii) the address of that person's principal place of residence, and

(iii) the name of the country in which that person is resident at the time the declaration is made,

(*e*) contains an undertaking by the declarer that, if the person referred to in *paragraph (c)* becomes resident in the State, the declarer will notify the relevant person accordingly, and

(*f*) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.

(8) (*a*) A relevant person shall—

(i) keep and retain for the longer of the following periods—

(I) a period of 6 years, and

(II) a period which ends not earlier than 3 years after the latest date on which interest in respect of which the declaration was made is paid,

and

(ii) on being so required by notice given in writing by an inspector, make available to the inspector within the time specified in the notice,

all declarations of the kind mentioned in this section which have been made in respect of interest paid by the relevant person.

(*b*) The inspector may examine or take extracts from or copies of any declarations made available under *paragraph (a).*

CHAPTER 3

Income tax: basis of assessment under Cases I and II

Cases I and II: basis of assessment.

65.—(1) Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment.

[ITA67 s58(1) and s60; FA90 s14(1)(a) and s15; FA97 s146(1) and Sch9 PtI par1(2)]

(2) Where in the case of any trade or profession it has been customary to make up accounts—

(*a*) if only one account was made up to a date within the year of assessment and that account was for a period of one year, the profits or gains of the year ending on that date

shall be taken to be the profits or gains of the year of assessment;

(*b*) if an account, other than an account to which *paragraph (a)* applies, was made up to a date in the year of assessment, or if more accounts than one were made up to dates in the year of assessment, the profits or gains of the year ending on that date or on the last of those dates, as the case may be, shall be taken to be the profits or gains of the year of assessment;

(*c*) in any other case, the profits or gains of the year of assessment shall be determined in accordance with *subsection (1)*.

(3) Where the profits or gains of a year of assessment have been computed on the basis of a period in accordance with *paragraph (b)* or *(c)* of *subsection (2)* and the profits of the corresponding period relating to the preceding year of assessment exceed the profits or gains charged to income tax for that year, then, the profits of that corresponding period shall be taken to be the profits or gains of that preceding year of assessment and the assessment shall be amended accordingly.

(4) In the case of the death of a person who, if he or she had not died, would under this section have become chargeable to income tax for any year of assessment, the tax which would have been so chargeable shall be assessed and charged on such person's executors or administrators, and shall be a debt due from and payable out of such person's estate.

Special basis at commencement of trade or profession.

[ITA67 s58(2), (3) and (4); FA90 s14(1)(b)]

66.—(1) Where a trade or profession has been set up and commenced within the year of assessment, the computation of the profits or gains chargeable under Case I or II of Schedule D shall be made either on the full amount of the profits or gains arising in the year of assessment or according to the average of such period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) Any person chargeable with income tax in respect of the profits or gains of any trade or profession which has been set up and commenced within one year preceding the year of assessment shall be charged on the full amount of the profits or gains for one year from the time of such setting up and commencement.

(3) Any person chargeable with income tax in respect of the profits or gains of any trade or profession which has been set up and commenced within the year next before the year preceding the year of assessment shall be entitled, on giving notice in writing to the inspector with the return required under *section 951* for the year of assessment, to have the assessment reduced by the amount (if any) by which the amount of the assessment for the year preceding the year of assessment exceeds the full amount of the profits or gains of that preceding year; but, where the excess is greater than the amount of the assessment, the difference between the excess and the amount of the assessment shall be treated for the purposes of *section 382* as if it were a loss sustained in a trade in that year of assessment.

Pt.4
Special basis on discontinuance of trade or profession.

67.—(1) (*a*) Where in any year of assessment a trade or profession is permanently discontinued, then, notwithstanding anything in the Income Tax Acts—

[ITA67 s58(5) and (6); FA71 s3; FA90 s14(2); FA96 s132(2) and Sch5 PtII]

(i) the person charged or chargeable with income tax in respect of the trade or profession shall be charged for that year on the amount of the profits or gains of the period beginning on the 6th day of April in that year and ending on the date of the discontinuance, subject to any deduction or set-off to which such person may be entitled under *section 382* and, if such person has been charged otherwise than in accordance with this paragraph, any tax overpaid shall be repaid, or an additional assessment may be made on such person, as the case may require;

(ii) if the profits or gains of the year ending on the 5th day of April in the year preceding the year of assessment in which the discontinuance occurs exceed the amount on which the person has been charged for that preceding year, or would have been charged if no such deduction or set-off to which such person may be entitled under *section 382* had been allowed, an additional assessment may be made on such person, so that such person shall be charged for that preceding year on the amount of the profits or gains of the year ending on the 5th day of April in that preceding year, subject to any such deduction or set-off to which such person may be entitled.

(*b*) In the case of the death of a person who, if he or she had not died, would under this subsection have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on such person's executors or administrators, and shall be a debt due from and payable out of such person's estate.

(2) The reference in *subsection (1)* to the discontinuance of a trade or profession shall be construed as referring to a discontinuance occurring by reason of the death while carrying on such trade or profession of the person carrying on the same, as well as to a discontinuance occurring in the lifetime of such person, and for the purposes of *subsection (1)* such death shall be deemed to cause a discontinuance and such discontinuance shall be deemed to take place on the day of such death.

Short-lived businesses.

68.—(1) This section shall apply to a trade or profession—

[ITA67 s58A; FA95 s19]

(*a*) which has been set up and commenced in a year of assessment,

(*b*) which is permanently discontinued within the second year of assessment following that year of assessment, and

(*c*) in respect of which the aggregate of the profits or gains on which any person has been charged, or would be charged to income tax, by virtue of any other provision of the Income Tax Acts, exceeds the aggregate of the profits or

gains arising in the period beginning on the date of set up and commencement and ending on the date of permanent discontinuance of the trade or profession.

(2) Any person chargeable to income tax on the profits or gains of a trade or profession to which this section applies shall be entitled, on giving notice in writing to the inspector on or before the specified return date (within the meaning of *section 950*) for the year of assessment in which the trade or profession is permanently discontinued, to have the assessment for the year of assessment immediately preceding that year reduced by the amount by which the amount of the assessment for that immediately preceding year exceeds the full amount of the profits or gains arising in that same year.

(3) *Subsection (2)* of *section 67* shall apply to this section as if references in that subsection to *subsection (1)* of that section included references to this section.

Changes of proprietorship.

[ITA67 s59]

69. —(1) Where at any time a trade or profession which immediately before that time was carried on by an individual (in this subsection referred to as ''the predecessor'') becomes carried on by another individual or by a partnership of persons (including a partnership in which the predecessor is a partner), the income tax payable for all years of assessment by the predecessor shall be computed as if the trade or profession had been permanently discontinued at that time.

(2) Where at any time an individual (in this subsection referred to as ''the successor'') succeeds to a trade or profession which immediately before that time was carried on by another individual or by a partnership of persons (including a partnership in which the successor was a partner), the income tax payable for all years of assessment by the successor shall be computed as if the successor had set up or commenced the trade or profession at that time.

(3) In the case of the death of a person who, if he or she had not died, would under this section have become chargeable to income tax for any year, the tax which would have been so chargeable shall be assessed and charged on such person's executors or administrators, and shall be a debt due from and payable out of such person's estate.

CHAPTER 4

Income tax: basis of assessment under Cases III, IV and V

Case III: basis of assessment.

[ITA67 s75 and s77(1), (2) and (5); FA90 s17(1)(a)(i) and (iii); FA97 s146(1) and Sch9 PtI par1(5)]

70.—(1) Income or profits chargeable under Case III of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and this section shall apply accordingly.

(2) Income tax under Case III of Schedule D shall be computed on the full amount of the profits or income arising within the year of assessment.

(3) Income tax shall, subject to *section 71*, be paid on the actual amount computed in accordance with *subsection (2)* without any deduction.

(4) *Subsection (2)* shall, in cases where income tax is to be computed by reference to the amount of income received in the State,

apply as if the reference in that subsection to income arising were a reference to income so received.

Foreign securities and possessions.

[ITA67 s76(1), (2)(a), (3), (5) and (6); F(MP)A68 s3(2) and Sch PtI; FA74 s46; FA90 s17(1)(a)(ii); FA97 s146(1) and Sch9 PtI par1(4)]

71.—(1) Subject to this section and *section 70*, income tax chargeable under Case III of Schedule D in respect of income arising from securities and possessions in any place outside the State shall be computed on the full amount of such income arising in the year of assessment whether the income has been or will be received in the State or not, subject to, in the case of income not received in the State—

(*a*) the same deductions and allowances as if it had been so received,

(*b*) the deduction, where such deduction cannot be made under, and is not forbidden by, any other provision of the Income Tax Acts, of any sum paid in respect of income tax in the place where the income has arisen, and

(*c*) a deduction on account of any annuity or other annual payment (apart from annual interest) payable out of the income to a person not resident in the State,

and the provisions of the Income Tax Acts (including those relating to the delivery of statements) shall apply accordingly.

(2) *Subsection (1)* shall not apply to any person who satisfies the Revenue Commissioners that he or she is not domiciled in the State, or that, being a citizen of Ireland, he or she is not ordinarily resident in the State.

(3) In the cases mentioned in *subsection (2)*, the tax shall, subject to *section 70*, be computed on the full amount of the actual sums received in the State from remittances payable in the State, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of such remittances, property, money or value brought into the State in the year of assessment without any deduction or abatement.

(4) Income arising outside the State which if it had arisen in the State would be chargeable under Case V of Schedule D shall be deemed to be income to which *sections 75* and *97* apply, in so far as those sections relate to deductions to be made by reference to *section 97(2)(e)*.

(5) Any person aggrieved by a decision of the Revenue Commissioners on any question as to domicile or ordinary residence arising under *subsection (2)* may, by notice in writing to that effect given to the Revenue Commissioners within 2 months from the date on which notice of the decision is given to him or her, make an application to have his or her claim for relief heard and determined by the Appeal Commissioners.

(6) Where an application is made under this section, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

Pt.4
Charge to tax on sums applied outside the State in repaying certain loans.

[FA71 s4(1) to (4) and (6); FA97 s15]

72.—(1) For the purposes of this section—

(*a*) a debt for money loaned shall, to the extent to which that money is applied in or towards satisfying another debt, be deemed to be a debt incurred for satisfying that other debt, and a debt incurred for satisfying in whole or in part a debt within *subsection (2)(c)* shall itself be treated as within that subsection, and

(*b*) ''lender'', in relation to any money loaned, includes any person for the time being entitled to repayment.

(2) For the purposes of *section 71(3)*, any income arising from securities and possessions in any place outside the State which is applied outside the State by a person ordinarily resident in the State in or towards satisfaction of—

(*a*) any debt for money loaned to such person in the State or for interest on money so loaned,

(*b*) any debt for money loaned to such person outside the State and received in or brought to the State, or

(*c*) any debt incurred for satisfying in whole or in part a debt within *paragraph (a)* or *(b)*,

shall be treated as received by such person in the State and as so received from remittances payable in the State.

(3) Where a person ordinarily resident in the State receives in or brings to the State money loaned to such person outside the State, but the debt for that money is wholly or partly satisfied before such person does so, *subsection (2)* shall apply as if the money had been received in or brought to the State before the debt was so satisfied, except that any sums treated by virtue of that subsection as received in the State shall be treated as so received at the time when the money so loaned is actually received in or brought to the State.

(4) Where a person is indebted for money loaned to him or her, income applied by the person in such a way that the money or property representing the income is held by the lender on behalf of or to the account of the person in such circumstances as to be available to the lender for the purpose of satisfying or reducing the debt by set-off or otherwise shall be treated as applied by the person in or towards its satisfaction if, under any arrangement between the person and the lender, the amount for the time being of the person's indebtedness to the lender, or the time at which it is to be repaid in whole or in part, depends in any respect directly or indirectly on the amount or value so held by the lender.

(5) In relation to income applied in or towards satisfaction of a debt for money loaned on or after the 20th day of February, 1997, or a debt incurred for satisfying in whole or in part any such debt, this section shall apply as if the references to ordinarily resident in the State in *subsections (2)* and *(3)* were references to resident or ordinarily resident in the State.

Income from certain possessions in Great Britain or Northern Ireland.

[ITA67 Sch6 PtIII par1; F(MP)A68 s3(2) and Sch PtI; FA69 s21; FA90 s17(1)(b); FA97 s146(1) and Sch9 PtI par1(36)]

73.—(1) In this section, ''rents'' includes any payment in the nature of a royalty and any annual or periodical payment in the nature of a rent derived from any lands, tenements or hereditaments, including lands, tenements and hereditaments to which *section 56* would apply or would have applied if such lands, tenements and hereditaments were situate in the State.

(2) In respect of property situate and profits or gains arising in Great Britain or Northern Ireland—

(*a*) *sections 70* and *71* shall apply as if *section 71(2)* were deleted, and

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(*b*) *subsection (3)* shall apply for the purposes of Case III of Schedule D, notwithstanding anything to the contrary in *section 70* or *71*.

(3) (*a*) Income tax in respect of income arising from possessions in Great Britain or Northern Ireland, other than stocks, shares, rents or the occupation of land, shall be computed either—

(i) on the full amount of such income arising in the year of assessment, or

(ii) on the full amount of such income on an average of such period as the case may require and as may be directed by the Appeal Commissioners,

so that according to the nature of the income the tax may be computed on the same basis as that on which it would have been computed if the income had arisen in the State, and subject in either case to a deduction on account of any annuity or other annual payment (apart from annual interest) payable out of the income to a person not resident in the State, and the provisions of the Income Tax Acts (including those relating to the delivery of statements) shall apply accordingly.

(*b*) The person chargeable and assessable in accordance with *paragraph (a)* shall be entitled to the same allowances, deductions and reliefs as if the income had arisen in the State.

Case IV: basis of assessment.

[ITA67 s79; FA96 s132(1) and Sch5 PtI par1(2)]

74.—(1) Income tax under Case IV of Schedule D shall be computed either on the full amount of the profits or gains arising in the year of assessment or according to the average of such a period, not being greater than one year, as the case may require and as may be directed by the inspector.

(2) The nature of the profits or gains chargeable to income tax under Case IV of Schedule D, and the basis on which the amount of such profits or gains has been computed, including the average, if any, taken on such profits or gains, shall be stated to the inspector.

(3) Every such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits or gains.

Case V: basis of assessment.

[ITA67 s81(1), (2) and (3)(a) and s86; FA69 s22, s33(1) and Sch4 PtI and s65(1) and Sch5 PtI; FA90 s18(1)(a)]

75.—(1) Without prejudice to any other provision of the Income Tax Acts, the profits or gains arising from—

(*a*) any rent in respect of any premises, and

(*b*) any receipts in respect of any easement,

shall, subject to and in accordance with the provisions of the Income Tax Acts, be deemed for the purposes of those Acts to be annual profits or gains within Schedule D, and the person entitled to such profits or gains shall be chargeable in respect of such profits or gains

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under Case V of that Schedule; but such rent or such receipts shall not include any payments to which *section 104* applies.

(2) Profits or gains chargeable under Case V of Schedule D shall, for the purposes of ascertaining liability to income tax, be deemed to issue from a single source, and *subsection (3)* shall apply accordingly.

(3) Tax under Case V of Schedule D shall be computed on the full amount of the profits or gains arising within the year of assessment.

(4) Neither this section nor *section 97* or *384* shall apply to a case in which the rent reserved under a lease (including, in the case of a lease granted on or after the 6th day of April, 1963, the duration of which does not exceed 50 years, an appropriate sum in respect of any premium payable under the lease) is insufficient, taking one year with another, to defray the cost to the lessor of fulfilling such lessor's obligations under the lease and of meeting any expense of maintenance, repairs, insurance and management of the premises subject to the lease which falls to be borne by such lessor.

(5) *Section 96* shall apply for the interpretation of this section as it applies for the interpretation of *Chapter 8* of this Part.

CHAPTER 5

Computational provisions: corporation tax

Computation of income: application of income tax principles.

[CTA76 s11(1), (2)(b) and (3) to (8); FA96 s132(2) and Sch5 PtII]

76.—(1) Except where otherwise provided by the Tax Acts, the amount of any income shall for the purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section, ''income tax law'', in relation to any accounting period, means the law applying to the charge on individuals of income tax for the year of assessment in which that accounting period ends, but does not include such of the enactments of the Income Tax Acts so applying as make special provision for individuals in relation to matters referred to in *subsection (1)*.

(3) Accordingly, for the purposes of corporation tax, income shall be computed and the assessment shall be made under the like Schedules and Cases as apply for the purposes of income tax, and in accordance with the provisions applicable to those Schedules and Cases, but (subject to the Corporation Tax Acts) the amounts so computed for several sources of income, if more than one, together with any amounts to be included in respect of chargeable gains, shall be aggregated to arrive at the total profits.

(4) Nothing in this section shall be taken to mean that income arising in any period is to be computed by reference to any other period (except in so far as this results from apportioning to different parts of a period income of the whole period).

(5) Subject to *section 77* and to any enactment applied by this section which expressly authorises such a deduction, no deduction shall be made for the purposes of the Corporation Tax Acts in computing income from any source—

(*a*) in respect of dividends or other distributions, or

(*b*) in respect of any yearly interest, annuity or other annual payment or any other payments mentioned in *section 104* or *237(2)*, but not including sums which are, or but for any exemption would be, chargeable under Case V of Schedule D.

(6) Without prejudice to the generality of *subsection (1)*, any provision of the Income Tax Acts, or of any other statute, which confers an exemption from income tax, provides for the disregarding of a loss, or provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except where otherwise provided, have the like effect for the purposes of corporation tax.

(7) This section shall not have effect so as to apply for the purposes of corporation tax anything in *section 71*.

(8) Where by virtue of this section or otherwise any enactment applies both to income tax and to corporation tax—

(*a*) that enactment shall not be affected in its operation by the fact that income tax and corporation tax are distinct taxes but, in so far as is consistent with the Corporation Tax Acts, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for such individual in relation to income tax and for such company in relation to corporation tax, and

(*b*) for that purpose, references in any such enactment to a relief from or charge to income tax or to a specified provision of the Income Tax Acts shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax or to any corresponding provision of the Corporation Tax Acts.

Miscellaneous special rules for computation of income.

[CTA76 s12(1) to (7)]

77.—(1) For the purposes of corporation tax, income tax law as applied by *section 76* shall apply subject to *subsections (2)* to *(7)*.

(2) (*a*) Where a company begins or ceases to carry on a trade, or to be within the charge to corporation tax in respect of a trade, the company's income shall be computed as if that were the commencement or, as the case may be, discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.

(*b*) Notwithstanding *paragraph (a)*, where any provision of the Income Tax Acts is applied for corporation tax by the Corporation Tax Acts, this subsection shall not apply for any purpose of that provision if under any enactment a trade is not to be treated as permanently discontinued for the corresponding income tax purpose.

(3) In computing income from a trade, *section 76(5)(b)* shall not prevent the deduction of yearly interest.

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(4) In computing a company's income for any accounting period from the letting of rights to work minerals in the State, there may be deducted any sums disbursed by the company wholly, exclusively and necessarily as expenses of management or supervision of those minerals in that period; but any enactments restricting the relief from income tax that might be given under *section 111* shall apply to restrict in the like manner the deductions that may be made under this subsection.

(5) Where a company is chargeable to corporation tax in respect of a trade under Case III of Schedule D, the income from the trade shall be computed in accordance with the provisions applicable to Case I of Schedule D.

(6) The amount of any income arising from securities and possessions in any place outside the State shall be treated as reduced (where such a deduction cannot be made under, and is not forbidden by, any provision of the Income Tax Acts applied by the Corporation Tax Acts) by any sum paid in respect of income tax in the place where the income has arisen.

(7) *Paragraphs (e)* and *(f)* of Case III of Schedule D in *section 18(2)* shall for the purposes of corporation tax extend to companies not resident in the State, in so far as those companies are chargeable to tax on income of descriptions which, in the case of companies resident in the State, are within those paragraphs (but without prejudice to any provision of the Income Tax Acts specially exempting non-residents from income tax on any particular description of income).

Computation of companies' chargeable gains.

[CTA76 s13(1), (1A), (1B), (1C), (2), (3)(a) and (c), (4) and (5); FA82 s31(1); FA88 Sch3 PtI par1(b); FA97 s59(2) and Sch6 PtI par1]

78.—(1) Subject to this section, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be determined in accordance with *subsection (3)* after taking into account *subsection (2)*.

(2) Where for an accounting period chargeable gains accrue to a company, an amount of capital gains tax shall be calculated as if, notwithstanding any provision to the contrary in the Corporation Tax Acts, capital gains tax were to be charged on the company in respect of those gains in accordance with the Capital Gains Tax Acts, and as if accounting periods were years of assessment; but, in calculating the amount of capital gains tax, *section 31* shall apply as if the reference in that section to deducting allowable losses were a reference to deducting relevant allowable losses.

(3) (*a*) The amount referred to in *subsection (1)* shall be an amount which, if (before making any deduction from the amount) it were charged to corporation tax as profits of the company arising in the accounting period at the rate specified in *section 21(1)*, would produce an amount of corporation tax equal to the amount of capital gains tax calculated for that accounting period in accordance with *subsection (2)*.

(*b*) For the purposes of *paragraph (a)*, where part of the accounting period falls in one financial year (in this paragraph referred to as the ''first-mentioned financial year'') and the other part falls in the financial year succeeding the first-mentioned financial year and different rates are in force under *section 21(1)* for each of those years, ''the rate specified in *section 21(1)*'' shall be deemed to be a rate per cent determined by the formula—

$$\frac{(A \times C)}{E} + \frac{(B \times D)}{E}$$

where—

A is the rate per cent in force for the first-mentioned financial year,

B is the rate per cent in force for the financial year succeeding the first-mentioned financial year,

C is the length of that part of the accounting period falling in the first-mentioned financial year,

D is the length of that part of the accounting period falling in the financial year succeeding the first-mentioned financial year, and

E is the length of the accounting period.

(*c*) *Paragraph (b)* shall apply as respects accounting periods ending on or after the 1st day of April, 1997, as if—

(i) the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, and

(ii) the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998,

were each a financial year.

(4) In *subsection (2)*—

''chargeable gains'' does not include chargeable gains accruing on relevant disposals within the meaning of *section 648*;

''relevant allowable losses'' means any allowable losses accruing to the company in the accounting period and any allowable losses previously accruing to the company while it has been within the charge to corporation tax in so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period.

(5) Except where otherwise provided by the Corporation Tax Acts, chargeable gains and allowable losses shall for the purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain, or as to the time when any such amount is to be treated as accruing, being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.

(6) Subject to *subsection (8)*, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts, the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—

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(*a*) this subsection shall not affect the references to income tax in *section 554(2)*, and

(*b*) in so far as those enactments operate by reference to matters of any specified description, for corporation tax account shall be taken of matters of that description which are confined to companies, but not of any such matters which are confined to individuals.

(7) The Capital Gains Tax Acts as extended by this section shall not be affected in their operation by the fact that capital gains tax and corporation tax are distinct taxes but, in so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for such individual in relation to capital gains tax and for such company in relation to corporation tax.

(8) Where assets of a company are vested in a liquidator, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to the liquidator by the company being disregarded accordingly).

Foreign currency: computation of income and chargeable gains.

[CTA76 s12A; FA94 s56(a); FA96 s45(1)]

79.—(1) (*a*) In this section—

''profit and loss account'' means—

(i) in the case of a company (in this definition referred to as the ''resident company'') resident in the State, the account of that company, and

(ii) in the case of a company (in this definition referred to as the ''non-resident company'') not resident in the State but carrying on a trade in the State through a branch or agency, the account of the business of the company carried on through or from such branch or agency,

which, in the opinion of the auditor appointed under section 160 of the Companies Act, 1963, or under the law of the State in which the resident company or non-resident company, as the case may be, is incorporated and which corresponds to that section, presents a true and fair view of the profit or loss of the resident company or the business of the non-resident company, as the case may be;

''rate of exchange'' means a rate at which 2 currencies might reasonably be expected to be exchanged for each other by persons dealing at arm's length or, where the context so requires, an average of such rates;

''relevant contract'', in relation to a company, means any contract entered into by the company for the purpose of eliminating or reducing the risk of loss being incurred by the company due to a change in the value of a relevant monetary item, being a

change resulting directly from a change in a rate of exchange;

"relevant monetary item", in relation to a company, means money held or payable by the company for the purposes of a trade carried on by it;

"relevant tax contract", in relation to an accounting period of a company, means any contract entered into by the company for the purpose of eliminating or reducing the risk of loss being incurred by the company due to a change in the value of money payable in discharge of a liability of the company to corporation tax for the accounting period, being a change resulting directly from a change in a rate of exchange of the functional currency (within the meaning of *section 402*) of the company for the currency of the State.

(*b*) The treatment of a contract entered into by a company as a relevant contract for the purposes of this section shall be disregarded for any other purpose of the Tax Acts.

(2) Notwithstanding *section 76*, for the purposes of corporation tax, the amount of any gain or loss, whether realised or unrealised, which—

(*a*) is attributable to any relevant monetary item or relevant contract of a company,

(*b*) results directly from a change in a rate of exchange, and

(*c*) is properly credited or debited, as the case may be, to the profit and loss account of the company,

shall be taken into account in computing the trading income of the company.

(3) (*a*) Notwithstanding *section 78*, for the purposes of corporation tax, where any gain or loss arises to a company in respect of—

(i) a relevant contract of the company, or

(ii) money held by the company for the purposes of a trade carried on by it,

so much of that gain or loss as results directly from a change in a rate of exchange shall not be a chargeable gain or an allowable loss, as the case may be, of the company.

(*b*) This subsection shall not apply as respects any gain or loss arising to a company carrying on life business within the meaning of *section 706(1)*, being a company which is not charged to corporation tax in respect of that business under Case I of Schedule D.

(4) Notwithstanding *section 78*, so much of the amount of any gain or loss arising to a company which carries on a trade in the State in an accounting period as—

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(*a*) is attributable to any relevant tax contract in relation to the accounting period,

(*b*) results directly from a change in a rate of exchange, and

(*c*) (i) where it is a gain, does not exceed the amount of the loss which, if the company had not entered into the relevant tax contract, would have been incurred by the company, and

(ii) where it is a loss, does not exceed the amount of the gain which, if the company had not entered into the relevant tax contract, would have arisen to the company,

due to a change in the value of money payable in discharge of a liability of the company to corporation tax for the accounting period,

shall not be a chargeable gain or an allowable loss, as the case may be, of the company.

Taxation of certain foreign currencies.

[FA93 s47(1) and (2)]

80.—(1) In this section—

''relevant liability'', in relation to an accounting period, means relevant principal—

(*a*) denominated in a currency other than the currency of the State, and

(*b*) the interest in respect of which—

(i) is to be treated as a distribution for the purposes of the Corporation Tax Acts, and

(ii) is computed on the basis of a rate which, at any time in that accounting period, exceeds 80 per cent of the specified rate at that time;

''relevant principal'' means an amount of money advanced to a borrower by a company, the ordinary trading activities of which include the lending of money, where—

(*a*) the consideration given by the borrower for that amount is a security within *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)*, and

(*b*) interest or any other distribution is paid out of the assets of the borrower in respect of that security;

''specified rate'' means—

(*a*) the rate known as the 3 month Dublin Interbank Offered Rate, a record of which is maintained by the Central Bank of Ireland, or

(*b*) where such a record was not maintained, the rate known as the Interbank market 3 month fixed rate as published in the statistical appendices of the bulletins and annual reports of the Central Bank of Ireland.

(2) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts, a profit or loss from any foreign exchange transaction, being a profit or loss which arises in an accounting period—

(*a*) in connection with relevant principal which, in relation to the accounting period, is a relevant liability, and

(*b*) to a company which, in relation to that relevant liability, is the borrower,

shall for the purposes of those Acts be deemed to be a profit or gain or a loss, as the case may be, of the trade carried on by the borrower in the course of which trade the relevant liability is used.

CHAPTER 6

Computational provisions: general

General rule as to deductions.

81.—(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.

[ITA67 s57 and s61; FA69 s 65(1) and Sch 5 PtI; FA74 s42(1); FA97 s146(1) and Sch9 PtI par1(3)]

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of—

(*a*) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;

(*b*) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession;

(*c*) the rent of any dwelling house or domestic offices or any part of any dwelling house or domestic offices, except such part thereof as is used for the purposes of the trade or profession, and, where any such part is so used, the sum so deducted shall be such as may be determined by the inspector and shall not, unless in any particular case the inspector is of the opinion that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling house or those domestic offices;

(*d*) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade or profession, over and above the sum actually expended for those purposes;

(*e*) any loss not connected with or arising out of the trade or profession;

(*f*) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade or profession;

(*g*) any capital employed in improvements of premises occupied for the purposes of the trade or profession;

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(*h*) any interest which might have been made if any such sums as aforesaid had been laid out at interest;

(*i*) any debts, except bad debts proved to be such to the satisfaction of the inspector and doubtful debts to the extent that they are respectively estimated to be bad and, in the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debts shall be deemed to be the value of any such debts;

(*j*) any average loss over and above the actual amount of loss after adjustment;

(*k*) any sum recoverable under an insurance or contract of indemnity;

(*l*) any annuity or other annual payment (other than interest) payable out of the profits or gains;

(*m*) any royalty or other sum paid in respect of the user of a patent.

Pre-trading expenditure.

[FA97 s29(1) and (4) to (6)]

82.—(1) This section shall apply to expenditure incurred for the purposes of a trade or profession set up and commenced on or after the 22nd day of January, 1997.

(2) Subject to *subsection (3)*, where a person incurs expenditure for the purposes of a trade or profession before the time that the trade or profession has been set up and commenced by that person, and such expenditure—

(*a*) is incurred not more than 3 years before that time, and

(*b*) is apart from this section not allowable as a deduction for the purpose of computing the profits or gains of the trade or profession for the purposes of Case I or II of Schedule D, but would have been so allowable if it had been incurred after that time,

then, the expenditure shall be treated for that purpose as having been incurred at that time.

(3) The amount of any expenditure to be treated under *subsection (1)* as incurred at the time that a trade or profession has been set up and commenced shall not be so treated for the purposes of *section 381*, *396(2)*, *420*, *455(3)* or *456*.

(4) An allowance or deduction shall not be made under any provision of the Tax Acts other than this section in respect of any expenditure or payment which is treated under this section as incurred on the day on which a trade or profession is set up and commenced.

Expenses of management of investment companies.

[CTA76 s15]

83.—(1) For the purposes of this section and of the other provisions of the Corporation Tax Acts relating to expenses of management, ''investment company'' means any company whose business consists wholly or mainly of the making of investments, and the principal part of whose income is derived from the making of investments, but includes any savings bank or other bank for savings.

(2) In computing for the purposes of corporation tax the total profits for any accounting period of an investment company resident in the State—

(*a*) there shall be deducted any sums disbursed as expenses of management (including commissions) for that period, except any such expenses as are deductible in computing income for the purposes of Case V of Schedule D; but

(*b*) there shall be deducted from the amount treated as expenses of management the amount of any income derived from sources not charged to tax, other than franked investment income.

(3) Where in any accounting period of an investment company the expenses of management deductible under *subsection (2)*, together with any charges on income paid in the accounting period wholly and exclusively for the purposes of the company's business, exceed the amount of the profits from which they are deductible, the excess shall be carried forward to the succeeding accounting period, and the amount so carried forward shall be treated for the purposes of this section (other than *subsection (5)*), including any further application of this subsection, as if it had been disbursed as expenses of management for that accounting period.

(4) For the purposes of *subsections (2)* and *(3)*, there shall be added to a company's expenses of management in any accounting period the amount of any allowances to be made to the company for that period by virtue of *section 109* or *774*.

(5) (*a*) Where an investment company proves that in any accounting period it has received franked investment income, it shall be entitled to claim payment of the amount of the tax credit comprised in so much of that income as is equal to the amount of any excess for the accounting period computed under *subsection (3)*, but excluding any amount carried forward from a previous accounting period.

(*b*) Any excess in respect of which relief is given under this subsection shall not be carried forward under *subsection (3)*.

(6) (*a*) Notice of any claim under *subsection (5)*, together with the particulars of that claim, shall be given in writing to the inspector within 2 years after the end of the accounting period in respect of which the claim is made.

(*b*) Where the inspector objects to such claim, the Appeal Commissioners shall hear and determine the claim in the like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

PT.4
Expenses in relation to establishment or alteration of superannuation schemes.

[ITA67 s63; FA72 s13(4) and Sch1 PtIII par 1, and s46(2) and Sch4 PtII]

84.—Where a superannuation scheme is established in connection with a trade or undertaking or a superannuation scheme so established is altered, and the person by whom the trade or undertaking is carried on makes a payment in respect of expenses (including a payment in respect of professional fees, but not including a payment by means of contribution towards the cost of providing the benefits payable under the scheme) in connection with such establishment or alteration, then, if the scheme or, as the case may be, the altered scheme is approved by the Revenue Commissioners under *section 772*, the amount of the payment shall be allowed to be deducted in the computation, for the purposes of assessment to tax, of the profits or gains of the trade or undertaking as an expense incurred when the payment is made.

Deduction for certain industrial premises.

[ITA67 s67(1), (2), (3) and (3A); FA69 s31]

85.—(1) In this section, ''premises'' means an industrial building or structure within the meaning of *section 268* which is not a building or structure to which *section 272* applies.

(2) In estimating the amount of annual profits or gains arising or accruing from any trade the profits of which are chargeable to tax under Case I of Schedule D, there shall be allowed to be deducted, as expenses incurred in any year on account of any premises owned by the person carrying on that trade and occupied by such person for the purposes of that trade, a deduction equal to five-twelfths of the rateable valuation of those premises.

(3) In estimating the profits for any year of any of the concerns which by virtue of *section 18(2)* are charged under Case I(*b*) of Schedule D, there shall be allowed to be deducted, as expenses incurred in any year on account of any premises owned by the person carrying on the concern and occupied by such person for the purposes of that concern, a deduction equal to five-twelfths of the rateable valuation of those premises.

(4) (*a*) Where, in the case of property valued under the Valuation Acts as a unit, a part is and a part is not premises, the rateable valuation of each part shall be arrived at by apportionment of the rateable valuation of the property.

(*b*) Any apportionment required by this subsection shall be made by the inspector according to the best of his or her knowledge and judgment.

(*c*) An apportionment made under *paragraph (b)* may be amended by the Appeal Commissioners or by the Circuit Court on the hearing or the rehearing of an appeal against an assessment made on the basis of the apportionment; but, on the hearing or the rehearing of any such appeal, a certificate of the Commissioner of Valuation tendered by either party to the appeal and stating, as regards property valued under the Valuation Acts as a unit, the amount of the rateable valuation of the property attributable to any part of the property shall be evidence of the amount so attributable.

Cost of registration of trade marks.

[FA71 s5]

86.—Notwithstanding anything in *section 81*, in computing the amount of the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred in obtaining for the purposes of the trade the registration of a trade mark or the renewal of registration of a trade mark.

Pt.4
Debts set off against profits and subsequently released.

[FA70 s24(1) and (2)(a)]

87.—(1) Where, in computing for tax purposes the profits or gains of a trade or profession, a deduction has been allowed for any debt incurred for the purposes of the trade or profession, then, if the whole or any part of that debt is thereafter released, the amount released shall be treated as a receipt of the trade or profession arising in the period in which the release is effected.

(2) If in any case referred to in *subsection (1)* the trade or profession has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected, or is treated for tax purposes as if it had been so discontinued, *section 91* shall apply as if the amount released were a sum received after the discontinuance.

Deduction for gifts to Enterprise Trust Ltd.

[FA92 s56; FA96 s56(b); FA97 s64]

88.—(1) In this section, ''the company'' means the company incorporated on the 30th day of October, 1991, as The Enterprise Trust Limited.

(2) This section shall apply to a gift of money which—

(*a*) on or before the 31st day of December, 1999, is made to the company and accepted by it,

(*b*) is to be applied by the company solely for the objects set out in its memorandum of association,

(*c*) apart from *subsection (3)* would not be deductible in computing for the purposes of corporation tax the profits or gains of a trade or profession, and

(*d*) is not income to which *section 792* applies.

(3) (*a*) Subject to *paragraph (b)* and *subsection (2)*, where a company (in this section referred to as a ''donor'') makes a gift to which this section applies and claims relief from tax by reference to the gift, the net amount of the gift shall be treated for the purposes of corporation tax as—

(i) a deductible trading expense of a trade carried on by the donor, or

(ii) an expense of management deductible in computing the total profits of the donor,

incurred by it in the accounting period in which the gift is made.

(*b*) In determining for the purposes of *paragraph (a)* the net amount of the gift, the amount or value of any consideration received by a donor as a result of making the gift, whether received directly or indirectly from the company or any other person, shall be deducted from the amount of the gift, and relief under this section shall not be given to a donor for an accounting period—

(i) if the net amount of the gift (or the aggregate of the net amounts of gifts) made by the donor in that accounting period, being a gift or gifts, as the case may be, to which this section applies, does not exceed £500,

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(ii) to the extent to which the net amount of the gift (or the aggregate of the net amounts of gifts) made by the donor in that accounting period, being a gift or gifts, as the case may be, to which this section applies, exceeds £100,000,

(iii) in respect of a gift made at any time in the year ending on the 31st day of December in the year 1998 or 1999, if at that time the aggregate of the net amounts of all gifts to which this section applies made to the company within that year exceeds £1,500,000.

(4) A claim under this section shall be made with the return required to be delivered under *section 951* for the accounting period in which the payment is made.

(5) Where a donor makes a gift in respect of which relief is not to be given by virtue of *subparagraph (iii)* of *subsection (3)(b)*, the company shall, by notice in writing given to the donor within 30 days of the making of the gift, advise the donor accordingly.

(6) Where a gift to which this section applies is made by a donor in an accounting period of the donor which is less than 12 months, the amounts specified in *subparagraphs (i)* and *(ii)* of *subsection (3)(b)* shall be proportionately reduced.

CHAPTER 7

Special measures on discontinuance of, and change of basis of computation of profits or gains of, a trade or profession

Valuation of trading stock at discontinuance of trade.

[ITA67 s62(1) (apart from proviso) and (2); FA70 s23(4)]

89.—(1) (*a*) In this section, ''trading stock'' means, subject to *paragraph (b)*, property of any description, whether real or personal, which is either—

(i) property such as is sold in the ordinary course of the trade in relation to which the expression is used or would be so sold if it were mature or if its manufacture, preparation or construction were complete, or

(ii) materials such as are used in the manufacture, preparation or construction of property such as is sold in the ordinary course of that trade.

(*b*) For the purposes of this section, ''trading stock'', in relation to a trade, includes any services, article or material which, if the trade were a profession, would be treated as work in progress of the profession for the purposes of *section 90*, and references to the sale or transfer of trading stock shall be construed accordingly.

(*c*) References in this section to a trade having been discontinued or to the discontinuance of a trade shall be construed as not referring to or including any case where such trade was carried on by a single individual and is discontinued by reason of such individual's death (whether such trade is or is not continued by another person after such death), but shall be construed as referring to and including every other case where a trade has been discontinued or is, by virtue

of any of the provisions of the Tax Acts, treated as having been discontinued for the purpose of computing tax.

(2) In computing the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance of the trade shall be valued in accordance with the following provisions:

(*a*) in the case of any such trading stock—

(i) which is sold, or is transferred for valuable consideration, to a person who carries on or intends to carry on a trade in the State, and

(ii) the cost of which to such person on such sale or transfer may be deducted by such person as an expense in computing for any purpose of the Tax Acts the profits or gains of the trade carried on or intended to be carried on by such person,

the value of such trading stock shall be taken to be the price paid for such trading stock on such sale or the value of the consideration given for such trading stock on such transfer, as the case may be;

(*b*) in the case of any other such trading stock, the value of such other trading stock shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

Valuation of work in progress at discontinuance of profession.

[FA70 s23(1) to (3) and (5); FA81 s9(d)]

90.—(1) Where, in computing for any of the purposes of the Tax Acts the profits or gains of a profession which has been discontinued, a valuation is taken of the work of the profession in progress at the discontinuance, that work shall be valued as follows:

(*a*) if the work is transferred for money or any other valuable consideration to a person who carries on or intends to carry on a profession in the State, and the cost of the work may be deducted by that person as an expense in computing for any such purpose the profits or gains of that profession, the value of the work shall be taken to be the amount paid or other consideration given for the transfer;

(*b*) if the work is not to be valued under *paragraph (a)*, its value shall be taken to be the amount which would have been paid for a transfer of the work on the date of the discontinuance as between parties at arm's length.

(2) Where a profession is discontinued and the person by whom it was carried on immediately before the discontinuance so elects, by notice in writing sent to the inspector at any time within 24 months after the discontinuance, the amount, if any, by which the value of the work in progress at the discontinuance (as ascertained under *subsection (1)*) exceeds the actual cost of the work shall not be taken into account in computing the profits or gains of the period immediately before the discontinuance, but the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax under *section 91* as if it were a sum to which that section applies received after the discontinuance.

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(3) *Subsections (1)* and *(2)* shall apply where a profession is treated for any of the purposes of the Tax Acts as permanently discontinued as they apply in the case of an actual discontinuance, but shall not apply in a case where a profession carried on by a single individual is discontinued by reason of such individual's death.

(4) References in this section to work in progress at the discontinuance of a profession shall be construed as references to—

(*a*) any services performed in the ordinary course of the profession, the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession had not been discontinued, and

(*b*) any article produced, and any such material as is used, in the performance of any such services,

and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

Receipts accruing after discontinuance of trade or profession.

[FA70 s20(1) to (4) and (5)(b), (c) and (d)]

91.—(1) Subject to *subsection (2)*, this section shall apply to all sums arising from the carrying on of a trade or profession during any period before the discontinuance of the trade or profession (not being sums otherwise chargeable to tax), in so far as the amount or value of the sums was not taken into account in computing the profits or gains for any period before the discontinuance, and whether or not the profits or gains for the period were computed on an earnings basis or on a conventional basis.

(2) This section shall not apply to any of the following sums—

(*a*) sums received by a person beneficially entitled to such sums who is not resident in the State, or by a person acting on such person's behalf, which represent income arising directly or indirectly from a country or territory outside the State,

(*b*) a lump sum paid to the personal representatives of the author of a literary, dramatic, musical or artistic work as a consideration for the assignment by them, wholly or partially, of the copyright in the work,

(*c*) sums realised by the transfer of trading stock belonging to a trade at the discontinuance of the trade or, in a case in which the profits or gains of a profession were computed on an earnings basis at the discontinuance of the profession, sums realised by the transfer of the work of the profession in progress at the discontinuance, and

(*d*) sums arising to an individual from a work which is such that any profits or gains that might have arisen to the individual from its publication, production or sale, as the case might be, would in accordance with *section 195(3)* have been disregarded for the purposes of the Income Tax Acts if they had arisen before the discontinuance of that individual's profession.

(3) Where any trade or profession, the profits or gains of which are chargeable to tax under Case I or II of Schedule D, has been permanently discontinued, tax shall be charged under Case IV of that Schedule in respect of any sums to which this section applies received after the discontinuance subject to any such deduction as is authorised by *subsection (4)*.

(4) In computing the charge to tax in respect of sums received by any person which are chargeable to tax by virtue of this section (including amounts treated as sums received by such person by virtue of *section 87*), there shall be deducted from the amount which apart from this subsection would be chargeable to tax—

(*a*) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade or profession had not been discontinued, would have been deducted in computing for tax purposes the profits or gains of the person by whom the trade or profession was carried on before the discontinuance, or would have been deducted from or set off against those profits or gains as so computed, and

(*b*) any capital allowance to which the person who carried on the trade or profession was entitled immediately before the discontinuance and to which effect has not been given by means of relief before the discontinuance.

(5) For the purposes of this Chapter—

(*a*) the profits or gains of a trade or profession in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of the carrying on of the trade or profession are taken into account in computing those profits or gains for tax purposes, and not otherwise, and ''earnings basis'' shall be construed accordingly,

(*b*) the profits or gains of a trade or profession in any period shall be treated as computed on a conventional basis where they are computed otherwise than by reference to earnings, and

(*c*) the value of any sum received in payment of a debt shall be treated as not taken into account in the computation to the extent that a deduction has been allowed in respect of that sum under *section 81(2)(i)*.

Receipts and losses accruing after change treated as discontinuance.

[FA70 s22]

92.—(1) This section shall apply in any case where, as a result of a change in the persons engaged in carrying on a trade or profession, the trade or profession is treated for any of the purposes of the Tax Acts as if it had been permanently discontinued and a new trade or profession set up and commenced.

(2) (*a*) *Sections 91* and *95* shall apply in the case of any such change as if the trade or profession had been permanently discontinued.

(*b*) Notwithstanding *paragraph (a)*, where the right to receive any sums to which *section 91* applies is or was transferred at the time of the change to the persons carrying on the trade or profession after the change, tax shall not be charged by virtue of that section, but any sums received

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by those persons by virtue of the transfer shall be treated for all purposes as receipts to be taken into the computation of profits or gains of the trade or profession in the period in which they are received.

(3) In computing for tax purposes the profits or gains of the trade or profession in any period after the change, there may be deducted a sum equal to any amount proved during that period to be irrecoverable in respect of any debts credited in computing for tax purposes the profits or gains for any period before the change (being debts the benefit of which was assigned to the persons carrying on the trade or profession after the change), in so far as the total amount proved to be irrecoverable in respect of those debts exceeds any deduction allowed in respect of them under *section 81(2)(i)* in a computation for any period before the change.

Cash basis, etc: relief for certain individuals.

[FA70 s25]

93.—(1) In this section—

''the net amount'' with which a person is chargeable to tax under *section 91* means the amount with which such person is so chargeable after making any deduction authorised by *section 91(4*) but before giving any relief under this section;

''relevant date'' means—

(*a*) in relation to tax under *section 91*, the date of the permanent discontinuance, and

(*b*) in relation to tax under *section 94*, the date of the change of basis.

(2) Where an individual born before the 6th day of April, 1919, or the personal representative of such an individual, is chargeable to tax under *section 91* or *94* and—

(*a*) the individual was engaged in carrying on the trade or profession on the 4th day of August, 1970, and

(*b*) the profits or gains of the trade or profession were not computed by reference to earnings in the period in which the date specified in *paragraph (a)* fell, or in any subsequent period ending before or on the relevant date,

the net amount with which such individual is so chargeable to tax shall be reduced by multiplying that net amount by the fraction specified in *subsection (4)*.

(3) Where *section 94* applies in relation to a change of basis taking place on a date before the 4th day of August, 1970, then, in relation to tax chargeable by reference to that change of basis, *subsection (2)* shall apply as if—

(*a*) that earlier date were substituted for the date specified in *paragraph (a)* of that subsection, and

(*b*) *paragraph (b)* of that subsection were deleted.

(4) The fraction referred to in *subsection (2)* is—

(*a*) where on the 6th day of April, 1970, the individual had not attained the age of 52 years, nineteen-twentieths,

(*b*) where on that date the individual had attained the age of 52 years, but had not attained the age of 53 years, eighteen-twentieths, and so on, reducing the fraction by one-twentieth for each year the individual had attained, up to the age of 64 years,

(*c*) where on that date the individual had attained the age of 65 years or any greater age, five-twentieths.

Conventional basis: general charge on receipts after change of basis.

[FA70 s26(1) to (4)]

94.—(1) Where in the case of any trade or profession the profits or gains of which are chargeable to tax under Case I or II of Schedule D there has been—

(*a*) a change from a conventional basis to the earnings basis, or

(*b*) a change of conventional basis which may result in receipts dropping out of computation,

tax shall be charged under Case IV of Schedule D in respect of sums to which this subsection applies which are received after the change and before the trade or profession is permanently discontinued.

(2) *Subsection (1)* shall apply to all sums arising from the carrying on of the trade or profession during any period before the change (not being sums otherwise chargeable to tax) in so far as their amount or value was not taken into account in computing the profits or gains for any period.

(3) Where in the case of any profession the profits or gains of which are chargeable to tax under Case II of Schedule D—

(*a*) there has been a change from a conventional basis to the earnings basis, or a change of conventional basis, and

(*b*) the value of work in progress at the time of the change was debited in the accounts and allowed as a deduction in computing profits for tax purposes for a period after the change,

then, in so far as no counterbalancing credit was taken into account in computing profits for tax purposes for any period ending before or on the date of the change, tax shall be charged under *subsection (1)* in respect of that amount for the year of assessment in which the change occurred as if that amount were a sum to which *subsection (2)* applies and the change of basis were a change of the kind described in *subsection (1)*.

(4) In this section, references to work in progress at the time of a change of basis shall be construed in accordance with *section 90(4)* but as if references in that section to the change of basis were references to the discontinuance.

(5) There shall be a change from a conventional basis to the earnings basis at the end of a period, the profits or gains of which were computed on a conventional basis, if the profits or gains of the next succeeding period are computed by reference to earnings and, if the profits or gains of 2 successive periods are computed on different

conventional bases, a change of conventional basis shall occur at the end of the earlier period.

Supplementary provisions as to tax under section 91 or 94.

[FA70 s21; CTA76 s164 and Sch3 PtII]

95.—(1) In the case of a transfer for value of the right to receive any sums described in *section 91(1)* or *94*, any tax chargeable by virtue of either of those sections shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in those sections to sums received shall be construed accordingly.

(2) Where an individual is chargeable to tax by virtue of *section 91* in respect of any sums received after the discontinuance of a trade or profession, and the profits or gains of the trade or profession to which such individual was entitled before the discontinuance fell to be treated as earned income for the purposes of the Income Tax Acts, those sums shall also be treated as earned income for those purposes but after any reduction in those sums under *section 93*.

(3) Where any sum chargeable to tax by virtue of *section 91* or *94* is received in any year of assessment beginning not later than 10 years after the discontinuance or, as the case may be, change of basis by the person by whom the trade or profession was carried on before the discontinuance or change or by such person's personal representatives, such person or (in either case) such person's personal representatives may, by notice in writing sent to the inspector within 2 years after the end of that year of assessment, elect that the tax so chargeable shall be charged as if the sum in question were received on the date on which the discontinuance took place or, as the case may be, on the last day of the period at the end of which the change took place, and, in any such case, an additional assessment shall (notwithstanding anything in *section 924(2)*) be made accordingly and, in connection with that assessment, no further deduction or relief shall be made or given in respect of any loss or allowance deducted in pursuance of *section 91(4)*.

(4) Where work in progress at the discontinuance of a profession, or the responsibility for its completion, is transferred, the sums to which *section 91* applies include any sums received by means of consideration for the transfer and any sums received by means of realisation by the transferee on behalf of the transferor of the work in progress transferred.

(5) No amount shall be deducted under *section 91(4)* if that amount has been allowed under any other provision of the Tax Acts.

(6) No amount shall be deducted more than once under *section 91(4)* and, as between sums chargeable for one year of assessment and sums chargeable for a subsequent year of assessment, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier year of assessment but, in the case of a loss which by virtue of this subsection or *section 91(4)* is to be allowed after the discontinuance, a deduction shall not be made from any sum chargeable for a year of assessment preceding that in which the loss is incurred.

Taxation of rents and certain other payments

Interpretation (*Chapter 8*).

[ITA67 s80(1), (2), (4) and (5) and s81(1) (definition of ''the person chargeable''); FA69 s27; FA75 s19 and Sch2 PtI par1 and 2]

96.—(1) In this Chapter, except where the context otherwise requires—

''easement'' includes any right, privilege or benefit in, over or derived from premises;

''lease'' includes an agreement for a lease and any tenancy, but does not include a mortgage, and ''lessee'' and ''lessor'' shall be construed accordingly, and ''lessee'' and ''lessor'' include respectively the successors in title of a lessee or a lessor;

''the person chargeable'' means the person entitled to the profits or gains arising from—

(*a*) any rent in respect of any premises, and

(*b*) any receipts in respect of any easement;

''premises'' means any lands, tenements or hereditaments in the State;

''premium'' includes any like sum, whether payable to the immediate or a superior lessor or to a person connected with the immediate or superior lessor;

''rent'' includes—

(*a*) any rentcharge, fee farm rent and any payment in the nature of rent, notwithstanding that the payment may relate partly to premises and partly to goods or services, and

(*b*) any payment made by the lessee to defray the cost of work of maintenance of or repairs to the premises, not being work required by the lease to be carried out by the lessee.

(2) (*a*) In ascertaining for the purposes of this Chapter the duration of a lease, the following provisions shall apply:

(i) where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease and the premium was not substantially greater than it would have been (on the assumptions required by *paragraph (b)*) if the term had been one expiring on that date, the lease shall not be treated as having been granted for a term longer than one ending on that date;

(ii) where the terms of the lease include provision for the extension of the lease beyond a particular date by notice given by the lessee, account may be taken of any circumstances making it likely that the lease will be so extended;

(iii) where the lessee or a person connected with the lessee is or may become entitled to a further lease or the grant of a further lease (whenever commencing) of the same premises or of premises

including the whole or part of the same premises, the term of the lease may be treated as not expiring before the term of the further lease.

(*b*) *Paragraph (a)* shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease or, in relation to tax under *section 98(4)*, at the time when the contract providing for a variation or waiver of a kind referred to in *section 98(4)* is entered into, and in applying *paragraph (a)*—

(i) it shall be assumed that all parties concerned, whatever their relationship, act as they would act if they were at arm's length, and

(ii) if by the lease or in connection with the granting of it—

(I) benefits were conferred other than vacant possession and beneficial occupation of the premises or the right to receive rent at a reasonable commercial rate in respect of the premises, or

(II) payments were made which would not be expected to be made by parties so acting if no other benefits had been so conferred,

it shall be further assumed, unless it is shown that the benefits were not conferred or the payments were not made for the purpose of securing a tax advantage in the application of this Chapter, that the benefits would not have been conferred nor the payments made had the lease been for a term ending on the date mentioned in *paragraph (a)*.

(3) Where the estate or interest of any lessor of any premises is the subject of a mortgage and either the mortgagee is in possession or the rents and profits are being received by a receiver appointed by or on the application of the mortgagee, that estate or interest shall be deemed for the purposes of this Chapter to be vested in the mortgagee, and references to a lessor shall be construed accordingly; but the amount of the liability to tax of any such mortgagee shall be computed as if the mortgagor was still in possession or, as the case may be, no receiver had been appointed and as if it were the amount of the liability of the mortgagor that was being computed.

(4) Where an inspector has reason to believe that a person has information relevant to the ascertainment of the duration of a lease in accordance with *subsection (2)*, the inspector may by notice in writing require such person to give, within 21 days after the date of the notice or such longer period as the inspector may allow, such information relevant to the ascertainment of the duration of the lease on the matters specified in the notice as is in such person's possession.

Computational rules and allowable deductions.

[ITA67 s81(4), (5), (6), (7) and (8); FA69 s22; FA97 s146(1) and Sch9 PtI par1(6)]

97.—(1) Subject to this Chapter, the amount of the profits or gains arising in any year shall for the purposes of Case V of Schedule D be computed as follows:

(*a*) the amount of any rent shall be taken to be the gross amount of that rent before any deduction for income tax;

(*b*) the amount of the profits or gains arising in any year shall be the aggregate of the surpluses computed in accordance

with *paragraph (c)*, reduced by the aggregate of the deficiencies as so computed; Pt.4 S.97

(*c*) the amount of the surplus or deficiency in respect of each rent or in respect of the total receipts from easements shall be computed by making the deductions authorised by *subsection (2)* from the rent or total receipts from easements, as the case may be, to which the person chargeable becomes entitled in any year.

(2) The deductions authorised by this subsection shall be deductions by reference to any or all of the following matters—

(*a*) the amount of any rent payable by the person chargeable in respect of the premises or in respect of a part of the premises;

(*b*) any sums borne by the person chargeable—

(i) in the case of a rent under a lease, in accordance with the conditions of the lease, and

(ii) in any other case, relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received,

in respect of any rate levied by a local authority, whether such sums are by law chargeable on such person or on some other person;

(*c*) the cost to the person chargeable of any services rendered or goods provided by such person, otherwise than as maintenance or repairs, being services or goods which—

(i) in the case of a rent under a lease, such person is legally bound under the lease to render or provide but in respect of which such person receives no separate consideration, and

(ii) in any other case, relate to and constitute an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature;

(*d*) the cost of maintenance, repairs, insurance and management of the premises borne by the person chargeable and relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received, not being an expense of a capital nature;

(*e*) interest on borrowed money employed in the purchase, improvement or repair of the premises.

(3) (*a*) The amount of the deductions authorised by *subsection (2)* shall be the amount which would be deducted in computing profits or gains under the provisions applicable to Case I of Schedule D if the receipt of rent were deemed to be a trade carried on by the person chargeable—

(i) in the case of a rent under a lease, during the currency of the lease, and

(ii) in the case of a rent not under a lease, during the period during which the person chargeable was entitled to the rent,

and the premises comprised in the lease or to which the rent relates were deemed to be occupied for the purpose of that trade.

(*b*) For the purpose of this subsection, the currency of a lease shall be deemed to include a period immediately following its termination, during which the lessor immediately before the termination was not in occupation of the premises or any part of the premises, but was entitled to possession of the premises, if at the end of that period the premises have become subject to another lease granted by the lessor.

(4) (*a*) Where the person chargeable is entitled in respect of any premises (in this subsection referred to as ''the relevant premises'') to a rent or to receipts from any easement and a sum by reference to which a deduction is authorised to be made by *subsection (2)* is payable by such person in respect of premises which comprise the whole or a part of the relevant premises and other premises, the inspector shall make, according to the best of his or her knowledge and judgment, any appropriate apportionment of the sum in determining the amount of any deduction under that subsection.

(*b*) Where the person chargeable retains possession of a part of any premises and that part is used in common by persons respectively occupying other parts of the premises, *paragraph (a)* shall apply as if a payment made in respect of the part used in common had been made in respect of those other parts.

(5) Any amount or part of an amount shall not be deducted under *subsection (2)* if it has otherwise been allowed as a deduction in computing the income of any person for the purposes of tax.

Treatment of premiums, etc. as rent.

[ITA67 s83; FA69 s33(1) and Sch4 PtI; FA75 s20 and Sch2 PtI pars1 and 2; CTA76 s140(1) and Sch2 PtI par3]

98.—(1) Where the payment of any premium is required under a lease or otherwise under the terms subject to which a lease is granted and the duration of the lease does not exceed 50 years, the lessor shall be treated for the purposes of *section 75* as becoming entitled when the lease is granted to an amount as rent (in addition to any actual rent) equal to the amount of the premium reduced by 2 per cent of that amount for each complete period of 12 months, other than the first, comprised in the term of the lease.

(2) (*a*) Where the terms subject to which a lease of any premises is granted impose on the lessee an obligation to carry out any work on the premises, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the lessor (in addition to any other premium) of an amount equal to the amount by which the value of the lessor's estate or interest immediately after the commencement of the lease falls short of what its then value would have been if the work had been carried out, but otherwise than at the expense of the lessee, and the rent were increased accordingly.

(*b*) Notwithstanding *paragraph (a)*, this subsection shall not apply in so far as the obligation requires the carrying out of work payment for which, if the lessor and not the lessee were obliged to carry it out, would be deductible from the rent under *section 97(2)*.

(3) Where under the terms subject to which a lease is granted a sum becomes payable by the lessee in place of the whole or a part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the lessor (in addition to any other premium) of the amount of that sum; but—

(*a*) in computing tax chargeable by virtue of this subsection in respect of a sum payable in place of rent, the term of the lease shall be treated as not including any period other than that in relation to which the sum is payable, and

(*b*) notwithstanding *subsection (1)*, rent treated as arising by virtue of this subsection shall be deemed to become due when the sum in question becomes payable by the lessee.

(4) Where as consideration for the variation or waiver of any of the terms of a lease a sum becomes payable by the lessee otherwise than as rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the lessor (in addition to any other premium) of the amount of that sum; but—

(*a*) in computing tax chargeable by virtue of this subsection, the term of the lease shall be treated as not including any period which precedes the time at which the variation or waiver takes effect or falls after the time at which the variation or waiver ceases to have effect, and

(*b*) notwithstanding *subsection (1)*, rent treated as arising by virtue of this subsection shall be deemed to become due when the contract providing for the variation or waiver is entered into.

(5) Where a payment mentioned in *subsection (1)*, *(3)* or *(4)* is due to a person other than the lessor, *subsection (1)*, *(3)* or *(4)*, as the case may be, shall not apply in relation to that payment, but any amount which would have been treated as rent if the payment had been due to the lessor shall be treated as an annual profit or gain of that other person and chargeable to tax under Case IV of Schedule D; but, where the amount relates to a payment within *subsection (4)*, it shall not be so treated unless the payment is due to a person connected with the lessor.

(6) For the purposes of this section, any sum other than rent paid on or in connection with the granting of a lease shall be presumed to have been paid by means of a premium except in so far as other sufficient consideration for the payment is shown to have been given.

(7) Where *subparagraph (iii)* of *section 96(2)(a)* applies, the premium, or an appropriate part of the premium, payable for or in connection with any lease mentioned in that subparagraph may be treated as having been required under any other lease.

(8) Where an amount by reference to which a person is chargeable to income tax or corporation tax by virtue of this section is payable by instalments, the tax chargeable may, if the person chargeable

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satisfies the Revenue Commissioners that such person would otherwise suffer undue hardship, be paid at such person's option by such instalments as the Revenue Commissioners may allow over a period not exceeding 8 years and ending not later than the time at which the last of the first-mentioned instalments is payable.

(9) Reference in this section to a sum shall be construed as including the value of any consideration, and references to a sum paid or payable or to the payment of a sum shall be construed accordingly.

Charge on assignment of lease granted at undervalue.

[ITA67 s84; FA69 s33(1) and Sch4]

99.—(1) Where the terms subject to which a lease of a duration not exceeding 50 years was granted are such that the lessor, having regard to values prevailing at the time the lease was granted, and on the assumption that the negotiations for the lease were at arm's length, could have required the payment of an additional sum (in this section referred to as ''the amount forgone'') by means of a premium or an additional premium for the grant of the lease, then, on any assignment of the lease for a consideration—

(*a*) where the lease has not previously been assigned, exceeding the premium (if any) for which it was granted, or

(*b*) where the lease has been previously assigned, exceeding the consideration for which it was last assigned,

the amount of the excess, in so far as it is not greater than the amount forgone reduced by the amount of any such excess arising on a previous assignment of the lease, shall, in the same proportion as the amount forgone would under *section 98(1)* have been treated as rent if it had been a premium under a lease, be treated as profits or gains of the assignor chargeable to the tax under Case IV of Schedule D.

(2) In computing the profits or gains of a trade of dealing in land, any trading receipts within this section shall be treated as reduced by the amount on which tax is chargeable by virtue of this section.

Charge on sale of land with right to reconveyance.

[ITA67 s85]

100.—(1) Where the terms subject to which an estate or interest in land is sold provide that it shall be, or may be required to be, reconveyed at a future date to the vendor or a person connected with the vendor, the vendor shall be chargeable to tax under Case IV of Schedule D on any amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed or, if the earliest date at which in accordance with those terms it would fall to be reconveyed is a date 2 years or more after the sale, on that excess reduced by 2 per cent of that excess for each complete year (other than the first) in the period between the sale and that date.

(2) Where under the terms of the sale the date of the reconveyance is not fixed, then—

(*a*) if the price on reconveyance varies with the date, the price shall be taken for the purposes of this section to be the lowest possible under the terms of the sale;

(*b*) the vendor may, before the expiration of 6 years after the date on which the reconveyance takes place, claim repayment of any amount by which tax assessed on such vendor by virtue of this section exceeded the amount which would have been so assessed if that date had been treated

for the purposes of this section as the date fixed by the terms of the sale.

(3) Where the terms of the sale provide for the grant of a lease directly or indirectly out of the estate or interest to the vendor or a person connected with the vendor, this section shall apply as if the grant of the lease were a reconveyance of the estate or interest at a price equal to the sum of the amount of the premium (if any) for the lease and the value at the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run; but this subsection shall not apply if the lease is granted, and begins to run, within one month after the sale.

(4) In computing the profits or gains of a trade of dealing in land, any trading receipts within this section shall be treated as reduced by the amount on which tax is chargeable by virtue of this section; but where, on a claim being made under *subsection (2)(b)*, the amount on which tax is chargeable by virtue of this section is treated as reduced, this subsection shall be deemed to have applied to the amount as reduced, and such adjustment of liability to tax shall be made (for all relevant years of assessment), whether by means of an additional assessment or otherwise, as may be necessary.

Relief for amount not received.

[ITA67 s90; FA69 s28]

101.—Where on a claim in that behalf the person chargeable proves—

(*a*) that such person has not received an amount to which such person is entitled and which is to be taken into account in computing the profits or gains on which such person is chargeable by virtue of this Chapter under Case IV or V of Schedule D, and

(*b*) (i) if the non-receipt of the amount was attributable to the default of the person by whom it was payable, that the amount is irrecoverable, or

(ii) if the person chargeable has waived payment of the amount, that the waiver was made without consideration and was reasonably made in order to avoid hardship,

then, the person chargeable shall be treated for tax purposes for all relevant years of assessment as if such person had not been entitled to receive the amount, and such adjustment shall be made by repayment or otherwise, as the case may require; but, if all or any part of the amount is subsequently received, such person's liability to tax for all relevant years of assessment shall be appropriately readjusted by additional assessment or otherwise.

Deduction by reference to premium, etc. paid in computation of profits for purposes of Schedule D, Cases I and II.

[ITA67 s91; FA75 s22(3) and Sch 2 PtIII]

102.—(1) In this section, ''the relevant period'' means—

(*a*) where the amount chargeable arose under *section 98*, the period treated in computing that amount as being the duration of the lease;

(*b*) where the amount chargeable arose under *section 99*, the period treated in computing that amount as being the duration of the lease remaining at the date of the assignment;

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(*c*) where the amount chargeable arose under *section 100*, the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not so fixed, ending with the earliest date at which the reconveyance or grant could take place in accordance with the terms of the sale.

(2) Where in relation to any premises an amount (in this section referred to as ''the amount chargeable'')—

(*a*) has become chargeable to tax under *subsection (1)*, *(2)*, *(3)*, *(4)* or *(5)* of *section 98* or under *section 99* or *100*, or

(*b*) would have become so chargeable but for *section 103(3)* or any exemption from tax,

and during any part of the relevant period the premises are wholly or partly occupied by the person for the time being entitled to the lease, estate or interest as respects which the amount chargeable arose for the purposes of a trade or profession carried on by such person, such person shall be treated, for the purpose of computing the profits or gains of the trade or profession for assessment under Case I or II of Schedule D, as paying in respect of the premises rent for any part of the relevant period during which the premises are occupied by such person (in addition to any rent actually paid) of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole, and such rent shall be taken as accruing from day to day.

(3) Where the amount chargeable arose under *section 98(2)* by reason of an obligation which included the incurring of expenditure in respect of which any allowance has been or will be made under *Part 9*, this section shall apply as if the obligation had not included the incurring of that expenditure and the amount chargeable had been calculated accordingly.

(4) Where the amount chargeable arose under *section 100* and the reconveyance or grant in question takes place at a price different from that taken in calculating that amount or on a date different from that taken in determining the relevant period, *subsections (1)* to *(3)* shall be deemed to have applied (for all relevant years of assessment) as they would have applied if the actual price or date had been so taken and such adjustments of liability to tax shall be made, by means of additional assessment or otherwise, as may be necessary.

Deduction by reference to premiums, etc. paid in computation of profits for purposes of this Chapter.

[ITA67 s92; FA69 s33(1) and Sch4 PtI; FA75 s22 and Sch2 PtIII]

103.—(1) In this section, ''the relevant period'' means, in relation to any amount—

(*a*) where the amount arose under *section 98*, the period treated in computing that amount as being the duration of the lease;

(*b*) where the amount arose under *section 99*, the period treated in computing that amount as being the duration of the lease remaining at the date of the assignment;

(*c*) where the amount arose under *section 100*, the period beginning with the sale and ending on the date fixed under the terms of the sale as the date of the reconveyance or grant, or, if that date is not so fixed, ending with the earliest

date at which the reconveyance or grant could take place in accordance with the terms of the sale.

(2) Where in relation to any premises an amount has become or would have become chargeable to tax as mentioned in *section 102(2)* by reference to a lease, estate or interest, the person for the time being entitled to that lease, estate or interest shall, subject to this section, be treated for the purposes of *section 97(2)* as paying rent accruing from day to day in respect of the premises (in addition to any rent actually paid) during any part of the relevant period in relation to the amount for which such person is entitled to the lease, estate or interest and in all bearing to that amount the same proportion as that part of the relevant period bears to the whole.

(3) Where in relation to any premises an amount has become or would have become chargeable to tax as mentioned in *section 102(2)*, and by reference to a lease granted out of, or a disposition of, the lease, estate or interest by reference to which the amount (in this section referred to as ''the prior chargeable amount'') so became or would have so become chargeable, a person would apart from this subsection be chargeable under *section 98*, *99* or *100* on any amount (in this section referred to as ''the later chargeable amount''), the amount on which the person is so chargeable shall be the excess, if any, of the later chargeable amount over the appropriate fraction of the prior chargeable amount or, where the lease or disposition by reference to which the person would be so chargeable extends to a part only of that premises, the excess, if any, of the later chargeable amount over so much of the appropriate fraction of the prior chargeable amount as on a just apportionment is attributable to that part of the premises.

(4) (*a*) In a case in which *subsection (3)* operates to reduce the amount on which apart from that subsection a person would be chargeable by reference to a lease or disposition, *subsection (2)* shall apply for the relevant period in relation to the later chargeable amount only if the appropriate fraction of the prior chargeable amount exceeds the later chargeable amount and shall then apply as if the prior chargeable amount were reduced in the proportion which the excess bears to that appropriate fraction.

(*b*) Notwithstanding *paragraph (a)*, where the lease or disposition extends to a part only of the premises mentioned in *subsection (3)*, *subsection (2)* and this subsection shall be applied separately in relation to that part and to the remainder of the premises, but as if for any reference to the prior chargeable amount there were substituted a reference to that amount proportionately adjusted.

(5) For the purposes of *subsections (3)* and *(4)*, the appropriate fraction of the prior chargeable amount shall be the sum which bears to that amount the same proportion as the length of the relevant period in relation to the later chargeable amount bears to the length of the relevant period in relation to the prior chargeable amount.

(6) Where the prior chargeable amount arose under *section 98(2)* by reason of an obligation which included the incurring of expenditure in respect of which any allowance has been or will be made under *Part 9*, this section shall apply as if the obligation had not included the incurring of that expenditure and the prior chargeable amount had been calculated accordingly.

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(7) Where the prior chargeable amount arose under *section 100* and the reconveyance or grant in question takes place at a price different from that taken in calculating that amount or on a date different from that taken in determining the relevant period in relation to that amount, *subsections (1)* to *(6)* shall be deemed to have applied (for all relevant years of assessment) as they would have applied if the actual price or date had been so taken and such adjustments of liability to tax shall be made, by means of additional assessment or otherwise, as may be necessary.

Taxation of certain rents and other payments.

[ITA67 s93(1) and (2); FA69 s29]

104.—(1) (*a*) This section shall apply to the following payments—

(i) any rent payable in respect of any premises or easements where the premises or easements are used, occupied or enjoyed in connection with any of the concerns the profits or gains arising out of which are chargeable to tax under Case I(*b*) of Schedule D by virtue of *section 18(2)*, and

(ii) any yearly interest, annuity or other annual payment reserved in respect of, or charged on or issuing out of any premises, not being a rent or a payment in respect of an easement.

(*b*) In *paragraph (a)(i)*, the reference to rent shall be deemed to include a reference to a toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money, money's worth or otherwise.

(2) (*a*) Any payment to which this section applies shall—

(i) in so far as it is not within any other Case of Schedule D, be charged with tax under Case IV of that Schedule, and

(ii) be treated for the purposes of *sections 81(2)(m)*, *237* and *238* as if it were a royalty paid in respect of the user of a patent.

(*b*) Notwithstanding *paragraph (a)*, where a rent mentioned in *subsection (1)(a)* is rendered in produce of the concern, this subsection shall apply as if *paragraph (a)(ii)* were deleted, and the value of the produce so rendered shall be taken to be the amount of profits or gains arising from that produce.

Taxation of rents: restriction in respect of certain rent and interest.

[FA74 s62(1) and (2)]

105.—(1) This section shall apply to—

(*a*) rent in respect of premises, or

(*b*) interest on borrowed money employed in the purchase, improvement or repair of premises,

payable by a person chargeable to tax in accordance with *section 75* on the profits or gains arising from rent in respect of those premises for a period before the date on which the premises are first occupied by a lessee for the purpose of a trade or undertaking or for use as a residence.

(2) No deduction shall be allowed for any year of assessment under *section 97(2)* in respect of rent or interest to which this section applies. PT.4 S.105

Tax treatment of receipts and outgoings on sale of premises.

[FA69 s26(1) to (4)]

106.—(1) Where by virtue of a contract for the sale of an estate or interest in premises there is to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which becomes due after the making of the contract but before the time at which the apportionment is to be made, and a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser, the purchaser shall be treated for the purposes of tax under Case V of Schedule D as if that part had become receivable or payable on the purchaser's behalf immediately after the time at which the apportionment is to be made.

(2) Where by virtue of such a contract there is to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of tax under Case V of Schedule D as if the contract had been entered into before the receipt or outgoing became due, and *subsection (1)* shall apply accordingly.

(3) Where on the sale of an estate or interest in premises there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which becomes receivable or is paid by the purchaser after the making of the apportionment, then, for the purposes of tax under Case V of Schedule D—

(*a*) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of the receipt or outgoing, as the case may be, shall be treated as reduced by so much of that amount as was apportioned to the vendor, and

(*b*) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and had become receivable, or had been paid, directly by the vendor and, where it is a part of an outgoing, had become due, immediately before the time at which the apportionment is made.

(4) Any reference in *subsection (1)* or *(2)* to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.

CHAPTER 9

Miscellaneous provisions

Apportionment of profits.

[ITA67 s107; FA69 s65(1) and Sch5 PtI]

107.—(1) Where in the case of any profits or gains chargeable under Case I, II or IV of Schedule D it is necessary, in order to determine the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts of such profits or gains or losses, it shall be lawful to make such division and apportionment or aggregation.

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(2) Any apportionment under this section shall be made in proportion to the number of months or fractions of months in the respective periods.

Statement of profits.

[ITA67 s68(1)]

108.—Every statement of profits to be charged under Schedule D which is made by any person—

(*a*) on that person's own account, or

(*b*) on account of another person for whom that person is chargeable, or who is chargeable in that person's name,

shall include every source of income so chargeable.

Payments in respect of redundancy.

[FA68 s37(1) and (3) to (7); FA74 s86 and Sch2 PtI; CTA76 s140(1) and Sch2 PtI par30; FA77 s42 and Sch1 PtIV par2]

109.—(1) In this section, ''lump sum'' and ''rebate'' have the same meanings respectively as in the Redundancy Payments Act, 1967.

(2) Where a lump sum is paid by an employer in respect of employment wholly in a trade or profession carried on by the employer and within the charge to income tax or corporation tax, the amount of the lump sum shall (if not otherwise so allowable) be allowable as a deduction in computing for the purposes of Schedule D the profits or gains or losses of the trade or profession, but if it is so allowed by virtue of this section the amount of the rebate recoverable shall (if it is not otherwise to be so treated) be treated as a receipt to be taken into account in computing those profits or gains and, if the lump sum was paid after the discontinuance of the trade or profession, the net amount so deductible shall be treated as if it were a payment made on the last day on which the trade or profession was carried on.

(3) Where a lump sum is paid by an employer in respect of employment wholly in a business carried on by the employer and expenses of management of the business are eligible for relief under *section 83* or *709*, the amount by which the lump sum exceeds the amount of the rebate recoverable shall (if not otherwise so allowable) be allowable as expenses of management eligible for relief under that section and, if the lump sum was paid after the discontinuance of the business, the net amount so allowable shall be treated as if it were expenses of management incurred on the last day on which the business was carried on.

(4) Where a lump sum is paid by an employer in respect of employment wholly in maintaining or managing premises and the expenses of maintaining or managing the premises were deductible under *section 97*, the amount by which the lump sum exceeds the amount of the rebate recoverable shall (if not otherwise allowable under that section) be treated for the purposes of *section 97* as a payment made by the employer in respect of the maintenance or management of the premises and, if the payment was made after the latest time when it could be taken into account under *section 97* as a payment in respect of the maintenance or management of the property, it shall be treated as having been made at that time.

(5) Relief shall not be given under *subsections (2)* to *(4)*, or otherwise, more than once in respect of any lump sum and, if the employee was being employed by the employer in such a way that different parts of the employee's remuneration fell to be treated for income tax purposes in different ways, the amount (in this subsection referred to as ''the excess amount'') by which the lump sum exceeds

the amount of the rebate recoverable shall be apportioned to the different capacities in which the employee was employed, and *subsections (2)* to *(4)* shall apply separately to the employment in those capacities, and by reference to the apportioned part of the excess amount, instead of by reference to the full amount of the lump sum and the full amount of the rebate.

(6) Where under section 32 of the Redundancy Payments Act, 1967, a payment of the whole or part of a lump sum is made by the Minister for Enterprise, Trade and Employment, the payment shall, in so far as the employer has reimbursed that Minister, be deemed for the purposes of this section to have been made by the employer.

Securitisation of assets.

[FA91 s31; FA96 s55(1)]

110.—(1) In this section—

''qualifying asset'' means—

(*a*) in the case of a qualifying company which is a qualified company (within the meaning of *section 446*), an asset—

(i) denominated in a foreign currency which consists of, or of an interest in or a contractual right to, any loan, lease, trade or consumer receiveable or other debt or receiveable whether secured or unsecured, and

(ii) of a person (in this section referred to as ''the originator''), being any government, public or local authority, company or other body corporate which—

(I) is not resident in the State, and

(II) (A) is not carrying on a trade in the State through a branch or agency, or

(B) is carrying on a trade in the State through a branch or agency and the asset was not created, acquired or held by or in connection with the branch or agency,

and

(*b*) in any other case, a loan made by a company (in this section referred to as ''the original lender'') on the security of a mortgage of a freehold or leasehold estate or interest in the ordinary course of a trade carried on by it which consists of or includes the lending of money on such security;

''qualifying company'' means a company resident in the State which carries on a business of the management of qualifying assets which it acquired from the original lender or original lenders or the originator or originators, as the case may be, and does not carry on any other business, apart from activities which are ancillary to the business of the management of those qualifying assets, but a company shall not be a qualifying company if any transaction is carried out by it otherwise than by means of a bargain made at arm's length.

(2) For the purposes of the Tax Acts—

(*a*) activities carried out in the course of a business carried on by a qualifying company shall be deemed to be activities carried out in the course of a trade, the profits or gains of which are chargeable to tax under Case I of Schedule D,

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(*b*) there shall be deducted as an expense of the trade the amount, in so far as it is not—

(i) otherwise deductible, or

(ii) recoverable from the original lender or the originator, as the case may be, or under any insurance, contract of indemnity or otherwise howsoever,

of any debt which is proved to the satisfaction of the inspector to be bad and of a doubtful debt to the extent that it is estimated to be bad; but, in the case of a company referred to in *paragraph (b)* of the definition of ''qualifying asset'', the amount of the debt shall not be deducted under this paragraph unless it would have been deductible as an expense of the trade of the original lender if that debt had been proved or estimated to be bad before it was acquired by the qualifying company, and

(*c*) where at any time an amount or part of an amount which has been deducted as an expense under *paragraph (b)* is recovered or is no longer estimated to be bad, the amount which has been so deducted shall, in so far as it is recovered or is no longer estimated to be bad, be treated as trading income of the trade at that time.

Allowance to owner of let mineral rights for expenses of management of minerals.

[ITA67 s553; F(MP)A68 s3(2) and Sch PtI and s3(5) and Sch PtIV; FA81 s9(c)]

111.—(1) (*a*) Where for any year of assessment rights to work minerals in the State are let, the lessor shall be entitled on making a claim in that behalf to be repaid so much of the income tax paid by such lessor by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to have been wholly, exclusively and necessarily disbursed by such lessor as expenses of management or supervision of those minerals in that year.

(*b*) Notwithstanding *paragraph (a)*, no repayment of tax under that paragraph shall be made—

(i) except on proof of payment of tax on the aggregate amount of the rent or royalties, or

(ii) if, or to such extent as, the expenses of management or supervision have been otherwise allowed as a deduction in computing income for the purposes of income tax.

(2) Notice of any claim under this section together with the particulars of the claim shall be given in writing within 24 months after the expiration of the year of assessment in respect of which the claim is made, and where the inspector objects to such claim the Appeal Commissioners shall hear and determine the claim in the like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

PART 5

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER 1

Basis of assessment, persons chargeable and extent of charge

Basis of assessment, persons chargeable and extent of charge.

[ITA67 s110; FA90 s19(a); FA91 s6]

112.—(1) Income tax under Schedule E shall be charged annually on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

(2) (*a*) In this subsection, ''emoluments'' means anything assessable to income tax under Schedule E.

(*b*) Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purposes of *subsection (1)*:

(i) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and

(ii) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.

CHAPTER 2

Computational provisions

Making of deductions.

[ITA67 s111(4) and s112; FA90 s19(b)(proviso)]

113.—(1) In this section, ''emoluments'' means all salaries, fees, wages, perquisites or profits or gains whatever arising from an office or employment, or the amount of any annuity, pension or stipend, as the case may be.

(2) Any deduction from emoluments allowed under the Income Tax Acts for the purpose of computing an assessment to income tax under Schedule E shall be made by reference to the amount paid or borne for the year or portion of the year on the emoluments of which the computation is made.

General rule as to deductions.

[ITA67 Sch2 rule3; FA96 s132(2) and Sch5 PtII]

114.—Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

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Fixed deduction for certain classes of persons.

[ITA67 Sch2 rule 4]

115.—Where the Minister for Finance is satisfied, with respect to any class of persons in receipt of any salary, fees or emoluments payable out of the public revenue, that such persons are obliged to lay out and expend money wholly, exclusively and necessarily in the performance of the duties in respect of which such salary, fees or emoluments are payable, the Minister for Finance may fix such sum as in that Minister's opinion represents a fair equivalent of the average annual amount so laid out and expended by persons of that class, and in charging the tax on such salary, fees or emoluments, there shall be deducted from the amount of such salary, fees or emoluments the sums so fixed by the Minister for Finance; but, if any person would but for this section be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

CHAPTER 3

Expenses allowances and provisions relating to the general benefits in kind charge

Interpretation (*Chapter 3*).

[ITA67 s119 and s122]

116.—(1) In this Chapter—

''business premises'', in relation to a body corporate, includes all premises occupied by that body for the purpose of any trade carried on by it and, except when the reference is expressly to premises which include living accommodation, includes so much of any such premises so occupied as is used wholly or mainly as living accommodation for any of the directors of the body corporate or for any persons employed by the body corporate in any employment to which this Chapter applies;

''control'', in relation to a body corporate, means the power of a person to secure—

(*a*) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(*b*) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person;

''director'' means—

(*a*) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(*b*) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person,

(*c*) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions or instructions the directors of a body corporate, defined in accordance with the preceding provisions of this definition, are accustomed to

act, but a person shall not, within the meaning of this definition, be deemed to be a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act by reason only that those directors act on advice given by the person in a professional capacity;

''employment'' means an employment such that any emoluments of the employment would be assessed under Schedule E, and references to persons employed by, or employees of, a body corporate include any person who takes part in the management of the affairs of the body corporate and is not a director of the body corporate.

(2) Any reference in this Chapter to anything provided for a director or employee shall, unless the reference is expressly to something provided for the director or employee personally, be construed as including a reference to anything provided for the spouse, family, servants, dependants or guests of that director or employee, and the reference in the definition of ''business premises'' to living accommodation for directors or employees shall be construed accordingly.

(3) (*a*) Subject to *subsection (4)* and *paragraphs (b)* and *(c)*, the employments to which this Chapter applies shall be employments the emoluments of which, estimated for the year of assessment in question according to the Income Tax Acts and on the basis that they are employments to which this Chapter applies, and without any deduction being made under *section 114* in respect of money expended in performing the duties of those employments, are £1,500 or more.

(*b*) Where a person is employed in 2 or more employments by the same body corporate and the total of the emoluments of those employments for the year of assessment in question estimated in accordance with *paragraph (a)* is £1,500 or more, all those employments shall be treated as employments to which this Chapter applies.

(*c*) Where a person is a director of a body corporate, all employments in which the person is employed by the body corporate shall be treated as employments to which this Chapter applies.

(4) All the directors of, and persons employed by, a body corporate over which another body corporate has control shall be treated for the purposes of *paragraphs (b)* and *(c)* of *subsection (3)* (but not for any other purpose) as if they were directors of that other body corporate or, as the case may be, as if the employment were an employment by that other body corporate.

Expenses allowances.

[ITA67 s116; FA74 s86 and Sch2 PtI]

117.—(1) Subject to this Chapter, any sum paid in respect of expenses by a body corporate to any of its directors or to any person employed by it in an employment to which this Chapter applies shall, if not otherwise chargeable to income tax as income of that director or employee, be treated for the purposes of *section 112* as a perquisite of the office or employment of that director or employee and included in the emoluments of that office or employment assessable to income tax accordingly; but nothing in this subsection shall prevent a claim for a deduction being made under *section 114* in respect of any money expended wholly, exclusively and necessarily in performing the duties of the office or employment.

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(2) The reference in *subsection (1)* to any sum paid in respect of expenses includes a reference to any sum put by a body corporate at the disposal of a director or employee and paid away by him or her.

Benefits in kind: general charging provision.

[ITA67 s117; FA73 s41; FA74 s86 and Sch2 PtI; FA96 s131(9)(a)]

118.—(1) Subject to this Chapter, where—

(*a*) a body corporate incurs expense in or in connection with the provision, for any of its directors or for any person employed by it in an employment to which this Chapter applies, of—

(i) living or other accommodation,

(ii) entertainment,

(iii) domestic or other services, or

(iv) other benefits or facilities of whatever nature, and

(*b*) apart from this section the expense would not be chargeable to income tax as income of the director or employee,

then, *sections 112*, *114* and *897* shall apply in relation to so much of the expense as is not made good to the body corporate by the director or employee as if the expense had been incurred by the director or employee and the amount of the expense had been refunded to the director or employee by the body corporate by means of a payment in respect of expenses, and income tax shall be chargeable accordingly.

(2) *Subsection (1)* shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee in any of its business premises of any accommodation, supplies or services provided for the director or employee personally and used by the director or employee solely in performing the duties of his or her office or employment.

(3) *Subsection (1)* shall not apply to expense incurred by the body corporate in or in connection with the provision of living accommodation for an employee in part of any of its business premises which include living accommodation if the employee is, for the purpose of enabling the employee properly to perform his or her duties, required by the terms of his or her employment to reside in the accommodation and either—

(*a*) the accommodation is provided in accordance with a practice which since before the 30th day of July, 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or

(*b*) it is necessary in the case of trades of the class in question that employees of the class in question should reside on premises of the class in question;

but this subsection shall not apply where the employee is a director of the body corporate in question or of any other body corporate over which that body corporate has control or which has control over that body corporate or which is under the control of a person who also has control over that body corporate.

(4) *Subsection (1)* shall not apply to expense incurred by the body corporate in or in connection with the provision of meals in any canteen in which meals are provided for the staff generally.

(5) *Subsection (1)* shall not apply to expense incurred by the body corporate in or in connection with the provision for a director or employee, or for the director's or employee's spouse, children or dependants, of any pension, annuity, lump sum, gratuity or other like benefit to be given on the death or retirement of the director or employee.

(6) Any reference in this section to expense incurred in or in connection with any matter includes a reference to a proper proportion of any expense incurred partly in or in connection with that matter.

(7) Where expense is incurred by a person connected with a body corporate, being expense which if incurred by the body corporate would be expense of the kind mentioned in *subsection (1)(a)*, the body corporate shall be deemed for the purposes of this section to have incurred the expense, and *subsection (1)* shall apply accordingly in relation to any person, being a director or employee of the body corporate, in respect of whom the expense was incurred.

(8) A person shall be regarded as connected with a body corporate for the purposes of *subsection (7)* if the person is—

(*a*) a trustee of a settlement (within the meaning of *section 794*) made by the body corporate, or

(*b*) a body corporate,

and would be regarded as connected with the body corporate for the purposes of *section 10*.

Valuation of benefits in kind.

[ITA67 s118(1), (2) and (4); FA69 s32(b) and (c)]

119.—(1) Any expense incurred by a body corporate in the acquisition or production of an asset which remains its own property shall be disregarded for the purposes of *section 118*.

(2) Where the making of any provision mentioned in *section 118(1)* takes the form of a transfer of the property in any asset of the body corporate and, since the acquisition or production of that asset by the body corporate, that asset has been used or has depreciated, the body corporate shall be deemed to have incurred in the making of that provision expense equal to the value of that asset at the time of the transfer.

(3) Where an asset which continues to belong to the body corporate is used wholly or partly in the making of any provision mentioned in *section 118(1)*, the body corporate shall be deemed for the purposes of that section to incur (in addition to any other expense incurred by it in connection with the asset, not being expense to which *subsection (1)* applies) annual expense in connection with the asset of an amount equal to the annual value of the use of the asset, but where any sum by means of rent or hire is payable by the body corporate in respect of the asset—

(*a*) if the annual amount of the rent or hire is equal to or greater than the annual value of the use of the asset, this subsection shall not apply, and

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(*b*) if the annual amount of the rent or hire is less than the annual value of the use of the asset, the rent or hire shall be disregarded for the purposes of *section 118(1)*.

(4) In the case of an asset being premises, the annual value of the use of the asset shall be taken for the purposes of *subsection (3)* to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant's rates, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the premises in a state to command that rent.

Unincorporated bodies, partnerships and individuals.

[ITA67 s123]

120.—(1) This Chapter shall apply in relation to unincorporated societies and other bodies as it applies in relation to bodies corporate and, in connection with this Chapter, the definition of ''control'' in *section 116(1)* shall, with the necessary modifications, also so apply.

(2) This Chapter shall apply in relation to any partnership carrying on any trade or profession as it would apply in relation to a body corporate carrying on a trade if so much of this Chapter as relates to directors of the body corporate or persons taking part in the management of the affairs of the body corporate were deleted; but—

(*a*) ''control'', in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership, and

(*b*) where a partnership carrying on any trade or profession has control over a body corporate to which this Chapter applies (''control'' being construed for this purpose in accordance with the definition of that term in *section 116(1)*)—

(i) any employment of any director of that body corporate by the partnership shall be an employment to which this Chapter applies, and

(ii) all the employments of any person who is employed both by the partnership and by the body corporate (being employments by the partnership or the body corporate) shall, for the purpose of ascertaining whether those employments or any of them are employments to which this Chapter applies, be treated as if they were employments by the body corporate.

(3) *Subsection (2)* shall apply in relation to individuals as it applies in relation to partnerships, but nothing in this subsection shall be construed as requiring an individual to be treated in any circumstances as under the control of another person.

Other benefit in kind charges

Benefit of use of car.

121.—(1) (*a*) In this section—

[FA82 s4(2) to (6) and (9)(a) and (b)(i), (ii) and (iv); FA92 s8(a),(b)(i) and (ii)(V) and Sch1 PtV; FA96 s6]

''business mileage for a year of assessment'', in relation to a person, means the total number of whole miles travelled in the year in the course of business use by that person of a car or cars in respect of which this section applies in relation to that person;

''business use'', in relation to a car in respect of which this section applies in relation to a person, means travelling in the car which that person is necessarily obliged to do in the performance of the duties of his or her employment;

''car'' means any mechanically propelled road vehicle constructed or adapted for the carriage of passengers, other than a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;

''employment'' means an office or employment of profit such that any emoluments (within the meaning of *section 113*) of the office or employment would be charged to tax, and cognate expressions shall be construed accordingly;

''private use'', in relation to a car, means use of the car other than business use;

''relevant log book'', in relation to a person and a year of assessment, means a record maintained on a daily basis of the person's business use for the year of assessment of a car or cars in respect of which this section applies in relation to that person for that year of assessment which—

(i) contains relevant details of distances travelled, nature and location of business transacted and amount of time spent away from the employer's place of business, and

(ii) is certified by the employer as being to the best of the employer's knowledge and belief true and accurate.

(*b*) For the purposes of this section—

(i) (I) a car made available in any year to an employee by reason of his or her employment shall be deemed to be available in that year for his or her private use unless the terms on which the car is so made available prohibit such use and no such use is made of the car in that year;

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(II) a car made available to an employee by his or her employer or by a person connected with the employer shall be deemed to be made available to him or her by reason of his or her employment (unless the employer is an individual and it can be shown that the car was made so available in the normal course of his or her domestic, family or personal relationships);

(III) a car shall be treated as available to a person and for his or her private use if it is available to a member or members of his or her family or household;

(IV) references to a person's family or household are references to the person's spouse, sons and daughters and their spouses, parents and servants, dependants and guests;

(ii) in relation to a car in respect of which this section applies, expenditure in respect of any costs borne by a person connected with the employer shall be treated as borne by the employer;

(iii) the original market value of a car shall be the price (including any duty of customs, duty of excise or value-added tax chargeable on the car) which the car might reasonably have been expected to fetch if sold in the State singly in a retail sale in the open market immediately before the date of its first registration in the State under section 6 of the Roads Act, 1920, or under corresponding earlier legislation, or elsewhere under the corresponding legislation of any country or territory.

(2) (*a*) In relation to a person chargeable to tax in respect of an employment, this section shall apply for a year of assessment in relation to a car which, by reason of the employment, is made available (without a transfer of the property in it) to the person and is available for his or her private use in that year.

(*b*) In relation to a car in respect of which this section applies for a year of assessment—

(i) *Chapter 3* of this Part shall not apply for that year in relation to the expense incurred in connection with the provision of the car, and

(ii) there shall be treated for that year as emoluments of the employment by reason of which the car is made available, and accordingly chargeable to income tax, the amount, if any, by which the cash equivalent of the benefit of the car for the year exceeds the aggregate for the year of the amounts which the employee is required to make good and actually makes good to the employer in respect of any part of the costs of providing or running the car; but any part of such

aggregate in respect of which the cash equivalent is reduced under *subsection (3)(a)* shall be disregarded for the purposes of this subparagraph.

(3) (*a*) The cash equivalent of the benefit of a car for a year of assessment shall be 30 per cent of the original market value of the car, but shall be reduced—

(i) where no part of the cost for that year of the fuel used in the course of the private use of the car by the employee is borne directly or indirectly by the employer, by 4.5 per cent of the original market value of the car,

(ii) where no part of the cost for that year of the insurance of the car is borne directly or indirectly by the employer, by 3 per cent of the original market value of the car,

(iii) where no part of the cost for that year of repair and servicing of the car is borne directly or indirectly by the employer, by 3 per cent of the original market value of the car, and

(iv) where no part of the excise duty for that year on the licence under section 1 of the Finance (Excise Duties) (Vehicles) Act, 1952, relating to the car is borne directly or indirectly by the employer, by 1 per cent of the original market value of the car.

(*b*) Where a car in respect of which this section applies in relation to a person for a year of assessment is made available to the person for part only of that year, the cash equivalent of the benefit of that car as respects that person for that year shall be an amount which bears to the full amount of the cash equivalent of the car for that year (ascertained under *paragraph (a)*) the same proportion as that part of the year bears to that year.

(4) (*a*) Where in relation to a person the business mileage for a year of assessment exceeds 15,000 miles, the cash equivalent of the benefit of the car for that year, instead of being the amount ascertained under *subsection (3)*, shall be the percentage of that amount applicable to that business mileage under the Table to this subsection.

(*b*) In the Table to this subsection, any percentage shown in *column (3)* shall be that applicable to any business mileage for a year of assessment which—

(i) exceeds the lower limit shown in *column (1)*, and

(ii) does not exceed the upper limit (if any) shown in *column (2)*,

opposite the mention of that percentage in *column (3)*.

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TABLE

Business mileage		Percentage
lower limit (1)	upper limit (2)	(3)
Miles	Miles	
15,000	16,000	97.5 per cent
16,000	17,000	95 per cent
17,000	18,000	90 per cent
18,000	19,000	85 per cent
19,000	20,000	80 per cent
20,000	21,000	75 per cent
21,000	22,000	70 per cent
22,000	23,000	65 per cent
23,000	24,000	60 per cent
24,000	25,000	55 per cent
25,000	26,000	50 per cent
26,000	27,000	45 per cent
27,000	28,000	40 per cent
28,000	29,000	35 per cent
29,000	30,000	30 per cent
30,000	—	25 per cent

(5) (*a*) Where for a year of assessment—

(i) a person, in the performance of the duties of his or her employment, spends 70 per cent or more of his or her time engaged on such duties away from the place of business of his or her employer, and

(ii) in relation to that person, the business mileage exceeds 5,000 miles,

then, if the person so elects in writing to the inspector, the cash equivalent of the benefit of the car for that year of assessment in relation to the person shall, instead of being the amount ascertained under *subsection (3)* or *(4)*, as may otherwise be appropriate, be 80 per cent of the amount ascertained under *subsection (3)*.

(*b*) When requested in writing by the inspector, a person who makes an election under *paragraph (a)* for a year of assessment shall within 30 days of the date of such request furnish to the inspector a relevant log book in relation to that year of assessment.

(*c*) This subsection shall not apply as respects a year of assessment where—

(i) when requested to do so, a person fails to deliver to the inspector within the time specified in *paragraph (b)* a relevant log book in relation to that year of assessment, or

(ii) the time spent by a person in the performance of the duties of his or her employment in that year of assessment is on average less than 20 hours per week.

(*d*) *Subsection (7)(e)* shall apply for the purposes of this sub-section as it applies for the purposes of *subsection (7)*. Pt.5 S.121

(*e*) Where a person makes an election under *paragraph (a)* for a year of assessment, such person shall retain the relevant log book in relation to that year of assessment for a period of 6 years after that end of that year or for such shorter period as the inspector may authorise in writing.

(6) (*a*) Where any amount is to be treated as emoluments of an employment under *subsection (2)(b)(ii)* for a year of assessment, it shall be the duty of the person who is chargeable to tax in respect of that amount to deliver in writing to the inspector, not later than 30 days after the end of that year of assessment, particulars of the car, of its original market value and of the business mileage and private mileage for that year of assessment.

(*b*) Where in relation to a year of assessment—

(i) a person makes default in the delivery of particulars in relation to—

(I) the original market value of a car in respect of which this section applies in relation to him or her,

(II) his or her business mileage for the year, or

(III) his or her private mileage for the year,

or

(ii) the inspector is not satisfied with the particulars which have been delivered by the person,

then, the original market value or business mileage or private mileage which is to be taken into account for the purpose of computing the amount of the tax to which that person is to be charged shall be such value or mileage, as the case may be, as according to the best of the inspector's judgment ought to be so taken into account and, in the absence of sufficient evidence to the contrary, the business mileage for a year of assessment in relation to a person shall be determined by deducting 5,000 from the total number of miles travelled in that year by that person in a car or cars in respect of which this section applies in relation to that person.

(*c*) The inspector, in making a computation for the purposes of an assessment or of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), before the end of the year of assessment to which the computation relates, in relation to a person in relation to whom this section applies for that year of assessment, shall make an estimate of that person's business mileage for the purpose of the computation, and *section 926* shall, with any necessary modifications, apply in relation to the estimate so made as it applies in relation to an estimate made under that section.

(*d*) A value or mileage taken into account under *paragraph (b)* may be amended by the Appeal Commissioners or

the Circuit Court on the hearing or the rehearing of an appeal against an assessment in respect of the employment in the performance of the duties of which the business mileage is done.

(7) (*a*) This subsection shall apply to any car in the case of which the inspector is satisfied (whether on a claim under this subsection or otherwise) that it has for any year been included in a car pool for the use of the employees of one or more employers.

(*b*) A car shall be treated as having been so included for a year if—

(i) in that year the car was made available to and actually used by more than one of those employees and in the case of each of them was made available to him or her by reason of his or her employment but was not in that year ordinarily used by any one of them to the exclusion of the others,

(ii) in the case of each of them, any private use of the car made by him or her in that year was merely incidental to his or her other use of the car in the year, and

(iii) the car was in that year not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them.

(*c*) Where this subsection applies to a car, the car shall be treated under this section as not having been available for the private use of any of the employees for the year in question.

(*d*) A claim under this subsection in respect of a car for any year may be made by any one of the employees mentioned in *paragraph (b)(i)* (they being referred to in *paragraph (e)* as ''the employees concerned'') or by the employer on behalf of all of them.

(*e*) (i) Any person aggrieved by a decision of the inspector on any question arising under this subsection may, by notice in writing to that effect given to the inspector within 2 months from the date on which notice of the decision is given to that person, make an application to have his or her claim for relief heard and determined by the Appeal Commissioners.

(ii) Where an application is made under *subparagraph (i)*, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(iii) On an appeal against the decision of the inspector on a claim under this section all the employees concerned may take part in the proceedings, and the

determination of the Appeal Commissioners or the Circuit Court, as the case may be, shall be binding on all those employees, whether or not they have taken part in the proceedings.

(iv) Where an appeal against the decision of the inspector on a claim under this subsection has been determined, no appeal against the inspector's decision on any other such claim in respect of the same car while in the same car pool and the same year shall be entertained.

Preferential loan arrangements.

122.—(1) (*a*) In this section—

[ITA67 s195B(3) and (6); FA82 s8(1) to (5), (7) and (9); FA89 s6; FA93 s10(1); FA95 s9; FA97 s146(1) and Sch9 PtI par12(1)]

''employee'', in relation to an employer, means an individual employed by the employer in an employment to which *Chapter 3* of this Part applies, including, in a case where the employer is a body corporate, a director (within the meaning of that Chapter) of the body corporate;

''employer'', in relation to an individual, means—

(i) a person of whom the individual or the spouse of the individual is an employee,

(ii) a person of whom the individual becomes an employee subsequent to the making of a loan by the person to the individual, and while any part of the loan, or of another loan replacing it, is outstanding, or

(iii) a person connected with a person referred to in *paragraph (i)* or *(ii)*;

''loan'' includes any form of credit, and references to a loan include references to any other loan applied directly or indirectly towards the replacement of another loan;

''preferential loan'' means a loan, in respect of which no interest is payable or interest is payable at a preferential rate, made directly or indirectly to an individual or to the spouse of the individual by a person who in relation to the individual or the spouse is an employer, but does not include any such loan in respect of which interest is payable at a rate that is not less than the rate of interest at which the employer in the course of the employer's trade makes equivalent loans for similar purposes at arm's length to persons other than employees or their spouses;

''preferential rate'' means a rate less than the specified rate;

''the specified rate'', in relation to a preferential loan, means—

(i) in a case where—

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(I) the interest paid on the preferential loan qualifies for relief under *section 244*, or

(II) if no interest is paid on the preferential loan, the interest which would have been paid on that loan (if interest had been payable) would have so qualified,

the rate of 7 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations,

(ii) in a case where—

(I) the preferential loan is made to an employee by an employer,

(II) the making of loans for the purposes of purchasing a dwelling house for occupation by the borrower as a residence, for a stated term of years at a rate of interest which does not vary for the duration of the loan, forms part of the trade of the employer, and

(III) the rate of interest at which, in the course of the employer's trade at the time the preferential loan is or was made, the employer makes or made loans at arm's length to persons, other than employees, for the purposes of purchasing a dwelling house for occupation by the borrower as a residence is less than 7 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations,

the first-mentioned rate in *subparagraph (III)*, or

(iii) in any other case, the rate of 11 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations.

(*b*) For the purposes of this section, a person shall be regarded as connected with another person if such person would be so regarded for the purposes of *section 250*.

(*c*) In this section, a reference to a loan being made by a person includes a reference to a person assuming the rights and liabilities of the person who originally made the loan and to a person arranging, guaranteeing or in any way facilitating a loan or the continuation of a loan already in existence.

(2) Where an individual has at any time during a year of assessment a preferential loan or loans made directly or indirectly to him or her by a person who at the time the loan is made is, or who at a time subsequent to the making of the loan becomes, an employer in relation to the individual, the individual shall, subject to *subsection (4)*, be treated for the purposes of *section 112* or, in a case where profits or gains from an employment with that person would be chargeable to tax under Case III of Schedule D, for the purposes of

a charge to tax under that Case as having received in that year of assessment as a perquisite of an office or employment with that person a sum equal to—

(*a*) if no interest is payable on the preferential loan or loans, the amount of interest which would have been payable in that year if interest had been payable on the loan or loans at the specified rate, or

(*b*) if interest is paid or payable at a preferential rate or rates, the difference between the aggregate amount of interest paid or payable in that year and the amount of interest which would have been payable in that year if interest had been payable on the loan or loans at the specified rate,

and the individual or, in the case of an individual whose spouse is chargeable to tax for the year of assessment in accordance with *section 1017*, the spouse of the individual shall be charged to tax accordingly.

(3) Where an individual has a loan made to him or her directly or indirectly in any year of assessment by a person who at the time the loan is made is, or who at a time subsequent to the making of the loan becomes, an employer in relation to the individual and the loan or any interest payable on the loan is released or written off in whole or in part—

(*a*) the individual shall be deemed for the purposes of *section 112* or, in a case where profits or gains from an employment with that person would be chargeable to tax under Case III of Schedule D, for the purposes of a charge to tax under that Case to have received in the year of assessment in which the release or writing off took place as a perquisite of an office or employment with that person a sum equal to the amount which is released or written off, and

(*b*) the individual or, in the case of an individual whose spouse is chargeable to tax for the year of assessment in accordance with *section 1017*, the spouse of the individual shall be charged to tax accordingly.

(4) Where for any year of assessment a sum is chargeable to tax under *subsection (2)* in respect of a preferential loan or loans or under *subsection (3)* in respect of an amount of interest written off or released, the individual to whom the loan or loans was or were made shall be deemed for the purposes of *section 244* to have paid in the year of assessment an amount or additional amount of interest, as the case may be, on the loan or loans equal to such sum or the individual by whom the interest written off or released was payable shall be deemed for those purposes to have paid in the year of assessment the interest released or written off.

(5) This section shall not apply to a loan made by an employer, being an individual, and shown to have been made in the normal course of his or her domestic, family or personal relationships.

(6) Any amount chargeable to tax by virtue of this section shall not be emoluments for the purpose of *section 472*.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution

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annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

CHAPTER 5

Miscellaneous charging provisions

General tax treatment of payments on retirement or removal from office or employment.

[ITA67 s114(1) to (5) and (7)]

123.—(1) This section shall apply to any payment (not otherwise chargeable to income tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.

(2) Subject to *section 201*, income tax shall be charged under Schedule E in respect of any payment to which this section applies made to the holder or past holder of any office or employment, or to his or her executors or administrators, whether made by the person under whom he or she holds or held the office or employment or by any other person.

(3) For the purposes of this section and *section 201*, any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.

(4) Any payment chargeable to tax by virtue of this section shall be treated as income received on the following date—

(*a*) in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected, and

(*b*) in the case of any other payment, the date of the termination or change in respect of which the payment is made,

and shall be treated as emoluments of the holder or past holder of the office or employment assessable to income tax under Schedule E.

(5) In the case of the death of any person who if he or she had not died would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged on his or her executors or administrators, and shall be a debt due from and payable out of his or her estate.

(6) Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom that payment is made to deliver particulars of the payment in writing to the inspector not later than 14 days after the end of that year.

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Tax treatment of certain severance payments.

[FA93 s7(2)]

124.—(1) This section shall apply to the following payments—

(*a*) a termination allowance (other than that part of the allowance which comprises a lump sum) payable in accordance with section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and any regulations made under that section, and

(*b*) a severance allowance or a special allowance payable in accordance with Part V (inserted by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992) of the Ministerial and Parliamentary Offices Act, 1938.

(2) Notwithstanding any other provision of the Income Tax Acts, payments to which this section applies shall be deemed to be—

(*a*) profits or gains accruing from an office or employment (and accordingly tax under Schedule E shall be charged on those payments, and tax so chargeable shall be computed under *section 112(1)*), and

(*b*) emoluments to which *Chapter 4* of *Part 42* is applied by *section 984*.

Tax treatment of benefits received under permanent health benefit schemes.

[FA79 s8(1), (4), (4A) and (6); FA86 s7; FA92 s7]

125.—(1) In this section—

''benefit'' means a payment made to a person under a permanent health benefit scheme in the event of loss or diminution of income in consequence of ill health;

''permanent health benefit scheme'' means any scheme, contract, policy or other arrangement, approved by the Revenue Commissioners for the purposes of this section, which provides for periodic payments to an individual in the event of loss or diminution of income in consequence of ill health.

(2) (*a*) A policy of permanent health insurance, sickness insurance or other similar insurance issued in respect of an insurance made on or after the 6th day of April, 1986, shall be a permanent health benefit scheme within the meaning of this section if it conforms with a form which, at the time the policy is issued, is either—

(i) a standard form approved by the Revenue Commissioners as a standard form of permanent health benefit scheme, or

(ii) a form varying from a standard form so approved in no other respect than by making such alterations to that standard form as are, at the time the policy is issued, approved by the Revenue Commissioners as being compatible with a permanent health benefit scheme when made to that standard form and satisfying any conditions subject to which the alterations are so approved.

(*b*) In approving a policy as a standard form of permanent health benefit scheme in pursuance of *paragraph (a)*, the Revenue Commissioners may disregard any provision of the policy which appears to them insignificant.

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(3) (*a*) Any benefit received by a person under a permanent health benefit scheme, whether as of right or not, shall be deemed to be—

(i) profits or gains arising or accruing from an employment, and

(ii) emoluments within the meaning of *Chapter 4* of *Part 42*.

(*b*) Tax under Schedule E shall be charged on every person to whom any benefit referred to in *paragraph (a)* is paid in respect of all such benefits paid to such person, and tax so chargeable shall be computed under *section 112(1)*.

(4) The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this section to be performed or discharged by them.

Tax treatment of certain benefits payable under Social Welfare Acts.

[ITA67 s224(1), (2) and (4); FA71 s12; FA92 s15; FA95 s10(1); FA97 s4]

126.—(1) In this section, ''the Acts'' means the Social Welfare (Consolidation) Act, 1993, and any subsequent enactment together with which that Act may be cited.

(2) (*a*) This subsection shall apply to the following benefits payable under the Acts—

(i) widow's (contributory) pension,

(ii) orphan's (contributory) allowance,

(iii) retirement pension, and

(iv) old age (contributory) pension.

(*b*) Payments of benefits to which this subsection applies shall be deemed to be emoluments to which *Chapter 4* of *Part 42* applies.

(3) (*a*) This subsection shall apply to the following benefits payable under the Acts—

(i) disability benefit,

(ii) unemployment benefit,

(iii) injury benefit which is comprised in occupational injuries benefit, and

(iv) pay-related benefit.

(*b*) Amounts to be paid on foot of the benefits to which this subsection applies (other than amounts so payable in respect of a qualified child within the meaning of section 2(3)(*a*) of the Social Welfare (Consolidation) Act, 1993) shall be deemed—

(i) to be profits or gains arising or accruing from an employment (and accordingly tax under Schedule E shall be charged on every person to whom any such benefit is payable in respect of amounts to be paid

on foot of such benefits, and tax so chargeable shall be computed under *section 112(1)*), and

(ii) to be emoluments to which *Chapter 4* of *Part 42* is applied by *section 984*.

(4) (*a*) In this subsection, ''income tax week'' means one of the successive periods of 7 days in a year of assessment beginning on the 1st day of that year, or on any 7th day after that day, and the last day of a year of assessment (or the last 2 days of a year of assessment ending in a leap year) shall be taken as included in the last income tax week of that year of assessment.

(*b*) Notwithstanding *subsection (3)*, the first £10 of the aggregate of the amounts of unemployment benefit payable to a person in respect of one or more days of unemployment comprised in any income tax week (other than an amount so payable in respect of a qualified child within the meaning of section 2(3)(*a*) of the Social Welfare (Consolidation) Act, 1993) shall be disregarded for the purposes of the Income Tax Acts.

(5) Notwithstanding *subsection (3)*, the aggregate of the amounts of disability benefit, injury benefit or both disability benefit and injury benefit payable to a person in respect of—

(*a*) for the year of assessment 1997-98, the first 18 days, and

(*b*) for the year of assessment 1998-99 and subsequent years of assessment, the first 36 days,

incapacity for work for which the person is entitled to payment of either disability benefit or injury benefit shall be disregarded for the purposes of the Income Tax Acts.

(6) (*a*) *Subsection (3)* shall come into operation on such day or days as may be fixed for that purpose by order or orders of the Minister for Finance, either generally or with reference to any particular benefit to which that subsection applies, or with reference to any category of person in receipt of any particular benefit to which that subsection applies, and different days may be so fixed for different benefits or categories of persons in receipt of benefits.

(*b*) Where an order is proposed to be made under this subsection, a draft of the order shall be laid before Dáil Éireann, and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

(7) (*a*) The Revenue Commissioners may, in order to provide for the efficient collection and recovery of any tax due in respect of benefits to which *subsection (3)* applies, make regulations modifying the Income Tax (Employment) Regulations, 1960 (S.I. No. 28 of 1960), in their application to those benefits, the employees in receipt of those benefits, the tax-free allowances appropriate to such employees, and employers of such employees or certificates of tax-free allowances or tax deduction cards held by employers of such employees in respect of those employees.

(*b*) Without prejudice to the generality of *paragraph (a)*, regulations under that paragraph may include provision for the reallocation by the Revenue Commissioners (without the issue of amended notices of determination of tax-free allowances, amended certificates of tax-free allowances or amended tax deduction cards) of the tax-free allowances appropriate to employees between the benefits to which *subsection (3)* applies and other emoluments receivable by them.

(*c*) Every regulation made under this subsection shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) (*a*) In this subsection, ''short-time employment'' has the same meaning as it has for the purposes of the Social Welfare Acts, but also includes an employment referred to in section 79(2)(*b*) of the Social Welfare (Consolidation) Act, 1993.

(*b*) Notwithstanding *subsection (3)* and the Finance Act, 1992 (Commencement of Section 15)(Unemployment Benefit and Pay-Related Benefit) Order, 1994 (S.I. No. 19 of 1994), *subsection (3)(b)* shall not apply as respects the year of assessment 1997-98 in relation to unemployment benefit paid or payable to a person employed in short-time employment.

Tax treatment of restrictive covenants.

[ITA67 s525; FA92 s18(1) and (3); FA97 s146(1) and Sch9 PtI par1(35)]

127.—(1) In this section—

''accounting period'' means an accounting period determined in accordance with *section 27*;

''basis period'' means the period on the profits or gains of which income tax is to be finally computed under Schedule D or, where by virtue of the Income Tax Acts the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period;

''office or employment'' means any office or employment whatever such that the emoluments of that office or employment, if any, are or would be chargeable to income tax under Schedule E or under Case III of Schedule D for any year of assessment;

references to the giving of valuable consideration shall not include references to the mere assumption of an obligation to make over or provide valuable property, rights or advantages, but shall include references to the doing of anything in or towards the discharge of such an obligation.

(2) Where—

(*a*) an individual who holds, has held or is about to hold an office or employment gives, in connection with the holding of the office or employment, an undertaking (whether absolute or qualified and whether legally valid or not),

the tenor or effect of which is to restrict the individual as to his or her conduct or activities,

(*b*) in respect of the giving of that undertaking by the individual, or of the total or partial fulfilment of that undertaking by the individual, any sum is paid either to the individual or to any other person, and

(*c*) apart from this section, the sum paid would not be treated as profits or gains from the office or employment,

the sum paid shall be deemed—

(i) to be profits or gains arising or accruing from the office or employment, and accordingly—

(I) in a case where the profits or gains from the office or employment are or would be chargeable to tax under the Schedule E, tax under that Schedule shall be charged on that sum, and tax so chargeable shall be computed under *section 112(1)*, or

(II) in a case where the profits or gains from the office or employment are or would be chargeable to tax under Case III of Schedule D, tax under that Case shall be charged on that sum,

and

(ii) in a case within *paragraph (i)(I)*, to be emoluments to which *Chapter 4* of *Part 42* is applied by *section 984*,

for the year of assessment in which the sum is paid; but where the individual has died before the payment of the sum this subsection shall apply as if the sum had been paid immediately before the individual's death.

(3) Where valuable consideration otherwise than in the form of money is given in respect of the giving of, or of the total or partial fulfilment of, any undertaking, *subsection (2)* shall apply as if a sum had instead been paid equal to the value of that consideration.

(4) Notwithstanding *section 81(2)*, where any sum paid or valuable consideration given by a person carrying on a trade or profession is chargeable to tax in accordance with *subsection (2)*, the sum paid or the value of the consideration given, as the case may be, may be deducted as an expense in computing for the purposes of Schedule D the profits or gains of that person's trade or profession, as the case may be—

(*a*) in the case of a person chargeable to income tax, for the basis period, or

(*b*) in the case of a person chargeable to corporation tax, for the accounting period,

in which the sum is paid or valuable consideration is given.

(5) Where any sum paid or valuable consideration given by an investment company (within the meaning of *section 83*), or a company to which *section 83* applies by virtue of *section 707*, is chargeable to tax in accordance with *subsection (2)*, the sum paid or the

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value of consideration given, as the case may be, shall for the purposes of *section 83* be treated as an expense of management for the accounting period in which the sum is paid or valuable consideration is given.

(6) This section shall apply in relation to any sum paid or consideration given in respect of the giving of, or the total or partial fulfilment of, any undertaking whenever given.

Tax treatment of directors of companies and employees granted rights to acquire shares or other assets.

[FA86 s9(1)(a) and (b)(i) and (iii), and (2) to (11)(a)]

128.—(1) (*a*) In this section, except where the context otherwise requires—

''company'' has the same meaning as in *section 4*;

''director'' and ''employee'' have the meanings respectively assigned to them by *section 770(1)*;

''right'' means a right to acquire any asset or assets including shares in any company;

''market value'' shall be construed in accordance with *section 548*;

''shares'' includes securities within the meaning of *section 135* and stock.

(*b*) In this section—

(i) references to the release of a right include references to agreeing to the restriction of the exercise of the right;

(ii) a person shall be regarded as acquiring a right as a director of a company or as an employee—

(I) if by reason of the person's office or employment it is granted to the person, or to another person who assigns the right to the person, and

(II) if *section 71(3)* does not apply in charging to tax the profits or gains of that office or employment,

and *clauses (I)* and *(II)* shall apply to a right granted by reason of a person's office or employment before the person has commenced to hold it or after the person has ceased to hold it as they would apply if the person had commenced to hold the office or employment or had not ceased to hold the office or employment, as the case may be.

(2) Where a person realises a gain by the exercise of, or by the assignment or release of, a right obtained by the person on or after the 6th day of April, 1986, as a director of a company or employee, the person shall be chargeable to tax under Schedule E for the year of assessment in which the gain is so realised on an amount equal to the amount of his or her gain as computed in accordance with this section.

(3) Subject to *subsection (5)*, where tax may by virtue of this section become chargeable in respect of any gain which may be realised by the exercise of a right, tax shall not be chargeable under any other provision of the Tax Acts in respect of the receipt of the right.

(4) The gain realised by—

(*a*) the exercise of any right at any time shall be taken to be the difference between the market value of the asset or assets, as the case may be, at the time of acquisition and the aggregate amount or value of the consideration, if any, given for the asset or assets and for the grant of the right, and

(*b*) the assignment or release of any right shall be taken to be the difference between the amount or value of the consideration for the assignment or release and the amount or value of the consideration, if any, given for the grant of the right,

and for this purpose the inspector may make a just apportionment of any entire consideration given for the grant of the right or for the grant of the right and for something besides; but neither the consideration given for the grant of the right nor any such entire consideration shall be taken to include the performance of any duties in or in connection with an office or employment, and no part of the amount or value of the consideration given for the grant shall be deducted more than once under this subsection.

(5) (*a*) Where a right mentioned in *subsection (2)* is obtained as mentioned in that subsection and the right is capable of being exercised later than 7 years after it is obtained, *subsection (3)* shall not prevent the charging of tax under any other provision of the Tax Acts in respect of the receipt of the right; but where tax is charged under such provision it shall be deducted from any tax which under *subsection (2)* is chargeable by reference to the gain realised by the exercise, assignment or release of the right.

(*b*) For the purpose of any charge to tax enabled to be made by this subsection, the value of a right shall be taken to be not less than the market value at the time the right is obtained of the asset or assets which may be acquired by the exercise of the right or of any asset or assets for which the asset or assets so acquired may be exchanged, reduced by the amount or value (or, if variable, the least amount or value) of the consideration for which the asset or assets may be so acquired.

(6) Subject to *subsection (7)*, a person shall, in the case of a right granted by reason of the person's office or employment, be chargeable to tax under this section in respect of a gain realised by another person—

(*a*) if the right was granted to that other person, or

(*b*) if the other person acquired the right otherwise than by or under an assignment made by means of a bargain at arm's length, or if the 2 persons are connected persons at the time when the gain is realised;

but in a case within *paragraph (b)* the gain realised shall be treated as reduced by the amount of any gain realised by a previous holder on an assignment of the right.

(7) A person shall not be chargeable to tax by virtue of *subsection (6)(b)* in respect of any gain realised by another person if the first-mentioned person was divested of the right by operation of law on the first-mentioned person's bankruptcy or otherwise, but the other person shall be chargeable to tax in respect of the gain under Case IV of Schedule D.

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(8) Where a right is assigned or released in whole or in part for a consideration which consists of or comprises another right, that other right shall not be treated as consideration for the assignment or release; but this section shall apply in relation to that other right as it applies in relation to the right assigned or released and as if the consideration for its acquisition did not include the value of the consideration given for the grant of the right assigned or released in so far as that has not been offset by any valuable consideration for the assignment or release other than the consideration consisting of the other right.

(9) (*a*) Where as a result of 2 or more transactions a person ceases to hold a right and the person or a connected person comes to hold another right (whether or not acquired from the person to whom the other right was assigned) and any of those transactions was effected under arrangements to which 2 or more persons holding rights in respect of which tax may be chargeable under this section were parties, those transactions shall be treated for the purposes of *subsection (8)* as a single transaction whereby the one right is assigned for a consideration which consists of or comprises the other right.

(*b*) This subsection shall apply in relation to 2 or more transactions, whether they involve an assignment preceding, coinciding with, or subsequent to, an acquisition.

(10) Where a gain chargeable to tax under *subsection (2)* or *(6)* is realised by the exercise of a right, *section 552* shall apply as if a sum equal to the amount of the gain so chargeable to tax formed part of the consideration given by the person acquiring the shares for their acquisition by that person.

(11) Where in any year of assessment a person grants a right in respect of which tax may be chargeable under this section, or allots any shares or transfers any asset in pursuance of such a right, or gives any consideration for the assignment or release in whole or in part of such a right, or receives written notice of the assignment of such a right, the person shall deliver particulars thereof in writing to the inspector not later than 30 days after the end of that year.

PART 6

Company Distributions, Tax Credits, Franked Investment Income and Advance Corporation Tax

CHAPTER 1

Taxation of company distributions

Irish resident company distributions not generally chargeable to corporation tax.

[CTA76 s2]

129.—Except where otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the State, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

CHAPTER 2

Meaning of distribution

Matters to be treated as distributions.

[CTA76 s84]

130.—(1) The following provisions of this Chapter, together with *sections 436* and *437*, shall, subject to any express exceptions, apply with respect to the meaning in the Corporation Tax Acts of ''distribution'' and for determining the persons to whom certain distributions are to be treated as made; but references in the Corporation

Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.

(2) In relation to any company, ''distribution'' means—

(*a*) any dividend paid by the company, including a capital dividend;

(*b*) any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except, subject to *section 132*, so much of the distribution, if any, as represents a repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

(*c*) any amount met out of assets of the company (whether in cash or otherwise) in respect of the redemption of any security issued by the company in respect of shares in, or securities of, the company otherwise than wholly for new consideration, or in the redemption of such part of any such security so issued as is not properly referable to new consideration;

(*d*) any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured, and, without prejudice to *section 135(9)*, for this purpose no amount shall be regarded as representing the principal secured by a security in so far as it exceeds any new consideration received by the company for the issue of the security), where the securities are—

(i) securities issued as mentioned in *paragraph (c)*, but excluding securities issued before the 27th day of November, 1975,

(ii) securities convertible directly or indirectly into shares in the company or securities carrying any right to receive shares in or securities of the company, not being (in either case) securities quoted on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so quoted,

(iii) securities under which—

(I) the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of the company's business, or

(II) the consideration so given represents more than a reasonable commercial return for the use of that principal; but this shall not operate so as to treat as a distribution so much of the interest or other distribution as represents a reasonable commercial return for the use of that principal,

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(iv) securities issued by the company and held by a company not resident in the State, where—

(I) the company which issued the securities is a 75 per cent subsidiary of the other company,

(II) both companies are 75 per cent subsidiaries of a third company which is not resident in the State, or

(III) except where 90 per cent or more of the share capital of the company which issued the securities is directly owned by a company resident in the State, both the company which issued the securities and the company not resident in the State are 75 per cent subsidiaries of a third company which is resident in the State,

or

(v) securities connected with shares in the company, where ''connected with'' means that, in consequence of the nature of the rights attaching to the securities or shares, and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or acquire, a proportionate holding of the shares;

(*e*) any amount required to be treated as a distribution by *subsection (3)* or by *section 131*.

(3) (*a*) Where on a transfer of assets or liabilities by a company to its members or to a company by its members the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by the member, the company shall be treated as making a distribution to the member of an amount equal to the difference (in *paragraph (b)* referred to as ''the relevant amount'').

(*b*) Notwithstanding *paragraph (a)*, where the company and the member receiving the benefit are both resident in the State and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident, the relevant amount shall not be treated as a distribution.

(4) The question whether one company is a subsidiary of another company for the purpose of *subsection (3)* shall be determined as a question whether it is a 51 per cent subsidiary of that other company, except that that other company shall be treated as not being the owner of—

(*a*) any share capital which it owns directly in a company, if a profit on a sale of the shares would be treated as a trading receipt of its trade,

(*b*) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt, or

(*c*) any share capital which it owns directly or indirectly in a company not resident in the State.

(5) (*a*) No transfer of assets (other than cash) or of liabilities between one company and another company shall constitute, or be treated as giving rise to, a distribution by virtue of *subsection (2)(b)* or *(3)* if they are companies—

(i) both of which are resident in the State and neither of which is a 51 per cent subsidiary of a company not so resident, and

(ii) which neither at the time of the transfer nor as a result of it are under common control.

(*b*) For the purposes of this subsection, 2 companies shall be under common control if they are under the control of the same person or persons, and for this purpose ''control'' shall be construed in accordance with *section 11*.

(*c*) Any amount which would be a distribution by virtue of *subsection (3)(a)* shall not constitute a distribution by virtue of *subsection (2)(b)*.

Bonus issues following repayment of share capital.

[CTA76 s85]

131.—(1) In this section—

''ordinary shares'' means shares other than preference shares;

''preference shares'' means shares—

(*a*) which do not carry any right to dividends other than dividends at a rate per cent of the nominal value of the shares which is fixed, and

(*b*) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on a stock exchange in the State;

''new consideration not derived from ordinary shares'' means new consideration other than consideration consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, and other than consideration derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

(2) Where a company—

(*a*) repays any share capital or has done so at any time on or after the 27th day of November, 1975, and

(*b*) at or after the time of that repayment, issues as paid up, otherwise than by the receipt of new consideration, any share capital,

the amount so paid up shall be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

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(3) *Subsection (2)* shall not apply where the repaid share capital consists of fully paid up preference shares—

(*a*) if those shares existed as issued and fully paid preference shares on the 27th day of November, 1975, and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or

(*b*) if those shares were issued after the 27th day of November, 1975, as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.

(4) Except in relation to a close company within the meaning of *section 430*, this section shall not apply if the issue of share capital mentioned in *subsection (2)(b)*—

(*a*) is of share capital other than redeemable share capital, and

(*b*) takes place more than 10 years after the repayment of share capital mentioned in *subsection (2)(a)*.

Matters to be treated or not treated as repayments of share capital.

[CTA76 s86]

132.—(1) In this section, ''relevant distribution'' means so much of any distribution made in respect of shares representing the relevant share capital as apart from *subsection (2)(a)* would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.

(2) (*a*) Where—

(i) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so on or after the 27th day of November, 1975, and

(ii) any amount so paid up is not to be treated as a distribution,

then, for the purposes of *sections 130* and *131*, distributions made afterwards by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after that date and not treated as distributions.

(*b*) For the purposes of *paragraph (a)*, all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

(3) Where share capital is issued at a premium representing new consideration, the amount of the premium shall be treated as forming part of that share capital for the purpose of determining under this Chapter whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital; but this subsection shall not apply in relation to any part of

the premium after that part has been applied in paying up share capital.

(4) Subject to *subsection (3)*, premiums paid on redemption of share capital shall not be treated as repayments of capital.

(5) Except in relation to a close company within the meaning of *section 430*, *subsection (2)(a)* shall not prevent a distribution being treated as a repayment of share capital if it is made—

(*a*) more than 10 years after the issue of share capital mentioned in *subsection (2)(a)(i)*, and

(*b*) in respect of share capital other than redeemable share capital.

Limitation on meaning of "distribution" — general.

[CTA76 s84A, FA87 s28(5)(b); FA89 s21(1)(a) and (2), FA90 s41(4) and s46; FA91 s28; FA92 s40; FA93 s45; FA94 s50; FA97 s146(1) and Sch9 PtI par10(2)(b)]

133.—(1) (*a*) In this section—

"agricultural society" and "fishery society" have the meanings respectively assigned to them by *section 443(16)*;

"relevant principal" means an amount of money advanced to a borrower by a company which is within the charge to corporation tax and the ordinary trading activities of which include the lending of money, where—

(i) the consideration given by the borrower for that amount is a relevant security, and

(ii) interest or any other distribution is paid out of the assets of the borrower in respect of that security;

"selling by wholesale" means selling goods of any class to a person who carries on a business of selling goods of that class or uses goods of that class for the purposes of a trade or undertaking carried on by the person;

"specified trade" means, subject to *paragraphs (b)*, *(d)* and *(e)*, a trade which consists wholly or mainly of the manufacture of goods, including activities which, if the borrower were to make a claim for relief in respect of the trade under *Part 14*, would be regarded for the purposes of that Part as the manufacture of goods, but not including trading activities in respect of which a certificate has been given by the Minister for Finance under *section 445*.

(*b*) Where the borrower mentioned in *subsection (5)* is a 75 per cent subsidiary of—

(i) an agricultural society, or

(ii) a fishery society,

"specified trade", in that subsection, means a trade of the borrower which consists wholly or mainly of either or both of—

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(I) the manufacture of goods within the meaning of the definition of ''specified trade'' in *paragraph (a)*, and

(II) the selling by wholesale of—

(A) where *subparagraph (i)* applies, agricultural products, or

(B) where *subparagraph (ii)* applies, fish.

(*c*) For the purposes of the definition of ''specified trade'' in *paragraph (a)* and of *paragraph (b)*, a trade shall be regarded, as respects an accounting period, as consisting wholly or mainly of particular activities only if the total amount receivable by the borrower from sales made in the course of those activities in the accounting period is not less than 75 per cent of the total amount receivable by the borrower from all sales made in the course of the trade in that period.

(*d*) A qualifying shipping trade (within the meaning of *section 407*) shall not be regarded as a specified trade for the purposes of this section.

(*e*) This section shall apply as respects any interest paid to a company in respect of relevant principal advanced before the 20th day of April, 1990, by the company to another company which carries on in the State a trade which but for *section 443(6)* would be a specified trade as if that trade were a specified trade.

(2) Any interest or other distribution which—

(*a*) is paid out of assets of a company (in this section referred to as ''the borrower'') to another company within the charge to corporation tax, and

(*b*) is so paid in respect of a security (in this section referred to as a ''relevant security'') within *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)*,

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by *subsection (3)*, *(4)* or *(5)*.

(3) *Subsection (2)* shall not apply where the principal secured has been advanced by a company out of money subscribed for the share capital of the company and that share capital is beneficially owned directly or indirectly by a person or persons resident outside the State.

(4) *Subsection (2)* shall not apply in a case where the consideration given by the borrower for the use of the principal secured represents more than a reasonable commercial return for the use of that principal; but, where this subsection applies, nothing in *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)* shall operate so as to treat as a distribution for the purposes of the Corporation Tax Acts so much of the interest or other distribution as represents a reasonable commercial return for the use of that principal.

(5) Subject to *subsections (6)* and *(7)*, *subsection (2)* shall not apply to any interest paid by the borrower, in an accounting period of the

borrower, to another company in respect of relevant principal advanced by that other company, where— PT.6 S.133

(*a*) in that accounting period the borrower carries on in the State a specified trade,

(*b*) the relevant principal in respect of which the interest is paid is used in the course of the specified trade—

(i) for the activities of the trade which consist of the manufacture of goods within the meaning of the definition of ''specified trade'' in *paragraph (a)* of *subsection (1)*, or

(ii) where *paragraph (b)* of *subsection (1)* applies, for the activities of the trade which consist of such selling by wholesale as is referred to in *paragraph (II)* of the definition of ''specified trade'' in that paragraph,

and

(*c*) the interest, if it were not a distribution, would be treated as a trading expense of that trade for that accounting period.

(6) *Subsection (5)* shall not apply to interest paid in respect of relevant principal to a company which on the 12th day of April, 1989, had no outstanding amounts of relevant principal advanced.

(7) Notwithstanding *subsection (5)*, where at any time after the 12th day of April, 1989, the total of the amounts of relevant principal (in this subsection referred to as ''the current amounts of relevant principal'') advanced by a company in respect of relevant securities held directly or indirectly by the company at that time is in excess of a limit, being a limit equal to 110 per cent of the total of the amounts of relevant principal advanced by the company in respect of relevant securities held directly or indirectly by the company on the 12th day of April, 1989, then, such part of any interest paid at that time to the company in respect of relevant principal as bears, in relation to the total amount of interest so paid to the company, the same proportion as the excess bears in relation to the current amounts of relevant principal shall not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company.

(8) (*a*) In this subsection and in *subsection (10)*, ''specified period'', in relation to relevant principal, means the period commencing on the date on which the relevant principal was advanced and ending on the date on which the relevant principal is to be repaid under the terms of the agreement to advance the relevant principal or, if earlier—

(i) in the case of relevant principal advanced before the 11th day of April, 1994, the 11th day of April, 2001, and

(ii) in any other case, a date which is 7 years after the date on which the relevant principal was advanced.

(*b*) Notwithstanding *subsection (5)*, where at any time on or after the 31st day of January, 1990, the total of the amounts of relevant principal (in this subsection and in *subsections (9)* and *(10)* referred to as ''the current amounts of relevant principal'') advanced by a company

in respect of relevant securities held directly or indirectly by the company at that time is in excess of a limit, being a limit equal to 75 per cent of the total of the amounts of relevant principal advanced by the company in respect of relevant securities held directly or indirectly by the company on the 12th day of April, 1989, then, any interest paid to the company in respect of relevant principal advanced by the company on or after the 31st day of January, 1990, being relevant principal which is included in the current amounts of relevant principal, shall not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company.

(*c*) Where apart from this paragraph any part of any interest paid to a company in respect of relevant principal advanced by the company on or after the 31st day of January, 1990, would not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company by virtue only of *paragraph (b)*, then, that paragraph shall not apply in relation to so much of that interest as is paid for a specified period in respect of relevant principal advanced and which was, at the time the relevant principal was advanced, specified in the list referred to in *subparagraph (iv)* if—

(i) the relevant principal is advanced by the company to a borrower who was in negotiation before the 31st day of January, 1990, with any company for an amount of relevant principal,

(ii) the borrower had received before the 31st day of January, 1990, a written offer of grant aid from the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta in respect of a specified trade or a proposed specified trade for the purposes of which trade the relevant principal is borrowed,

(iii) the specified trade is a trade which the borrower commenced to carry on after the 31st day of January, 1990, or is a specified trade of the borrower in respect of which the borrower is committed, under a business plan approved by the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta, to the creation of additional employment,

(iv) before the 25th day of March, 1992, the specified trade of the borrower was included in a list prepared by the Industrial Development Authority and approved before that day by the Minister for Industry and Commerce and the Minister for Finance, being a list specifying a particular amount of relevant principal in respect of each trade which amount is considered to be essential for the success of that trade, and

(v) the borrower or a company connected with the borrower is not a company which commenced to carry on relevant trading operations (within the meaning of *section 446*) after the 20th day of April, 1990, or intends to commence to carry on such trading operations;

but this paragraph shall not apply to any interest in respect of any relevant principal advanced after the time when the total of the amounts of relevant principal to which this paragraph applies, advanced by all lenders who have made such advances, exceeds £170,000,000.

(*d*) For the purposes of this subsection and *subsections (9)* and *(10)*—

(i) relevant principal advanced by a company at any time on or after a day includes any relevant principal advanced on or after that day to a borrower under an agreement entered into before that day,

(ii) where on or after the 6th day of May, 1993, a period of repayment of relevant principal advanced by a company is extended (whether or not the right to such an extension arose out of the terms of the agreement to advance the relevant principal), the company shall be treated as having—

(I) received repayment of the relevant principal, and

(II) advanced a corresponding amount of relevant principal,

on the date on which apart from the extension the relevant principal fell to be repaid, and

(iii) where at any time after an amount of relevant principal is specified in a list in accordance with *paragraph (c)(iv)* or *subsection (9)(c)(ii)* or *(10)(b)(ii)* a company advances, or is treated as advancing, to a borrower relevant principal the interest in respect of which is treated as a distribution by virtue only of *paragraph (c)* or *subsection (9)(c)* or *(10)(b)*, the amount of relevant principal specified in the list shall be treated as reduced by the amount of relevant principal so advanced, or treated as advanced, and the amount so reduced shall be treated as the amount specified in that list.

(*e*) For the purposes of this subsection and *subsections (9)* and *(10)*, where a company which has on or after the 31st day of January, 1990, advanced relevant principal to a borrower under the terms of an agreement and, under the terms of that or any other agreement, the company assigns to another company part or all of its rights and obligations under the first-mentioned agreement in relation to the relevant principal, such assignment shall be deemed not to have taken place.

(9) (*a*) Notwithstanding *subsections (5)*, *(7)* and *(8)*, where at any time on or after the 31st day of December, 1991, the current amounts of relevant principal advanced by a company in respect of relevant securities held directly or indirectly by the company at that time is in excess of a limit, being a limit equal to 40 per cent of the total of the amounts of relevant principal advanced by the company in respect of the relevant securities held directly or indirectly by the company on the 12th day of April, 1989, then, any interest paid to the company in respect of relevant principal advanced by the company on or after the

31st day of December, 1991, being relevant principal which is included in the current amounts of relevant principal, shall not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company.

(*b*) (i) Where the total of the amounts of relevant principal advanced by a company in respect of relevant securities held directly or indirectly by the company at any time on or after the 31st day of December, 1991, is less than the limit referred to in *paragraph (a)*, that paragraph shall apply as if that limit were the total of the amounts of relevant principal so advanced as at that time unless the company proves that it has as far as possible, at all times on or after the 31st day of December, 1991, advanced to borrowers relevant principal in respect of the interest on which *paragraph (a)* does not, or would not, apply by virtue of *paragraph (c)*.

(ii) Where at any time during the period commencing on the 18th day of April, 1991, and ending immediately before the 31st day of December, 1991, an amount of relevant principal which was advanced to a borrower, being a company which carries on one or more trading operations (within the meaning of *section 445(1)*), is repaid, this section shall apply as if—

(I) references in *subparagraph (i)* and in *paragraph (a)* to the 31st day of December, 1991, were references to the day on which the amount is repaid, and

(II) during that period—

(A) the reference in *subparagraph (i)* to relevant principal in respect of the interest on which *paragraph (a)* does not, or would not, apply by virtue of *paragraph (c)* were a reference to such principal in respect of the interest on which *paragraph (b)* of *subsection (8)* does not, or would not, apply by virtue of *paragraph (c)* of that subsection, and

(B) the reference in *paragraph (c)* of *subsection (8)* to *paragraph (b)* of that subsection were a reference to *paragraph (a)*.

(*c*) Where apart from this paragraph any part of any interest paid to a company in respect of relevant principal advanced by the company on or after the 31st day of December, 1991, would not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company by virtue only of *paragraph (a)*, then, subject to *subsection (11)*, that paragraph shall not apply in relation to so much of that interest as is paid if—

(i) the specified trade is a trade which the borrower commenced to carry on after the 31st day of January, 1990, or is a specified trade of the borrower in respect of which the borrower is committed, under a

business plan approved by the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta, to the creation of additional employment,

(ii) the specified trade of the borrower was selected by the Industrial Development Authority for inclusion in a list, approved by the Minister for Industry and Commerce and the Minister for Finance, being a list specifying a particular amount of relevant principal in respect of each trade which amount is considered to be essential for the success of that trade, and

(iii) the borrower or a company connected with the borrower is not a company which commenced to carry on relevant trading operations (within the meaning of *section 446*) after the 20th day of April, 1990, or intends to commence to carry on such trading operations.

(10)(*a*) Notwithstanding *subsections (5)* and *(7)* to *(9)*, any interest paid to a company in respect of relevant principal advanced by the company on or after the 20th day of December, 1991, shall not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company.

(*b*) Where apart from this paragraph any interest paid to a company in respect of relevant principal advanced by the company on or after the 20th day of December, 1991, would not be treated as a distribution for the purposes of the Corporation Tax Acts in the hands of the company by virtue only of *paragraph (a)*, then, subject to *subsection (11)*, that paragraph shall not apply in relation to so much of that interest as is paid for a specified period in respect of relevant principal advanced and which was, at the time the relevant principal was advanced, specified in the list referred to in *subparagraph (ii)* if—

(i) the specified trade is a trade which the borrower commenced to carry on after the 31st day of January, 1990, or is a specified trade of the borrower in respect of which the borrower is committed, under a business plan approved by the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta, to the creation of additional employment,

(ii) before the 25th day of March, 1992, the specified trade of the borrower was included in a list prepared by the Industrial Development Authority and approved before that day by the Minister for Industry and Commerce and the Minister for Finance, being a list specifying a particular amount of relevant principal in respect of each trade which amount is considered to be essential for the success of that trade, and

(iii) the borrower is not a company which carries on relevant trading operations (within the meaning of *section 446*) or intends to carry on such trading operations.

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(11) *Subsections (9)(c)* and *(10)(b)* shall not apply to any interest in respect of any relevant principal advanced after the time when the total of the amounts of relevant principal to which those subsections apply, advanced by all lenders who have made such advances, exceeds the aggregate of—

(*a*) £250,000,000, and

(*b*) the excess, if any, of £170,000,000 over the total of the amounts of relevant principal to which *subsection (8)(c)* applies advanced by all lenders who have made such advances.

(12)(*a*) In this subsection, ''scheduled repayment date'', in relation to any relevant principal, means the date on which that relevant principal is to be repaid under the terms of the agreement to advance that relevant principal.

(*b*) Where at any time before the 7th day of December, 1993—

(i) relevant principal (in this subsection referred to as ''the first-mentioned relevant principal''), the interest in respect of which was treated as a distribution by virtue only of *subsection (8)(c)*, *(9)(c)* or *(10)(b)*, advanced by a company to a borrower was repaid by the borrower before the scheduled repayment date, and

(ii) a further amount or further amounts of relevant principal, the interest in respect of which is to be treated as a distribution by virtue only of *subsection (8)(c)*, *(9)(c)* or *(10)(b)*, was or were advanced to that borrower,

then, *subsection (8)(d)(iii)* shall not apply in relation to so much of—

(I) the further amount of relevant principal advanced as does not exceed the amount of relevant principal repaid, or

(II) where there are more further amounts advanced than one, the aggregate of the further amounts of relevant principal advanced as does not exceed the relevant principal repaid.

(*c*) Where by virtue of *paragraph (b) subsection (8)(d)(iii)* does not apply in relation to any amount of relevant principal advanced by a company, the company shall be treated as having—

(i) received a repayment of that amount of relevant principal, and

(ii) advanced a corresponding amount of relevant principal,

on the scheduled repayment date of the first-mentioned relevant principal.

(*d*) For the purposes of this subsection, where there are more further advances of relevant principal than one, the amount to which *subsection (8)(d)(iii)* does not apply shall be referable as far as possible to an earlier rather than a later such further advance.

(*e*) Notwithstanding *paragraphs (b)* to *(d)*, interest which but for this paragraph would not be treated as a distribution by virtue only of *subsection (8)(d)(iii)* may be treated as a distribution if it is paid in respect of relevant principal advanced before the 7th day of December, 1993.

(13)(*a*) In this subsection, ''relevant period'' means a period which commences at a time at which, in accordance with the terms of the agreement under which relevant principal secured by a relevant security is advanced, an amount representing the interest for the use of the relevant principal is to be paid, and ends at a time immediately before the next time at which such an amount is to be paid.

(*b*) Interest paid to a company in respect of—

(i) relevant principal denominated in a currency other than Irish currency, and

(ii) a relevant period which begins on or after the 30th day of January, 1991,

shall not be a distribution for the purposes of the Corporation Tax Acts in the hands of the company if, at any time during that period, the rate on the basis of which interest is computed exceeds 80 per cent of the rate known as the 3 month Dublin Interbank Offered Rate on Irish pounds (in this subsection referred to as ''the 3 month Dublin Interbank Offered Rate'') a record of which is maintained by the Central Bank of Ireland.

(*c*) *Paragraph (b)* shall not apply to any interest paid to a company in respect of relevant principal advanced by the company—

(i) before the 30th day of January, 1991, under an agreement entered into before that day if on that day the rate on the basis of which interest in respect of the relevant security is to be computed exceeds 80 per cent of the 3 month Dublin Interbank Offered Rate; but this subparagraph shall not apply as respects any relevant period commencing on or after the 20th day of December, 1991, if in that relevant period that rate exceeds the rate on the basis of which interest would have been computed if the relevant principal had continued to be denominated in the currency in which it was denominated on the 30th day of January, 1991,

(ii) on or after the 30th day of January, 1991—

(I) which is included in a list referred to in *subsection (8)(c)(iv), (9)(c)(ii)* or *(10)(b)(ii)*, and

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(II) for the purposes of a specified trade of a borrower who is certified by the Minister for Enterprise, Trade and Employment as having received an undertaking that the interest would be treated as a distribution;

but this subparagraph shall not apply as respects any relevant period commencing on or after the 20th day of December, 1991, if in that relevant period the rate on the basis of which interest in respect of the relevant security is to be computed exceeds—

(A) a rate approved by the Minister for Finance in consultation with the Minister for Enterprise, Trade and Employment, or

(B) where it is lower than the rate so approved and the relevant principal was advanced on or after the 30th day of January, 1991, and before the 20th day of December, 1991, the rate which would have applied if the relevant principal had continued to be denominated in the currency in which it was denominated when it was advanced,

(iii) on or after the 18th day of April, 1991, where the rate on the basis of which that interest is computed exceeds 80 per cent of the 3 month Dublin Interbank Offered Rate by reason only that the relevant principal advanced is denominated in sterling, or

(iv) to a borrower which is a company carrying on one or more trading operations within the meaning of *section 445(1)*.

Limitation on meaning of ''distribution'' in relation to certain payments made in respect of ''foreign source'' finance.

[CTA76 s84A(1) to (6), (9) and (10); FA84 s41; FA86 s54; FA87 s28(5)(b); FA89 s21(2)(a); FA97 s146(1) and Sch9 PtI par10(2)(a)]

134.—(1) (*a*) In this section—

''agricultural society'' and ''fishery society'' have the meanings respectively assigned to them by *section 443(16)*;

''selling by wholesale'' means selling goods of any class to a person who carries on a business of selling goods of that class or uses goods of that class for the purposes of a trade or undertaking carried on by the person;

''specified trade'' means, subject to *paragraphs (b)* and *(d)* and to *subsection (6)*, a trade which consists wholly or mainly of—

(i) the manufacture of goods, including activities which, if the borrower were to make a claim for relief in respect of the trade under *Part 14*, would be regarded for the purposes of that Part as the manufacture of goods, or

(ii) the rendering of services in the course of a service undertaking in respect of which an employment grant was made by the Industrial Development Authority under section 2 of the Industrial Development (No. 2) Act, 1981.

(*b*) Where the borrower mentioned in *subsection (5)* is a 75 per cent subsidiary of—

(i) an agricultural society, or

(ii) a fishery society,

"specified trade", in that subsection, means a trade of the borrower which consists wholly or mainly of either or both of—

(I) the manufacture of goods within the meaning of the definition of "specified trade" in *paragraph (a)*, and

(II) the selling by wholesale of—

(A) where *subparagraph (i)* applies, agricultural products, or

(B) where *subparagraph (ii)* applies, fish.

(*c*) For the purposes of the definition of "specified trade" in *paragraph (a)* and of *paragraph (b)*, a trade shall be regarded, as respects an accounting period, as consisting wholly or mainly of particular activities only if the total amount receivable by the borrower from sales made or, as the case may be, in payment for services rendered in the course of those activities in the accounting period is not less than 75 per cent of the total amount receivable by the borrower from all sales made in the course of the trade in that period.

(*d*) A qualifying shipping trade (within the meaning of *section 407*) shall not be regarded as a specified trade for the purposes of this section.

(2) This section shall apply only where the principal secured has been advanced by a company out of money subscribed for the share capital of the company and that share capital is beneficially owned directly or indirectly by a person or persons resident outside the State.

(3) Any interest or other distribution which—

(*a*) is paid out of assets of a company (in this section referred to as "the borrower") to another company within the charge to corporation tax, and

(*b*) is so paid in respect of a security (in this section referred to as a "relevant security") within *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)*,

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by *subsection (4)* or *(5)*.

(4) *Subsection (3)* shall not apply in a case where the consideration given by the borrower for the use of the principal secured represents more than a reasonable commercial return for the use of that principal; but, where this subsection applies, nothing in *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)* shall operate so as to treat as a

distribution for the purposes of the Corporation Tax Acts so much of the interest or other distribution as represents a reasonable commercial return for the use of that principal.

(5) *Subsection (3)* shall not apply to any interest paid by the borrower, in an accounting period of the borrower, to another company the ordinary trading activities of which include the lending of money, where—

(*a*) in that accounting period the borrower carries on in the State a specified trade, and

(*b*) the interest, if it were not a distribution, would be treated as a trading expense of that trade for that accounting period.

(6) (*a*) This subsection shall apply to any interest or other distribution which apart from this subsection would be a distribution for the purposes of the Corporation Tax Acts, other than any interest or other distribution which is paid by the borrower under an obligation entered into—

(i) before the 13th day of May, 1986, or

(ii) before the 1st day of September, 1986, in accordance with negotiations which were in progress between the borrower and a lender before the 13th day of May, 1986.

(*b*) *Subsection (5)* shall apply as respects any interest or other distribution to which this subsection applies as if *paragraph (ii)* of the definition of ''specified trade'' in *subsection (1)(a)* were deleted.

(*c*) For the purposes of *paragraph (a)*—

(i) an obligation shall be treated as having been entered into before a particular date only if before that date there was in existence a binding contract in writing under which that obligation arose, and

(ii) negotiations in accordance with which an obligation was entered into shall not be regarded as having been in progress before the 13th day of May, 1986, unless on or before that date preliminary commitments or agreements in relation to that obligation had been entered into between the lender referred to in that paragraph and the borrower.

Distributions: supplemental.

[CTA76 s87; FA91 s29]

135.—(1) (*a*) In this Chapter, ''new consideration'' means consideration not provided directly or indirectly out of the assets of the company, but does not include amounts retained by the company by means of capitalising a distribution.

(*b*) Notwithstanding *paragraph (a)*, where share capital has been issued at a premium representing new consideration, any part of that premium applied afterwards in paying up share capital shall also be treated as new consideration for that share capital, except in so far as the premium has been taken into account under *section 132(3)* so as to enable a distribution to be treated as a repayment of share capital.

(2) (*a*) No consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Chapter as new consideration received by the company unless the consideration consists of—

(i) money or value received from the company as a distribution,

(ii) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by that security, or

(iii) the giving up of the right to that share capital or security on its cancellation, extinguishment or acquisition by the company.

(*b*) No amount shall be regarded as new consideration by virtue of *subparagraph (ii)* or *(iii)* of *paragraph (a)* in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a distribution on issue, the nominal value of that share capital.

(3) Where 2 or more companies enter into arrangements to make distributions to each other's members, all parties concerned may for the purposes of this Chapter be treated as if anything done by any of those companies had been done by any other, and this subsection shall apply however many companies participate in the arrangements.

(4) (*a*) In this Chapter and in *section 137*, ''in respect of shares in the company'' and ''in respect of securities of the company'', in relation to a company which is a member of a 90 per cent group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.

(*b*) Without prejudice to *section 130(2)(b)* as extended by *paragraph (a)*, in relation to a company which is a member of a 90 per cent group, ''distribution'' includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

(*c*) Nothing in this subsection shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the State.

(*d*) For the purposes of this subsection, a principal company and all its 90 per cent subsidiaries form a 90 per cent group, and ''principal company'' means a company of which another company is a subsidiary.

(*e*) Nothing in this subsection shall require any company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of another company to be treated as making a distribution where it acquires shares in the other company in accordance with section 9(1) of the Insurance Act, 1990.

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(5) A distribution shall be treated under this Chapter as made, or consideration as provided, out of assets of a company if the cost falls on the company.

(6) In this Chapter and in *section 137*, ''share'' includes stock and any other interest of a member in a company.

(7) References in this Chapter to issuing share capital as paid up apply also to the paying up of any issued share capital.

(8) For the purposes of this Chapter and of *section 137*, ''security'' includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

(9) Where securities are issued at a price less than the amount repayable on them and are not quoted on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Chapter to exceed the issue price unless the securities are issued on terms reasonably comparable with the terms of issue of securities so quoted.

(10) For the purposes of this Chapter and of *section 137*, a thing shall be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder of the share, or is done in pursuance of a right granted or offer made in respect of a share, and anything done in respect of shares by reference to share holdings at a particular time shall be regarded as done to the then holder of the shares or the personal representatives of any shareholder then dead.

(11) *Subsection (10)* shall apply in relation to securities as it applies in relation to shares.

CHAPTER 3

Distributions and tax credits — general

Tax credit for certain recipients of distributions.

[CTA76 s88; FA94 s27(b); FA97 s37 and Sch2 par1]

136.—(1) Where a company resident in the State makes a distribution, the recipient of the distribution shall, subject to the Tax Acts, be entitled to a tax credit under this section (in the Tax Acts referred to as a ''tax credit'').

(2) The tax credit in respect of a distribution shall be available for the purposes specified in the Tax Acts and shall, subject to any express provision to the contrary, be an amount determined by the formula—

$$D \times \frac{A}{100 - A}$$

where—

A is the standard credit rate per cent for the year of assessment in which the distribution is made, and

D is the amount or value of the distribution.

(3) A company resident in the State which is entitled to a tax credit in respect of a distribution may claim to have the amount of the tax credit paid to it if—

(*a*) the company is wholly exempt from corporation tax or is only not exempt in respect of trading income, or

(*b*) the distribution is one in relation to which express exemption (otherwise than by *section 129*) is given, whether specifically or by virtue of a more general exemption from tax, under any provision of the Tax Acts.

(4) A person, not being a company resident in the State, who is entitled to a tax credit in respect of a distribution may claim—

(*a*) to have the credit set against the income tax chargeable on such person's income for the year of assessment in which the distribution is made, and

(*b*) where the credit exceeds that income tax, and the person is—

(i) resident in the State, or

(ii) entitled under *section 1033* to a tax credit in respect of the distribution,

to have the excess paid to such person.

(5) (*a*) In this subsection, ''trust resident in the State'' means a trust administered under the law of the State, not being a trust the general administration of which is ordinarily carried on outside the State and the trustees or a majority of the trustees of which are resident or ordinarily resident outside the State.

(*b*) Where a distribution mentioned in *subsection (1)* is, or is to be treated as, or is deemed to be under any provision of the Tax Acts, income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether that person is entitled to a tax credit in respect of the distribution shall be determined by reference to where that person and not the actual recipient is resident), and where any such distribution is income of a trust resident in the State, the trustees shall be entitled to a tax credit in respect of such distribution if no other person is to be treated for the purposes of this section as receiving the distribution.

Disallowance of reliefs in respect of bonus issues.

[CTA76 s89]

137.—(1) This section shall apply where any person (in this section referred to as ''the recipient'') receives an amount treated as a distribution by virtue of—

(*a*) *paragraph (c)* or *(d)* of *section 130(2)*,

(*b*) *section 131*, or

(*c*) *section 132(2)(a)*,

and, in this section, a distribution within *paragraph (a)*, *(b)* or *(c)* is referred to as a ''bonus issue'', and ''relevant tax credit'', in relation to a bonus issue, means the tax credit to which the recipient of the bonus issue becomes entitled under *section 136* in respect of the bonus issue.

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(2) Subject to *subsection (5)*, where the recipient is entitled by reason of—

(*a*) any exemption from tax,

(*b*) the setting-off of losses against profits or income, or

(*c*) the payment of interest,

to recover tax in respect of any distribution which the recipient has received, no account shall be taken, for the purposes of any such exemption, set-off or payment of interest, of any bonus issue or relevant tax credit which the recipient has received.

(3) Subject to *subsection (5)*, a bonus issue and the relevant tax credit shall be treated as not being franked investment income within the meaning of *section 156*.

(4) Subject to *subsection (5)*, the relevant tax credit relating to a bonus issue shall not be available to set against any income tax which the recipient is entitled to deduct under *section 237* or with which the recipient is chargeable by virtue of *section 238*.

(5) Nothing in *subsections (2)* to *(4)* shall affect the proportion (if any) of any bonus issue made in respect of any shares or securities which, if that bonus issue were declared as a dividend, would represent a normal return to the recipient on the consideration provided by the recipient for the relevant shares or securities, that is, those in respect of which the bonus issue was made and, if those securities are derived from shares or securities previously acquired by the recipient, the shares or securities which were previously acquired; and nothing in those subsections shall affect the like proportion of the relevant tax credit relating to that bonus issue.

(6) For the purposes of *subsection (5)*—

(*a*) if the consideration provided by the recipient for any of the relevant shares or securities was in excess of their market value at the time the recipient acquired them, or if no consideration was provided by the recipient for any of the relevant shares or securities, the recipient shall be taken to have provided for those shares or securities consideration equal to their market value at the time the recipient acquired them, and

(*b*) in determining whether an amount received by means of dividend exceeds a normal return, regard shall be had to the length of time before the receipt of that amount that the recipient first acquired any of the relevant shares or securities and to any dividends and other distributions made in respect of the relevant shares or securities during that time.

Treatment of dividends on certain preference shares.

[FA84 s42(1), (2) and (3); FA 89 s26]

138.—(1) In this section—

''preference shares'' does not include preference shares—

(*a*) which are quoted on a stock exchange in the State,

(*b*) which are not so quoted but which carry rights in respect of dividends and capital comparable with those general for fixed-dividend shares quoted on a stock exchange in the State, or

(*c*) which are non-transferable shares issued on or after the 6th day of April, 1989, by a company in the course of carrying

on relevant trading operations within the meaning of *section 445* or *446*, to a company—

(i) none of the shares of which is beneficially owned, whether directly or indirectly, by a person resident in the State, and

(ii) which, if this paragraph had not been enacted, would not be chargeable to corporation tax in respect of any profits other than dividends which would be so chargeable by virtue of this section;

''shares'' includes stock.

(2) This section shall apply to any dividend which—

(*a*) is paid by a company (in this section referred to as ''the issuer'') to another company (in this section referred to as ''the subscriber'') within the charge to corporation tax, and

(*b*) is so paid in respect of preference shares of the issuer.

(3) Notwithstanding any provision of the Tax Acts—

(*a*) the subscriber shall not be entitled to a tax credit in respect of a dividend to which this section applies, and

(*b*) the dividend shall be chargeable to corporation tax under Case IV of Schedule D.

Dividends and other distributions at gross rate or of gross amount.

[CTA76 s178; FA78 s28(6); FA97 s37 and Sch2 par1]

139.—(1) Where any right or obligation created before the 6th day of April, 1976, is expressed by reference to a dividend at a gross rate or of a gross amount, that right or obligation shall, in relation to a dividend payable on or after that date, take effect as if the reference were to a dividend of an amount determined by the formula—

$$D - \frac{A \times D}{100}$$

where—

A is the standard credit rate per cent for the year of assessment in which the dividend is paid, and

D is an amount equal to a dividend at that gross rate or of that gross amount.

(2) *Subsection (1)* shall apply with the necessary modifications to a dividend partly at a gross rate or of a gross amount and shall apply to any distribution other than a dividend as it applies to a dividend.

CHAPTER 4

Distributions out of certain exempt profits or gains or out of certain relieved income

Distributions out of profits or gains from stallion fees, stud greyhound services fees and occupation of certain woodlands.

[CTA76 s93; FA96 s25(3); FA97 s146(1) and Sch9 par10(3)]

140.—(1) In this section—

''exempt profits'' means profits or gains which by virtue of *section 231*, *232* or *233* were not charged to tax;

''other profits'' includes a dividend or other distribution of a company resident in the State, but does not include a distribution to which *subsection (3)(a)(i)* applies.

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(2) Where a distribution for an accounting period is made by a company in part out of exempt profits and in part out of other profits, the distribution shall be treated as if it consisted of 2 distributions respectively made out of exempt profits and out of other profits.

(3) (*a*) So much of any distribution as has been made out of exempt profits—

(i) shall, where the recipient of that distribution is a company, be deemed for the purposes of the Corporation Tax Acts to be exempt profits of the company, and

(ii) shall not be regarded as income for any purpose of the Income Tax Acts.

(*b*) Notwithstanding *section 136*, the recipient of any distribution, including part of a distribution treated under *subsection (2)* as a distribution, made out of exempt profits shall not be entitled to a tax credit in respect of that distribution.

(4) (*a*) Where a company makes a distribution, including part of a distribution treated under *subsection (2)* as a distribution, in respect of any right or obligation to which *section 139* relates and the distribution is made out of exempt profits, the company shall make a supplementary distribution of an amount equal to the amount of the tax credit which would have applied in respect of the distribution if *subsection (3)(b)* had not been enacted.

(*b*) *Subsection (2)* shall apply to a supplementary distribution under this subsection as if that supplementary distribution were a distribution made wholly out of exempt profits.

(5) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under *subsection (2)* as a distribution, made by a company out of exempt profits, *section 152* shall apply to the company so that the statements provided for by that section shall show as respects each such distribution, in addition to the particulars required to be given apart from this section, that the distribution is made out of exempt profits.

(6) In relation to any supplementary distribution under *subsection (4)*, *section 152* shall apply to the company so that the statement required by *subsection (1)* of that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(7) Where a company makes a distribution for an accounting period, the distribution shall be regarded for the purposes of this section as having been made out of the distributable income (within the meaning of *section 144(8)*) of that period to the extent of that income and, in relation to the excess of the distribution over that income, out of the most recently accumulated income.

(8) *Subsections (6)* and *(7)* of *section 145* shall apply for the purposes of this section as they apply for the purposes of that section.

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Distributions out of income from patent royalties.

[CTA76 s170; FA92 s19(2); FA96 s32(2) and (3)(b); FA97 s146(1) and Sch9 par10(9)]

141.—(1) In this section—

''disregarded income'' means—

(*a*) as respects distributions made out of specified income accruing to a company on or after the 28th day of March, 1996—

(i) income from a qualifying patent which by virtue of *section 234(2)* has been disregarded for the purposes of income tax, and

(ii) income from a qualifying patent which by virtue of *section 234(2)* and *section 76(6)* has been disregarded for the purposes of corporation tax,

but does not include income (in this section referred to as ''specified income'') from a qualifying patent (within the meaning of *section 234*) which would not be income from a qualifying patent if *paragraph (a)* of the definition of ''income from a qualifying patent'' in *section 234(1)* had not been enacted, and

(*b*) as respects any other distributions—

(i) income which by virtue of *section 234(2)* has been disregarded for the purposes of income tax, and

(ii) income which by virtue of *section 234(2)* and *section 76(6)* has been disregarded for the purposes of corporation tax;

''eligible shares'', in relation to a company, means shares forming part of the ordinary share capital of the company which—

(*a*) are fully paid up,

(*b*) carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed, and

(*c*) are not subject to any different treatment from the treatment which applies to all shares of the same class, in particular different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) restrictions attaching to the shares, or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares;

''other profits'' includes a dividend or other distribution of a company resident in the State, but does not include a distribution to which *subsection (3)(a)(ii)* applies.

(2) Where a distribution for an accounting period is made by a company in part out of disregarded income and in part out of other profits, the distribution shall be treated as if it consisted of 2 distributions respectively made out of disregarded income and out of other profits.

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(3) (*a*) So much of any distribution as has been made out of disregarded income—

(i) shall, subject to *subsection (4)(a)*, not be regarded as income for any purpose of the Income Tax Acts, and

(ii) shall, where the recipient of that distribution is a company and the distribution is in respect of eligible shares, be deemed for the purposes of this section to be disregarded income.

(*b*) The recipient of any distribution, including part of a distribution treated under *subsection (2)* as a distribution, made out of disregarded income shall not be entitled to a tax credit in respect of that distribution.

(4) (*a*) *Subsection (3)(a)(i)* shall not apply to any distribution received by a person unless it is a distribution—

(i) in respect of eligible shares, or

(ii) made out of disregarded income, being income (in this subsection referred to in relation to a person as ''relevant income'') which is referable to a qualifying patent in relation to which the person carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, designing, development or other similar activity leading to the invention which is the subject of the qualifying patent.

(*b*) For the purposes of *paragraph (a)*, where a distribution for an accounting period is made by a company to a person in part out of relevant income, in relation to the person, and in part out of other disregarded income, the distribution shall be treated as if it consisted of 2 distributions respectively made out of relevant income and out of other disregarded income.

(5) (*a*) In this subsection—

''the amount of aggregate expenditure on research and development incurred by a company in relation to an accounting period'' means the amount of expenditure on research and development activities incurred in the State by the company in the accounting period and the previous 2 accounting periods; but, where in an accounting period a company incurs expenditure on research and development activities and not less than 75 per cent of that expenditure was incurred in the State, all of that expenditure shall be deemed to have been incurred in the State;

''the amount of the expenditure on research and development activities'', in relation to expenditure incurred by a company in an accounting period, means non-capital expenditure incurred by the company, being the aggregate of the amounts of—

(i) such part of the emoluments paid by the company to employees of the company engaged in carrying out research and development activities related to the

company's trade as is laid out for the purposes of those activities,

(ii) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade, and

(iii) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade,

but, where the company (in this definition referred to as ''the first company'') is a member of a group, then, for the purposes of this section, the amount of expenditure on research and development activities incurred in an accounting period by another company which in the accounting period is a member of the group shall, on a joint election in writing being made on that behalf by the first company and the other company, be treated as being expenditure incurred on research and development activities in the accounting period by the first company and not by the other company;

''research and development activities'' has the same meaning as in *section 766*.

(*b*) For the purpose of this subsection—

(i) 2 companies shall be deemed to be members of a group if both companies are wholly or mainly under the control of the same individual or individuals or if one company is a 75 per cent subsidiary of another company or both companies are 75 per cent subsidiaries of a third company and, in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(I) any share capital which it owns directly in a company if a profit on sale of the shares would be treated as a trading receipt of its trade, or

(II) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt;

(ii) a company shall be wholly or mainly under the control of an individual or individuals if not less that 75 per cent of the ordinary share capital of the company is owned directly or indirectly by the individual or, as the case may be, by individuals each of whom owns directly or indirectly part of that share capital;

(iii) *sections 412* to *418* shall apply for the purposes of this paragraph as they apply for the purposes of *Chapter 5* of *Part 12* and, where 2 companies are deemed to be members of a group by reason that both companies are wholly or mainly under the control of the same individual or individuals, those sections shall apply as they would apply for the purposes of that

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Chapter if the references in those sections to a parent company included a reference to an individual or individuals who hold shares in a company.

(*c*) Where for an accounting period a company makes one or more distributions out of specified income which accrued to the company on or after the 28th day of March, 1996, so much of the amount of that distribution, or the aggregate of such distributions, as does not exceed the amount of aggregate expenditure on research and development incurred by the company in relation to the accounting period shall be treated as a distribution made out of disregarded income.

(*d*) (i) Notwithstanding *paragraph (c)* but subject to *subparagraph (ii)*, if in an accounting period the beneficial recipient (in this paragraph referred to as ''the recipient'') of the specified income shows in writing to the satisfaction of the Revenue Commissioners that the specified income is income from a qualifying patent in respect of an invention which—

(I) involved radical innovation, and

(II) was patented for bona fide commercial reasons and not primarily for the purpose of avoiding liability to taxation,

the Revenue Commissioners shall, after consideration of any evidence in relation to the matter which the recipient submits to them and after such consultations (if any) as may seem to them to be necessary with such persons as in their opinion may be of assistance to them, determine whether all distributions made out of specified income accruing to the recipient for that accounting period and all subsequent accounting periods shall be treated as distributions made out of disregarded income and the recipient shall be notified in writing of the determination.

(ii) A recipient aggrieved by a determination of the Revenue Commissioners under *subparagraph (i)* may, by notice in writing given to the Revenue Commissioners within 30 days of the date of notification advising of the determination, appeal to the Appeal Commissioners and the Appeal Commissioners shall hear and determine the appeal made to them as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(*e*) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this subsection to be performed or discharged by the Revenue Commissioners, and references in this subsection to the Revenue Commissioners shall, with any necessary modifications, be construed as including references to an officer so nominated.

(6) (*a*) Where a company makes a distribution, including part of a distribution treated under *subsection (2)* as a distribution, in respect of any right or obligation to which *section 139* relates and the distribution is made out of disregarded income, the company shall make a supplementary distribution of an amount equal to the amount of the tax credit which would have applied in respect of the distribution if *subsection (3)(b)* had not been enacted.

(*b*) *Subsection (3)* shall apply to a supplementary distribution under this subsection as if that supplementary distribution were a distribution made wholly out of disregarded income.

(7) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under *subsection (2)* as a distribution, made by a company out of disregarded income, *section 152* shall apply to the company so that the statements provided for by that section shall show as respects each such distribution, in addition to the particulars required to be given apart from this section, that the distribution is made out of disregarded income.

(8) In relation to any supplementary distribution under *subsection (6)*, *section 152* shall apply to the company so that the statement required by *subsection (1)* of that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(9) Where a company makes a distribution for an accounting period, the distribution shall be regarded for the purposes of this section as having been made out of the distributable income (within the meaning of *section 144(8)*) of that period to the extent of that income and, in relation to the excess of the distributions over that income, out of the most recently accumulated income.

(10) *Subsections (6)* and *(7)* of *section 145* shall apply for the purposes of this section as they apply for the purposes of that section.

Distributions out of profits of certain mines.

[CTA76 s81]

142.—(1) In this section—

''exempted income'' means income in respect of which a company has obtained relief under—

(*a*) the Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956, or

(*b*) Chapter II (Profits of Certain Mines) of Part XXV of the Income Tax Act, 1967;

''other income'' means income of a company which is not exempted income.

(2) Where a distribution for an accounting period is made by a company wholly out of exempted income, the distribution shall not be regarded as income for any purpose of the Income Tax Acts and, notwithstanding *section 136*, the recipient of the distribution shall not be entitled to a tax credit in respect of it.

(3) Where a distribution for an accounting period is made by a company in part out of exempted income and in part out of other

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income, the distribution shall be treated as if it consisted of 2 distributions respectively made out of exempted income and other income, and *subsection (2)* shall apply to such part of the distribution as is made out of exempted income as it applies to a distribution made wholly out of exempted income.

(4) Any distribution, including part of a distribution treated under *subsection (3)* as a distribution, made out of exempted income shall, where the recipient is a company resident in the State, be deemed for the purposes of this section to be exempted income of the company.

(5) (*a*) Where a company makes a distribution, including part of a distribution treated under *subsection (3)* as a distribution, in respect of any right or obligation to which *section 139* relates and the distribution is made out of exempted income, the company shall make a supplementary distribution of an amount equal to the amount of the tax credit which would have applied in respect of the distribution if *subsection (2)* had not been enacted.

(*b*) *Subsection (2)* shall apply to a supplementary distribution under this subsection as if the supplementary distribution were a distribution made out of exempted income, and *section 152(1)* shall apply so that the statement required by that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(6) *Subsections (7)* and *(8)* of *section 144* and *subsections (6)* and *(7)* of *section 145* shall apply for the purposes of this section as they apply for the purposes of those sections.

(7) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under *subsection (3)* as a distribution, made out of exempted income, *section 152* shall apply so that the statements provided for by that section shall show, in addition to the particulars required to be given apart from this section, that the distribution is made out of exempted income.

Distributions out of profits from coal, gypsum and anhydrite mining operations.

[CTA76 s82; FA77 s5(2) and Sch1 PtII; FA97 s37 and Sch2 par1]

143.—(1) In this section, ''relieved income'' means the income of a company—

(*a*) on which income tax was paid at a reduced rate by virtue of—

(i) section 395(1) of the Income Tax Act, 1967,

(ii) section 7 or 8 of the Finance (Miscellaneous Provisions) Act, 1956, or

(iii) section 32 of the Finance Act, 1960,

(*b*) on which income tax was borne by deduction at a reduced rate under—

(i) section 396(1) of the Income Tax Act, 1967, or

(ii) section 9 of the Finance (Miscellaneous Provisions) Act, 1956,

or

(*c*) which is franked investment income, the tax credit comprised in which has been reduced under this section. PT.6 S.143

(2) The tax credit in respect of a distribution made wholly out of relieved income shall, notwithstanding *section 136*, be the amount determined by applying to the amount of the distribution the fraction—

$$\frac{A}{100 - A}$$

where A is 50 per cent of the standard credit rate per cent for the year of assessment in which the distribution is made.

(3) Where a distribution is made in part out of relieved income and in part out of other income, the distribution shall be treated as if it consisted of 2 distributions respectively made out of relieved income and out of other income, and the tax credit in respect of each such distribution shall be calculated in accordance with *subsection (2)* and *section 136* respectively.

(4) Any distribution, including part of a distribution treated under *subsection (3)* as a distribution, made out of relieved income shall, where the recipient is a company resident in the State, be deemed for the purposes of this section to be relieved income of the company.

(5) Subject to *subsection (7)*, for the purposes of the Tax Acts, a distribution made by a company out of relieved income shall be treated as representing income equal to the aggregate of the amount or value of that distribution and the amount of the tax credit in respect of it calculated in accordance with this section.

(6) Where for a year of assessment the taxable income of an individual which is chargeable at the standard rate includes income represented by distributions made out of relieved income, the individual's liability to income tax in respect of the income represented by such distributions shall be an amount equal to the tax on that income calculated at 50 per cent of the standard rate for the year of assessment in which the distributions were made.

(7) Where for a year of assessment the taxable income of an individual which is chargeable at the higher rate includes income represented by distributions made out of relieved income, the individual's liability to income tax at the higher rate in respect of the income represented by such distributions shall be an amount equal to the tax, calculated at the higher rate for the year of assessment in which the distributions were made, on the income reduced by 50 per cent, and credit shall be given against that tax of an amount equal to tax at the standard credit rate for that year on the amount of the income as so reduced.

(8) Where a company makes a distribution, including part of a distribution treated as a distribution under *subsection (3)*, in respect of any right or obligation to which *section 139* relates and the tax credit in respect of that distribution is calculated in accordance with *subsection (2)*, then, the company shall make a supplementary distribution of an amount equal to the excess of the tax credit which would have applied to the distribution if this section had not been enacted over the amount of the tax credit which in accordance with *subsection (2)* applies to the distribution, and the person to whom the distribution and the supplementary distribution are made shall be

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regarded as having received one distribution consisting of the aggregate of the distribution and the supplementary distribution.

(9) Notwithstanding *section 136*, the recipient of a supplementary distribution under *subsection (8)* shall not be entitled to a tax credit in respect of such supplementary distribution, and *section 152(1)* shall apply so that the statement required by that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(10) *Subsections (7)* and *(8)* of *section 144* and *subsections (6)* and *(7)* of *section 145* shall apply for the purposes of this section as they apply for the purposes of those sections.

(11) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under *subsection (3)* as a distribution, made by a company out of relieved income, *section 152* shall apply so that the statements provided for by that section shall show, in addition to the particulars required to be given apart from this section, that the distribution is made out of relieved income and the amount of the tax credit which would apply in respect of the distribution if it were not made out of relieved income.

Distributions out of profits from trading within Shannon Airport.

[CTA76 s76(1), (2)(a)(ii) and (b) and (3) to (8); FA92 s35(b); FA97 s146(1) and (2), Sch9 PtI par10(1) and PtII]

144.—(1) In this section—

''exempted trading operations'' means trading operations which were exempted trading operations for the purposes for Part V of the Corporation Tax Act, 1976;

''other profits'' includes a dividend or other distribution of a body corporate resident in the State, but does not include a distribution to which *subsection (3)(a)* applies.

(2) Where a distribution for an accounting period is made by a body corporate in part out of income from exempted trading operations and in part out of other profits, the distribution shall be treated as if it consists of 2 distributions respectively made out of income from exempted trading operations and out of other profits.

(3) (*a*) So much of any distribution as has been made out of income from exempted trading operations shall, where the recipient of that distribution is a body corporate, be deemed for the purposes of this section to be income from exempted trading operations.

(*b*) The recipient of any distribution, including part of a distribution treated under *subsection (2)* as a distribution, made out of income from exempted trading operations shall not be entitled to a tax credit in respect of that distribution.

(4) (*a*) Where a body corporate makes a distribution, including part of a distribution treated under *subsection (2)* as a distribution, in respect of any right or obligation to which *section 139* relates and the distribution is made out of income from exempted trading operations, the body corporate shall make a supplementary distribution of an amount equal to the amount of the tax credit which would have applied in respect of the distribution if *subsection (3)(b)* had not been enacted.

(*b*) *Subsection (3)* shall apply to a supplementary distribution under this subsection as if that supplementary distribution were a distribution made wholly out of income from exempted trading operations.

(5) In relation to any distribution (not being a supplementary distribution under this section), including part of a distribution treated under *subsection (2)* as a distribution, made by a body corporate out of income from exempted trading operations, *section 152* shall apply to the body corporate so that the statements provided for by that section shall show, as respects each such distribution, in addition to the particulars required to be given apart from this section, that the distribution is made out of income from exempted trading operations.

(6) In relation to any supplementary distribution under *subsection (4)*, *section 152(1)* shall apply to the body corporate so that the statement required by that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

(7) Where a body corporate makes a distribution for an accounting period, the distribution shall be regarded for the purposes of this section as having been made out of the distributable income of that period to the extent of that income and in relation to the excess of the distribution over that income out of the most recently accumulated income.

(8) For the purposes of *subsection (7)*, the distributable income of a company for an accounting period shall be an amount determined by the formula—

$$(R - S) + T$$

where R, S and T have the same meanings respectively as in *section 147(1)(a)*.

(9) *Subsections (6)* and *(7)* of *section 145* shall apply for the purposes of this section as they apply for purposes of that section.

Distributions out of profits from export of certain goods.

[CTA76 s28(8), s64 and s66A(1) and (2); FA78 s28(4); FA80 s42(6); FA82 s60(1); FA92 s35(a); FA97 s37 and Sch2 par1 and par3(3)]

145.—(1) This section shall apply to a distribution (in this section referred to as a ''relevant distribution'') made or deemed to have been made by a company for an accounting period wholly or in part out of—

(*a*) the company's income for the accounting period the corporation tax in respect of which has been reduced under Part IV of the Corporation Tax Act, 1976, or

(*b*) a distribution or distributions received by the company in the accounting period in respect of which the tax credit is determined in accordance with this section.

(2) (*a*) Where a relevant distribution is made or is deemed for the purposes of this section to have been made by a company for an accounting period, the tax credit to which the recipient of the relevant distribution is entitled in respect of it shall be an amount arrived at by applying a fraction determined by the formula—

$$\frac{A + B}{C}$$

to the amount of the relevant distribution,

where—

A is an amount arrived at by applying to the amount of the company's distributable income for the accounting period, excluding distributions received by the company in that period, the fraction—

$$\frac{D}{100 - D}$$

where D is the standard credit rate per cent for the year of assessment in which the relevant distribution is made reduced in the same proportion as the company's liability to corporation tax on its income (other than its income from the sale of goods within the meaning of *section 448*) for the accounting period is reduced under section 58 of the Corporation Tax Act, 1976, subject to paragraph (*c*) of the proviso to section 182(3), and paragraph (iii) of the proviso to section 184(3), of that Act,

B is the aggregate of the tax credits in respect of the amount referred to in *subsection (4)(a)(ii)*, and

C is the amount of the company's distributable income for the accounting period.

(*b*) The reference to certain tax credits in the definition of "B" in *paragraph (a)* shall, in relation to distributions received by a company which makes a distribution to which this section applies, be construed—

(i) as a reference to such tax credits multiplied by .4937 in so far as they are tax credits in respect of distributions made before the 6th day of April, 1978, or made after the 5th day of April, 1983, and before the 6th day of April, 1988,

(ii) as a reference to such tax credits multiplied by .6203 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1978, and before the 6th day of April, 1983,

(iii) as a reference to such tax credits multiplied by .5649 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1988, and before the 6th day of April, 1989,

(iv) as a reference to such tax credits multiplied by .6835 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1989, and before the 6th day of April, 1991,

(v) as a reference to such tax credits multiplied by .7975 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1991, and before the 6th day of April, 1995, and

(vi) as a reference to such tax credits multiplied by .8899 in so far as they are tax credits in respect of distributions made after the 5th day of April, 1995, and before the 6th day of April, 1997.

(3) For the purposes of this section—

(*a*) where the total amount of the distributions made by a company for an accounting period exceeds the distributable income of the company for that accounting period, the excess shall be deemed for the purposes of this section to be a distribution for the immediately preceding accounting period;

(*b*) where the total amount of the distributions made or deemed under *paragraph (a)* to have been made by a company for the immediately preceding accounting period referred to in *paragraph (a)* exceeds the distributable income of the company for that accounting period, the excess shall be deemed to be a distribution for the next immediately preceding accounting period and so on;

(*c*) where the total amount of the distributions made or deemed under this subsection to have been made for the first accounting period for which the company came within the charge to corporation tax exceeds the distributable income of the company for that accounting period—

(i) the excess shall be deemed to be a distribution for the company's period of account which ended on the accounting date last before the 6th day of April, 1975, or, if there was no such period of account, to be a distribution for the year which ended on the 5th day of April, 1976, and

(ii) the tax credit in respect of the excess which is so deemed shall be an amount equal to the amount of income tax which under section 410 of the Income Tax Act, 1967, the company would have been entitled to deduct from a dividend of such an amount as after deduction of that tax would equal the amount of the excess, and for this purpose it shall be assumed that the dividend was paid on the 5th day of April, 1976, and was in respect of such period of account or year which ended on the 5th day of April, 1976, as the case may be,

but the tax credit in respect of a distribution to which *subparagraph (i)* applies shall not exceed the amount which would be the amount of the tax credit in respect of the distribution if that tax credit were determined in accordance with *section 136(2)*.

(4) (*a*) For the purposes of this section, the distributable income of a company for an accounting period shall be the aggregate of the following amounts—

(i) the income of the company charged to corporation tax for the accounting period less the amount of corporation tax payable by the company for the accounting period which is attributable to that income, and

(ii) an amount equal to the distributions received by the company in the accounting period which is comprised in its franked investment income of the accounting period, other than franked investment income against which relief is given under *section 83(5)*, *157* or *158*, and which relief was not subsequently withdrawn under those sections.

(*b*) For the purposes of *paragraph (a)*, the income of a company for an accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne exclusive of the part of the profits attributable to chargeable gains, and that part shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.

(5) Where the distributable income of a company for an accounting period is to be determined for the purposes of this section in relation to a distribution made by the company for that accounting period (in this subsection referred to as ''the first-mentioned distribution''), there shall be deducted from the aggregate mentioned in *subsection (4)(a)* the aggregate of the following amounts—

(*a*) the amount of the company's income which, in relation to the first-mentioned distribution, is to be taken into account in the definition of ''A'' in *section 147(1)* (before any reduction under *paragraph 5(2)(i)* or *6(2)(i)* of *Schedule 32*) as income of the company for the relevant accounting period (within the meaning of *Part 14*) which coincides with or is included in that accounting period, less the amount of corporation tax to be taken into account in the definition of ''B'' in *section 147(1)* in respect of that amount of the company's income, and

(*b*) an amount equal to the distributions received by the company in the accounting period which are relevant distributions within the meaning of *section 147*, and which are to be included within the definition of ''E'' in *subsection (1)* of that section in relation to the first-mentioned distribution.

(6) Where a period of account for or in respect of which a company makes a distribution is not an accounting period and part of the period of account falls within an accounting period, the proportion of the distribution to be treated for the purposes of this section as being for or in respect of the accounting period shall be the same proportion as that part of the period of account bears to the whole of that period.

(7) Where a company makes a distribution which is not expressed to be for or in respect of a specified period, the distribution shall be

treated for the purposes of this section as having been made for the accounting period in which it is made.

(8) Where the income of a company for an accounting period includes a dividend from which income tax was deducted under section 456 of the Income Tax Act, 1967, then, for the purposes of this section, the amount of tax so deducted shall be deemed to be a tax credit in respect of a distribution of an amount equal to the amount of the dividend reduced by the amount of tax so deducted.

(9) In relation to a relevant distribution (other than a supplementary distribution under *section 146*), *section 152* shall apply so that the statements provided for by that section shall show, in addition to the particulars to be given apart from this section, the amount of the tax credit which would apply in respect of the distribution if it were not a relevant distribution.

(10) The inspector may by notice in writing require a company to furnish him or her with such information or particulars as may be necessary for the purposes of *subsections (1)* to *(9)*, and, if the company does not comply with the requirements of the notice, it shall be liable to a penalty of £800.

(11) (*a*) In this subsection, ''the relieved amount'' means so much of a relevant distribution as is determined by the formula—

$$E - \frac{F \times (100 - G)}{G}$$

where—

E is the amount of the distribution,

F is the amount of the tax credit in respect of the distribution, and

G is the standard credit rate per cent for the purposes of *section 136(2)* in respect of the year of assessment in which the distribution is made.

(*b*) Notwithstanding any other provision of the Tax Acts, for the purposes of determining a person's liability, if any, to income tax in respect of distributions received by such person, so much of a relevant distribution as is the relieved amount shall be treated as a separate distribution received by the person in respect of which such person shall not be entitled to a tax credit, and the remainder, if any, of the relevant distribution shall be treated as a separate distribution received by such person in respect of which the tax credit shall be the tax credit in respect of the relevant distribution.

Provisions supplementary to *section 145.*

[CTA76 s65]

146.—(1) Where a company makes a distribution in respect of any right or obligation to which *section 139* relates and the tax credit in respect of that distribution is calculated in accordance with *section 145*, the company shall make a supplementary distribution of an amount equal to the excess of the amount of the tax credit which would have applied to the distribution if *section 145* had not been enacted over the amount of the tax credit which in accordance with

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section 145 applies to the distribution, and the person to whom the distribution and the supplementary distribution are made shall be regarded as having received one distribution consisting of the aggregate of the distribution and the supplementary distribution.

(2) Notwithstanding *section 136*, the recipient of a supplementary distribution under *subsection (1)* shall not be entitled to a tax credit in respect of it.

(3) In relation to any supplementary distribution within the meaning of *subsection (1)*, *section 152(1)* shall apply to the company so that the statement required by that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

CHAPTER 5

Distributions out of certain income of manufacturing companies

Distributions.

[FA80 s45(1) to (3) (apart from paragraph (a) of proviso to subsection (1A)) and (5) to (8); FA88 s32(1) and (3) and Sch2 PtII par1(a); FA89 s24; FA92 s248; F(No.2)A92 s2; FA93 s46(5); FA97 s146(1) and Sch9 PtI par11(2)]

147.—(1) (*a*) There shall be treated as a specified distribution for the purposes of *subsection (4)* so much of a distribution (in this paragraph referred to as ''the first-mentioned distribution'') treated under *subsection (2)* or *section 154* as made by a company for an accounting period as does not exceed the amount, which may be nil, determined by the formula—

$$Y \times \frac{(A - B) + E - U}{(R - S) + T - W}$$

where, subject to *sections 148* and *149* and *paragraphs 5* and *6* of *Schedule 32*—

A is the amount of the company's income, the corporation tax referable to which is reduced under *section 448*, for the relevant accounting period which coincides with or is included in the accounting period,

B is the amount of the corporation tax, as reduced under *section 448*, referable to the amount mentioned in the definition of ''A'',

E is the amount of the relevant distributions, whether made before the 6th day of April, 1989, or on or after that day, received by the company in the accounting period, which is included in its franked investment income of the accounting period, other than franked investment income against which relief is given under *section 83(5)*, *157* or *158*, and which relief was not subsequently withdrawn under those sections,

R is the amount of the income of the company charged to corporation tax for the accounting period within the meaning of *section 145(4)(b)*, with the addition of any amount of income of the company which would be charged to corporation tax for the accounting period but for *section 231*, *232*, *233* or *234*, or section 71 of the Corporation Tax Act, 1976,

S is the amount of the corporation tax which, before any set-off of or credit for tax, including foreign tax, and after any relief under *section 448* or *paragraph 16* or *18* of *Schedule 32,* or section 58 of the Corporation Tax Act, 1976, is chargeable for the accounting period, exclusive of the corporation tax, before any credit for foreign tax, chargeable on the part of the company's profits attributable to chargeable gains for that period; and that part shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description,

T is the amount of the distributions received by the company in the accounting period which is included in its franked investment income of the accounting period, other than franked investment income against which relief is given under *section 83(5)*, *157* or *158*, and which relief was not subsequently withdrawn under those sections, with the addition of any amount received by the company in the accounting period to which *section 140(3)*, *141(3)*, *142(4)* or *144(3)(a)* applies,

U is the amount of relevant distributions made by the company before the 6th day of April, 1989, which—

(i) were made for the accounting period, or

(ii) would be deemed to have been made for the accounting period by virtue of *subsections (3)* and *(7)* of *section 145* if—

(I) *subsections (3)* and *(7)* of that section were treated as applying for the purposes of this definition as they apply for the purposes of that section, and

(II) ''relevant distribution'' and ''distributable manufacturing income'' were substituted for ''distribution'' and ''distributable income'' respectively wherever those terms occur in *subsections (3)* and *(7)* of that section,

W is the amount of the distributions made by the company before the 6th day of April, 1989, which—

(i) were made for the accounting period, or

(ii) would be deemed to have been made for the accounting period by virtue of *subsections (3)* and *(7)* of *section 145* if—

(I) *subsections (3)* and *(7)* of that section were treated as applying for the purposes of this definition as they apply for the purposes of that section, and

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(II) every reference to ''distributable income of the company'' in *subsection (3)* of that section were a reference to the amount determined by the formula—

$$(R - S) + T$$

where R, S and T have the same meanings as otherwise in this paragraph,

and

Y is the amount of the first-mentioned distribution.

(*b*) Any reference in this section to a relevant distribution—

(i) made by a company before the 6th day of April, 1989, shall be construed as a reference to a relevant distribution within the meaning of *paragraph 4* of *Schedule 32*, and

(ii) made by a company on or after the 6th day of April, 1989, shall be construed as a reference to a relevant distribution within the meaning of *subsection (4)*.

(*c*) For the purposes of this Chapter, ''relevant accounting period'' has the same meaning as it has for the purposes of *Part 14*.

(2) (*a*) For the purposes of this subsection and *subsections (1)* and *(4)* and irrespective of the period of account for which a distribution is made by a company, a distribution or distributions, as the case may be, made by the company on a day (in this subsection referred to as ''the first-mentioned day'') falling on or after the 6th day of April, 1989, shall be treated as having been made for the most recent accounting period of the company ending before the first-mentioned day; but, where a distribution made by a company is—

(i) a distribution by virtue only of *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)*, or

(ii) a distribution made in respect of shares of a type referred to in *paragraph (c)* of the definition of ''preference shares'' in *section 138(1)*,

the distribution shall be treated, subject to *paragraphs (b)* to *(d)*, as having been made for the accounting period in which the first-mentioned day falls.

(*b*) (i) Where the first-mentioned day falls in an accounting period of the company which begins on the day on which the company commenced to be within the charge to corporation tax, the distribution or distributions, as the case may be, shall be treated as made for that accounting period and, where the total amount of distributions made by the company on or after the 6th day of April, 1989, which are treated as having been made for that accounting period would otherwise exceed the amount of the distributable income of the company for that accounting period,

the excess shall be treated as a distribution or distributions, as the case may be, which has not or have not been made for any accounting period.

(ii) Where the first-mentioned day falls on or after the first day of an accounting period of the company which ends on a day on which the company ceases to be within the charge to corporation tax, the distribution or distributions, as the case may be, shall be treated as made for that accounting period.

(*c*) (i) Where the total amount of distributions made by the company on or after the 6th day of April, 1989, which are treated as having been made for an accounting period, would otherwise exceed the amount of the distributable income of the company for that accounting period, the excess shall be treated as a distribution or distributions, as the case may be, made for the immediately preceding accounting period of the company.

(ii) Where the total amount of distributions made by the company on or after the 6th day of April, 1989, which are treated as having been made for the immediately preceding accounting period referred to in *subparagraph (i)*, would otherwise exceed the amount of the distributable income of the company for that accounting period, the excess shall be treated as a distribution or distributions, as the case may be, made for the immediately preceding accounting period of the company, and so on.

(*d*) Where by virtue of the application of this subsection to the distribution or distributions, as the case may be, made by the company on the first-mentioned day there is an excess mentioned in *paragraphs (b)* and *(c)*, that excess—

(i) where there is only one distribution made by the company on the first-mentioned day, shall be wholly attributed to that distribution, or

(ii) where there is more than one distribution so made on the first-mentioned day, shall be partly attributed to each of those distributions in the same respective proportion as the amount of each such distribution bears to the total amount of the distributions made by the company on that day,

so that any distribution made by the company on the first-mentioned day shall be treated as consisting of 2 or, if there is more than one such excess, more distributions each of which is made by the company for a different accounting period (if any).

(3) For the purposes of this section—

(*a*) the amount of the distributable income of a company for an accounting period shall be the amount determined by the formula—

$$(R - S) + T - W$$

where R, S, T and W have the same meanings respectively as in *subsection (1)*, and

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(*b*) the amount of the distributable manufacturing income of a company for an accounting period shall be the amount determined by the formula—

$$(A - B) + E$$

where A, B and E have the same meanings respectively as in *subsection (1)*.

(4) Where a distribution made by a company on or after the 6th day of April, 1989 (in this subsection referred to as ''the first-mentioned distribution''), is treated for the purposes of this subsection as—

(*a*) consisting of or including a specified distribution, or

(*b*) consisting of 2 or more distributions, one or more of which is treated as consisting of or including a specified distribution,

the first-mentioned distribution shall, notwithstanding any other provision of the Corporation Tax Acts, be treated for the purposes of those Acts as if it consists of 2 distributions, either but not both of which may be nil, being respectively—

(i) a distribution, which shall be a relevant distribution for the purposes of this section, of an amount equal to the amount of the specified distribution mentioned in *paragraph (a)* or equal to the total amount of the specified distributions mentioned in *paragraph (b)*, as the case may be, and

(ii) a distribution which is not a relevant distribution and which consists of the balance of the first-mentioned distribution.

(5) (*a*) The tax credit to which a recipient of a relevant distribution is entitled in respect of it shall, notwithstanding any provision of the Corporation Tax Acts other than this section, be an amount equal to one-eighteenth of the amount of the relevant distribution.

(*b*) Where as respects an accounting period corporation tax payable by a company is by virtue of *subsection (7)* of *section 448* reduced by the revised relief (within the meaning of that subsection), the tax credit in respect of a distribution treated for the purposes of this section as made for the accounting period shall be an amount determined by the formula—

$$F \times \tfrac{1}{2}\left[\frac{G}{100 - G}\right]$$

where—

F is the amount or value of the distribution, and

G is an amount determined by the formula—

$$\frac{H}{J} \times 100$$

where—

H is the corporation tax payable by the company for the accounting period, in so far as it is referable to income from the sale of those goods (within the meaning of *section 448*), after deducting from that tax such amount as is to be deducted under *section 448*, and

J is the income from the sale of those goods.

(6) The tax credit (if any) to which the recipient of a distribution to which *subsection (4)(ii)* applies is entitled in respect of the distribution shall be calculated in accordance with the Corporation Tax Acts other than *subsection (5)*.

(7) In relation to a relevant distribution, including part of a distribution treated under *subsection (4)* as a relevant distribution, made by a company, *section 152* shall apply to the company so that the statements provided for by that section shall show as respects each such distribution, in addition to the particulars required to be given apart from this subsection, that the distribution is a relevant distribution for the purposes of this section.

(8) (*a*) Where it appears to the inspector that the amount of tax credit to which the recipient of a relevant distribution, including part of a distribution treated under *subsection (4)* as a relevant distribution, was shown to be entitled on the statement annexed to or accompanying any warrant or cheque or other order mentioned in *section 152(1)*, or in any statement mentioned in *section 152(3)*, exceeds the amount of the tax credit to which the recipient of the statement should have been shown to be entitled on that statement by reference to this section and *section 150*, the inspector may make an assessment to income tax on the company under Case IV of Schedule D for the year of assessment in which the statement is made on an amount the income tax on which, at the standard rate for that year of assessment, is equal to the amount by which the tax credit shown in the statement exceeds the tax credit to which the recipient of that statement should have been shown to be entitled on that statement.

(*b*) Any amount on which by virtue of this subsection income tax is charged on a company by an assessment under Case IV of Schedule D shall not be regarded as income of the company for any purpose of the Tax Acts.

(*c*) This subsection shall not apply if the inspector is, or on appeal the Appeal Commissioners are, satisfied that, either by reason of a correction by the company of the statement annexed to or accompanying the relevant warrant or cheque or other order mentioned in *section 152(1)*, or of the statement mentioned in *section 152(3)*, or for any other good and sufficient reason, it would be just and reasonable that this subsection should not apply.

(9) The inspector may by notice in writing require a company to furnish him or her with such information or particulars as may be necessary for the purposes of this section and, if the company does

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not comply with the requirements of the notice, it shall be liable to a penalty of £1,200.

Treatment of certain deductions in relation to relevant distributions.

[FA80 s46; FA88 s32(3) and Sch2 PtII par1(b)]

148.—(1) In this section, ''relevant deduction'', in relation to a relevant accounting period of a company, means any amount allowed as a deduction against the total profits of the company in that period in respect of—

(*a*) charges on income,

(*b*) group relief,

(*c*) any allowance in respect of capital expenditure to which effect is given for that period under *section 308(4)*,

(*d*) any loss in respect of which the profits of that period are treated as reduced under *section 396(2)*, or

(*e*) other amounts which under the Corporation Tax Acts may be deducted from or set against or treated as reducing profits of more than one description.

(2) Where for any relevant accounting period of a company—

(*a*) the corporation tax referable to the income of the company from the sale of goods is to be reduced under *section 448*, and

(*b*) a relevant deduction has been allowed against the total profits in computing the corporation tax chargeable,

then, the amount of the company's income to be taken into account in the definition of ''A'' in *section 147(1)* in respect of that relevant accounting period shall be reduced by an amount equal to such part of the relevant deduction as bears to the whole the same proportion as the amount of the income of the company from the sale of goods bears to the total income brought into charge to corporation tax for the relevant accounting period.

Dividends and other distributions at gross rate or of gross amount.

[FA80 s49; FA88 s32(3) and Sch2 PtII par1(g)]

149.—(1) Where a company makes a distribution which is a relevant distribution for the purposes of *section 147*, including part of a distribution treated under *section 147(4)* as a relevant distribution, and which is in respect of any right or obligation to which *section 139* applies, the company shall make a supplementary distribution of an amount equal to the excess of the amount of the tax credit which would have applied in respect of the relevant distribution, if *section 147(5)* had not been enacted, over the amount of the tax credit which in accordance with *section 147(5)* applies to the relevant distribution.

(2) Where the whole or part of a supplementary distribution under *subsection (1)* which is a relevant distribution for the purposes of *section 147* is received by a company in an accounting period, then, for the purposes of that section—

(*a*) the whole or part, as the case may be, of the supplementary distribution shall be an amount taken into account under the definition of ''E'', and

(*b*) the whole of the supplementary distribution shall be an amount taken into account under the definition of ''T'',

in the formulae in *subsections (1)* and *(3)* of *section 147*.

(3) Notwithstanding *section 136*, the recipient of a supplementary distribution under *subsection (1)* shall not be entitled to a tax credit in respect of it.

(4) In relation to any supplementary distribution within the meaning of *subsection (1)*, *section 152(1)* shall apply to the company so that the statement required by that section shall show, in addition to the particulars required to be given apart from this section, the separate amount of such supplementary distribution.

Tax credit for recipients of certain distributions.

[FA 93 s46(1) and (2)]

150.—(1) This section shall apply to a distribution made by a company which carries on a specified trade (being a specified trade within the meaning of *section 133(1)*) and which is a distribution by virtue only of *subparagraph (ii)*, *(iii) (I)* or *(v)* of *section 130(2)(d)*.

(2) Where a distribution to which this section applies or part of such a distribution is not otherwise a relevant distribution for the purposes of *section 147(5)*, then, notwithstanding any provision to the contrary in *section 147*, the distribution or part of it, as the case may be, shall be deemed for the purposes of *section 147(5)* to be a relevant distribution.

Appeals.

[FA80 s51]

151.—An appeal to the Appeal Commissioners shall lie on any question arising under this Chapter in the like manner as an appeal would lie against an assessment to corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 6

Distributions — supplemental

Explanation of tax credit to be annexed to interest and dividend warrants.

[CTA76 s5 and s83(5)]

152.—(1) Every warrant, cheque or other order drawn or made, or purporting to be drawn or made, in payment by any company of any dividend, or of any interest which is a distribution, shall have annexed to it or be accompanied by a statement in writing showing—

(*a*) the amount of the dividend (distinguishing a dividend or any part of it which is paid out of capital profits of the company) or interest paid,

(*b*) (whether or not the recipient is a person entitled to a tax credit in respect of the dividend or interest) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that dividend or interest, and

(*c*) the period for which that dividend or interest is paid.

(2) Where a company fails to comply with any of the provisions of *subsection (1)*, the company shall incur a penalty of £10 in respect of each offence, but the aggregate amount of the penalties imposed under this section on any company in respect of offences connected with any one distribution of dividends or interest shall not exceed £100.

(3) (*a*) A company which makes a distribution (not being a distribution to which *subsection (1)* refers) shall, if the recipient so requests in writing, furnish to the recipient a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of the distribution.

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(*b*) The duty imposed by this subsection shall be enforceable at the suit or instance of the person requesting the statement.

Distributions to non-residents.

[CTA76 s83(4); FA92 s38(2); FA94 s27(a); FA95 s39]

153.—(1) Where for any year of assessment the income of a person who for that year is neither resident nor ordinarily resident in the State includes an amount in respect of a distribution made by a company resident in the State—

(*a*) the liability of the person to income tax in respect of the distribution shall be reduced by the amount by which that liability, before it is reduced by the tax credit (if any) in respect of the distribution, exceeds the amount (which may be nil) of that tax credit, and

(*b*) the amount or value of the distribution shall be treated for the purposes of *sections 237* and *238* as not brought into charge to income tax.

(2) The Revenue Commissioners may by notice in writing require a company which has made a distribution to furnish them, within such time as they may direct, with such particulars as they consider necessary to identify persons benefiting from *subsection (1)*.

Attribution of distributions to accounting periods.

[FA89 s25; FA92 s37; FA97 s38]

154.—(1) (*a*) Notwithstanding *sections 140*, *141*, *144*, *145* and *147(2)* but subject to *subsections (2)* and *(3)*, where a company which makes a distribution specifies, by notice in writing given to the inspector within 6 months of the end of the accounting period in which the distribution is made, the extent to which the distribution is to be treated for the purposes of *sections 140*, *141*, *144*, *145* and *147* as made for any accounting period or periods, the distribution shall be so treated for those purposes irrespective of the period of account for which it was made.

(*b*) A part of a distribution treated under *paragraph (a)* as made for an accounting period shall be treated for the purposes of *sections 140*, *141*, *144* and *145*, and *subsections (1)*, *(2)* and *(4)* of *section 147*, as a separate distribution.

(2) A company may specify in accordance with *subsection (1)* that only so much of a distribution, or more than one distribution, made on any day is made—

(*a*) for any accounting period, as does not exceed the undistributed income of the company for that accounting period on that day, and

(*b*) for an accounting period or accounting periods ending more than 9 years before that day, as does not exceed the amount by which the amount of the distribution or the aggregate amount of the distributions, as the case may be, exceeds the aggregate of the undistributed income of the company on that day for accounting periods ending before, but not more than 9 years before, that day.

(3) Except where a distribution made by a company is—

(*a*) an interim dividend paid before the 6th day of April, 2002, by the directors of the company, pursuant to powers conferred on them by the articles of association of the company, in respect of the profits of the accounting period in which it is paid,

(*b*) a distribution by virtue only of *subparagraph (ii), (iii)(I)* or *(v)* of *section 130(2)(d)*,

(*c*) a distribution made in respect of shares of a type referred to in *paragraph (c)* of the definition of ''preference shares'' in *section 138(1)*, or

(*d*) made in an accounting period in which the company ceases or commences to be within the charge to corporation tax,

the company shall not be entitled to specify in accordance with *subsection (1)* that the distribution is to be treated as made for the accounting period in which it is made.

(4) Notwithstanding *subsection (3)* but subject to *subsection (5)*, a company shall not be entitled to specify in accordance with *subsection (1)* that a distribution, being an interim dividend or part of it, is to be treated as made for the accounting period in which it is made where—

(*a*) the circumstances of the company are such that, if the distribution or the part of it, as the case may be, were treated as made for the accounting period in which it is made, the company would be unable at the time when the interim dividend is paid to determine without recourse to estimation how much of the distribution or the part of it, as the case may be, would in accordance with *section 147(1)* be treated as a specified distribution for the purposes of *section 147(4)*, or

(*b*) that treatment of the distribution or the part of it, as the case may be, as made for the accounting period in which it is made, would facilitate any arrangement whereby the tax credit in respect of a dividend received by a shareholder could exceed the tax credit, if any, in respect of a dividend received by another shareholder, notwithstanding that the shareholdings of those shareholders carry the same or substantially similar rights in respect of dividends and capital.

(5) *Subsection (4)* shall apply to a company—

(*a*) the profits brought into charge to corporation tax of which are wholly or mainly referable to relevant trading operations within the meaning of *section 445(1)* or *446(1)*, and

(*b*) which—

(i) (I) is a trading or holding company owned by a consortium for the purposes of *section 165(1)(b)* or a 51 per cent subsidiary of a company resident in the State, and

(II) has not made an election under *section 165(2)(b)*,

or

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(ii) is referred to in *section 168(1)(a)(ii)* as ''the first-mentioned company'',

as if *subsection (4)(b)* were deleted.

(6) For the purposes of this section, the amount of the undistributed income of a company for an accounting period on any day shall be the amount of the distributable income of the company for the accounting period as determined by *section 147(3)*, reduced by the amount of each distribution, or part of each distribution, made before that day and on or after the 6th day of April, 1989, which is to be treated, whether under *section 147* or this section, as made for that accounting period.

Restriction of certain reliefs in respect of distributions out of certain exempt or relieved profits.

[FA90 s34(1)(a) and (b)(ii), (2), (3), (5) and (6)]

155.—(1) In this section, ''distribution'' has the same meaning as in the Corporation Tax Acts.

(2) (*a*) This section shall apply to shares in a company where any agreement, arrangement or understanding exists which could reasonably be considered to eliminate the risk that the person beneficially owning those shares—

(i) might, at or after a time specified in or implied by that agreement, arrangement or understanding, be unable to realise directly or indirectly in money or money's worth an amount so specified or implied, other than a distribution, in respect of those shares, or

(ii) might not receive an amount so specified or implied of distributions in respect of those shares.

(*b*) The reference in this subsection to the person beneficially owning shares shall be deemed to be a reference to both that person and any person connected with that person.

(*c*) For the purposes of this subsection, an amount specified or implied shall include an amount specified or implied in a foreign currency.

(3) Where any person receives a distribution in respect of shares to which this section applies and, apart from the application of this subsection to the distribution, *section 140(3)(a)*, *141(3)(a)*, *144(3)(a)* or *145* would apply to the distribution, then, notwithstanding any provision of the Tax Acts other than *subsection (4)* and for the purposes of those Acts—

(*a*) none of those sections shall apply to the distribution,

(*b*) that person shall not be entitled to a tax credit in respect of the distribution, and

(*c*) the distribution shall be treated as income chargeable to income tax or corporation tax, as the case may be, under Case IV of Schedule D.

(4) *Subsection (3)* shall not apply to a distribution received—

(*a*) by a company—

(i) none of the shares of which is beneficially owned by a person resident in the State, and

(ii) which, if this subsection had not been enacted, would not be chargeable to corporation tax in respect of any profits other than distributions which would be so chargeable by virtue of this section, or

(*b*) by a person not resident in the State.

(5) Notwithstanding *subsection (4)*, the liability to income tax or corporation tax of any person resident in the State, other than a company to which *paragraph (a)* of that subsection relates, shall be determined as if that subsection had not been enacted.

CHAPTER 7

Franked investment income

Franked investment income and franked payments.

[CTA76 s24]

156.—(1) Income of a company resident in the State which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit) shall be referred to in the Corporation Tax Acts as ''franked investment income'' of the company.

(2) The sum of the amount or value of a distribution made by a company resident in the State and the amount of the tax credit in respect of the distribution shall be referred to in the Corporation Tax Acts as ''a franked payment'', and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

Set-off of losses, etc. against franked investment income.

[CTA76 s25(1) to (7); FA86 s55(1)(a); FA92 s49(1)]

157.—(1) Where in any accounting period a company receives franked investment income, the company may on making a claim for the purpose require that the franked investment income or part of the franked investment income shall for all or any of the purposes mentioned in *subsection (2)* be treated as if it were a like amount of profits chargeable to corporation tax and, subject to *subsections (4)* and *(5)*, the company shall be entitled to have paid to it the value of the tax credit comprised in the income or in the part of the income so treated.

(2) The purposes for which a claim may be made under *subsection (1)* shall be—

(*a*) the deduction of charges on income under *section 243*;

(*b*) the setting of certain capital allowances against total profits under *section 308(4)*;

(*c*) the setting of trading losses against total profits under *section 396(2)*.

(3) Where a company makes a claim under this section for any accounting period, the reduction to be made in profits of that accounting period shall be made as far as may be in profits chargeable to corporation tax rather than in the amount treated as profits so chargeable under this section.

(4) Where a claim under this section relates to *section 308(4)* or *396(2)* and an accounting period of the company falls partly before and partly within the time mentioned in *section 308(4)* or *396(2)*, as the case may be, then—

(*a*) the restriction imposed by *section 308(4)* or *396(3)* on the amount of the relief shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as profits of the accounting period under this section; but

(*b*) relief under this section shall be given only against a part of the amount so treated proportionate to the part of the accounting period falling within the time mentioned in *section 308(4)* or *396(2)*, as the case may be.

(5) (*a*) Subject to *paragraph (b)*, where a company has obtained payment of a tax credit on a claim under this section or under *section 83(5)* and apart from such a claim any amount could be set off against or deducted from profits of a subsequent accounting period, the company may claim that the amount shall be so set off or deducted; but in that case, to the extent to which the amount was used to obtain payment of a tax credit, such tax credit shall be recoverable from the company by an assessment on it to income tax under Case IV of Schedule D for the year of assessment in which the subsequent accounting period ends on an amount the income tax on which at the standard rate for that year of assessment is equal to the amount of such tax credit.

(*b*) Relief under this subsection shall not be given against the profits of an accounting period if such relief could be given against the profits of an earlier accounting period.

(6) Where a company makes a claim under *subsection (5)* in respect of an accounting period, any income tax payable by virtue of that subsection shall, for the purposes of the charge, assessment, collection and recovery from the company of that tax and of any interest or penalties on that tax, be treated and described as corporation tax payable by that company for that accounting period, notwithstanding that for the other purposes of the Tax Acts it is income tax.

(7) The time limits for claims under this section shall be—

(*a*) if and in so far as the purpose for which the claim is made is the deduction of charges on income under *section 243* or the setting of capital allowances against total profits under *section 308(4)*, 2 years from the end of the accounting period in which the charges were paid or the capital allowances were to be made;

(*b*) if and in so far as the purpose for which the claim is made is the setting of trading losses against total profits under *section 396(2)*, 2 years from the end of the accounting period in which the trading loss is incurred;

(*c*) if the claim is a claim under *subsection (5)*, 2 years from the end of the accounting period in respect of which the claim is made.

(8) Any amount on which by virtue of this section income tax is charged on a company by an assessment under Case IV of Schedule D shall not be regarded as income of the company for any purpose of the Tax Acts.

PT.6
Set-off of loss brought forward or terminal loss against franked investment income in the case of financial concerns.

[CTA76 s26; FA83 s51; FA86 s55(1)(a) and (b); FA92 s49(2)]

158.—(1) Where in any accounting period a company receives franked investment income, the company, instead of or in addition to making a claim under *section 157*, may on making a claim for that purpose require that the franked investment income shall be taken into account for relief under *section 396(1)* or *397* up to the amount of such income received in the accounting period which, if chargeable to corporation tax, would have been so taken into account by virtue of *section 396(6)*, and (subject to the restriction to the amount of franked investment income) *subsections (2)* to *(7)* shall apply where the company makes a claim under this section for any accounting period.

(2) For the purposes of the claim, the amount to which the claim relates shall be treated as trading income of the accounting period.

(3) (*a*) The reduction to be made in trading income of an accounting period shall be made as far as may be in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(*b*) Where the claim is made under *section 397*, the loss in the trade shall be set primarily against income chargeable to corporation tax (exclusive of income so treated as chargeable by this section) for the accounting periods referred to in *section 397(1)*, and the set-off of the loss against franked investment income provided for by this section shall apply to the balance only of such loss which has not been set off under *section 397(1)* and the set-off against franked investment income of such balance of the loss as is referred to above shall be effected in a later rather than an earlier accounting period falling within the 3 years mentioned in *section 397(1)*.

(4) Where a company has obtained payment to it of a tax credit by virtue of this section on a claim under *section 396(1)* and apart from such a claim a loss could be set off against or deducted from profits of a subsequent accounting period, the company may claim that the loss shall be so set off or deducted; but in that case, to the extent to which the loss was used to obtain payment of a tax credit, such tax credit shall be recovered from the company by an assessment on it to income tax under Case IV of Schedule D for the year of assessment in which the subsequent accounting period ends on an amount the income tax on which at the standard rate for that year of assessment is equal to the amount of such tax credit, and the time limit for a claim under this subsection shall be 2 years from the end of the subsequent accounting period.

(5) Where a company makes a claim under *subsection (4)* in respect of an accounting period, any income tax payable by virtue of that subsection shall, for the purposes of the charge, assessment, collection and recovery from the company of that tax and of any interest or penalties on that tax, be treated and described as corporation tax payable by that company for that accounting period, notwithstanding that for the other purposes of the Tax Acts it is income tax.

(6) Where the claim relates to *section 397* and an accounting period of the company falls partly outside the 3 years mentioned in *subsection (1)* of that section—

(*a*) the restriction imposed by *subsection (2)* of that section on the amount of the reduction that may be made in the

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trading income of that period shall be applied only to any relief to be given apart from this section, and shall be applied without regard to any amount treated as trading income of the period by virtue of this section; but

(*b*) relief under this section shall be given only against a part of the amount so treated proportionate to the part of the accounting period falling within the 3 years in question.

(7) Any amount on which by virtue of this section income tax is charged on a company by an assessment under Case IV of Schedule D shall not be regarded as income of the company for any purpose of the Tax Acts.

CHAPTER 8

Advance corporation tax

Liability for advance corporation tax.

[FA83 s38]

159.—Except where otherwise provided for in this Chapter, where a company resident in the State makes a distribution, the company shall be liable to make a payment of corporation tax (to be known as ''advance corporation tax'') in accordance with this Chapter and, subject to *section 162*, the amount of advance corporation tax shall, whether or not the recipient of the distribution is a person entitled to a tax credit in respect of the distribution, be equal to the amount of the tax credit to which a recipient who is such a person is entitled in respect of the distribution.

Set-off of advance corporation tax.

[FA83 s39]

160.—(1) In this section, ''surplus advance corporation tax'', in relation to an accounting period, means advance corporation tax which cannot be set against the company's liability to corporation tax for that period because of a want or deficiency of income charged to corporation tax for that period or because of any relief from or reduction in the amount of corporation tax charged on such income for that period.

(2) Advance corporation tax paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set, in so far as possible, against the company's liability to corporation tax on any income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(3) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax, the company may, within 2 years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were advance corporation tax paid in respect of distributions made by the company in any of its accounting periods ending in the period of 12 months immediately preceding that accounting period (but so that the amount which is the subject of the claim is set, in so far as possible, against the company's liability for a more recent accounting period before a more remote one), and in so far as may be required corporation tax shall be repaid accordingly.

(4) Where in the case of any accounting period of a company there is an amount of surplus advance corporation tax which has not been dealt with under *subsection (3)*, that amount shall be treated for the purposes of this section (including any further application of this

subsection) as if it were advance corporation tax paid in respect of distributions made by the company in the next accounting period.

(5) For the purposes of this section, the income of a company charged to corporation tax for any accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne exclusive of the part of the profits attributable to chargeable gains, and that part shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.

(6) For the purposes of this section, a notice under *section 884* may require the inclusion in the return to be delivered by a company under that section of particulars of any surplus advance corporation tax carried forward in relation to that company under *subsection (4)*.

(7) This section shall apply subject to *sections 161* to *172*.

Rectification of excessive set-off of advance corporation tax.

[FA83 s40]

161.—Where an inspector discovers that any set-off of advance corporation tax under *section 160* ought not to have been made, or is or has become excessive, the inspector may make any such assessments as may in his or her judgment be required for recovering any tax that ought to have been paid and generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of the person concerned are what they would have been if only such set-offs had been made as ought to have been made.

Calculation of advance corporation tax where company receives distributions.

[FA83 s41]

162.—(1) In this section, references to a distribution or distributions shall not include references to a distribution or distributions—

(*a*) made before the 9th day of February, 1983, or

(*b*) treated under this Chapter as not being a distribution or distributions for the purposes of this section.

(2) Where in any accounting period a company receives a distribution, the company shall not be liable to pay advance corporation tax in respect of distributions made by it in that period unless the aggregate amount of the tax credits in respect of the distributions made by the company in the period exceeds the aggregate amount of the tax credits in respect of distributions received by it in the period.

(3) Where in any accounting period there is an excess referred to in *subsection (2)*, the amount of advance corporation tax payable by the company in respect of distributions made by it in that period shall be equal to the excess.

(4) Where the aggregate amount of the tax credits in respect of distributions received by a company in an accounting period exceeds the sum of—

(*a*) the aggregate amount of the tax credits (if any) in respect of distributions made by the company in that period, and

(*b*) the amount of any payment to the company under any provision of the Corporation Tax Acts of the tax credits in respect of distributions received by it in that period,

the excess shall be carried forward to the next accounting period and be treated for the purposes of this section (including any further application of this subsection) as a tax credit in respect of a distribution received by the company in that period.

(5) Where an inspector discovers that, because of the payment to a company of the tax credit in respect of a distribution received by it or for any other reason, the amount carried forward under *subsection (4)* to an accounting period (and treated as a tax credit in respect of a distribution received by the company in that period) is or has become excessive, the inspector may make any such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the amount of advance corporation tax (including interest on unpaid tax) payable by the company in respect of distributions made by it in that period is the same as it would have been if only such an amount had been so carried forward as ought to have been carried forward.

Tax credit recovered from company.

[FA83 s42(1)]

163.—Where under the Corporation Tax Acts a company obtains payment of a tax credit in respect of a distribution received by it and that tax credit or any part of that tax credit is subsequently recovered from the company by an assessment on it to income tax under Case IV of Schedule D, the amount of the tax credit so recovered shall be treated for the purposes of *section 162* as if it were a tax credit in respect of a distribution received by the company in the accounting period in which the amount is so recovered.

Restrictions as to payment of tax credit.

[FA83 s43]

164.—(1) Where—

(*a*) by virtue of *section 162* the amount of advance corporation tax payable by a company in respect of distributions made by it in an accounting period is less than the amount of advance corporation tax which would have been payable by the company in respect of those distributions if that section had not been enacted, and

(*b*) either—

(i) no amount is treated under *section 162(4)* as a tax credit in respect of a distribution received by the company in the accounting period, or

(ii) the aggregate amount of the tax credits in respect of distributions made by the company in the accounting period is greater than the amount which is so treated under *section 162(4)*,

then, an amount of the tax credits in respect of distributions received by the company in the accounting period shall not be available for payment to the company under the Corporation Tax Acts, and the amount which is not so available shall be the aggregate amount of the tax credits in respect of distributions received by the company in the accounting period or, if it is less, an amount determined by the formula—

where—

A is the aggregate amount of the tax credits in respect of distributions made by the company in the accounting period, and

B is the amount (if any) so treated under *section 162(4)*.

(2) For the purposes of *subsection (1)*, account shall not be taken of any distribution treated as not being a distribution for the purposes of *section 159* or *162* under any provision of this Chapter.

Group dividends.

[FA83 s44; FA92 s51(1); FA94 s55; FA96 s58(1)(a)]

165.—(1) (*a*) In this section—

''trading or holding company'' means a trading company or a company whose business consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent subsidiaries;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(*b*) For the purposes of this section, a company shall be owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by 5 or fewer companies of which none beneficially owns less than 5 per cent of that capital, and those companies are referred to in this section as ''the members of the consortium''.

(*c*) In determining for the purposes of this section whether one company is a 51 per cent subsidiary of another company, that other company shall be treated as not being the owner of—

(i) any share capital which it owns directly or indirectly in a company not resident in the State, or

(ii) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt.

(*d*) References in this section to a dividend or dividends received by a company shall apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(*e*) References in this section to dividends shall be construed as including references to distributions on the redemption, repayment or purchase by a company of its own shares or on the acquisition of those shares by another company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the company, and references to the receipt of dividends or to the payment of dividends shall be construed accordingly.

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(2) (*a*) Where a company receives dividends from another company (both being companies resident in the State) and the company paying the dividends is—

(i) a 51 per cent subsidiary of the other company or of a company so resident of which the other company is a 51 per cent subsidiary, or

(ii) a trading or holding company owned by a consortium the members of which include the company receiving the dividends,

then, subject to *paragraph (b)* and *subsections (3)* to *(6)*—

(I) any such dividends shall be treated as not being distributions for the purposes of either *section 159* or *162*, and

(II) the tax credits in respect of those dividends shall not be available for payment, under any provision of the Corporation Tax Acts, to the company by which the dividends are received.

(*b*) The company paying the dividends may elect by notice in writing to the inspector that this section shall not apply in relation to any amount of dividends specified in the notice.

(3) An election under *subsection (2)(b)* shall not be valid unless—

(*a*) the election is made before the due date for the payment, by the company paying the dividends, of advance corporation tax for the accounting period in which the dividends are paid, and

(*b*) the advance corporation tax in respect of those dividends has been paid.

(4) *Subsection (2)* shall not apply to any dividend received by a company on any investments if a profit on the sale of those investments would be treated as a trading receipt of the company.

(5) Where a company purports by virtue of *subsection (2)* to pay any dividend without paying advance corporation tax and advance corporation tax ought to have been paid, the inspector may make such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the company paying and the company receiving the dividend are, in so far as possible, the same as they would have been if the advance corporation tax had been duly paid.

(6) Where tax assessed under *subsection (5)* on the company which paid the dividend is not paid by that company before the expiry of 3 months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the company which received the dividend.

PT.6
Surrender of advance corporation tax.

[FA83 s45; FA91 s69(a)]

166.—(1) Where a company (in this section referred to as ''the surrendering company'') has paid an amount of advance corporation tax in respect of a dividend or dividends paid by it in an accounting period and the advance corporation tax has not been repaid, and if throughout the accounting period the surrendering company would be treated as a member of a group of companies for the purposes of group relief under *Chapter 5* of *Part 12*, the surrendering company may, on making a claim to the inspector, surrender the benefit of the whole or any part of that amount to any company (in this section referred to as ''the recipient company'') which for the purposes of group relief would be treated as a member of the same group of companies throughout that accounting period or (in such proportions as the surrendering company may determine) to any 2 or more such companies.

(2) Subject to *subsections (4)* and *(5)*, where the benefit of any amount of advance corporation tax (in this section referred to as ''the surrendered amount'') is surrendered under this section to a recipient company, then—

(*a*) if the advance corporation tax mentioned in *subsection (1)* was paid in respect of one dividend only or of dividends all of which were paid on the same date, the recipient company shall be treated for the purposes of *section 160* as having paid an amount of advance corporation tax equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid, and

(*b*) if the advance corporation tax mentioned in *subsection (1)* was paid in respect of dividends paid on different dates, the recipient company shall be treated for the purposes of *section 160* as having paid an amount of advance corporation tax equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.

(3) For the purposes of *subsection (2)(b)*, ''the appropriate part of the surrendered amount'', in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of that amount the same proportion as the amount of the tax credit in respect of that dividend bears to the total amount of the tax credits in respect of the dividends mentioned in that subsection.

(4) No amount of advance corporation tax which a recipient company is treated as having paid by virtue of *subsection (2)* shall, under *section 160(3*), be set against the recipient company's liability to corporation tax; but, in determining for the purposes of *subsections (3)* and *(4)* of *section 160* what amount (if any) of surplus advance corporation tax there is in any accounting period of a recipient company, an amount so treated as having been paid shall be set against the recipient company's liability to corporation tax before any advance corporation tax paid in respect of any distribution made by the recipient company.

(5) No amount of advance corporation tax which a recipient company is treated as having paid by virtue of *subsection (2)* shall be set against the recipient company's liability to corporation tax for any accounting period in which, or in any part of which, the recipient company and the surrendering company would not be treated for the purposes of group relief under *Chapter 5* of *Part 12* as members of the same group of companies.

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(6) Any claim under this section shall be made within 2 years after the end of the accounting period to which that claim relates and shall require the consent or consents of the recipient company or companies concerned (which shall be notified to the inspector in such form as the Revenue Commissioners may require).

(7) No amount of advance corporation tax which has been set off under *section 160(2)* or dealt with under *section 160(3)* shall be available for the purposes of a claim under this section, and no amount of advance corporation tax, the benefit of which has been surrendered under this section, shall be treated for the purposes of *section 160* as advance corporation tax paid by the surrendering company.

(8) A payment made by a recipient company to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of advance corporation tax, being a payment not exceeding that amount—

(*a*) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(*b*) shall not be regarded as a distribution or a charge on income for any of the purposes of the Corporation Tax Acts.

(9) References in this section to dividends shall be construed as including references to distributions on the redemption, repayment or purchase by a company of its own shares or on the acquisition of those shares by another company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the company, and references to the payment of dividends shall be construed accordingly.

Change of ownership of company: calculation and treatment of advance corporation tax.

[FA83 s46(1) to (8)]

167.—(1) In this section—

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

''investment company'' means a company (other than a holding company) whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived from the making of investments;

''holding company'' means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent subsidiaries and which are trading companies.

(2) This section shall apply if—

(*a*) within any period of 3 years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company, or

(*b*) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in ownership of the company.

(3) *Sections 160*, *162* and *171* shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership and the part after that change were 2 separate accounting periods, and for that purpose the income of the company charged to corporation tax for the accounting period (as determined in accordance with *section 160(5)*) shall be apportioned between those parts.

(4) No advance corporation tax paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall be treated under *section 160(4)* as paid by it in respect of distributions made in an accounting period ending after the change of ownership, and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership and the part after that change were 2 separate accounting periods.

(5) In *subsection (2)(a)*, ''major change in the nature or conduct of a trade or business'' includes—

(*a*) a major change in the type of property dealt in, or services or facilities provided, in the trade or business,

(*b*) a major change in customers, outlets or markets of the trade or business,

(*c*) a change whereby the company ceases to be a trading company and becomes an investment company or vice versa, or

(*d*) where the company is an investment company, a major change in the nature of the investments held by the company,

and this section shall apply even if the change is the result of a gradual process which began outside the period of 3 years mentioned in *subsection (2)(a)*.

(6) *Subsection (4)* shall apply to advance corporation tax which a company is treated as having paid by virtue of *section 166(2)* as it applies to advance corporation tax paid by the company.

(7) *Subsections (6)* and *(7)* of *section 401* shall apply for the purposes of this section as they apply for the purposes of that section and shall so apply as if—

(*a*) the reference in *paragraph 3* of *Schedule 9* to losses or capital allowances were a reference to advance corporation tax, and

(*b*) the reference in *paragraph 7* of *Schedule 9* to the 16th day of May, 1973, were a reference to the 9th day of February, 1983.

(8) *Section 1075* shall apply in relation to a notice given under *paragraph 8* of *Schedule 9* (as applied for the purposes of this section by *subsection (7)*) as it applies in relation to such a notice given for the purposes of *section 401*.

Pt.6
Distributions to certain non-resident companies.

[FA83 s47(1) to (3); FA91 s69(b); FA96 s58(1)(b)]

168.—(1) (*a*) This section shall apply to any distribution which—

(i) is a distribution by virtue only of *section 130(2)(d)(iv)*, or

(ii) is a dividend paid by a company (in this subsection referred to as ''the first-mentioned company'') to another company—

(I) (A) of which the first-mentioned company is a 75 per cent subsidiary, or

(B) which is a member of a consortium which owns the first-mentioned company,

and

(II) which is a resident of the United States of America or of a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made.

(*b*) For the purposes of *paragraph (a)*—

a company shall be owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by 5 or fewer companies of which none beneficially owns less than 5 per cent of that capital, and those companies are referred to as ''members of the consortium'';

''resident of the United States of America'' has the meaning assigned to it by the Convention set out in *Schedule 25*;

a company shall be regarded as being a resident of a territory, other than the United States of America, if it is so regarded under arrangements made with the government of that territory and having the force of law by virtue of *section 826*;

the reference to a dividend paid by a company shall be construed as including a reference to a distribution made by the company on the redemption, repayment or purchase of its own shares or by another company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the company on the acquisition of those shares.

(2) Where a company proves that this section applies to a distribution made by it and claims to have the distribution treated as not being a distribution for the purposes of *section 159*, then—

(*a*) the distribution shall be so treated, and

(*b*) notwithstanding any provision of the Tax Acts, the company to which the distribution is made shall not be entitled to a tax credit in respect of the distribution.

(3) Any claim under this section shall be made in the return made under *section 171* for the accounting period in which the distribution is made and shall require the consent, notified to the inspector in such form as the Revenue Commissioners may require, of the company to which the distribution is made. PT.6 S.168

169.—(1) In this section, ''relevant company'' means a company which— Non-distributing investment companies.

(*a*) is an investment company within the meaning of Part XIII of the Companies Act, 1990, [FA83 s47A; FA95 s37]

(*b*) is a qualified company within the meaning of *section 446*, and

(*c*) makes only one payment in respect of any share or security issued by it, being a payment made in the redemption, repayment or purchase of the share.

(2) Where a company proves that it is a relevant company and claims to have every payment made by it in the redemption, repayment or purchase of shares issued by it treated as not being or including a distribution for the purposes of *section 159*, then—

(*a*) every such payment shall be so treated, and

(*b*) notwithstanding any provision of the Tax Acts, the person to whom each such payment is made shall not be entitled to a tax credit in respect of it.

(3) A claim under this section shall be made in writing to the inspector in a form prescribed by the Revenue Commissioners and shall be submitted together with the company's return of profits for the accounting period which is the first accounting period in which the company makes any payment to which *subsection (2)* relates.

170.—(1) Subject to *subsection (2)*, this section shall apply to any interest which is a distribution and is paid by a company in respect of a security of the company within *subparagraph (ii)*, *(iii)(I)* or *(v)* of *section 130(2)(d)*, where— Interest in respect of certain securities. [FA83 s48(1), (2)(a), (3) and (4)]

(*a*) the security in respect of which the interest is paid was issued by the company to another company the ordinary trading activities of which include the lending of money, and

(*b*) either—

(i) the obligation to pay the interest was entered into before the 9th day of February, 1983, or

(ii) that obligation was entered into before the 9th day of June, 1983, pursuant to negotiations which were in progress on the 9th day of February, 1983;

but an obligation shall be treated for the purposes of *paragraph (b)* as having been entered into before a particular date only if before that date there was in existence a binding contract in writing under which that obligation arose and, where that contract was subject to the execution of a loan agreement, the loan agreement was duly executed before the 9th day of June, 1983.

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(2) Where a period of repayment (in this subsection referred to as ''the repayment period'') of either principal or interest provided for under an obligation referred to in *subsection (1)(b)* is extended on or after the 9th day of February, 1983 (whether or not the right to such an extension arose out of the terms of the contract creating that obligation), this section shall not apply to any interest which is paid in respect of the period by which the repayment period is extended.

(3) Interest to which this section applies shall not be treated as a distribution for the purposes of either *section 159* or *162*.

(4) The tax credit in respect of any interest to which this section applies shall not be available under the Corporation Tax Acts for payment to the person by whom the interest is received.

Returns, payment and collection of advance corporation tax.

[FA83 s50; FA90 s55; FA93 s41; FA97 s146(2) and Sch9 PtII]

171.—(1) This section shall apply for the purpose of regulating the time and manner in which advance corporation tax shall be accounted for and paid.

(2) A company shall make for each of its accounting periods in accordance with this section a return to the inspector of the distributions made and distributions received by the company in that period and of the advance corporation tax (if any) payable by the company in respect of the distributions made by it.

(3) A return for any period for which a return is required to be made under this section shall be made within 9 months from the end of that period.

(4) A return under this section need not be made by a company for an accounting period in which it has not made a distribution.

(5) (*a*) The return made by a company for an accounting period shall show—

(i) the amount of the distributions made by the company in the period and the amount of the tax credits in respect of those distributions,

(ii) the amount (if any) of the distributions received by the company in the period and the amount of the tax credits in respect of those distributions,

(iii) the amount of any tax credit carried forward to the accounting period and treated under *section 162(4)* as a tax credit in respect of a distribution received by the company in that period, and

(iv) the amount (if any) of advance corporation tax payable by the company in respect of the distributions made by it in the period.

(*b*) The return shall specify whether any amount of tax credits is included pursuant to *paragraph (a)(i)* in respect of distributions treated under this Chapter as not being distributions for the purposes of *section 159* and, if so, the amount so included.

(*c*) The return shall specify whether any amount of tax credits is included pursuant to *paragraph (a)(ii)* in respect of distributions treated under this Chapter as not being distributions for the purposes of *section 162* and, if so, the amount so included.

(*d*) Where any amount is included in the return pursuant to *subparagraph (ii)* or *(iii)* of *paragraph (a)*, the inclusion shall be treated as a claim by the company to have it taken into account in determining the amount of advance corporation tax payable, and any such claim shall be supported by such evidence as the inspector may reasonably require.

(6) (*a*) Advance corporation tax in respect of any distribution required to be included in a return under this section shall be due within 6 months from the end of the accounting period for which the return is required to be made under *subsection (3)* and shall be paid to the Collector-General, and advance corporation tax so due shall be payable by the company without the making of any assessment; but advance corporation tax which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made).

(*b*) Notwithstanding *paragraph (a)*, where the last day of the period within which the advance corporation tax is due is a day after the 28th day of the month in which that period ends, the advance corporation tax shall be due not later than the 28th day of that month.

(7) Where it appears to the inspector that there is a distribution which ought to have been and has not been included in a return, or where the inspector is dissatisfied with any return, the inspector may make an assessment on the company to the best of his or her judgment, and any advance corporation tax due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(8) Where a company makes a distribution on a date which does not fall within an accounting period of the company, an accounting period of the company shall be deemed to end on that date and the company shall make a return of that distribution within 6 months from that date, and the advance corporation tax for which the company is accountable in respect of that distribution shall be due at the time by which the return is to be made.

(9) Where any item has been incorrectly included in a return under this section as a distribution made or received by a company, the inspector may make any such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the resulting liabilities to tax, including interest on unpaid tax, whether of the company or of any other person, are in so far as possible the same as they would have been if the item had not been so included.

(10) (*a*) Advance corporation tax assessed on a company under this section shall be due within one month after the issue of the notice of assessment (unless due earlier under *subsection (6)* or *(8)*), subject to any appeal against the assessment; but no such appeal shall affect the date when tax is due under *subsection (6)* or *(8)*.

(*b*) On the determination of an appeal against an assessment under this section, any tax overpaid shall be repaid.

(11) (*a*) The provisions of the Corporation Tax Acts relating to—

(i) assessments to corporation tax,

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(ii) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(iii) the collection and recovery of corporation tax,

shall, in so far as they are applicable, apply to the assessment, collection and recovery of advance corporation tax under this section.

(*b*) Any tax payable in accordance with this section without the making of an assessment shall carry interest at the rate of 1.25 per cent for each month or part of a month from the date when the tax becomes due and payable until payment.

(*c*) *Subsections (2)* to *(4)* of *section 1080* shall apply in relation to interest payable under *paragraph (b)* as they apply in relation to interest payable under *section 1080*.

(*d*) In its application to any tax charged by any assessment to advance corporation tax in accordance with this section, *section 1080* shall apply as if *subsection (1)(b)* of that section were deleted.

(12) *Sections 861(2)(b)*, *884(5)*, *1071* and *1072* shall, with any necessary modifications, apply in relation to a return under this section as they apply in relation to a return under *section 884*.

(13) In this section, references to a distribution or distributions do not include references to a distribution or distributions made by a company not resident in the State.

Application of Corporation Tax Acts.

[FA83 s53]

172.—The provisions of the Corporation Tax Acts as to the charge, calculation and payment of corporation tax (including provisions conferring any relief or exemption) shall not be construed as affecting the charge, calculation or payment of advance corporation tax.

CHAPTER 9

Taxation of acquisition by a company of its own shares

Interpretation (*Chapter 9*).

[FA91 s59; FA97 s39(1)(a)]

173.—(1) In this Chapter—

''chargeable period'' means an accounting period of a company or a year of assessment;

''control'' shall be construed in accordance with *section 11*;

''group'' means a company which has one or more 51 per cent subsidiaries together with those subsidiaries;

''holding company'' means a company whose business, disregarding any trade carried on by it, consists wholly or mainly of the holding of the shares or securities of one or more companies which are its 51 per cent subsidiaries;

''inspector'', in relation to any matter, means an inspector of taxes appointed under *section 852*, and includes such other officer as the Revenue Commissioners shall appoint in that behalf;

''personal representative'' has the same meaning as in *section 799*;

''quoted company'' means a company whose shares, or any class of whose shares, are listed in the official list of a stock exchange or dealt in on an unlisted securities market;

''shares'' includes stock;

''trade'' does not include dealing in shares, securities, land, futures or traded options, and ''trading activities'' shall be construed accordingly;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

''trading group'' means a group the business of whose members taken together consists wholly or mainly of the carrying on of a trade or trades.

(2) References in this Chapter to the owner of shares shall be treated as references to the beneficial owner except where the shares are held on trusts other than bare trusts, or are comprised in the estate of a deceased person, and in such a case shall be treated as references to the trustees or, as the case may be, to the deceased's personal representatives.

(3) References in this Chapter to a payment made by a company include references to anything else that is, or but for *section 175* or *176* would be, a distribution.

(4) References in this Chapter to a company being unquoted shall be treated as references to a company which is neither a quoted company nor a 51 per cent subsidiary of a quoted company.

Taxation of dealer's receipts on purchase of shares by issuing company or by its subsidiary.

[FA91 s60]

174.—(1) In this section—

''fixed-rate preference shares'' means shares which—

(*a*) were issued wholly for new consideration,

(*b*) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities,

(*c*) do not carry any right to dividends other than dividends which are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and

(*d*) carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares quoted on a stock exchange in the State;

''new consideration'' has the meaning assigned to it by *section 135*.

(2) Where—

(*a*) a company purchases its own shares from a dealer, or

(*b*) a company, which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of another company, purchases the other company's shares from a dealer,

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the purchase price shall be taken into account in computing the profits of the dealer chargeable to tax under Case I or II of Schedule D, and accordingly—

(i) tax shall not be chargeable under Schedule F in respect of any distribution represented by any part of the price,

(ii) the dealer shall not be entitled to a tax credit in respect of the distribution under *section 136*, and

(iii) *sections 129* and *152* shall not apply to the distribution.

(3) For the purposes of *subsection (2)*, a person shall be a dealer in relation to shares of a company if the price received on their sale by the person other than to the company, or to a company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the company, would be taken into account in computing the person's profits chargeable to tax under Case I or II of Schedule D.

(4) Subject to *subsection (5)*, in *subsection (2)*—

(*a*) the reference to the purchase of shares includes a reference to the redemption or repayment of shares and the purchase of rights to acquire shares, and

(*b*) the reference to the purchase price includes a reference to any sum payable on redemption or repayment.

(5) *Subsection (2)* shall not apply in relation to—

(*a*) the redemption of fixed-rate preference shares, or

(*b*) the redemption, on binding terms settled before the 18th day of April, 1991, of other preference shares issued before that date,

if in either case the shares were issued to and continuously held by the person from whom they are redeemed.

Purchase of own shares by quoted company.

[FA91 s60A; FA97 s39(1)(b) and (2)]

175.—(1) Notwithstanding *Chapter 2* of this Part, references in the Tax Acts to distributions of a company shall be construed so as not to include references to a payment made on or after the 26th day of March, 1997, by a quoted company on the redemption, repayment or purchase of its own shares.

(2) References in *subsection (1)* to a quoted company shall include references to a company which is a member of a group of which a quoted company is a member.

Purchase of unquoted shares by issuing company or its subsidiary.

[FA91 s61]

176.—(1) Notwithstanding *Chapter 2* of this Part, references in the Tax Acts to distributions of a company, other than any such references in *sections 440* and *441*, shall be construed so as not to include references to a payment made by a company on the redemption, repayment or purchase of its own shares if the company is an unquoted trading company or the unquoted holding company of a trading group and either—

(*a*) (i) the redemption, repayment or purchase—

(I) is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 51 per cent subsidiaries, and

(II) does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is to enable the owner of the shares to participate in the profits of the company or of any of its 51 per cent subsidiaries without receiving a dividend,

and

(ii) the conditions specified in *sections 177* to *181*, in so far as applicable, are satisfied in relation to the owner of the shares, or

(*b*) the person to whom the payment is made—

(i) applies the whole or substantially the whole of the payment (apart from any sum applied in discharging that person's liability to capital gains tax, if any, in respect of the redemption, repayment or purchase) to discharging—

(I) within 4 months of the valuation date (within the meaning of section 21 of the Capital Acquisitions Tax Act, 1976) of a taxable inheritance of the company's shares taken by that person, a liability to inheritance tax in respect of that inheritance, or

(II) within one week of the day on which the payment is made, a debt incurred by that person for the purpose of discharging that liability to inheritance tax,

and

(ii) could not without undue hardship have otherwise discharged that liability to inheritance tax and, where appropriate, the debt so incurred.

(2) Where *subsection (1)* would apply to a payment made by a company which is a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of another company on the acquisition of shares of the other company if for the purposes of the Tax Acts other than this subsection—

(*a*) the payment were to be treated as a payment by the other company on the purchase of its own shares, and

(*b*) the acquisition by the subsidiary of the shares were to be treated as a purchase by the other company of its own shares,

then, notwithstanding *Chapter 2* of this Part, references in the Tax Acts to distributions of a company, other than references in *sections 440* and *441*, shall be construed so as not to include references to the payment made by the subsidiary.

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Conditions as to residence and period of ownership.

[FA91 s62]

177.—(1) In this section and in *sections 178* to *181*—

''the purchase'' means the redemption, repayment or purchase referred to in *section 176(1)(a);*

''the vendor'' means the owner of the shares immediately before the purchase is made.

(2) The vendor shall be resident and ordinarily resident in the State for the chargeable period in which the purchase is made and, if the shares are held through a nominee, the nominee shall also be so resident and ordinarily resident.

(3) The residence and ordinary residence of trustees shall be determined for the purposes of this section as they are determined under *section 574* for the purposes of the Capital Gains Tax Acts.

(4) The residence and ordinary residence of personal representatives shall be taken for the purposes of this section to be the same as the residence and ordinary residence of the deceased immediately before his or her death.

(5) The references in this section to a person's ordinary residence shall be disregarded in the case of a company.

(6) The shares shall have been owned by the vendor throughout the period of 5 years ending on the date of the purchase.

(7) Where at any time during that period the shares were transferred to the vendor by a person who was then the vendor's spouse living with the vendor, then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse living with the vendor, any period during which the shares were owned by that person shall be treated for the purposes of *subsection (6)* as a period of ownership by the vendor.

(8) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner or is the personal representative of a previous owner—

(*a*) any period during which the shares were owned by the previous owner or the previous owner's personal representatives shall be treated for the purposes of *subsection (6)* as a period of ownership by the vendor, and

(*b*) that subsection shall apply as if it referred to 3 years instead of 5 years.

(9) In determining whether the condition in *subsection (6)* is satisfied in a case where the vendor acquired shares of the same class at different times—

(*a*) shares acquired earlier shall be taken into account before shares acquired later, and

(*b*) any previous disposal by the vendor of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

(10) Where for the purposes of capital gains tax the time when a person acquired shares would be determined under *section 584*, *585*, *586*, *587* or *600*, then, unless the person is to be treated under *section 584(4)* as giving or becoming liable to give any consideration, other

than the old holding, for the acquisition of those shares, it shall be determined in the same way for the purposes of this section. Pt.6 S.177

Conditions as to reduction of vendor's interest as shareholder.

178.—(1) Where immediately after the purchase the vendor owns shares in the company, the vendor's interest as a shareholder shall, subject to *section 181*, be substantially reduced.

[FA91 s63]

(2) Where immediately after the purchase any associate of the vendor owns shares in the company, the combined interest as shareholders of the vendor and the vendor's associates shall, subject to *section 181*, be substantially reduced.

(3) The question whether the combined interests as shareholders of the vendor and the vendor's associates are substantially reduced shall be determined in the same way as is (under *subsections (4)* to *(7)*) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of the vendor's associates as well as the vendor's own interests.

(4) Subject to *subsection (5)*, the vendor's interest as a shareholder shall be taken to be substantially reduced only if the total nominal value of the shares owned by the vendor immediately after the purchase, expressed as a percentage of the issued share capital of the company at that time, does not exceed 75 per cent of the corresponding percentage immediately before the purchase.

(5) The vendor's interest as a shareholder shall not be taken to be substantially reduced where—

(*a*) the vendor would, if the company distributed all its profits available for the distribution immediately after the purchase, be entitled to a share of those profits, and

(*b*) that share, expressed as a percentage of the total of those profits, exceeds 75 per cent of the corresponding percentage immediately before the purchase.

(6) In determining for the purposes of *subsection (5)* the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which the person would be entitled for a year.

(7) In *subsection (5)*, ''profits available for distribution'' has the same meaning as it has for the purposes of Part IV of the Companies (Amendment) Act, 1983, except that for the purposes of that subsection the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased—

(*a*) in the case of every company, by £100, and

(*b*) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in *subsection (6)*, by a further amount equal to that required to make the distribution to which that person is entitled in accordance with that subsection,

and, where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment

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or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.

(8) References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

Conditions applicable where purchasing company is member of a group.

[FA91 s64]

179.—(1) Subject to *subsections (2)* to *(4)*, in this section, ''group'' means a company which has one or more 51 per cent subsidiaries but is not itself a 51 per cent subsidiary of any other company, together with those subsidiaries.

(2) Where the whole or a significant part of the business carried on by an unquoted company (in this section referred to as ''the successor company'') was previously carried on by—

(*a*) the company making the purchase, or

(*b*) a company which apart from this subsection is a member of a group to which the company making the purchase belongs,

the successor company and any company of which it is a 51 per cent subsidiary shall be treated as being a member of the same group as the company making the purchase, whether or not apart from this subsection the company making the purchase is a member of a group.

(3) *Subsection (2)* shall not apply if the successor company first carried on the business referred to in that subsection more than 3 years before the time of the purchase.

(4) For the purposes of this section, a company which has ceased to be a 51 per cent subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

(5) Subject to *section 181*, where the company making the purchase is immediately before the purchase a member of a group and immediately after the purchase—

(*a*) the vendor owns shares in one or more other members of the group, whether or not the vendor then owns shares in the company making the purchase, or

(*b*) the vendor owns shares in the company making the purchase and immediately before the purchase the vendor owned shares in one or more members of the group,

the vendor's interest as a shareholder in the group shall be substantially reduced.

(6) Subject to *section 181*, where the company making the purchase is immediately before the purchase a member of a group, and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and the vendor's associates shall be substantially reduced.

(7) Subject to *subsection (8)*, in *subsections (9)* to *(11)*, ''relevant company'' means the company making the purchase and any other company— Pt.6 S.179

(*a*) in which the vendor owns shares, and

(*b*) which is a member of the same group as the company making the purchase,

immediately before or immediately after the purchase.

(8) The question whether the combined interests as shareholders in the group of the vendor and the vendor's associates are substantially reduced shall be determined in the same way as is (under this section) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of the vendor's associates as well as the vendor's own interests, and references in *subsections (9)* to *(11)* to a relevant company shall be construed accordingly.

(9) The vendor's interest as a shareholder in the group shall be ascertained by—

(*a*) expressing the total nominal value of the shares owned by the vendor in each relevant company as a percentage of the issued share capital of the company,

(*b*) adding together the percentages so obtained, and

(*c*) dividing the result by the number of relevant companies (including any in which the vendor owns no shares).

(10) Subject to *subsection (11)*, the vendor's interest as a shareholder in the group shall be taken to be substantially reduced only if it does not exceed 75 per cent of the corresponding interest immediately before the purchase.

(11) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced where—

(*a*) the vendor would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more or them, and

(*b*) that share, or the aggregate of those shares, expressed as a percentage of the aggregate of the profits available for distribution of every member of the group which is—

(i) a relevant company, or

(ii) a 51 per cent subsidiary of a relevant company,

exceeds 75 per cent of the corresponding percentage immediately before the purchase.

(12) *Subsections (6)* and *(7)* of *section 178* shall apply for the purposes of *subsection (11)* as they apply for the purposes of *subsection (5)* of that section.

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Additional conditions.

[FA91 s65]

180.—(1) In this section, ''group'' has the same meaning as in *section 179*.

(2) Subject to *section 181*, the vendor shall not immediately after the purchase be connected with the company making the purchase or with any company which is a member of the same group as that company.

(3) Subject to *section 181*, the purchase shall not be part of a scheme or arrangement which is designed or likely to result in the vendor or any associate of the vendor having interests in any company such that, if the vendor or any associate of the vendor had those interests immediately after the purchase, any of the conditions in *sections 178* and *179* and *subsection (2)* could not be satisfied.

(4) A transaction occurring within one year after the purchase shall be deemed for the purposes of *subsection (3)* to be part of a scheme or arrangement of which the purchase is also part.

Relaxation of conditions in certain cases.

[FA91 s66]

181.—Where—

(*a*) any of the conditions in *sections 178* to *180* which are applicable are not satisfied in relation to the vendor, but

(*b*) the vendor proposed or agreed to the purchase in order to produce the result that the condition in *section 178(2)* or *179(6)*, which could not otherwise be satisfied in respect of the redemption, repayment or purchase of shares owned by a person of whom the vendor is an associate, could be satisfied in that respect,

then, if that result is produced by virtue of the purchase, *section 176(1)(a)* shall apply, as respects so much of the purchase as was necessary to produce that result, as if the conditions in *sections 178* to *180* were satisfied in relation to the vendor.

Returns.

[FA91 s67]

182.—(1) In this section, ''appropriate inspector'' and ''prescribed form'' have the same meanings respectively as in *Part 41*.

(2) Where a company makes a payment which it treats as one to which *subsection (1)* or *(2)* of *section 176* applies, the company shall make a return in a prescribed form to the appropriate inspector of—

(*a*) the payment,

(*b*) the circumstances by reason of which that subsection is regarded as applying to it, and

(*c*) such further particulars as may be required by the prescribed form.

(3) A company shall make a return under this section—

(*a*) within 9 months from the end of the accounting period in which it makes the payment, or

(*b*) if, at any time after the payment is made, the inspector by notice in writing requests such a form, within the time (which shall not be less than 30 days) limited by such notice.

(4) *Section 1071* shall, with any necessary modifications, apply in relation to a return under this section as it applies in relation to a return under *section 884*. PT.6 S.182

Information.

[FA91 s68(1) to (3)]

183.—(1) Where a company treats a payment made by it as one to which *subsection (1)(a)* or *(2)* of *section 176* applies, any person connected with the company who knows of any such scheme or arrangement affecting the payment as is mentioned in *section 180(3)* shall, within 60 days after that person first knows of both the payment and the scheme or arrangement, give a notice to the inspector containing particulars of the scheme or arrangement.

(2) Where the inspector has reason to believe that a payment treated by the company making it as one to which *subsection (1)(a)* or *(2)* of *section 176* applies may form part of a scheme or arrangement of the kind referred to in that section or in *section 180(3)*, the inspector may by notice require the company or any person connected with the company to furnish to the inspector within such time, not being less than 60 days, as may be specified in the notice—

(*a*) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and

(*b*) such other information as the inspector may reasonably require for the purposes of the provision in question and the company or that person has or can reasonably obtain.

(3) (*a*) The recipient of a payment treated by the company making it as a payment to which *subsection (1)(a)* or *(2)* of *section 176* applies shall, if so required by the inspector, state whether the payment in question is received on behalf of any person other than such recipient and, if so, the name and address of that person.

(*b*) Any person on whose behalf a payment referred to in *paragraph (a)* is received shall, if so required by the inspector, state whether the payment in question is received on behalf of any person other than that person and, if so, the name and address of that other person.

Treasury shares.

[FA91 s70]

184.—(1) For the purposes of the Tax Acts and the Capital Gains Tax Acts—

(*a*) any shares which are—

(i) held by the company as treasury shares, and

(ii) not cancelled by the company,

shall be deemed to be cancelled immediately on their acquisition by the company,

(*b*) a deemed or actual cancellation of shares shall be treated as giving rise to neither a chargeable gain nor an allowable loss, and

(*c*) a reissue by the company of treasury shares shall be treated as an issue of new shares by it.

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(2) For the purposes of this section, a reference to treasury shares shall be a reference to treasury shares within the meaning of section 209 of the Companies Act, 1990.

Associated persons.

[FA91 s71]

185.—(1) Any question whether a person is an associate of another person in relation to a company shall be determined for the purposes of *sections 176* to *183* and *section 186* in accordance with the following provisions:

(*a*) a husband and wife living together shall be associates of one another, a person under the age of 18 shall be an associate of his or her parents, and his or her parents shall be the person's associates;

(*b*) a person who has control of a company shall be an associate of the company and the company shall be the person's associate;

(*c*) where a person who has control of one company has control of another company, the second company shall be an associate of the first company;

(*d*) where shares in a company are held by trustees other than bare trustees, then, in relation to that company but subject to *subsection (2)*, the trustees shall be associates of—

(i) any person who directly or indirectly provided property to the trustees or has made a reciprocal arrangement for another person to do so,

(ii) any person who is by virtue of *paragraph (a)* an associate of a person within *subparagraph (i)*, and

(iii) any person who is or may become beneficially entitled to a material interest in the shares,

and any such person shall be an associate of the trustees;

(*e*) where shares in a company are comprised in the estate of a deceased person, then, in relation to that company, the deceased's personal representatives shall be associates of any person who is or may become beneficially entitled to a material interest in the shares, and any such person shall be an associate of the personal representatives;

(*f*) where one person is accustomed to act on the directions of another person in relation to the affairs of a company, then, in relation to that company, the 2 persons shall be associates of one another.

(2) *Subsection (1)(d)* shall not apply to shares held on trusts which—

(*a*) relate exclusively to an exempt approved scheme within the meaning of *Chapter 1* of *Part 30*, or

(*b*) are exclusively for the benefit of the employees, or the employees and directors, of the company referred to in *subsection (1)(d)* or of companies in a group to which that company belongs, or their dependants, and are not wholly or mainly for the benefit of directors or their relatives,

and for the purposes of this subsection ''group'' means a company which has one or more 51 per cent subsidiaries, together with those subsidiaries. PT.6 S.185

(3) For the purposes of *paragraphs (d)* and *(e)* of *subsection (1)*, a person's interest shall be a material interest if its value exceeds 5 per cent of the value of all the property held on the trusts or, as the case may be, comprised in the estate concerned, excluding any property in which the person is not and cannot become beneficially entitled to an interest.

Connected persons.

186.—(1) Any question whether a person is connected with a company shall, notwithstanding *section 10*, be determined for the purposes of *sections 176* to *183* in accordance with the following provisions:

[FA91 s72; FA96 s131(9)(a)]

(*a*) a person shall, subject to *subsection (2)*, be connected with a company if the person directly or indirectly possesses or is entitled to acquire more than 30 per cent of—

(i) the issued ordinary share capital of the company,

(ii) the loan capital and issued share capital of the company, or

(iii) the voting power in the company;

(*b*) a person shall be connected with a company if the person 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 any other circumstances, entitle the person to receive more than 30 per cent of the assets of the company which would then be available for distribution to equity holders of the company, and for the purposes of this paragraph—

(i) the persons who are equity holders of the company, and

(ii) the percentage of the assets of the company to which a person would be entitled,

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

(*c*) a person shall be connected with a company if the person has control of the company.

(2) Where a person—

(*a*) acquired or became entitled to acquire loan capital of a company in the ordinary course of a business carried on by the person, being a business which includes the lending of money, and

(*b*) takes no part in the management or conduct of the company,

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the person's interest in that loan capital shall be disregarded for the purposes of *subsection (1)(a)*.

(3) References in this section to the loan capital of a company are references to 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.

(4) For the purposes of this section—

(*a*) a person shall be treated as entitled to acquire anything which the person is entitled to acquire at a future date or will at a future date be entitled to acquire, and

(*b*) a person shall be assumed to have the rights or powers of the person's associates as well as the person's own rights or powers.

PART 7

Income Tax and Corporation Tax Exemptions

CHAPTER 1

Income tax

Exemption from income tax and associated marginal relief.

[FA80 s1; FA81 s1(a)(i); FA89 s1(a); FA91 s1(a)(iii); FA94 s1(a); FA97 s1(a)]

187.—(1) In this section, ''the specified amount'' means, subject to *subsection (2)*—

(*a*) in a case where the individual would apart from this section be entitled to a deduction specified in *section 461(a)*, £8,000, and

(*b*) in any other case, £4,000.

(2) (*a*) For the purposes of this section and *section 188*, where a claimant proves that he or she has living at any time during the year of assessment any qualifying child, then, subject to *subsection (3)*, the specified amount (within the meaning of this section or *section 188*, as the case may be) shall be increased for that year of assessment by—

(i) £450 in respect of the first such child,

(ii) £450 in respect of the second such child, and

(iii) £650 in respect of each such child in excess of 2.

(*b*) Any question as to whether a child is a qualifying child for the purposes of this section or *section 188* shall be determined on the same basis as it would be for the purposes of *section 462*, but without regard to *subsections (1)(b)*, *(2)*, *(3)* and *(5)* of that section.

(3) Where for any year of assessment 2 or more individuals are, or but for this subsection would be, entitled under *subsection (2)* to an increase in the specified amount (within the meaning of this section or *section 188*, as the case may be) in respect of the same child, the following provisions shall apply:

(*a*) only one such increase under *subsection (2)* shall be allowed in respect of each child;

(*b*) where such child is maintained by one individual only, that individual only shall be entitled to claim the increase;

(*c*) where such child is maintained by more than one individual, each individual shall be entitled to claim such part of the increase as is proportionate to the amount expended on the child by that individual in relation to the total amount paid by all individuals towards the maintenance of the child;

(*d*) in ascertaining for the purposes of this subsection whether an individual maintains a child and, if so, to what extent, any payment made by the individual for or towards the maintenance of the child which that individual is entitled to deduct in computing his or her total income for the purposes of the Income Tax Acts shall be deemed not to be a payment for or towards the maintenance of the child.

(4) Where for any year of assessment—

(*a*) an individual makes a claim for the purpose, makes a return in the prescribed form of his or her total income for that year and proves that such total income does not exceed the specified amount, the individual shall be entitled to exemption from income tax, or

(*b*) an individual makes a claim for the purpose, makes a return in the prescribed form of his or her total income for that year and proves that such total income does not exceed a sum equal to twice the specified amount, the individual shall be entitled to have the amount of income tax payable in respect of his or her total income for that year, if that amount would but for this subsection exceed a sum equal to 40 per cent of the amount by which his or her total income exceeds the specified amount, reduced to that sum.

Age exemption and associated marginal relief.

[FA80 s2(1) to (4) and (6) and (7); FA81 s1(b)(i); FA89 s1(b); FA94 s1(b); FA96 s132 and Sch5 PtI par12; FA97 s1(b)]

188.—(1) In this section and in *section 187*, ''total income'' has the same meaning as in *section 3*, but includes income arising outside the State which is not chargeable to tax.

(2) In this section, ''the specified amount'' means, subject to *section 187(2)*—

(*a*) in a case where the individual would apart from this section be entitled to a deduction specified in *section 461(a)*, £9,200; but, if at any time during the year of assessment either the individual or the spouse of the individual was of the age of 75 years or over, ''the specified amount'' means £10,400, and

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(*b*) in any other case, £4,600; but, if at any time during the year of assessment the individual was of the age of 75 years or over, ''the specified amount'' means £5,200.

(3) This section shall apply for any year of assessment to an individual who makes a claim for the purpose, makes a return in the prescribed form of his or her total income for that year and proves that, at some time during the year of assessment, either the individual, or, in a case where the individual would apart from this section be entitled to a deduction specified in *section 461(a)*, the spouse of the individual, was of the age of 65 years or over.

(4) Where an individual to whom this section applies proves that his or her total income for a year of assessment for which this section applies does not exceed the specified amount, the individual shall be entitled to exemption from income tax for that year.

(5) Where an individual to whom this section applies proves that his or her total income for a year of assessment for which this section applies does not exceed a sum equal to twice the specified amount, the individual shall be entitled to have the amount of income tax payable in respect of his or her total income for that year, if that amount would but for this subsection exceed a sum equal to 40 per cent of the amount by which his or her total income exceeds the specified amount, reduced to that sum.

(6) (*a*) *Subsections (1)* and *(2)* of *section 459* and *section 460* shall apply in relation to exemption from tax or any reduction of tax under this section or under *section 187* as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to *section 458*.

(*b*) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall, with any necessary modifications, apply in relation to exemption from tax or any reduction of tax under this section or under *section 187*.

Payments in respect of personal injuries.

[FA90 s5(1) and (2)]

189.—(1) This section shall apply to any payment made—

(*a*) to or in respect of an individual who is permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself, and

(*b*) following the institution by or on behalf of the individual of a civil action for damages in respect of personal injury giving rise to that mental or physical infirmity.

(2) Income (in this subsection referred to as ''the relevant income'') which arises to an individual, to or in respect of whom payments to which this section applies are made, from the investment in whole or in part of such payments or of income from such payments, being income consisting of dividends or other income which but for this section would be chargeable to tax under Schedule C or under Case III, IV (by virtue of *section 59)* or V of Schedule D or under Schedule F, shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts; but—

(*a*) the provisions of those Acts relating to the making of returns of total income shall apply as if this section had not been enacted, and

(*b*) this section shall not apply in a case unless the relevant income is the sole or main income of the individual to or in respect of whom the relevant income arises. Pt.7 S.189

Certain payments made by the Haemophilia HIV Trust.

[FA90 s7]

190.—(1) In this section, ''the Trust'' means the trust established by deed dated the 22nd day of November, 1989, between the Minister for Health and certain other persons, and referred to in that deed as ''the Haemophilia H.I.V. Trust'' or ''the HHT''.

(2) This section shall apply to income consisting of payments made by the trustees of the Trust to or in respect of a beneficiary under the Trust.

(3) Notwithstanding any provision of the Income Tax Acts, income to which this section applies shall be disregarded for the purposes of those Acts.

Taxation treatment of Hepatitis C compensation payments.

[FA96 s9]

191.—(1) In this section—

''the Scheme'' means the Scheme of Compensation for certain persons who have contracted Hepatitis C from the use of Human Immunoglobulin-Anti-D, whole blood or other blood products, which was approved by Dáil Éireann on the 13th day of December, 1995;

''the Tribunal'' means the Tribunal established by the Minister for Health on the 15th day of December, 1995, to administer the Scheme pursuant to Clause 22 of the Scheme.

(2) This section shall apply to any payment in respect of compensation—

(*a*) by the Tribunal, or

(*b*) following the institution by or on behalf of an individual of a civil action for damages in respect of personal injury,

to a person in respect of a right of action in relation to which the person may make a claim to the Tribunal under Clause 4 of the Scheme.

(3) For the purposes of the Income Tax Acts and notwithstanding any provision of those Acts to the contrary—

(*a*) income consisting of payments to which this section applies shall be disregarded, and

(*b*) any payment by the Tribunal to which this section applies shall be treated in all respects as if it were a payment made following the institution, by or on behalf of the person to or in respect of whom the payment is made, of a civil action for damages in respect of personal injury.

Payments in respect of thalidomide children.

[FA73 s19(1) and (2); FA78 s7]

192.—(1) This section shall apply to any payment made by the Minister for Health and Children or by the foundation known as Hilfswerk für behinderte Kinder to or in respect of any individual handicapped by reason of infirmity which can be linked with the taking by the individual's mother during her pregnancy of preparations containing thalidomide.

(2) Income which—

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(*a*) consists of a payment to which this section applies, or

(*b*) arises to a person to or in respect of whom payments to which this section applies are made, from the investment in whole or in part of such payments or of the income derived from such payments, being income consisting of dividends or other income which but for this section would be chargeable to tax under Schedule C or under Case III, IV (by virtue of *section 59*) or V of Schedule D or under Schedule F,

shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax Acts; but the provisions of those Acts relating to the making of returns of total income shall apply as if this section had not been enacted.

Income from scholarships.

[ITA67 s353; FA97 s11(1) and (2)]

193.—(1) (a) In this section—

''relevant body'' means a body corporate, unincorporated body, partnership, individual or other body;

''relevant scholarship'' means a scholarship provision for which is made, either directly or indirectly, by a relevant body or a person connected with the relevant body and where payments are made, either directly or indirectly, in respect of such a scholarship to—

(i) an employee or, where the relevant body is a body corporate, a director of the relevant body, or

(ii) the spouse, family, dependants or servants of such employee or director;

''scholarship'' includes an exhibition, bursary or other similar educational endowment.

(*b*) A person shall be regarded as connected with a relevant body for the purposes of this subsection if that person is—

(i) a trustee of a settlement, within the meaning of *section 10*, made by the relevant body, or

(ii) a relevant body,

and that person would be regarded as connected with the relevant body for the purposes of that section.

(2) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for the purposes of the Income Tax Acts.

(3) Nothing in *subsection (2)* shall be construed as conferring on any person other than the person holding the scholarship in question any exemption from a charge to income tax.

(4) Notwithstanding *subsection (3)*, a payment of income arising from a relevant scholarship which is— Pt.7 S.193

(*a*) provided from a trust fund or under a scheme, and

(*b*) held by a person receiving full-time instruction at a university, college, school or other educational establishment,

shall be exempt from income tax if, in the year of assessment in which the payment is made, not more than 25 per cent of the total amount of the payments made from that fund, or under that scheme, in respect of scholarships held as mentioned in *paragraph (b)* is attributable to relevant scholarships.

(5) If any question arises whether any income is income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment, the Revenue Commissioners may consult the Minister for Education and Science.

(6) Where a payment is made before the 6th day of April, 1998, in respect of a scholarship awarded before the 26th day of March, 1997, this section shall apply subject to *paragraph 2* of *Schedule 32*.

Child benefit.

194.—Child benefit payable under Part IV of the Social Welfare (Consolidation) Act, 1993, or any subsequent Act together with which that Act may be cited, shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

[ITA67 s354; FA97 s146(1) and Sch9 PtI par1(26)]

Exemption of certain earnings of writers, composers and artists.

195.—(1) In this section, ''work'' means an original and creative work which is within one of the following categories—

(*a*) a book or other writing;

(*b*) a play;

(*c*) a musical composition;

(*d*) a painting or other like picture;

(*e*) a sculpture.

[FA69 s2; FA89 s5; FA94 s14; FA95 s173(2); FA96 s14; FA97 s146(1) and Sch9 PtI par18(1)]

(2) (*a*) This section shall apply to an individual—

(i) who is—

(I) resident in the State and not resident elsewhere, or

(II) ordinarily resident and domiciled in the State and not resident elsewhere, and

(ii) (I) who is determined by the Revenue Commissioners, after consideration of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, to have written, composed or executed, as the case may

be, either solely or jointly with another individual, a work or works generally recognised as having cultural or artistic merit, or

(II) who has written, composed or executed, as the case may be, either solely or jointly with another individual, a particular work which the Revenue Commissioners, after consideration of the work and of any evidence in relation to the matter which the individual submits to them and after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, determine to be a work having cultural or artistic merit.

(*b*) The Revenue Commissioners shall not make a determination under this subsection unless—

(i) the individual concerned duly makes a claim to the Revenue Commissioners for the determination, being (where the determination is sought under *paragraph (a)(ii)(II)*) a claim made after the publication, production or sale, as the case may be, of the work in relation to which the determination is sought, and

(ii) the individual complies with any request to him or her under *subsection (4)*.

(3) (*a*) An individual to whom this section applies and who duly makes a claim to the Revenue Commissioners in that behalf shall, subject to *paragraph (b)*, be entitled to have the profits or gains arising to him or her from the publication, production or sale, as the case may be, of a work or works in relation to which the Revenue Commissioners have made a determination under *clause (I)* or *(II)* of *subsection (2)(a)(ii)*, or of a work of the individual in the same category as that work, and which apart from this section would be included in an assessment made on him or her under Case II of Schedule D, disregarded for the purposes of the Income Tax Acts.

(*b*) The exemption authorised by this section shall not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in respect of which the Revenue Commissioners make a determination referred to in *clause (I)* or *(II)* of *subsection (2)(a)(ii)*, as the case may be.

(*c*) The relief provided by this section may be given by repayment or otherwise.

(4) (*a*) Where an individual makes a claim to which *subsection (2)(a)(ii)(I)* relates, the Revenue Commissioners may serve on the individual a notice or notices in writing requesting the individual to furnish to them within such period as may be specified in the notice or notices such information, books, documents or other evidence as may appear to them to be necessary for the purposes of a determination under *subsection (2)(a)(ii)(I)*.

(*b*) Where an individual makes a claim to which *subsection (2)(a)(ii)(II)* relates, the individual shall—

(i) in the case of a book or other writing or a play or musical composition, if the Revenue Commissioners so request, furnish to them 3 copies, and

(ii) in the case of a painting or other like picture or a sculpture, if the Revenue Commissioners so request, provide, or arrange for the provision of, such facilities as the Revenue Commissioners may consider necessary for the purposes of a determination under *subsection (2)(a)(ii)(II)* (including any requisite permissions or consents of the person who owns or possesses the painting, picture or sculpture).

(5) The Revenue Commissioners may serve on an individual who makes a claim under *subsection (3)* a notice or notices in writing requiring the individual to make available within such time as may be specified in the notice all such books, accounts and documents in the individual's possession or power as may be requested, being books, accounts and documents relating to the publication, production or sale, as the case may be, of the work in respect of the profits or gains of which exemption is claimed.

(6) (*a*) In this subsection, ''relevant period'' means, as respects a claim in relation to a work or works or a particular work, the period of 6 months commencing on the date on which a claim is first made in respect of that work or those works or the particular work, as the case may be.

(*b*) Where—

(i) an individual—

(I) has made due claim (in this subsection referred to as a ''claim'') to the Revenue Commissioners for a determination under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in relation to a work or works or a particular work, as the case may be, that the individual has written, composed or executed, as the case may be, solely or jointly with another individual, and

(II) as respects the claim, has complied with any request made to the individual under *subsection (4)* or *(5)* in the relevant period,

and

(ii) the Revenue Commissioners fail to make a determination under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in relation to the claim in the relevant period,

the individual may, by notice in writing given to the Revenue Commissioners within 30 days after the end of the relevant period, appeal to the Appeal Commissioners on the grounds that—

(A) the work or works is or are generally recognised as having cultural or artistic merit, or

(B) the particular work has cultural or artistic merit,

as the case may be.

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(7) The Appeal Commissioners shall hear and determine an appeal made to them under *subsection (6)* as if it were an appeal against an assessment to income tax and, subject to *subsection (8)*, the provisions of the Income Tax Acts relating to such appeals and to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(8) (*a*) On the hearing of an appeal made under *subsection (6)*, the Appeal Commissioners may—

(i) after consideration of—

(I) any evidence in relation to the matter submitted to them by or on behalf or the individual concerned and by or on behalf of the Revenue Commissioners, and

(II) in relation to a work or works or a particular work, the work or works or the particular work,

and

(ii) after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them,

determine that the individual concerned has written, composed or executed, as the case may be, either solely or jointly with another individual—

(A) a work or works generally recognised as having cultural or artistic merit, or

(B) a particular work which has cultural or artistic merit,

and, where the Appeal Commissioners so determine, the individual shall be entitled to relief under *subsection (3)(a)* as if the determination had been made by the Revenue Commissioners under *clause (I)* or *(II)* of *subsection (2)(a)(ii)*, as the case may be.

(*b*) This subsection shall, subject to any necessary modifications, apply to the rehearing of an appeal by a judge of the Circuit Court and, to the extent necessary, to the determination by the High Court of any question or questions of law arising on the statement of a case for the opinion of the High Court.

(9) For the purposes of the hearing or rehearing of an appeal made under *subsection (6)*, the Revenue Commissioners may nominate any of their officers to act on their behalf.

(10) For the purposes of determining the amount of the profits or gains to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionment of receipts and expenses as may be necessary.

(11) Notwithstanding any exemption provided by this section, the provisions of the Income Tax Acts regarding the making by the individual of a return of his or her total income shall apply as if the exemption had not been authorised.

(12) (*a*) An Comhairle Ealaíon and the Minister for Arts, Heritage, Gaeltacht and the Islands shall, with the consent of the Minister for Finance, draw up guidelines for determining for the purposes of this section whether a work within a category specified in *subsection (1)* is an original and creative work and whether it has, or is generally recognised as having, cultural or artistic merit.

(*b*) Without prejudice to the generality of *paragraph (a)*, a guideline under that paragraph may—

(i) consist of a specification of types or kinds of works that are not original and creative or that have not, or are not generally recognised as having, cultural or artistic merit, including a specification of works that are published, produced or sold for a specified purpose, and

(ii) specify criteria by reference to which the questions whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

(13) (*a*) Where a claim for a determination under *subsection (2)* is made to the Revenue Commissioners, the Revenue Commissioners shall not determine that the work concerned is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines under *subsection (12)* for the time being in force.

(*b*) *Paragraph (a)* shall, with any necessary modifications, apply to—

(i) a determination by the Appeal Commissioners under *subsection (8)* on an appeal to them under *subsection (6)* in relation to a claim mentioned in *paragraph (a)*, and

(ii) a rehearing by a judge of the Circuit Court of an appeal mentioned in *subparagraph (i)* and, to the extent necessary, to the determination by the High Court of any question of law arising on such an appeal or rehearing and specified in the statement of a case for the opinion of the High Court, by the Appeal Commissioners or, as the case may be, a judge of the Circuit Court.

(14) Where a determination has been or is made under *clause (I)* or *(II)* of *subsection (2)(a)(ii)* in relation to a work or works of a person, *subsection (3)(a)* shall not apply to any other work of that person that is in the same category as such work or works and is or was first published, produced or sold on or after the 3rd day of May, 1994, unless that other work is one that complies with the guidelines under *subsection (12)* for the time being in force and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit.

(15) On application to the Revenue Commissioners in that behalf by any person, the Revenue Commissioners shall supply the person free of charge with a copy of any guidelines under *subsection (12)* for the time being in force.

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Expenses of members of judiciary.

[FA94 s164]

196.—(1) In this section, ''a member of the Judiciary'' means—

(*a*) a judge of the Supreme Court,

(*b*) a judge of the High Court,

(*c*) a judge of the Circuit Court, or

(*d*) a judge of the District Court.

(2) An allowance payable by means of an annual sum to a member of the Judiciary in accordance with section 5 of the Courts of Justice Act, 1953, and which has been determined, in accordance with subsection (2)(*c*) of that section, by the Minister for Justice, Equality and Law Reform in consultation with the Minister for Finance to be in full settlement of the expenses which such a person is obliged to incur in the performance of his or her duties as a member of the Judiciary, and which are not otherwise reimbursed either directly or indirectly out of moneys provided by the Oireachtas, shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

(3) *Sections 114* and *115* shall not apply in relation to expenses in full settlement of which an allowance referred to in *subsection (2)* is payable, and no claim shall lie under those sections in respect of those expenses.

Bonus or interest paid under instalment savings schemes.

[FA70 s18]

197.—Any bonus or interest payable to an individual under an instalment savings scheme (within the meaning of section 53 of the Finance Act, 1970) shall be disregarded for the purposes of the Income Tax Acts if, or in so far as, the bonus or interest is payable in respect of an amount not exceeding the amount permitted under the scheme to be paid by the individual.

Certain interest not to be chargeable.

[FA95 s40]

198.—Notwithstanding any other provision of the Income Tax Acts but without prejudice to any charge under the Corporation Tax Acts on the profits of such person, a person not ordinarily resident in the State shall not be chargeable to income tax in respect of interest paid by a company in the course of carrying on relevant trading operations within the meaning of *section 445* or *446*.

Interest on certain securities.

[ITA67 s345; FA74 s86 and Sch 2 PtI]

199.—Income tax shall not be chargeable in respect of the interest on securities issued by the Minister for Finance for the purpose of being used in payment of income tax, and such interest shall not be reckoned in computing income for the purposes of the Income Tax Acts.

Certain foreign pensions.

[F(MP)A68 s9; FA97 s146(1) and Sch9 PtI par3]

200.—(1) In this section, ''tax'', in relation to any country, means a tax which is chargeable and payable under the law of that country and which corresponds to income tax in the State.

(2) This section shall apply to any pension, benefit or allowance which—

(*a*) is given in respect of past services in an office or employment or is payable under the provisions of the law of the country in which it arises which correspond to the provisions of Chapter 12, 16 or 17 of Part II of, or Chapter 4 or 6 of Part III of, the Social Welfare

(Consolidation) Act, 1993, or any subsequent Act together with which that Act may be cited, and

(*b*) if it were received by a person who, for the purposes of tax of the country in which it arises, is resident in that country and is not resident elsewhere, would not be regarded as income for those purposes.

(3) In *section 18(2)*, the reference in paragraph (*f*) of Case III to income arising from possessions outside the State shall be deemed not to include a reference to any pension, benefit or allowance to which this section applies.

Exemptions and reliefs in respect of tax under *section 123.*

[ITA67 s115 and Sch3 pars 12 and 13; FA72 s13(4) and Sch1 PtIII par2; FA80 s10(1)(a) and (c); FA92 s18(2); FA93 s7(1) and s8(a); FA97 s12]

201.—(1) (*a*) In this section and in *Schedule 3*—

"the basic exemption" means £6,000 together with £500 for each complete year of the service, up to the relevant date, of the holder in the office or employment in respect of which the payment is made;

"foreign service", in relation to an office or employment, means service such that—

(i) tax was not chargeable in respect of the emoluments of the office or employment,

(ii) the office or employment being an office or employment within Schedule E, tax under that Schedule was not chargeable in respect of the whole of the emoluments of that office or employment, or

(iii) the office or employment being regarded as a possession in a place outside the State within the meaning of Case III of Schedule D, tax in respect of the income arising from that office or employment did not fall to be computed in accordance with *section 71(1)*;

"the relevant date", in relation to a payment not being a payment in commutation of annual or other periodical payments, means the date of the termination or change in respect of which it is made and, in relation to a payment in commutation of annual or other periodical payments, means the date of the termination or change in respect of which those payments would have been made.

(*b*) In this section—

"control", in relation to a body corporate, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any power conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership;

references to an employer or to a person controlling or controlled by an employer include references to such employer's or such person's successors.

(*c*) For the purposes of this section and of *Schedule 3*, offices or employments in respect of which payments to which *section 123* applies are made shall be treated as held under associated employers if, on the date which is the relevant date in relation to any of those payments, one of those employers is under the control of the other or of a third person who controls or is under the control of the other on that or any other such date.

(2) Income tax shall not be charged by virtue of *section 123* in respect of the following payments—

(*a*) any payment made in connection with the termination of the holding of an office or employment by the death of the holder, or made on account of injury to or disability of the holder of an office or employment;

(*b*) any sum chargeable to tax under *section 127*;

(*c*) a benefit provided in pursuance of any retirement benefits scheme where under *section 777* the employee (within the meaning of that section) was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit;

(*d*) a benefit paid in pursuance of any scheme or fund described in *section 778(1)*.

(3) *Subsection (2)(d)* shall not apply to the following payments—

(*a*) a termination allowance payable in accordance with section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and any regulations made under that section,

(*b*) a severance allowance or a special allowance payable in accordance with Part V (inserted by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992) of the Ministerial and Parliamentary Offices Act, 1938,

(*c*) a special severance gratuity payable under section 7 of the Superannuation and Pensions Act, 1963, or any analogous payment payable under or by virtue of any other enactment, or

(*d*) a benefit paid in pursuance of any statutory scheme (within the meaning of *Chapter 1* of *Part 30*) established or amended after the 10th day of May, 1997, other than a payment representing normal retirement benefits, which

is made in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment in circumstances—

(I) of redundancy or abolition of office, or

(II) for the purposes of facilitating improvements in the organisation of the employing company, organisation, Department or other body by which greater efficiency or economy can be effected,

and, for the purposes of this paragraph, ''normal retirement benefits'' means recognised superannuation benefits customarily payable to an individual on retirement at normal retirement date under the relevant statutory scheme, notwithstanding that, in relation to the termination of an office or employment in the circumstances described in this paragraph, such benefits may be paid earlier than the designated retirement date or may be calculated by reference to a period greater than the individual's actual period of service in the office or employment, and includes benefits described as short service gratuities which are calculated on a basis approved by the Minister for Finance.

(4) Income tax shall not be charged by virtue of *section 123* in respect of a payment in respect of an office or employment in which the holder's service included foreign service where the foreign service comprised—

(*a*) in any case, three-quarters of the whole period of service down to the relevant date,

(*b*) where the period of service down to the relevant date exceeded 10 years, the whole of the last 10 years, or

(*c*) where the period of service down to the relevant date exceeded 20 years, one-half of that period, including any 10 of the last 20 years.

(5) (*a*) Income tax shall not be charged by virtue of *section 123* in respect of a payment of an amount not exceeding the basic exemption and, in the case of a payment which exceeds that amount, shall be charged only in respect of the excess.

(*b*) Notwithstanding *paragraph (a)*, where 2 or more payments in respect of which tax is chargeable by virtue of *section 123*, or would be so chargeable apart from *paragraph (a)*, are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments held under the same employer or under associated employers, that paragraph shall apply as if those payments were a single payment of an amount equal to that aggregate amount, and the amount of any one payment chargeable to tax shall be ascertained as follows:

(i) where the payments are treated as income of different years of assessment, the amount of the basic exemption shall be deducted from a payment treated as income of an earlier year before any payment treated as income of a later year, and

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(ii) subject to *subparagraph (i)*, the amount of the basic exemption shall be deducted rateably from the payments according to their respective amounts.

(6) The person chargeable to income tax by virtue of *section 123* in respect of any payment may, before the expiration of 6 years after the end of the year of assessment of which that payment is treated as income, by notice in writing to the inspector claim any such relief in respect of the payment as is applicable to the payment under *Schedule 3* and, where such a claim is duly made and allowed, all such repayments and assessments of income tax shall be made as are necessary to give effect to such a claim.

(7) For the purposes of any provision of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's income, that income shall be calculated without regard to any payment chargeable to tax by virtue of *section 123*.

Relief for agreed pay restructuring.

[FA97 s14]

202.—(1) (*a*) In this section—

''basic pay'', in relation to a participating employee of a qualifying company, means the employee's emoluments (other than non-pecuniary emoluments) from the company in respect of an employment held with the company;

''collective agreement'' means an agreement entered into by a company with, or on behalf of, one or more than one body representative of employees of the company where each such body is either the holder of a negotiation licence under the Trade Union Act, 1941, or is an excepted body within the meaning of section 6 of that Act as amended by the Trade Union Act, 1942;

''control'', in relation to a qualifying company, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to the qualifying company or any other qualifying company, or

(ii) by virtue of any power conferred by the articles of association or any other document regulating the qualifying company or any other qualifying company,

that the affairs of the first-mentioned qualifying company are conducted in accordance with the wishes of such person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership;

''emoluments'' has the same meaning as in *section 472*;

''employment'' means an office or employment of profit such that any emoluments of the office or employment of profit are to be charged to tax under Schedule E;

''the Minister'' means the Minister for Enterprise, Trade and Employment;

''participating employee'', in relation to a qualifying company, means a qualifying employee who is a participant in a relevant agreement with the company;

''qualifying company'' means a company to which the Minister has issued a certificate under *subsection (2)* which has not been withdrawn under that subsection;

''qualifying employee'', in relation to a qualifying company, means an employee of the company in receipt of emoluments from the company;

''reduced basic pay'', in relation to a participating employee, means the basic pay of the employee as reduced by the substantial reduction provided for in the relevant agreement concerned;

''relevant agreement'', in relation to a qualifying company, means a collective agreement covering all or substantially all of the qualifying employees of the company—

(*a*) which provides amongst other things for—

(i) a substantial reduction in the basic pay of the participating employees,

(ii) the payment of the reduced basic pay to the participating employees for the duration of the relevant period, and

(iii) the payment to the participating employees of a lump sum to compensate for that reduction,

and

(*b*) which is registered with the Labour Relations Commission;

''relevant date'', in relation to a relevant agreement, means the date the relevant agreement was registered with the Labour Relations Commission;

''relevant period'', in relation to a relevant agreement, means the period of 5 years commencing on the relevant date in relation to that agreement;

''specified amount'', in relation to a participating employee, means £6,000 together with £200 for each complete year of service (subject to a maximum of 20 years), up to the relevant date, of the employee in the service of the qualifying company.

(*b*) For the purposes of this section—

(i) a reduction in the basic pay of a participating employee shall not be regarded as substantial unless it amounts to at least 10 per cent of the average for one year of the employee's basic pay ascertained by reference to such pay for the 2 year period ending on the relevant date, and

(ii) employments in respect of which payments to which this section applies are made shall be treated as held with associated qualifying companies if, on the date of any of those payments, one of those companies is under the control of the other company or of a third person who controls or is under the control of the other company on that or any other such date.

(2) (*a*) The Minister, on the making of an application in that behalf by a company, may, in accordance with guidelines laid down for the purpose by the Minister with the agreement of the Minister for Finance, give a certificate to a company stating that for the purposes of this section it may be treated as a qualifying company.

(*b*) The Minister may not grant a certificate to a company under this subsection unless the Minister is satisfied, on advice from the Labour Relations Commission, that—

(i) the company is faced with an actual or imminent substantial adverse change to its competitive environment which will determine its survival,

(ii) to meet that change and achieve its survival, it is necessary for the company to enter into a relevant agreement with its qualifying employees, and

(iii) the relevant agreement into which it is proposed to enter is designed for the sole purpose of addressing, and can be reasonably expected to address, that change.

(*c*) An application under *paragraph (a)* shall be in such form as the Minister may direct and shall contain such information in relation to the company, its trade or business and the terms of the relevant agreement into which it proposes to enter with its qualifying employees as may be specified in the guidelines referred to in that paragraph.

(*d*) A certificate issued by the Minister under *paragraph (a)* shall contain such conditions as the Minister considers appropriate and specifies in the certificate.

(*e*) Any cost incurred by the Labour Relations Commission in providing advice to the Minister in accordance with *paragraph (b)* shall be reimbursed by the company concerned to the Commission.

(*f*) Where during the relevant period a qualifying company fails to comply with any of the conditions to which a certificate given to it under *paragraph (a)* is subject, the Minister may, by notice in writing to the company, revoke the certificate.

(*g*) The Minister may not give a certificate under *paragraph (a)* at any time on or after the 6th day of April, 2000.

(3) (*a*) An agreement shall not be a relevant agreement for the purposes of this section unless and until it has been registered with the Labour Relations Commission.

(*b*) A qualifying company shall, within the period of one month from the date of each of the first 5 anniversaries of the relevant date or such longer period as the Labour Relations Commission may in writing allow, confirm to the Commission, in such form as the Commission shall direct, that all the terms of the relevant agreement, to the extent that they are still relevant, continue to be in force.

(4) Nothing in this section shall be construed as preventing a participating employee from receiving during the relevant period an increase in basic pay—

(*a*) which is—

(i) provided for under the terms of the agreement known as Partnership 2000 for Inclusion, Employment and Competitiveness entered into by the Government and the Social Partners in December, 1996, or any similar increase under an agreement, whether negotiated on a national basis or otherwise, which succeeds that agreement or which succeeds an agreement which succeeds the first-mentioned agreement, or

(ii) part of an incremental scale under the terms of the employee's contract of employment and which was in place 12 months before the relevant date,

and

(*b*) which is determined by reference to the employee's reduced basic pay or that pay as subsequently increased as provided for in *paragraph (a)*.

(5) (*a*) This section shall apply to a payment made to a participating employee by a qualifying company under a relevant agreement.

(*b*) A payment to which this section applies shall, to the extent that the payment does not exceed the specified amount, be exempt from any charge to income tax.

(*c*) Where 2 or more payments to which this section applies are made to or in respect of the same person in respect of the same employment or in respect of different employments held with the same qualifying company or an associated qualifying company, this subsection shall apply as if those payments were a single payment of an amount equal to the aggregate of those payments, and the amount of any payment chargeable to income tax shall be ascertained as follows:

(i) where the payments are treated as income of different years of assessment, the specified amount shall be deducted from a payment treated as income of an

earlier year before any payment treated as income of a later year, and

(ii) subject to *subparagraph (i)*, the specified amount shall be deducted from a payment made earlier in a year of assessment before any payment made later in that year.

(6) Where during the relevant period—

(*a*) the Minister revokes, in accordance with *paragraph (f)* of *subsection (2)*, a certificate given to a company under *paragraph (a)* of that subsection,

(*b*) a qualifying company fails to meet the requirements of *subsection (3)(b)*, or

(*c*) a participating employee receives an increase in reduced basic pay other than as provided for in *subsection (4)*,

then, any relief granted under this section, where *paragraph (a)* or *(b)* applies, to all the participating employees of the company or, where *paragraph (c)* applies, to the participating employee concerned, shall be withdrawn by the making of an assessment to income tax under Case IV of Schedule D for the year of assessment for which the relief was granted.

(7) Where during the relevant period a participating employee receives a payment from a qualifying company, other than a payment to which this section applies, which is chargeable to tax by virtue of *section 123*, any relief from tax in respect of that payment under *section 201(5)* or *Schedule 3* shall be reduced by the amount of any relief given under this section in respect of a payment to which this section applies made in the relevant period.

(8) *Section 201* and *Schedule 3* and *section 480* shall not apply in relation to a payment to which this section applies.

Payments in respect of redundancy.
[FA 68 s37(1) and (2)]

203.—(1) In this section, ''lump sum'' and ''weekly payment'' have the same meanings respectively as in the Redundancy Payments Act, 1967.

(2) Any lump sum or weekly payment and any payment to or on behalf of an employed or unemployed person in accordance with regulations under section 46 of the Redundancy Payments Act, 1967, shall be exempt from income tax under Schedule E.

Military and other pensions, gratuities and allowances.

[ITA67 s340(1), (2)(a), (b) and (c)]

204.—(1) This section shall apply to—

(*a*) all wound and disability pensions, and all increases in such pensions, granted under the Army Pensions Acts, 1923 to 1980, or those Acts and any subsequent Act together with which those Acts may be cited; but, where the amount of any pension to which this paragraph applies is not solely attributable to disability, the relief conferred by this section shall extend only to such part as is certified by the Minister for Defence to be attributable to disability;

(*b*) all gratuities in respect of wounds or disabilities similarly granted under any enactment referred to in *paragraph (a)*;

(*c*) military gratuities and demobilisation pay granted to officers of the National Forces or the Defence Forces of Ireland on demobilisation;

(*d*) deferred pay within the meaning of any regulations under the Defence Act, 1954, which is credited to the pay account of a member of the Defence Forces;

(*e*) gratuities granted in respect of service with the Defence Forces.

(2) Income to which this section applies shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

Veterans of War of Independence.

[FA82 s9(1) and (2)]

205.—(1) In this section—

''military service'' means the performance of duty as a member of an organisation to which Part II of the Army Pensions Act, 1932, applies, but includes military service within the meaning of that Part of that Act, military service within the meaning of the Military Service Pensions Act, 1924, and service in the Forces within the meaning of the Military Service Pensions Act, 1934;

''relevant legislation'' means the Army Pensions Acts, 1923 to 1980, the Military Service Pensions Acts, 1924 to 1964, the Connaught Rangers (Pensions) Acts, 1936 to 1964, any Act amending any of those Acts and any regulation (in so far as it affects a pension, allowance, benefit or gratuity under any of those Acts or any other Act amending any of those Acts) made under the Pensions (Increase) Act, 1964, or under any of those Acts or any other Act amending any of those Acts;

''relevant military service'' means military service during any part of a period referred to in section 5(2) of the Army Pensions Act, 1932, or, in the case of a qualified person within the meaning of the Connaught Rangers (Pensions) Act, 1936, the circumstances referred to in paragraphs (*a*), (*b*) and (*c*) of section 2 of that Act;

''veteran of the War of Independence'' means a person who was—

(*a*) a member of an organisation to which Part II of the Army Pensions Act, 1932, applies, or a qualified person within the meaning of the Connaught Rangers (Pensions) Act, 1936, and

(*b*) engaged in relevant military service.

(2) A pension, allowance, benefit or gratuity, in so far as it is related to the relevant military service of a veteran of the War of Independence, or to an event which happened during or in consequence of such relevant military service, which is paid under the relevant legislation to—

(*a*) such veteran, or

(*b*) the wife, widow, child or other dependant or partial dependant of such veteran,

shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

Pt.7
Income from investments under Social Welfare (Consolidation) Act, 1993.

206.—The Minister for Finance shall be entitled to exemption from tax in respect of the income derived from investments made under section 7 of the Social Welfare (Consolidation) Act, 1993.

[ITA67 s338]

Rents of properties belonging to hospitals and other charities.

[ITA67 s333 and s339(2) and (4); F(MP)A68 s3(4) and Sch PtIII; FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par13]

207.—(1) Exemption shall be granted—

(*a*) from income tax chargeable under Schedule D in respect of the rents and profits of any property belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, in so far as those rents and profits are applied to charitable purposes only;

(*b*) from income tax chargeable—

(i) under Schedule C in respect of any interest, annuities, dividends or shares of annuities,

(ii) under Schedule D in respect of any yearly interest or other annual payment, and

(iii) under Schedule F in respect of any distribution,

forming part of the income of any body of persons or trust established for charitable purposes only, or which, according to the rules or regulations established by statute, charter, decree, deed of trust or will, are applicable to charitable purposes only, and in so far as the same are applied to charitable purposes only;

(*c*) from income tax chargeable under Schedule C in respect of any interest, annuities, dividends or shares of annuities in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purposes of divine worship, and in so far as the same are applied to those purposes.

(2) (*a*) This subsection shall apply to every gift (within the meaning of the Charities Act, 1961) made before the 1st day of July, 1961, which, if it had been made on or after that day, would by virtue of section 50 of that Act (which relates to gifts for graves and memorials) have been, to the extent provided in that section, a gift for charitable purposes.

(*b*) *Subsection (1)* shall apply in relation to a gift to which this subsection applies as if the gift had been made on or after the 1st day of July, 1961.

(3) Every claim under this section shall be verified by affidavit, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent.

(4) A person who makes a false or fraudulent claim for exemption under this section in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of £100.

Pt.7
Lands owned and occupied, and trades carried on by, charities.

208.—(1) In this section, ''charity'' means any body of persons or trust established for charitable purposes only.

[ITA67 s334(1)(a) and (c), (2A) and (3); FA69 s33(1) and Sch4 PtI and s65(1) and Sch5 PtI; FA81 s11]

(2) Exemption shall be granted—

(*a*) from income tax chargeable under Case I (*b*) of Schedule D by virtue of *section 18(2)* where the profits or gains so chargeable arise out of lands, tenements or hereditaments which are owned and occupied by a charity;

(*b*) from income tax chargeable under Schedule D in respect of the profits of a trade carried on by any charity, if the profits are applied solely to the purposes of the charity and either—

(i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity, or

(ii) the work in connection with the trade is mainly carried on by beneficiaries of the charity.

(3) *Subsection (2)(b)* shall apply in respect of the profits of a trade of farming carried on by a charity as if the words after ''solely to the purposes of the charity'' were deleted.

Bodies for the promotion of Universal Declaration of Human Rights and the implementation of European Convention for the Protection of Human Rights and Fundamental Freedoms.

[FA73 s20]

209.—Where any body of persons having consultative status with the United Nations Organisation or the Council of Europe—

(*a*) has as its sole or main object the promotion of observance of the Universal Declaration of Human Rights or the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or both the promotion of observance of that Declaration and the implementation of that Convention, and

(*b*) is precluded by its rules or constitution from the direct or indirect payment or transfer, otherwise than for valuable and sufficient consideration, to any of its members of any of its income or property by means of dividend, gift, division, bonus or otherwise however by means of profit,

there shall, on a claim in that behalf being made to the Revenue Commissioners, be allowed, in the case of the body, such exemption from income tax as is to be allowed under *section 207* in the case of a body of persons established for charitable purposes only the whole income of which is applied to charitable purposes only.

The Great Book of Ireland Trust.

[FA91 s13]

210.—(1) In this section, ''the Trust'' means ''The Great Book of Ireland Trust'' established by trust deed dated the 12th day of December, 1990, for the purposes of—

(*a*) making and carrying to completion and selling a unique manuscript volume (in this section referred to as ''The Great Book of Ireland''), and

(*b*) using the proceeds of the sale of The Great Book of Ireland for the benefit of—

(i) a company incorporated on the 5th day of August, 1986, as Clashganna Mills Trust Limited, and

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(ii) a company incorporated on the 1st day of March, 1991, as Poetry Ireland Limited.

(2) Notwithstanding any provision of the Income Tax Acts—

(*a*) income arising to the trustees of the Trust in respect of the sale by it of The Great Book of Ireland, and

(*b*) payments made to the companies referred to in *subsection (1)(b)* under the Trust by the trustees of the Trust,

shall be disregarded for the purposes of those Acts.

Friendly societies.

[ITA67 s335 and s339(2) and (4); FA67 s7; F(MP)A68 s3(4) and Sch PtIII; FA73 s44; CTA76 s140(1) and Sch2 PtI par14]

211.—(1) An unregistered friendly society whose income does not exceed £160 shall be entitled to exemption from income tax, and a registered friendly society which is precluded by statute or by its rules from assuring to any person a sum exceeding £1,000 by means of gross sum, or £52 a year by means of annuity, shall be entitled to exemption from income tax under Schedules C, D and F.

(2) A registered friendly society shall not be entitled to exemption from tax under this section in relation to any year of assessment if the Revenue Commissioners determine, for the purposes of entitlement to exemption for that year, that the society does not satisfy the following conditions—

(*a*) that it was established solely for any or all of the purposes set out in section 8(1) of the Friendly Societies Act, 1896, and not for the purpose of securing a tax advantage, and

(*b*) that since its establishment it has engaged solely in activities directed to achieving the purposes for which it was so established and has not engaged in trading activities, other than by means of insurance in respect of members, with a view to the realisation of profits.

(3) In making a determination under this section in relation to a registered friendly society, the Revenue Commissioners shall consider any evidence in relation to the matter submitted to them by the society.

(4) In any case where a friendly society is aggrieved by a determination of the Revenue Commissioners under this section in relation to the society, the society shall be entitled to appeal to the Appeal Commissioners against the determination of the Revenue Commissioners and the Appeal Commissioners shall hear and determine the appeal as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(5) Every claim under this section shall be verified by affidavit, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent.

(6) A person who makes a false or fraudulent claim for exemption under this section in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of £100.

Pt.7
Credit unions.

212.—With effect from the date of its registration under the Industrial and Provident Societies Acts, 1893 to 1978, a credit union shall be entitled to exemption from income tax.

[FA72 s43; CTA76 s164 and Sch 3 Pt II]

Trade unions.

213.—(1) In this section, ''provident benefits'' includes any payment expressly authorised by the registered rules of the trade union and made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by means of superannuation, or to a member who has met with an accident, or has lost his or her tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or as provision for the children of a deceased member.

[ITA67 s336 and s339(2) and (4); F(MP)A68 s3(4) and Sch PtIII; CTA76 s140 and Sch2 PtI par15; FA80 s11]

(2) A registered trade union which is precluded by statute or by its rules from assuring to any person a sum exceeding £2,000 by means of gross sum or £750 a year by means of annuity shall be entitled to exemption from income tax under Schedules C, D and F in respect of its interest and dividends which are applicable and applied solely for the purpose of provident benefits.

(3) Every claim under this section shall be verified by affidavit, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent.

(4) A person who makes a false or fraudulent claim for exemption under this section in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of £100.

Local authorities, etc.

214.—(1) In this section, ''local authority'' has the meaning assigned to it by section 2(2) of the Local Government Act, 1941, and includes a body established under the Local Government Services (Corporate Bodies) Act, 1971.

[FA90 s13]

(2) This section shall apply to each of the following bodies—

(*a*) a local authority;

(*b*) a health board;

(*c*) a vocational education committee established under the Vocational Education Acts, 1930 to 1993;

(*d*) a committee of agriculture established under the Agriculture Acts, 1931 to 1980.

(3) Notwithstanding any provision of the Income Tax Acts, other than *Chapter 4* of *Part 8*, income arising to a body to which this section applies shall be exempt from income tax.

Certain profits of agricultural societies.

215.—(1) In this section, ''agricultural society'' means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, livestock breeding or forestry.

[ITA67 s348]

(2) Any profits or gains arising to an agricultural society from an exhibition or show held for the purposes of the society shall, if they are applied solely to the purposes of the society, be exempt from income tax.

Pt.7
Profits from lotteries.

[ITA67 s350]

216.—Exemption from income tax shall be granted in respect of profits from a lottery to which a licence under Part IV of the Gaming and Lotteries Act, 1956, applies.

CHAPTER 2

Corporation tax

Certain income of Nítrigin Éireann Teoranta.

[FA88 s39; FA92 s57]

217.—Notwithstanding any provision of the Corporation Tax Acts, income—

(*a*) arising to Nítrigin Éireann Teoranta in any accounting period ending in the period commencing on the 1st day of January, 1987, and ending on the 31st day of December, 1999, from the business of supplying gas purchased from Bord Gáis Éireann to Irish Fertilizer Industries Limited under a contract between Nítrigin Éireann Teoranta and Irish Fertilizer Industries Limited, and

(*b*) which but for this section would have been chargeable to corporation tax under Case I of Schedule D,

shall be exempt from corporation tax.

Certain income of Housing Finance Agency plc.

[FA85 s24; FA90 s56]

218.—Notwithstanding any provision of the Corporation Tax Acts, income arising to the Housing Finance Agency plc—

(*a*) from the business of making loans and advances under section 5 of the Housing Finance Agency Act, 1981, which income would but for this section have been chargeable to corporation tax under Case I of Schedule D, and

(*b*) which income would but for this section have been chargeable to corporation tax under Case III of Schedule D,

shall be exempt from corporation tax.

Income of body designated under Irish Takeover Panel Act, 1997.

[FA97 s63]

219.—Notwithstanding any provision of the Corporation Tax Acts, income arising in any accounting period ending after the 30th day of April, 1997, to the body designated by the Minister for Enterprise, Trade and Employment under section 3 of the Irish Takeover Panel Act, 1997, shall be exempt from corporation tax.

Profits of certain bodies corporate.

[FA83 s32; FA87 s34; FA91 s41; FA95 s44(1) and (2); FA97 s49(1) and (2)]

220.—Notwithstanding any provision of the Corporation Tax Acts, profits arising to any of the bodies corporate specified in the Table to this section shall be exempt from corporation tax.

TABLE

1. Bord Gáis Éireann.
2. A company authorised by virtue of a licence granted by the Minister of Finance under the National Lottery Act, 1986.
3. The Dublin Docklands Development Authority.
4. An Bord Pinsean — The Pensions Board.
5. The Irish Horseracing Authority.

6. The company incorporated on the 1st day of December, 1994, as Irish Thoroughbred Marketing Limited. Pt.7 S.220

7. The company incorporated on the 1st day of December, 1994, as Tote Ireland Limited.

Certain payments to National Co-operative Farm Relief Services Ltd and certain payments made to its members.

[FA94 s52; FA95 s57]

221.—(1) In this section—

''the first agreement'' means the agreement in writing dated the 4th day of July, 1991, between the Minister for Agriculture, Food and Forestry and the National Co-operative for the provision of financial support for farm relief services, together with every amendment of the agreement in accordance with Article 9.1 of that agreement;

''the second agreement'' means the agreement in writing dated the 16th day of May, 1995, between the Minister for Agriculture, Food and Forestry and the National Co-operative for the provision of financial support for the development of agricultural services, together with every amendment of the agreement in accordance with Article 9.1 of that agreement;

''a member co-operative'' means a society engaged in the provision of farm relief services which has been admitted to membership of the National Co-operative;

''the Minister'' means the Minister for Agriculture and Food;

''the National Co-operative'' means the society registered on the 13th day of August, 1980, as National Co-operative Farm Relief Services Limited;

''society'' means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978.

(2) Notwithstanding any provision of the Corporation Tax Acts—

(*a*) a grant made under Article 3.1 of the first agreement by the Minister to the National Co-operative,

(*b*) a transfer of moneys under Article 3.6 of the first agreement by the National Co-operative to a member co-operative,

(*c*) a payment made under Article 3.1(*a*) of the second agreement by the Minister to the National Co-operative, and

(*d*) a transmission of moneys under Article 3.4 in respect of payments under Article 3.1(*a*) of the second agreement by the National Co-operative to a member co-operative,

shall be disregarded for the purposes of those Acts.

Certain dividends from a non-resident subsidiary.

[FA88 s41; FA91 s40]

222.—(1) (*a*) In this section—

''approved investment plan'' means an investment plan in respect of which the Minister has given a certificate in accordance with *subsection (2)* to the company concerned;

''investment plan'' means a plan of a company resident in the State which is directed towards the creation or maintenance of employment in the

State in trading operations carried on, or to be carried on, in the State and which has been submitted—

(i) before the commencement of its implementation, or

(ii) where the Minister is satisfied that there was reasonable cause for it to be submitted after the commencement of its implementation, within one year from that commencement,

to the Minister by the company for the purpose of enabling it to claim relief under this section;

''the Minister'' means the Minister for Finance;

''relevant dividends'' means dividends, received by a company resident in the State (being the company claiming relief under this section) from a foreign subsidiary of the company, which are—

(i) specified in a certificate given by the Minister under *subsection (2)*, and

(ii) applied within a period—

(I) which begins one year before the first day on which the dividends so specified are received in the State, or at such earlier time as the Revenue Commissioners may by notice in writing allow, and

(II) which ends 2 years after the first day on which the dividends so specified are received in the State, or at such later time as the Revenue Commissioners may by notice in writing allow,

for the purposes of an approved investment plan;

''relief under this section'', in relation to a company for an accounting period, means the amount by which any corporation tax payable by the company is reduced by virtue of *subsection (3)*.

(*b*) (i) The reference in the definition of ''relevant dividends'' to ''a foreign subsidiary'' means a 51 per cent subsidiary of a company where the company is resident in the State and the subsidiary is a resident of the United States of America or of a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made.

(ii) For the purposes of *subparagraph (i)*—

''resident of the United States of America'' has the meaning assigned to it by the Convention set out in *Schedule 25*;

a company shall be regarded as being a resident of a territory other than the United States

of America if it is so regarded under arrangements made with the government of that territory and having the force of law by virtue of *section 826*.

(2) Where an investment plan has been duly submitted by a company, and the Minister—

(*a*) is satisfied that the plan is directed towards the creation or maintenance of employment in the State in trading operations carried on, or to be carried on, in the State, and

(*b*) has been informed in writing by the company of the amount of dividends concerned,

the Minister may give a certificate to the company certifying that an amount of dividends specified in the certificate shall be an amount of relevant dividends.

(3) Subject to *subsection (4)*, where a company claims and proves that it has received in an accounting period any amount of relevant dividends, the amount of the company's income for the period represented by those dividends shall not be taken into account in computing the income of the company for that accounting period for the purposes of corporation tax.

(4) Where in relation to a certificate given to a company under *subsection (2)* the Minister considers that, as regards the approved investment plan concerned, all or part of the relevant dividends have not been applied within the period provided for in the definition of ''relevant dividends'', the Minister may, by notice in writing to the company, reduce the amount of the relevant dividends specified in the certificate by so much as has not been so applied, and accordingly where the amount of the relevant dividends specified in a certificate is so reduced—

(*a*) in a case where relief under this section has been granted in respect of the amount of the relevant dividends specified in the certificate before such a reduction of that amount, the inspector shall make such assessments or additional assessments as are necessary to recover the relief given in respect of the amount of the reduction, and

(*b*) in a case where a claim for relief has not yet been made, relief shall not be due under this section in respect of the amount of the reduction.

(5) A claim for relief under this section shall be made in writing to the inspector and shall be submitted together with the company's return of profits for the period in which the relevant dividends are received in the State.

CHAPTER 3

Income tax and corporation tax

Small enterprise grants.

[FA93 s37]

223.—(1) This section shall apply to a grant made under section 10(5)(*a*) of the Údarás na Gaeltachta Act, 1979, or section 21(5)(*a*) (as amended by the Industrial Development (Amendment) Act, 1991) of the Industrial Development Act, 1986, being an employment grant—

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(*a*) in the case of section 10(5)(*a*) of the Údarás na Gaeltachta Act, 1979, under the scheme known as ''Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscnaimh Sheirbhíse Idir-Náisiúnta'' or the scheme known as ''Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscail Bheaga Dhéantúsaíochta'', or

(*b*) in the case of section 21(5)(*a*) of the Industrial Development Act, 1986 (as so amended), under the scheme known as ''Scheme Governing the Making of Employment Grants to Small Industrial Undertakings''.

(2) A grant to which this section applies shall be disregarded for the purposes of the Tax Acts.

Grants to medium and large industrial undertakings.

[FA95 s43]

224.—(1) This section shall apply to a grant made under section 10(5)(*a*) of the Údarás na Gaeltachta Act, 1979, or section 21(5)(*a*) (as amended by the Industrial Development (Amendment) Act, 1991) of the Industrial Development Act, 1986, being an employment grant—

(*a*) in the case of section 10(5)(*a*) of the Údarás na Gaeltachta Act, 1979, under the scheme known as ''Deontais Fhostaíochta ó Údarás na Gaeltachta do Ghnóthais Mhóra/Mheánmhéide Thionsclaíocha'', or

(*b*) in the case of section 21(5)(*a*) of the Industrial Development Act, 1986 (as so amended), under the scheme known as ''Scheme Governing the Making of Employment Grants to Medium/Large Industrial Undertakings''.

(2) A grant to which this section applies shall be disregarded for the purposes of the Tax Acts.

Employment grants.

[FA82 s18; FA97 s146(1) and Sch9 PtI par12(2)]

225.—(1) This section shall apply to an employment grant made under—

(*a*) section 25 of the Industrial Development Act, 1986, or

(*b*) section 12 of the Industrial Development Act, 1993.

(2) A grant to which this section applies shall be disregarded for the purposes of the Tax Acts.

Certain employment grants and recruitment subsidies.

[FA96 s40(1) and (2); FA97 s40]

226.—(1) This section shall apply to an employment grant or recruitment subsidy made to an employer in respect of a person employed by such employer under—

(*a*) the Back to Work Allowance Scheme, being a scheme established on the 1st day of October, 1993, and administered by the Minister for Social, Community and Family Affairs,

(*b*) any scheme which may be established by the Minister for Enterprise, Trade and Employment with the approval of the Minister for Finance for the purposes of promoting the employment of individuals who have been unemployed for 3 years or more and which is to be administered by An Foras Áiseanna Saothair,

(*c*) paragraph 13 of Annex B to an operating agreement between the Minister for Enterprise, Trade and Employment and a County Enterprise Board, being a board specified in the Schedule to the Industrial Development Act, 1995,

(*d*) as respects grants or subsidies paid on or after the 6th day of April, 1997, the Employment Support Scheme, being a scheme established on the 1st day of January, 1993, and administered by the National Rehabilitation Board,

(*e*) as respects grants or subsidies paid on or after the 6th day of April, 1997, the Pilot Programme for the Employment of People with Disabilities, being a programme administered by a company incorporated on the 7th day of March, 1995, as The Rehab Group,

(*f*) the European Union Leader II Community Initiative 1994 to 1999, and which is administered in accordance with operating rules determined by the Minister for Agriculture and Food,

(*g*) the European Union Operational Programme for Local Urban and Rural Development which is to be administered by the company incorporated under the Companies Acts, 1963 to 1990, on the 14th day of October, 1992, as Area Development Management Limited,

(*h*) the Special European Union Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland which was approved by the European Commission on the 28th day of July, 1995,

(*i*) the Joint Northern Ireland/Ireland INTERREG Programme 1994 to 1999, which was approved by the European Commission on the 27th day of February, 1995, or

(*j*) any initiative of the International Fund for Ireland, which was designated by the International Fund for Ireland (Designation and Immunities) Order, 1986 (S.I. No. 394 of 1986), as an organisation to which Part VIII of the Diplomatic Relations and Immunities Act, 1967, applies.

(2) An employment grant or recruitment subsidy to which this section applies shall be disregarded for the purposes of the Tax Acts.

Certain income arising to specified non-commercial state-sponsored bodies.

227.—(1) In this section, ''non-commercial state-sponsored body'' means a body specified in *Schedule 4*.

(2) For the purposes of this section, the Minister for Finance may by order amend *Schedule 4* by the addition to that Schedule of any body or the deletion from that Schedule of any body standing specified.

[FA94 s32(1),(2),(3) and (4)]

(3) Where an order is proposed to be made under *subsection (2)*, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

(4) Notwithstanding any provision of the Tax Acts other than the provisions (apart from *section 261(c)*) of *Chapter 4* of *Part 8*, income arising to a non-commercial state-sponsored body—

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(*a*) which but for this section would have been chargeable to tax under Case III, IV or V of Schedule D, and

(*b*) from the date that such body was incorporated under the Companies Acts, 1963 to 1990, or was established by or under any other enactment,

shall be disregarded for the purposes of the Tax Acts; but a non-commercial state-sponsored body—

(i) which has paid income tax or corporation tax shall not be entitled to repayment of that tax, and

(ii) shall not be treated as—

(I) a company within the charge to corporation tax in respect of interest for the purposes of *paragraph (f)* of the definition of ''relevant deposit'' in *section 256*, or

(II) a person to whom *section 267* applies.

Income arising to designated bodies under the Securitisation (Proceeds of Certain Mortgages) Act, 1995.

[FA96 s39(1) and (2)]

228.—Notwithstanding any provision of the Tax Acts, income arising to a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995, shall be exempt from income tax and corporation tax.

Harbour authorities and port companies.

[FA97 s60(1) and (3) to (5)]

229.—(1) (*a*) In this section—

''relevant body'' means—

(i) a harbour authority within the meaning of the Harbours Act, 1946,

(ii) a company established pursuant to section 7 of the Harbours Act, 1996, and

(iii) any other company which controls a harbour and carries on a trade which consists wholly or partly of the provision in that harbour of such facilities and accommodation for vessels, goods and passengers as are ordinarily provided by harbour authorities specified in *paragraph (i)*, and companies specified in *paragraph (ii)* which control harbours, situate within the State, in those harbours;

''relevant profits or gains'' means so much of the profits or gains of a relevant body controlling a harbour situate within the State as arise from the provision in that harbour of such facilities and accommodation for vessels, goods and passengers as are ordinarily provided by—

(i) harbour authorities specified in *paragraph (i)*, and

(ii) companies specified in *paragraph (ii)*,

of the definition of ''relevant body'' which control harbours, situate within the State, in those harbours.

(*b*) For the purposes of this section, where an accounting period falls partly in a period, the part of the accounting period falling in the period shall be regarded as a separate accounting period.

(2) Exemption shall be granted from tax under Schedule D in respect of relevant profits or gains in the period beginning on the 1st day of January, 1997, and ending on the 31st day of December, 1998.

(3) *Subsection (2)* shall apply to a relevant body which is a harbour authority referred to in *paragraph (i)* of the definition of ''relevant body'' as if ''in the period beginning on the 1st day of January, 1997, and ending on the 31st day of December, 1998'' were deleted.

(4) Where a relevant body is chargeable to tax under Schedule D in respect of relevant profits or gains, the relevant profits or gains shall be reduced by an amount equal to—

(*a*) as respects accounting periods falling wholly or partly in the year 1999, two-thirds of those relevant profits or gains, and

(*b*) as respects accounting periods falling wholly or partly in the year 2000, one-third of those relevant profits or gains.

National Treasury Management Agency.

[FA91 s20(1) and (3)]

230.—(1) Notwithstanding any provision of the Corporation Tax Acts, profits arising to the National Treasury Management Agency in any accounting period shall be exempt from corporation tax.

(2) Notwithstanding any provision of the Tax Acts, any interest, annuity or other annual payment paid by the National Treasury Management Agency shall be paid without deduction of income tax.

Profits or gains from stallion fees.

[FA69 s18(2)(b); CTA76 s11(6); FA85 s14(1)]

231.—The profits or gains arising—

(*a*) (i) to the owner of a stallion, which is ordinarily kept on land in the State, from the sale of services of mares within the State by the stallion, or

(ii) to the part-owner of such a stallion from the sale of such services or of rights to such services, or

(*b*) to the part-owner of a stallion, which is ordinarily kept on land outside the State, from the sale of services of mares by the stallion or of rights to such services, where the part-owner carries on in the State a trade which consists of or includes bloodstock breeding and it is shown to the satisfaction of the inspector, or on appeal to the satisfaction of the Appeal Commissioners, that the part-ownership of the stallion was acquired and is held primarily for the purposes of the service by the stallion of mares owned or partly-owned by the part-owner of the stallion in the course of that trade,

shall not be taken into account for any purpose of the Tax Acts.

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Profits from occupation of certain woodlands.

[FA69 s18(1) and (2)(c); CTA76 s11(6); FA96 s132(2) and Sch5 PtII]

232.—(1) In this section—

''occupation'', in relation to any land, means having the use of that land;

''woodlands'' means woodlands in the State.

(2) Except where otherwise provided by *section 75*, the profits or gains arising from the occupation of woodlands managed on a commercial basis and with a view to the realisation of profits shall not be taken into account for any purpose of the Tax Acts.

Stud greyhound service fees.

[FA96 s25(1) and (2)]

233.—(1) In this section—

''greyhound bitches'' means female greyhounds registered in the Irish Greyhound Stud Book or in any other greyhound stud book recognised for the purposes of the Irish Greyhound Stud Book;

''stud greyhound'' means a male greyhound registered as a sire for stud purposes in the Irish Greyhound Stud Book or in any other greyhound stud book recognised for the purposes of the Irish Greyhound Stud Book.

(2) The profits or gains arising—

(*a*) (i) to the owner of a stud greyhound, which is ordinarily kept in the State, from the sale of services of greyhound bitches within the State by the stud greyhound, or

(ii) to the part-owner of such a stud greyhound from the sale of such services or of rights to such services, or

(*b*) to the part-owner of a stud greyhound, which is ordinarily kept outside the State, from the sale of services of greyhound bitches by the stud greyhound or of rights to such services, where the part-owner carries on in the State a trade which consists of or includes greyhound breeding and it is shown to the satisfaction of the inspector, or on appeal to the satisfaction of the Appeal Commissioners, that the part-ownership of the stud greyhound was acquired and is held primarily for the purposes of the service by the stud greyhound of greyhound bitches owned or partly-owned by the part-owner of the stud greyhound in the course of that trade,

shall not be taken into account for any purpose of the Tax Acts.

Certain income derived from patent royalties.

[FA73 s34; CTA76 s140(1) and Sch2 PtI par35; FA81 s19; FA92 s19(1); FA94 s28; FA96 s32(1) and (3)(a) and s132(1) and Sch5 PtI par7; FA97 s146(1) and Sch9 PtI par6(2)]

234.—(1) In this section—

''income from a qualifying patent'' means any royalty or other sum paid in respect of the user of the invention to which the qualifying patent relates, including any sum paid for the grant of a licence to exercise rights under such patent, where that royalty or other sum is paid—

(*a*) for the purposes of activities which—

(i) would be regarded, otherwise than by virtue of *paragraph (b)* or *(c)* of *section 445(7)* or *section 446*, as

the manufacture of goods for the purpose of relief under *Part 14*, or

(ii) would be so regarded if they were carried on in the State by a company,

but, as respects a royalty or other sum paid on or after the 23rd day of April, 1996, where the royalty or other sum exceeds the royalty or other sum which would have been paid if the payer of the royalty or other sum and the beneficial recipient of the royalty or other sum were independent persons acting at arm's length, the excess shall not be income from a qualifying patent,

or

(*b*) by a person who—

(i) is not connected (within the meaning of *section 10* as it applies for the purposes of capital gains tax) with the person who is the beneficial recipient of the royalty or other sum, and

(ii) has not entered into any arrangement in connection with the royalty or other sum the main purpose or one of the main purposes of which was to satisfy *subparagraph (i)*;

''qualifying patent'' means a patent in relation to which the research, planning, processing, experimenting, testing, devising, designing, developing or similar activity leading to the invention which is the subject of the patent was carried out in the State;

''resident of the State'' means any person resident in the State for the purposes of income tax and not resident elsewhere;

a company shall be regarded as a resident of the State if it is managed and controlled in the State.

(2) (*a*) A resident of the State who makes a claim in that behalf and makes a return in the prescribed form of his or her total income from all sources, as estimated in accordance with the Income Tax Acts, shall be entitled to have any income from a qualifying patent arising to him or her disregarded for the purposes of the Income Tax Acts.

(*b*) In *paragraph (a)*, the reference to a return of total income from all sources as estimated in accordance with the Income Tax Acts shall apply for corporation tax as if it were or included a reference to a return under *section 884*.

(3) Notwithstanding *subsection (2)*, an individual shall not be entitled to have any amount of income from a qualifying patent arising to him or her disregarded for any purpose of the Income Tax Acts unless the individual carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, designing, developing or other similar activity leading to the invention which is the subject of the qualifying patent.

(4) Where, under section 77 of the Patents Act, 1992, or any corresponding provision of the law of any other country, an invention which is the subject of a qualifying patent is made, used, exercised

or vended by or for the service of the State or the government of the country concerned, this section shall apply as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence and any sums paid in respect of the licence were income from a qualifying patent.

(5) Where any income arising to a person is by virtue of this section to be disregarded, the person shall not be treated, by reason of such disregarding, as having ceased to possess the whole of a single source within the meaning of *section 70(1)*.

(6) For the purpose of determining the amount of income to be disregarded under this section for the purposes of the Income Tax Acts, the Revenue Commissioners may make such apportionments of receipts and expenses as may be necessary.

(7) The relief provided by this section may be given by repayment or otherwise.

(8) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall, with any necessary modifications, apply in relation to exemptions from tax under this section.

Bodies established for promotion of athletic or amateur games or sports.

[ITA67 s349; FA84 s9; FA97 s146(1) and Sch9 PtI par1(25)]

235.—(1) In this section, ''approved body of persons'' means—

(*a*) any body of persons established for and existing for the sole purpose of promoting athletic or amateur games or sports, and

(*b*) (i) any body of persons that, as respects the year 1983-84 or any earlier year of assessment, was granted exemption from income tax under section 349 of the Income Tax Act, 1967, before that section was substituted by section 9 of the Finance Act, 1984, or

(ii) any company that, as respects any accounting period ending before the 6th day of April, 1984, was granted exemption from corporation tax under section 349 (before the substitution referred to in *subparagraph (i)*) of the Income Tax Act, 1967, as applied for corporation tax by section 11(6) of the Corporation Tax Act, 1976;

but does not include any such body of persons to which the Revenue Commissioners, after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, give a notice in writing stating that they are satisfied that the body—

(I) was not established for the sole purpose specified in *paragraph (a)* or was established wholly or partly for the purpose of securing a tax advantage, or

(II) being established for the sole purpose specified in *paragraph (a)*, no longer exists for such purpose or commences to exist wholly or partly for the purpose of securing a tax advantage.

(2) Exemption from income tax or, as the case may be, corporation tax shall be granted in respect of so much of the income of any

approved body of persons as is shown to the satisfaction of the Revenue Commissioners to be income which has been or will be applied to the sole purpose specified in *subsection (1)(a)*.

(3) Where a notice is given under *subsection (1)*, the exemption from income tax or, as the case may be, corporation tax accorded to the body of persons to which it relates shall cease to have effect—

(*a*) if the notice is a notice to which *paragraph (I)* of that subsection applies—

(i) as respects income tax, for the year of assessment in which the body of persons was established or the year 1984-85, whichever is the later, and for each subsequent year of assessment, or

(ii) as respects corporation tax, for the first accounting period of the body of persons which commences on or after the 6th day of April, 1984, and for each subsequent accounting period;

(*b*) if the notice is a notice to which *paragraph (II)* of that subsection applies—

(i) as respects income tax, for the year of assessment in which in the opinion of the Revenue Commissioners the body of persons ceased to exist for the sole purpose specified in *subsection (1)(a)* or the year in which it commenced to exist wholly or partly for the purpose of securing a tax advantage, whichever is the earlier, but not being a year earlier than the year 1984-85, and for each subsequent year of assessment, or

(ii) as respects corporation tax, for the accounting period in which in the opinion of the Revenue Commissioners the body of persons ceased to exist for the sole purpose specified in *subsection (1)(a)* or the accounting period in which it commenced to exist wholly or partly for the purpose of securing a tax advantage, whichever is the earlier, but not being an accounting period which ends before the 6th day of April, 1984, and for each subsequent accounting period.

(4) *Section 949* shall apply to a notice under *subsection (1)* as if the notice were a determination by the Revenue Commissioners of a claim to an exemption under the Income Tax Acts.

(5) Anything required or permitted to be done by the Revenue Commissioners or any power or function conferred or imposed on them by this section may be done, exercised or performed, as appropriate, by an officer of the Revenue Commissioners authorised by them in that behalf.

236.—(1) In this section—

Loan of certain art objects.

[FA94 s19(1) to (6)]

''art object'' has the meaning assigned to it by *subsection (2)(a)*;

''authorised person'' means—

(*a*) an inspector or other officer of the Revenue Commissioners authorised by them in writing for the purposes of this section, or

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(*b*) a person authorised by the Minister in writing for the purposes of this section;

''the Minister'' means the Minister for Arts, Heritage, Gaeltacht and the Islands;

''relevant building'' means an approved building within the meaning of *section 482*;

''relevant garden'' means an approved garden within the meaning of *section 482*.

(2) (*a*) In this section, ''art object'' means any work of art (including a picture, sculpture, print, book, manuscript, piece of jewellery, furniture or other similar object) or scientific collection which, on application to them in that behalf by a person who owns or occupies a relevant building or a relevant garden, as the case may be, is determined—

(i) by the Minister, after consideration of any evidence in relation to the matter which the individual submits to the Minister and after such consultation (if any) as may seem to the Minister to be necessary with such person or body of persons as in the opinion of the Minister may be of assistance to the Minister, to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and

(ii) by the Revenue Commissioners, to be an object reasonable access to which is afforded, and in respect of which reasonable facilities for viewing are provided, to the public.

(*b*) Without prejudice to the generality of the requirement that reasonable access be afforded, and that reasonable facilities for viewing be provided, to the public, access to and facilities for the viewing of an art object shall not be regarded as being reasonable access afforded, or the provision of reasonable facilities for viewing, to the public unless—

(i) subject to such temporary removal as is necessary for the purposes of the repair, maintenance or restoration of the object as is reasonable, access to it is afforded and facilities for viewing it are provided for not less than 60 days (including not less than 40 days during the period commencing on the 1st day of May and ending on the 30th day of September) in any year and, on each such day, such access is afforded and such facilities for viewing are provided in a reasonable manner and at reasonable times for a period, or periods in the aggregate, of not less than 4 hours,

(ii) such access is afforded and such facilities are provided to the public on the same days and at the same times as access is afforded to the public to the relevant building or the relevant garden, as the case may be, in which the object is kept, and

(iii) the price, if any, paid by the public in return for such access is in the opinion of the Revenue Commissioners reasonable in amount and does not operate to preclude the public from seeking access to the object.

(*c*) Where the Revenue Commissioners make a determination under *paragraph (a)* in relation to an art object, and reasonable access to the object ceases to be afforded, or reasonable facilities for the viewing of the object cease to be provided, to the public, the Revenue Commissioners may, by notice in writing given to the owner or occupier of the relevant building or relevant garden, as the case may be, in which the object is kept, revoke the determination with effect from the date on which they consider that such access or such facilities for viewing so ceased, and—

(i) this subsection shall cease to apply to the object from that date, and

(ii) for the year of assessment in which this subsection ceases to apply to the object, *subsection (3)* shall cease to apply to any expense referred to in *paragraph (a)* of that subsection incurred or deemed to have been incurred by the body corporate concerned.

(3) Subject to this section, where—

(*a*) a body corporate incurs an expense solely in, or solely in connection with, or is deemed to incur an expense in connection with, the provision to an individual (being an individual who is employed by the body corporate in an employment to which *Chapter 3* of *Part 5* applies, or who is a director, within the meaning of that Chapter, of the body corporate) of a benefit or facility which consists of the loan of an art object of which the body corporate is the beneficial owner, and

(*b*) the object is kept in a relevant building or a relevant garden, as the case may be, owned or occupied by the individual,

then, *section 436(3)* shall not apply to any such expense and *section 118(1)* shall not apply to any such expense for any year of assessment for which a claim in that behalf is made by the individual to the Revenue Commissioners.

(4) (*a*) Where an individual makes an application under *subsection (2)* or a claim under *subsection (3)*, an authorised person may at any reasonable time enter the relevant building or relevant garden concerned for the purpose of inspecting the art object to which the application or claim relates.

(*b*) Whenever an authorised person exercises any power conferred on him or her by this subsection, the authorised person shall on request produce his or her authorisation to any person concerned.

(*c*) Any person who obstructs or interferes with an authorised person in the course of exercising a power conferred on the authorised person by this subsection shall be guilty of

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an offence and shall be liable on summary conviction to a fine not exceeding £500.

(5) An application under *subsection (2)* or a claim under *subsection (3)*—

(*a*) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and

(*b*) in the case of a claim under *subsection (3)*, shall be accompanied by such statements in writing as may be required by the prescribed form in relation to the expense in respect of which the claim is made, including statements by the body corporate which incurred the expense.

(6) *Section 606* shall not apply to an object which is an art object.

PART 8

Annual Payments, Charges and Interest

CHAPTER 1

Annual payments

Annual payments payable wholly out of taxed income.

[ITA67 s433; FA69 s33 and Sch4 PtI; FA74 s5(1); CTA76 s164 and Sch4 PtI; FA89 s89(1); FA96 s132(1) and Sch5 PtI par1(19)]

237.—(1) Where any annuity or any other annual payment apart from yearly interest of money (whether payable in or outside the State, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to income tax—

(*a*) the whole of those profits or gains shall be assessed and charged with income tax on the person liable to the annuity or annual payment, without distinguishing the same,

(*b*) the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making such payment to deduct and retain out of such payment a sum representing the amount of the income tax on such payment at the standard rate of income tax for the year in which the amount payable becomes due,

(*c*) the person to whom such payment is made shall allow such deduction on the receipt of the residue of such payment, and

(*d*) the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid.

(2) Where any royalty or other sum is paid in respect of the user of a patent wholly out of profits or gains brought into charge to income tax, the person paying the royalty or other sum shall be entitled on making the payment to deduct and retain out of the

payment a sum representing the amount of income tax on the payment at the standard rate of income tax for the year in which the royalty or other sum payable becomes due.

(3) This section shall not apply to any rents or other sums in respect of which the person entitled to them is chargeable to tax under Case V of Schedule D or would be so chargeable but for any exemption from tax.

Annual payments not payable out of taxed income.

238.—(1) In this section, ''the inspector'' means such inspector as the Revenue Commissioners may direct.

[ITA67 s434(1) to (5A) and (8); FA69 s33 and Sch4; FA74 s11 and Sch1 PtII; CTA76 s151(14); FA90 s51(3); FA96 s132(1) and Sch5 PtI par1(20)]

(2) On payment of any annuity or other annual payment (apart from yearly interest of money) charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable or not wholly payable out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct out of such payment a sum representing the amount of the income tax on such payment at the standard rate of tax in force at the time of the payment.

(3) Where any such payment is made by or through any person, that person shall forthwith deliver to the Revenue Commissioners an account of the payment, or of so much of the payment as is not made out of profits or gains brought into charge, and of the income tax deducted out of the payment or out of that part of the payment, and the inspector shall assess and charge the payment of which an account is so delivered on that person.

(4) The inspector may, where any person has made default in delivering an account required by this section, or where he or she is not satisfied with the account so delivered, make an assessment according to the best of his or her judgment.

(5) The provisions of the Income Tax Acts relating to—

(*a*) persons who are to be chargeable with income tax,

(*b*) income tax assessments,

(*c*) appeals against such assessments,

(*d*) the collection and recovery of income tax,

(*e*) the rehearing of appeals, and

(*f*) cases to be stated for the opinion of the High Court,

shall, in so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.

(6) *Subsections (3)* to *(5)* shall apply subject to *sections 239* and *241* with respect to the time and manner in which certain companies resident in the State are to account for and pay income tax in respect of—

(*a*) payments from which tax is deductible, and

(*b*) any amount deemed to be an annual payment.

(7) Except where provided by *section 1041(1)*, this section shall not apply to any rents or other sums in respect of which the person

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entitled to them is chargeable to tax under Case V of Schedule D or would be so chargeable but for any exemption from tax.

Income tax on payments by resident companies.

[CTA76 s151(1) to (13) (apart from subsection (8)(c)); FA90 s49]

239.—(1) In this section, ''relevant payment'' means—

(*a*) any payment from which income tax is deductible and to which *subsections (3)* to *(5)* of *section 238* apply, and

(*b*) any amount which under *section 438* is deemed to be an annual payment.

(2) This section shall apply for the purpose of regulating the time and manner in which companies resident in the State—

(*a*) are to account for and pay income tax in respect of relevant payments, and

(*b*) are to be repaid income tax in respect of payments received by them.

(3) A company shall make for each of its accounting periods in accordance with this section a return to the inspector of the relevant payments made by it in that period and of the income tax for which the company is accountable in respect of those payments.

(4) A return for any period for which a return is required to be made under this section shall be made within 9 months from the end of that period.

(5) Income tax in respect of any payment required to be included in a return under this section shall be due at the time by which preliminary tax (if any) for the accounting period for which the return is required to be made under *subsection (3)* is due and payable, and income tax so due shall be payable by the company without the making of any assessment; but income tax which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made).

(6) Where it appears to the inspector that there is a relevant payment which ought to have been but has not been included in a return, or where the inspector is dissatisfied with any return, the inspector may make an assessment on the company to the best of his or her judgment, and any income tax due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(7) Where in any accounting period a company receives any payment on which it bears income tax by deduction, the company may claim to have the income tax on that payment set against any income tax which it is liable to pay under this section in respect of payments made by it in that period, and any such claim shall be included in the return made under *subsection (3)* for the accounting period in question, and (where necessary) income tax paid by the company under this section for that accounting period and before the claim is allowed shall be repaid accordingly.

(8) (*a*) Where a claim has been made under *subsection (7)*, no proceedings for collecting tax which would be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but this subsection shall not affect the date when the tax is due, and when the

claim is finally determined any tax underpaid in consequence of this subsection shall be paid.

(*b*) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under *subsection (5)* or *(6)*, effect shall not be given to any claim under *subsection (7)* made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest on that tax.

(9) Income tax set against other tax under *subsection (7)* shall be treated as paid or repaid, as the case may be, and the same tax shall not be taken into account both under this subsection and under *section 24(2)*.

(10) (*a*) Where a company makes a relevant payment on a date which does not fall within an accounting period, the company shall make a return of that payment within 6 months from that date, and the income tax for which the company is accountable in respect of that payment shall be due at the time by which the return is to be made.

(*b*) Any assessment in respect of tax payable under this subsection shall be treated as relating to the year of assessment in which the payment is made.

(*c*) *Subsection (11)* shall not apply to an assessment under this subsection.

(11) (*a*) Subject to *subsection (10)(b)*, income tax payable (after income tax borne by the company by deduction has been set, by virtue of any claim under *subsection (7)*, against income tax which it is liable to pay under *subsection (5)*) in respect of relevant payments in an accounting period shall, for the purposes of the charge, assessment, collection and recovery from the company making the payments of that tax and of any interest or penalties on that tax, be treated and described as corporation tax payable by that company for that accounting period, notwithstanding that for all other purposes of the Tax Acts it is income tax.

(*b*) Tax paid by a company which is treated as corporation tax by virtue of this subsection shall be repaid to the company if it would have been so repaid under *subsection (7)* had it been treated as income tax paid by the company.

(*c*) Any tax assessable under one or more of the provisions of this section may be included in one assessment if the tax so included is all due on the same date.

(12) Nothing in this section shall be taken to prejudice any powers conferred by the Tax Acts for the recovery of tax by means of an assessment or otherwise.

(13) (*a*) The Revenue Commissioners may, by regulations made for the purposes mentioned in *subsection (2)*, modify, supplement or replace any of the provisions of this section, and references in the Corporation Tax Acts and in any other enactment to this section shall be construed as including references to any such regulations and, without prejudice to the generality of the foregoing, such regulations may, in relation to tax charged by this section,

modify any provision of the Tax Acts relating to returns, assessments, claims or appeals, or may apply any such provision with or without modification.

(*b*) Regulations under this subsection may—

(i) make different provision for different descriptions of companies and for different circumstances, and may authorise the Revenue Commissioners, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;

(ii) include such transitional and other supplemental provisions as appear to the Revenue Commissioners to be expedient or necessary.

(*c*) Every regulation made under this subsection shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Provisions as to tax under *section 239.*

[CTA76 s152; FA78 s46(1)(f), (2) and (3); FA81 s22; FA90 s50; FA97 s146(2) and Sch9 PtII]

240.—(1) *Subsections (2)* to *(4)* shall apply only in respect of a company to which *section 239(10)* relates.

(2) The provisions of the Income Tax Acts relating to—

(*a*) persons who are to be chargeable to income tax,

(*b*) income tax assessments,

(*c*) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(*d*) the collection and recovery of income tax,

shall, in so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under *section 239*.

(3) (*a*) Any tax payable in accordance with *section 239* without the making of an assessment shall carry interest at the rate of 1.25 per cent for each month or part of a month from the date when the tax becomes due and payable until payment.

(*b*) *Subsections (2)* to *(4)* of *section 1080* shall apply in relation to interest payable under this subsection as they apply in relation to interest payable under *section 1080*.

(4) In its application to any tax charged by an assessment to income tax in accordance with *section 239*, *section 1080* shall apply as if *subsection (1)(b)* of that section were deleted.

(5) *Section 1081(1)* shall not apply where by virtue of *section 438(4)* there is any discharge or repayment of tax assessed under *section 239*.

PT.8
Income tax on payments by non-resident companies.

241.—(1) This section shall apply in relation to an accounting period of a company not resident in the State if the company is—

[FA90 s51(1) and (2)]

(*a*) required by virtue of *section 238(3)* to deliver an account to the Revenue Commissioners, and

(*b*) within the charge to corporation tax in respect of the accounting period.

(2) Where this section applies in relation to an accounting period of a company, then—

(*a*) the company shall make a return to the inspector of—

(i) payments made by the company in the accounting period and in respect of which income tax is required to be deducted by virtue of *section 238(2)*, and

(ii) the tax deducted out of those payments by virtue of *section 238(2)*,

and

(*b*) income tax in respect of which a return is to be made under *paragraph (a)* shall, for the purposes of the charge, assessment, collection and recovery from the company making the payments of that tax and of any interest or penalties on that tax, be treated as if it were corporation tax chargeable for the accounting period for which the return is required under *paragraph (a)*.

Annual payments for non-taxable consideration.

242.—(1) This section shall apply to any payment which is—

[FA89 s89(2)]

(*a*) an annuity or other annual payment charged with tax under Case III of Schedule D, other than—

(i) interest,

(ii) an annuity granted in the ordinary course of a business of granting annuities, or

(iii) a payment made to an individual under a liability incurred in consideration of the individual surrendering, assigning or releasing an interest in settled property to or in favour of a person having a subsequent interest,

and

(*b*) made under a liability incurred for consideration in money or money's worth, where all or any part of such consideration is not required to be taken into account in computing for the purposes of income tax or corporation tax the income of the person making the payment.

(2) Any payment to which this section applies—

(*a*) shall be made without deduction of income tax,

(*b*) shall not be allowed as a deduction in computing the income or total income of the person by whom it is made, and

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(*c*) shall not be a charge on income for the purposes of corporation tax.

CHAPTER 2

Charges on income for corporation tax purposes

Allowance of charges on income.

[CTA76 s10; FA82 s23(3); FA83 s25(2); FA90 s43; FA97 s29(2), (5) and (6)]

243.—(1) Subject to this section and to any other express exceptions, ''charges on income'' means, for the purposes of corporation tax, payments of any description mentioned in *subsection (4)*, not being dividends or other distributions of the company; but no payment deductible in computing profits or any description of profits for the purposes of corporation tax shall be treated as a charge on income.

(2) In computing the corporation tax chargeable for any accounting period of a company, any charges on income paid by the company in the accounting period, in so far as paid out of the company's profits brought into charge to corporation tax, shall be allowed as deductions against the total profits for the period reduced by any other relief from corporation tax other than group relief.

(3) (*a*) This subsection shall apply to expenditure incurred for the purposes of a trade or profession set up and commenced on or after the 22nd day of January, 1997.

(*b*) Where—

(i) a company pays any charges on income before the time it sets up and commences a trade, and

(ii) the payment is made wholly and exclusively for the purposes of that trade,

that payment, to the extent that it is not otherwise deducted from total profits of the company, shall be treated for the purposes of corporation tax as paid at that time.

(*c*) An allowance or deduction shall not be made under any provision of the Tax Acts, other than this subsection, in respect of any expenditure or payment treated under this section as incurred on the day on which a trade or profession is set up and commenced.

(4) Subject to *subsections (5)* to *(8)*, the payments referred to in *subsection (1)* are—

(*a*) any yearly interest, annuity or other annual payment and any other payments mentioned in *section 104* or *237(2)*, and

(*b*) any other interest payable in the State on an advance from—

(i) a bank carrying on a bona fide banking business in the State, or

(ii) a person who in the opinion of the Revenue Commissioners is bona fide carrying on business as a member of a stock exchange in the State or bona

fide carrying on the business of a discount house in the State, Pt.8 S.243

and for the purposes of this section any interest payable by a company as is mentioned in *paragraph (b)* shall be treated as paid on such interest being debited to the company's account in the books of the person to whom it is payable.

(5) No payment mentioned in *subsection (4)(a)* made by a company to a person not resident in the State shall be treated as a charge on income unless it is a payment—

(*a*) from which, in accordance with—

(i) *section 238*, or

(ii) that section as applied by *section 246*,

except where the company has been authorised by the Revenue Commissioners to do otherwise, the company deducts income tax which it accounts for under *sections 238* and *239*, or under *sections 238* and *241*, as the case may be, or

(*b*) which is payable out of income brought into charge to tax under Case III of Schedule D and which arises from securities and possessions outside the State.

(6) No such payment made by a company as is mentioned in *subsection (4)* shall be treated as a charge on income if—

(*a*) the payment is charged to capital or the payment is not ultimately borne by the company, or

(*b*) the payment is not made under a liability incurred for a valuable and sufficient consideration and, in the case of a company not resident in the State, incurred wholly and exclusively for the purposes of a trade carried on by the company in the State through a branch or agency, and for the purposes of this paragraph a payment within *subparagraph (ii)* or *(iii)* of *section 792(1)(b)* shall be treated as incurred for valuable and sufficient consideration.

(7) Subject to *subsection (8)*, interest shall not be treated as a charge on income.

(8) Subject to *subsection (9)*, *subsection (7)* shall not apply to any payment of interest on a loan to a company to defray money applied for a purpose mentioned in *subsection (2)* of *section 247*, if the conditions specified in *subsections (3)* and *(4)* of that section are fulfilled.

(9) *Section 249* shall apply for corporation tax as for income tax, and accordingly references in that section to *section 247*, to the investing company and to the borrower, to interest eligible for relief, and to affording relief for interest shall apply as if they were or included respectively references to *subsection (8)*, to such a company as is mentioned in that subsection, to interest to be treated as a charge on income, and to treating part only of a payment of interest as a charge on income.

Principal provisions relating to the payment of interest

Relief for interest paid on certain home loans.

[FA97 s145]

244.—(1) (*a*) In this section—

''dependent relative'', in relation to an individual, means any of the persons mentioned in *paragraph (a)* or *(b)* of *section 466(2)* in respect of whom the individual is entitled to a deduction under that section;

''loan'' means any loan or advance or any other arrangement whatever by virtue of which interest is paid or payable;

''qualifying interest'', in relation to an individual and a year of assessment, means the amount of interest paid by the individual in the year of assessment in respect of a qualifying loan;

''qualifying loan'', in relation to an individual, means a loan or loans which, without having been used for any other purpose, is or are used by the individual solely for the purpose of defraying money employed in the purchase, repair, development or improvement of a qualifying residence or in paying off another loan or loans used for such purpose;

''qualifying residence'', in relation to an individual, means a residential premises situated in the State, Northern Ireland or Great Britain, which is used as the sole or main residence of—

(i) the individual,

(ii) a former or separated spouse of the individual, or

(iii) a person who in relation to the individual is a dependent relative, and which is, where the residential premises is provided by the individual, provided rent-free and without any other consideration;

''relievable interest'', in relation to an individual and a year of assessment, means an amount equal to that part of the qualifying interest paid by the individual in the year of assessment which is determined by the formula—

$$(I \times 80\%) - M$$

where—

I is—

(i) in the case of an individual assessed to tax for the year of assessment in accordance with *section 1017*, the amount of qualifying

interest paid by that individual in the year of assessment or, if less, £5,000,

(ii) in the case of a widowed individual, the amount of qualifying interest paid by that individual in the year of assessment or, if less, £3,600,

(iii) in the case of any other individual, the amount of qualifying interest paid by that individual in the year of assessment or, if less, £2,500, and

M is—

(i) in the case of an individual assessed to tax for the year of assessment in accordance with *section 1017*, £200 or, if less, the amount of qualifying interest paid by that individual in the year of assessment,

(ii) in the case of any other individual, £100 or, if less, the amount of qualifying interest paid by that individual in the year of assessment,

but, notwithstanding the preceding provisions of this definition and subject to *paragraph (c)*, as respects the first 5 years of assessment for which there is an entitlement to relief under this section in respect of a qualifying loan, ''relievable interest'', in relation to an individual and a year of assessment, shall mean an amount equal to that part of the qualifying interest paid by the individual in the year of assessment which is determined by the formula—

$$(I \times 100\%)$$

where I has the same meaning as in the preceding provisions of this definition;

''residential premises'' means—

(i) a building or part of a building used, or suitable for use, as a dwelling, and

(ii) land which the occupier of a building or part of a building used as a dwelling has for the occupier's own occupation and enjoyment with that building or that part of a building as its garden or grounds of an ornamental nature;

''separated'' means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent.

(*b*) For the purposes of this section, in the case of an individual assessed to tax for a year of assessment in accordance with *section 1017*, any payment of qualifying interest made by the individual's spouse, in respect of which the individual's spouse would

have been entitled to relief under this section if that spouse were assessed to tax for the year of assessment in accordance with *section 1016* (apart from *subsection (2)* of that section) shall be deemed to have been made by the individual.

(*c*) For the purposes of the second-mentioned formula in the definition of ''relievable interest'', the number of years of assessment in which the amount of relievable interest is to be determined in accordance with that formula shall be reduced by one year of assessment for each year of assessment in which an individual was entitled to relief for a year of assessment before the year 1997-98 under section 76(1) or 496 of, or paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967.

(2) (*a*) In this subsection, ''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year.

(*b*) Where an individual for a year of assessment proves that in the year of assessment such individual paid an amount of qualifying interest, then, the income tax to be charged, other than in accordance with *section 16(2)*, on such individual for that year of assessment shall be reduced by an amount which is the lesser of—

(i) the amount equal to the appropriate percentage of the relievable interest, and

(ii) the amount which reduces that income tax to nil.

(*c*) Except for the purposes of *sections 187* and *188*, no account shall be taken of relievable interest in calculating the total income of the individual by whom the relievable interest is paid.

(3) (*a*) Where the amount of relievable interest is determined in accordance with the second-mentioned formula in the definition of ''relievable interest'', then, notwithstanding any other provision of the Tax Acts, in the case of an individual who has elected or could be deemed to have duly elected to be assessed to tax for the year of assessment in accordance with *section 1017*, where either—

(i) the individual, or

(ii) the individual's spouse,

was previously entitled to relief under this section or under section 76(1) or 496 of, or paragraph 1 (2) of Part III of Schedule 6 to, the Income Tax Act, 1967, and the other person was not so entitled—

(I) the relief to be given under this section, other than that part of the relief (in this subsection referred to as ''the additional relief'') which is represented by the difference between the relievable interest and the amount which would have been the amount of

the relievable interest had the first-mentioned formula in that definition applied, shall be treated as given in equal proportions to the individual and that individual's spouse for that year of assessment, and

(II) the additional relief shall be reduced by 50 per cent and the additional relief, as so reduced, shall be given only to the person who was not previously entitled to relief under this section or under section 76(1) or 496 of, or paragraph 1(2) of Part III of Schedule 6 to, the Income Tax Act, 1967.

(*b*) *Paragraph (a)* shall apply notwithstanding that—

(i) *section 1023* may have applied for the year of assessment, and

(ii) the payments in respect of which relief is given may not have been made in equal proportions.

(4) (*a*) Notwithstanding anything in this section, a loan shall not be a qualifying loan, in relation to an individual, if it is used for the purpose of defraying money applied in—

(i) the purchase of a residential premises or any interest in such premises from an individual who is the spouse of the purchaser,

(ii) the purchase of a residential premises or any interest in such premises if, at any time after the 25th day of March, 1982, that premises or interest was disposed of by the purchaser or by his or her spouse or if any interest which is reversionary to the interest purchased was so disposed of after that date, or

(iii) the purchase, repair, development or improvement of a residential premises, and the person who, directly or indirectly, received the money is connected with the individual and it appears that the purchase price of the premises substantially exceeds the value of what is acquired or, as the case may be, the cost of the repair, development or improvement substantially exceeds the value of the work done.

(*b*) *Subparagraphs (i)* and *(ii)* of *paragraph (a)* shall not apply in the case of a husband and wife who are separated.

(5) Where an individual acquires a new sole or main residence but does not dispose of the previous sole or main residence owned by the individual and it is shown to the satisfaction of the inspector that it was the individual's intention, at the time of the acquisition of the new sole or main residence, to dispose of the previous sole or main residence and that the individual has taken and continues to take all reasonable steps necessary to dispose of it, the previous sole or main residence shall be treated as a qualifying residence, in relation to the individual, for the period of 12 months commencing on the date of the acquisition of the new sole or main residence.

(6) (*a*) In this subsection, ''personal representative'' has the same meaning as in *section 799*.

(*b*) Where any interest paid on a loan used for a purpose mentioned in the definition of ''qualifying loan'' by persons

as the personal representatives of a deceased person or as trustees of a settlement made by the will of a deceased person would, on the assumptions stated in *paragraph (c)*, be eligible for relief under this section and, in a case where the condition stated in that paragraph applies, that condition is satisfied, that interest shall be so eligible notwithstanding the preceding provisions of this section.

(*c*) For the purposes of *paragraph (b)*, it shall be assumed that the deceased person would have survived and been the borrower and if, at the time of the person's death, the residential premises was used as that person's sole or main residence, it shall be further assumed that the person would have continued so to use it and the following condition shall then apply, namely, that the residential premises was, at the time the interest was paid, used as the sole or main residence of the deceased's widow or widower or of any dependent relative of the deceased.

Relief for certain bridging loans.

[FA74 s32; FA97 s146(1) and Sch9 PtI par8(1)]

245.—(1) Where a person—

(*a*) disposes of such person's only or main residence and acquires another residence for use as such person's only or main residence,

(*b*) obtains a loan, the proceeds of which are used to defray in whole or in part the cost of the acquisition or the disposal or both, and

(*c*) pays interest on the loan (and on any subsequent loan the proceeds of which are used to repay in whole or in part the first-mentioned loan or any such subsequent loan or to pay interest on any such loan) in respect of the period of 12 months from the date of the making of the first-mentioned loan,

such person shall be entitled on proof of those facts to a reduction in tax under *section 244* on the amount of that interest as if no other interest had been paid by such person in respect of the period of 12 months from the date of the making of the first-mentioned loan.

(2) *Subsection (1)* shall not apply to a loan the proceeds of which are applied for some other purpose before being applied for the purpose specified in that subsection.

Interest payments by companies and to non-residents.

[FA74 s31; CTA76 s140(1) and Sch2 PtI par42; FA88 s38; FA96 s33(1) and s132(2) and Sch5 PtII; FA97 s36]

246.—(1) In this section—

''company'' means any body corporate;

''relevant security'' means a security issued by a company on or before the 31st day of December, 2005, on terms which oblige the company to redeem the security within a period of 15 years after the date on which the security was issued.

(2) Where any yearly interest charged with tax under Schedule D is paid—

(*a*) by a company, otherwise than when paid in a fiduciary or representative capacity, to a person whose usual place of abode is in the State, or

(*b*) by any person to another person whose usual place of abode is outside the State, Pt.8 S.246

the person by or through whom the payment is made shall on making the payment deduct out of the payment a sum representing the amount of the tax on the payment at the standard rate in force at the time of the payment, and *subsections (1)* and *(3)* to *(5)* of *section 238* shall apply to such payments as they apply to payments specified in *subsection (2)* of that section.

(3) S*ubsection (2)* shall not apply to—

(*a*) interest paid in the State on an advance from a bank carrying on a bona fide banking business in the State,

(*b*) interest paid by such a bank in the ordinary course of such business,

(*c*) interest paid to a person whose usual place of abode is outside the State by—

(i) a company in the course of carrying on relevant trading operations within the meaning of *section 445* or *446*, or

(ii) a specified collective investment undertaking within the meaning of *section 734*,

(*d*) interest paid by a company authorised by the Revenue Commissioners to pay interest without deduction of income tax,

(*e*) interest on any securities in respect of which the Minister for Finance has given a direction under *section 36*,

(*f*) interest paid without deduction of tax by virtue of *section 700*, or

(*g*) interest which under *section 437* is a distribution.

(4) In relation to interest paid in respect of a relevant security *subsection (3)(c)* shall apply—

(*a*) as if there were deleted from *subsection (2)* of *section 445* '', and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005'', and

(*b*) as if there were deleted from *subsection (2)* of *section 446* '', and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005''.

Relief to companies on loans applied in acquiring interest in other companies.

[FA74 s33 and s 35(4) and (5); CTA76 s140(1) and Sch2 PtI par43; FA96 s131(9)(a)]

247.—(1) (*a*) In this section and in *sections 248* and *249*—

''control'' shall be construed in accordance with *section 432*;

''material interest'', in relation to a company, means the beneficial ownership of, or the ability to control, directly or through the medium of a connected company or connected companies or by any

other indirect means, more than 5 per cent of the ordinary share capital of the company.

(*b*) For the purposes of this section and *sections 248* and *249*, a company shall be regarded as connected with another company if it would be so regarded for the purposes of the Tax Acts by virtue of *section 10* and if it is a company referred to in *subsection (2)(a)*.

(2) This section shall apply to a loan to a company (in this section and in *section 249(1)* referred to as ''the investing company'') to defray money applied—

(*a*) in acquiring any part of the ordinary share capital of—

(i) a company which exists wholly or mainly for the purpose of carrying on a trade or trades or a company whose income consists wholly or mainly of profits or gains chargeable under Case V of Schedule D, or

(ii) a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a company referred to in *subparagraph (i)*,

(*b*) in lending to a company referred to in *paragraph (a)* money which is used wholly and exclusively for the purposes of the trade or business of the company or of a connected company, or

(*c*) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (on the assumption, if the loan was free of interest, that it carried interest).

(3) Relief shall be given in respect of any payment of the interest by the investing company on the loan if—

(*a*) when the interest is paid the investing company has a material interest in the company or in a connected company,

(*b*) during the period taken as a whole from the application of the proceeds of the loan until the interest was paid at least one director of the investing company was also a director of the company or of a connected company, and

(*c*) the investing company shows that in the period referred to in *paragraph (b)* it has not recovered any capital from the company or from a connected company apart from any amount taken into account under *section 249*.

(4) *Subsection (2)* shall not apply to a loan unless it is made in connection with the application of the money and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.

(5) Interest eligible for relief under this section shall be deducted from or set off against the income of the borrower for the accounting period in which the interest is paid and tax shall be discharged or

repaid accordingly, and such interest shall not be eligible for relief under any provision of the Tax Acts apart from this section.

Relief to individuals on loans applied in acquiring interest in companies.

[FA74 s34 and s35(4) and (5); FA92 s14(4)]

248.—(1) This section shall apply to a loan to an individual to defray money applied—

(*a*) in acquiring any part of the ordinary share capital of—

(i) a company which exists wholly or mainly for the purpose of carrying on a trade or trades or a company whose income consists wholly or mainly of profits or gains chargeable under Case V of Schedule D, or

(ii) a company whose business consists wholly or mainly of the holding of stocks, shares or securities of a company referred to in *subparagraph (i)*,

(*b*) in lending to a company referred to in *paragraph (a)* money which is used wholly and exclusively for the purpose of the trade or business of the company or of a connected company, or

(*c*) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (on the assumption, if the loan was free of interest, that it carried interest).

(2) Relief shall be given in respect of any payment of interest by the individual on the loan if—

(*a*) when the interest is paid the individual has a material interest in the company or in a connected company,

(*b*) during the period taken as a whole from the application of the proceeds of the loan until the interest was paid, the individual has worked for the greater part of his or her time in the actual management or conduct of the business of the company or of a connected company, and

(*c*) the individual shows that in the period referred to in *paragraph (b)* he or she has not recovered any capital from the company or from a connected company, apart from any amount taken into account under *section 249*.

(3) Relief shall not be given in respect of any payment of interest by an individual on a loan applied on or after the 24th day of April, 1992, for any of the purposes specified in *subsection (1)* unless the loan is applied for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(4) *Subsection (1)* shall not apply to a loan unless it is made in connection with the application of the money and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.

(5) Interest eligible for relief under this section shall be deducted from or set off against the income of the borrower for the year of assessment in which the interest is paid and tax shall be discharged

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or repaid accordingly, and such interest shall not be eligible for relief under any provision of the Income Tax Acts apart from this section.

Rules relating to recovery of capital and replacement loans.

[FA74 s35(1) to (3)]

249.—(1) (*a*) Where, at any time after the application of the proceeds of a loan to which *section 247* or *248* applies, the investing company or the individual (in this section referred to as ''the borrower'') has recovered any amount of capital from the company concerned or from a connected company without using that amount in repayment of the loan, the borrower shall be treated for the purposes of this section as if the borrower had at that time repaid that amount out of the loan and so that out of the interest otherwise eligible for relief and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

(*b*) Where part only of a loan referred to in *paragraph (a)* fulfils the conditions in *section 247* or *248* so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

(2) (*a*) The borrower shall be treated as having recovered an amount of capital from the company or from a connected company if—

(i) the borrower receives consideration of that amount or value for the sale of any part of the ordinary share capital of the company or of a connected company or any consideration of that amount or value by means of repayment of any part of that ordinary share capital,

(ii) the company or a connected company repays that amount of a loan or advance from the borrower, or

(iii) the borrower receives consideration of that amount or value for assigning any debt due to the borrower from the company or from a connected company.

(*b*) In the case of a sale or assignment otherwise than by means of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

(3) *Sections 247(3)* and *248(2)* and *subsections (1)* and *(2)* shall apply to a loan referred to in *section 247(2)(c)* or *248(1)(c)* as if such loan and any loan it replaces were one loan, and as if—

(*a*) references in *sections 247(3)* and *248(2)* and in *subsection (1)* to the application of the proceeds of the loan were references to the application of the proceeds of the original loan, and

(*b*) any restriction under *subsection (1)* which applied to any loan which has been replaced applied also to the loan which replaces that loan.

250.—(1) In this section—

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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)]

''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

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(*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.

Restriction of relief to individuals on loans applied in acquiring shares in companies where a claim for ''BES relief'' or ''film relief'' is made in respect of amount subscribed for shares.

[FA90 s11; FA93 s6]

251.—Notwithstanding *sections 248* and *250*, relief shall not be given under either section in respect of any payment of interest on any loan applied in acquiring shares (being shares forming part of the ordinary share capital of a company) issued—

(*a*) on or after the 20th day of April, 1990, if a claim for relief under *Part 16* is made in respect of the amount subscribed for those shares, or

(*b*) on or after the 6th day of May, 1993, if a claim for relief under *section 481* is made in respect of the amount subscribed for those shares.

Restriction of relief to individuals on loans applied in acquiring interest in companies which become quoted companies.

[FA92 s14(1), (2) and (3); FA97 s10]

252.—(1) In this section—

''loan'' means a loan applied for any of the purposes specified in the principal section;

''the principal section'' means *section 248* as extended by *section 250*;

''quoted company'' means a company whose shares or any class of whose shares—

(*a*) are listed in the official list of the Irish Stock Exchange or any other stock exchange, or

(*b*) are quoted on an unlisted securities market of any stock exchange;

''the specified date'', in relation to a loan, means—

(*a*) (i) in a case where the loan was applied on or before the 5th day of April, 1989, the 6th day of April, 1992,

(ii) in a case where the loan was applied on or after the 6th day of April, 1989, but on or before the 5th day of April, 1990, the 6th day of April, 1993, and

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(iii) in a case where the loan was applied on or after the 6th day of April, 1990, the 6th day of April, 1994,

or

(*b*) if later, the 6th day of April in the second year of assessment next after the year of assessment in which the company, part of whose ordinary share capital was acquired or, as the case may be, to which the money was loaned, becomes a quoted company.

(2) Subject to *subsection (3)*, if the company, part of whose ordinary share capital was acquired or, as the case may be, to which the money was loaned, is, at the specified date in relation to the loan, a quoted company, entitlement to relief under the principal section in respect of interest paid on a loan shall be determined subject to the following provisions:

(*a*) as respects the year of assessment commencing with the specified date, relief shall not be given in respect of the excess of the amount, or of the aggregate amount, of the interest over 70 per cent of the amount, or of the aggregate amount, of the interest in respect of which apart from this paragraph relief would otherwise have been given under the principal section;

(*b*) as respects the next year of assessment, relief shall not be given in respect of the excess of the amount, or of the aggregate amount, of the interest over 40 per cent of the amount, or of the aggregate amount, of the interest in respect of which apart from this paragraph relief would otherwise have been given under the principal section;

(*c*) as respects any subsequent year of assessment, no relief shall be given under the principal section.

(3) Notwithstanding anything in *subsection (2)* or the principal section, the principal section shall not apply in relation to any payment of interest on a loan applied on or after the 29th day of January, 1992, if, at the time the loan is applied, the company, part of whose ordinary share capital was or is acquired or, as the case may be, to which the money was or is loaned, is a quoted company.

Relief to individuals on loans applied in acquiring interest in partnerships.

[FA74 s36]

253.—(1) This section shall apply to a loan to an individual to defray money applied—

(*a*) in purchasing a share in a partnership,

(*b*) in contributing money to a partnership by means of capital or a premium, or in advancing money to the partnership, where the money contributed or advanced is used wholly and exclusively for the purposes of the trade or profession carried on by the partnership, or

(*c*) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (on the assumption, if the loan was free of interest, that it carried interest).

(2) Relief shall be given in respect of any payment of interest by the individual on the loan if—

(*a*) throughout the period from the application of the proceeds of the loan until the interest was paid the individual has personally acted in the conduct of the trade or profession carried on by the partnership as a partner therein, and

(*b*) the individual shows that in that period he or she has not recovered any capital from the partnership, apart from any amount taken into account under *subsection (3)*.

(3) (*a*) Where at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the partnership without using that amount in repayment of the loan, the individual shall be treated for the purposes of this section as if he or she had at that time repaid that amount out of the loan, and accordingly there shall be deducted out of the interest otherwise eligible for relief and payable for any period after that time an amount equal to interest on the amount of capital so recovered.

(*b*) Where part only of a loan fulfils the conditions in this section so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

(4) (*a*) The individual shall be treated as having recovered an amount of capital from the partnership if—

(i) the individual receives a consideration of that amount or value for the sale of any part of his or her interest in the partnership,

(ii) the partnership returns any amount of capital to the individual or repays any amount advanced by the individual, or

(iii) the individual receives a consideration of that amount or value for assigning any debt due to the individual from the partnership.

(*b*) In the case of a sale or assignment otherwise than by means of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

(5) *Subsections (2)* to *(4)* shall apply to a loan referred to in *subsection (1)(c)* as if such loan and any loan it replaces were one loan, and as if—

(*a*) references in *subsections (2)* to *(4)* to the application of the proceeds of the loan were references to the application of the proceeds of the original loan, and

(*b*) any restriction under *subsection (3)* which applied to any loan which has been replaced applied also as respects the loan which replaces that loan.

(6) *Subsection (1)* shall not apply to a loan unless it is made in connection with the application of the money and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for

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some other purpose before being applied as described in that subsection.

(7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid and tax shall be discharged or repaid accordingly, and such interest shall not be eligible for relief under any provision of the Income Tax Acts apart from this section.

Interest on borrowings to replace capital withdrawn in certain circumstances from a business.

[FA74 s37]

254.—Where a person borrows money to replace in whole or in part capital in any form formerly employed in any trade, profession or other business carried on by the person in respect of the profits or gains of which tax is charged under Schedule D, being capital which within the 5 years preceding the date of replacement was withdrawn from such use for use otherwise than in connection with a trade, profession or other business carried on by the person, interest on such borrowed money shall not be regarded as interest wholly and exclusively laid out or expended for the purposes of a trade, profession or other business.

Arrangements for payment of interest less tax or of fixed net amount.

[FA74 s39]

255.—(1) Any agreement made, whether orally or in writing, for the payment of interest ''less tax'', or using words to that effect, shall be construed, in relation to interest payable without deduction of tax, as if the words ''less tax'' or the equivalent words were not included.

(2) In relation to interest on which the recipient is chargeable to tax under Schedule D and which is payable without deduction of tax, any agreement, whether orally or in writing and however worded, for the payment of interest at such a rate (in this subsection referred to as ''the gross rate'') as shall, after deduction of tax at the standard rate of tax for the time being in force, be equal to a stated rate, shall be construed as if it were an agreement requiring the payment of interest at the gross rate.

CHAPTER 4

Interest payments by certain deposit takers

Interpretation (*Chapter 4*).

[FA 86 s31; FA91 s11; FA92 s22(1)(a); F(No.2)A92 s3(a); FA93 s15(1)(a); FA95 s11(1) and s167]

256.—(1) In this Chapter—

''amount on account of appropriate tax'' shall be construed in accordance with *section 258(4)*;

''appropriate tax'', in relation to a payment of relevant interest, means a sum representing income tax on the amount of that payment—

(*a*) in the case of a relevant deposit or relevant deposits held in a special savings account, at the rate of 15 per cent, and

(*b*) in the case of any other relevant deposit, at the standard rate in force at the time of payment;

''building society'' means a building society within the meaning of the Building Societies Act, 1989, or a society established in accordance with the law of any other Member State of the European Communities which corresponds to that Act;

''deposit'' means a sum of money paid to a relevant deposit taker on terms under which it will be repaid with or without interest and

either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made;

''foreign currency'' means a currency other than the currency of the State;

''interest'' means any interest of money whether yearly or otherwise, including any amount, whether or not described as interest, paid in consideration of the making of a deposit, and, as respects a building society, includes any dividend or other distribution in respect of shares in the society; but any amount consisting of an excess of the amount received on the redemption of any holding of A.C.C. Bonus Bonds — First Series, issued by ACC Bank plc, over the amount paid for the holding shall not be treated as interest for the purposes of this Chapter;

''pension scheme'' means an exempt approved scheme within the meaning of *section 774* or a retirement annuity contract or a trust scheme to which *section 784* or *785* applies;

''relevant deposit'' means a deposit held by a relevant deposit taker, other than a deposit—

(*a*) which is made by, and the interest on which is beneficially owned by—

(i) a relevant deposit taker,

(ii) the National Treasury Management Agency,

(iii) the State acting through the National Treasury Management Agency,

(iv) the Central Bank of Ireland, or

(v) Icarom plc,

(*b*) which is a debt on a security issued by the relevant deposit taker and listed on a stock exchange,

(*c*) which, in the case of a relevant deposit taker resident in the State for the purposes of corporation tax, is held at a branch of the relevant deposit taker situated outside the State,

(*d*) which, in the case of a relevant deposit taker not resident in the State for the purposes of corporation tax, is held otherwise than at a branch of the relevant deposit taker situated in the State,

(*e*) which is a deposit denominated in a foreign currency made—

(i) by a person other than an individual before the 1st day of January, 1993, or

(ii) by an individual before the 1st day of June, 1991,

but, where on or after the 1st day of June, 1991, and before the 1st day of January, 1993, a deposit denominated in a foreign currency is made by an individual to a relevant deposit taker with whom the individual had a

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deposit denominated in the same foreign currency immediately before the 1st day of June, 1991, such a deposit shall not be regarded as a relevant deposit,

(*f*) (i) which is made on or after the 1st day of January, 1993, by, and the interest on which is beneficially owned by—

(I) a company which is or will be within the charge to corporation tax in respect of the interest, or

(II) a pension scheme,

and

(ii) in respect of which a declaration of the kind mentioned in *section 265* has been made to the relevant deposit taker,

(*g*) in respect of which—

(i) no person resident in the State is beneficially entitled to any interest, and

(ii) a declaration of the kind mentioned in *section 263* has been made to the relevant deposit taker, or

(*h*) (i) the interest on which is exempt—

(I) from income tax under Schedule D by virtue of *section 207(1)(b)*, or

(II) from corporation tax by virtue of *section 207(1)(b)* as it applies for the purposes of corporation tax under *section 76(6)*,

and

(ii) in respect of which a declaration of the kind mentioned in *section 266* has been made to the relevant deposit taker;

''relevant deposit taker'' means any of the following persons—

(*a*) a person who is a holder of a licence granted under section 9 of the Central Bank Act, 1971, or a person who holds a licence or other similar authorisation under the law of any other Member State of the European Communities which corresponds to a licence granted under that section,

(*b*) a building society,

(*c*) a trustee savings bank within the meaning of the Trustee Savings Banks Acts, 1863 to 1989,

(*d*) ACC Bank plc,

(*e*) ICC Bank plc,

(*f*) ICC Investment Bank Limited,

(*g*) the Post Office Savings Bank;

"relevant interest" means interest paid in respect of a relevant deposit;

"return" means a return under *section 258(2)*;

"special savings account" means an account opened on or after the 1st day of January, 1993, in which a relevant deposit or relevant deposits made by an individual is or are held and in respect of which—

(*a*) the conditions in *section 264(1)* are satisfied, and

(*b*) a declaration of the kind mentioned in *section 264(2)* has been made to the relevant deposit taker.

(2) For the purposes of this Chapter—

(*a*) any amount credited as interest in respect of a relevant deposit shall be treated as a payment of interest, and references in this Chapter to relevant interest being paid shall be construed accordingly,

(*b*) any reference in this Chapter to the amount of a payment of relevant interest shall be construed as a reference to the amount which would be the amount of that payment if no appropriate tax were to be deducted from that payment, and

(*c*) a deposit shall be treated as held at a branch of a relevant deposit taker if it is recorded in its books as a liability of that branch.

Deduction of tax from relevant interest.

[FA 86 s32]

257.—(1) Where a relevant deposit taker makes a payment of relevant interest—

(*a*) the relevant deposit taker shall deduct out of the amount of the payment the appropriate tax in relation to the payment,

(*b*) the person to whom such payment is made shall allow such deduction on the receipt of the residue of the payment, and

(*c*) the relevant deposit taker shall be acquitted and discharged of so much money as is represented by the deduction as if that amount of money had actually been paid to the person.

(2) A relevant deposit taker shall treat every deposit made with it as a relevant deposit unless satisfied that such a deposit is not a relevant deposit; but, where a relevant deposit taker has satisfied itself that a deposit is not a relevant deposit, it shall be entitled to continue to so treat the deposit until such time as it is in possession of information which can reasonably be taken to indicate that the deposit is or may be a relevant deposit.

(3) Any payment of relevant interest which is within *subsection (1)* shall be treated as not being within *section 246*.

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Returns and collection of appropriate tax.

[FA 86 s33(1) to (9)(d) and (10); FA97 s146(2) and Sch9 PtII]

258.—(1) Notwithstanding any other provision of the Tax Acts, this section shall apply for the purpose of regulating the time and manner in which appropriate tax in relation to a payment of relevant interest shall be accounted for and paid.

(2) Subject to *subsection (5)*, a relevant deposit taker shall make for each year of assessment, within 15 days from the end of the year of assessment, a return to the Collector-General of the relevant interest paid by it in that year and of the appropriate tax in relation to the payment of that interest.

(3) The appropriate tax in relation to a payment of relevant interest which is required to be included in a return shall be due at the time by which the return is to be made and shall be paid by the relevant deposit taker to the Collector-General, and the appropriate tax so due shall be payable by the relevant deposit taker without the making of an assessment; but appropriate tax which has become so due may be assessed on the relevant deposit taker (whether or not it has been paid when the assessment is made) if that tax or any part of it is not paid on or before the due date.

(4) (*a*) Notwithstanding *subsection (3)*, a relevant deposit taker shall for each year of assessment pay to the Collector-General, within 15 days of the 5th day of October in that year of assessment, an amount on account of appropriate tax.

(*b*) An amount on account of appropriate tax payable under this subsection shall be not less than the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment concerned under *subsection (3)* if the total amount of the relevant interest which had accrued in the period commencing on the 6th day of April and ending on the 5th day of October in that year of assessment on all relevant deposits held by the relevant deposit taker in that period (and no more) had been paid by it in that year of assessment.

(*c*) Any amount on account of appropriate tax so paid by the relevant deposit taker for any year of assessment shall be treated as far as may be as a payment on account of any appropriate tax due and payable by it for that year of assessment under *subsection (3)*.

(*d*) For the purposes of *paragraph (b)*, interest shall be treated as accruing from day to day if not otherwise so treated.

(*e*) Where the amount on account of appropriate tax paid by a relevant deposit taker for any year of assessment under this subsection exceeds the amount of appropriate tax due and payable by it for that year of assessment under *subsection (3)*, the excess shall be carried forward and shall be set off against any amount due and payable under this subsection or *subsection (3)* by the relevant deposit taker for any subsequent year of assessment (any such set-off being effected as far as may be against an amount so due and payable at an earlier date rather than at a later date).

(5) (*a*) Any amount on account of appropriate tax payable by a relevant deposit taker under *subsection (4)* shall be so payable without the making of an assessment.

(*b*) The provisions of this Chapter relating to the collection and recovery of appropriate tax shall, with any necessary modifications, apply to the collection and recovery of any amount on account of appropriate tax.

(*c*) A return required to be made by a relevant deposit taker for any year of assessment shall contain a statement of the amount of interest in respect of which an amount on account of appropriate tax is due and payable by the relevant deposit taker for that year of assessment and of the amount on account of appropriate tax so due and payable, and a return shall be so required to be made by a relevant deposit taker for a year of assessment notwithstanding that no relevant interest was paid by it in the year of assessment.

(6) Where it appears to the inspector that there is any amount of appropriate tax in relation to a payment of relevant interest which ought to have been but has not been included in a return, or where the inspector is dissatisfied with any return, the inspector may make an assessment on the relevant deposit taker to the best of his or her judgment, and any amount of appropriate tax in relation to a payment of relevant interest due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(7) Where any item has been incorrectly included in a return as a payment of relevant interest, the inspector may make such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the resulting liabilities to tax, including interest on unpaid tax, whether of the relevant deposit taker or any other person, are in so far as possible the same as they would have been if the item had not been so included.

(8) (*a*) Any appropriate tax assessed on a relevant deposit taker under this Chapter shall be due within one month after the issue of the notice of assessment (unless that tax or any amount treated as an amount on account of that tax is due earlier under *subsection (3)* or *(4)*) subject to any appeal against the assessment, but no such appeal shall affect the date when any amount is due under *subsection (3)* or *(4)*.

(*b*) On the determination of an appeal against an assessment under this Chapter, any appropriate tax overpaid shall be repaid.

(9) (*a*) The provisions of the Income Tax Acts relating to—

(i) assessments to income tax,

(ii) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(iii) the collection and recovery of income tax,

shall, in so far as they are applicable, apply to the assessment, collection and recovery of appropriate tax.

(*b*) Any amount of appropriate tax or amount on account of appropriate tax payable in accordance with this Chapter

without the making of an assessment shall carry interest at the rate of 1.25 per cent for each month or part of a month from the date when the amount becomes due and payable until payment.

(*c*) *Subsections (2)* and *(4)* of *section 1080* shall apply in relation to interest payable under *paragraph (b)* as they apply in relation to interest payable under *section 1080*.

(*d*) In its application to any appropriate tax charged by any assessment made in accordance with this Chapter, *section 1080* shall apply as if *subsection (1)(b)* of that section were deleted.

(10) Every return shall be in a form prescribed by the Revenue Commissioners and shall include a declaration to the effect that the return is correct and complete.

Alternative amount on account of appropriate tax.

[FA87 s7(1)(a) and (b), (2), (3) and (4)]

259.—(1) For the purposes of this section—

(*a*) interest shall be treated, if not otherwise so treated, as accruing from day to day, and

(*b*) references to ''general crediting date'', as respects a relevant deposit taker, shall be construed as references to a date on which the relevant deposit taker credits to all, or to the majority, of relevant deposits held by it on that date interest accrued due on those deposits (whether or not the interest is added to the balances on the relevant deposits on that date for the purpose of calculating interest due at some future date).

(2) Where for any year of assessment the amount of appropriate tax due and payable by a relevant deposit taker for that year under *section 258* is less than the amount of appropriate tax which would have been so due and payable by the relevant deposit taker for that year if the total amount of the interest which had accrued, in the period of 12 months ending on—

(*a*) the general crediting date as respects that relevant deposit taker falling in that year of assessment,

(*b*) if there is more than one general crediting date as respects that relevant deposit taker falling in that year of assessment, the last such date, or

(*c*) if there is no general crediting date as respects that relevant deposit taker falling in that year of assessment, the 5th day of April in that year,

on all relevant deposits held by the relevant deposit taker in that period (and no more) had been paid by it in that period, this section shall apply to that relevant deposit taker for the year of assessment succeeding that year of assessment and for each subsequent year of assessment.

(3) Notwithstanding anything in *section 258*, where this section applies to a relevant deposit taker for any year of assessment, *section 258(4)* shall not apply to the relevant deposit taker for that year of assessment but *subsection (4)* shall apply to that relevant deposit taker for that year and, as respects that relevant deposit taker

for that year, any reference in the Tax Acts (apart from this section) to *section 258(4)* shall be construed as a reference to *subsection (4)*. PT.8 S.259

(4) (*a*) Notwithstanding *section 258(3)*, a relevant deposit taker shall for each year of assessment pay to the Collector-General, within 15 days of the 5th day of October in that year of assessment, an amount on account of appropriate tax which shall be not less than the amount determined by the formula set out in the Table to this paragraph, and any amount on account of appropriate tax so paid by the relevant deposit taker for a year of assessment shall be treated as far as may be as a payment on account of any appropriate tax due and payable by it for that year of assessment under *section 258(3)*.

TABLE

A – (B – C)

where—

A is the amount of appropriate tax which would be due and payable by the relevant deposit taker for the year of assessment (in this Table referred to as ''the relevant year'') in accordance with *section 258(3)* if the total amount of the relevant interest which had accrued in the period of 12 months ending on the 5th day of October in the relevant year on all relevant deposits held by the relevant deposit taker in that period (and no more) had been paid by it in the relevant year,

B is the amount of appropriate tax which was due and payable by the relevant deposit taker for the year of assessment preceding the relevant year in accordance with *section 258(3)*, and

C is an amount equal to the lesser of the amount at B and the amount treated, in accordance with this subsection or *section 258(4)*, as paid by the relevant deposit taker on account of the appropriate tax due and payable by it for the year of assessment preceding the relevant year.

(*b*) Where the amount on account of appropriate tax paid by a relevant deposit taker for any year of assessment under this subsection exceeds the amount of appropriate tax due and payable by it for that year of assessment under *section 258(3)*, the excess shall be carried forward and shall be set off against any amount due and payable under this subsection or *section 258(3)* by the relevant deposit taker for any subsequent year of assessment (any such set-off being effected as far as may be against an amount so due and payable at an earlier date rather than at a later date).

Provisions supplemental to *sections 258* and *259*.

[FA86 s33A; FA96 s42; FA97 s146(1) and Sch9 PtI par14]

260.—(1) In this section—

''specified deposit'' means a relevant deposit made on or after the 28th day of March, 1996, in respect of which specified interest is payable other than such a deposit—

(*a*) which is held in a special savings account, or

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(*b*) in respect of which—

(i) the interest payable is to any extent linked to or determined by changes in a stock exchange index or any other financial index,

(ii) arrangements were, or were being put, in place by the relevant deposit taker before the 28th day of March, 1996, to accept such a deposit, and

(iii) the deposit is made on or before the 7th day of June, 1996;

''specified interest'' means interest in respect of a specified deposit, other than so much of the amount of that interest as—

(*a*) is payable annually or at more frequent intervals, or

(*b*) cannot be determined until the date of payment of such interest, notwithstanding that the terms under which the deposit was made are complied with fully.

(2) (*a*) Subject to this section, specified interest shall for the purposes of *section 258* be deemed—

(i) to accrue from day to day, and

(ii) to be relevant interest paid by the relevant deposit taker in each year of assessment to the extent that—

(I) it is deemed to accrue in that year of assessment, and

(II) it is not paid in that year of assessment,

and the relevant deposit taker shall account for appropriate tax accordingly.

(*b*) The amount of specified interest deemed to be relevant interest paid by a relevant deposit taker in any year of assessment by virtue of this subsection shall not be less than such amount as would be deductible in respect of interest or any other amount payable on the specified deposit in computing the income of the relevant deposit taker for the year of assessment if the year of assessment were an accounting period of the relevant deposit taker.

(3) (*a*) Where apart from *subsection (2)* a relevant deposit taker makes a payment of relevant interest which is or includes specified interest, the relevant deposit taker shall—

(i) deduct out of the whole of the amount of that payment the appropriate tax in relation to that payment in accordance with *section 257*, and

(ii) account for that appropriate tax under *section 258*,

and that appropriate tax shall be due and payable by the relevant deposit taker in accordance with *section 258*.

(*b*) So much of the amount of appropriate tax paid by the relevant deposit taker by virtue of *subsection (2)* as is referable to specified interest included in a payment of

relevant interest referred to in *paragraph (a)* shall be set off against any amount of appropriate tax due and payable by the relevant deposit taker for the year of assessment in which that payment of interest is made or against any amount, or amount on account of, appropriate tax due and payable by it for a year of assessment subsequent to that year (any such set-off being effected as far as may be against an amount so due and payable at an earlier date rather than at a later date).

(4) *Subsection (2)* shall not apply for any year of assessment where, for that year of assessment and all preceding years of assessment—

(*a*) in accordance with *section 258(4)* or *259(4)*, as may be appropriate, a relevant deposit taker makes a payment on account of appropriate tax in respect of specified interest as if, in relation to each specified deposit held by it, the references—

(i) in *section 258(4)*, to the period beginning on the 6th day of April, and ending on the 5th day of October in the year of assessment, and

(ii) in *section 259(4)*, where it occurs in the meaning assigned to ''A'', to the period of 12 months ending on the 5th day of October in the relevant year,

were a reference to the period beginning on the date on which the specified deposit was made and ending on the 5th day of October in the year of assessment, and

(*b*) the full amount payable on account of appropriate tax by the relevant deposit taker in that year of assessment in accordance with *section 258(4)* or *259(4)*, including any amount payable in accordance with those sections as modified by *paragraph (a)*, before the set-off of any amount on account of appropriate tax paid in an earlier year of assessment, does not exceed the appropriate tax payable by the relevant deposit taker for that year of assessment.

Taxation of relevant interest, etc.

[FA 86 s35(1)(a) to (cc); FA93 s15(1)(b); FA94 s12(1)(a)]

261.—Notwithstanding anything in the Tax Acts—

(*a*) no part of any interest paid by a building society in respect of any shares in the society shall be treated for the purposes of the Corporation Tax Acts as a distribution of the society or as franked investment income of any company resident in the State;

(*b*) except where otherwise provided for in *section 267*, no repayment of appropriate tax in respect of any relevant interest shall be made to any person receiving or entitled to the payment of the relevant interest who is not a company within the charge to corporation tax in respect of the payment;

(*c*) (i) the amount of any payment of relevant interest shall be regarded as income chargeable to tax under Case IV of Schedule D and under no other Case or Schedule and shall be taken into account in computing the total income of the person entitled to that amount,

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but, in relation to such a person (being an individual)—

(I) except for the purposes of a claim to repayment under *section 267(3)*, the specified amount within the meaning of *section 187* or *188*, and

(II) the part of taxable income on which he or she is charged to income tax at the standard rate,

shall, as respects the year of assessment for which he or she is to be charged to income tax in respect of the relevant interest, be increased by the amount of that payment, and

(ii) where the specified amount is so increased, references in *sections 187* and *188* to—

(I) income tax payable shall be construed as references to the income tax payable after credit is given by virtue of *section 59* for appropriate tax deducted from the payment of relevant interest, and

(II) a sum equal to twice the specified amount shall be construed as references to a sum equal to the aggregate of—

(A) twice the specified amount (before it is so increased), and

(B) the amount of the payment of relevant interest;

(*d*) *section 59* shall apply as if a reference to appropriate tax deductible by virtue of this Chapter were contained in *paragraph (a)* of that section.

Statement furnished by relevant deposit taker.

[FA86 s36]

262.—A relevant deposit taker shall, when requested to do so by any person entitled to any relevant interest on a relevant deposit held by the relevant deposit taker, furnish to that person, as respects any payment of such relevant interest, a statement showing—

(*a*) the amount of that payment,

(*b*) the amount of appropriate tax deducted from that payment,

(*c*) the net amount of that payment, and

(*d*) the date of that payment.

Declarations relating to deposits of non-residents.

[FA86 s37(1) (apart from paragraph (i) of the proviso) and (2); FA95 s167]

263.—(1) The declaration referred to in *paragraph (g)(ii)* of the definition of ''relevant deposit'' in *section 256(1)* shall be a declaration in writing to a relevant deposit taker which—

(*a*) is made by a person (in this section referred to as ''the declarer'') to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker and is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time when the declaration is made the person beneficially entitled to the interest in relation to the deposit is not, or, as the case may be, all of the persons so entitled are not, resident in the State,

(*d*) contains as respects the person or, as the case may be, each of the persons mentioned in *paragraph (c)*—

(i) the name of the person,

(ii) the address of the person's principal place of residence, and

(iii) the name of the country in which the person is resident at the time the declaration is made,

(*e*) contains an undertaking by the declarer that if the person or, as the case may be, any of the persons mentioned in *paragraph (c)* becomes resident in the State, the declarer will notify the relevant deposit taker accordingly, and

(*f*) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter;

and a declaration made before the 27th day of May, 1986, in a form authorised by the Revenue Commissioners under paragraph (22) of Financial Resolution No. 12 passed by Dáil Éireann on the 30th day of January, 1986, shall be deemed for the purposes of this Chapter to be a declaration of the kind mentioned in this subsection.

(2) (*a*) A relevant deposit taker shall—

(i) keep and retain for the longer of the following periods—

(I) a period of 6 years, and

(II) a period which, in relation to the deposit in respect of which the declaration is made, ends not earlier than 3 years after the date on which the deposit is repaid or, as the case may be, becomes a relevant deposit, and

(ii) on being so required by notice given to it in writing by an inspector, make available to the inspector, within the time specified in the notice,

all declarations of the kind mentioned in *subsection (1)* which have been made in respect of deposits held by the relevant deposit taker.

(*b*) The inspector may examine or take extracts from or copies of any declarations made available to him or her under *paragraph (a)*.

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Conditions and declarations relating to special savings accounts.

[FA86 s37A; FA92 s22(1)(c); F(No.2)A92 s3(b); FA93 s15(1)(c); FA94 s12(1)(b)]

264.—(1) The following are the conditions referred to in *paragraph (a)* of the definition of ''special savings account'' in *section 256(1)*:

(*a*) the account shall be designated by the relevant deposit taker as a special savings account;

(*b*) the account shall not be denominated in a foreign currency;

(*c*) the account shall not be connected with any other account held by the account holder or any other person; and for this purpose an account shall be connected with another account if—

(i) (I) either account was opened with reference to the other account, or with a view to enabling the other account to be opened on particular terms, or with a view to facilitating the opening of the other account on particular terms, and

(II) the terms on which either account was opened would have been significantly less favourable to the account holder if the other account had not been opened,

or

(ii) the terms on which either account is operated are altered or affected in any way whatever because of the existence of the other account;

(*d*) no withdrawal of money shall be made from the account within the period of 3 months commencing on the date on which it is opened;

(*e*) the terms under which the account is opened shall require the individual to give a minimum notice of 30 days to the relevant deposit taker in relation to the withdrawal of any money from the account;

(*f*) all moneys held in the account shall be subject to the same terms;

(*g*) there shall not be any agreement, arrangement or understanding in existence, whether express or implied, which influences or determines, or could influence or determine, the rate (other than an unspecified and variable rate) of interest which is paid or payable, in respect of the relevant deposit or relevant deposits held in the account, in or in respect of any period which is more than 24 months;

(*h*) interest paid or payable in respect of the relevant deposit or relevant deposits held in the account shall not directly or indirectly be linked to or determined by any change in the price or value of any shares, stocks, debentures or securities listed on a stock exchange or dealt in on an unlisted securities market;

(*i*) the relevant deposit or the aggregate of the relevant deposits held in the account, including any relevant interest added to that deposit or those deposits, shall not at any time exceed £50,000;

(*j*) the account shall not be opened by or held in the name of an individual who is not of full age;

(*k*) the account shall be opened by and held in the name of the individual beneficially entitled to the relevant interest payable in respect of the relevant deposit or relevant deposits held in the account;

(*l*) except in the case of an account opened and held jointly only by a couple married to each other, the account shall not be a joint account;

(*m*) except in the case of an account opened and held jointly only by a couple married to each other, either the same or any other relevant deposit taker shall not simultaneously hold another special savings account opened and held by an individual;

(*n*) in the case of an account opened and held jointly only by a couple married to each other, they shall not simultaneously hold (either with the same or any other relevant deposit taker) any other special savings account either individually or jointly other than one other such account opened and held jointly by them.

(2) The declaration referred to in *paragraph (b)* of the definition of ''special savings account'' in *section 256(1)* shall be a declaration in writing to a relevant deposit taker which—

(*a*) is made by the individual (in this section referred to as ''the declarer'') to whom any interest payable in respect of the relevant deposit or relevant deposits held in the account in respect of which the declaration is made is payable by the relevant deposit taker, and is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time when the declaration is made the conditions referred to in *paragraphs (j)* to *(n)* of *subsection (1)* are satisfied in relation to the account in respect of which the declaration is made,

(*d*) contains the full name and address of the individual beneficially entitled to the interest payable in respect of the relevant deposit or relevant deposits held in the account in respect of which the declaration is made,

(*e*) contains an undertaking by the declarer that, if the conditions referred to in *paragraphs (j)* to *(n)* of *subsection (1)* cease to be satisfied in respect of the account in respect of which the declaration is made, the declarer will notify the relevant deposit taker accordingly, and

(*f*) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter.

(3) *Subsection (2)* of *section 263* shall apply as respects declarations of the kind mentioned in this section as it applies as respects declarations of the kind mentioned in that section.

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(4) *Section 261* shall apply in relation to any relevant interest paid in respect of any relevant deposit held in a special savings account as if the following paragraph were substituted for *paragraph (c)* of that section:

> ''(*c*) the amount of any payment of relevant interest (being relevant interest paid in respect of any relevant deposit held in a special savings account) shall not, except for the purposes of a claim to repayment under *section 267(3)* in respect of the appropriate tax deducted from such relevant interest, be reckoned in computing total income for the purposes of the Income Tax Acts,''.

(5) An account shall cease to be a special savings account if any of the conditions mentioned in *subsection (1)* cease to be satisfied, and *subsection (4)* shall not apply to any relevant interest in respect of any relevant deposit held in the account which is paid on or after the date on which the account ceases to be a special savings account.

Declarations by companies and pension schemes.

[FA86 s37B; FA92 s22(1)(c); F(No.2)A92 s3(c)]

265.—(1) In this section—

''appropriate person'' means—

(*a*) in relation to a company, the person or persons appointed as auditor of the company under section 160 of the Companies Act, 1963, or under the law of the state in which the company is incorporated and which corresponds to that section, and

(*b*) in relation to a pension scheme—

(i) in the case of an exempt approved scheme (within the meaning of *section 774*), the administrator (within the meaning of *section 770*) of the scheme,

(ii) in the case of a retirement annuity contract to which *section 784* or *785* applies, the person lawfully carrying on in the State the business of granting annuities on human life with whom the contract is made, and

(iii) in the case of a trust scheme to which *section 784* or *785* applies, the trustees of the trust scheme;

''tax reference number'', in relation to a person, has the meaning assigned to it by *section 885* in relation to a specified person within the meaning of that section.

(2) The declaration referred to in *paragraph (f)* of the definition of ''relevant deposit'' in *section 256(1)* shall be a declaration in writing to the relevant deposit taker which—

(*a*) is made by a person (in this section referred to as ''the declarer'') to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker, and is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time the declaration is made the interest on the deposit in respect of which the declaration is made—

(i) (I) is beneficially owned by a company within the charge to corporation tax, and

(II) will be included in the profits of the company on which it is to be charged to corporation tax,

or

(ii) is beneficially owned by a pension scheme,

(*d*) contains as respects the person beneficially entitled to the interest—

(i) that person's name and address, and

(ii) that person's tax reference number,

(*e*) contains a certificate by the appropriate person that, to the best of that person's knowledge and belief, the declaration made in accordance with *paragraph (c)* and the information furnished in accordance with *paragraph (d)* are true and correct, and

(*f*) contains such information as the Revenue Commissioners may reasonably require for the purposes of this Chapter.

(3) *Subsection (2)* of *section 263* shall apply as respects declarations of the kind mentioned in this section as it applies as respects declarations of the kind mentioned in that section.

(4) Where a return is required to be made by a relevant deposit taker under *section 891* in respect of interest on a deposit in respect of which a declaration has been made in accordance with this section, that return shall include the tax reference number contained in that declaration of the person beneficially entitled to the interest.

Declarations relating to deposits of charities.

[FA86 s38]

266.—(1) The declaration referred to in *paragraph (h)(ii)* of the definition of ''relevant deposit'' in *section 256(1)* shall be a declaration in writing to a relevant deposit taker which—

(*a*) is made by a person (in this section referred to as ''the declarer'') to whom any interest on the deposit in respect of which the declaration is made is payable by the relevant deposit taker, and is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time when the declaration is made the interest on the deposit in respect of which the declaration is made—

(i) (I) forms part of the income of a body of persons or trust treated by the Revenue Commissioners as a body or trust established for charitable purposes only, or

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(II) is, according to the rules or regulations established by statute, charter, decree, deed of trust or will, applicable to charitable purposes only and is so treated by the Revenue Commissioners, and

(ii) will be applied to charitable purposes only,

(*d*) contains the name and address of the person, or, as the case may be, of each of the persons entitled, in respect of the interest in relation to the deposit, to exemption—

(i) from income tax under Schedule D by virtue of *section 207(1)(b)*, or

(ii) from corporation tax by virtue of *section 207(1)(b)* as it applies for the purposes of corporation tax by virtue of *section 76(6)*,

(e) contains an undertaking by the declarer that if the person or, as the case may be, any of the persons referred to in paragraph (d) ceases to be so exempt in respect of that interest, the declarer will notify the relevant deposit taker accordingly, and

(*f*) contains such information as the Revenue Commissioners may reasonably require for the purposes of this Chapter.

(2) *Subsection (2)* of *section 263* shall apply as respects declarations of the kind mentioned in this section as it applies as respects declarations of the kind mentioned in that section.

Repayment of appropriate tax in certain cases.

[FA 86 s39]

267.—(1) In this section, ''relevant person'' means an individual who proves to the satisfaction of the inspector or, on appeal, to the Appeal Commissioners that—

(*a*) at some time during the relevant year the individual or his or her spouse was of the age of 65 years or over, or

(*b*) throughout the relevant year the individual or his or her spouse was, or as on and from some time during the relevant year the individual or his or her spouse became, permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself.

(2) Notwithstanding *section 261(b)*, repayment of appropriate tax in respect of any relevant interest shall be made to a person entitled to exemption in respect of that interest—

(*a*) from income tax under Schedule D by virtue of *section 207(1)(b)*, or

(*b*) from corporation tax by virtue of *section 207(1)(b)* as it applies for the purposes of corporation tax by virtue of *section 76(6)*.

(3) Where in any year of assessment (in this subsection referred to as ''the relevant year'') the total income of a relevant person includes any relevant interest and apart from *section 261(b)* the relevant person would be entitled to repayment of the whole or any part of the appropriate tax deducted from that relevant interest, then, notwithstanding *section 261(b)*, the repayment to which the relevant person would be so entitled may be made to the relevant person on the making by the relevant person to the inspector, not earlier than the end of the relevant year, of a claim in that behalf.

PART 9

PRINCIPAL PROVISIONS RELATING TO RELIEF FOR CAPITAL EXPENDITURE

CHAPTER 1

Industrial buildings or structures: industrial building allowances, writing-down allowances, balancing allowances and balancing charges

Meaning of ''industrial building or structure''.

[ITA67 s255(1) to (5), s257 and s263(4); FA69 s64(1), (2) and (5), FA75 s34(1) and (3); FA84 s36; FA92 s27; FA96 s29]

268.—(1) In this Part, ''industrial building or structure'' means a building or structure in use—

(*a*) for the purposes of a trade carried on in—

(i) a mill, factory or other similar premises, or

(ii) a laboratory the sole or main function of which is the analysis of minerals (including oil and natural gas) in connection with the exploration for, or the extraction of, such minerals,

(*b*) for the purposes of a dock undertaking,

(*c*) for the purposes of growing fruit, vegetables or other produce in the course of a trade of market gardening within the meaning of *section 654*,

(*d*) for the purposes of the trade of hotel-keeping,

(*e*) for the purposes of the intensive production of cattle, sheep, pigs, poultry or eggs in the course of a trade other than the trade of farming within the meaning of *section 654*, or

(*f*) for the purposes of a trade which consists of the operation or management of an airport and which is an airport runway or an airport apron used solely or mainly by aircraft carrying passengers or cargo for hire or reward,

and in particular, in relation to capital expenditure incurred on or after the 6th day of April, 1969, includes any building or structure provided by the person carrying on such a trade or undertaking for the recreation or welfare of workers employed in that trade or undertaking and in use for that purpose.

(2) In this section, ''dock'' includes any harbour, wharf, pier or jetty or other works in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation, and ''dock undertaking'' shall be construed accordingly.

(3) For the purpose of this Part, a building or structure in use as a holiday camp or, in relation to capital expenditure incurred on or after the 1st day of July, 1968, a building or structure in use as a holiday cottage and comprised in premises registered in any register of holiday cottages established by Bord Fáilte Éireann under any Act of the Oireachtas passed on or after the 29th day of July, 1969, shall be deemed to be a building or structure in use for the purposes of the trade of hotel-keeping.

(4) Where capital expenditure is incurred on preparing, cutting, tunnelling or levelling land for the purposes of preparing the land as a site for the installation of machinery or plant, the machinery or

plant shall, as regards that expenditure, be treated for the purposes of this Chapter as a building or structure.

(5) For the purposes of this Part, expenditure incurred by a person on or after the 23rd day of April, 1996, either on the construction of, or on the acquisition of the relevant interest in, a building or structure not situated in the State shall not be treated as expenditure on a building or structure within the meaning of this section unless, being a building or structure not situated in the State—

(*a*) it is a building or structure which is to be constructed or which is in the course of construction and in respect of which it can be shown that—

(i) the person has either entered into a binding contract in writing for the acquisition of the site for the building or structure or has entered into an agreement in writing in relation to an option to acquire that site on or before the 23rd day of April, 1996,

(ii) the person has entered into a binding contract in writing for the construction of the building or structure on or before the 1st day of July, 1996, and

(iii) the construction of the building or structure had commenced on or before the 1st day of July, 1996, and had been completed before the 31st day of December, 1997,

and

(*b*) it is a building or structure to be constructed or which is being constructed which will be used for the purposes of a trade the profits or gains from which are taxable in the State.

(6) *Subsection (1)* shall apply in relation to a part of a trade as it applies in relation to a trade but, where part only of a trade complies with the conditions set out in that subsection, a building or structure shall not by virtue of this subsection be an industrial building or structure unless it is in use for the purposes of that part of that trade.

(7) (*a*) In this subsection, ''retail shop'' includes any premises of a similar character where retail trade or business (including repair work) is carried on.

(*b*) Notwithstanding anything in *subsections (1)* to *(6)* but subject to *subsection (8)*, in this Part, ''industrial building or structure'' does not include any building or structure in use as, or as part of, a dwelling house (other than a holiday cottage referred to in *subsection (3)*), retail shop, showroom or office or for any purpose ancillary to the purposes of a dwelling house (other than a holiday cottage referred to in *subsection (3)*), retail shop, showroom or office.

(8) Where part of the whole of a building or structure is, and part of the whole of the building or structure is not, an industrial building or structure, and the capital expenditure incurred on the construction of the second-mentioned part is not more than 10 per cent of the total capital expenditure incurred on the construction of the whole building or structure, the whole building or structure and every part

of the whole of the building or structure shall be treated as an industrial building or structure. Pt.9 S.268

(9) *Subsection (1)* shall apply—

(*a*) by reference to *paragraph (a)(ii)*, as respects capital expenditure incurred on or after the 25th day of January, 1984,

(*b*) by reference to *paragraph (e)*, as respects capital expenditure incurred on or after the 6th day of April, 1971, and

(*c*) by reference to *paragraph (f)*, as respects capital expenditure incurred on or after the 24th day of April, 1992.

Meaning of ''the relevant interest''.

[ITA67 s268]

269.—(1) Subject to this section, in this Chapter, ''the relevant interest'', in relation to any expenditure incurred on the construction of a building or structure, means the interest in that building or structure to which the person who incurred the expenditure was entitled when the person incurred the expenditure.

(2) Where, when a person incurs expenditure on the construction of a building or structure, the person is entitled to 2 or more interests in the building or structure and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Chapter.

(3) An interest shall not cease to be the relevant interest for the purposes of this Chapter by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender of the leasehold interest, or on the person entitled to the leasehold interest acquiring the interest which is reversionary on the leasehold interest, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

Meaning of ''expenditure on construction of building or structure''.

[ITA67 s256, s263(4); CTA76 s21(1) and Sch1 par18; FA94 s22(1)(b); FA97 s146(1) and Sch9 PtI par1(18)]

270.—(1) In this section, ''refurbishment'', in relation to a building or structure, means any work of construction, reconstruction, repair or renewal, including the provision of water, sewerage or heating facilities carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

(2) A reference in this Chapter to expenditure incurred on the construction of a building or structure includes expenditure on the refurbishment of the building or structure, but does not include—

(*a*) any expenditure incurred on the acquisition of, or of rights in or over, any land,

(*b*) any expenditure on the provision of machinery or plant or on any asset treated for any chargeable period as machinery or plant, or

(*c*) any expenditure in respect of which an allowance is or may be made for the same or for any other chargeable period under *section 670* or *765(1)*.

(3) Where a building or structure which is to be an industrial building or structure forms part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the construction of the whole building or number

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of buildings, as the case may be, for the purpose of determining the expenditure incurred on the construction of the building or structure which is to be an industrial building or structure.

Industrial building allowances.

[ITA67 s254(1)(a), (b) and (c), (2A), (2B), (3) and (7); FA75 s34(2)(a)(i); CTA76 s 21(1) and Sch1 par17and par72; FA81 s27; FA88 s51(1)(a) and (cc), (4)(a) and (6); FA89 s14; FA90 s74, s80 and s81(1)(a) and (4); FA91 s22(1); FA93 s33(1); FA95 s26 and s27; FA96 s27 and s43]

271.—(1) In this section—

''industrial development agency'' means the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta;

''appropriate chargeable period'', in relation to any person who has incurred expenditure on the construction of a building or structure, means the chargeable period related to the expenditure or, if it is later, the chargeable period related to the event (which shall be regarded as an event within the meaning of *section 321(2)(b)*), where such event is—

(*a*) the commencement of the tenancy in a case in which the first use to which the building or structure is put is a use by a person occupying it by virtue of a tenancy to which the relevant interest is reversionary, or

(*b*) in a case to which *subsection (2)(b)(ii)* refers, the commencement of the tenancy to which the relevant interest is reversionary;

''relevant lease'' means a lease to which the relevant interest is reversionary.

(2) (*a*) Subject to the Tax Acts, where a person incurs capital expenditure on the construction of a building or structure—

(i) which is to be an industrial building or structure to which *subsection (3)* applies, and

(ii) which is to be occupied for the purposes of a trade carried on either by the person or by a lessee mentioned in *paragraph (b)*,

there shall be made to the person who incurred the expenditure, for the appropriate chargeable period, an allowance (in this Chapter referred to as an ''industrial building allowance'').

(*b*) The lessee referred to in *paragraph (a)* is a lessee occupying the building or structure on the construction of which the expenditure was incurred and who so occupies it—

(i) under a relevant lease, or

(ii) under a lease to which a relevant lease granted to an industrial development agency is reversionary.

(3) This subsection shall apply to—

(*a*) an industrial building or structure provided—

(i) before the 23rd day of April, 1996, for use for the purposes of trading operations, or

(ii) on or after the 23rd day of April, 1996, by a company for use for the purposes of trading operations carried on by the company,

which are relevant trading operations within the meaning of *section 445* or *446* but, in relation to capital expenditure incurred on the provision of an industrial building or structure on or after the 6th day of May, 1993, excluding an industrial building or structure provided by a lessor to a lessee other than in the course of the carrying on by the lessor of those relevant trading operations,

(*b*) an industrial building or structure provided for the purposes of a project approved by an industrial development agency on or before the 31st day of December, 1988, and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995; but, as respects an industrial building or structure provided for the purposes of a project approved by an industrial development agency in the period from the 1st day of January, 1986, to the 31st day of December, 1988, this paragraph shall apply as if the reference to the 31st day of December, 1995, were a reference to the 31st day of December, 1996,

and

(*c*) an industrial building or structure provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from the 1st day of January, 1989, to the 31st day of December, 1990, and in respect of the provision of which expenditure is incurred before the 31st day of December, 1997; but, as respects an industrial building or structure provided for the purposes of any such project specified in the list referred to in *section 133(8)(c)(iv)*, this paragraph shall apply as if the reference to the 31st day of December, 1997, were a reference to the 31st day of December, 2002.

(4) An industrial building allowance shall be of an amount equal to—

(*a*) where the building or structure is to be used for a purpose specified in *paragraph (a)* or *(b)* of *section 268(1)*, 50 per cent of the capital expenditure mentioned in *subsection (2)*; but, in the case of a building or structure to which *subsection (3)(a)* applies, this paragraph shall apply only if that expenditure is incurred before the 25th day of January, 1999,

(*b*) where the building or structure is to be used for a purpose specified in *paragraph (c)* or *(e)* of *section 268(1)*, 20 per cent of the capital expenditure mentioned in *subsection (2)*, and

(*c*) in any other case, 10 per cent of the capital expenditure mentioned in *subsection (2)*.

(5) Where an industrial building allowance in respect of capital expenditure incurred on the construction of a building or structure to which *subsection (3)(c)* applies is made under this section for any chargeable period—

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(*a*) no allowance in relation to that capital expenditure shall be made under *section 272* for that chargeable period, and

(*b*) an allowance in relation to that capital expenditure which is to be made under *section 272* for any chargeable period subsequent to that chargeable period shall not be increased under *section 273*.

(6) Notwithstanding any other provision of this section, no industrial building allowance shall be made in respect of any expenditure on a building or structure if the building or structure, when it comes to be used, is not an industrial building or structure, and where an industrial building allowance has been granted in respect of any expenditure on any such building or structure, any necessary additional assessments may be made to give effect to this subsection.

Writing-down allowances.

[ITA67 s264; FA75 s34(2)(a)(ii) and (iii) and (3); CTA76 s21(1) and Sch1 pars23 and 72; FA86 s52(2); FA94 s22(1)(c) and (2); FA96 s28(1)]

272.—(1) A building or structure shall be one to which this section applies only if the capital expenditure incurred on the construction of it has been incurred on or after the 30th day of September, 1956.

(2) Subject to this Part, where—

(*a*) any person is, at the end of a chargeable period or its basis period, entitled to an interest in a building or structure to which this section applies,

(*b*) at the end of the chargeable period or its basis period, the building or structure is an industrial building or structure, and

(*c*) that interest is the relevant interest in relation to the capital expenditure incurred on the construction of that building or structure,

an allowance (in this Chapter referred to as a ''writing-down allowance'') shall be made to such person for that chargeable period.

(3) A writing-down allowance shall be of an amount equal to—

(*a*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (a)* or *(b)* of *section 268(1)*—

(i) 2 per cent of the expenditure referred to in *subsection (2)(c)*, if that expenditure was incurred before the 16th day of January, 1975, or

(ii) 4 per cent of the expenditure referred to in *subsection (2)(c)*, if that expenditure is incurred on or after the 16th day of January, 1975,

(*b*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (c)* or *(e)* of *section 268(1)*, 10 per cent of the expenditure referred to in *subsection (2)(c)*,

(*c*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)*, other than a building or structure to which *paragraph (d)* relates—

(i) 10 per cent of the expenditure referred to in *subsection (2)(c)*, if that expenditure was incurred before the 27th day of January, 1994, or

(ii) 15 per cent of the expenditure referred to in *subsection (2)(c)*, if that expenditure is incurred on or after the 27th day of January, 1994,

(*d*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)* by reason of its use as a holiday cottage, 10 per cent of the expenditure referred to in *subsection (2)(c)*, and

(*e*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(f)*, 4 per cent of the expenditure referred to in *subsection (2)(c)*.

(4) Where the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure, then, subject to any further adjustment under this subsection on a later sale, the writing-down allowance for any chargeable period, if that chargeable period or its basis period ends after the time of the sale, shall be the residue (within the meaning of *section 277*) of that expenditure immediately after the sale, reduced in the proportion (if it is less than one) which the length of the chargeable period bears to the part unexpired at the date of the sale of the period of—

(*a*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (a)* or *(b)* of *section 268(1)*—

(i) 50 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure was incurred before the 16th day of January, 1975, or

(ii) 25 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure is incurred on or after the 16th day of January, 1975,

(*b*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (c)* or *(e)* of *section 268(1)*, 10 years beginning with the time when the building or structure was first used,

(*c*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)*, other than a building or structure referred to in *paragraph (d)*—

(i) 10 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure was incurred before the 27th day of January, 1994, or

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(ii) 7 years beginning with the time when the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure is incurred on or after the 27th day of January, 1994,

(*d*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)* by reason of its use as a holiday cottage, 10 years beginning with the time when the building or structure was first used, and

(*e*) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(f)*, 25 years beginning with the time when the building or structure was first used.

(5) In ascertaining a writing-down allowance to be made to a person under *subsection (4)*, the residue of expenditure mentioned in that subsection shall, where it exceeds the amount of expenditure incurred by that person in respect of the sale, be taken to be the amount of the expenditure so incurred.

(6) Notwithstanding any other provision of this section, in no case shall the amount of a writing-down allowance made to a person for any chargeable period in respect of any expenditure exceed what, apart from the writing off to be made by reason of the making of that allowance, would be the residue of that expenditure at the end of that chargeable period or its basis period.

Acceleration of writing-down allowances in respect of certain expenditure on certain industrial buildings or structures.

[FA78 s25; FA79 s25; FA88 s48 and s51(1)(a), (c) and (cc), (4)(b) and (6); FA89 s16; FA90 s76, s80 and s81(1)(a) and (b), proviso to (1), and (5); FA93 s33; FA95 s26 and s27; FA96 s43 and s132(1) and Sch 5 PtI par11]

273.—(1) In this section—

''industrial development agency'' means the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta;

''qualifying expenditure'' means capital expenditure incurred on or after the 2nd day of February, 1978, by the person to whom the allowance under *section 272* is to be made on the construction of a building or structure which is to be an industrial building or structure occupied by that person for a purpose specified in *paragraph (a)*, *(b)* or *(d)* of *section 268(1)*, but excluding such expenditure incurred for the purposes of the trade of hotel-keeping unless it is incurred on the construction of premises which are registered in a register kept by Bord Fáilte Éireann under the Tourist Traffic Acts, 1939 to 1995.

(2) (*a*) Subject to this section, where for any chargeable period an allowance is to be made under *section 272* in respect of qualifying expenditure, the allowance shall, subject to *subsection (6)* of that section, be increased by such amount as is specified by the person to whom the allowance is to be made and, in relation to a case in which this subsection has applied, any reference in the Tax Acts to an allowance made under *section 272* shall be construed as a reference to that allowance as increased under this section.

(*b*) As respects any qualifying expenditure incurred on or after the 1st day of April, 1988, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed for one

chargeable period or more than one such period, shall not in the aggregate exceed—

(i) if the qualifying expenditure was incurred before the 1st day of April, 1989, 75 per cent,

(ii) if the qualifying expenditure was incurred on or after the 1st day of April, 1989, and before the 1st day of April, 1991, 50 per cent, or

(iii) if the qualifying expenditure was incurred on or after the 1st day of April, 1991, and before the 1st day of April, 1992, 25 per cent,

of the amount of that qualifying expenditure.

(3) Notwithstanding *subsection (2)*, but subject to *subsections (4)* and *(6)*—

(*a*) no allowance made under *section 272* in respect of qualifying expenditure incurred on or after the 1st day of April, 1992, shall be increased under this section, and

(*b*) as respects chargeable periods ending on or after the 6th day of April, 1999, no allowance made under *section 272* in respect of qualifying expenditure incurred before the 1st day of April, 1992, shall be increased under this section.

(4) This section shall apply in relation to capital expenditure incurred on the construction of an industrial building or structure to which *subsection (5)* applies as if *subsections (2)(b)* and *(3)* were deleted.

(5) This subsection shall apply to—

(*a*) an industrial building or structure provided—

(i) before the 23rd day of April, 1996, for use for the purposes of trading operations, or

(ii) on or after the 23rd day of April, 1996, by a company for use for the purposes of trading operations carried on by the company,

which are relevant trading operations within the meaning of *section 445* or *446* but, in relation to capital expenditure incurred on the provision of an industrial building or structure on or after the 6th day of May, 1993, excluding an industrial building or structure provided by a lessor to a lessee other than in the course of the carrying on by the lessor of those relevant trading operations,

(*b*) an industrial building or structure the expenditure on the provision of which was incurred before the 31st day of December, 1995, under a binding contract entered into on or before the 27th day of January, 1988, and

(*c*) an industrial building or structure provided for the purposes of a project approved by an industrial development agency on or before the 31st day of December, 1988, and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995; but, as

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respects an industrial building or structure provided for the purposes of a project approved by an industrial development agency in the period from the 1st day of January, 1986, to the 31st day of December, 1988, this paragraph shall apply as if the reference to the 31st day of December, 1995, were a reference to the 31st day of December, 1996.

(6) This section shall apply in relation to capital expenditure incurred on the construction of a building or structure which is to be an industrial building or structure to which *subsection (7)(a)* applies—

(*a*) as if in *subsection (2)(b)*—

(i) the following subparagraph were substituted for *subparagraph (ii)*:

''(ii) if the qualifying expenditure is incurred on or after the 1st day of April, 1989, 50 per cent,'',

and

(ii) *subparagraph (iii)* were deleted,

and

(*b*) as if *subsection (3)* were deleted.

(7) (*a*) This subsection shall apply to—

(i) an industrial building or structure provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from the 1st day of January, 1989, to the 31st day of December, 1990, and in respect of the provision of which expenditure is incurred before the 31st day of December, 1997; but, as respects an industrial building or structure provided for the purposes of any such project specified in the list referred to in *section 133(8)(c)(iv)*, this paragraph shall apply as if the reference to the 31st day of December, 1997, were a reference to the 31st day of December, 2002, and

(ii) a building or structure which is to be an industrial building or structure within the meaning of *section 268(1)(d)* and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995, where a binding contract for the provision of the building or structure was entered into before the 31st day of December, 1990.

(*b*) *Paragraph (a)(ii)* shall not apply if the building or structure referred to in that paragraph is not registered within 6 months after the date of the completion of that building or structure in a register kept by Bord Fáilte Éireann under the Tourist Traffic Acts, 1939 to 1995, and where by virtue of this section any allowance or increased allowance has been granted, any necessary additional assessments may be made to give effect to this paragraph.

(8) Where for any chargeable period an allowance under *section 272* in respect of qualifying expenditure is increased under this section, no allowance under *section 271* shall be made in respect of that qualifying expenditure for that or any subsequent chargeable period.

Balancing allowances and balancing charges.

[ITA67 s265; FA69 s64(3) and (4); FA75 s34(2)(a)(iii); CTA76 s21(1) and Sch1 pars24 and 72; FA80 s58; FA88 s45 and s51(1)(d) and (5); FA90 s78; FA94 s22(1)(d) and (2); FA95 s24; FA96 s28(2); FA97 s23(1)(a) and (2)]

274.—(1) (*a*) Where any capital expenditure has been incurred on the construction of a building or structure in respect of which an allowance has been made under this Chapter, and any of the following events occurs—

(i) the relevant interest in the building or structure is sold,

(ii) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled to the leasehold interest acquiring the interest which is reversionary on the leasehold interest,

(iii) the building or structure is demolished or destroyed or, without being demolished or destroyed, ceases altogether to be used, or

(iv) subject to *subsection (2)*, where consideration (other than rent or an amount treated or, as respects consideration received on or after the 26th day of March, 1997, partly treated as rent under *section 98*) is received by the person entitled to the relevant interest in respect of an interest which is subject to that relevant interest,

an allowance or charge (in this Chapter referred to as a ''balancing allowance'' or a ''balancing charge'') shall, in the circumstances mentioned in this section, be made to or on, as the case may be, the person entitled to the relevant interest immediately before that event occurs, for the chargeable period related to that event.

(*b*) Notwithstanding *paragraph (a)*, no balancing allowance or balancing charge shall be made by reason of any event referred to in that paragraph occurring more than—

(i) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (a)* or *(b)* of *section 268(1)*—

(I) 50 years after the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure was incurred before the 16th day of January, 1975, or

(II) 25 years after the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure is incurred

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on or after the 16th day of January, 1975,

(ii) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *paragraph (c)* or *(e)* of *section 268(1)*, 10 years after the building or structure was first used,

(iii) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)*, other than a building or structure to which *subparagraph (iv)* relates—

(I) 10 years after the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure was incurred before the 27th day of January, 1994, or

(II) 7 years after the building or structure was first used, in the case where the capital expenditure on the construction of the building or structure is incurred on or after the 27th day of January, 1994,

(iv) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)* by reason of its use as a holiday cottage, 10 years after the building or structure was first used, and

(v) in relation to a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(f)*, 25 years after the building or structure was first used.

(2) *Subsection (1)(a)(iv)* shall not apply as respects the relevant interest in a building or structure in use for the purposes of a trade or part of a trade of hotel-keeping where a binding contract for the provision of the building or structure was entered into after the 27th day of January, 1988, and before the 1st day of June, 1988.

(3) Where there are no sale, insurance, salvage or compensation moneys, or consideration of the type referred to in *subsection (1)(a)(iv)*, or where the residue of the expenditure immediately before the event exceeds those moneys or that consideration, a balancing allowance shall be made, and the amount of that allowance shall be the amount of that residue or, as the case may be, of the excess of that residue over those moneys or that consideration.

(4) Where the sale, insurance, salvage or compensation moneys, or consideration of the type referred to in *subsection (1)(a)(iv)*, exceed the residue, if any, of the expenditure immediately before the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to the excess or, where the residue is nil, to those moneys or that consideration.

(5) (*a*) In this subsection, ''the relevant period'' means the period beginning when the building or structure was first used for any purpose and ending—

(i) if the event giving rise to the balancing allowance or balancing charge occurs on the last day of a chargeable period or its basis period, on that day, or

(ii) in any other case, on the latest date before that event which is the last day of a chargeable period or its basis period;

but where before that event the building or structure has been sold while an industrial building or structure, the relevant period shall begin on the day following that sale or, if there has been more than one such sale, the last such sale.

(*b*) Where a balancing allowance or a balancing charge is to be made to or on a person, and any part of the relevant period is not comprised in a chargeable period for which a writing-down allowance has been made to such person or is not comprised in the basis period for such chargeable period, the amount of the balancing allowance or, as the case may be, the amount on which the balancing charge is to be made shall be reduced in the proportion which the part or parts so comprised bears to the whole of the relevant period.

(*c*) Notwithstanding *paragraph (b)*, where but for *section 272(6)* or *321(5)* a writing-down allowance would have been made to a person for any chargeable period, the part of the relevant period comprised in that chargeable period or its basis period shall be deemed for the purposes of this subsection to be comprised in a chargeable period for which a writing-down allowance was made to the person.

(6) Where a building or structure which is to be regarded as an industrial building or structure within the meaning of *section 268(1)(d)* by reason of its use as a holiday cottage ceases to be comprised in premises registered in a register referred to in *section 268* in such circumstances that apart from this subsection this section would not apply in relation to the building or structure, the relevant interest in the building or structure shall for the purposes of this Chapter (other than *section 272(4)*) be deemed on such cesser to have been sold while the building or structure was an industrial building or structure and the net proceeds of the sale shall be deemed for those purposes to be an amount equal to the capital expenditure incurred on the construction of the building or structure.

(7) Where a balancing charge is made under this section by virtue of *subsection (6)* and the relevant interest in the building or structure is not subsequently sold by the person on whom the charge is made while the building or structure is not an industrial building or structure, such person shall, if the building or structure again becomes comprised in a premises registered in a register referred to in *section 268*, be treated for the purposes of this Chapter as if, at the time of the cesser referred to in *subsection (6)*, such person were the buyer of the relevant interest deemed under that subsection to have been sold.

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(8) Notwithstanding any other provision of this section, in no case shall the amount on which a balancing charge is made on a person in respect of any expenditure on the construction of a building or structure exceed the amount of the industrial building allowance, if any, made to such person in respect of that expenditure together with the amount of any writing-down allowances made to such person in respect of that expenditure for chargeable periods which end on or before the date of the event giving rise to the charge or, as the case may be, for chargeable periods for which the basis periods end on or before that date.

Restriction of balancing allowances on sale of industrial building or structure.

[FA73 s40(1) to (5)]

275.—(1) In this section—

''inferior interest'' means any interest in or right over the building or structure in question, whether granted by the relevant person or by someone else;

''premium'' includes any capital consideration except so much of any sum as corresponds to any amount of rent or profits which is to be computed by reference to that sum under *section 98*;

''capital consideration'' means consideration which consists of a capital sum or would be a capital sum if it had taken the form of a money payment;

''rent'' includes any consideration which is not capital consideration;

''commercial rent'' means such rent as might reasonably be expected to have been required in respect of the inferior interest in question, having regard to any premium payable for the grant of the interest, if the transaction had been at arm's length.

(2) This section shall apply where—

(*a*) the relevant interest in a building is sold subject to an inferior interest,

(*b*) by virtue of the sale a balancing allowance under *section 274* would apart from this section be made to or for the benefit of the person (in this section referred to as ''the relevant person'') who was entitled to the relevant interest immediately before the sale, and

(*c*) either—

(i) the relevant person, the person to whom the relevant interest is sold and the grantee of the inferior interest, or any 2 of them, are connected with each other, or

(ii) it appears with respect to the sale or the grant of the inferior interest, or with respect to transactions including the sale or grant, that the sole or main benefit which but for this section might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under this Chapter.

(3) For the purposes of *section 274*, the net proceeds to the relevant person of the sale—

(*a*) shall be taken to be increased by an amount equal to any premium receivable by the relevant person for the grant of the inferior interest, and

(*b*) where no rent or no commercial rent is payable in respect of the inferior interest, shall be taken to be the sum of—

(i) what those proceeds would have been if a commercial rent had been payable and the relevant interest had been sold in the open market, and

(ii) any amount to be added under *paragraph (a)*;

but the net proceeds of the sale shall not by virtue of this subsection be taken to be greater than such amount as will secure that no balancing allowance is to be made.

(4) Where *subsection (3)* operates in relation to a sale to deny or reduce a balancing allowance in respect of any expenditure, the residue of that expenditure immediately after the sale shall be calculated for the purposes of this Chapter as if that balancing allowance had been made or, as the case may be, had not been reduced.

(5) Where the terms on which the inferior interest is granted are varied before the sale of the relevant interest, any capital consideration for the variation shall be treated for the purposes of this section as a premium for the grant of the interest, and the question whether any and, if so, what rent is payable in respect of the interest shall be determined by reference to the terms as in force immediately before the sale.

Application of *sections 272* and *274* in relation to capital expenditure on refurbishment.

[FA91 s26]

276.—(1) In this section, ''refurbishment'' means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure.

(2) Notwithstanding any other provision of the Tax Acts, where on or after the 6th day of April, 1991, any capital expenditure has been incurred on the refurbishment of a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under this Chapter, *sections 272* and *274* shall apply as if ''the capital expenditure on refurbishment of the building or structure was incurred'' were substituted for ''the building or structure was first used'' in each place where it occurs in *sections 272(4)* and *274(1)(b)*.

(3) For the purposes of giving effect to this section in so far as the computation of a balancing allowance or balancing charge is concerned, all such apportionments shall be made as are in the circumstances just and reasonable.

Writing off of expenditure and meaning of ''residue of expenditure''.

[ITA67 s266; CTA76 s21(1) and Sch1 par25; FA97 s23(b)]

277.—(1) For the purposes of this Chapter, any expenditure incurred on the construction of any building or structure shall be treated as written off to the extent and at the times specified in this section, and references in this Chapter to the residue of any such expenditure shall be construed accordingly.

(2) Where an industrial building allowance is made in respect of the expenditure, the amount of that allowance shall be written off at the time when the building or structure is first used.

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(3) Where, by reason of the building or structure being at any time an industrial building or structure, a writing-down allowance is made for any chargeable period in respect of the expenditure, the amount of that allowance shall be written off at that time; but, where at that time an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be written off by this subsection at that time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any, and if so what, balancing allowance or balancing charge is to be made.

(4) (*a*) Where, for any period or periods between the time when the building or structure was first used for any purpose and the time at which the residue of the expenditure is to be ascertained, the building or structure has not been in use as an industrial building or structure, there shall in ascertaining that residue be treated as having been previously written off in respect of that period or those periods amounts equal to writing-down allowances made for chargeable periods of a total length equal to the length of that period, or the aggregate length of those periods, as the case may be, at such rate or rates as would have been appropriate having regard to any sale on which *section 272(4)* operated.

(*b*) Where the building or structure was in use as an industrial building or structure at the end of the basis period for any year of assessment before the year 1960-61, an amount equal to 2 per cent of the expenditure shall be treated as written off at the end of the previous year of assessment.

(5) Where on the occasion of a sale a balancing allowance is made in respect of the expenditure, there shall be written off at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.

(6) Where on the occasion of a sale a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Chapter to be increased at the time of the sale by the amount on which the charge is made.

(7) Where, on receipt of consideration of the type referred to in *section 274(1)(a)(iv)*, a balancing allowance is made in respect of the expenditure, there shall be written off at the time of the event giving rise to the balancing allowance or, if later, on the 26th day of March, 1997, the amount by which the residue of the expenditure before that event exceeds that consideration.

Manner of making allowances and charges.

[ITA67 s254(1)(d) and (e) and s267; CTA76 s21(1) and Sch1 par17 and par26]

278.—(1) Except in the cases mentioned in this section, any allowance or charge made to or on a person under the preceding provisions of this Part shall be made to or on such person in taxing such person's trade or, as the case may require, in charging such person's income under Case V of Schedule D.

(2) An industrial building allowance shall be made to a person by discharge or repayment of tax if such person's interest in the building or structure is subject to any lease when the expenditure is incurred or becomes subject to any lease before the building or structure is first used for any purpose and, where it is so made, *section 304(4)* shall not apply; but this subsection shall not apply as respects income chargeable under Case V of Schedule D.

(3) A writing-down allowance shall be made to a person for a chargeable period by means of discharge or repayment of tax if such person's interest is subject to any lease at the end of that chargeable period or its basis period; but this subsection shall not apply as respects income chargeable under Case V of Schedule D.

(4) A balancing allowance shall be made to a person by means of discharge or repayment of tax if such person's interest is subject to any lease immediately before the event giving rise to the allowance; but this subsection shall not apply as respects income chargeable under Case V of Schedule D.

(5) A balancing charge shall be made on a person under Case IV of Schedule D if such person's interest is subject to any lease immediately before the event giving rise to the charge and the corresponding income is chargeable under that Case.

(6) Any allowance which under *subsections (1)* to *(4)* is to be made otherwise than in taxing a trade shall be available primarily against the following income—

(*a*) where the income (whether arising by means of rent or receipts in respect of premises or easements or otherwise) from the industrial building or structure in respect of the capital expenditure on which the allowance is given is chargeable under Case V of Schedule D, against income chargeable under that Case,

(*b*) where the income (whether arising by means of rent or receipts in respect of premises or easements or otherwise) from the industrial building or structure in respect of the capital expenditure on which the allowance is given is chargeable under Case IV of Schedule D, against income chargeable under that Case, or

(*c*) income chargeable under Case IV or V of Schedule D respectively which is the subject of a balancing charge.

279.—(1) For the purposes of this section—

Purchases of certain buildings or structures.

FA70 s19(1), (2) and (2A); FA90 s75; FA91 s23; FA97 s146(1) and Sch9 PtI par4(2)]

''expenditure incurred on the construction of a building or structure'' excludes any expenditure within the meaning of *section 270(2)*;

''the net price paid'' means the amount represented by A in the equation—

$$A = B \times \frac{C}{C + D}$$

where—

B is the amount paid by a person on the purchase of the relevant interest in a building or structure,

C is the amount of the expenditure actually incurred on the construction of the building or structure, and

D is the amount of any expenditure actually incurred which is expenditure for the purposes of *paragraph (a)*, *(b)* or *(c)* of *section 270(2)*.

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(2) Where expenditure is incurred on the construction of a building or structure and, before the building or structure is used or within a period of one year after it commences to be used, the relevant interest in the building or structure is sold, then, if an allowance has not been claimed by any other person in respect of that building or structure under this Chapter—

(*a*) the expenditure actually incurred on the construction of the building or structure shall be disregarded for the purposes of *sections 271*, *272*, *274* and *277*, but

(*b*) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure equal to that expenditure or to the net price paid by such person for that interest, whichever is the less;

but, where the relevant interest in the building or structure is sold more than once before the building or structure is used or within the period of one year after it commences to be used, *paragraph (b)* shall apply only in relation to the last of those sales.

(3) Where the expenditure incurred on the construction of a building or structure was incurred by a person carrying on a trade which consists, as to the whole or any part of the trade, of the construction of buildings or structures with a view to their sale and, before the building or structure is used or within a period of one year after it commences to be used, such person sells the relevant interest in the building or structure in the course of that trade or, as the case may be, of that part of that trade, *subsection (2)* shall apply subject to the following modifications—

(*a*) if that sale is the only sale of the relevant interest before the building or structure is used or within the period of one year after it commences to be used, *subsection (2)* shall apply as if in *paragraph (b)* of that subsection ''that expenditure or to'' and '', whichever is the less'' were deleted, and

(*b*) if there is more than one sale of the relevant interest before the building or structure is used or within the period of one year after it commences to be used, *subsection (2)* shall apply as if the reference to the expenditure actually incurred on the construction of the building or structure were a reference to the price paid on that sale.

Temporary disuse of building or structure.

[ITA67 s270; CTA76 s21(1) and Sch1 par27]

280.—(1) For the purposes of this Chapter, a building or structure shall not be deemed to cease altogether to be used by reason that it is temporarily out of use and where, immediately before any period of temporary disuse, a building or structure is an industrial building or structure, it shall be deemed to continue to be an industrial building or structure during the period of temporary disuse.

(2) (*a*) Notwithstanding any other provision of this Part as to the manner of making allowances and charges but subject to *paragraph (b)*, where by virtue of *subsection (1)* a building or structure is deemed to continue to be an industrial building or structure while temporarily out of use, then, if—

(i) on the last occasion on which the building or structure was in use as an industrial building or structure, it was in use for the purposes of a trade which has since been permanently discontinued, or

(ii) on the last occasion on which the building or structure was in use as an industrial building or structure, the relevant interest in the building or structure was subject to a lease which has since come to an end,

any writing-down allowance or balancing allowance to be made to any person in respect of the building or structure during any period for which the temporary disuse continues after the discontinuance of the trade or the coming to an end of the lease shall be made by means of discharge or repayment of tax, and any balancing charge to be made on any person in respect of the building or structure during that period shall be made under Case IV of Schedule D.

(*b*) Where for a chargeable period the person has income chargeable to tax under Case V of Schedule D and at the end of the chargeable period or its basis period the building or structure is one to which *paragraph (a)* applies, any writing-down allowance or balancing allowance or balancing charge to be made to or on the person in respect of the building or structure shall be made in charging that person's income under Case V of Schedule D.

(3) The reference in this section to the permanent discontinuance of a trade does not include a reference to the happening of any event which by virtue of the Income Tax Acts is to be treated as equivalent to the discontinuance of the trade.

Special provisions in regard to leases.

[ITA67 s269]

281.—(1) Where with the consent of the lessor a lessee of any building or structure remains in possession of that building or structure after the termination of the lease without a new lease being granted to the lessee, that lease shall be deemed for the purposes of this Chapter to continue so long as the lessee remains so in possession.

(2) Where on the termination of a lease a new lease is granted to the lessee consequent on the lessee being entitled by statute to a new lease or in pursuance of an option available to the lessee under the terms of the first lease, this Chapter shall apply as if the second lease were a continuation of the first lease.

(3) Where on the termination of a lease the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, this Chapter shall apply as if the lease had come to an end by reason of the surrender of the lease in consideration of the payment.

Supplementary provisions (*Chapter 1*).

[ITA67 s263(2) and (3)]

282.—(1) A person who has incurred expenditure on the construction of a building or structure shall be deemed, for the purposes of any provision of this Chapter referring to such person's interest in the building or structure at the time when the expenditure was incurred, to have had the same interest in the building or structure as such person would have had if the construction of the building or structure had been completed at that time.

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(2) Without prejudice to any other provision of this Part relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure, shall for the purposes of this Chapter be deemed to be reduced by an amount equal to so much of that sum or those moneys, as the case may be, as on a just apportionment is attributable to assets representing expenditure other than expenditure in respect of which an allowance may be made under this Chapter.

CHAPTER 2

Machinery or plant: initial allowances, wear and tear allowances, balancing allowances and balancing charges

Initial allowances.

[ITA67 s251(1), (4)(bb)(ii) and (d), (6) and (7); FA73 s9(2) (apart from the proviso); CTA76 s 21(1) and Sch1 par15 and par61; FA88 s43(b), s51(1)(a) and (cc) (proviso thereto), (2)(a), (c) and (d) and (6); FA89 s13; FA90 s73(a) and (b), s80, s81(1)(a) and (2)(a) and (b); FA93 s33; FA95 s27; FA96 s43]

283.—(1) In this section—

''industrial development agency'' means the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta;

''new'' means unused and not secondhand, but a ship shall be deemed to be new even if it has been used or is secondhand.

(2) Subject to the Tax Acts, where—

(*a*) a person carrying on a trade, the profits or gains of which are chargeable under Case I of Schedule D, incurs capital expenditure on the provision for the purposes of the trade of new machinery or new plant, other than vehicles suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles,

(*b*) that machinery or plant is machinery or plant to which *subsection (4)* or *(5)* applies, and

(*c*) that machinery or plant while used for the purposes of that trade is wholly and exclusively so used,

there shall be made to such person for the chargeable period related to the expenditure an allowance (in this Chapter referred to as an ''initial allowance'').

(3) An initial allowance shall be of an amount equal to—

(*a*) in the case of machinery or plant to which *subsection (4)* applies, 100 per cent of the capital expenditure mentioned in *subsection (2)*, or

(*b*) in the case of machinery or plant to which *subsection (5)* applies, 50 per cent of the capital expenditure mentioned in *subsection (2)*.

(4) This subsection shall apply to—

(*a*) machinery or plant provided—

(i) before the 23rd day of April, 1996, for use for the purposes of trading operations, or

(ii) on or after the 23rd day of April, 1996, by a company for use for the purposes of trading operations carried on by the company,

which are relevant trading operations within the meaning of *section 445* or *446* but, in relation to capital expenditure incurred on the provision of machinery or plant on or after the 6th day of May, 1993, excluding machinery or plant provided by a lessor to a lessee other than in the course of the carrying on by the lessor of those relevant trading operations, and

(*b*) machinery or plant provided for the purposes of a project approved by an industrial development agency in the period from the 1st day of January, 1986, to the 31st day of December, 1988, and in respect of the provision of which expenditure was incurred before the 31st day of December, 1996.

(5) This subsection shall apply to machinery or plant provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from the 1st day of January, 1989, to the 31st day of December, 1990, and in respect of the provision of which expenditure is incurred before the 31st day of December, 1997; but, as respects machinery or plant provided for the purposes of any such project specified in the list referred to in *section 133(8)(c)(iv)*, this subsection shall apply as if the reference to the 31st day of December, 1997, were a reference to the 31st day of December, 2002.

(6) Where an initial allowance in respect of capital expenditure incurred on or after the 1st day of April, 1989, on the provision of machinery or plant, other than machinery or plant to which *subsection (4)* applies, is made under this section for any chargeable period—

(*a*) no allowance for wear and tear of that machinery or plant shall be made under *section 284* for that chargeable period, and

(*b*) an allowance for wear and tear of that machinery or plant which is to be made under *section 284* for any chargeable period subsequent to that chargeable period shall not be increased under *section 285*.

(7) Any initial allowance under this section made to a person for any chargeable period in respect of machinery or plant shall not exceed such sum as will, when added to—

(*a*) the amount of any allowance in respect of the machinery or plant made to the person under *section 284* for that chargeable period, and

(*b*) the aggregate amount of any allowances made to the person in respect of the machinery or plant under this section and *section 284* for earlier chargeable periods,

equal the amount of the expenditure incurred by such person on the provision of the machinery or plant.

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Wear and tear allowances.

[ITA67 s241(1)(a) and (b) and proviso to (1), (6), (6A), (10) and (11); CTA76 s21(1) and Sch1 par6; FA92 s26(4); FA96 s132(1) and Sch5 PtI par1(12)(a); FA97 s22 and s146(1) and Sch9 PtI par1(16)]

284.—(1) Subject to the Tax Acts, where a person carrying on a trade in any chargeable period has incurred capital expenditure on the provision of machinery or plant for the purposes of the trade, an allowance (in this Chapter referred to as a ''wear and tear allowance'') shall be made to such person for that chargeable period on account of the wear and tear of any of the machinery or plant which belongs to such person and is in use for the purposes of the trade at the end of that chargeable period or its basis period and which, while used for the purposes of the trade, is wholly and exclusively so used.

(2) (*a*) Subject to *subsection (4)*, the amount of the wear and tear allowance to be made shall be an amount equal to—

(i) in the case of machinery or plant, other than machinery or plant of the type referred to in *subparagraph (ii)*, 15 per cent of the actual cost of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement, or

(ii) in the case of machinery or plant which consists of a vehicle suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles, 20 per cent of the value of that machinery or plant at the commencement of the chargeable period.

(*b*) Where a chargeable period or its basis period consists of a period less than one year in length, the wear and tear allowance shall not exceed such portion of the amount specified in *subparagraph (i)* or *(ii)* of *paragraph (a)*, as the case may be, as bears to that amount the same proportion as the length of the chargeable period or its basis period bears to a period of one year.

(3) For the purposes of *subsection (2)(a)(ii)*, the value at the commencement of the chargeable period of the machinery or plant shall be taken to be the actual cost to the person of such machinery or plant reduced by the total of any wear and tear allowances made to that person in relation to the machinery or plant for previous chargeable periods.

(4) No wear and tear allowance or repayment on account of any such allowance shall be made for any chargeable period if such allowance, when added to—

(*a*) the allowances on that account, and

(*b*) any initial allowances in relation to the machinery or plant under *section 283*,

made for any previous chargeable periods to the person by whom the trade is carried on, will make the aggregate amount of the allowances exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by means of renewal, improvement or reinstatement.

(5) No wear and tear allowance shall be made under this section in respect of capital expenditure incurred on the construction of a

building or structure which is or is deemed to be an industrial building or structure within the meaning of *section 268.* Pt.9 S.284

(6) Subject to *subsection (7)*, this section shall, with any necessary modifications, apply in relation to the letting of any premises the profits or gains from which are chargeable under *Chapter 8* of *Part 4* as it applies in relation to trades.

(7) Where by virtue of *subsection (6)* this section applies to the letting of any premises, it shall apply as respects the year of assessment 1997-98 and subsequent years of assessment in respect of capital expenditure incurred on the provision of machinery or plant within the meaning of *subsection (2)(a)(i)* where—

(*a*) such expenditure is incurred wholly and exclusively in respect of a house used solely as a dwelling which is or is to be let as a furnished house, and

(*b*) that furnished house is provided for renting or letting on bona fide commercial terms in the open market.

Acceleration of wear and tear allowances.

[FA67 s11(1), (2), (2A) and (4); FA71 s26(1), (2), (2A) and (4); CTA76 s21(1) and Sch1 par53 and par60; FA78 s22; FA88 s46, s47 and s51(1)(a), (c), (cc) and the proviso thereto and (d), (3) and (6); FA90 s71, s72, s80 and s81(1)(a) and (c) and proviso to (1), and (3); FA95 s26 and s27; FA96 s43 and s132(1) and Sch5 PtI pars2 and 5]

285.—(1) In this section—

''designated area'' means a designated area for the purposes of the Industrial Development Act, 1969;

''industrial development agency'' means the Industrial Development Authority, Shannon Free Airport Development Company Limited or Údarás na Gaeltachta;

''qualifying building or structure'' means a building or structure which is to be an industrial building or structure within the meaning of *section 268(1)(d)*, and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995, where a binding contract for the provision of the building or structure was entered into before the 31st day of December, 1990;

''qualifying machinery or plant'' means machinery or plant, other than vehicles suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles, provided—

(*a*) on or after the 1st day of April, 1967, for use in any designated area, or

(*b*) on or after the 1st day of April, 1971, for use in any area other than a designated area,

for the purposes of a trade and which at the time it is so provided is unused and not secondhand.

(2) (*a*) Subject to this section and *section 299(2)*, where for any chargeable period a wear and tear allowance is to be made under *section 284* in relation to any qualifying machinery or plant, the allowance shall, subject to *section 284(4)*, be increased by such amount as is specified by the person to whom the allowance is to be made and, in relation to a case in which this subsection has applied, any reference in the Tax Acts to an allowance made under *section 284* shall be construed as a reference to that allowance as increased under this subsection.

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(*b*) Subject to *subsections (4)* and *(6)*, as respects any machinery or plant provided for use on or after the 1st day of April, 1988, any wear and tear allowance made under *section 284* and increased under *paragraph (a)* in respect of that machinery or plant, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed—

(i) if the machinery or plant was provided for use before the 1st day of April, 1989, 75 per cent,

(ii) if the machinery or plant was provided for use on or after the 1st day of April, 1989, and before the 1st day of April, 1991, 50 per cent, or

(iii) if the machinery or plant was provided for use on or after the 1st day of April, 1991, and before the 1st day of April, 1992, 25 per cent,

of the capital expenditure incurred on the provision of that machinery or plant.

(3) Notwithstanding *subsection (2)* but subject to *subsections (4)* and *(6)*—

(*a*) no allowance made under *section 284* for wear and tear of any qualifying machinery or plant provided for use on or after the 1st day of April, 1992, shall be increased under this section, and

(*b*) as respects chargeable periods ending on or after the 6th day of April, 1999, no allowance made under *section 284* for wear and tear of any qualifying machinery or plant provided for use before the 1st day of April, 1992, shall be increased under this section.

(4) This section shall apply in relation to machinery or plant to which *subsection (5)* applies as if *subsections (2)(b)* and *(3)* were deleted.

(5) This subsection shall apply to—

(*a*) machinery or plant provided—

(i) before the 23rd day of April, 1996, for use for the purposes of trading operations, or

(ii) on or after the 23rd day of April, 1996, by a company for use for the purposes of trading operations carried on by the company,

which are relevant trading operations within the meaning of *section 445* or *446* but, in relation to capital expenditure incurred on the provision of machinery or plant on or after the 6th day of May, 1993, excluding machinery or plant provided by a lessor to a lessee other than in the course of the carrying on by the lessor of those relevant trading operations,

(*b*) machinery or plant the expenditure on the provision of which was incurred before the 31st day of December, 1995, under a binding contract entered into on or before the 27th day of January, 1988,

(*c*) machinery or plant provided for the purposes of a project approved by an industrial development agency on or before the 31st day of December, 1988, and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995; but, as respects machinery or plant provided for the purposes of a project approved by an industrial development agency in the period from the 1st day of January, 1986, to the 31st day of December, 1988, this paragraph shall apply as if the reference to the 31st day of December, 1995, were a reference to the 31st day of December, 1996,

and

(*d*) machinery or plant provided before the 1st day of April, 1991, for the purposes of a trade or part of a trade of hotel-keeping carried on in a building or structure or part of a building or structure, including machinery or plant provided by a lessor to a lessee for use in such a trade or part of a trade, where a binding contract for the provision of that building or structure was entered into after the 27th day of January, 1988, and before the 1st day of June, 1988.

(6) This section shall apply in relation to machinery or plant to which *subsection (7)(a)* applies—

(*a*) as if in *subsection (2)(b)*—

(i) the following subparagraph were substituted for *subparagraph (ii)*:

''(ii) if the machinery or plant is provided for use on or after the 1st day of April, 1989, 50 per cent,'',

and

(ii) *subparagraph (iii)* were deleted,

and

(*b*) as if *subsection (3)* were deleted.

(7) (*a*) This subsection shall apply to—

(i) machinery or plant provided for the purposes of a project approved for grant assistance by an industrial development agency in the period from the 1st day of January, 1989, to the 31st day of December, 1990, and in respect of the provision of which expenditure is incurred before the 31st day of December, 1997; but, as respects machinery or plant provided for the purposes of any such project specified in the list referred to in *section 133(8)(c)(iv)*, this subparagraph shall apply as if the reference to the 31st day of December, 1997, were a reference to the 31st day of December, 2002,

and

(ii) machinery or plant provided for the purposes of a trade or part of a trade of hotel-keeping carried on

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in a qualifying building or structure and in respect of the provision of which expenditure was incurred before the 31st day of December, 1995.

(*b*) *Paragraph (a)(ii)* shall not apply if the qualifying building or structure is not registered within 6 months after the date of the completion of that building or structure in a register kept by Bord Fáilte Éireann under the Tourist Traffic Acts, 1939 to 1995, and where by virtue of this section any allowance or increased allowance has been granted any necessary additional assessments may be made to give effect to this paragraph.

(8) Where for any chargeable period a wear and tear allowance under *section 284* in relation to any machinery or plant is increased under this section, no allowance under *section 283* shall be made in relation to the machinery or plant for that or any subsequent chargeable period.

Increased wear and tear allowances for taxis and cars for short-term hire.

[FA87 s24; FA96 s131, s132(1) and Sch5 PtI par16]

286.—(1) (*a*) In this section—

"car" means any mechanically propelled road vehicle, being a vehicle which has been constructed or adapted to be primarily suited to the carriage of passengers and not to the conveyance of goods or burden of any description or to the haulage by road of other vehicles, and which is a vehicle of a type commonly used as a private vehicle and suitable to be so used, and includes a vehicle in use for the purpose referred to in *paragraph (ii)* of the definition of "qualifying purposes";

"qualifying purposes" means, subject to *paragraphs (c)* and *(d)*, the use in the ordinary course of trade of a car for the purposes of—

(i) short-term hire to members of the public, or

(ii) the carriage of members of the public while the car is a licensed public hire vehicle fitted with a taximeter in accordance with the Road Traffic (Public Service Vehicles) Regulations, 1963 (S.I. No. 191 of 1963);

"short-term hire", in relation to a car and subject to *paragraph (b)*, means the hire of the car to a person under a hire-drive agreement (within the meaning of section 3 of the Road Traffic Act, 1961) for a continuous period which does not exceed 8 weeks.

(*b*) Where a period of hire of a car to a person by another person is followed within 7 days of the end of that period by a further period of hire of a car (whether the same car or not) to that person by that other person, the 2 periods shall be deemed for the purposes of this section, including any subsequent application of this paragraph, to constitute together a single continuous period of hire so that, where that continuous period of hire exceeds 8 weeks, the period of hire of any car included in that continuous period of hire shall not be treated as a period of

short-term hire, and for the purposes of this paragraph any reference to a person shall be treated as including a reference to any other person who is connected with that person.

(*c*) For the purposes of this section, a car shall be regarded as used by a person for qualifying purposes as respects a chargeable period only if not less than 75 per cent of its use (determined by reference to the periods of time in which the car is used, or available for use, for any purpose) by that person in the chargeable period or its basis period is for qualifying purposes.

(*d*) Notwithstanding *paragraph (c)*, where as respects a chargeable period the use of a car for qualifying purposes does not satisfy the requirements of that paragraph but would have satisfied those requirements if the reference in that paragraph to 75 per cent were a reference to 50 per cent, the car shall be deemed to be used for qualifying purposes as respects that chargeable period if the use of the car by that person for qualifying purposes satisfied the requirements of that paragraph as respects the immediately preceding chargeable period, or the car shall be deemed to be so used if that use of the car has satisfied those requirements as respects the immediately succeeding chargeable period, and the inspector shall accordingly adjust the amount of capital allowances to be made in taxing the person's trade and any amount of tax overpaid shall be repaid.

(2) In determining what capital allowances are to be made to a person for any chargeable period in taxing a trade which consists of or includes the carrying on of qualifying purposes, *section 284* shall apply to a car which as respects that period has been used by the person for qualifying purposes as if the reference in *subsection (2)(a)(ii)* of that section to 20 per cent were a reference to 40 per cent.

Wear and tear allowances deemed to have been made in certain cases.

[FA 1970 s 14(1),(2) and (3); CTA76 s21(1) and Sch1 par56; FA97 s146(1) and Sch9 PtI par4 (1)]

287.—(1) In this section—

''wear and tear allowance'' means an allowance made under *section 284* otherwise than by virtue of *section 285*;

''normal wear and tear allowance'' means such wear and tear allowance or greater wear and tear allowance, if any, as would have been made to a person in respect of any machinery or plant used by such person during any chargeable period if all the conditions specified in *subsection (3)* had been fulfilled in relation to that chargeable period.

(2) Where for any chargeable period during which any machinery or plant has been used by a person no wear and tear allowance or a wear and tear allowance less than the normal wear and tear allowance is made to such person in respect of the machinery or plant, the normal wear and tear allowance shall be deemed for the purposes of *subsections (3)* and *(4)* of *section 284* to have been made to such person in respect of the machinery or plant for that chargeable period.

(3) The conditions referred to in *subsection (1)* are—

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(*a*) that the trade had been carried on by the person in question since the date on which such person acquired the machinery or plant and had been so carried on by such person in such circumstances that the full amount of the profits or gains of the trade was liable to be charged to tax,

(*b*) that the trade had at no time consisted wholly or partly of exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967, or Part V of the Corporation Tax Act, 1976,

(*c*) that the machinery or plant had been used by such person solely for the purposes of the trade since that date,

(*d*) that a proper claim had been duly made by such person for wear and tear allowance in respect of the machinery or plant for every relevant chargeable period, and

(*e*) that no question arose in connection with any chargeable period as to there being payable to such person directly or indirectly any sums in respect of, or taking account of, the wear and tear of the machinery or plant.

(4) In the case of a company, *subsection (3)(a)* shall not alter the periods which are to be taken as chargeable periods but if, during any time after the year 1975-76 and after the company acquired the machinery or plant, the company has not been within the charge to corporation tax, any year of assessment or part of a year of assessment falling within that time shall be taken as a chargeable period as if it had been an accounting period of the company.

Balancing allowances and balancing charges.

[ITA67 s272(1) to (4), (5)(a) and (b) and (6) and definition of "scientific research allowance" in ITA67 s271; CTA76 s21(1) and Sch1 par28 and par29; FA94 s24(b); FA95 s25(1)]

288.—(1) Subject to this section, where any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a wear and tear allowance has been made for any chargeable period to a person carrying on a trade—

(*a*) any event occurring after the setting up and before the permanent discontinuance of the trade whereby the machinery or plant ceases to belong to the person carrying on the trade (whether on a sale of the machinery or plant or in any other circumstances of any description),

(*b*) any event occurring after the setting up and before the permanent discontinuance of the trade whereby the machinery or plant (while continuing to belong to the person carrying on the trade) permanently ceases to be used for the purposes of a trade carried on by the person,

(*c*) the permanent discontinuance of the trade, the machinery or plant not having previously ceased to belong to the person carrying on the trade,

(*d*) in the case of machinery or plant consisting of computer software or the right to use or otherwise deal with computer software, any event whereby the person grants to another person a right to use or otherwise deal with the whole or part of the computer software concerned in circumstances where the consideration in money for the grant constitutes (or, if there were consideration in money for the grant, would constitute) a capital sum,

an allowance or charge (in this Chapter referred to as a ''balancing allowance'' or a ''balancing charge'') shall, in the circumstances mentioned in this section, be made to or, as the case may be, on that person for the chargeable period related to that event. PT.9 S.288

(2) Where there are no sale, insurance, salvage or compensation moneys or where the amount of the capital expenditure of the person in question on the provision of the machinery or plant still unallowed as at the time of the event exceeds those moneys, a balancing allowance shall be made, and the amount of the allowance shall be the amount of the expenditure still unallowed as at that time or, as the case may be, of the excess of that expenditure still unallowed as at that time over those moneys.

(3) Where the sale, insurance, salvage or compensation moneys exceed the amount, if any, of that expenditure still unallowed as at the time of the event, a balancing charge shall be made, and the amount on which it is made shall be an amount equal to—

(*a*) the excess, or

(*b*) where the amount still unallowed is nil, those moneys.

(4) (*a*) In this subsection, ''scientific research allowance'' means—

(i) in relation to any expenditure incurred before the 6th day of April, 1965, the total amount of any allowances made in respect of that expenditure under section 244(3) of the Income Tax Act, 1967, increased by the amount of any allowance made under section 244(4)(*b*) of that Act or, as the case may be, reduced by any amount treated as a trading receipt in accordance with section 244(4)(*c*) of that Act, and

(ii) in relation to any expenditure incurred on or after the 6th day of April, 1965, the amount of any allowance made in respect of that expenditure under *subsection (1)* or *(2)* of *section 765*, reduced by any amount treated as a trading receipt in accordance with *section 765(3)(a)*.

(*b*) Notwithstanding anything in *subsection (3)*, in no case shall the amount on which a balancing charge is made on a person exceed the aggregate of the following amounts—

(i) the amount of the initial allowance, if any, made to the person in respect of the expenditure in question,

(ii) the amount of any wear and tear allowance made to the person in respect of the machinery or plant in question,

(iii) the amount of any scientific research allowance made to the person in respect of the expenditure, and

(iv) the amount of any balancing allowance previously made to the person in respect of the expenditure.

(5) (*a*) Where the aggregate amount of initial allowances and wear and tear allowances made to any person in respect

of any machinery or plant exceeds the actual amount of the expenditure incurred by that person on the provision of that machinery or plant, the amount of such excess (in this paragraph referred to as ''the excess amount'') shall, on the occurrence of an event within *paragraph (a)*, *(b)*, *(c)* or *(d)* of *subsection (1)*, be deemed to be a payment of an equal amount received by that person on account of sale, insurance, salvage or compensation moneys and shall be added to any other such moneys received in respect of that machinery or plant, and a balancing charge shall be made and the amount on which it is made shall be an amount equal to—

(i) where there are no sale, insurance, salvage or compensation moneys, the excess amount, or

(ii) where there are sale, insurance, salvage or compensation moneys, the aggregate of such moneys and the excess amount.

(*b*) Where as respects any machinery or plant an event within *paragraph (a)*, *(b)*, *(c)* or *(d)* of *subsection (1)* is followed by another event within any of those paragraphs, any balancing allowance or balancing charge made to or on the person by virtue of the happening of the later event shall take account of any balancing allowance or balancing charge previously made to or on that person in respect of the expenditure incurred by the person on the provision of that machinery or plant.

(6) (*a*) Where—

(i) the sale, insurance, salvage or compensation moneys consist of a payment or payments to a person under the scheme for compensation in respect of the decommissioning of fishing vessels implemented by the Minister for the Marine and Natural Resources in accordance with Council Regulation (EC) No. 3699/93 of 21 December 1993,[1] and

(ii) on account of the receipt by the person of such payment or payments, a balancing charge is to be made on the person for any chargeable period other than by virtue of *paragraph (b)*,

then, the amount on which the balancing charge is to be made for that chargeable period shall be an amount equal to one-third of the amount (in this subsection referred to as ''the original amount'') on which the balancing charge would but for this subsection have been made.

(*b*) Notwithstanding *paragraph (a)*, there shall be made on the person for each of the 2 immediately succeeding chargeable periods a balancing charge, and the amount on which that charge is made for each of those periods shall be an amount equal to one-third of the original amount.

[1]O.J. No. L 346, 31.12.1993, p.1.

289.—(1) In this section, ''open-market price'', in relation to any machinery or plant, means the price which the machinery or plant would have fetched if sold in the open market at the time of the event in question.

[ITA67 s277]

(2) Where—

(*a*) an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant,

(*b*) the event is the permanent discontinuance of a trade, and

(*c*) at or about the time of the discontinuance there occurs in relation to the machinery or plant any event mentioned in *paragraphs (a)* to *(c)* of *section 318*, not being a sale at less than open-market price other than a sale to which *section 312* applies,

then, for the purpose of determining—

(i) whether the discontinuance gives rise to a balancing allowance or balancing charge, and, if so,

(ii) the amount of the allowance or, as the case may be, the amount on which the charge is to be made,

the amount of the net proceeds, compensation, receipts or insurance moneys mentioned in *paragraphs (a)* to *(c)* of *section 318* which arise on the last-mentioned event shall be deemed to be an amount of sale, insurance, salvage or compensation moneys arising on the permanent discontinuance of the trade.

(3) (*a*) Subject to *subsections (4)* and *(6)*, *paragraph (b)* shall apply where an event occurs which gives rise or might give rise to a balancing allowance or balancing charge in respect of machinery or plant, and—

(i) the event is the permanent discontinuance of the trade and immediately after the time of the discontinuance the machinery or plant continues to belong to the person by whom the trade was carried on immediately before that time and the case is not one within *subsection (2)*,

(ii) the event is the permanent discontinuance of the trade and at the time of the discontinuance the machinery or plant is either sold at less than the open-market price, the sale not being one to which *section 312* applies, or the machinery or plant is given away,

(iii) the event is the sale of the machinery or plant at less than the open-market price, not being a sale to which *section 312* applies, or is the gift of the machinery or plant, or

(iv) the event is that, after the setting up and before the permanent discontinuance of the trade, the machinery or plant permanently ceases to be used for the purposes of a trade carried on by the person by whom the first-mentioned trade is being carried on,

and so ceases either by reason of that person's transferring the machinery or plant to other use or, on a transfer of the trade which is not treated as involving a discontinuance of the trade, by reason of the retention of the machinery or plant by the transferor.

(*b*) For the purpose of determining whether a balancing allowance or balancing charge is to be made and, if so, the amount of the allowance or, as the case may be, the amount on which the charge is to be made, the event shall be treated as if it had given rise to sale, insurance, salvage or compensation moneys of an amount equal to the open-market price of the machinery or plant.

(4) References in *subsection (3)* to the sale of machinery or plant at less than the open-market price do not include references to the sale of machinery or plant in such circumstances that there is a charge to income tax under Schedule E by virtue of *Chapter 3* of *Part 5*, and *subsection (3)(b)* shall not apply by reason of the gift of machinery or plant if the machinery or plant is given away in any such circumstances.

(5) Subject to *subsection (6)*, where *subsection (3)(b)* applies by reason of the gift or sale of machinery or plant to any person, and that person receives or purchases the machinery or plant with a view to using it for the purposes of a trade carried on by that person, then, in determining whether any, and if so what, wear and tear allowances, balancing allowances or balancing charges are to be made in connection with that trade, the like consequences shall ensue as if the recipient or purchaser had purchased the machinery or plant at the open-market price.

(6) Where in a case within *subsection (5)* the recipient or purchaser and the donor or seller, by notice in writing to the inspector, jointly so elect, the following provisions shall apply:

(*a*) *subsections (3)(b)* and *(5)* shall apply as if for the references in those subsections to the open-market price there were substituted references to that price or the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the gift or sale, whichever is the lower;

(*b*) notwithstanding anything in this Chapter, such balancing charge, if any, shall be made on the recipient or purchaser on any event occurring after the date of the gift or sale as would have been made on the donor or seller if the donor or seller had continued to own the machinery or plant and had done all such things and been allowed all such allowances in connection with the machinery or plant as were done by or allowed to the recipient or purchaser.

Option in case of replacement.

[ITA67 s273(1)]

290.—Where machinery or plant, in the case of which any of the events mentioned in *section 288(1)* has occurred, is replaced by the owner of the machinery or plant and a balancing charge is to be made on that owner by reason of that event, or but for this section a balancing charge would have been made on that owner by reason of that event, then, if by notice in writing to the inspector that owner so elects, the following provisions shall apply:

(*a*) if the amount on which the charge would have been made is greater than the capital expenditure on providing the new machinery or plant—

(i) the charge shall be made only on an amount equal to the difference,

(ii) no initial allowance, no balancing allowance and no wear and tear allowance shall be made in respect of the new machinery or plant or the expenditure on the provision of the new machinery or plant, and

(iii) in considering whether any, and if so what, balancing charge is to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;

(*b*) if the capital expenditure on providing the new machinery or plant is equal to or greater than the amount on which the charge would have been made—

(i) the charge shall not be made,

(ii) the amount of any initial allowance in respect of that expenditure and the amount of any wear and tear allowance shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made, and

(iii) in considering whether any, and if so what, balancing allowance or balancing charge is to be made in respect of the new machinery or plant, there shall be deemed to have been granted in respect of the new machinery or plant an initial allowance equal to the amount on which the charge would have been made, in addition to any initial allowance actually granted in respect of the new machinery or plant.

Computer software.

[ITA67 s241A(1) and (2); FA94 s24(a)]

291.—(1) Where a person carrying on a trade incurs capital expenditure in acquiring for the purposes of the trade a right to use or otherwise deal with computer software, then, for the purposes of this Chapter and *Chapter 4* of this Part—

(*a*) the right and the software to which the right relates shall be treated as machinery or plant,

(*b*) such machinery or plant shall be treated as having been provided for the purposes of the trade, and

(*c*) for so long as the person is entitled to the right, that machinery or plant shall be treated as belonging to that person.

(2) In any case where—

(*a*) a person carrying on a trade incurs capital expenditure on the provision of computer software for the purposes of the trade, and

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(*b*) in consequence of the person incurring that expenditure, the computer software belongs to that person but does not constitute machinery or plant,

then, for the purposes of this Chapter and *Chapter 4* of this Part, the computer software shall be treated as machinery or plant.

Meaning of ''amount still unallowed''.

[ITA67 s274; CTA76 s21(1) and Sch1 par30]

292.—References in this Chapter to the amount still unallowed as at any time of any expenditure on the provision of machinery or plant shall be construed as references to the amount of that expenditure less—

(*a*) any initial allowance made or deemed under this Chapter to have been made in respect of that expenditure to the person who incurred the expenditure,

(*b*) any wear and tear allowances made or deemed under this Chapter to have been made to that person in respect of the machinery or plant on the provision of which the expenditure was incurred, being allowances made for any chargeable period such that the chargeable period or its basis period ended before the time in question,

(*c*) any scientific research allowance (within the meaning of *section 288(4)(a)*) made to that person in respect of the expenditure, and

(*d*) any balancing allowance made to that person in respect of the expenditure.

Application to partnerships.

[ITA67 s275; CTA76 s21(1) and Sch1 par31]

293.—(1) (*a*) Where, after the setting up and on or before the permanent discontinuance of a trade which at any time is carried on in partnership, any event occurs which gives rise or may give rise to a balancing allowance or balancing charge in respect of machinery or plant—

(i) any balancing allowance or balancing charge which, if the trade had at all times been carried on by one and the same person, would have been made to or on that person in respect of that machinery or plant by reason of that event shall, subject to *section 1010*, be made to or on the person or persons carrying on the trade in the chargeable period related to that event (in this paragraph referred to as ''the relevant person or persons''), and

(ii) the amount of any such allowance or charge shall be computed as if the relevant person or persons had at all times been carrying on the trade and as if everything done to or by the predecessors of the relevant person or persons in the carrying on of the trade had been done to or by the relevant person or persons.

(*b*) Notwithstanding *paragraph (a)*, in applying *section 288(4)* to any balancing charge to be made in accordance with that paragraph, the allowances

made in respect of the machinery or plant for the year beginning on the 6th day of April, 1959, or for any earlier year of assessment shall not be taken to include allowances made to, or attributable to the shares of, persons who were not, either alone or in partnership with other persons, carrying on the trade at the beginning of the year beginning on the 6th day of April, 1959.

(2) (*a*) In this subsection, ''several trade'' has the meaning assigned to it by *section 1008*.

(*b*) In taxing the several trade of any partner in a partnership, the same allowances and charges shall be made in respect of machinery or plant used for the purposes of that trade, and belonging to one or more of the partners but not being partnership property, as would be made if the machinery or plant had at all material times belonged to all the partners and been partnership property and everything done by or to any of the partners in relation to the machinery or plant had been done by or to all the partners.

(3) Notwithstanding *section 288*, a sale or gift of machinery or plant used for the purposes of a trade carried on in partnership, being a sale or gift by one or more of the partners to one or more of the partners, shall not be treated as an event giving rise to a balancing allowance or balancing charge if the machinery or plant continues to be used after the sale or gift for the purposes of that trade.

(4) References in *subsections (2)* and *(3)* to use for the purposes of a trade do not include references to use in pursuance of a letting by the partner or partners in question to the partnership or to use in consideration of the making to the partner or partners in question of any payment which may be deducted in computing under *section 1008(3)* the profits or gains of the trade.

Machinery or plant used partly for non-trading purposes.

[ITA67 s276; FA90 s79]

294.—Where an event occurs which gives rise or might give rise to a balancing allowance or balancing charge to or on any person and the machinery or plant concerned is machinery or plant which—

(*a*) has been used by that person for the purposes of a trade carried on by that person and, in relation to machinery or plant provided for use for the purposes of a trade on or after the 1st day of April, 1990, while so used, was used wholly and exclusively for those purposes, and

(*b*) has also been used for other purposes,

then, in determining the amount of the allowance or, as the case may be, the amount on which the charge is to be made, regard shall be had to all the relevant circumstances and in particular to the extent of the use for those other purposes, and there shall be made to or on that person an allowance of such an amount or a charge on such an amount, as the case may be, as may be just and reasonable.

Option in case of succession under will or intestacy.

[ITA67 s278]

295.—Where a person succeeds to a trade as a beneficiary under the will or on the intestacy of a deceased person who carried on that trade, the following provisions shall, if the beneficiary by notice in writing to the inspector so elects, apply in relation to any machinery or plant previously owned by the deceased person and used by the deceased person for the purposes of that trade:

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(*a*) the reference in *section 313* to the price which the machinery or plant would have fetched if sold in the open market shall, in relation to the succession and any previous succession occurring on or after the death of the deceased, be deemed to be a reference to that price or the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the succession in question, whichever is the lower, and

(*b*) notwithstanding anything in that section, such balancing charge, if any, shall be made on the beneficiary on any event occurring after the succession as would have been made on the deceased if he or she had not died and had continued to own the machinery or plant and had done all such things and been allowed all such allowances in connection with the machinery or plant as were done by or allowed to the beneficiary or the successor on any previous succession mentioned in *paragraph (a)*.

Balancing allowances and balancing charges: wear and tear allowances deemed to have been made in certain cases.

[ITA67 s279; CTA76 s21(1) and Sch1 par32]

296.—(1) In determining whether any, and if so what, balancing allowance or balancing charge is to be made to or on any person for any chargeable period in taxing a trade, there shall be deemed to have been made to that person, for every previous chargeable period in which the machinery or plant belonged to that person and which is a chargeable period to be taken into account for the purpose of this section, such wear and tear allowance or greater wear and tear allowance, if any, in respect of the machinery or plant as would have been made to that person if all the conditions specified in *subsection (3)* had been fulfilled in relation to every such previous chargeable period.

(2) There shall be taken into account for the purposes of this section every previous chargeable period in which the machinery or plant belonged to the person and—

(*a*) during which the machinery or plant was not used by the person for the purposes of the trade,

(*b*) during which the trade was not carried on by the person,

(*c*) during which the trade was carried on by the person in such circumstances that, otherwise than by virtue of Chapter I of Part XXV of the Income Tax Act, 1967, or Part V of the Corporation Tax Act, 1976, the full amount of the profits or gains of the trade was not liable to be charged to tax,

(*d*) for which the whole or a part of the tax chargeable in respect of the profits of the trade was not payable by virtue of Chapter II of Part XXV of the Income Tax Act, 1967, or

(*e*) for which the tax payable in respect of the profits of the trade was reduced by virtue of Chapter III or IV of Part XXV of the Income Tax Act, 1967, or Part IV of the Corporation Tax Act, 1976.

(3) The conditions referred to in *subsection (1)* are—

(*a*) that the trade had been carried on by the person in question since the date on which that person acquired the machinery or plant and had been so carried on by that person

in such circumstances that the full amount of the profits or gains of the trade was liable to be charged to tax,

(*b*) that the trade had at no time consisted wholly or partly of exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967, or Part V of the Corporation Tax Act, 1976,

(*c*) that the machinery or plant had been used by that person solely for the purposes of the trade since that date, and

(*d*) that a proper claim had been duly made by that person for wear and tear allowance in respect of the machinery or plant for every relevant chargeable period.

(4) In the case of a company (within the meaning of *section 4(1)*), *subsection (3)(a)* shall not alter the periods which are to be taken as chargeable periods but, if during any time after the 5th day of April, 1976, and after the company acquired the machinery or plant, the company has not been within the charge to corporation tax, any year of assessment or part of a year of assessment falling within that time shall be taken as a chargeable period as if it had been an accounting period of the company.

(5) Nothing in this section shall affect *section 288(4)*.

Subsidies towards wear and tear.

[ITA67 s280; CTA76 s21(1) and Sch1 par33]

297.—(1) Where—

(*a*) an event occurs which gives rise or might give rise to a balancing allowance or balancing charge to or on any person in respect of any machinery or plant provided or used by that person for the purposes of a trade, and

(*b*) any sums which—

(i) are in respect of, or take account of, the wear and tear to the machinery or plant occasioned by its use for the purposes of the trade, and

(ii) do not fall to be taken into account as that person's income or in computing the profits or gains of any trade carried on by that person,

have been paid, or are to be payable, to that person directly or indirectly,

then, in determining whether any and, if so, what balancing allowance or balancing charge is to be made to or on that person, there shall be deemed to have been made to that person for the chargeable period related to the event a wear and tear allowance in respect of the machinery or plant of an amount equal to the total amount of those sums.

(2) Nothing in this section shall affect *section 288(4)*.

Allowances to lessors.

[ITA67 s241(5), s252 and s281; CTA76 s21(1) and Sch1 par6 and par16; FA80 s17(3)]

298.—(1) Where machinery or plant is let on such terms that the burden of the wear and tear of the machinery or plant falls directly on the lessor, the lessor shall be entitled, on making a claim to the inspector within 24 months after the end of the chargeable period, to—

(*a*) an initial allowance under *section 283*, and

(*b*) a wear and tear allowance under *section 284*,

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in relation to the machinery or plant, equal to the amount which might have been allowed if during the period of the letting the machinery or plant were in use for the purposes of a trade carried on by the lessor.

(2) Where machinery or plant is let on such terms as are referred to in *subsection (1)*, the preceding provisions of this Chapter, in so far as they relate to balancing allowances and balancing charges, shall apply in relation to the lessor as if the machinery or plant were, during the term of the letting, in use for the purposes of a trade carried on by the lessor.

Allowances to lessees.

[ITA67 s241(2) and s252; FA67 s11(3); FA71 s26(3); CTA76 s21(1) and Sch1 par6, par16, par53 and par60]

299.—(1) Where machinery or plant is let to the person by whom the trade is carried on, on the terms of that person being bound to maintain the machinery or plant and deliver it over in good condition at the end of the lease, and if the burden of the wear and tear of the machinery or plant will in fact fall directly on that person, then, for the purposes of *sections 283* and *284*, the capital expenditure on the provision of the machinery or plant shall be deemed to have been incurred by that person and the machinery or plant shall be deemed to belong to that person.

(2) *Subsection (2)* of *section 285* shall not apply to qualifying machinery or plant (within the meaning of that section) which is let to a person on the terms mentioned in *subsection (1)*, unless the contract of letting provides that the person shall or may become the owner of the machinery or plant on the performance of the contract, and, where the contract so provides but without becoming the owner of the machinery or plant the person ceases to be entitled (otherwise than on his or her death) to the benefit of the contract in so far as it relates to the machinery or plant, *subsection (2)* of *section 285* shall be deemed not to have applied in relation to the machinery or plant and accordingly there shall be made all such additional assessments and adjustments of assessments as may be appropriate.

Manner of making allowances and charges.

[ITA67 s241(1)(c), s251(1) and s282; CTA76 s21(1) and Sch1 par15, par34; FA96 s132(1) and Sch5 PtI par1(12)]

300.—(1) Any allowance or charge made to or on any person under the preceding provisions of this Chapter shall, unless it is made under or by virtue of *section 298*, be made to or on that person in taxing such person's trade.

(2) Any initial allowance or wear and tear allowance made under or by virtue of *section 298(1)* or any balancing allowance made under or by virtue of *section 298(2)* shall be made by means of discharge or repayment of tax, and shall be available primarily against income from the letting of machinery or plant.

(3) Any balancing charge made under or by virtue of *section 298(2)* shall be made under Case IV of Schedule D.

Application to professions, employments and offices.

[ITA67 s241(10), s241A(3), s253 and s283(1); FA70 s14(4); CTA76 s21(1) and Sch1 par6; FA97 s22, s146(1) and Sch9 PtI par1(17)]

301.—(1) The preceding provisions of this Chapter (other than *sections 283*, *285* and *286*) shall, with any necessary modifications, apply in relation to professions, employments and offices as they apply in relation to trades.

(2) *Sections 283* and *285* shall, with any necessary modifications, apply in relation to professions as they apply in relation to trades.

Dredging: initial allowances and annual allowances

302.—(1) In this Chapter—

Interpretation (*Chapter 3*).

[ITA67 s294(6), (8) and (10); CTA76 s21(1) and Sch1 par43]

''dredging'' does not include things done otherwise than in the interests of navigation, but (subject to that) includes the removal of anything forming part of or projecting from the bed of the sea or of any inland water, by whatever means it is removed and whether or not at the time of removal it is wholly or partly above water, and also includes the widening of an inland waterway in the interests of navigation;

''qualifying trade'' means any trade or undertaking which, or a part of which, complies with either of the following conditions—

(*a*) that it consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway, or

(*b*) that it is for a purpose set out in *section 268(1)*,

but, where part only of a trade or undertaking complies with *paragraph (a)* or *(b)*, *section 303(5)* shall apply as if the part which does and the part which does not so comply were separate trades.

(2) For the purposes of this Chapter, the first relevant chargeable period, in relation to expenditure incurred by any person, shall be the chargeable period related to the following event or occasion—

(*a*) the incurring of the expenditure, or

(*b*) in the case of expenditure for which allowances are to be made by virtue of *section 303(6)*, the occasion when that person first both carries on the trade or part of the trade for the purposes of which the expenditure was incurred, and occupies for the purposes of that trade or part of the trade the dock or other premises in connection with which the expenditure was incurred.

303.—(1) (*a*) Subject to this section, where for the purposes of any qualifying trade carried on by a person the person incurs capital expenditure on dredging, and either the trade consists of the maintenance or improvement of the navigation of a harbour, estuary or waterway or the dredging is for the benefit of vessels coming to, leaving or using any dock or other premises occupied by the person for the purposes of the trade, then—

Allowances for expenditure on dredging.

[ITA67 s294(1) to (5), (7), (9), (11) and (12); CTA76 s21(1) and Sch1 par43]

(i) an initial allowance equal to 10 per cent of the expenditure shall be made for the first relevant chargeable period to the person incurring the expenditure, and

(ii) writing-down allowances shall be made in respect of that expenditure to the person for the time being carrying on the trade during a writing-down period of 50 years beginning with the first relevant chargeable period; but, where a writing-down allowance is to be made for a year of assessment to such a

person and such person is within the charge to income tax in respect of the trade for part only of that year, that part shall be treated as a separate chargeable period for the purposes of computing allowances under this section.

(*b*) This subsection shall not apply to any expenditure incurred before the 30th day of September, 1956.

(2) Where the trade is permanently discontinued in any chargeable period, then, for that chargeable period there shall be made to the person last carrying on the trade, in addition to any other allowance made to that person, an allowance equal to the amount of the expenditure less the allowances made in respect of the expenditure under *subsection (1)* for that and previous chargeable periods.

(3) For the purposes of this section, a trade shall not be treated by virtue of the Income Tax Acts as discontinued on a change in the persons engaged in carrying it on.

(4) Any allowance under this section shall be made in taxing the trade.

(5) Where expenditure is incurred partly for the purposes of a qualifying trade and partly for other purposes, *subsection (1)* shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the purposes of that trade.

(6) Where a person incurs capital expenditure for the purposes of a trade or part of a trade not yet carried on by the person but with a view to carrying it on, or incurs capital expenditure in connection with a dock or other premises not yet occupied by the person for the purposes of a qualifying trade but with a view to so occupying the dock or premises, *subsections (1)* to *(5)* shall apply as if the person had been carrying on the trade or part of the trade or occupying the dock or premises for the purposes of the qualifying trade, as the case may be, at the time when the expenditure was incurred.

(7) Where a person contributes a capital sum to expenditure on dredging incurred by another person, the person shall for the purposes of this section be treated as incurring capital expenditure on that dredging equal to the amount of the contribution, and the capital expenditure incurred by the other person on that dredging shall for those purposes be deemed to be reduced by the amount of the contribution.

(8) No allowance shall be made by virtue of this section in respect of any expenditure if for the same or any other chargeable period an allowance is or can be made in respect of that expenditure under *Chapter 1* of this Part.

(9) Notwithstanding any other provision of this section, in determining the allowances to be made under this section in any particular case, there shall be deemed to have been made in that case all such allowances (other than initial allowances) as could have been made if this section had always applied.

Miscellaneous and general

Income tax: allowances and charges in taxing a trade, etc.

304.—(1) This section and *section 305* shall apply as respects allowances and charges which are to be made under this Part as it applies for the purposes of income tax.

[ITA67 s241(3) and (4), s251(5), s252, s253, s254(5) and (6), s295, CTA76 s21(1) and Sch1 par6, par15, par16, par17 and par44]

(2) Any claim by a person for an allowance under this Part in charging profits or gains of any description shall be included in the annual statement required to be delivered under the Income Tax Acts of those profits or gains, and the allowance shall be made as a deduction in charging those profits or gains.

(3) (*a*) A claim for an industrial building allowance under *section 271* shall be accompanied by a certificate signed by the claimant (which shall be deemed to form part of the claim) stating that the expenditure was incurred on the construction of an industrial building or structure and giving such particulars as show that the allowance is to be made.

(*b*) A claim for an initial allowance under *section 283* shall be accompanied by a certificate signed by the claimant (which shall be deemed to form part of the claim) stating that the expenditure was incurred on new machinery or new plant and giving such particulars as show that the allowance is to be made.

(4) Subject to *section 278(2)*, where full effect cannot be given in any year to any allowance to be made under this Part in taxing a trade owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, then, the allowance or part of the allowance to which effect has not been given, as the case may be, shall, for the purpose of making the assessment to income tax for the following year, be added to the amount of the allowances to be made under this Part in taxing the trade for that following year, and be deemed to be part of those allowances, or, if there is no such allowance for that following year, be deemed to be the allowance for that following year, and so on for succeeding years.

(5) Any charge to be made under this Part on a person for any chargeable period in taxing the person's trade or in charging the person's income under Case V of Schedule D shall be made by means of an assessment in addition to any other assessment to be made on the person for that period.

(6) (*a*) The preceding provisions of this section (other than *subsection (3)*) shall apply in relation to professions, employments and offices as they apply in relation to trades.

(*b*) *Subsection (3)(b)* shall, with any necessary modifications, apply in relation to professions as it applies in relation to trades.

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Income tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax.

[ITA67 s254(1)(e), s296(1), (3), (4) and (5), F(MP)A68 s3(2) and Sch1; CTA76 s21(1) and Sch1 par17; FA80 s17(1)]

305.—(1) (*a*) Where under this Part an allowance is to be made to a person for any year of assessment which is to be given by means of discharge or repayment of tax, and is to be available or available primarily against a specified class of income, the amount of the allowance shall be deducted from or set off against the person's income of that class for that year of assessment and, if the amount to be allowed is greater than the amount of the person's income of that class for that year of assessment, the balance shall be deducted from or set off against the person's income of that class for the next year of assessment, and so on for subsequent years of assessment, and tax shall be discharged or repaid accordingly.

(*b*) Notwithstanding *paragraph (a)*, where an allowance referred to in that paragraph is available primarily against income of the specified class and the amount of the allowance is greater than the amount of the person's income of that class for the first-mentioned year of assessment, the person may, by notice in writing given to the inspector not later than 2 years after the end of the year of assessment, elect that the excess shall be deducted from or set off against the person's other income for that year of assessment, and it shall be deducted from or set off against that income and tax shall be discharged or repaid accordingly and only the excess, if any, of the amount of the allowance over all the person's income for that year of assessment shall be deducted from or set off against the person's income of the specified class for succeeding years.

(2) Any claim for an allowance mentioned in *subsection (1)* shall be made to and determined by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to that person of the decision, appeal to the Appeal Commissioners.

(3) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (2)* as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

(4) Where any person, for the purpose of obtaining for that person or any other person any relief from or repayment of tax in respect of an allowance mentioned in *subsection (1)*, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.

Meaning of basis period.

[ITA67 s297; CTA76 s21(1) and Sch1 par45; FA90 s22(1)(b); FA96 s132(1) and Sch5 PtI par1(13)]

306.—(1) In this Part, as it applies for income tax purposes, ''basis period'' has the meaning assigned to it by this section.

(2) (*a*) Subject to *paragraph (b)*, in the case of a person to whom an allowance or on whom a charge is to be made under Case I of Schedule D in charging the profits or gains of the person's trade or under Case V of Schedule D in charging income arising from rents or receipts in respect of premises or easements, the person's basis period for

any year of assessment shall be the period on the profits or gains of which income tax for that year is to be finally computed under Case I of Schedule D in respect of the trade in question or, as the case may be, under Case V of Schedule D in respect of the income arising from rents or receipts in respect of premises or easements or, where by virtue of the Income Tax Acts the profits or gains or income of any other period are to be taken to be the profits or gains or income of that period, that other period.

(*b*) In the case of any trade—

(i) where 2 basis periods overlap, the period common to both shall be deemed for the purpose of this subsection to fall in the first basis period only,

(ii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then, unless the second-mentioned year of assessment is the year of the permanent discontinuance of the trade, the interval shall be deemed to be part of the second basis period, and

(iii) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade is permanently discontinued and the basis period for the year in which the permanent discontinuance occurs, the interval shall be deemed to form part of the first basis period.

(3) (*a*) Any reference in *subsection (2)(b)* to the overlapping of 2 periods shall be construed as including a reference to the coincidence of 2 periods or to the inclusion of one period in another, and references to the period common to both of 2 periods shall be construed accordingly.

(*b*) Any reference in *subsection (2)(b)* to the permanent discontinuance of a trade shall be construed as including a reference to the occurring of any event which under the Income Tax Acts is to be treated as equivalent to the permanent discontinuance of a trade.

(4) Where an allowance or charge is to be made under *Chapter* 2 of this Part to or on a person carrying on or holding a profession, employment or office, *subsections (1)* to *(3)* shall apply as if the references to a trade included references to a profession, employment or office and as if the references to Case I of Schedule D included references to Case II of Schedule D and Schedule E.

(5) In the case of any other person to whom an allowance or on whom a charge is to be made under this Part, that other person's basis period for any year of assessment shall be the year of assessment itself.

Corporation tax: allowances and charges in taxing a trade.

[CTA76 s14(1) and (2)]

307.—(1) In computing for the purposes of corporation tax a company's profits for any accounting period, there shall be made in accordance with this section and *section 308* all such deductions and additions as are required to give effect to the provisions of the Tax Acts which relate to allowances (including investment allowances) and charges in respect of capital expenditure, and *subsection (2)* and

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section 308 shall apply as respects allowances and charges which are to be made under those provisions as they apply for the purposes of corporation tax.

(2) (*a*) Allowances and charges to be made for any accounting period in taxing a trade shall be given effect by treating the amount of any allowance as a trading expense of the trade in that period and by treating the amount on which any such charge is to be made as a trading receipt of the trade in that period.

(*b*) (i) A company to which an industrial building allowance under *section 271*, an initial allowance under *section 283* or an initial allowance under *section 303(1)(a)* is to be made in taxing a trade for any accounting period may disclaim the allowance by notice in writing given to the inspector not later than 2 years after the end of that period.

(ii) Any such notice shall be accompanied by a certificate signed by the person by whom the notice is given giving such particulars as show that the allowance would be made if no such notice were given and the amount which would be so made.

(iii) Where notice is given under *subparagraph (i)* for any accounting period, the inspector may make an assessment to corporation tax on the company for that accounting period on the amount or the further amount which in the inspector's opinion ought to be charged.

Corporation tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax.

[CTA76 s14(3) to (8)]

308.—(1) Where an allowance is to be made to a company for any accounting period which is to be given by discharge or repayment of tax or in charging its income under Case V of Schedule D, and is to be available primarily against a specified class of income, it shall, as far as may be, be given effect by deducting the amount of the allowance from any income of the period, being income of the specified class.

(2) Balancing charges for any accounting period which are not to be made in taxing a trade shall, notwithstanding any provision for them to be made under Case IV or V of Schedule D, as the case may be, be given effect by treating the amount on which the charge is to be made as income of the same class as that against which the corresponding allowances are available or primarily available.

(3) Where an allowance which is to be made for any accounting period by means of discharge or repayment of tax, or in charging income under Case V of Schedule D, as the case may be, cannot be given full effect under *subsection (1)* in that period by reason of a want or deficiency of income of the relevant class, then, so long as the company remains within the charge to corporation tax, the amount unallowed shall be carried forward to the succeeding accounting period, except in so far as effect is given to it under *subsection (4)*, and the amount so carried forward shall be treated for the purposes of this section, including any further application of this subsection, as the amount of a corresponding allowance for that period.

(4) Where an allowance (other than an allowance carried forward from an earlier accounting period) which is to be made for any

accounting period by means of discharge or repayment of tax, or in charging income under Case V of Schedule D, as the case may be, and which is available primarily against income of a specified class cannot be given full effect under *subsection (1)* in that period by reason of a want or deficiency of income of that class, the company may claim that effect shall be given to the allowance against the profits (of whatever description) of that accounting period and, if the company was then within the charge to corporation tax, of preceding accounting periods ending within the time specified in *subsection (5)*, and, subject to that subsection and to any relief for earlier allowances or for losses, the profits of any of those accounting periods shall then be treated as reduced by the amount unallowed under *subsection (1)*, or by so much of that amount as cannot be given effect under this subsection against profits of a later accounting period.

(5) The time referred to in *subsection (4)* is a time immediately preceding the accounting period first mentioned in *subsection (4)* equal in length to the accounting period for which the allowance is to be made; but the amount or aggregate amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not, with the amount of any reduction to be made in those profits under any corresponding provision of the Corporation Tax Acts relating to losses, exceed a part of those profits proportionate to the part of the period falling within that time.

(6) A claim under *subsection (4)* shall be made by notice in writing given to the inspector not later that 2 years from the end of the accounting period in which an allowance cannot be given full effect under *subsection (1)*.

Companies not resident in the State.

[CTA76 s21(4)]

309.—Where a company not resident in the State is within the charge to corporation tax in respect of one source of income and to income tax in respect of another source, then, in applying—

(*a*) this Part,

(*b*) *section 374*,

(*c*) *sections 658* and *660*,

(*d*) *sections 670* and *672* to *678*,

(*e*) *sections 764* and *765*,

(f) section 769, and

(*g*) any other provision of the Tax Acts relating to the making of allowances or charges under or in accordance with the provisions referred to in *paragraphs (a)* to *(f)*,

allowances relating to any source of income shall be given effect against income chargeable to the same tax as is chargeable on income from that source.

Allowances in respect of certain contributions to capital expenditure of local authorities.

[FA78 s26]

310.—(1) In this section—

''approved scheme'' means a scheme undertaken by a local authority with the approval of the Minister for the Environment and Local Government which has as its object or among its objects the treatment of trade effluents;

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''trade effluents'' means liquid or other matter discharged into public sewers from premises occupied for the purposes of a trade.

(2) Where a person, for the purposes of a trade carried on or to be carried on by the person, contributes a capital sum to expenditure by a local authority on the provision of an asset to be used for the purposes of an approved scheme, in so far as the scheme relates to the treatment of trade effluents, then, such allowances, if any, shall be made to the person under *section 271*, *272*, *283* or *284* as would have been made to the person if the contribution had been expenditure on the provision for the purposes of that trade of a similar asset and that asset had continued at all material times to be in use for the purposes of the trade.

(3) The following provisions shall apply in relation to a transfer of a trade or part of a trade for the purposes of which a contribution referred to in *subsection (2)* was made:

(*a*) where the transfer is of the whole trade, allowances which, if the transfer had not taken place, would have been made to the transferor under *section 272* or *284* for chargeable periods ending after the date of the transfer shall be made to the transferee and shall not be made to the transferor;

(*b*) where the transfer is of part only of the trade, *paragraph (a)* shall apply in relation to so much of the allowance as is properly referable to the part of the trade transferred.

Apportionment of consideration and exchanges and surrenders of leasehold interests.

[ITA67 s298; FA96 s132(1) and Sch5 PtI par1(14)]

311.—(1) (*a*) Any reference in this Part to the sale of any property includes a reference to the sale of that property together with any other property and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as on a just apportionment is properly attributable to the first-mentioned property shall for the purposes of this Part be deemed to be the net proceeds of the sale of the first-mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.

(*b*) For the purposes of this subsection, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property or that there are, or purport to be, separate sales of separate items of that property.

(2) *Subsection (1)* shall, with the necessary modifications, apply in relation to other sale, insurance, salvage or compensation moneys as it applies in relation to the net proceeds of sales.

(3) This Part shall apply as if any reference in this Part to the sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender of that interest for valuable consideration, and any provisions of this Part referring to the sales shall apply accordingly with the necessary modifications and in particular with the modifications that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the

exchange or surrender, and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if the consideration had taken the form of a money payment. Pt.9 S.311

(4) This section shall, with the necessary modifications, apply in relation to *Chapter 1* of *Part 24* and *sections 764* and *765* as if that Chapter and those sections were contained in this Part.

Special provisions as to certain sales.

[ITA67 s299 other than subsection (4)(b)(iii); CTA76 s21(1) Sch1 par46; FA96 s132(1) and Sch5 PtI par1(15)]

312.—(1) In this section, ''control'', in relation to a body corporate, means the power of a person to secure—

(*a*) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(*b*) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.

(2) (*a*) This section shall apply in relation to sales of any property where either—

(i) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them, or

(ii) it appears with respect to the sale, or with respect to transactions of which the sale is one, that the sole or main benefit which apart from this section might have been expected to accrue to the parties or any of them was the obtaining of an allowance under this Part or under *Chapter 1* of *Part 24* or *section 764* or *765*.

(*b*) References in this subsection to a body of persons include references to a partnership.

(3) Where the property is sold at a price other than the price it would have fetched if sold in the open market, then, subject to *subsections (4)* and *(5)*, the like consequences shall ensue for the purposes of the enactments mentioned in *subsection (2)*, in their application to the tax of all persons concerned, as would have ensued if the property had been sold for the price it would have fetched if sold in the open market.

(4) (*a*) Subject to *paragraph (b)*, where the sale is a sale of machinery or plant—

(i) no initial allowance shall be made to the buyer, and

(ii) subject to *subsection (5)*, if the price which the property would have fetched if sold in the open market is greater than the amount which, for the purpose of

determining whether any, and if so, what, balancing charge should be made on the seller in respect of the property under *Chapter 2* of this Part, would be taken to be the amount of the capital expenditure incurred by the seller on the provision of the property, *subsection (3)* shall apply as if for each of the references to the price which the property would have fetched if sold in the open market there were substituted a reference to that amount.

(*b*) This subsection shall not apply in relation to a sale of machinery or plant which was never used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business.

(5) (*a*) Subject to *subsection (6)*, where the sale is one to which *subsection (2)(a)(i)* applies and *subsection (2)(a)(ii)* does not apply, and the parties to the sale by notice in writing to the inspector so elect, the following provisions shall apply:

(i) *subsection (3)* shall apply as if for each of the references to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum mentioned in *paragraph (b)*, whichever is the lower;

(ii) *subsection (4)(a)(ii)* shall not apply;

(iii) notwithstanding anything in the preceding provisions of this section, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have been made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection with the property as were done by or allowed to the buyer.

(*b*) The sum referred to in *paragraph (a)(i)* is—

(i) in the case of an industrial building or structure, the residue of the expenditure on the construction of that building or structure immediately before the sale, computed in accordance with *section 277*, and

(ii) in the case of machinery or plant, the amount of the expenditure on the provision of the machinery or plant still unallowed immediately before the sale, computed in accordance with *section 292*.

(6) (*a*) An election under *subsection (5)(a)* may not be made if—

(i) any of the parties to the sale is not resident in the State at the time of the sale, and

(ii) the circumstances are not at that time such that an allowance or charge under this Part is to be or might be made to or on that party in consequence of the sale.

(*b*) Except where referred to in *paragraph (a)*, this section shall apply in relation to a sale notwithstanding that it is not fully applicable by reason of the non-residence of a party to the sale or otherwise. PT.9 S.312

Effect, in certain cases, of succession to trade, etc.

[ITA67 s300; FA96 s132(2) and Sch5 PtII]

313.—(1) Where a person succeeds to any trade or profession which until that time was carried on by another person and by virtue of *section 69* the trade or profession is to be treated as discontinued, any property which, immediately before the succession takes place, was in use for the purposes of the discontinued trade or profession and without being sold is, immediately after the succession takes place, in use for the purposes of the new trade or profession shall for the purposes of this Part be treated as if it had been sold to the successor when the succession takes place and as if the net proceeds of that sale had been the price which that property would have fetched if sold in the open market.

(2) Where, after the setting up and before the permanent discontinuance of a trade or profession which at any time is carried on in partnership anything is done for the purposes of that trade or profession, any allowance or charge which, if the trade or profession had at all times been carried on by one and the same person, would have been made to or on that person under this Part shall, subject to *section 1010*, be made to or on the person or persons from time to time carrying on that trade or profession (in this subsection referred to as ''the relevant person or persons''), and the amount of any such allowance or charge shall be computed as if the relevant person or persons had at all times been carrying on the trade or profession and as if everything done to or by the predecessors of the relevant person or persons in the carrying on of that trade or profession had been done to or by the relevant person or persons.

(3) In relation to machinery or plant, this section shall apply subject to *Chapter 2* of this Part in so far as that Chapter relates to balancing allowances and balancing charges.

Procedure on apportionment.

[ITA67 s301; CTA76 s21(1) and Sch1 par47]

314.—(1) Where under or by virtue of this Part any sum is to be apportioned and at the time of the apportionment it appears that it is material as respects the liability to tax (for whatever chargeable period) of 2 or more persons, any question which arises as to the manner in which the sum is to be apportioned shall be determined, for the purposes of the tax of all those persons, by the Appeal Commissioners in the like manner as if it were an appeal against an assessment to income tax under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal shall apply accordingly with any necessary modifications, and all those persons shall be entitled to appear and be heard by the Appeal Commissioners or to make representations to them in writing.

(2) This section shall apply in relation to any determination for the purposes of this Part of the price which property would have fetched if sold in the open market as it applies in relation to apportionments.

Property used for purposes of ''exempted trading operations''.

[ITA67 s302; CTA76 s21(1) and Sch1 par48]

315.—(1) Where an event occurs which gives rise, or would but for this section give rise, to a balancing allowance or balancing charge in respect of any property to or on a company in relation to which a certificate under section 374(2) of the Income Tax Act, 1967, or section 70(2) of the Corporation Tax Act, 1976, has been given, then, whether the certificate is still in force or not, this section shall apply.

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(2) Where the property has been used by the company exclusively for the purposes of its exempted trading operations within the meaning of Chapter I of Part XXV of the Income Tax Act, 1967, or Part V of the Corporation Tax Act, 1976, no balancing allowance or balancing charge shall be made.

(3) Where the property has been used partly for the purposes of the company's exempted trading operations and partly for the purposes of its other trading operations, regard shall be had to all the relevant circumstances of the case and there shall be made to or on the company an allowance of such an amount, or, as the case may be, a charge on such an amount, as may be just and reasonable.

Interpretation of certain references to expenditure and time when expenditure is incurred.

[ITA67 s241(9A), s251(2), s254(4)(a), s260, s261, s303(1), (2); CTA76 s21(1) and Sch1 par15, par17, par21 and par49; FA96 s132(1) and Sch5 PtI par1(12)(b)]

316.—(1) References in this Part to capital expenditure and capital sums—

(*a*) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum allowed to be deducted in computing for the purposes of tax the profits or gains of a trade, profession, office or employment carried on or held by that person, and

(*b*) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which are to be taken into account as receipts in computing the profits or gains of any trade, profession, office or employment carried on or held by that person,

and do not include, in relation to any person referred to in *paragraphs (a)* and *(b)*, any expenditure or sum in the case of which a deduction of tax is to be or may be made under *section 237* or *238*.

(2) Any reference in this Part to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question become payable; but, for the purposes of *section 284*, this subsection shall apply only in respect of machinery and plant provided for use for the purposes of a trade on or after the 6th day of April 1996.

(3) For the purposes of *sections 271* and *283*, any expenditure incurred for the purposes of a trade by a person about to carry on the trade shall be treated as if it had been incurred by that person on the first day on which that person carries on the trade.

Treatment of grants.

[ITA67 s254(4)(b), s303(3), FA86 s52(1), FA87 s25; CTA76 s 21(1) and Sch1 par1, par17 and par49; FA93 s34(1)(a) and (b) and (3)]

317.—(1) In this section—

''food processing trade'' means a trade which consists of or includes the manufacture of processed food;

''processed food'' means goods manufactured in the State in the course of a trade by a company, being goods which—

(*a*) are intended for human consumption as a food, and

(*b*) have been manufactured by a process involving the use of machinery or plant whereby the goods produced by the application of that process differ substantially in form and value from the materials to which the process has been applied and whereby, without prejudice to the generality

of the foregoing, the process does not consist primarily of—

(i) the acceleration, retardation, alteration or application of a natural process, or

(ii) the application of methods of preservation, pasteurisation or any similar treatment;

''qualifying machinery or plant'' means machinery or plant used solely in the course of a process of manufacture whereby processed food is produced.

(2) Subject to *subsection (3)*, expenditure shall not be regarded for any of the purposes of this Part, other than *sections 283* and *284*, as having been incurred by a person in so far as the expenditure has been or is to be met directly or indirectly—

(*a*) in relation to expenditure incurred before the 6th day of May, 1993, by the State, by any board established by statute or by any public or local authority, and

(*b*) in relation to expenditure incurred on or after the 6th day of May, 1993, by the State or by any person other than the first-mentioned person.

(3) (*a*) Subject to *paragraph (b)* and *subsection (4)*, where an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *section 283* or *284* and the capital expenditure incurred on the provision of the machinery or plant in respect of which the allowance is to be made was incurred on or after the 29th day of January, 1986, the following provisions shall apply:

(i) expenditure shall not be regarded as having been incurred by a person in so far as the expenditure has been or is to be met directly or indirectly—

(I) in relation to expenditure incurred before the 6th day of May, 1993, by the State, by any board established by statute or by any public or local authority, and

(II) in relation to expenditure incurred on or after the 6th day of May, 1993, by the State or by any person other than the first-mentioned person, and

(ii) the actual cost of any machinery or plant to any person shall for the purposes of *section 284* be taken to be the amount of capital expenditure incurred on the provision of such machinery or plant less any expenditure referred to in *subparagraph (i)*.

(*b*) *Paragraph (a)* shall not apply in relation to any capital expenditure which is met or is to be met in the manner mentioned in *paragraph (a)(i)*—

(i) under the terms of an agreement finally approved on or before the 29th day of January, 1986, by a Department of State, any board established by statute or any public or local authority, or

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(ii) under the terms of an agreement which—

(I) was the subject of negotiations which were in progress on the 29th day of January, 1986, with a Department of State, any board established by statute or any public or local authority, and

(II) was finally approved by such Department, board or authority not later than the 31st day of December, 1986.

(4) (*a*) *Subsection (3)* shall not apply where an allowance is to be made under *section 283* or *284* in taxing a food processing trade carried on by a company and the capital expenditure in respect of which the allowance is to be made was incurred by that company and was so incurred in respect of qualifying machinery or plant.

(*b*) The reference in *paragraph (a)* to expenditure incurred by a company shall not include any expenditure which it is deemed to have incurred in accordance with *section 299*.

Meaning of "sale, insurance, salvage or compensation moneys".

[ITA67 s304(1); CTA76 s21(1) and Sch1 par50; FA94 s24(c)]

318.—In this Part, except where the context otherwise requires, "sale, insurance, salvage or compensation moneys", in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person, means—

(*a*) where the event is a sale of any property, including the sale of a right to use or otherwise deal in machinery or plant consisting of computer software, the net proceeds to that person of the sale,

(*b*) where the event is the demolition or destruction of any property, the net amount received by that person for the remains of the property, together with any insurance moneys received by that person in respect of the demolition or destruction and any other compensation of any description received by that person in respect of the demolition or destruction, in so far as that compensation consists of capital sums,

(*c*) as respects machinery or plant, where the event is the permanent loss of the machinery or plant otherwise than in consequence of its demolition or destruction, any insurance moneys received by that person in respect of any loss and any other compensation of any description received by that person in respect of that loss, in so far as that compensation consists of capital sums, and

(*d*) where the event is that a building or structure ceases altogether to be used, any compensation of any description received by that person in respect of that event, in so far as that compensation consists of capital sums.

Adjustment of allowances by reference to value-added tax.

[FA75 s29; FA97 s20(14)]

319.—(1) In computing any deduction, allowance or relief for the purposes of—

(*a*) this Part,

(*b*) *sections 658* and *659*,

(*c*) *Chapter 1* of *Part 24*, or PT.9 S.319

(*d*) *sections 764*, *765* and *769*,

the cost to a person of any machinery or plant, or the amount of any expenditure incurred by a person, shall not take account of any amount included in such cost or expenditure for value-added tax in respect of which the person may claim—

(i) a deduction under section 12 of the Value-Added Tax Act, 1972, or

(ii) a refund of value-added tax under an order under section 20(3) of that Act.

(2) In calculating for the purposes of this Part the amount of sale, insurance, salvage or compensation moneys to be taken into account in computing a balancing allowance or balancing charge to be made to or on a person, no account shall be taken of the amount of value-added tax (if any) chargeable to the person in respect of those moneys.

Other interpretation (*Part 9*).

[ITA67 s254(1)(c), s255(6) and s304(1) to (6); CTA76 s21(1) and Sch1 par17 and par50; FA97 s146(1) and Sch9 PtI par1(20)]

320.—(1) In this Part, except where the context otherwise requires—

''income'' includes any amount on which a charge to tax is authorised to be made under this Part;

''lease'' includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, but does not include a mortgage, and ''lessee'', ''lessor'' and ''leasehold interest'' shall be construed accordingly.

(2) Any reference in this Part to any building, structure, machinery or plant shall be construed as including a reference to a part of any building, structure, machinery or plant except, in relation to a building or structure, where the reference is comprised in a reference to the whole of a building or structure.

(3) This Part shall apply in relation to a share in machinery or plant as it applies in relation to a part of machinery or plant and, for the purposes of this Part, a share in machinery or plant shall be deemed to be used for the purposes of a trade only so long as the machinery or plant is used for the purposes of the trade.

(4) Any reference in this Part to the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(5) Any reference in this Part to the setting up or permanent discontinuance of a trade includes, except where the contrary is expressly provided, a reference to the occurring of any event which under any provision of the Income Tax Acts is to be treated as equivalent to the setting up or permanent discontinuance of a trade.

(6) Any reference in this Part to an allowance made includes a reference to an allowance which would be made but for an insufficiency of profits or gains, or other income, against which to make the allowance.

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Provisions of general application in relation to the making of allowances and charges.

[CTA76 Sch1 par1, 2, 3; FA97 s20(4)]

321.—(1) *Subsections (2)* to *(7)* shall apply for the interpretation of—

(*a*) this Part,

(*b*) *section 374*,

(*c*) *sections 658* to *660*,

(*d*) *Chapter 1* of *Part 24*,

(*e*) *sections 764* and *765*,

(*f*) *section 769*, and

(*g*) any other provision of the Tax Acts relating to the making of allowances or charges under or in accordance with the provisions referred to in *paragraphs (a)* to *(f)*.

(2) ''Chargeable period'' means an accounting period of a company or a year of assessment, and—

(*a*) a reference to a chargeable period or its basis period is a reference to the chargeable period if it is an accounting period and to the basis period for it if it is a year of assessment;

(*b*) a reference to a chargeable period related to expenditure, or a sale or other event, is a reference to the chargeable period in which, or to that in the basis period for which, the expenditure is incurred or the sale or other event takes place, and means the latter only if the chargeable period is a year of assessment.

(3) References to tax for a chargeable period shall be construed in relation to corporation tax as referring to the tax for any financial year which is chargeable in respect of that period.

(4) A reference to allowances or charges being made in taxing a trade is a reference to their being made in computing the trading income for corporation tax or in charging the profits or gains of the trade to income tax.

(5) (*a*) Where it is provided that writing-down allowances shall be made in respect of any expenditure during a writing-down period of a specified length, there shall for any chargeable period wholly or partly comprised in the writing-down period be made an allowance equal to the appropriate fraction of the expenditure and, subject to any provision to the contrary, the appropriate fraction shall be such fraction of the writing-down period as falls within the chargeable period.

(*b*) Notwithstanding *paragraph (a)*, the aggregate amount of the writing-down allowances made, whether to the same or to different persons, together with the amount of any initial allowance (but not of any investment allowance), shall not exceed the amount of the expenditure.

(6) Where the reference is partly to years of assessment before the year 1976-77—

(*a*) a writing-down allowance includes an annual allowance, and

(*b*) an allowance on account of wear and tear of machinery or plant includes a deduction on account of wear and tear of machinery or plant,

in the sense which in the context those expressions had immediately before the commencement of the Corporation Tax Act, 1976. PT.9 S.321

(7) Where any enactment referred to in *subsection (1)* provides for an amount of a writing-down allowance or an allowance on account of wear and tear of machinery or plant to be determined by a fraction or percentage, specified numerically, of any expenditure or other sum, or by reference to a percentage determined or deemed to be determined for a chargeable period of one year, then for a chargeable period of less than a year the fraction or percentage shall be proportionately reduced.

(8) Except where the context otherwise requires, in any provision of the Income Tax Acts not referred to in *subsection (1)* any reference to an allowance or charge for a year of assessment under a provision referred to in that subsection shall include the like allowance or charge for an accounting period of a company, and any reference to the making of an allowance or charge in charging profits or gains of a trade shall be construed as a reference to making the allowance in taxing a trade.

(9) Any provision of the Income Tax Acts whereby, for the purposes of—

(*a*) this Part,

(*b*) *section 670*,

(*c*) *section 764* or *765*,

(*d*) *section 769*, or

(*e*) any provision of the Income Tax Acts relating to the making of allowances or charges under or in accordance with the provisions referred to in *paragraphs (a)* to *(d)*,

a trade is or is not to be treated as permanently discontinued or a new trade as set up and commenced shall apply in the like manner in the case of a trade so treated by virtue of the Corporation Tax Acts.

PART 10

Income Tax and Corporation Tax: Reliefs for Renewal and Improvement of Certain Urban Areas, Certain Resort Areas and Certain Islands

CHAPTER 1

Custom House Docks Area

Interpretation (*Chapter 1*).

[FA86 s41; FA87 s27(1)(b) and (2); FA94 s36(c) and (d); FA95 s32(1)(a) and s33]

322.—(1) In this Chapter, but subject to *subsection (2)*—

''the Custom House Docks Area'' means the area described in *paragraph 2* of *Schedule 5*;

''the specified period'' means the period commencing on the 25th day of January, 1988, and ending on the 24th day of January, 1999.

(2) For the purposes of this Chapter, the Minister for Finance, after consultation with the Minister for the Environment and Local Government, may by order direct that—

(*a*) the definition of ''the Custom House Docks Area'' shall include such area or areas described in the order which but for the order would not be included in that definition, and

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(*b*) as respects any such area so described, the definition of ''the specified period'' shall be construed as a reference to such period as shall be specified in the order in relation to that area; but no such period specified in the order shall commence before the 26th day of January, 1994, or end after the 24th day of January, 1999,

and, where the Minister for Finance so orders, the definition of ''the Custom House Docks Area'' shall be deemed to include that area or those areas and the definition of ''the specified period'' shall be construed as a reference to the period specified in the order.

(3) The Minister for Finance may make orders for the purpose of this section and any order made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) *Schedule 5* shall apply for the purposes of supplementing this Chapter.

Capital allowances in relation to construction of certain commercial premises.

[FA86 s42(1), (2), proviso to (4), and (7); FA92 s29(b)(ii); FA93 s30(1)(a)(ii); FA95 s32(1)(b)]

323.—(1) In this section, ''qualifying premises'' means a building or structure the site of which is wholly within the Custom House Docks Area and which—

(*a*) apart from this section is not an industrial building or structure within the meaning of *section 268(1)*, and

(*b*) (i) is in use for the purposes of a trade or profession, or

(ii) whether or not it is so used, is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include any building or structure in use as or as part of a dwelling house.

(2) (*a*) Subject to *subsections (3)* to *(5)*, the provisions of the Tax Acts relating to the making of allowances or charges in respect of capital expenditure incurred on the construction of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction of a qualifying premises only in so far as that expenditure is incurred in the specified period.

(3) (*a*) For the purposes of the application, by *subsection (2)*, of *sections 271* and *273* in relation to capital expenditure incurred in the specified period on the construction of a qualifying premises— Pt.10 S.323

(i) *section 271* shall apply as if—

(I) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(II) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(III) *subsections (3)* and *(5)* of that section were deleted, and

(IV) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(ii) *section 273* shall apply as if—

(I) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted, and

(II) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(*b*) Notwithstanding *paragraph (a)*, as respects any capital expenditure incurred on or after the 25th day of January, 1998, on the construction of any qualifying premises—

(i) any allowance made under *section 272* and increased under *section 273(2)(a)* in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 54 per cent of the amount of that expenditure, and

(ii) where any allowance made under *section 272* in respect of that expenditure is increased under *section 273* for any chargeable period, no allowance shall be made in respect of that expenditure under *section 271*.

(4) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying premises was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

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(5) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction of a qualifying premises is incurred in the specified period, only such an amount of that capital expenditure as is determined by the inspector, according to the best of the inspector's knowledge and judgment, to be properly attributable to work on the construction of the premises actually carried out during the specified period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period, and any amount which by virtue of this subsection is determined by the inspector may be amended by the Appeal Commissioners or by the Circuit Court on the hearing or the rehearing of an appeal against that determination.

Double rent allowance in respect of rent paid for certain business premises.

[FA86 s45(1)(a) and (c) and (2) (apart from paragraph (a) of 1st proviso, and 2nd proviso thereto); FA90 s32 and s33(1) and (2)(a); FA91 s21; FA92 s29(d)(ii); FA93 s30(1)(c) and (2)(b); FA94 s35(1)(d) and (2)(c); FA96 s131; FA97 s27]

324.—(1) (*a*) In this section—

''lease'', ''lessee'', ''lessor'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

''qualifying lease'' means, subject to *subsection (4)*, a lease in respect of a qualifying premises granted in the specified period, or within the period of 2 years from the day next after the end of the specified period, on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

''qualifying premises'' means a building or structure the site of which is wholly within the Custom House Docks Area and—

(i) (I) which is an industrial building or structure within the meaning of *section 268(1)*, and in respect of which capital expenditure is incurred in the specified period for which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9*, or

(II) in respect of which an allowance is to be made, or, as respects rent payable under a qualifying lease entered into on or after the 18th day of April, 1991, will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 323*, and

(ii) which is let on bona fide commercial terms for such consideration as might be expected to be paid on a letting of the building or structure negotiated on an arm's length basis,

but, as respects rent payable under a qualifying lease entered into on or after the 6th day of May, 1993, where capital expenditure is incurred in the specified period on the refurbishment of a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred;

''refurbishment'', in relation to a building or structure, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

(*b*) For the purposes of this section but subject to *paragraph (c)*, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(i) 10 years, or

(ii) the period by which 10 years exceeds—

(I) any preceding period, or

(II) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable—

(A) by that person or any other person, or

(B) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 11th day of April, 1994, by that person or any person connected with that person,

in relation to that premises under a qualifying lease.

(*c*) As respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, ''relevant rental period'', in relation to a qualifying premises, means the period of 10 years commencing on the day on which rent in respect of that premises is first payable under any qualifying lease.

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(2) Subject to *subsection (3)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as ''the first-mentioned deduction'') on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person—

(*a*) for a relevant rental period, or

(*b*) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, in the relevant rental period,

in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as ''the second-mentioned deduction'') equal to the amount of the first-mentioned deduction but, as respects a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(3) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and such person or, as respects rent payable in relation to any qualifying premises under a qualifying lease entered into on or after the 6th day of May, 1993, either such person or another person connected with such person—

(*a*) takes under a qualifying lease a qualifying premises (in this subsection referred to as ''the second-mentioned premises'') occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(*b*) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(4) (*a*) In this subsection—

''current value'', in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

''fair value'', in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

''inception of the lease'' means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

''minimum lease payments'' means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee;

''unguaranteed residual value'', in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(*b*) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.

Rented residential accommodation: deduction for certain expenditure on construction.

[FA81 s23(1)(a), (2), (3)(a), (5), (6) and (7); FA91 s56(1)(a)(i) and (b) and (2); FA94 s37(1)(b)(ii); FA95 s34(1)(c)(ii) and (2)]

325.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 329(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which

does not exceed 10 per cent of the relevant cost of the house;

''qualifying period'' means the period commencing on the 30th day of January, 1991, and ending on the last day of the specified period;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(a)* and *(5)* of *section 329*, a house in the Custom House Docks Area—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(*d*) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant cost'', in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

(*a*) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(*b*) the expenditure actually incurred on the construction of the house;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a

deduction of so much (if any) of that expenditure as is to be treated under *section 329(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under *section 329(7)* as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(*a*) of the expenditure incurred on the construction of that building or those buildings, and

(*b*) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

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then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) (*a*) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under *section 329(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

(*b*) For the purposes of this subsection and *subsection (7)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 329(7)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(7) (*a*) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under *section 329(7)* as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(*b*) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of that trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as ''the purchaser'') who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price

paid by the purchaser on the purchase (in this paragraph referred to as ''the first purchase''), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first purchase.

(8) *Section 329* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA81 s23(1)(a), (2), (3)(a), (5), (6)(a) and (7)(a) and s24(1), (2)(a) to (f) and (3); FA85 s22(1) to (3); FA91 s56(1)(a)(i) and (b) and s58(1)(b)(i) and (3)(a); FA94 s37(1)(b)(ii) and (d)(ii) and (2)(b)]

326.—(1) In this section—

''conversion expenditure'' means, subject to *subsection (2)*, expenditure incurred on—

(*a*) the conversion into a house of a building in the Custom House Docks Area which has not been previously in use as a dwelling, and

(*b*) the conversion into 2 or more houses of a building in the Custom House Docks Area which before the conversion had not been in use as a dwelling or had been in use as a single dwelling,

and references in this section and in *section 329* to ''conversion'', ''conversion into a house'' and ''expenditure incurred on conversion'' shall be construed accordingly;

''qualifying lease'', in relation to a house, means, subject to *section 329(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the market value of the house at the time the conversion is completed and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house at the time the conversion is completed shall for the purposes of this paragraph be taken to be an amount which bears to the market value of the building at that time the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying period'' means the period commencing on the 30th day of January, 1991, and ending on the last day of the specified period;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)* and *(5)* of *section 329*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

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(I) 125 square metres, or

(II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and

(*d*) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

(i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or

(ii) any expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building.

(4) Subject to *subsection (5)*, where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 329(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(5) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the conversion expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (4)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the conversion expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 329(7)* as having been incurred in the qualifying period bears to the whole of the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(7) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

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(8) Where the event mentioned in *subsection (7)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 329(7)* or under this section (apart from *subsection (5)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 329(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

(9) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period conversion expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 329(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 329(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(10) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(11) *Section 329* shall apply for the purposes of supplementing this section.

327.—(1) In this section—

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Rented residential accommodation: deduction for certain expenditure on refurbishment.

[FA81 s23(1)(a), (2), (3)(a), (5), (6)(a) and (7)(a); FA85 s21(1)(a), (2)(a)(i) to (vi) and (viii) to (x), (3) and (4); FA91 s57(1)(b)(i) and (3)(a)(i) and (aa); FA94 s37(1)(c)(ii) and (2)(b)]

''qualifying lease'', in relation to a house, means, subject to *section 329(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium—

(i) which is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or which, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment, and

(ii) which does not exceed 10 per cent of the market value of the house on the date of completion of the refurbishment to which the relevant expenditure relates and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house on that date shall for the purposes of this subparagraph be taken to be an amount which bears to the market value of the building on that date the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying period'' means the period commencing on the 30th day of January, 1991, and ending on the last day of the specified period;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)* and *(5)* of *section 329*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and

(*d*) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let

on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''refurbishment'', in relation to a building, means either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works or the provision of such facilities is certified by the Minister for the Environment and Local Government, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment;

''relevant expenditure'' means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period of 10 years beginning on the date of the first such letting after the date of such completion;

''specified building'' means a building in the Custom House Docks Area—

(*a*) in which before the refurbishment to which the relevant expenditure relates there are 2 or more houses, and

(*b*) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) 2 or more houses.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a

deduction of so much (if any) of the expenditure as is to be treated under *section 329(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which—

(i) is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor, and

(ii) is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the relevant expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the relevant expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 329(7)* as having been incurred in the qualifying period bears to the whole of the relevant expenditure incurred in relation to the qualifying premises.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 329(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 329(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(7) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period relevant expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 329(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 329(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(8) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(9) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of

which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts. Pt.10 S.327

(10) *Section 329* shall apply for the purposes of supplementing this section.

328.—(1) In this section—

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA86 s44(1)(a), (b) and (e) and (2); FA88 s25; FA94 s35(1)(c)(ii) and (v) and (2)(a) and (b); FA95 s32(1)(c) and (2)]

''qualifying expenditure'', in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual in the specified period on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

(*a*) that expenditure,

(*b*) the qualifying premises, or

(*c*) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

''qualifying owner-occupied dwelling'', in relation to an individual, means a qualifying premises the site of which is wholly within the Custom House Docks Area and which is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

''qualifying premises'', in relation to the incurring of qualifying expenditure, means, subject to *subsections (4)* and *(5)* of *section 329*, a house—

(*a*) which is used solely as a dwelling,

(*b*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and

(*c*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, on the construction of a house, and expenditure incurred before the 26th day of January, 1994, on the refurbishment of a house, 90 square metres,

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in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres;

''refurbishment'' has the same meaning as in *section 327*.

(2) Where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

(*a*) 5 per cent of the amount of that expenditure, or

(*b*) in the case where the qualifying expenditure has been incurred on or after the 26th day of January, 1994, on the refurbishment of the qualifying premises, 10 per cent of the amount of that expenditure.

(3) (*a*) Where the qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred only such amount of the expenditure as the inspector, to the best of his or her knowledge and judgment, considers to be just and reasonable, and the expenditure shall be apportioned accordingly.

(*b*) An apportionment made under *paragraph (a)* may be amended by the Appeal Commissioners or by the Circuit Court on the hearing or rehearing of an appeal against any deduction granted on the basis of the apportionment.

(4) *Section 329* shall apply for the purposes of supplementing this section.

Provisions supplementary to *sections 325* to *328*.

[FA81 s23(1)(a), (b) and (c), (3)(b) and (c), (4), (8), (9), (10) and (11), and s24(2)(g); FA85 s21(2)(a)(vii), (xi) and (xii) and (5) and s22(1) and (5); FA86 s44(3)]

329.—(1) In *sections 325* to *328*—

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 325*, *326*, *327* or *328*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

''house'' includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

''lease'', ''lessee'', ''lessor'' and ''premium'' have the same meanings respectively as in *Chapter 8* of *Part 4*; PT.10 S.329

''total floor area'' means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) A lease shall not be a qualifying lease for the purposes of *section 325*, *326* or *327* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(3) A house shall not be a qualifying premises for the purposes of *section 325*, *326* or *327* if—

(*a*) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 325(2)*, *326(4)* or *327(2)*, as the case may be, and

(*b*) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (*a*) A house shall not be a qualifying premises for the purposes of *section 325* or, in so far as it applies to expenditure other than expenditure on refurbishment, *section 328* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 326* or *327* or, in so far as it applies to expenditure on refurbishment, *section 328* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(5) A house shall not be a qualifying premises for the purposes of *section 325*, *326*, *327* or *328* unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) For the purposes of *sections 325* to *328*, references in those sections to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the

premises and, without prejudice to the generality of the foregoing, as including in particular—

(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(7) (*a*) For the purposes of determining, in relation to any claim under *section 325(2)*, *326(4)*, *327(2)* or *328(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period or, as the case may be, during the specified period, only such an amount of that expenditure as is determined by the inspector, according to the best of his or her knowledge and judgment, to be properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises which was actually carried out during the qualifying period or, as the case may be, during the specified period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *subsection (6)* expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(*c*) Any amount which by virtue of *paragraph (a)* or *(b)* is determined by the inspector may be amended by the Appeal Commissioners or by the Circuit Court on the hearing or the rehearing of an appeal against that determination.

(8) (*a*) Any apportionment required by *section 325(4)*, *326(6)* or *327(4)* shall be made by the inspector according to the best of his or her knowledge and judgment.

(*b*) Any apportionment made under *section 325(4)*, *326(6)* or *327(4)* may be amended by the Appeal Commissioners or by the Circuit Court on the hearing or the rehearing of an appeal against any deduction granted on the basis of the apportionment.

(9) (*a*) For the purposes of *sections 325* and *326* other than the purposes mentioned in *subsection (7)(a)*, expenditure

incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease. Pt.10 S.329

(*b*) For the purposes of *section 327* other than the purposes mentioned in *subsection (7)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(*c*) For the purposes of *section 328* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

(10) For the purposes of *sections 326* and *327*, expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

(11) *Section 555* shall apply as if a deduction under *section 325(2)*, *326(4)* or *327(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 325(5)*, *326(7)* or *327(5)*, as the case may be, were a balancing charge.

(12) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 325*, *326*, *327* or *328* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 2

Temple Bar Area

330.—(1) In this Chapter— Interpretation. (*Chapter 2*).

''qualifying period'' means the period commencing on the 6th day of April, 1991, and ending on the 5th day of April, 1999, but, for the purposes of *sections 334* to *336*, ''qualifying period'' means the period commencing on the 30th day of January, 1991, and ending on the 5th day of April, 1999; [FA97 s147]

''refurbishment'' means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of repair or restoration, or maintenance in the nature of repair or restoration, of a building or structure, which is consistent with the original character or fabric of the building or structure;

''the Temple Bar Area'' means the area described in *paragraph 2* of *Schedule 6*.

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(2) The provisions specified in this Chapter as applying in relation to capital or other expenditure incurred or rent payable in relation to any building or premises (however described in this Chapter) in the Temple Bar Area shall apply only if the relevant building or premises, in relation to which that capital or other expenditure was incurred or rent is so payable, is approved for the purposes of this Chapter by the company known as Temple Bar Renewal Limited.

(3) Notwithstanding any other provision of the Tax Acts, where part of a building or structure is used for commercial purposes and part is used for residential purposes, the total amount of the expenditure incurred on the construction or refurbishment of the building or structure shall be apportioned as between the respective parts of the building or structure in such manner as is just and reasonable for the purpose of giving effect to this Chapter.

(4) *Schedule 6* shall apply for the purposes of supplementing this Chapter.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

[FA97 s148]

331.—(1) This section shall apply to a building or structure—

(*a*) which is—

(i) constructed in the Temple Bar Area in the qualifying period, or

(ii) an existing building or structure in the Temple Bar Area as on the 1st day of January, 1991, and is the subject of refurbishment in the qualifying period,

and

(*b*) which is to be an industrial building or structure by reason of its use for a purpose specified in *paragraph (a)* or *(d)* of *section 268(1)*.

(2) *Section 271* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(*b*) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(*c*) *subsections (3)* and *(5)* of that section were deleted, and

(*d*) (i) in the case where the capital expenditure is incurred on the construction of the building or structure, the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 25 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(ii) in the case where the capital expenditure is incurred on the refurbishment of the building or structure, the

following subsection were substituted for *subsection (4)* of that section:

"(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.".

(3) *Section 273* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies—

(*a*) in the case where the capital expenditure is incurred on the construction of the building or structure as if—

(i) in *subsection (1)* of that section the definition of "industrial development agency" were deleted,

(ii) the following paragraph were substituted for *paragraph (b)* of *subsection (2)* of that section:

"(*b*) As respects any qualifying expenditure, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of the amount of that qualifying expenditure.",

and

(iii) *subsections (3)* to *(7)* of that section were deleted,

and

(*b*) in the case where the capital expenditure is incurred on the refurbishment of the building or structure as if—

(i) in *subsection (1)* of that section the definition of "industrial development agency" were deleted, and

(ii) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(4) For the purposes of this section, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, such expenditure shall be deemed to include the lesser of—

(*a*) any expenditure incurred on the purchase of the building or structure, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and

(*b*) an amount which is equal to the value of the building or structure on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the capital expenditure actually incurred in the qualifying period on the refurbishment of the building or structure.

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(5) Notwithstanding *section 274(1)*, in the case of a building or structure to which this section applies by reason of its use for a purpose specified in *section 268(1)(a)*, no balancing charge shall be made by reason of any of the events specified in *section 274(1)* which occurs—

(*a*) more than 13 years after the building or structure was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the building or structure was incurred.

(6) For the purposes only of determining, in relation to a claim for an allowance under *section 271* or *273* as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period; but nothing in this subsection shall affect the operation of *subsection (4)*.

(7) Where, in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies, any allowance or charge has been made under the provisions of the Tax Acts relating to the making of allowances and charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure by virtue of section 42 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, that allowance or charge shall be deemed to have been made under those provisions by virtue of this section.

Capital allowances in relation to construction or refurbishment of certain commercial premises.

[FA97 s149]

332.—(1) In this section—

''multi-storey car park'' means a building or structure consisting of 3 or more storeys wholly or mainly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

''qualifying premises'' means a building or structure which—

(*a*) (i) is constructed in the Temple Bar Area in the qualifying period, or

(ii) is an existing building or structure in the Temple Bar Area as on the 1st day of January, 1991, and is the subject of refurbishment in the qualifying period,

(*b*) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(*c*) (i) is in use for the purposes of a trade or profession, or

(ii) whether or not it is so used, is let on bona fide commercial terms for such consideration as might be

expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include any part of a building or structure in use as or as part of a dwelling house.

(2) (*a*) Subject to *subsections (3)* to *(8)*, the provisions of the Tax Acts relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) *Section 271* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(*b*) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(*c*) *subsections (3)* and *(5)* of that section were deleted, and

(*d*) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.''.

(4) *Section 273* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted, and

(*b*) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(5) For the purposes of this section, where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, such expenditure shall be deemed to include the lesser of—

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(*a*) any expenditure incurred on the purchase of the building or structure, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and

(*b*) an amount which is equal to the value of the building or structure as on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the capital expenditure actually incurred in the qualifying period on the refurbishment of the qualifying premises.

(6) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying premises was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(7) (*a*) Notwithstanding *subsections (2)* to *(4)*, any allowance or charge which apart from this subsection would be made by virtue of *subsection (2)* in respect of capital expenditure incurred on the construction of a qualifying premises, other than a qualifying premises which is a multi-storey car park, shall be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(*b*) For the purposes of *paragraph (a)*, the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(*c*) Nothing in this subsection shall affect the operation of *section 274(8)*.

(8) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period; but nothing in this subsection shall affect the operation of *subsection (5)*.

(9) Where, in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises, any allowance or charge has been made under the provisions of the Tax Acts relating to the making of allowances and charges in respect of capital expenditure incurred on the construction

or refurbishment of an industrial building or structure by virtue of section 42 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, that allowance or charge shall be deemed to have been made under those provisions by virtue of this section.

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA97 s150]

333.—(1) (*a*) In this section—

''lease'', ''lessee'', ''lessor'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

''qualifying lease'' means, subject to *subsection (4)*, a lease in respect of a qualifying premises granted in the qualifying period, or within the period of 2 years from the day next after the end of the qualifying period, on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

''qualifying premises'' means a building or structure in the Temple Bar Area—

(i) (I) which is an industrial building or structure within the meaning of *section 268(1)*, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9*, or

(II) in respect of which an allowance is to be made, or, as respects rent payable under a qualifying lease entered into on or after the 18th day of April, 1991, will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 332*, and

(ii) which is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, as respects rent payable under a qualifying lease entered into on or after the 6th day of May, 1993, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation

tax, as the case may be, under *Chapter 1* of *Part 9*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(*b*) For the purposes of this section but subject to *paragraph (c)*, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(i) 10 years, or

(ii) the period by which 10 years exceeds—

(I) any preceding period, or

(II) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable—

(A) by that person or any other person, or

(B) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 11th day of April, 1994, by that person or any person connected with that person,

in relation to that premises under a qualifying lease.

(*c*) As respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, ''relevant rental period'', in relation to a qualifying premises, means the period of 10 years commencing on the day on which rent in respect of that premises is first payable under any qualifying lease.

(2) Subject to *subsection (3)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as ''the first-mentioned deduction'') on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person—

(*a*) for a relevant rental period, or

(*b*) as respects rent payable in relation to any qualifying premises under a qualifying lease entered into before the 18th day of April, 1991, in the relevant rental period,

in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as ''the second-mentioned deduction'') equal to the amount of the first-mentioned deduction but, as respects

a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(3) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in respect of that qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and such person or, as respects rent payable in relation to any qualifying premises under a qualifying lease entered into on or after the 6th day of May, 1993, either such person or another person connected with such person—

(*a*) takes under a qualifying lease a qualifying premises (in this subsection referred to as ''the second-mentioned premises'') occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(*b*) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(4) (*a*) In this subsection—

''current value'', in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

''fair value'', in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

''inception of the lease'' means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

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''minimum lease payments'' means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee;

''unguaranteed residual value'', in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(*b*) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.

(5) In determining whether a period is a relevant rental period for the purposes of this section, rent payable by any person in relation to a premises in respect of which a further deduction was given under section 45 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991 (or would have been so given but for the operation of paragraph (*b*) of the proviso to subsection (2) of section 45 of the Finance Act, 1986), shall be treated as having been payable by that person in relation to the premises under a qualifying lease.

Rented residential accommodation: deduction for certain expenditure on construction.

[FA97 s151]

334.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 338(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the relevant cost of the house;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(a)* and *(5)* of *section 338*, a house in the Temple Bar Area—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than— PT.10 S.334

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(*d*) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant cost'', in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

(*a*) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(*b*) the expenditure actually incurred on the construction of the house;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under *section 338(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under *section 338(7)* as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(*a*) of the expenditure incurred on the construction of that building or those buildings, and

(*b*) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) (*a*) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under

section 338(7) or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

(*b*) For the purposes of this subsection and *subsection (7)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 338(7)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(7) (*a*) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under *section 338(7)* as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(*b*) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of that trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as ''the purchaser'') who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as ''the first purchase''), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first purchase.

(8) This section shall apply as if a deduction given to a person under section 23 of the Finance Act, 1981, as applied by section 56 of the Finance Act, 1991 (in so far as it applied in relation to the Temple Bar Area), were a deduction given to such person under this

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section in respect of expenditure incurred in the qualifying period on the construction of a qualifying premises.

(9) *Section 338* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA97 s152]

335.—(1) In this section—

''conversion expenditure'' means, subject to *subsection (2)*, expenditure incurred on—

(*a*) refurbishment in the course of the conversion into a house of a building in the Temple Bar Area which has not been previously in use as a dwelling, and

(*b*) refurbishment in the course of the conversion into 2 or more houses of a building in the Temple Bar Area which before the conversion had not been in use as a dwelling or had been in use as a single dwelling,

and references in this section and in *section 338* to ''conversion'', ''conversion into a house'' and ''expenditure incurred on conversion'' shall be construed accordingly;

''qualifying lease'', in relation to a house, means, subject to *section 338(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the market value of the house at the time the conversion is completed and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house at the time the conversion is completed shall for the purposes of this paragraph be taken to be an amount which bears to the market value of the building at that time the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)* and *(5)* of *section 338*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and

(*d*) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

(i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or

(ii) any expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building.

(4) Subject to *subsection (5)*, where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 338(7)* or under this section as having been incurred by such person in the qualifying period, and

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(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(5) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the conversion expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (4)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the conversion expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 338(7)* as having been incurred in the qualifying period bears to the whole of the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(7) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(8) Where the event mentioned in *subsection (7)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 338(7)* or under this section (apart

from *subsection (5)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 338(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

(9) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period conversion expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 338(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 338(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(10) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(11) This section shall apply as if a deduction given to a person under section 23 of the Finance Act, 1981, by virtue of section 24 of that Act or section 22 of the Finance Act, 1985, as respectively applied by sections 56 and 58 of the Finance Act, 1991 (in so far as those sections applied to the Temple Bar Area), were a deduction given to such person under this section in respect of conversion expenditure incurred in the qualifying period in relation to a house which is a qualifying premises.

(12) *Section 338* shall apply for the purposes of supplementing this section.

Pt.10
Rented residential accommodation: deduction for certain expenditure on refurbishment.

[FA97 s153]

336.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 338(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium—

(i) which is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or which, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment, and

(ii) which does not exceed 10 per cent of the market value of the house on the date of completion of the refurbishment to which the relevant expenditure relates and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house on that date shall for the purposes of this subparagraph be taken to be an amount which bears to the market value of the building on that date the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)* and *(5)* of *section 338*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 26th day of January, 1994, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and

(*d*) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period

(except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant expenditure'' means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period of 10 years beginning on the date of the first such letting after the date of such completion;

''specified building'' means a building in the Temple Bar Area—

(*a*) in which before the refurbishment to which the relevant expenditure relates there are 2 or more houses, and

(*b*) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) 2 or more houses.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 338(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which—

(i) is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor, and

(ii) is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment.

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(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the relevant expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the relevant expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 338(7)* as having been incurred in the qualifying period bears to the whole of the relevant expenditure incurred in relation to the qualifying premises.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 338(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 338(7)*

as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(7) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period relevant expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 338(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 338(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(8) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(9) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts.

(10) This section shall apply as if a deduction given to a person under section 23 of the Finance Act, 1981, by virtue of section 21 of the Finance Act, 1985, as applied by section 57 of the Finance Act, 1991 (in so far as that section applied to the Temple Bar Area), were a deduction given to such person under this section in respect of relevant expenditure incurred in the qualifying period in relation to a house which is a qualifying premises.

(11) *Section 338* shall apply for the purposes of supplementing this section.

337.—(1) In this section—

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA97 s154]

''qualifying expenditure'', in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual in the qualifying period on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

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(*a*) that expenditure,

(*b*) the qualifying premises, or

(*c*) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

''qualifying owner-occupied dwelling'', in relation to an individual, means a qualifying premises which is wholly within the Temple Bar Area and is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

''qualifying premises'', in relation to the incurring of qualifying expenditure, means, subject to *subsections (4)* and *(5)* of *section 338*, a house—

(*a*) which is used solely as a dwelling,

(*b*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and

(*c*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, on the construction of a house, and expenditure incurred before the 26th day of January, 1994, on the refurbishment of a house, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres.

(2) Where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the expenditure was incurred is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

(*a*) in the case where the qualifying expenditure has been incurred on the construction of the qualifying premises, 5 per cent of the amount of that expenditure, or

(*b*) in the case where the qualifying expenditure has been incurred on the refurbishment of the qualifying premises, 10 per cent of the amount of that expenditure.

(3) For the purposes of this section, where qualifying expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, such expenditure shall be deemed to include the lesser of—

(*a*) any expenditure incurred on the purchase of the qualifying premises, other than expenditure incurred on the acquisition of, or of rights in or over, any land, and

(*b*) an amount equal to the value of the qualifying premises as on the 1st day of January, 1991, other than any amount of such value as is attributable to, or to rights in or over, any land,

if the expenditure referred to in *paragraph (a)* or the amount referred to in *paragraph (b)*, as the case may be, is not greater than the amount of the qualifying expenditure actually incurred in the qualifying period on the refurbishment of the qualifying premises.

(4) Where the qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure, and the expenditure shall be apportioned accordingly.

(5) This section shall apply as if a deduction given to an individual for any year of assessment under section 44 of the Finance Act, 1986, as applied by section 55 of the Finance Act, 1991, were a deduction given to the individual under this section in respect of qualifying expenditure.

(6) *Section 338* shall apply for the purposes of supplementing this section.

338.—(1) In *sections 334* to *337*—

Provisions supplementary to *sections 334* to *337.*

[FA97 s155]

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 334*, *335*, *336* or *337*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

''house'' includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

''lease'', ''lessee'', ''lessor'', ''premium'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

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''total floor area'' means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) A lease shall not be a qualifying lease for the purposes of *section 334*, *335* or *336* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(3) A house shall not be a qualifying premises for the purposes of *section 334*, *335* or *336* if—

(*a*) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 334(2)*, *335(4)* or *336(2)*, as the case may be, and

(*b*) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (*a*) A house shall not be a qualifying premises for the purposes of *section 334* or, in so far as it applies to expenditure other than expenditure on refurbishment, *section 337* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 335* or *336* or, in so far as it applies to expenditure on refurbishment, *section 337* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(5) A house shall not be a qualifying premises for the purposes of *section 334*, *335*, *336* or *337* unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) For the purposes of *sections 334* to *337*, references in those sections to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(7) (*a*) For the purposes of determining, in relation to any claim under *section 334(2)*, *335(4)*, *336(2)* or *337(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises which was actually carried out during the qualifying period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *subsection (6)* expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(*c*) Nothing in this subsection shall affect the operation of *section 337(3)*.

(8) (*a*) For the purposes of *sections 334* and *335* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease.

(*b*) For the purposes of *section 336* other than the purposes mentioned in *subsection (7)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(*c*) For the purposes of *section 337* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

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(9) For the purposes of *sections 335* and *336*, expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

(10) *Section 555* shall apply as if a deduction under *section 334(2)*, *335(4)* or *336(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 334(5)*, *335(7)* or *336(5)*, as the case may be, were a balancing charge.

(11) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 334*, *335*, *336* or *337* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 3

Designated areas, designated streets, enterprise areas and multi-storey car parks in certain urban areas

Interpretation (*Chapter 3*).

339.—(1) In this Chapter—

[FA94 s38(1), (3) and (4); FA95 s35(1)(a); FA97 s26(a)]

''designated area'' and ''designated street'' mean respectively an area or areas or a street or streets specified as a designated area or a designated street, as the case may be, by order under *section 340*;

''enterprise area'' means—

(*a*) an area or areas specified as an enterprise area by order under *section 340*, or

(*b*) an area or areas described in *Schedule 7*;

''lease'', ''lessee'', ''lessor'', ''premium'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building, structure or house, means the price which the unencumbered fee simple of the building, structure or house would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building, structure or house, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building, structure or house is constructed;

''qualifying period'' means—

(*a*) subject to *subsection (2)* and *section 340* and other than for the purposes of *section 344*, the period commencing on the 1st day of August, 1994, and ending on the 31st day of July, 1997, or

(*b*) in respect of an area or areas described in *Schedule 7*, the period commencing on the 1st day of July, 1997, and ending on the 30th day of June, 2000;

''refurbishment'', in relation to a building or structure and other than for the purposes of *sections 348* and *349*, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure;

''the relevant local authority'', in relation to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of a building or structure to which *subsection (2)(a)* applies, means the council of a county or the corporation of a county or other borough or, where appropriate, the urban district council, in whose functional area the qualifying premises is situated;

''street'' includes part of a street and the whole or part of any road, square, quay or lane.

(2) (*a*) Where in relation to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of a building or structure which is—

(i) to be an industrial building or structure to which *section 341* applies,

(ii) a qualifying premises within the respective meanings assigned in *sections 342*, *345* (other than a building or structure to which *paragraph (a)(v)* of that meaning in that section applies), *346*, *347*, *348* and *349*, or

(iii) a qualifying building within the meaning of *section 343*,

the relevant local authority gives a certificate in writing, on or before the 30th day of September, 1997, to the person constructing, converting or refurbishing, as the case may be, such a building or structure stating that it is satisfied that not less than 15 per cent of the total cost of the building or structure had been incurred before the 31st day of July, 1997, then, the reference in *paragraph (a)* of the definition of ''qualifying period'' to ending on the 31st day of July, 1997, shall be construed as a reference to ending on the 31st day of July, 1998.

(*b*) In considering whether to give a certificate referred to in *paragraph (a)*, the relevant local authority shall have regard only to the guidelines in relation to the giving of such certificates entitled ''*Extension from 31 July, 1997, to 31 July, 1998, of the time limit for qualifying expenditure on developments*'' issued by the Department of the Environment on the 28th day of January, 1997.

(3) *Schedule 7* shall apply for the purposes of supplementing this Chapter.

Designated areas, designated streets and enterprise areas.

[FA94 s39; FA95 s35(1)(b); FA97 s26(b)]

340.—(1) The Minister for Finance may, after consultation with the Minister for the Environment and Local Government, by order direct that—

(*a*) the area or areas, or street or streets, described in the order shall be a designated area, a designated street or, as the case may be, an enterprise area for the purposes of this Chapter, and

(*b*) as respects any such area or any such street so described, the definition of ''qualifying period'' in *section 339* shall be construed as a reference to such period as shall be specified in the order in relation to that area or, as the case may be, that street; but no such period specified in the order shall commence before the 1st day of August, 1994, or end after the 31st day of July, 1997.

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(2) The Minister for Finance may, after consultation with the Minister for Public Enterprise and following receipt of a proposal from or on behalf of a company intending to carry on qualifying trading operations (within the meaning of *section 343*) in an area or areas immediately adjacent to any of the airports commonly known as—

(*a*) Cork Airport,

(*b*) Donegal Airport,

(*c*) Galway Airport,

(*d*) Kerry Airport,

(*e*) Knock International Airport,

(*f*) Sligo Airport, or

(*g*) Waterford Airport,

being a company which, if those trading operations were to be carried on in an area which apart from this subsection would be an enterprise area, would be a qualifying company (within the meaning of *section 343*), by order direct that—

(i) the area or areas described in the order shall be an enterprise area for the purposes of this Chapter, and

(ii) as respects any such area so described in the order, the reference in *paragraph (a)* of the definition of ''qualifying period'' in *section 339(1)* to the period commencing on the 1st day of August, 1994, and ending on the 31st day of July, 1997, shall be construed as a reference to such period as shall be specified in the order in relation to that area, but no such period specified in the order shall commence before the 1st day of August, 1994, or end after the 30th day of June, 2000.

(3) Every order made by the Minister for Finance under *subsection (1)* or *(2)* shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

[FA94 s40; FA95 s35(1)(c)]

341.—(1) This section shall apply to a building or structure the site of which is wholly within a designated area, or which fronts on to a designated street, and which is to be an industrial building or structure by reason of its use for a purpose specified in *section 268(1)(a)*.

(2) Subject to *subsection (4)*, *section 271* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(*b*) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted, Pt.10 S.341

(*c*) *subsection (3)* of that section were deleted,

(*d*) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 25 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(*e*) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted.

(3) Subject to *subsection (4)*, *section 273* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(*b*) the following paragraph were substituted for *paragraph (b)* of *subsection (2)* of that section:

''(*b*) As respects any qualifying expenditure, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of the amount of that qualifying expenditure.'',

and

(*c*) *subsections (3)* to *(7)* of that section were deleted.

(4) (*a*) In the case of an industrial building or structure which fronts on to a designated street, *subsections (2)* and *(3)* shall apply only in relation to capital expenditure incurred in the qualifying period on the refurbishment of the industrial building or structure and only if the following conditions are satisfied—

(i) that the industrial building or structure was comprised in an existing building or structure (in this subsection referred to as ''the existing building'') on the 1st day of August, 1994, which fronts on to the designated street, and

(ii) that, apart from the capital expenditure incurred in the qualifying period on the refurbishment of the industrial building or structure, expenditure is incurred on the existing building which is—

(I) conversion expenditure within the meaning of *section 347*,

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(II) relevant expenditure within the meaning of *section 348*, or

(III) qualifying expenditure within the meaning of *section 349* (being qualifying expenditure on refurbishment within the meaning of that section),

and in respect of which a deduction has been given, or would on due claim being made be given, under *section 347*, *348* or *349*, as the case may be.

(*b*) Notwithstanding *paragraph (a)*, *subsections (2)* and *(3)* shall not apply in relation to so much (if any) of the capital expenditure incurred in the qualifying period on the refurbishment of the industrial building or structure as exceeds the amount of the deduction, or the aggregate amount of the deductions, which has been given, or which would on due claim being made be given, under *section 347*, *348* or *349*, as the case may be, in respect of the conversion expenditure, the relevant expenditure or, as the case may be, the qualifying expenditure.

(5) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a building or structure to which this section applies by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the building or structure was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the building or structure was incurred.

(6) For the purposes only of determining, in relation to a claim for an allowance under *section 271* or *273* as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, the refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Capital allowances in relation to construction or refurbishment of certain commercial premises.

[FA94 s41; FA95 s35(1)(d)]

342.—(1) (*a*) In this section, ''qualifying premises'' means a building or structure the site of which is wholly within a designated area, or which fronts on to a designated street, and which—

(i) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(ii) (I) is in use for the purposes of a trade or profession, or

(II) whether or not it is so used, is let on bona fide commercial terms for such consideration as might be expected to be

paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include any part of a building or structure in use as or as part of a dwelling house or an office.

(*b*) Notwithstanding *paragraph (a)*—

(i) in relation to a building or structure no part of the site of which is within any one of the county boroughs of Dublin, Cork, Limerick, Galway or Waterford, *paragraph (a)* shall be construed as if ''or an office'' were deleted;

(ii) where, in relation to a building or structure any part of the site of which is within any one of the county boroughs of Dublin, Cork, Limerick, Galway or Waterford, any part (in this paragraph referred to as ''the specified part'') of the building or structure is not a qualifying premises and—

(I) the specified part is in use as, or as part of, an office, and

(II) the capital expenditure incurred in the qualifying period on the construction or refurbishment of the specified part is not more than 10 per cent of the total capital expenditure incurred in that period on the construction or refurbishment of the building or structure,

then, the specified part shall be treated as a qualifying premises.

(2) (*a*) Subject to *subsections (3)* to *(6)*, the provisions of the Tax Acts (other than *section 341*) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

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(3) (*a*) In the case of a qualifying premises which fronts on to a designated street, *subsection (2)* shall apply only in relation to capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises and only if the following conditions are satisfied—

(i) that the qualifying premises were comprised in an existing building or structure (in this subsection referred to as ''the existing building'') on the 1st day of August, 1994, which fronts on to the designated street, and

(ii) that, apart from the capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises, expenditure is incurred on the existing building which is—

(I) conversion expenditure within the meaning of *section 347*,

(II) relevant expenditure within the meaning of *section 348*, or

(III) qualifying expenditure within the meaning of *section 349* (being qualifying expenditure on refurbishment within the meaning of that section),

and in respect of which a deduction has been given, or would on due claim being made be given, under *section 347*, *348* or *349*, as the case may be.

(*b*) Notwithstanding *paragraph (a)*, *subsection (2)* shall not apply in relation to so much (if any) of the capital expenditure incurred in the qualifying period on the refurbishment of the qualifying premises as exceeds the amount of the deduction, or the aggregate amount of the deductions, which has been given, or which would on due claim being made be given, under *section 347*, *348* or *349*, as the case may be, in respect of the conversion expenditure, the relevant expenditure or, as the case may be, the qualifying expenditure.

(4) For the purposes of the application, by *subsection (2)*, of *sections 271* and *273* in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises—

(*a*) *section 271* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(iii) *subsection (3)* of that section were deleted,

(iv) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(v) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted,

and

(*b*) *section 273* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted, and

(ii) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(5) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying premises was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(6) (*a*) Notwithstanding *subsections (2)* to *(5)*, any allowance or charge which apart from this subsection would be made by virtue of *subsection (2)* in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises shall be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(*b*) For the purposes of *paragraph (a)*, the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(*c*) Nothing in this subsection shall affect the operation of *section 274(8)*.

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

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Capital allowances in relation to construction or refurbishment of certain buildings or structures in enterprise areas.

[FA94 s41A; FA95 s35(1)(e)]

343.—(1) In this section—

''the Minister'', except where the context otherwise requires, means the Minister for Enterprise, Trade and Employment;

''qualifying building'' means a building or structure the site of which is wholly within an enterprise area and which is in use for the purposes of the carrying on of qualifying trading operations by a qualifying company, but does not include any part of a building or structure in use as or as part of a dwelling house;

''qualifying company'' means a company—

(*a*) which has been approved for financial assistance under a scheme administered by Forfás, Forbairt or the Industrial Development Agency (Ireland), and

(*b*) to which the Minister has given a certificate under *subsection (2)* which has not been withdrawn in accordance with *subsection (5)* or *(6)*;

''qualifying trading operations'' means—

(*a*) the manufacture of goods within the meaning of *Part 14*, or

(*b*) the rendering of services in the course of a service industry (within the meaning of the Industrial Development Act, 1986).

(2) Subject to *subsection (4)*, the Minister may—

(*a*) on the recommendation of Forfás (in conjunction with Forbairt or the Industrial Development Agency (Ireland), as may be appropriate), in accordance with guidelines laid down by the Minister, and

(*b*) following consultation with the Minister for Finance,

give a certificate to a company certifying that the company is, with effect from a date to be specified in the certificate, to be treated as a qualifying company for the purposes of this section.

(3) A certificate under *subsection (2)* may be given either without conditions or subject to such conditions as the Minister considers proper and specifies in the certificate.

(4) The Minister shall not certify under *subsection (2)* that a company is a qualifying company for the purposes of this section unless—

(*a*) the company is carrying on or intends to carry on qualifying trading operations in an enterprise area, and

(*b*) the Minister is satisfied that the carrying on by the company of such trading operations will contribute to the balanced development of the enterprise area.

(5) Where, in the case of a company in relation to which a certificate under *subsection (2)* has been given—

(*a*) the company ceases to carry on or, as the case may be, fails to commence to carry on qualifying trading operations in the enterprise area, or

(*b*) the Minister is satisfied that the company has failed to comply with any condition subject to which the certificate was given, Pt.10 S.343

the Minister may, by notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the notice.

(6) Where, in the case of a company in relation to which a certificate under *subsection (2)* has been given, the Minister is of the opinion that any activity of the company has had or may have an adverse effect on the use or development of the enterprise area or is otherwise inimical to the balanced development of the enterprise area, then—

(*a*) the Minister may, by notice in writing served by registered post on the company, require the company to desist from such activity with effect from such date as may be specified in the notice, and

(*b*) if the Minister is not satisfied that the company has complied with the requirements of the notice, the Minister may, by a further notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the further notice.

(7) (*a*) Subject to *subsections (8)* and *(9)*, the provisions of the Tax Acts (other than *section 341*) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply as if a qualifying building were, at all times at which it is a qualifying building, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying building only in so far as that expenditure is incurred in the qualifying period.

(8) For the purposes of the application, by *subsection (7)*, of *sections 271* and *273* in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying building—

(*a*) *section 271* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(iii) *subsection (3)* of that section were deleted,

(iv) the following subsection were substituted for *subsection (4)* of that section:

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''(4) An industrial building allowance shall be of an amount equal to 25 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(v) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted,

and

(*b*) *section 273* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) the following paragraph were substituted for *paragraph (b)* of *subsection (2)* of that section:

''(*b*) As respects any qualifying expenditure, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of the amount of that qualifying expenditure.'',

and

(iii) *subsections (3)* to *(7)* of that section were deleted.

(9) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying building by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying building was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the qualifying building was incurred.

(10) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (7)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying building is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Capital allowances in relation to construction or refurbishment of certain multi-storey car parks.

[FA94 s41B; FA95 s35(1)(f); FA96 s26(1)]

344.—(1) In this section—

''multi-storey car park'' means a building or structure consisting of 2 or more storeys wholly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

''qualifying multi-storey car park'' means a multi-storey car park in respect of which the relevant local authority gives a certificate in

writing to the person providing the multi-storey car park stating that it is satisfied that the multi-storey car park has been developed in accordance with criteria laid down by the Minister for the Environment and Local Government following consultation with the Minister for Finance;

''qualifying period'' means the period commencing on the 1st day of July, 1995, and ending on the 30th day of June, 1998;

''the relevant local authority'', in relation to the construction or refurbishment of a multi-storey car park, means—

(*a*) the corporation of a county or other borough or, where appropriate, the urban district council, or

(*b*) in respect of the administrative county of Dún Laoghaire-Rathdown, the administrative county of Fingal or the administrative county of South Dublin, the council of the county,

in whose functional area the multi-storey car park is situated.

(2) (*a*) Subject to *subsections (3)* to *(6)*, the provisions of the Tax Acts (other than *section 341*) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply as if a qualifying multi-storey car park were, at all times at which it is a qualifying multi-storey car park, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park only in so far as that expenditure is incurred in the qualifying period.

(3) In a case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying multi-storey car park, *subsection (2)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 20 per cent of the market value of the qualifying multi-storey car park immediately before that expenditure is incurred.

(4) For the purposes of the application, by *subsection (2)*, of *sections 271* and *273* in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying multi-storey car park—

(*a*) *section 271* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(iii) *subsection (3)* of that section were deleted,

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(iv) the following subsection were substituted for *subsection (4)* of that section:

"(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.",

and

(v) in *subsection (5)* of that section "to which *subsection (3)(c)* applies" were deleted,

and

(*b*) *section 273* shall apply as if—

(i) in *subsection (1)* of that section, the definition of "industrial development agency" were deleted, and

(ii) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(5) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying multi-storey car park by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying multi-storey car park was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the multi-storey car park was incurred.

(6) (*a*) Notwithstanding *subsections (2)* to *(5)*, any allowance or charge which apart from this subsection would be made by virtue of *subsection (2)* in respect of capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park shall be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(*b*) For the purposes of *paragraph (a)*, the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(*c*) Nothing in this subsection shall affect the operation of *section 274(8)*.

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the qualifying multi-storey car park actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital

expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) Where by virtue of *subsection (2)* an allowance is given under *Chapter 1* of *Part 9* in respect of capital expenditure incurred on the construction or refurbishment of a qualifying multi-storey car park, no allowance shall be given in respect of that expenditure under that Chapter by virtue of any other provision of the Tax Acts.

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA94 s42; FA95 s35(1)(g); FA97 s26(c) and s27]

345.—(1) In this section—

''qualifying lease'' means, subject to *subsection (8)*, a lease in respect of a qualifying premises granted—

(*a*) in the qualifying period in the case of a qualifying premises which is a building or structure to which *section 339(2)(a)* refers, or

(*b*) in the qualifying period, or within the period of one year from the day next after the end of the qualifying period, in the case of any other qualifying premises,

on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

''qualifying premises'' means, subject to *subsection (5)(a)*, a building or structure—

(*a*) (i) the site of which is wholly within a designated area and which is a building or structure in use for a purpose specified in *section 268(1)(a)*, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *section 271* or *273*, as applied by *section 341*,

(ii) the site of which is wholly within a designated area and in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 342*,

(iii) the site of which is wholly within an enterprise area and in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 343*,

(iv) the site of which is wholly within a designated area and which is a building or structure in use for the purposes specified in *section 268(1)(d)*, and in respect of the construction or refurbishment of which capital expenditure is incurred in the qualifying period for which an allowance would but for *subsection (6)* be made for the purposes of income tax or

corporation tax, as the case may be, under *Chapter 1* of *Part 9*, or

(v) in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 344*,

and

(*b*) which is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made, or will by virtue of *section 279* be made, or in respect of which an allowance would but for *subsection (6)* be made, for the purposes of income tax or corporation tax, as the case may be, under any of the provisions referred to in *paragraph (a)*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(2) For the purposes of this section, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(*a*) 10 years, or

(*b*) the period by which 10 years exceeds—

(i) any preceding period, or

(ii) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable by that person or any other person in relation to that premises under a qualifying lease.

(3) Subject to *subsection (4)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as ''the first-mentioned deduction'') on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person for a relevant rental period in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as ''the second-mentioned deduction'') equal to the amount of the first-mentioned deduction but, as respects a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(4) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in

respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and either such person or another person connected with such person—

(*a*) takes under a qualifying lease a qualifying premises (in this subsection referred to as ''the second-mentioned premises'') occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(*b*) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(5) (*a*) A building or structure in use for the purposes specified in *section 268(1)(d)* shall not be a qualifying premises for the purposes of this section unless the person to whom an allowance under *Chapter 1* of *Part 9* would but for *subsection (6)* be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure elects by notice in writing to the appropriate inspector (within the meaning of *section 950*) to disclaim all allowances under that Chapter in respect of that capital expenditure.

(*b*) An election under *paragraph (a)* shall be included in the return required to be made by the person concerned under *section 951* for the first year of assessment or the first accounting period, as the case may be, for which an allowance would but for *subsection (6)* have been made to that person under *Chapter 1* of *Part 9* in respect of that capital expenditure.

(*c*) An election under *paragraph (a)* shall be irrevocable.

(*d*) A person who has made an election under *paragraph (a)* shall furnish a copy of that election to any person (in this paragraph referred to as ''the second-mentioned person'') to whom the person grants a qualifying lease in respect of the qualifying premises, and the second-mentioned person shall include the copy in the return required to be made by the second-mentioned person under *section 951* for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of the qualifying premises.

(6) Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure in use for the purposes specified in *section 268(1)(d)*

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makes an election under *subsection (5)(a)*, then, notwithstanding any other provision of the Tax Acts—

(*a*) no allowance under *Chapter 1* of *Part 9* shall be made to the person in respect of that capital expenditure,

(*b*) on the occurrence, in relation to the building or structure, of any of the events referred to in *section 274(1)*, the residue of expenditure (within the meaning of *section 277*) in relation to that capital expenditure shall be deemed to be nil, and

(*c*) *section 279* shall not apply in the case of any person who buys the relevant interest (within the meaning of *section 269*) in the building or structure.

(7) For the purposes of determining, in relation to *paragraph (a)(iv)* of the definition of ''qualifying premises'' and *subsections (5)* and *(6)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out in the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) (*a*) In this subsection—

''current value'', in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

''fair value'', in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

''inception of the lease'' means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

''minimum lease payments'' means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease

and guaranteed by the lessee or by a person connected with the lessee;

''unguaranteed residual value'', in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(*b*) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.

Rented residential accommodation: deduction for certain expenditure on construction.

[FA94 s43; FA95 s35(1)(h) and (2)(d)]

346.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 350(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the relevant cost of the house;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(a)*, *(4)(c)* and *(5)* of *section 350*, a house—

(*a*) the site of which is wholly within a designated area,

(*b*) which is used solely as a dwelling,

(*c*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

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(ii) in any other case, is not less than 35 square metres and not more than 125 square metres;

(*d*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(*e*) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant cost'', in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

(*a*) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(*b*) the expenditure actually incurred on the construction of the house;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under *section 350(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under *section 350(7)* as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(*a*) of the expenditure incurred on the construction of that building or those buildings, and

(*b*) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) (*a*) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under *section 350(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

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(*b*) For the purposes of this subsection and *subsection (7)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 350(7)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(7) (*a*) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under *section 350(7)* as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(*b*) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of the trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as ''the purchaser'') who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as ''the first purchase''), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first sale.

(8) *Section 350* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA94 s44]

347.—(1) In this section—

''conversion expenditure'' means, subject to *subsection (2)*, expenditure incurred on—

(*a*) the conversion into a house of a building—

(i) the site of which is wholly within a designated area, or which fronts on to a designated street, and

(ii) which has not been previously in use as a dwelling, PT.10 S.347

and

(*b*) the conversion into 2 or more houses of a building—

(i) the site of which is wholly within a designated area, or which fronts on to a designated street, and

(ii) which before the conversion had not been in use as a dwelling or had been in use as a single dwelling,

and references in this section and in *section 350* to ''conversion'', ''conversion into a house'' and ''expenditure incurred on conversion'' shall be construed accordingly;

''qualifying lease'', in relation to a house, means, subject to *section 350(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the market value of the house at the time the conversion is completed and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house at the time the conversion is completed shall for the purposes of this paragraph be taken to be an amount which bears to the market value of the building at that time the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)*, *(4)(c)* and *(5)* of *section 350*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and

(*d*) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

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''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

(i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or

(ii) any expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building.

(4) Subject to *subsection (5)*, where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 350(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(5) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the conversion expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates

shall be deemed for the purposes of *subsection (4)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the conversion expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 350(7)* as having been incurred in the qualifying period bears to the whole of the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(7) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(8) Where the event mentioned in *subsection (7)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 350(7)* or under this section (apart from *subsection (5)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 350(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

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(9) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period conversion expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 350(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 350(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(10) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(11) *Section 350* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on refurbishment.

[FA94 s45; FA97 s146(1) and Sch9 PtI par18(2)]

348.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 350(2)*, a lease of the house the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium—

(i) which is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or which, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment, and

(ii) which does not exceed 10 per cent of the market value of the house on the date of completion of the refurbishment to which the relevant expenditure relates and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house on that date shall for the purposes of this subparagraph be taken to be an amount which bears to the market

value of the building on that date the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)*, *(4)(c)* and *(5)* of *section 350*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and

(*d*) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''refurbishment'', in relation to a building, means either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works or the provision of such facilities is certified by the Minister for the Environment and Local Government, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment;

''relevant expenditure'' means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion

as the total floor area of the non-residential unit bears to the total floor area of the building;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period of 10 years beginning on the date of the first such letting after the date of such completion;

''specified building'' means a building—

(*a*) the site of which is wholly within a designated area, or which fronts on to a designated street,

(*b*) in which before the refurbishment to which the relevant expenditure relates there are 2 or more houses, and

(*c*) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) 2 or more houses.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 350(7)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which—

(i) is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor, and

(ii) is payable on or subsequent to the date of completion of the refurbishment to which the relevant expenditure relates or, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the relevant expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the relevant expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 350(7)* as having been incurred in the qualifying period bears to the whole of the relevant expenditure incurred in relation to the qualifying premises.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 350(7)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 350(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(7) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the

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qualifying period relevant expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 350(7)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 350(7)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(8) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(9) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts.

(10) *Section 350* shall apply for the purposes of supplementing this section.

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA94 s46(1) to (4) and (7); FA95 s35(1)(i) and (2)(d)]

349.—(1) In this section—

''qualifying expenditure'', in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

(*a*) that expenditure,

(*b*) the qualifying premises, or

(*c*) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

''qualifying owner-occupied dwelling'', in relation to an individual, means a qualifying premises which is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

"qualifying premises", in relation to the incurring of qualifying expenditure, means, subject to *subsections (4)* and *(5)* of *section 350*, a house—

(*a*) the site of which is wholly within a designated area, or which fronts on to a designated street,

(*b*) which is used solely as a dwelling,

(*c*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and

(*d*) the total floor area of which—

(i) is not less than 30 square metres and not more than—

(I) 125 square metres, or

(II) as respects expenditure incurred before the 12th day of April, 1995, on the construction of a house, 90 square metres,

in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres;

"refurbishment" has the same meaning as in *section 348*.

(2) (*a*) Subject to *subsection (3)*, where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

(i) in the case where the qualifying expenditure has been incurred on the construction of the qualifying premises, 5 per cent of the amount of that expenditure, or

(ii) in the case where the qualifying expenditure has been incurred on the refurbishment of the qualifying premises, 10 per cent of the amount of that expenditure.

(*b*) A deduction shall be given under this section in respect of qualifying expenditure only in so far as that expenditure is to be treated under *section 350(7)* as having been incurred in the qualifying period.

(3) Notwithstanding *subsection (2)*, where qualifying expenditure has been incurred in relation to a qualifying premises which fronts

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on to a designated street, a deduction shall be given under this section only if that expenditure has been incurred on the refurbishment of the qualifying premises.

(4) Where qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure, and the expenditure shall be apportioned accordingly.

(5) *Section 350* shall apply for the purposes of supplementing this section.

Provisions supplementary to *sections 346* to *349*.

[FA94 s47]

350.—(1) In *sections 346* to *349*—

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 346*, *347*, *348* or *349*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

''house'' includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

''total floor area'' means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) A lease shall not be a qualifying lease for the purposes of *section 346*, *347* or *348* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(3) A house shall not be a qualifying premises for the purposes of *section 346*, *347* or *348* if—

(*a*) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 346(2)*, *347(4)* or *348(2)*, as the case may be, and

(*b*) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (*a*) A house shall not be a qualifying premises for the purposes of *section 346* or, in so far as it applies to expenditure other than expenditure on refurbishment, *section 349* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 347* or *348* or, in so far as it applies to expenditure on refurbishment, *section 349* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(*c*) A house shall not be a qualifying premises for the purposes of *section 346*, *347*, *348* or *349* unless the house or, in a case where the house is one of a number of houses in a single development, the development of which it is a part complies with such guidelines as may from time to time be issued by the Minister for the Environment and Local Government, with the consent of the Minister for Finance, for the purposes of furthering the objectives of the Urban Renewal Act, 1986, and, without prejudice to the generality of the foregoing, such guidelines may include provisions in relation to all or any one or more of the following—

(i) the design and the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, houses,

(ii) the total floor area and dimensions of rooms within houses, measured in such manner as may be determined by the Minister for the Environment and Local Government,

(iii) the provision of ancillary facilities and amenities in relation to houses, and

(iv) the balance to be achieved between houses of different types and sizes within a single development of 2 or more houses or within such a development and its general vicinity having regard to the housing existing or proposed in that vicinity.

(5) A house shall not be a qualifying premises for the purposes of *section 346*, *347*, *348* or *349* unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) For the purposes of *sections 346* to *349*, references in those sections to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

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(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(7) (*a*) For the purposes of determining, in relation to any claim under *section 346(2)*, *347(4)*, *348(2)* or *349(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises actually carried out during the qualifying period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *subsection (6)* expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(8) (*a*) For the purposes of *sections 346* and *347* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease.

(*b*) For the purposes of *section 348* other than the purposes mentioned in *subsection (7)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period, in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(*c*) For the purposes of *section 349* other than the purposes mentioned in *subsection (7)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

(9) For the purposes of *sections 346* to *348*, expenditure shall not be regarded as incurred by a person in so far as it has been or is to

be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority. PT.10 S.350

(10) *Section 555* shall apply as if a deduction under *section 346(2)*, *347(4)* or *348(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 346(5)*, *347(7)* or *348(5)*, as the case may be, were a balancing charge.

(11) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 346*, *347*, *348* or *349* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 4

Qualifying resort areas

Interpretation (*Chapter 4*).

351.—In this Chapter—

[FA95 s46(1)]

''lease'', ''lessee'', ''lessor'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building or structure, means the price which the unencumbered fee simple of the building or structure would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or structure, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or structure is constructed;

''qualifying period'' means the period commencing on the 1st day of July, 1995, and ending on the 30th day of June, 1998;

''qualifying resort area'' means any area described in *Schedule 8*;

''refurbishment'', in relation to a building or structure and other than for the purposes of *section 358*, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

352.—(1) This section shall apply to a building or structure the site of which is wholly within a qualifying resort area and which is to be an industrial building or structure by reason of its use for the purposes specified in *section 268(1)(d)*.

(2) Subject to *subsection (5)*, *section 271* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

[FA95 s47]

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

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(*b*) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(*c*) *subsection (3)* of that section were deleted,

(*d*) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(*e*) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted.

(3) Subject to *subsection (5)*, *section 272* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if the following subsection were substituted for *subsection (3)* of that section:

''(3) A writing down allowance shall be of an amount equal to 5 per cent of the expenditure referred to in *subsection (2)(c)*.''.

(4) Subject to *subsection (5)*, *section 273* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(*b*) the following paragraph were substituted for *paragraph (b)* of *subsection (2)* of that section:

''(*b*) As respects any qualifying expenditure, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 75 per cent of the amount of that qualifying expenditure.'',

and

(*c*) *subsections (3)* to *(7)* of that section were deleted.

(5) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, *subsections (2)* to *(4)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount which is equal to 20 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(6) For the purposes only of determining, in relation to a claim for an allowance under *section 271*, *272* or *273*, as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such

an amount of that capital expenditure as is properly attributable to work on the construction or, as the case may be, the refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Capital allowances in relation to construction or refurbishment of certain commercial premises.

[FA95 s48; FA97 s146(1) and Sch9 PtI par19]

353.—(1) In this section—

''qualifying premises'' means a building or structure the site of which is wholly within a qualifying resort area and which—

(*a*) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(*b*) is in use for the purposes of the operation of one or more qualifying tourism facilities,

but does not include any part of a building or structure in use as or as part of a dwelling house, other than a tourist accommodation facility of the type referred to in the definition of ''qualifying tourism facilities'';

''qualifying tourism facilities'' means—

(*a*) tourist accommodation facilities registered by Bord Fáilte Éireann under Part III of the Tourist Traffic Act, 1939, or specified in a list published under section 9 of the Tourist Traffic Act, 1957, and

(*b*) such other classes of facilities as may be approved of for the purposes of this section by the Minister for Tourism, Sport and Recreation in consultation with the Minister for Finance.

(2) (*a*) Subject to *subsections (3)* to *(6)*, the provisions of the Tax Acts relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, *subsection (2)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount which is equal to 20 per cent of

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the market value of the qualifying premises immediately before that expenditure is incurred.

(4) For the purposes of the application, by *subsection (2)*, of *sections 271*, *272* and *273* in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a qualifying premises—

(*a*) *section 271* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(iii) *subsection (3)* of that section were deleted,

(iv) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(v) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted,

(*b*) *section 272* shall apply as if the following subsection were substituted for *subsection (3)* of that section:

''(3) A writing down allowance shall be of an amount equal to 5 per cent of the expenditure referred to in *subsection (2)(c)*.'',

and

(*c*) *section 273* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) the following paragraph were substituted for *paragraph (b)* of *subsection (2)* of that subsection:

''(*b*) As respects any qualifying expenditure, any allowance made under *section 272* and increased under *paragraph (a)* in respect of that expenditure, whether claimed in one chargeable period or more than one such period, shall not in the aggregate exceed 75 per cent of the amount of that qualifying expenditure.'',

and

(iii) *subsections (3)* to *(7)* of that section were deleted.

(5) In the case of a qualifying premises which is such a premises by virtue of being a tourist accommodation facility of a type referred to in *paragraph (a)* of the definition of ''qualifying tourism facilities''—

(*a*) the event of the premises ceasing to be registered or specified in the manner referred to in that paragraph of that definition shall be treated as if it were an event specified in *section 274(1)*, and

(*b*) for the purposes of the application of *section 274* on the occurrence of any such event, there shall, notwithstanding anything to the contrary in *section 318*, be treated as arising in relation to that event sale, insurance, salvage or compensation moneys in an amount equal to the aggregate of—

(i) the residue of the expenditure (within the meaning of *section 277*) incurred on the construction or refurbishment of the premises immediately before that event, and

(ii) the allowances made under *Chapter 1* of *Part 9* by virtue of *subsection (2)* in respect of the expenditure incurred on the construction or refurbishment of the premises.

(6) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to any qualifying premises by reason of any of the events specified, or by virtue of *subsection (5)* treated as specified, in *section 274(1)* which occurs—

(*a*) more than 11 years after the qualifying premises was first used, or

(*b*) in a case where *section 276* applies, more than 11 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) Where by virtue of *subsection (2)* an allowance is given under *Chapter 1* of *Part 9* in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises, relief shall not be given in respect of that expenditure under any provision of the Tax Acts other than that Chapter.

354.—(1) In this section—

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA95 s49; FA97 s27]

''qualifying lease'' means, subject to *subsection (5)*, a lease in respect of a qualifying premises granted in the qualifying period on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person who is entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

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''qualifying premises'' means, subject to *section 355(2)*, a building or structure the site of which is wholly within a qualifying resort area and—

(*a*) (i) which is a building or structure in use for the purposes specified in *section 268(1)(d)*, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *section 271*, *272* or *273*, as applied by *section 352*, or

(ii) in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 353*,

and

(*b*) which is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under any of the provisions referred to in *paragraph (a)*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 20 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(2) For the purposes of this section, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(*a*) 10 years, or

(*b*) the period by which 10 years exceeds—

(i) any preceding period, or

(ii) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable by that person or any other person in relation to that premises under a qualifying lease.

(3) Subject to *subsection (4)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as ''the first-mentioned deduction'') on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person for a relevant rental period in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as ''the

second-mentioned deduction'') equal to the amount of the first-mentioned deduction but, as respects a qualifying lease granted on or after the 21st day of April, 1997, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction. Pt.10 S.354

(4) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and either such person or another person connected with such person—

(*a*) takes under a qualifying lease a qualifying premises (in this subsection referred to as ''the second-mentioned premises'') occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(*b*) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises,

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(5) (*a*) In this subsection—

''current value'', in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

''fair value'', in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

''inception of the lease'' means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

''minimum lease payments'' means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee;

''unguaranteed residual value'', in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(*b*) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.

Disclaimer of capital allowances on holiday cottages, holiday apartments, etc.

[FA95 s49A; FA96 s30]

355.—(1) This section shall apply to—

(*a*) a building or structure to which *section 352* applies by virtue of the building or structure being a holiday cottage of the type referred to in *section 268(3)*, and

(*b*) a building or structure which is a qualifying premises within the meaning of *section 353* by virtue of the building or structure being—

(i) a holiday apartment registered under Part III of the Tourist Traffic Act, 1939, or

(ii) other self-catering accommodation specified in a list published under section 9 of the Tourist Traffic Act, 1957.

(2) (*a*) Subject to *subsection (5)*, a building or structure to which this section applies shall not be a qualifying premises for the purposes of *section 354* unless the person to whom an allowance under *Chapter 1* of *Part 9* would but for *subsection (3)* be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure elects by notice in writing to the appropriate inspector (within the meaning of *section 950*) to disclaim all allowances under that Chapter in respect of that capital expenditure.

(*b*) An election under *paragraph (a)* shall be included in the return required to be made by the person concerned under *section 951* for the first year of assessment or the first accounting period, as the case may be, for which an allowance would but for *subsection (3)* have been made to that person under *Chapter 1* of *Part 9* in respect of that capital expenditure.

(*c*) An election under *paragraph (a)* shall be irrevocable.

(*d*) A person who has made an election under *paragraph (a)* shall furnish a copy of that election to any person (in this paragraph referred to as ''the second-mentioned person'') to whom the person grants a qualifying lease (within the meaning of *section 354*) in respect of a building or structure to which this section applies, and the second-mentioned person shall include the copy in the return required to be made by the second-mentioned person under *section 951* for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of such a building or structure.

(3) Subject to *subsection (5)*, where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure to which this section applies makes an election under *subsection (2)(a)*, then, notwithstanding any other provision of the Tax Acts—

(*a*) no allowance under *Chapter 1* of *Part 9* shall be made to the person in respect of that capital expenditure,

(*b*) on the occurrence, in relation to the building or structure, of any of the events referred to in *section 274(1)*, the residue of expenditure (within the meaning of *section 277*) in relation to that capital expenditure shall be deemed to be nil, and

(*c*) *section 279* shall not apply in the case of any person who buys the relevant interest (within the meaning of *section 269*) in the building or structure.

(4) Subject to *subsection (5)*, where in the qualifying period a person incurs capital expenditure on the acquisition, construction or refurbishment of a building or structure which is or is to be a building or structure to which *subsection (1)(b)* applies and an allowance is to be made in respect of that expenditure under *section 271* or *272*, then—

(*a*) neither *section 305(1)(b)* nor *section 308(4)* shall apply as respects that allowance, and

(*b*) neither *section 381* nor *section 396(2)* shall apply as respects the whole or part, as the case may be, of any loss which would not have arisen but for the making of that allowance.

(5) This section shall not apply—

(*a*) to expenditure incurred in the qualifying period on the acquisition, construction or refurbishment of a building or structure (in this subsection referred to as ''the holiday cottage or apartment'') which is or is to be a building or

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structure to which this section applies where before the 5th day of April, 1996—

(i) a binding contract in writing was entered into for the acquisition or construction of the holiday cottage or apartment,

(ii) an application for planning permission for the construction of the holiday cottage or apartment was received by a planning authority, or

(iii) in relation to the holiday cottage or apartment, an opinion in writing was issued by the Revenue Commissioners to the effect that an allowance to be made in respect of expenditure on the holiday cottage or apartment would not be restricted by virtue of *section 408*,

or

(*b*) where before the 5th day of April, 1996—

(i) expenditure was incurred on the acquisition of land on which the holiday cottage or apartment is to be constructed or refurbished, by the person who incurred the expenditure on that construction or refurbishment, or

(ii) a binding contract in writing was entered into for the acquisition of that land by that person,

and that person can prove to the satisfaction of the Revenue Commissioners that a detailed plan had been prepared and that detailed discussions had taken place with a planning authority in relation to the holiday cottage or apartment on or after the 8th day of February, 1995, but before the 5th day of April, 1996, and that this can be supported by means of an affidavit from the planning authority.

Rented residential accommodation: deduction for certain expenditure on construction.

[FA95 s50]

356.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 359(2)*, a lease of the house the consideration for the grant of which consists solely of—

(*a*) a single payment which is or is to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) periodic payments all of which are or are to be treated as rent for the purposes of that Chapter;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(a)*, *(5)* and *(6)* of *section 359*, a house—

(*a*) the site of which is wholly within a qualifying resort area,

(*b*) which is used solely as a dwelling,

(*c*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*d*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(*e*) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant cost'', in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

(*a*) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(*b*) the expenditure actually incurred on the construction of the house;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under *section 359(8)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(*a*) of the expenditure incurred on the construction of that building or those buildings, and

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(*b*) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(4) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(5) (*a*) Where the event mentioned in *subsection (4)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under *section 359(8)* or under this section the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

(*b*) For the purposes of this subsection and *subsection (6)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 359(8)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(6) (*a*) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under *section 359(8)* as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(*b*) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of that trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as ''the purchaser'') who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as ''the first purchase''), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first purchase.

(7) *Section 359* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA95 s51]

357.—(1) In this section—

''conversion expenditure'' means, subject to *subsection (2)*, expenditure incurred on—

(*a*) the conversion into a house of a building—

(i) the site of which is wholly within a qualifying resort area, and

(ii) which before the conversion had not been in use as a dwelling,

and

(*b*) the conversion into 2 or more houses of a building—

(i) the site of which is wholly within a qualifying resort area, and

(ii) which before the conversion had not been in use as a dwelling or had been in use as a single dwelling,

and references in this section and in *section 359* to ''conversion'', ''conversion into a house'' and ''expenditure incurred on conversion'' shall be construed accordingly;

''qualifying lease'', in relation to a house, means, subject to *section 359(2)*, a lease of the house the consideration for the grant of which consists solely of—

(*a*) a single payment which is or is to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) periodic payments all of which are or are to be treated as rent for the purposes of that Chapter;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)*, *(5)* and *(6)* of *section 359*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and

(*d*) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

(i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or

(ii) any expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area

of the non-residential unit bears to the total floor area of the building. PT.10 S.357

(4) Where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 359(8)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(5) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(7) Where the event mentioned in *subsection (6)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 359(8)* or under this section the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 359(8)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

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(8) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period conversion expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 359(8)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 359(8)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(9) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(10) *Section 359* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on refurbishment.

[FA95 s52]

358.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 359(2)*, a lease of the house the consideration for the grant of which consists solely of—

(*a*) a single payment which is or is to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) periodic payments all of which are or are to be treated as rent for the purposes of that Chapter;

''qualifying premises'' means, subject to *subsections (3)*, *(4)(b)*, *(5)* and *(6)* of *section 359*, a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and

(*d*) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''refurbishment'', in relation to a building, means either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works or the provision of such facilities is certified by the Minister for the Environment and Local Government, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment;

''relevant expenditure'' means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period of 10 years beginning on the date of the first such letting after the date of such completion;

''specified building'' means a building—

(*a*) the site of which is wholly within a qualifying resort area,

(*b*) in which before the refurbishment to which the relevant expenditure relates there is one or more than one house, and

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(*c*) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) one or more than one house.

(2) Where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 359(8)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(4) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(5) Where the event mentioned in *subsection (4)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 359(8)* or under this section the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 359(8)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion

as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(6) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period relevant expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 359(8)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 359(8)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(7) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(8) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts.

(9) *Section 359* shall apply for the purposes of supplementing this section.

359.—(1) In *sections 356* to *358*—

Provisions supplementary to *sections 356* to *358.*

[FA95 s53]

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 356*, *357* or *358*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, or, as the case may be, refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

''house'' includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

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''total floor area'' means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) A lease shall not be a qualifying lease for the purposes of *section 356*, *357* or *358* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(3) A house shall not be a qualifying premises for the purposes of *section 356*, *357* or *358* if—

(*a*) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 356(2)*, *357(4)* or *358(2)*, as the case may be, and

(*b*) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(4) (*a*) A house shall not be a qualifying premises for the purposes of *section 356* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 357* or *358* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(5) A house shall not be a qualifying premises for the purposes of *section 356*, *357* or *358* unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(6) (*a*) A house shall not be a qualifying premises for the purposes of *section 356*, *357* or *358* unless, throughout the relevant period (within the meaning of section *356*, *357* or *358*, as the case may be)—

(i) it is used primarily for letting to and occupation by tourists, with or without prior arrangement, and

(ii) it is used and occupied for no other purpose during the period beginning on the 1st day of April and ending on the 31st day of October in each year.

(*b*) A house shall not be a qualifying premises for the purposes of *section 356*, *357* or *358* if, during the relevant period (within the meaning of *section 356*, *357* or *358*, as the case may be), the house is let or leased to or occupied by any person for more than 2 consecutive months at any one time or for more than 6 months in any year.

(*c*) A house shall not be a qualifying premises for the purposes of *section 356*, *357* or *358* unless a register of lessees of the house is maintained which shall contain the following particulars—

(i) the name, permanent address and nationality of each lessee of the house during the relevant period (within the meaning of *section 356*, *357* or *358*, as the case may be), and

(ii) the date of arrival and the date of departure of each such lessee.

(7) For the purposes of *sections 356* to *358*, references in those sections to the construction of, conversion into, or, as the case may be, refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(8) (*a*) For the purposes of determining, in relation to any claim under *section 356(2)*, *357(4)* or *358(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, or, as the case may be, refurbishment of, the premises actually carried out during the qualifying period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *subsection (7)* expenditure on the construction of, conversion into, or, as the case may be, refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, or, as the case may be, refurbishment of, the qualifying premises were references to the development of such land.

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(9) (*a*) For the purposes of *sections 356* and *357* other than the purposes mentioned in *subsection (8)(a)*, expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease.

(*b*) For the purposes of *section 358* other than the purposes mentioned in *subsection (8)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period, in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(10) For the purposes of *sections 356* to *358*, expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

(11) *Section 555* shall apply as if a deduction under *section 356(2)*, *357(4)* or *358(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 356(4)*, *357(6)* or *358(4)*, as the case may be, were a balancing charge.

(12) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 356*, *357* or *358* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 5

Designated islands

Interpretation (*Chapter 5*).

360.—(1) In this Chapter—

[FA96 s65]

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 361*, *362*, *363* or *364*, as the case may be, stating that the amount specified in the certificate in relation to the cost of construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

''designated island'' means any of the following islands—

(*a*) in the administrative county of Cork, the islands of Bere, Clear, Dursey, Hare, Long, Sherkin and Whiddy,

(*b*) in the administrative county of Donegal, the islands of Arranmore, Inishbofin, Inishfree and Tory,

(*c*) in the administrative county of Galway, the islands of Inisbofin, Inisheer, Inishmaan and Inishmore, Pt.10 S.360

(*d*) in the administrative county of Limerick, the island of Foynes,

(*e*) in the administrative county of Mayo, the islands of Claggan, Clare, Inishbiggle, Inishcottle, Inishlyre and Inishturk, and

(*f*) in the administrative county of Sligo, the island of Coney;

''house'' includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

''lease'', ''lessee'', ''lessor'', ''premium'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building or house, means the price which the unencumbered fee simple of the building or house would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building or house, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building or house is constructed;

''qualifying period'' means the period commencing on the 1st day of August, 1996, and ending on the 31st day of July, 1999;

''total floor area'' means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) References in this Chapter to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

Pt.10
Rented residential accommodation: deduction for certain expenditure on construction.

[FA96 s66]

361.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 365(1)*, a lease of the house the duration of which is not less than 12 months and the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the relevant cost of the house;

''qualifying premises'' means, subject to *subsections (2)*, *(3)(a)* and *(4)* of *section 365*, a house—

(*a*) the site of which is on a designated island,

(*b*) which is used solely as a dwelling,

(*c*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*d*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost, the amount specified in which in respect of the cost of construction of the house is not less than the expenditure actually incurred on such construction, and

(*e*) which without having been used is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant cost'', in relation to a house, means, subject to *subsection (3)*, an amount equal to the aggregate of—

(*a*) the expenditure incurred on the acquisition of, or of rights in or over, any land on which the house is constructed, and

(*b*) the expenditure actually incurred on the construction of the house;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred expenditure on the construction of a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of that expenditure as is to be treated under *section 365(5)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the expenditure to be treated as having been incurred in the qualifying period on the construction of the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the expenditure actually incurred on the construction of the qualifying premises which is to be treated under *section 365(5)* as having been incurred in the qualifying period bears to the whole of the expenditure incurred on that construction.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary—

(*a*) of the expenditure incurred on the construction of that building or those buildings, and

(*b*) of the amount which would be the relevant cost in relation to that building or those buildings if the building or buildings, as the case may be, were a single qualifying premises,

for the purposes of determining the expenditure incurred on the construction of the qualifying premises and the relevant cost in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

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(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of expenditure incurred on the construction of the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) (*a*) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of expenditure on the construction of the house equal to the amount which under *section 365(5)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period on the construction of the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed the relevant price paid by such person on the purchase.

(*b*) For the purposes of this subsection and *subsection (7)*, the relevant price paid by a person on the purchase of a house shall be the amount which bears to the net price paid by such person on that purchase the same proportion as the amount of the expenditure actually incurred on the construction of the house which is to be treated under *section 365(5)* as having been incurred in the qualifying period bears to the relevant cost in relation to that house.

(7) (*a*) Subject to *paragraph (b)*, where expenditure is incurred on the construction of a house and before the house is used it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the lesser of—

(i) the amount of such expenditure which is to be treated under *section 365(5)* as having been incurred in the qualifying period, and

(ii) the relevant price paid by such person on the purchase;

but, where the house is sold more than once before it is used, this subsection shall apply only in relation to the last of those sales.

(*b*) Where expenditure is incurred on the construction of a house by a person carrying on a trade or part of a trade which consists, as to the whole or any part of that trade, of the construction of buildings with a view to their sale and the house, before it is used, is sold in the course of that trade or, as the case may be, that part of that trade—

(i) the person (in this paragraph referred to as ''the purchaser'') who purchases the house shall be

treated for the purposes of this section as having incurred in the qualifying period expenditure on the construction of the house equal to the relevant price paid by the purchaser on the purchase (in this paragraph referred to as ''the first purchase''), and

(ii) in relation to any subsequent sale or sales of the house before the house is used, *paragraph (a)* shall apply as if the reference to the amount of expenditure which is to be treated as having been incurred in the qualifying period were a reference to the relevant price paid on the first purchase.

(8) *Section 365* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA96 s67]

362.—(1) In this section—

''conversion expenditure'' means, subject to *subsection (2)*, expenditure incurred on—

(*a*) the conversion into a house of a building—

(i) the site of which is on a designated island, and

(ii) which has not been previously in use as a dwelling,

and

(*b*) the conversion into 2 or more houses of a building—

(i) the site of which is on a designated island, and

(ii) which before the conversion had not been in use as a dwelling or had been in use as a single dwelling,

and references in this section and in *section 365* to ''conversion'', ''conversion into a house'' and ''expenditure incurred on conversion'' shall be construed accordingly;

''qualifying lease'', in relation to a house, means, subject to *section 365(1)*, a lease of the house the duration of which is not less than 12 months and the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, together with a payment by means of a premium which does not exceed 10 per cent of the market value of the house at the time the conversion is completed and, in the case of a house which is a part of a building and is not saleable apart from the building of which it is a part, the market value of the house at the time the conversion is completed shall for the purposes of this paragraph be taken to be an amount which bears to the market value of the building at that time the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (2)*, *(3)(b)* and *(4)* of *section 365*, a house—

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(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of conversion in relation to the house is not less than the expenditure actually incurred on such conversion, and

(*d*) which without having been used subsequent to the incurring of the expenditure on the conversion is first let in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the first letting of the premises under a qualifying lease.

(2) For the purposes of this section, expenditure incurred on the conversion of a building shall be deemed to include expenditure incurred in the course of the conversion on either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

in relation to the building or any outoffice appurtenant to or usually enjoyed with the building, but shall not be deemed to include—

(i) any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts, or

(ii) any expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the conversion is not a house.

(3) For the purposes of *subsection (2)(ii)*, where expenditure is attributable to a building in general and not directly to any particular house or non-residential unit comprised in the building on completion of the conversion, such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building.

(4) Subject to *subsection (5)*, where a person, having made a claim in that behalf, proves to have incurred conversion expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 365(5)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(5) (*a*) This subsection shall apply to any premium or other sum which is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor.

(*b*) Where any premiums or other sum to which this subsection applies or any part of such premium or such other sum, is not or is not treated as rent for the purposes of *section 97*, the conversion expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (4)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the conversion expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 365(5)* as having been incurred in the qualifying period bears to the whole of the conversion expenditure incurred in relation to the qualifying premises.

(6) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the expenditure incurred on the conversion of that building or those buildings for the purposes of determining the conversion expenditure incurred in relation to the qualifying premises.

(7) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (4)* in respect of conversion expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

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(8) Where the event mentioned in *subsection (7)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of conversion expenditure in relation to the house equal to the amount of the conversion expenditure which under *section 365(5)* or under this section (apart from *subsection (5)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 365(5)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house.

(9) Where conversion expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period conversion expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 365(5)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the conversion expenditure incurred in relation to the house is to be treated under *section 365(5)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the conversion expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the conversion expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(10) This section shall not apply in the case of a conversion unless planning permission in respect of the conversion has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(11) *Section 365* shall apply for the purposes of supplementing this section.

Rented residential accommodation: deduction for certain expenditure on refurbishment.

[FA96 s68; FA97 s146(1) and Sch9 PtI par20]

363.—(1) In this section—

''qualifying lease'', in relation to a house, means, subject to *section 365(1)*, a lease of the house the duration of which is not less than 12 months and the consideration for the grant of which consists—

(*a*) solely of periodic payments all of which are or are to be treated as rent for the purposes of *Chapter 8* of *Part 4*, or

(*b*) of payments of the kind mentioned in *paragraph (a)*, PT.10 S.363
together with a payment by means of a premium—

(i) which is payable on or subsequent to the date of the completion of the refurbishment to which the relevant expenditure relates or which, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment, and

(ii) which does not exceed 10 per cent of the market value of the house on the date of completion of the refurbishment to which the relevant expenditure relates and, in the case of a house which is part of a building and is not saleable apart from the building of which it is a part, the market value of the house on that date shall for the purposes of this subparagraph be taken to be an amount which bears to the market value of the building on that date the same proportion as the total floor area of the house bears to the total floor area of the building;

''qualifying premises'' means, subject to *subsections (2)*, *(3)(b)* and *(4)* of *section 365,* a house—

(*a*) which is used solely as a dwelling,

(*b*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres,

(*c*) in respect of which there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of refurbishment in relation to the house is not less than the relevant expenditure actually incurred on such refurbishment, and

(*d*) which on the date of completion of the refurbishment to which the relevant expenditure relates is let (or, if not let on that date, is, without having been used after that date, first let) in its entirety under a qualifying lease and thereafter throughout the remainder of the relevant period (except for reasonable periods of temporary disuse between the ending of one qualifying lease and the commencement of another such lease) continues to be let under such a lease;

''refurbishment'', in relation to a building, means either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works or the provision of such facilities is certified by the Minister for the Environment and Local Government, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment;

''relevant expenditure'' means expenditure incurred on the refurbishment of a specified building, other than expenditure attributable to any part (in this section referred to as a ''non-residential unit'') of the building which on completion of the refurbishment is not a house, and for the purposes of this definition where expenditure is attributable to the specified building in general (and not directly to any particular house or non-residential unit comprised in the building on completion of the refurbishment), such an amount of that expenditure shall be deemed to be attributable to a non-residential unit as bears to the whole of that expenditure the same proportion as the total floor area of the non-residential unit bears to the total floor area of the building;

''relevant period'', in relation to a qualifying premises, means the period of 10 years beginning on the date of the completion of the refurbishment to which the relevant expenditure relates or, if the premises was not let under a qualifying lease on that date, the period of 10 years beginning on the date of the first such letting after the date of such completion;

''specified building'' means a building—

(*a*) the site of which is on a designated island,

(*b*) in which before the refurbishment to which the relevant expenditure relates there is one or more than one house, and

(*c*) which on completion of that refurbishment contains (whether in addition to any non-residential unit or not) one or more than one house.

(2) Subject to *subsection (3)*, where a person, having made a claim in that behalf, proves to have incurred relevant expenditure in relation to a house which is a qualifying premises—

(*a*) such person shall be entitled, in computing for the purposes of *section 97(1)* the amount of a surplus or deficiency in respect of the rent from the qualifying premises, to a deduction of so much (if any) of the expenditure as is to be treated under *section 365(5)* or under this section as having been incurred by such person in the qualifying period, and

(*b*) *Chapter 8* of *Part 4* shall apply as if that deduction were a deduction authorised by *section 97(2)*.

(3) (*a*) This subsection shall apply to any premium or other sum which—

(i) is payable, directly or indirectly, under a qualifying lease or otherwise under the terms subject to which the lease is granted, to or for the benefit of the lessor or to or for the benefit of any person connected with the lessor, and

(ii) is payable on or subsequent to the date of completion of the refurbishment to which the relevant expenditure relates or, if payable before that date, is so payable by reason of or otherwise in connection with the carrying out of the refurbishment.

(*b*) Where any premium or other sum to which this subsection applies, or any part of such premium or such other sum, is not or is not treated as rent for the purposes *section 97*, the relevant expenditure to be treated as having been incurred in the qualifying period in relation to the qualifying premises to which the qualifying lease relates shall be deemed for the purposes of *subsection (2)* to be reduced by the lesser of—

(i) the amount of such premium or such other sum or, as the case may be, that part of such premium or such other sum, and

(ii) the amount which bears to the amount mentioned in *subparagraph (i)* the same proportion as the amount of the relevant expenditure actually incurred in relation to the qualifying premises which is to be treated under *section 365(5)* as having been incurred in the qualifying period bears to the whole of the relevant expenditure incurred in relation to the qualifying premises.

(4) Where a qualifying premises forms a part of a building or is one of a number of buildings in a single development, or forms a part of a building which is itself one of a number of buildings in a single development, there shall be made such apportionment as is necessary of the relevant expenditure incurred on that building or those buildings for the purposes of determining the relevant expenditure incurred in relation to the qualifying premises.

(5) Where a house is a qualifying premises and at any time during the relevant period in relation to the premises either of the following events occurs—

(*a*) the house ceases to be a qualifying premises, or

(*b*) the ownership of the lessor's interest in the house passes to any other person but the house does not cease to be a qualifying premises,

then, the person who before the occurrence of the event received or was entitled to receive a deduction under *subsection (2)* in respect of relevant expenditure incurred in relation to the qualifying premises shall be deemed to have received on the day before the day of the occurrence of the event an amount as rent from the qualifying premises equal to the amount of the deduction.

(6) Where the event mentioned in *subsection (5)(b)* occurs in the relevant period in relation to a house which is a qualifying premises, the person to whom the ownership of the lessor's interest in the

house passes shall be treated for the purposes of this section as having incurred in the qualifying period an amount of relevant expenditure in relation to the house equal to the amount of the relevant expenditure which under *section 365(5)* or under this section (apart from *subsection (3)(b)*) the lessor was treated as having incurred in the qualifying period in relation to the house; but, in the case of a person who purchases such a house, the amount so treated as having been incurred by such person shall not exceed—

(*a*) the net price paid by such person on the purchase, or

(*b*) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 365(5)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house.

(7) Where relevant expenditure is incurred in relation to a house and before the house is used subsequent to the incurring of that expenditure it is sold, the person who purchases the house shall be treated for the purposes of this section as having incurred in the qualifying period relevant expenditure in relation to the house equal to the lesser of—

(*a*) the amount of such expenditure which is to be treated under *section 365(5)* as having been incurred in the qualifying period, and

(*b*) (i) the net price paid by such person on the purchase, or

(ii) in case only a part of the relevant expenditure incurred in relation to the house is to be treated under *section 365(5)* as having been incurred in the qualifying period, the amount which bears to that net price the same proportion as that part bears to the whole of the relevant expenditure incurred in relation to the house;

but, where the house is sold more than once before it is used subsequent to the incurring of the relevant expenditure in relation to the house, this subsection shall apply only in relation to the last of those sales.

(8) This section shall not apply in the case of any refurbishment unless planning permission, in so far as it is required, in respect of the work carried out in the course of the refurbishment has been granted under the Local Government (Planning and Development) Acts, 1963 to 1993.

(9) Expenditure in respect of which a person is entitled to relief under this section shall not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any other provision of the Tax Acts.

(10) *Section 365* shall apply for the purposes of supplementing this section.

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Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA96 s69(1) to (3) and (5)]

364.—(1) In this section—

''qualifying expenditure'', in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

(*a*) that expenditure,

(*b*) the qualifying premises, or

(*c*) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

''qualifying owner-occupied dwelling'', in relation to an individual, means a qualifying premises which is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

''qualifying premises'', in relation to the incurring of qualifying expenditure, means, subject to *subsections (3)* and *(4)(a)* of *section 365*, a house—

(*a*) the site of which is on a designated island,

(*b*) which is used solely as a dwelling,

(*c*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and

(*d*) the total floor area of which—

(i) is not less than 30 square metres and not more than 125 square metres in the case where the house is a separate self-contained flat or maisonette in a building of 2 or more storeys, or

(ii) in any other case, is not less than 35 square metres and not more than 125 square metres;

''refurbishment'' has the same meaning as in *section 363*.

(2) (*a*) Subject to *subsection (3)*, where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of the individual, to have a deduction made

from his or her total income of an amount equal to 5 per cent of the amount of that expenditure.

(*b*) A deduction shall be given under this section in respect of qualifying expenditure only in so far as that expenditure is to be treated under *section 365(5)* as having been incurred in the qualifying period.

(3) Where qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure and the expenditure shall be apportioned accordingly.

(4) *Section 365* shall apply for the purposes of supplementing this section.

Provisions supplementary to *sections 360* to *364.*

[FA96 s70]

365.—(1) A lease shall not be a qualifying lease for the purposes of *section 361*, *362* or *363* if the terms of the lease contain any provision enabling the lessee or any other person, directly or indirectly, at any time to acquire any interest in the house to which the lease relates for a consideration less than that which might be expected to be given at that time for the acquisition of the interest if the negotiations for that acquisition were conducted in the open market at arm's length.

(2) A house shall not be a qualifying premises for the purposes of *section 361*, *362* or *363* if—

(*a*) it is occupied as a dwelling by any person connected with the person entitled, in relation to the expenditure incurred on the construction of, conversion into, or, as the case may be, refurbishment of, the house, to a deduction under *section 361(2)*, *362(4)* or *363(2)*, as the case may be, and

(*b*) the terms of the qualifying lease in relation to the house are not such as might have been expected to be included in the lease if the negotiations for the lease had been at arm's length.

(3) (*a*) A house shall not be a qualifying premises for the purposes of *section 361* or, in so far as it applies to expenditure other than expenditure on refurbishment, *section 364* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 362* or *363* or, in so far as it applies to expenditure on refurbishment, *section 364* unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(4) (*a*) A house shall not be a qualifying premises for the purposes of *section 361*, *362*, *363* or *364* unless persons authorised in writing by the Minister for the Environment and Local Government for the purposes of those sections are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(*b*) A house shall not be a qualifying premises for the purposes of *section 361*, *362* or *363* unless, throughout the period of any qualifying lease related to that premises, the house is used as the sole or main residence of the lessee in relation to that qualifying lease.

(5) (*a*) For the purposes of determining, in relation to any claim under *section 361(2)*, *362(4)*, *363(2)* or *364(2)*, as the case may be, whether and to what extent expenditure incurred on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the premises actually carried out during the qualifying period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *section 360(2)* expenditure on the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, the qualifying premises were references to the development of such land.

(6) (*a*) For the purposes of *sections 361* and *362* other than the purposes mentioned in *subsection (5)(a)*, expenditure incurred on the construction of, or, as the case may be, conversion into, a qualifying premises shall be deemed to have been incurred on the date of the first letting of the premises under a qualifying lease.

(*b*) For the purposes of *section 363* other than the purposes mentioned in *subsection (5)(a)*, relevant expenditure incurred in relation to the refurbishment of a qualifying premises shall be deemed to have been incurred on the date of the commencement of the relevant period, in relation to the premises, determined as respects the refurbishment to which the relevant expenditure relates.

(*c*) For the purposes of *section 364* other than the purposes mentioned in *subsection (5)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred that the premises is in use as a dwelling.

(7) For the purposes of *sections 361* to *363,* expenditure shall not be regarded as incurred by a person in so far as it has been or is to be met, directly or indirectly, by the State, by any board established by statute or by any public or local authority.

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(8) *Section 555* shall apply as if a deduction under *section 361(2)*, *362(4)* or *363(2)*, as the case may be, were a capital allowance and as if any rent deemed to have been received by a person under *section 361(5)*, *362(7)* or *363(5)*, as the case may be, were a balancing charge.

(9) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 361*, *362*, *363* or *364* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

CHAPTER 6

Dublin Docklands Area

Interpretation (*Chapter 6*).

366.—In this Chapter—

[FA97 s52]

''qualifying area'' means an area or areas in the Dublin Docklands Area (within the meaning of section 4 of the Dublin Docklands Development Authority Act, 1997) specified as a qualifying area by order under *section 367*;

''lease'', ''lessee'', ''lessor'', ''premium'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

''market value'', in relation to a building, structure or house, means the price which the unencumbered fee simple of the building, structure or house would fetch if sold in the open market in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the building, structure or house, less the part of that price which would be attributable to the acquisition of, or of rights in or over, the land on which the building, structure or house is constructed;

''qualifying period'' means, subject to *section 367*, the period commencing on the 1st day of July, 1997, and ending on the 30th day of June, 2000;

''refurbishment'', in relation to a building or structure and other than for the purposes of *section 371*, means any work of construction, reconstruction, repair or renewal, including the provision or improvement of water, sewerage or heating facilities, carried out in the course of the repair or restoration, or maintenance in the nature of repair or restoration, of the building or structure.

Qualifying areas.

[FA97 s53]

367.—(1) Subject to *subsection (2)*, the Minister for Finance may, after consultation with the Minister for the Environment and Local Government, following a recommendation from the Executive Board (within the meaning of section 17 of the Dublin Docklands Development Authority Act, 1997) of the Dublin Docklands Development Authority (within the meaning of section 14 of that Act), by order direct that—

(*a*) the area or areas described in the order shall be a qualifying area—

(i) for the purposes of one or more sections of this Chapter, and

(ii) in relation to *section 369*, for the purposes of that section, including or excluding the provisions of *subsection (6)* of that section as may be specified in the order, and

(*b*) as respects any such area so described in the order, the definition of ''qualifying period'' in *section 366* shall be construed as a reference to such period as shall be specified in the order in relation to that area, but no such period specified in the order shall commence before the 1st day of July, 1997, or end after the 30th day of June, 2000.

(2) In considering the making of an order under *subsection (1)* in respect of an area and in particular for the purposes of determining whether that area should be a qualifying area for the purposes of one or more sections of this Chapter and, where the area is to be a qualifying area for the purposes of *section 369*, whether the relief to be provided by virtue of *section 369* is or is not to be subject to *subsection (6)* of that section, the Minister shall have regard to the following criteria—

(*a*) the consistency, in relation to the area, of the types of development for which relief is provided in one or more sections of this Chapter with the relevant provisions of the master plan for the Dublin Docklands Area prepared and adopted under section 24 of the Dublin Docklands Development Authority Act, 1997, which consistency shall be certified by the Executive Board of the Dublin Docklands Development Authority,

(*b*) the market conditions in the area in terms of the existing and projected supply of, and the existing and projected demand for, the type of development for which relief is provided in one or more sections of this Chapter,

(*c*) the significance of the area for the overall regeneration of the Dublin Docklands Area, and

(*d*) the nature and extent of any barriers to the regeneration of the area.

(3) Every order made by the Minister for Finance under *subsection (1)* shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

[FA97 s54]

368.—(1) This section shall apply to a building or structure the site of which is wholly within a qualifying area and which is to be an industrial building or structure by reason of its use for a purpose specified in *section 268(1)(a)*.

(2) Subject to *subsection (4)*, *section 271* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

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(*b*) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(*c*) *subsection (3)* of that section were deleted,

(*d*) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(*e*) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted.

(3) Subject to *subsection (4)*, *section 273* shall apply in relation to capital expenditure incurred in the qualifying period on the construction or refurbishment of a building or structure to which this section applies as if—

(*a*) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted, and

(*b*) *subsections (2)(b)* and *(3)* to *(7)* of that section were deleted.

(4) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure to which this section applies, *subsections (2)* and *(3)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(5) For the purposes only of determining, in relation to a claim for an allowance under *section 271* or *273* as applied by this section, whether and to what extent capital expenditure incurred on the construction or refurbishment of an industrial building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

Capital allowances in relation to construction or refurbishment of certain commercial premises.

[FA97 s55]

369.—(1) (*a*) In this section—

''qualifying multi-storey car park'' means a building or structure consisting of 2 or more storeys wholly or mainly in use for the purpose of providing, for members of the public generally without preference for any particular class of person, on payment of an appropriate charge, parking space for mechanically propelled vehicles;

''qualifying premises'' means a building or structure the site of which is wholly within a qualifying area and which—

(i) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(ii) (I) is in use for the purposes of a trade or profession, or

(II) whether or not it is so used, is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but does not include a car park (other than a qualifying multi-storey car park) or any part of a building or structure in use as or as part of a dwelling-house.

(*b*) Where part of a building or structure is a qualifying premises and part of it (in this paragraph referred to as ''the second-mentioned part'') is not a qualifying premises and the capital expenditure incurred in the qualifying period on the construction or refurbishment of the second-mentioned part is not more than 10 per cent of the total capital expenditure incurred in that period on the construction or refurbishment of the building or structure, then, the building or structure and every part of it shall be treated as a qualifying premises.

(2) (*a*) Subject to *paragraph (b)* and *subsections (3)* to *(6),* the provisions of the Tax Acts (other than *section 368*) relating to the making of allowances or charges in respect of capital expenditure incurred on the construction or refurbishment of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply—

(i) as if a qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(ii) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(*b*) An allowance shall be given by virtue of this subsection in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises only in so far as that expenditure is incurred in the qualifying period.

(3) In the case where capital expenditure is incurred in the qualifying period on the refurbishment of a qualifying premises, *subsection (2)* shall apply only if the total amount of the capital expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the qualifying premises immediately before that expenditure is incurred.

(4) For the purposes of the application, by *subsection (2)*, of *sections 271* and *273* in relation to capital expenditure incurred in the

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qualifying period on the construction or refurbishment of a qualifying premises—

(*a*) *section 271* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted,

(ii) in *subsection (2)(a)(i)* of that section ''to which *subsection (3)* applies'' were deleted,

(iii) *subsection (3)* of that section were deleted,

(iv) the following subsection were substituted for *subsection (4)* of that section:

''(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.'',

and

(v) in *subsection (5)* of that section ''to which *subsection (3)(c)* applies'' were deleted,

and

(*b*) *section 273* shall apply as if—

(i) in *subsection (1)* of that section the definition of ''industrial development agency'' were deleted, and

(ii) *subsections (2)(b)* and *(3)* to *(7*) of that section were deleted.

(5) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs—

(*a*) more than 13 years after the qualifying premises was first used, or

(*b*) in a case where *section 276* applies, more than 13 years after the capital expenditure on refurbishment of the qualifying premises was incurred.

(6) (*a*) Notwithstanding *subsections (2)* to *(5)*, any allowance or charge which apart from this subsection would be made by virtue of *subsection (2)* in respect of capital expenditure incurred on the construction or refurbishment of a qualifying premises may be reduced to one-half of the amount which apart from this subsection would be the amount of that allowance or charge.

(*b*) *Paragraph (a)* shall apply where, in respect of an area, the Minister for Finance, having had regard to the criteria set out in *subsection (2)* of *section 367,* has specified in an order under *subsection (1)* of that section that the area is a qualifying area for the purposes of this section and that the relief to apply is subject to this subsection.

(*c*) For the purposes of *paragraph (a)*, the amount of an allowance or charge to be reduced to one-half shall be computed as if—

(i) this subsection had not been enacted, and

(ii) effect had been given to all allowances taken into account in so computing that amount.

(*d*) Nothing in this subsection shall affect the operation of *section 274(8)*.

(7) For the purposes only of determining, in relation to a claim for an allowance by virtue of *subsection (2)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a qualifying premises is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the premises actually carried out during the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) Where by virtue of *subsection (2)* an allowance is given under *Chapter 1* of *Part 9* in respect of any capital expenditure incurred on the construction or refurbishment of a qualifying premises, relief shall not be given in respect of that expenditure under that Chapter by virtue of any provision of the Tax Acts other than *subsection (2)*.

370.—(1) In this section—

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA97 s56]

''qualifying lease'' means, subject to *subsection (8)*, a lease in respect of a qualifying premises granted in the qualifying period on bona fide commercial terms by a lessor to a lessee not connected with the lessor, or with any other person entitled to a rent in respect of the qualifying premises, whether under that lease or any other lease;

''qualifying premises'' means, subject to *subsection (5)(a)*, a building or structure the site of which is wholly within a qualifying area and—

(*a*) (i) which is a building or structure in use for a purpose specified in *section 268(1)(a)*, and in respect of which capital expenditure is incurred in the qualifying period for which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *section 271* or *273*, as applied by *section 368*,

(ii) in respect of which an allowance is to be made, or will by virtue of *section 279* be made, for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9* by virtue of *section 369*, or

(iii) which is a building or structure in use for the purposes specified in *section 268(1)(d)*, and in respect of the construction or refurbishment of which capital expenditure is incurred in the qualifying period for which an allowance would but for *subsection (6)* be made for the purposes of income tax or corporation tax, as the case may be, under *Chapter 1* of *Part 9*,

and

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(*b*) which is let on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure negotiated on an arm's length basis,

but, where capital expenditure is incurred in the qualifying period on the refurbishment of a building or structure in respect of which an allowance is to be made, or will by virtue of *section 279* be made, or in respect of which an allowance would but for *subsection (6)* be made, for the purposes of income tax or corporation tax, as the case may be, under any of the provisions referred to in *paragraph (a)*, the building or structure shall not be regarded as a qualifying premises unless the total amount of the expenditure so incurred is not less than an amount equal to 10 per cent of the market value of the building or structure immediately before that expenditure is incurred.

(2) For the purposes of this section, so much of a period, being a period when rent is payable by a person in relation to a qualifying premises under a qualifying lease, shall be a relevant rental period as does not exceed—

(*a*) 10 years, or

(*b*) the period by which 10 years exceeds—

(i) any preceding period, or

(ii) if there is more than one preceding period, the aggregate of those periods,

for which rent was payable by that person or any other person in relation to that premises under a qualifying lease.

(3) Subject to *subsection (4)*, where in the computation of the amount of the profits or gains of a trade or profession a person is apart from this section entitled to any deduction (in this subsection referred to as ''the first-mentioned deduction'') on account of rent in respect of a qualifying premises occupied by such person for the purposes of that trade or profession which is payable by such person for a relevant rental period in relation to that qualifying premises under a qualifying lease, such person shall be entitled in that computation to a further deduction (in this subsection referred to as ''the second-mentioned deduction'') equal to the amount of the first-mentioned deduction but, where the first-mentioned deduction is on account of rent payable by such person to a connected person, such person shall not be entitled in that computation to the second-mentioned deduction.

(4) Where a person holds an interest in a qualifying premises out of which interest a qualifying lease is created directly or indirectly in respect of the qualifying premises and in respect of rent payable under the qualifying lease a claim for a further deduction under this section is made, and either such person or another person connected with such person—

(*a*) takes under a qualifying lease a qualifying premises (in this subsection referred to as ''the second-mentioned premises'') occupied by such person or such other person, as the case may be, for the purposes of a trade or profession, and

(*b*) is apart from this section entitled, in the computation of the amount of the profits or gains of that trade or profession, to a deduction on account of rent in respect of the second-mentioned premises, Pt.10 S.370

then, unless such person or such other person, as the case may be, shows that the taking on lease of the second-mentioned premises was not undertaken for the sole or main benefit of obtaining a further deduction on account of rent under this section, such person or such other person, as the case may be, shall not be entitled in the computation of the amount of the profits or gains of that trade or profession to any further deduction on account of rent in respect of the second-mentioned premises.

(5) (*a*) A building or structure in use for the purposes specified in *section 268(1)(d)* shall not be a qualifying premises for the purposes of this section unless the person to whom an allowance under *Chapter 1* of *Part 9* would but for *subsection (6)* be made for the purposes of income tax or corporation tax, as the case may be, in respect of the capital expenditure incurred in the qualifying period on the construction or refurbishment of the building or structure elects by notice in writing to the appropriate inspector (within the meaning of *section 950*) to disclaim all allowances under that Chapter in respect of that capital expenditure.

(*b*) An election under *paragraph (a)* shall be included in the return required to be made by the person concerned under *section 951* for the first year of assessment or the first accounting period, as the case may be, for which an allowance would but for *subsection (6)* have been made to that person under *Chapter 1* of *Part 9* in respect of that capital expenditure.

(*c*) An election under *paragraph (a)* shall be irrevocable.

(*d*) A person who has made an election under *paragraph (a)* shall furnish a copy of that election to any person (in this paragraph referred to as ''the second-mentioned person'') to whom the person grants a qualifying lease in respect of the qualifying premises, and the second-mentioned person shall include the copy in the return required to be made by the second-mentioned person under *section 951* for the year of assessment or accounting period, as the case may be, in which rent is first payable by the second-mentioned person under the qualifying lease in respect of the qualifying premises.

(6) Where a person who has incurred capital expenditure in the qualifying period on the construction or refurbishment of a building or structure in use for the purposes specified in *section 268(1)(d)* makes an election under *subsection (5)(a)*, then, notwithstanding any other provision of the Tax Acts—

(*a*) no allowance under *Chapter 1* of *Part 9* shall be made to the person in respect of that capital expenditure,

(*b*) on the occurrence, in relation to the building or structure, of any of the events referred to in *section 274(1)*, the residue of expenditure (within the meaning of *section 277*) in relation to that capital expenditure shall be deemed to be nil, and

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(*c*) *section 279* shall not apply in the case of any person who buys the relevant interest (within the meaning of *section 269*) in the building or structure.

(7) For the purposes of determining, in relation to *paragraph (a)(iii)* of the definition of ''qualifying premises'' and *subsections (5)* and *(6)*, whether and to what extent capital expenditure incurred on the construction or refurbishment of a building or structure is incurred or not incurred in the qualifying period, only such an amount of that capital expenditure as is properly attributable to work on the construction or refurbishment of the building or structure actually carried out in the qualifying period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

(8) (*a*) In this subsection—

''current value'', in relation to minimum lease payments, means the value of those payments discounted to their present value at a rate which, when applied at the inception of the lease to—

(i) those payments, including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee, and

(ii) any unguaranteed residual value of the qualifying premises, excluding any part of such value for which the lessor will be accountable to the lessee,

produces discounted present values the aggregate amount of which equals the amount of the fair value of the qualifying premises;

''fair value'', in relation to a qualifying premises, means an amount equal to such consideration as might be expected to be paid for the premises on a sale negotiated on an arm's length basis less any grants receivable towards the purchase of the qualifying premises;

''inception of the lease'' means the earlier of the time the qualifying premises is brought into use or the date from which rentals under the lease first accrue;

''minimum lease payments'' means the minimum payments over the remaining part of the term of the lease to be paid to the lessor, and includes any residual amount to be paid to the lessor at the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee;

''unguaranteed residual value'', in relation to a qualifying premises, means that part of the residual value of that premises at the end of a term of a lease, as estimated at the inception of the lease, the realisation of which by the lessor is not assured or is guaranteed solely by a person connected with the lessor.

(*b*) A finance lease, that is—

(i) a lease in respect of a qualifying premises where, at the inception of the lease, the aggregate of the current value of the minimum lease payments (including any initial payment but excluding any payment or part of any payment for which the lessor will be accountable to the lessee) payable by the lessee in relation to the lease amounts to 90 per cent or more of the fair value of the qualifying premises, or

(ii) a lease which in all the circumstances is considered to provide in substance for the lessee the risks and benefits associated with ownership of the qualifying premises other than legal title to that premises,

shall not be a qualifying lease for the purposes of this section.

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA97 s57(1) to (3) and (5)]

371.—(1) In this section—

''qualifying expenditure'', in relation to an individual, means an amount equal to the amount of the expenditure incurred by the individual on the construction or, as the case may be, refurbishment of a qualifying premises which is a qualifying owner-occupied dwelling in relation to the individual after deducting from that amount of expenditure any sum in respect of or by reference to—

(*a*) that expenditure,

(*b*) the qualifying premises, or

(*c*) the construction or, as the case may be, refurbishment work in respect of which that expenditure was incurred,

which the individual has received or is entitled to receive, directly or indirectly, from the State, any board established by statute or any public or local authority;

''qualifying owner-occupied dwelling'', in relation to an individual, means a qualifying premises which is first used, after the qualifying expenditure has been incurred, by the individual as his or her only or main residence;

''qualifying premises'', in relation to the incurring of qualifying expenditure, means, subject to *subsections (2)* and *(3)* of *section 372*, a house—

(*a*) the site of which is wholly within a qualifying area,

(*b*) which is used solely as a dwelling,

(*c*) in respect of which, if it is not a new house (for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979) provided for sale, there is in force a certificate of reasonable cost the amount specified in which in respect of the cost of construction or, as the case may be, refurbishment of the house is not less than the expenditure actually incurred on such construction or refurbishment, as the case may be, and

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(*d*) the total floor area of which is not less than 38 square metres and not more than 125 square metres;

''refurbishment'', in relation to a building, means either or both of the following—

(*a*) the carrying out of any works of construction, reconstruction, repair or renewal, and

(*b*) the provision or improvement of water, sewerage or heating facilities,

where the carrying out of such works or the provision of such facilities is certified by the Minister for the Environment and Local Government, in any certificate of reasonable cost granted by that Minister in relation to any house contained in the building, to have been necessary for the purposes of ensuring the suitability as a dwelling of any house in the building and whether or not the number of houses in the building, or the shape or size of any such house, is altered in the course of such refurbishment;

(2) Subject to *subsection (3)*, where an individual, having made a claim in that behalf, proves to have incurred qualifying expenditure in a year of assessment, the individual shall be entitled, for that year of assessment and for any of the 9 subsequent years of assessment in which the qualifying premises in respect of which the individual incurred the qualifying expenditure is the only or main residence of the individual, to have a deduction made from his or her total income of an amount equal to—

(*a*) in the case where the qualifying expenditure has been incurred on the construction of the qualifying premises, 5 per cent of the amount of that expenditure, or

(*b*) in the case where the qualifying expenditure has been incurred on the refurbishment of the qualifying premises, 10 per cent of the amount of that expenditure.

(3) Where qualifying expenditure in relation to a qualifying premises is incurred by 2 or more persons, each of those persons shall be treated as having incurred the expenditure in the proportions in which they actually bore the expenditure, and the expenditure shall be apportioned accordingly.

(4) *Section 372* shall apply for the purposes of supplementing this section.

Provisions supplementary to *section 371*.

[FA97 s58]

372.—(1) In *section 371*—

''certificate of reasonable cost'' means a certificate granted by the Minister for the Environment and Local Government for the purposes of *section 371* stating that the amount specified in the certificate in relation to the cost of construction or refurbishment of the house to which the certificate relates appears to that Minister at the time of the granting of the certificate and on the basis of the information available to that Minister at that time to be reasonable, and section 18 of the Housing (Miscellaneous Provisions) Act, 1979, shall, with any necessary modifications, apply to a certificate of reasonable cost as if it were a certificate of reasonable value within the meaning of that section;

"house" includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant to or usually enjoyed with that building or part of a building;

"total floor area" means the total floor area of a house measured in the manner referred to in section 4(2)(*b*) of the Housing (Miscellaneous Provisions) Act, 1979.

(2) (*a*) A house shall not be a qualifying premises for the purposes of *section 371*, in so far as it applies to expenditure other than expenditure on refurbishment, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 4 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards of construction of houses and the provision of water, sewerage and other services in houses.

(*b*) A house shall not be a qualifying premises for the purposes of *section 371*, in so far as it applies to expenditure on refurbishment, unless it complies with such conditions, if any, as may be determined by the Minister for the Environment and Local Government from time to time for the purposes of section 5 of the Housing (Miscellaneous Provisions) Act, 1979, in relation to standards for improvements of houses and the provision of water, sewerage and other services in houses.

(*c*) A house shall not be a qualifying premises for the purposes of *section 371* unless the house or, in a case where the house is one of a number of houses in a single development, the development of which it is a part complies with such guidelines as may from time to time be issued by the Minister for the Environment and Local Government, with the consent of the Minister for Finance, for the purposes of furthering the objectives of the Urban Renewal Act, 1986, and, without prejudice to the generality of the foregoing, such guidelines may include provisions in relation to all or any one or more of the following—

(i) the design and the construction of, conversion into, refurbishment of, or, as the case may be, construction or refurbishment of, houses,

(ii) the total floor area and dimensions of rooms within houses, measured in such manner as may be determined by the Minister for the Environment and Local Government,

(iii) the provision of ancillary facilities and amenities in relation to houses, and

(iv) the balance to be achieved between houses of different types and sizes within a single development of 2 or more houses or within such a development and its general vicinity having regard to the housing existing or proposed in that vicinity.

(3) A house shall not be a qualifying premises for the purposes of *section 371* unless persons authorised in writing by the Minister for

the Environment and Local Government for the purposes of that section are permitted to inspect the house at all reasonable times on production, if so requested by a person affected, of their authorisations.

(4) For the purposes of *section 371*, references in that section to the construction or refurbishment of any premises shall be construed as including references to the development of the land on which the premises is situated or which is used in the provision of gardens, grounds, access or amenities in relation to the premises and, without prejudice to the generality of the foregoing, as including in particular—

(*a*) demolition or dismantling of any building on the land,

(*b*) site clearance, earth moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

(*c*) walls, power supply, drainage, sanitation and water supply, and

(*d*) the construction of any outhouses or other buildings or structures for use by the occupants of the premises or for use in the provision of amenities for the occupants.

(5) (*a*) For the purposes of determining, in relation to any claim under *section 371(2)*, whether and to what extent expenditure incurred on construction or refurbishment of a qualifying premises is incurred or not incurred during the qualifying period, only such an amount of that expenditure as is properly attributable to work on the construction or refurbishment of the premises actually carried out during the qualifying period shall be treated as having been incurred during that period.

(*b*) Where by virtue of *subsection (4)* expenditure on the construction or refurbishment of a qualifying premises includes expenditure on the development of any land, *paragraph (a)* shall apply with any necessary modifications as if the references in that paragraph to the construction or refurbishment of the qualifying premises were references to the development of such land.

(6) For the purposes of *section 371* other than the purposes mentioned in *subsection (5)(a)*, expenditure incurred on the construction or refurbishment of a qualifying premises shall be deemed to have been incurred on the earliest date after the expenditure was actually incurred on which the premises is in use as a dwelling.

(7) An appeal to the Appeal Commissioners shall lie on any question arising under this section or under *section 371* (other than a question on which an appeal lies under section 18 of the Housing (Miscellaneous Provisions) Act, 1979) in the like manner as an appeal would lie against an assessment to income tax or corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

PART 11

CAPITAL ALLOWANCES AND EXPENSES FOR CERTAIN ROAD VEHICLES

Interpretation (*Part 11*).

[FA73 s30(1), (5) and (6); FA76 s31, FA86 s50(1); FA88 s24(1); FA89 s12(1); FA92 s21(1); FA94 s21(1); FA95 s23(1); FA97 s21(1)]

373.—(1) Subject to *section 380(1)*, this Part shall apply to a vehicle which is a mechanically propelled road vehicle constructed or adapted for the carriage of passengers, other than a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.

(2) In this Part, ''the specified amount'', in relation to expenditure incurred on the provision or hiring of a vehicle to which this Part applies, means—

(*a*) £2,500, where the expenditure was incurred on or after the 16th day of May, 1973, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred under a contract entered into before that day where either—

(I) the expenditure was incurred within 12 months after that day, or

(II) the contract was one of hire-purchase or for purchase by instalments,

and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure where the contract of hire-purchase or for purchase by instalments was entered into before that day;

(*b*) £3,500, where the expenditure was incurred after the 28th day of January, 1976, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure under a contract entered into on or before that day;

(*c*) £4,000, where the expenditure was incurred on or after the 6th day of April, 1986, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure under a contract entered into before that day;

(*d*) £6,000, where the expenditure was incurred on or after the 28th day of January, 1988, but such expenditure does not include—

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(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure under a contract entered into before that day;

(*e*) £7,000, where the expenditure was incurred on or after the 26th day of January, 1989, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure under a contract entered into before that day;

(*f*) £10,000, where the expenditure was incurred on or after the 30th day of January, 1992, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure under a contract entered into before that day;

(*g*) £13,000, where the expenditure was incurred on or after the 27th day of January, 1994, on the provision or hiring of a vehicle which on or after that day was first registered in the State under section 131 of the Finance Act, 1992, without having been previously registered in any other State which provides for the registration of a mechanically propelled vehicle, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure incurred under a contract entered into before that day;

(*h*) £14,000, where the expenditure was incurred on or after the 9th day of February, 1995, on the provision or hiring of a vehicle which on or after that day was not a used or secondhand vehicle and was first registered in the State under section 131 of the Finance Act, 1992, without having been previously registered in any other State which provides for the registration of a mechanically propelled vehicle, but such expenditure does not include—

(i) as respects *sections 374*, *375* and *377*, expenditure incurred within 12 months after that day under a contract entered into before that day, and

(ii) as respects *subsections (2)* and *(3)* of *section 378* and *section 379*, expenditure incurred under a contract entered into before that day;

(*i*) £15,000, where the expenditure was incurred on or after the 23rd day of January, 1997, on the provision or hiring of a vehicle which, on or after that date was not a used or secondhand vehicle and was first registered in the State under section 131 of the Finance Act, 1992, without having been previously registered in any other State which duly provides for the registration of a mechanically propelled vehicle.

(3) This Part (other than *section 376*) shall be construed as one with *Part 9*, except that in *section 375* ''capital expenditure'' shall be construed without regard to *section 316(1)*.

Capital allowances for cars costing over certain amount.

[FA73 s25; CTA76 s21(1) and Sch1 par62; FA97 s146(1) and Sch9 PtI par6(1)]

374.—(1) In relation to a vehicle to which this Part applies, *section 284* shall apply as if, for the purpose of *subsection (3)* of that section, the actual cost of the vehicle were taken to be the specified amount where the expenditure incurred on the provision of the vehicle exceeded that amount and, where an allowance which apart from this subsection would be made under *section 284* is to be reduced by virtue of this subsection, any reference in the Tax Acts to an allowance made under *section 284* shall be construed as a reference to that allowance as reduced under this subsection.

(2) In relation to a vehicle to which this Part applies, the allowances under *section 284* to be taken into account for the purposes of *Chapter 2* of *Part 9* in computing the amount of expenditure still unallowed at any time shall be limited to those computed in accordance with *subsection (1)*, and the expenditure incurred on the provision of the vehicle to be taken into account for the purposes of that Chapter shall be limited to the specified amount.

(3) Where the expenditure incurred on the provision of a vehicle to which this Part applies exceeds the specified amount, any balancing allowance or balancing charge shall be computed, in a case where there are sale, insurance, salvage or compensation moneys, as if the amount of those moneys (or, where in consequence of any provision of the Tax Acts other than this subsection some other amount is to be treated as the amount of those moneys, that other amount) were reduced in the proportion which the specified amount bears to the actual amount of that expenditure.

(4) (*a*) Where the expenditure incurred on the provision of a vehicle to which this Part applies exceeds the specified amount and—

(i) the person providing the vehicle (in this section referred to as ''the prior owner'') sells the vehicle or gives it away so that *subsection (5)* of *section 289*, or that subsection as applied by *subsection (6)* of that section, applies in relation to the purchaser or donee,

(ii) the prior owner sells the vehicle and the sale is a sale to which *section 312* applies, or

(iii) in consequence of a succession to the trade or profession of the prior owner, *section 313(1)* applies,

then, in relation to the purchaser, donee or successor, the price which the vehicle would have fetched if sold in the open market or the expenditure incurred by the prior owner on the provision of the vehicle shall be treated for the purposes of *section 289*, *312* or *313* as reduced in the proportion which the specified amount bears to the actual amount of that expenditure, and, in the application of *subsection (3)* to the purchaser, donee or successor, references to the expenditure incurred on the provision of the vehicle shall be construed as references to the expenditure so incurred by the prior owner.

(*b*) Where *paragraph (a)* has applied on any occasion in relation to a vehicle, and no sale or gift of the vehicle has since occurred other than one to which either *section 289* or *312* applies, then, in relation to all persons concerned, the like consequences under *paragraph (a)* shall ensue as respects a gift, sale or succession within *subparagraphs (i)* to *(iii)* of that paragraph which occurs on any subsequent occasion as would ensue if the person who in relation to that sale, gift or succession is the prior owner had incurred expenditure on the provision of the vehicle of an amount equal to the expenditure so incurred by the person who was the prior owner on the first-mentioned occasion.

(5) In the application of *section 290* to a case where the vehicle is the new machinery or plant referred to in that subsection, the expenditure shall be disregarded in so far as it exceeds the specified amount, but without prejudice to the application of *subsections (1)* to *(4)* to the vehicle.

(6) Where the capital expenditure incurred on the provision of a vehicle exceeds the specified amount but under *section 317(2)* any part of that expenditure is to be treated as not having been incurred by a person, the amount which (subject to *subsections (1)* to *(5)*) is to be treated for the purposes of *Part 9* as having been incurred by that person shall be reduced in the proportion which the specified amount bears to the capital expenditure incurred on the provision of the vehicle.

Limit on renewals allowance for cars.

[FA73 s26; CTA76 s140(1) and Sch2 PtI par33 and s164 and Sch3 PtI]

375.—In determining what amount (if any) is allowable—

(*a*) to be deducted in computing profits or gains chargeable to tax under Schedule D,

(*b*) to be deducted from emoluments chargeable to tax under Schedule E, or

(*c*) to be taken into account for the purposes of a management expenses claim under *section 83* or under that section as applied by *section 707*,

in respect of capital expenditure incurred on the provision of a vehicle to which this Part applies, being expenditure exceeding the specified amount, the excess over the specified amount shall be disregarded; but, if on the replacement of the vehicle any amount becomes so allowable in respect of capital expenditure on any other vehicle, any deduction to be made, in determining the last-mentioned amount, for the value or proceeds of sale of the replaced vehicle or otherwise in respect of the replaced vehicle shall be reduced in the

proportion which the specified amount bears to the cost of the replaced vehicle.

Restriction of deduction in respect of running expenses of cars.

[FA76 s32; FA95 s23(2); FA97 s21(2)]

376.—(1) In this section—

''qualifying expenditure'' means the amount of expenditure incurred in relation to a vehicle to which this Part applies, being expenditure which but for this section—

(*a*) would be allowable as a deduction—

(i) in the computation of the profits or gains chargeable to tax under Schedule D of the trade, profession or business in the course of which the vehicle is used, or

(ii) in the computation of the profits or gains chargeable to tax under Schedule E from an office or employment in the performance of the duties of which the vehicle is used,

or

(*b*) would be taken into account for the purposes of a claim in respect of expenses of management under *section 83* or under that section as applied by *section 707*;

''relevant amount'' means—

(*a*) in relation to qualifying expenditure incurred before the 23rd day of January, 1997, £14,000, and

(*b*) in relation to qualifying expenditure incurred on or after the 23rd day of January, 1997, £15,000;

''relevant cost'', in relation to a vehicle provided for the purposes of a trade, profession, business, office or employment, means—

(*a*) in a case where the vehicle is purchased by the person providing it, the actual cost to that person of providing the vehicle, or

(*b*) in a case where the vehicle is not purchased by the person providing it, the retail price of the vehicle at the time it was first provided for use by that person.

(2) (*a*) Where for any year of assessment or accounting period a deduction is claimed by any person in respect of qualifying expenditure and that expenditure is incurred in respect of a vehicle the relevant cost of which exceeds the relevant amount, the amount of the deduction to be allowed in respect of that qualifying expenditure shall be reduced—

(i) subject to *paragraph (b)*, by one-third of the amount by which the relevant cost of the vehicle exceeds the relevant amount, or

(ii) where that person so elects, by an amount which bears to the amount of the qualifying expenditure the same proportion as the excess of the relevant cost of the vehicle over the relevant amount bears to the relevant cost of the vehicle.

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(*b*) Where *paragraph (a)(i)* applies and the period in respect of which the qualifying expenditure is incurred is part only of a year, the amount by which the deduction is to be reduced for that period by virtue of *paragraph (a)(i)* shall be reduced in the proportion which that part of the year bears to a year.

Limit on deductions, etc. for hiring cars.

[FA73 s27]

377.—Where apart from this section the amount of any expenditure on the hiring (otherwise than by means of hire-purchase) of a vehicle to which this Part applies would be allowed to be deducted or taken into account as mentioned in *section 375*, and the retail price of the vehicle at the time it was made exceeded the specified amount, the amount of that expenditure shall be reduced in the proportion which the specified amount bears to that price.

Cars: provisions as to hire-purchase, etc.

[FA73 s28]

378.—(1) In the case of a vehicle to which this Part applies, being a vehicle the retail price of which at the time of the contract in question exceeds the specified amount, *subsections (2)* to *(4)* shall apply.

(2) Where a person, having incurred capital expenditure on the provision of a vehicle to which this Part applies under a contract providing that such person shall or may become the owner of the vehicle on the performance of the contract, ceases to be entitled to the benefit of the contract without becoming the owner of the vehicle, that expenditure shall, in so far as it relates to the vehicle, be disregarded for the purposes of *Chapter 2* of *Part 9* and in determining what amount (if any) is allowable as mentioned in *section 375*.

(3) Where *subsection (2)* applies, all payments made under the contract shall be treated for tax purposes (including in particular for the purposes of *section 377*) as expenditure incurred on the hiring of the vehicle otherwise than by means of hire-purchase.

(4) Where the person providing the vehicle takes it under a hire-purchase contract, then, in apportioning the payments under the contract between capital expenditure incurred on the provision of the vehicle and other expenditure, so much of those payments shall be treated as such capital expenditure as is equal to the price which would be chargeable, at the time the contract is entered into, to the person providing the vehicle if that person were acquiring it on a sale outright.

Cars: provisions where hirer becomes owner.

[FA73 s29]

379.—Where, having hired (otherwise than by means of hire-purchase) a vehicle to which this Part applies, a person subsequently becomes the owner of the vehicle and the retail price of the vehicle at the time it was made exceeded the specified amount, then, for the purposes of the Tax Acts (and in particular *sections 374* and *377*)—

(*a*) so much of the aggregate of the payments for the hire of the vehicle and of any payment for the acquisition of the vehicle as does not exceed the retail price of the vehicle at the time it was made shall be treated as capital expenditure incurred on the provision of the vehicle, and as having been incurred when the hiring began, and

(*b*) the payments to be treated as expenditure on the hiring of the vehicle shall be rateably reduced so as to amount in the aggregate to the balance.

380.—(1) *Sections 374*, *375* and *377*, *subsections (2)* and *(3)* of *section 378* and *section 379* shall not apply where a vehicle is provided or hired, wholly or mainly, for the purpose of hire to or the carriage of members of the public in the ordinary course of trade.

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Provisions supplementary to *sections 374* to *379.*

[FA73 s30(2) to (4); CTA76 s164 and Sch3 PtII]

(2) *Sections 374* and *375*, *subsections (2)* and *(3)* of *section 378* and *section 379* shall not apply in relation to a vehicle provided by a person who is a manufacturer of a vehicle to which this Part applies, or of parts or accessories for such a vehicle, if the person shows that the vehicle was provided solely for the purpose of testing the vehicle or parts or accessories for such vehicle; but, if during the period of 5 years beginning with the time when the vehicle was provided, such person puts it to any substantial extent to a use which does not serve that purpose only, this subsection shall be deemed not to have applied in relation to the vehicle.

(3) (*a*) There shall be made all such additional assessments and adjustments of assessments as may be necessary for the purpose of applying *subsections (2)* and *(3)* of *section 378*, *section 379* and *subsection (2)*, and any such additional assessments or adjustments of assessments may be made at any time.

(*b*) In the case of the death of a person who, if he or she had not died, would under *subsections (2)* and *(3)* of *section 378*, *section 379* and *subsection (2)* have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged on his or her executors or administrators and shall be a debt due from and payable out of his or her estate.

PART 12

Principal Provisions Relating to Loss Relief, Treatment of Certain Losses and Capital Allowances, and Group Relief

CHAPTER 1

Income tax: loss relief

381.—(1) Subject to this section, where in any year of assessment any person has sustained a loss in any trade, profession or employment carried on by that person either solely or in partnership, that person shall be entitled, on making a claim in that behalf, to such repayment of income tax as is necessary to secure that the aggregate amount of income tax for the year ultimately borne by that person will not exceed the amount which would have been borne by that person if the income of that person had been reduced by the amount of the loss.

Right to repayment of tax by reference to losses.

[ITA67 s307(1), (1AAA) and (2) to (6); F(MP)A68 s3(2) and Sch PtI; FA74 s26; FA79 s17; FA80 s19 and Sch1 PtIII; FA97 s146(2) and Sch9 PtII]

(2) This section shall not apply to any loss sustained in any year of assessment by the owner of a stallion from the sale of services of mares by the stallion or of rights to such services or by the part-owner of a stallion from the sale of such services or such rights.

(3) (*a*) In this subsection, ''appropriate income'' means either earned or unearned income according as income arising during the same period as the loss to the person sustaining the loss from the same activity would have been that person's earned or unearned income.

(b) For the purposes of *subsection (1)*, the amount of income tax which would have been borne if income had been reduced by the amount of a loss shall be computed—

(i) where the loss has been sustained by an individual, on the basis of treating the loss as reducing—

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(I) firstly, the appropriate income of the individual,

(II) secondly, the other income of the individual,

(III) thirdly, in a case where the individual, or, being a husband or wife, as the case may be, the individual's spouse, is assessed to tax in accordance with *section 1017*, the appropriate income of the individual's wife or husband, as the case may be, and

(IV) finally, the other income of the individual's wife or husband, as the case may be, and

(ii) where the loss has been sustained in a trade carried on by a body corporate, on the basis of treating the loss as reducing—

(I) firstly, the income of the body corporate from profits or gains of the trade in which the loss was sustained, and

(II) then, the other income of the body corporate.

(4) The amount of a loss sustained in an activity shall for the purposes of this section be computed in the like manner as profits or gains arising or accruing from the activity would be computed under the relevant provisions of the Income Tax Acts.

(5) Where repayment has been made to a person for any year under this section—

(*a*) no portion of the loss which in the computation of the repayment was treated as reducing the person's income shall be taken into account in computing the amount of an assessment for any subsequent year, and

(*b*) so much of the loss as was required by *subsection (3)* to be treated as reducing income of a particular class or income from a particular source shall for the purposes of the Income Tax Acts be regarded as a deduction to be made from income of that class or from income from that source, as the case may be, in computing the person's total income for the year.

(6) Any claim to repayment under this section shall be made, in a form prescribed by the Revenue Commissioners, not later than 2 years after the end of the year of assessment and shall be made to and determined by the inspector; but any person aggrieved by any determination of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after notification to that person of the determination, appeal to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (6)* as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

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Right to carry forward losses to future years.

[ITA67 s309(1) and (2); FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par1(21)]

382.—(1) Where, in any trade or profession carried on by a person, either solely or in partnership, such person has sustained a loss (to be computed in the like manner as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given under *section 381* or under any other provision of the Income Tax Acts, such person may claim that any portion of the loss for which relief has not been so given shall be carried forward and, in so far as may be, deducted from or set off against the amount of profits or gains on which such person is assessed under Schedule D in respect of that trade or profession for any subsequent year of assessment, except that, if and in so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(2) Any relief under this section shall be given as far as possible from the assessment for the first subsequent year of assessment and, in so far as it cannot be so given, from the assessment for the next year of assessment and so on.

Relief under Case IV for losses.

[ITA67 s310; FA97 s146(1) and Sch9 PtI par1(22)]

383.—(1) Where in any year of assessment a person sustains a loss in any transaction (being a transaction of such kind that, if any profits had arisen from the transaction, such person would have been liable to be assessed in respect of those profits under Case IV of Schedule D) in which such person engages, whether solely or in partnership, such person may claim for the purposes of the Income Tax Acts that the amount of that loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which such person is assessed under Case IV of Schedule D for that year and that any portion of the loss for which relief is not so given shall be carried forward and, in so far as may be, deducted from or set off against the amount of profits or gains on which such person is assessed under that Case for any subsequent year of assessment.

(2) In the application of this section to a loss sustained by a partner in a partnership, ''the amount of profits or gains on which such person is assessed'' shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed under Case IV of Schedule D as the partner would be required under the Income Tax Acts to include in a return of the partner's total income for that year.

(3) Any relief under this section by means of carrying forward any portion of a loss shall be given as far as possible from the assessment for the first subsequent year of assessment and, in so far as it cannot be so given, from the assessment for the next year of assessment and so on.

Relief under Case V for losses.

[ITA67 s89; FA69 s24; FA90 s18(1)(b) and (c); FA97 s146(1) and Sch9 PtI par1(7)]

384.—(1) In this section, ''the person chargeable'' has the same meaning as in *Chapter 8* of *Part 4*.

(2) Where in any year of assessment the aggregate amount of the deficiencies computed in accordance with *section 97(1)* exceeds the aggregate of the surpluses as so computed, the excess shall be carried forward and, in so far as may be, deducted from or set off against the amount of profits or gains on which the person chargeable is assessed under Case V of Schedule D for any subsequent year of assessment, and if income tax has been overpaid the amount overpaid shall be repaid.

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(3) Any relief under this section shall be given as far as possible from the assessment for the first subsequent year of assessment and, in so far as it cannot be so given, from the assessment for the next year of assessment and so on.

Terminal loss.

[ITA67 s311]

385.—(1) Where a trade or profession is permanently discontinued, and any person carrying on the trade or profession either solely or in partnership immediately before the time of the discontinuance has sustained in the trade or profession a loss to which this section applies (in this Chapter referred to as a ''terminal loss''), then, subject to *sections 386* to *389*, that person may claim for the purposes of the Income Tax Acts that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which that person has been charged to income tax under Schedule D in respect of the trade or profession for the 3 years of assessment last preceding that in which the discontinuance occurs, and there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to the claim.

(2) Relief shall not be given in respect of the same matter both under this section and under any other provision of the Income Tax Acts.

(3) Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.

Determination of terminal loss.

[ITA67 s312; FA96 s131(2) and Sch5 PtI par1(16)]

386.—(1) In this section, ''the relevant capital allowances'', in relation to any year of assessment, means the capital allowances to be made in charging the profits or gains of the trade or profession for that year, excluding amounts carried forward from an earlier year, and for the purposes of *paragraphs (a)* and *(c)* of *subsection (2)* the amount of a loss shall be computed in the like manner as profits or gains are computed under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

(2) The question whether a person has sustained any, and if so what, terminal loss in a trade or profession shall for the purposes of *section 385* be determined by taking the amounts, if any, of the following (in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to income tax)—

(*a*) the loss sustained by the person in the trade or profession in the year of assessment in which it is permanently discontinued;

(*b*) the relevant capital allowances for that year of assessment;

(*c*) the loss sustained by the person in the trade or profession in the part of the preceding year of assessment beginning 12 months before the date of the discontinuance;

(*d*) the same fraction of the relevant capital allowances for that preceding year of assessment as the part beginning 12 months before the date of the discontinuance is of a year.

Calculation of amount of profits or gains for purposes of terminal loss.

[ITA67 s313(1) and (2)]

387.—(1) The amount of the profits or gains on which a person has been charged to income tax for any year of assessment in respect of the profits or gains of a trade or profession shall, for the purposes of relief under *section 385* from the assessment for that year, be taken to be the full amount of the profits or gains on which the person was assessable for that year reduced by—

(*a*) a sum equal to the total amount of the deductions, if any, in respect of capital allowances made in charging the profits or gains,

(*b*) a sum equal to the amount of the deductions, if any, in respect of payments made or losses sustained, which were to be made from the profits or gains in computing for income tax purposes the person's total income for the year, or would have been so made if the person were an individual, and

(*c*) in the case of a body of persons, a sum equal to so much of the profits or gains as was applied in payment of dividends;

but, where any deduction mentioned in *paragraph (b)* may be treated in whole or in part either as having been made from the profits or gains or as having been made from other income, the deduction shall, as far as may be, be treated for the purposes of this subsection as made from the other income.

(2) Where under *subsection (1)(b)* the amount of the profits or gains on which a person was assessable for any year is reduced by reference to a payment made by the person, a like reduction shall be made in the amount of the terminal loss for which relief may be given under *section 385* for earlier years unless the payment was made wholly and exclusively for the purposes of the trade or profession.

Meaning of "permanently discontinued" for purposes of terminal loss.

[ITA67 s314(1)]

388.—For the purposes of *sections 385* to *389*, a trade or profession shall be treated as permanently discontinued and a new trade or profession set up or commenced when it is so treated for the purposes of *section 69*, or where by reference to *section 1008(1)(a)(ii)* a several trade of a partner has been deemed to have been permanently discontinued; but—

(*a*) a person who continues to be engaged in carrying on the trade or profession immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance, and

(*b*) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which the person was charged in respect of the same trade or profession for a period before a previous discontinuance, if the person has been continuously engaged in carrying on the trade or profession between the 2 discontinuances, and, in the person's case, if the previous discontinuance occurred within 12 months before the others, it shall be disregarded for the purposes of *section 386(2)*.

Determination of claim for terminal loss.

[ITA67 s315; F(MP)A68 s3(2) and Sch PtI]

389.—(1) Any claim under *section 385* shall be made to and determined by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to that person of the decision, appeal to the Appeal Commissioners.

(2) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (1)* as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax

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Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

Amount of assessment made under *section 238* to be allowed as a loss for certain purposes.

[ITA67 s316; FA96 s132(1) and Sch5 PtI par 1(17); FA97 s29(3), (5) and (6)]

390.—(1) Subject to this section, where a person has been assessed to income tax for a year of assessment under *section 238* in respect of a payment made wholly and exclusively for the purposes of a trade or profession, the amount on which income tax has been paid under that assessment shall for the purposes of *sections 382* and *385* to *389* be treated as if it were a loss sustained in that trade or profession and relief in respect of such loss shall be allowed accordingly; but no relief shall be allowed under this section in respect of any such payment or any part of such payment which is not ultimately borne by the person assessed or which is charged to capital.

(2) (*a*) This subsection shall apply to expenditure incurred for the purposes of a trade or profession which is set up and commenced on or after the 22nd day of January, 1997.

(*b*) Where an individual who has set up and commenced a trade or profession has been assessed to tax for any year of assessment under *section 238* in respect of a payment made—

(i) before the time the trade or profession has been set up and commenced, and

(ii) wholly and exclusively for the purposes of the trade or profession,

then, this section shall apply in relation to the payment as it would apply if the payment were made at that time.

(*c*) An allowance or deduction shall not be made under any provision of the Tax Acts, other than this section, in respect of any expenditure or payment which is treated under this section as incurred on the day on which a trade or profession is set up and commenced.

(3) This section shall not apply to any sum assessed under *section 238* by virtue of *section 246(2)*, *757* or *1041(1)*.

CHAPTER 2

Income tax: loss relief — treatment of capital allowances

Interpretation (*Chapter 2*).

[ITA67 s317(1), (2)(b), (c) and (d) and s322; FA69 s65(1) and Sch5 PtI; FA75 s33(2) and Sch1 PtII; FA97 s146(2) and Sch9 PtII]

391.—(1) In this Chapter—

''balancing charges'' means balancing charges under *Part 9* or *Chapter 1* of *Part 29*;

''year of claim'', in relation to any claim under *section 381*, means the year of assessment for which the claim is made.

(2) For the purposes of this Chapter—

(*a*) any reference to capital allowances or balancing charges for a year of assessment shall be construed as a reference to those to be made in charging the profits or gains of the trade for that year, excluding, in the case of allowances, amounts carried forward from an earlier year,

(*b*) effect shall be deemed to be given in charging the profits or gains of the trade for a year of assessment to allowances carried forward from an earlier year before it is given to allowances for the year of assessment, and

(*c*) any reference to an amount of capital allowances non-effective in a year of assessment shall be construed as referring to the amount to which effect cannot be given in charging the profits or gains of the trade for that year by reason of an insufficiency of profits or gains.

(3) This Chapter shall apply, with any necessary modifications, in relation to a profession or employment as it applies in relation to a trade.

Option to treat capital allowances as creating or augmenting a loss.

392.—(1) Subject to this Chapter, any claim made under *section 381* for relief in respect of a loss sustained in any trade in any year of assessment (in this Chapter referred to as ''the year of the loss'') may require the amount of the loss to be determined as if an amount equal to the capital allowances for the year of the loss were to be deducted in computing the profits or gains or losses of the trade in the year of the loss, and a claim may be so made notwithstanding that apart from those allowances a loss had not been sustained in the trade in the year of the loss.

[ITA67 s318; FA97 s146(1) and Sch9 PtI par1(23)]

(2) Where on any claim made by virtue of this Chapter relief is not given under *section 381* for the full amount of the loss determined under *subsection (1)*, the relief shall be referred, as far as may be, to the loss sustained in the trade rather than to the capital allowances in respect of the trade.

Extent to which capital allowances to be taken into account for purposes of *section 392.*

393.—(1) The capital allowances for any year of assessment shall be taken into account under *section 392(1)* only if and in so far as such capital allowances are not required to offset balancing charges for the year, and relief shall not be given by reference to the capital allowances so taken into account in respect of an amount greater than the amount non-effective in the year of assessment for which the claim is made.

[ITA67 s319; FA97 s146(1) and Sch9 PtI par1(24)]

(2) For the purposes of *subsection (1)*, the capital allowances for any year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges are to be made after deducting from that amount the amount, if any, of capital allowances for earlier years which is carried forward to that year and would, without the balancing charges, be non-effective in that year.

Effect of giving relief under *section 381* by reference to capital allowances.

394.—Where for any year of claim relief is given under *section 381* by reference to any capital allowances, then, for the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, and any relief previously given for a subsequent year on the basis that effect had not been so given to those allowances shall be adjusted, where necessary, by additional assessment.

[ITA67 s320]

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Relief affected by subsequent changes of law, etc.

[ITA67 s321; FA96 s132(1) and Sch5 PtI par1(18)]

395.—(1) Where relief given to a person by virtue of *section 392(1)* for any year of claim is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened shall, if not otherwise made good, be recovered from the person by assessment under Case IV of Schedule D.

(2) For the purpose of an assessment mentioned in *subsection (1)*, the amount of capital allowances by reference to which the repayment was made, or an appropriate part of that amount, shall be deemed to be income chargeable under Case IV of Schedule D for the year of claim and shall be included in the return of income which the person is required to make under the Income Tax Acts for that year.

CHAPTER 3

Corporation tax: loss relief

Relief for trading losses other than terminal losses.

[CTA76 s16(1) to (8) and (10); FA92 s46(1)(b); FA93 s22]

396.—(1) Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods, and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under *subsection (2)* or *section 455(3)*, be relieved against income or profits of an earlier accounting period.

(2) Where in any accounting period a company carrying on a trade incurs a loss in the trade, then, subject to *subsection (4)*, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period and, if the company was then carrying on the trade and the claim so requires, of preceding accounting periods ending within the time specified in *subsection (3)*, and, subject to that subsection and to any relief for an earlier loss, the profits of any of those periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.

(3) The time referred to in *subsection (2)* shall be a time immediately preceding the accounting period first mentioned in *subsection (2)* equal in length to the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not exceed a part of those profits proportionate to the part of the period falling within that time.

(4) *Subsection (2)* shall not apply to trades within Case III of Schedule D.

(5) (*a*) Subject to *paragraph (b)*, the amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the like manner as trading income from the trade in that period would have been computed.

(*b*) Where expenses of management of an assurance company (within the meaning of *section 706*) are deductible under *section 83* from the profits of the accounting period in which they were incurred, or of any accounting period subsequent to that period, those expenses shall not be taken into account in computing a loss incurred in a trade of the company. PT.12 S.396

(6) For the purposes of this section, ''trading income'', in relation to any trade, means the income which is to be, or would be, included in respect of the trade in the total profits of the company; but where in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or III of Schedule D, and in any later accounting period to which the loss or any part of the loss is carried forward under *subsection (1)* relief in respect of the loss or that part of the loss cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient, any interest or dividends on investments which would be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of *subsection (1)* as if they were trading income of the trade.

(7) Where in an accounting period the charges on income paid by a company—

(*a*) exceed the amount of the profits against which they are deductible, and

(*b*) include payments made wholly and exclusively for the purposes of a trade carried on by the company,

then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of *subsection (1)* be deductible as if they were trading expenses of the trade.

(8) In this section, references to a company carrying on a trade are references to the company carrying on the trade so as to be within the charge to corporation tax in respect of the trade.

(9) A claim under *subsection (2)* shall be made within 2 years from the end of the accounting period in which the loss is incurred.

Relief for terminal loss in a trade.

[CTA76 s18(1) to (3)]

397.—(1) (*a*) Where a company ceasing to carry on a trade has, in any accounting period falling wholly or partly within the previous 12 months, incurred a loss in the trade, the company may claim to set the loss off for the purposes of corporation tax against trading income from the trade in accounting periods falling wholly or partly within the 3 years preceding those 12 months (or within any shorter period throughout which the company has carried on the trade) and, subject to *subsections (2)* and *(3)* and to any relief for earlier losses, the trading income of any of those accounting periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against income of a later accounting period.

(*b*) Relief shall not be given under this subsection in respect of any loss in so far as the loss has been or

can be otherwise taken into account so as to reduce or relieve any charge to tax.

(2) Where a loss is incurred in an accounting period falling partly outside the 12 months mentioned in *subsection (1)*, relief shall be given under that subsection in respect of a part only of that loss proportionate to the part of the period falling within those 12 months, and the amount of the reduction which may be made under that subsection in the trading income of an accounting period falling partly outside the 3 years mentioned in that subsection shall not exceed a part of that income proportionate to the part of the period falling within those 3 years.

(3) *Subsections (5)* to *(8)* of *section 396* shall apply for the purposes of this section as they apply for the purposes of *section 396(1)*, and relief shall not be given under this section in respect of a loss incurred in a trade so as to interfere with any relief under *section 243* in respect of payments made wholly and exclusively for the purposes of that trade.

Computation of losses attributable to exemption of income from certain securities.

[FA92 s42(2) and (3)(b) (apart from proviso thereto)]

398.—(1) Notwithstanding *subsection (5)* of *section 396* or *subsection (3)* of *section 397*, in ascertaining for the purposes of those sections whether and to what extent a company has incurred a loss in carrying on a trade in the State through a branch or agency, the interest on, and other profits or gains from, a security held by or for the branch or agency shall be treated as a trading receipt of the trade if such interest or other profits or gains would, if *sections 43*, *49* and *50* had not been enacted, have been so treated, or have been included in an amount so treated.

(2) *Subsection (1)* shall apply for the purposes of ascertaining whether and to what extent a company has incurred a loss where apart from that subsection the company would be treated as having incurred a loss and that loss would be—

(*a*) set-off against the trading income or profits (whether of that company or any other company) of, or

(*b*) incurred in,

an accounting period.

Losses in transactions from which income would be chargeable under Case IV or V of Schedule D.

[CTA76 s19]

399.—(1) (*a*) Where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case IV of Schedule D, the company may claim to set the loss off against the amount of any income arising from such transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period, and the company's income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.

(*b*) Where a company sustains a loss in a transaction which, if profit had arisen from it, would be chargeable to tax by virtue of *subsection (3)* or *(4)* of *section 814*, then, if the company is chargeable to

tax in respect of the interest payable on the amount of money the right to which has been disposed of, the amount of that interest shall be included in the amounts against which the company may claim to set off the amount of its loss under this subsection.

(2) (*a*) Where in any accounting period a company is within the charge to corporation tax under Case V of Schedule D and the aggregate of the deficiencies, computed in accordance with *section 97(1)*, exceeds the aggregate of the surpluses as so computed, the excess may, on a claim being made in that behalf, be deducted from or set off, as far as may be, against the amount of any income in respect of which the company is assessed to corporation tax under Case V of Schedule D for previous accounting periods ending within the time specified in *subsection (3)*, and, subject to that subsection and to any relief for an earlier excess of deficiencies, that income of any of those periods shall then be treated as reduced, as far as may be, by the amount of the excess, and any portion of the excess for which relief is not so given shall be set off against the income in respect of which the company is assessed to corporation tax under Case V of Schedule D for any subsequent accounting period.

(*b*) Any relief under this subsection by means of carrying forward any portion of the excess referred to in *paragraph (a)* shall be given as far as possible from the first subsequent assessment and, in so far as it cannot be so given, then from the next assessment and so on.

(3) The time referred to in *subsection (2)* shall be a time immediately preceding the accounting period first mentioned in *subsection (2)* equal in length to the accounting period in which the excess of deficiencies occurred; but the amount of the reduction which may be made under that subsection in the income of an accounting period falling partly before that time shall not exceed a part of that income proportionate to the part of the period falling within that time.

(4) A claim under *subsection (2)* shall be made within 2 years from the end of the accounting period in which the excess of deficiencies was incurred.

Company reconstructions without change of ownership.

[CTA76 s20]

400.—(1) For the purposes of this section—

(*a*) a trade carried on by 2 or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;

(*b*) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust;

(*c*) a trade or interest in a trade belonging to a company shall, where the result of so doing is that *subsection (5)* or *(10)* applies in relation to an event, be treated in any of the ways permitted by *subsection (2)*.

(2) For the purposes of this section, a trade or interest in a trade which belongs to a company engaged in carrying on the trade may be regarded—

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(*a*) as belonging to the persons owning the ordinary share capital of the company and as belonging to those persons in proportion to the amount of their holdings of that capital, or

(*b*) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to those persons in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with that person's or that body of persons' wishes, be regarded as owned by that person or body of persons having that power.

(3) For the purposes of *subsection (2)*—

(*a*) references to ownership shall be construed as references to beneficial ownership;

(*b*) a company shall be deemed to be a subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;

(*c*) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with *subsections (5)* to *(10)* of *section 9*;

(*d*) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

(4) In determining for the purposes of this section whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose ''relative'' means husband, wife, ancestor, lineal descendant, brother or sister.

(5) (*a*) Where, on a company (in this section referred to as ''the predecessor'') ceasing to carry on a trade, another company (in this section referred to as ''the successor'') begins to carry on the trade and—

(i) on or at any time within 2 years after that event, the trade or an interest amounting to not less than a 75 per cent share in the trade belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event, and

(ii) the trade is not, within the period taken for the comparison under *subparagraph (i)*, carried on otherwise than by a company within the charge to tax in respect of the trade,

then, the Corporation Tax Acts shall apply subject to *subsections (6)* to *(9)*.

(*b*) In *subparagraphs (i)* and *(ii)* of *paragraph (a)*, references to the trade shall apply also to any other trade of which the activities comprise the activities of the first-mentioned trade.

(6) The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by *sections 307* and *308*; but there shall be made to or on the successor in accordance with those sections all such allowances and charges as would, if the predecessor had continued to carry on the trade, have been made to or on the predecessor, and the amount of any such allowance or charge shall be computed as if the successor had been carrying on the trade since the predecessor began to do so and as if everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

(7) The predecessor shall not be entitled to relief under *section 397* except as provided by *subsection (9)* and, subject to any claim made by the predecessor under *section 396(2)*, the successor shall be entitled to relief under *section 396(1)*, as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to claim relief if the predecessor had continued to carry on the trade.

(8) Any securities within the meaning of *section 748* which, at the time when the predecessor ceases to carry on the trade, form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.

(9) On the successor ceasing to carry on the trade—

(*a*) if the successor does so within 4 years of succeeding to the trade, any relief which might be given to the successor under *section 397* on the successor ceasing to carry on the trade may, in so far as that relief cannot be given to the successor, be given to the predecessor as if the predecessor had incurred the loss (including any amount treated as a loss under *section 397(3)*), and

(*b*) if the successor ceases to carry on the trade within one year of succeeding to the trade, relief may be given to the predecessor under *section 397* in respect of any loss incurred by the predesessor (or any amount treated as such a loss under *section 397(3)*);

but, for the purposes of *section 397* as it applies by virtue of this subsection to the giving of relief to the predecessor, the predecessor shall be treated as ceasing to carry on the trade when the successor does so.

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(10) Where the successor ceases to carry on the trade within the period taken for the comparison under *subsection (5)(a)(i)* and, on its doing so, a third company begins to carry on the trade, then, no relief shall be given to the predecessor by virtue of *subsection (9)* by reference to that event; but, subject to that, *subsections (6)* to *(9)* shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

(*a*) in relation to the earlier event, ''successor'' shall include the successor at either event, and

(*b*) in relation to the later event, ''predecessor'' shall include the predecessor at either event,

and, if the conditions of this subsection are thereafter again satisfied, this subsection shall apply again in the like manner.

(11) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, that part of the trade carried on by the successor shall for the purposes of this subsection be treated as a separate trade, if the effect of so treating it is that *subsection (5)* or *(10)* applies to that event in relation to that separate trade, and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for the purposes of this section be treated as having carried on that part of its trade as a separate trade, if the effect of so treating it is that *subsection (5)* or *(10)* applies to that event in relation to that separate trade.

(12) Where under *subsection (11)* any activities of a company's trade are to be treated as a separate trade on the company ceasing or beginning to carry them on, any necessary apportionment shall be made of receipts or expenses.

(13) Where by virtue of *subsection (12)* any sum is to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of 2 or more companies, any question which arises as to the manner in which the sum is to be apportioned shall, for the purposes of the tax of all those companies, be determined by the Appeal Commissioners who shall determine the question in the like manner as if it were an appeal against an assessment, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications, and all those companies shall be entitled to appear before and be heard by the Appeal Commissioners or to make representations to them in writing.

(14) Any relief to be given under this section by means of discharge or repayment of tax shall be given on the making of a claim.

Change in ownership of company: disallowance of trading losses.

[CTA76 s27(1) to (7)]

401.—(1) In this section, ''major change in the nature or conduct of a trade'' includes—

(*a*) a major change in the type of property dealt in, or services or facilities provided, in the trade, or

(*b*) a major change in customers, outlets or markets of the trade,

and this section shall apply even if the change is the result of a gradual process which began outside the period of 3 years mentioned in *subsection (2)(a)*. Pt.12 S.401

(2) Where—

(*a*) within any period of 3 years, there is both a change in the ownership of a company and (whether earlier or later in that period or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(*b*) at any time after the scale of the activities in a trade carried on by a company has become small or negligible and before any considerable revival of the trade, there is a change in the ownership of the company,

relief shall not be given—

(i) under *section 396* by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership, or

(ii) under *paragraph 16* or *18* of *Schedule 32* against corporation tax payable for any accounting period ending after the change of ownership.

(3) (*a*) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership and the part after that change shall be treated as 2 separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the 2 parts.

(*b*) The apportionment under *paragraph (a)* shall be on a time basis according to the respective lengths of the 2 parts except that, if it appears that that method would operate unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(4) In relation to any relief available under *section 400*, *subsection (2)* shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.

(5) (*a*) Where relief in respect of a company's losses has been restricted under this section, then, notwithstanding *section 320(6)*, in applying the provisions of *Part 9* and of *Chapter 1* of *Part 29* relating to balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction to be made in taxing the company's trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period, or of any subsequent chargeable period before the change of ownership, were sufficient to give effect to the allowance or deduction.

(*b*) In applying this subsection, it shall be assumed that any profits or gains are applied in giving effect to any such

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allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(6) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than 3 years after that change), an assessment to give effect to this section shall not be out of time if made within 10 years from that time or the latest of those times.

(7) *Schedule 9* shall apply for the purpose of supplementing this section.

CHAPTER 4

Income tax and corporation tax: treatment of certain losses and certain capital allowances

Foreign currency: tax treatment of capital allowances and trading losses of a company.

[CTA76 s14A; FA94 s56(b)]

402.—(1) (*a*) In this section—

''functional currency'' means—

(i) in relation to a company resident in the State, the currency of the primary economic environment in which the company operates, and

(ii) in relation to a company not resident in the State, the currency of the primary economic environment in which the company carries on trading activities in the State,

but, where the profit and loss account of a company for any period of account has been prepared in terms of the currency of the State, that currency shall be the functional currency of the company for that period;

''profit and loss account'' and ''rate of exchange'' have the same meanings respectively as in *section 79*;

''representative rate of exchange'' means a rate of exchange of a currency for another currency equal to the mid-market rate at close of business recorded by the Central Bank of Ireland, or by a similar institution of another State, for those 2 currencies.

(*b*) For the purposes of this section, the currency of the primary economic environment of a company shall be determined—

(i) in the case of a company resident in the State, with reference to the currency in which—

(I) revenues and expenses of the company are primarily generated, and

(II) the company primarily borrows and lends, and

(ii) in the case of a company not so resident which carries on trading activities in the State, with reference to the currency in which—

(I) revenues and expenses of those activities are primarily generated, and

(II) the company primarily borrows and lends for the purposes of those activities.

(*c*) For the purposes of this section, the day on which any expenditure is incurred shall be taken to be the day on which the sum in question becomes payable.

(2) (*a*) Subject to *paragraph (b)*, the amount (which may be nil) of any allowance or charge to be made for any accounting period—

(i) in taxing a trade of a company, and

(ii) by reference to capital expenditure incurred by the company on or after the 1st day of January, 1994,

shall be—

(I) computed in terms of the functional currency of the company by reference to amounts expressed in that currency, and

(II) given effect, in accordance with *section 307(2)(a)*, by being treated as a trading expense or receipt, as the case may be, of the trade in computing the trading income or loss, expressed in that functional currency, of the trade for that accounting period.

(*b*) (i) For the purposes of the computation of an allowance or charge to be made for an accounting period (in this paragraph referred to as ''the first-mentioned period'') by reference to capital expenditure incurred by a company on or after the 1st day of January, 1994, and

(ii) without prejudice to any allowance made by reference to that expenditure for an accounting period earlier than the first-mentioned period,

where that expenditure was incurred, or an allowance referable to that expenditure was computed, in terms of a currency other than the functional currency of the company for the first-mentioned period, then, that expenditure or allowance, as the case may be, shall be expressed in terms of that functional currency by reference to a representative rate of exchange of that functional currency for the other currency for the day on which that expenditure was incurred.

(3) (*a*) Subject to *paragraph (b)*, for the purposes of *sections 396* and *397*, the amount (which may be nil) of any set-off due to a company against income or profits of an accounting period in respect of a loss from a trade incurred by the company in an accounting period shall—

(i) be computed in terms of the company's functional currency by reference to amounts expressed in that currency, and

(ii) then be expressed in terms of the currency of the State by reference to the rate of exchange which—

(I) is used to express in terms of the currency of the State the amount of the income from the trade for the accounting period in which the loss is to be set off, or

(II) would be so used if there were such income.

(*b*) (i) For the purposes of the computation of any set-off due to a company against income or profits of an accounting period (in this paragraph referred to as ''the first-mentioned period'') in respect of a loss from a trade incurred by the company in an accounting period, and

(ii) without prejudice to any set-off made against the income or profits of an accounting period earlier than the first-mentioned period by reference to that loss,

where that loss, or any set-off referable to that loss, was computed in terms of a currency other than the functional currency of the company for the first-mentioned period, then, that loss or set-off, as the case may be, shall be expressed in terms of that functional currency by reference to a rate of exchange of that functional currency for the other currency, being an average of representative rates of exchange of that functional currency for the other currency during the accounting period in which the loss was incurred.

Restriction on use of capital allowances for certain leased assets.

[FA84 s40(1) to (10); FA86s53; FA87 s26; FA90 s41(5)(a) and (c); FA94 s61(1)]

403.—(1) (*a*) In this section—

''chargeable period or its basis period'' has the same meaning as in *section 321(2)*;

''lessee'' and ''lessor'', in relation to machinery or plant provided for leasing, mean respectively the person to whom the machinery or plant is or is to be leased and the person providing the machinery or plant for leasing, and ''lessee'' and ''lessor'' include respectively the successors in title of a lessee or a lessor;

''the relevant period'' has the meaning assigned to it by *subsection (9)(b)*;

''the specified capital allowances'' means capital allowances in respect of—

(i) expenditure incurred on machinery or plant provided on or after the 25th day of January, 1984, for leasing in the course of a trade of leasing, or

(ii) the diminished value of such machinery or plant by reason of wear and tear,

other than capital allowances in respect of machinery or plant to which *subsection (6)*, *(7)*, *(8)* or *(9)* applies;

''trade of leasing'' means—

(i) a trade which consists wholly of the leasing of machinery or plant, or

(ii) any part of a trade treated as a separate trade by virtue of *subsection (2)*.

(*b*) For the purposes of this section—

(i) letting on charter a ship or aircraft which has been provided for such letting, and

(ii) letting any item of machinery or plant on hire,

shall be regarded as leasing of machinery or plant if apart from this paragraph it would not be so regarded.

(*c*) Where a company carries on a trade of operating ships in the course of which a ship is let on charter, *paragraph (b)* shall not apply so as to treat the letting on charter as the leasing of machinery or plant if apart from this section the letting would be regarded for the purposes of Case I of Schedule D as part of the activities of the trade.

(2) Where in any chargeable period or its basis period a person carries on as part of a trade any leasing of machinery or plant, that leasing shall be treated for the purposes of the Tax Acts, other than any provision of those Acts relating to the commencement or cessation of a trade, as a separate trade distinct from all other activities carried on by such person as part of the trade, and any necessary apportionment shall be made of receipts or expenses.

(3) (*a*) Notwithstanding *section 381*, where relief is claimed under that section in respect of a loss sustained in a trade of leasing, the amount of that loss, in so far as by virtue of *section 392* it is referable to the specified capital allowances, shall be treated for the purposes of *subsections (1)* and *(3)(b)* of *section 381* as reducing profits or gains of that trade of leasing only and shall not be treated as reducing any other income.

(*b*) Where *paragraph (a)* applies in the case of any claimant to relief under *section 381*—

(i) any limitation imposed by *section 393* on the amount of capital allowances which may be taken into account under *section 392* shall be referred, as far as may be, to the specified capital allowances rather than to any other capital allowances, and

(ii) notwithstanding *section 392(2)* (but without prejudice to *paragraph (a)* and to the order in which income is to be treated as reduced under *section 381(3)(b)*),

the claimant may specify the extent to which any reduction of income treated as occurring by virtue of *section 381* is to be referred to so much of the loss as is attributable to the loss, if any, actually sustained in the trade of leasing, the specified capital allowances or any other capital allowances, and, where the claimant so specifies, *section 394* shall apply in accordance with the claimant's specification and not in accordance with *section 392(2)*.

(4) (*a*) Where in an accounting period a company carrying on a trade of leasing incurs a loss in that trade and any specified capital allowances have been treated by virtue of *section 307* or *308* as trading expenses in arriving at the amount of the loss, the relevant amount of the loss shall not be available—

(i) for relief under *section 396(2)*, except to the extent that it can be set off under that section against the company's income from the trade of leasing only, or

(ii) to be surrendered by means of group relief.

(*b*) For the purposes of *paragraph (a)*, the relevant amount of the loss shall be the full amount of the loss or, if it is less, an amount equal to—

(i) where no capital allowances, other than the specified capital allowances, have been treated by virtue of *section 307* or *308* as trading expenses in arriving at the amount of the loss, the amount of the specified capital allowances, or

(ii) where, in addition to the specified capital allowances, other capital allowances have been so treated by virtue of *section 307* or *308*, the lesser of—

(I) the amount of the specified capital allowances, and

(II) the amount by which the loss exceeds the amount of the other capital allowances;

but, where the amount of the loss does not exceed the amount of the other capital allowances, the relevant amount of the loss shall be nil.

(5) *Sections 305(1)(b)*, *308(4)* and *420(2)* shall not apply in relation to capital allowances—

(*a*) in respect of expenditure incurred on or after the 25th day of January, 1984, on the provision of machinery or plant, or

(*b*) in respect of the diminished value of machinery or plant by reason of wear and tear, if that machinery or plant was first acquired on or after the 25th day of January, 1984, by the person to whom the capital allowances are to be or have been made,

other than capital allowances in respect of machinery or plant to which *subsection (6)* or *(7)* applies.

(6) References in this section to machinery or plant to which this subsection applies are references to machinery or plant provided on or after the 25th day of January, 1984, for leasing where the expenditure incurred on the provision of the machinery or plant was incurred under an obligation entered into by the lessor and the lessee before—

(*a*) the 25th day of January, 1984, or

(*b*) the 1st day of March, 1984, pursuant to negotiations which were in progress between the lessor and the lessee before the 25th day of January, 1984.

(7) References in this section to machinery or plant to which this subsection applies are references to machinery or plant provided on or after the 25th day of January, 1984, for leasing where the expenditure incurred on the provision of the machinery or plant (or, in the case of a film to which section 6 or 7 of the Irish Film Board Act, 1980, applies, the cost of the making of the film) has been or is to be met directly or indirectly, wholly or partly, by the Industrial Development Authority, the Irish Film Board, the Shannon Free Airport Development Company Limited, or Údarás na Gaeltachta; but this subsection shall not apply to machinery or plant provided for leasing on or after the 13th day of May, 1986, unless—

(*a*) the machinery or plant is a film to which section 6 or 7 of the Irish Film Board Act, 1980, applies, or

(*b*) the expenditure incurred on the provision of the machinery or plant (not being a film of the kind mentioned in *paragraph (a)*) was incurred under an obligation entered into by the lessor and the lessee before—

(i) the 13th day of May, 1986, or

(ii) the 1st day of September, 1986, pursuant to negotiations which were in progress between the lessor and the lessee before the 13th day of May, 1986.

(8) The reference in the definition of ''the specified capital allowances'' to machinery or plant to which this subsection applies is a reference to machinery or plant provided for leasing by a lessor to a lessee in the course of the carrying on by the lessor of relevant trading operations within the meaning of *section 445* or *446*, and—

(*a*) in respect of the expenditure on which no allowance has been or will be made under *section 283*, or

(*b*) in respect of which no allowance on account of wear and tear to be made under *section 284* has been or will be increased under *section 285*.

(9) (*a*) (i) In this subsection, ''specified trade'', in relation to a lessee, means a trade which throughout the relevant period consists wholly or mainly of the manufacture of goods (including activities which, if the lessee were to make a claim for relief in respect of the trade under *Part 14*, would be regarded for the purposes of that Part as the manufacture of goods).

(ii) For the purposes of *subparagraph (i)*, a trade shall be regarded, as respects the relevant period, as consisting wholly or mainly of particular activities only if the total amount receivable by the lessee from

sales made or, as the case may be, in payment for services rendered in the course of those activities in the relevant period is not less than 75 per cent of the total amount receivable by the lessee from all sales made or, as the case may be, in payment for all services rendered in the course of the trade in the relevant period.

(iii) As respects a person who carries on a trade of leasing and who incurred expenditure on the provision before the 20th day of April, 1990, of machinery or plant for leasing under an obligation entered into before that date by the lessor and a lessee who carries on a trade which but for *section 443(6)* would be a specified trade, this subsection shall apply as if the trade carried on by the lessee were a specified trade.

(iv) For the purposes of *subparagraph (iii)*, an obligation shall be treated as entered into before the 20th day of April, 1990, only if before that date there were in existence a binding contract in writing under which that obligation arose.

(*b*) The reference in the definition of ''the specified capital allowances'' to machinery or plant to which this subsection applies is a reference to machinery or plant (not being a film of the kind mentioned in *subsection (7)(a)*) provided on or after the 13th day of May, 1986, for leasing by a lessor to a lessee (who is not a person connected with the lessor) under a lease the terms of which include an undertaking given by the lessee that, during a period (in this section referred to as ''the relevant period'') which is not less than 3 years and which commences on the day on which the machinery or plant is first brought into use by the lessee, the machinery or plant so provided will be used by the lessee for the purposes only of a specified trade carried on in the State by the lessee.

(*c*) Any machinery or plant in respect of which an undertaking mentioned in *paragraph (b)* has been given by a lessee, and which at any time has been treated as machinery or plant to which this subsection applies, shall at any later time cease to be machinery or plant to which this subsection applies if at that later time it appears to the inspector (or on appeal to the Appeal Commissioners) that the undertaking has not been fulfilled by the lessee.

(*d*) Where any machinery or plant ceases in accordance with *paragraph (c)* to be machinery or plant to which this subsection applies, such assessments or adjustments of assessments shall be made to recover from the lessor any relief from tax given to the lessor because the machinery or plant was treated as machinery or plant to which this subsection applies.

(*e*) This subsection shall not apply to machinery or plant provided for leasing on or after the 13th day of May, 1986, if the expenditure incurred on the provision of the machinery or plant was incurred under an obligation entered into by the lessor and the lessee before—

(i) the 13th day of May, 1986, or

(ii) the 1st day of September, 1986, pursuant to negotiations which were in progress between the lessor and the lessee before the 13th day of May, 1986. Pt.12 S.403

(10) For the purposes of *subsections (6)*, *(7)* and *(9)*—

(*a*) an obligation shall be treated as having been entered into before a particular date only if before that date there was in existence a binding contract in writing under which that obligation arose, and

(*b*) negotiations pursuant to which an obligation was entered into shall not be regarded as having been in progress between a lessor and a lessee before a particular date unless on or before that date preliminary commitments or agreements in relation to that obligation had been entered into between the lessor and the lessee.

Restriction on use of capital allowances for certain leased machinery or plant.

[FA94 s30(1) to (5) and (7)]

404.—(1) (*a*) In this section—

''agricultural machinery'' means machinery or plant used or intended to be used for the purposes of a trade of farming (within the meaning of *section 654*) or machinery or plant of a type commonly used for such a trade which is used or intended to be used for the purposes of a trade which consists of supplying services which normally play a part in agricultural production;

''asset'' means machinery or plant;

''chargeable period'', ''chargeable period related to'', and ''chargeable period or its basis period'' have the same meanings respectively as in *section 321(2)*;

''fair value'', in relation to a leased asset, means an amount equal to such consideration as might be expected to be paid for the asset at the inception of the lease on a sale negotiated on an arm's length basis, less any grants receivable by the lessor towards the purchase of the asset;

''inception of the lease'' means the date on which the leased asset is brought into use by the lessee or the date from which lease payments under the lease first accrue, whichever is the earlier;

''lease payments'' means the lease payments over the term of the lease to be paid to the lessor in relation to the leased asset, and includes any residual amount to be paid to the lessor at or after the end of the term of the lease and guaranteed by the lessee or by a person connected with the lessee or under the terms of any scheme or arrangement between the lessee and any other person;

''lessee'' and ''lessor'' have the same meanings respectively as in *section 403*;

''predictable useful life'', in relation to an asset, means the useful life of the asset estimated at the

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inception of the lease, having regard to the purpose for which the asset was acquired and on the assumption that—

(i) its life will end when it ceases to be useful for the purpose for which it was acquired, and

(ii) it will be used in the normal manner and to the normal extent throughout its life;

''relevant lease payment'' means—

(i) the amount of any lease payment as provided under the terms of the lease, or

(ii) where the lease provides for the amount of any lease payment to be determined by reference to a rate known as the Dublin Interbank Offered Rate and a record of which is kept by the Central Bank of Ireland, or a similar rate, the amount calculated by reference to that rate if the rate per cent at the inception of the lease were the rate per cent at the time of the payment;

''relevant lease payments related to a chargeable period or its basis period'' means relevant lease payments under the lease or the amounts which are treated as the relevant lease payments and which, if they were the actual amounts payable under the lease, would be taken into account in computing the income of the lessor for that chargeable period or its basis period or any earlier such period;

''relevant period'' means the period—

(i) beginning at the inception of the lease, and

(ii) ending at—

(I) the earliest time at which the aggregate of amounts of the discounted present value at the inception of the lease of relevant lease payments which are payable at or before that time amounts to 90 per cent or more of the fair value of the leased asset, or

(II) if it is earlier, at the end of the predictable useful life of the asset,

and, for the purposes of this definition, relevant lease payments shall be discounted at a rate which, when applied at the inception of the lease to the amount of the relevant lease payments, produces discounted present values the aggregate of which equals the amount of the fair value of the leased asset at the inception of the lease, but where the duration of the relevant period determined in accordance with the preceding provisions of this definition is more than 7 years, the relevant period shall not be the period so determined but shall be

the period which would be determined in accordance with this definition if for ''90 per cent'' there were substituted ''95 per cent''.

(*b*) For the purposes of this section—

(i) a lease of an asset shall be a relevant lease unless—

(I) as respects any chargeable period or its basis period of the lessor which falls wholly or partly in the relevant period, the aggregate of the amounts of relevant lease payments related to the chargeable period or its basis period and the amounts of relevant lease payments related to any earlier chargeable period or its basis period is not less than an amount determined by the formula—

$$W \times P \times \frac{90 + (10 \times W)}{100}$$

where—

P is the aggregate of the amounts of relevant lease payments payable by the lessee in relation to the leased asset in the relevant period, and

W is an amount determined by the formula—

$$\frac{E}{R}$$

where—

E is the length of the part of the relevant period which has expired at the end of the chargeable period or its basis period, and

R is the length of the relevant period, and

(II) except for an amount of relevant lease payments which is inconsequential, the excess of the total relevant lease payments under the lease over the aggregate of the relevant lease payments in the relevant period is payable to the lessor, or would be so payable if the relevant lease payments were the actual amounts payable under the lease, within a period the duration of which does not exceed—

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(A) where the exception to the definition of ''relevant period'' does not apply, one-seventh of the duration of the relevant period, and

(B) where that exception does apply, one-ninth of the duration of the relevant period,

or one year, whichever is the greater, and which commences immediately after the end of the relevant period,

(ii) a lease, the duration of the relevant period in respect of which exceeds 10 years and which apart from this subparagraph would be a relevant lease, shall not be a relevant lease if it is a lease of an asset, being an asset—

(I) provided for the purposes of a project, specified in the list referred to in *section 133(8)(c)(iv)*, which has been approved for grant aid by the Industrial Development Authority, the Shannon Free Airport Development Company Limited or Udarás na Gaeltachta, and

(II) to which *section 283(5)* or *285(7)(a)(i)* applies,

and it would not be a relevant lease if for *clauses (I)* and *(II)* of *subparagraph (i)* there were substituted the following:

''(I) the aggregate of the relevant lease payments related to a chargeable period or its basis period of the lessor which falls wholly or partly in the period (in this subsection referred to as the 'first period') of 3 years beginning at the inception of the lease is not less than an amount determined by the formula—

$$V \times \frac{D}{100} \times \frac{80}{100} \times \frac{M}{12}$$

where—

D is the rate per cent at the inception of the lease of the rate known as the 6 month Dublin Interbank Offered Rate and a record of which is maintained by the Central Bank of Ireland, expressed as a rate per annum,

M is the number of months in the chargeable period or its basis period, and

V is the fair value of the asset at the inception of the lease,

(II) as respects any chargeable period or its basis period of the lessor which falls wholly or partly in the period (in this subsection referred to as 'the second period') commencing immediately after the first period and ending at the end of the relevant period, the aggregate of the amounts of relevant lease payments related to the chargeable period or its basis period and the amounts of relevant lease payments related to any earlier chargeable period or its basis period falling wholly or partly in the second period is not less than an amount determined by the formula—

$$\frac{E}{R} \times P$$

where—

E is the length of the part of the second period which has expired at the end of the chargeable period or its basis period,

P is the aggregate of the amounts of relevant lease payments payable by the lessee in relation to the leased asset in the second period, and

R is the length of the second period, and

(III) except for an amount of relevant lease payments which is inconsequential, the excess of the total relevant lease payments under the lease over the aggregate of the relevant lease payments in the relevant period is payable to the lessor, or would be so payable if the relevant lease payments were the actual amounts payable under the lease, within a

period of one year after the end of the relevant period.'',

(iii) an amount of relevant lease payments shall be treated as inconsequential if the aggregate of amounts, estimated at the inception of the lease, of discounted value, at the end of the period specified in *clause (II)* of *subparagraph (i)* or *clause (III)* of that subparagraph (construed in accordance with *subparagraph (ii)*), as the case may be, of the relevant lease payments after that time does not exceed 5 per cent of the fair value of the leased asset or £2,000, whichever is the lesser, and, for the purposes of this subparagraph, relevant lease payments shall be discounted at the rate specified in the definition of ''relevant period'', and

(iv) where a chargeable period or its basis period, being an accounting period of a company, begins before and ends after a date, being the commencement of the relevant period, the first period or the second period or the end of such a period, as the case may be, it shall be divided into one part beginning on the day on which the accounting period begins and ending at the beginning or the end, as the case may be, of the relevant period, the first period or the second period, and another part beginning immediately after that time and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods.

(2) (*a*) Where in the course of a trade an asset is provided by a person for leasing under a relevant lease, the letting of the asset under that relevant lease shall be treated as a separate trade of leasing (in this subsection referred to as a ''specified leasing trade'') distinct from all other activities, including other leasing activities, of the person, and *section 403*, apart from *subsections (5)* to *(9)* of that section, shall apply in relation to a specified leasing trade as it applies in relation to a trade of leasing within the meaning of that section.

(*b*) *Sections 305(1)(b)*, *308(4)* and *420(2)* shall not apply in relation to capital allowances—

(i) in respect of expenditure incurred on the provision of an asset, or

(ii) on account of the wear and tear of an asset,

which is provided by a person for leasing under a relevant lease.

(3) Notwithstanding *subsection (1)(b)*, a lease of an asset which consists of agricultural machinery or plant shall not be a relevant

lease unless it would be such a lease if the amounts of relevant lease payments related to any chargeable period or its basis period were taken to be an amount equal to 50 per cent of the aggregate of the amounts of relevant lease payments related to that chargeable period or its basis period and the amounts of relevant lease payments related to a period equal in length to, and ending immediately before the commencement of, that period.

(4) (*a*) Where at any time after the 11th day of April, 1994, either of the following events occurs—

(i) the terms of a lease of an asset entered into before that day are altered, or

(ii) a lessor and a lessee agree to terminate a lease of an asset and, at or about that time, a further agreement to lease the asset is entered into by the lessor and the lessee or an agreement is entered into by the lessor and a person connected with the lessee, by the lessee and a person connected with the lessor or by a person connected with the lessor and a person connected with the lessee,

such that the aggregate of the amounts of the lease payments which are payable, or which would be payable if the relevant lease payments were the actual amounts payable under the lease, after any time exceeds the aggregate of the amounts of such relevant lease payments which would have been payable after that time if the events in *subparagraph (i)* or *(ii)* had not taken place, then, notwithstanding *subsection (6)(a)*, unless it is shown that the change or the termination was effected for bona fide commercial reasons, the lease (including the terminated lease) shall be treated as if it were at all times a relevant lease, and relief given under *Part 9*, *Chapter 1* or *2* of this Part, or *section 396* or *420*, which would not have been given if the lease was a relevant lease, shall be withdrawn.

(*b*) The withdrawal of an allowance or relief under *paragraph (a)* shall be made—

(i) for the chargeable period related to the event giving rise to the withdrawal of the relief, and

(ii) in accordance with *paragraph (c)*,

and both—

(I) details of the event giving rise to the withdrawal of the allowance or relief, and

(II) the amount to be treated as income under *paragraph (c)*,

shall be included in the return required to be made by the lessor under *section 951* for that chargeable period.

(*c*) (i) Notwithstanding any other provision of the Tax Acts, where relief is to be withdrawn under *paragraph (a)* in respect of—

(I) any amount which was set off against income under *section 305*,

(II) the amount of any loss which was set off under *section 307*, *308*, *396* or *420* against profits, or

(III) the amount of any loss which was treated by virtue of a claim under *section 381* as reducing income,

and which would not have been so set off or treated if the lease were a relevant lease, such amount (in this subsection referred to as ''the relevant amount'') as would not have been so set off or treated, increased in accordance with *subparagraph (ii)*, shall be treated as income arising in the chargeable period specified in *paragraph (b)(i)*.

(ii) The amount by which the relevant amount is to be increased under *subparagraph (i)* shall be an amount determined by the formula—

$$A \times \frac{R}{100} \times M$$

where—

A is the relevant amount,

M is the number of months in the period beginning on the date on which tax for the chargeable period in which the losses were treated as reducing income, or set off against profits, as the case may be, was due and payable and ending on the date on which tax for the chargeable period for which the withdrawal of relief is to be made is due and payable, and

R is the rate per cent specified in *section 1080(1)*.

(5) Notwithstanding *subsection (1)(b)*, where at any time on or after the 11th day of April, 1994, a person (in this subsection referred to as ''the lessor'') acquires an asset from another person who before that date was the owner of the asset and at or about that time the lessor or a person connected with the lessor leases the asset to the other person or a person connected with the other person, then, unless—

(*a*) the asset is new and unused, or

(*b*) the lease would not be a relevant lease if—

(i) for the first formula in *subsection (1)(b)(i)(I)* there were substituted ''W × P'', and

(ii) *subsection (1)(b)(ii)* had not been enacted,

the lease shall be a relevant lease for the purposes of this section.

(6) This section shall apply as on and from the 23rd day of December, 1993; but a lease of an asset shall not be a relevant lease if—

(*a*) a binding contract in writing for the letting of the asset was concluded before that day,

(*b*) the leasing of the asset is carried on in the course of relevant trading operations within the meaning of *section 445* or *446*, or

(*c*) subject to *subsections (4)* and *(5)*—

(i) the relevant period does not exceed 5 years,

(ii) the fair value of the asset does not exceed £50,000 and, except where the assets are separate and distinct assets used independently of each other and the use of one is not an integral part of the use of the other, the fair value of an asset which is leased by a lessor to a lessee shall for the purposes of this subparagraph be treated as exceeding £50,000 if the aggregate of the fair value of such an asset and the fair value of any other asset leased by the lessor to the lessee in the period of 12 months ending at the inception of the lease of such an asset exceeds £50,000, and

(iii) the lease provides for lease payments to be made at annual or more frequent regular intervals throughout the period of the lease such that none of those payments, other than a payment which consists of the consideration for the disposal of the asset for an amount equal to its market value (being its market value if it were not subject to any lease) at the time of disposal, is significantly greater than any of the lease payments payable before it.

Restriction on use of capital allowances on holiday cottages.

[FA92 s25]

405.—(1) Subject to *subsection (2)*, where on or after the 24th day of April, 1992, a person incurs capital expenditure on the acquisition or construction of a building or structure which is or is to be an industrial building or structure by virtue of being a holiday cottage within the meaning of *section 268*, and an allowance is to be made in respect of that expenditure under *section 271* or *272*—

(*a*) neither *section 305(1)(b)* nor *section 308(4)* shall apply as respects that allowance, and

(*b*) neither *section 381* nor *section 396(2)* shall apply as respects the whole or part (as the case may be) of any loss which would not have arisen but for the making of that allowance.

(2) This section shall not apply to expenditure incurred before the 6th day of April, 1993, on the acquisition or construction of a building or structure (in this subsection referred to as ''the holiday cottage'') which is or is to be an industrial building or structure by virtue of being a holiday cottage within the meaning of *section 268* if before the 24th day of April, 1992—

(*a*) a binding contract in writing for the construction of the holiday cottage was entered into, or

(*b*) (i) a binding contract in writing for the purchase or lease of land for the construction of the holiday cottage was entered into, and

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(ii) an application for planning permission for the construction of the holiday cottage was received by a planning authority.

Corporation tax: restriction on use of capital allowances on fixtures and fittings for furnished residential accommodation.

[ITA67 s241(11)(b); FA97 s22]

406.—Where a person incurs capital expenditure of the type to which *subsection (7)* of *section 284* applies and an allowance is to be made in respect of that expenditure under that section—

(*a*) *section 308(4)* shall not apply as respects that allowance, and

(*b*) *section 396(2)* shall not apply as respects the whole or part (as the case may be) of any loss which would not have arisen but for the making of that allowance.

Restriction on use of losses and capital allowances for qualifying shipping trade.

[FA87 s28(1), (2), (4) and (5)(a); FA88 s40(1) and (3); FA90 s42(1); FA94 s62; FA96 s54]

407.—(1) In this section—

''lessee'', in relation to a ship provided for leasing, means the person to whom the ship is or is to be leased and includes the successors in title of a lessee;

''qualifying ship'' means a seagoing vessel which—

(*a*) (i) is owned to the extent of not less than 51 per cent by a person or persons resident in the State, or

(ii) is the subject of a letting on charter without crew by a lessor not resident in the State,

(*b*) in the case of a vessel to which *paragraph (a)(i)* applies, is registered in the State under Part II of the Mercantile Marine Act, 1955, and, in the case of a vessel to which *paragraph (a)(ii)* applies, is a vessel in respect of which it can be shown that the requirements of the Merchant Shipping Acts, 1894 to 1993, have been complied with as if it had been a vessel registered under that Part,

(*c*) is of not less than 100 tons gross tonnage, and

(*d*) is self-propelled,

but, notwithstanding anything in *paragraph (a)*, *(b)*, *(c)* or *(d)*, does not include—

(i) a fishing vessel, other than a vessel normally used for the purposes of an activity mentioned in *paragraph (d)* of the definition of ''qualifying shipping activities'',

(ii) a tug, other than a tug in respect of which a certificate has been given by the Minister for the Marine and Natural Resources certifying that in the opinion of the Minister the tug is capable of operating in seas outside the portion of the seas which are, for the purposes of the Maritime Jurisdiction Act, 1959 (as amended by the Maritime Jurisdiction (Amendment) Act, 1988), the territorial seas of the State,

(iii) a vessel (including a dredger) used primarily as a floating platform for working machinery or as a diving platform, and

(iv) any other vessel of a type not normally used for the purposes of qualifying shipping activities;

''qualifying shipping activities'' means activities carried on by a company in the course of a trade and which consist of— Pt.12 S.407

(*a*) the use of a qualifying ship for the purpose of carrying by sea passengers or cargo for reward,

(*b*) the provision on board the qualifying ship of services ancillary to that use of the qualifying ship,

(*c*) the granting of rights by virtue of which another person provides or will provide those services on board that qualifying ship,

(*d*) the subjecting of fish to a manufacturing process on board a qualifying ship,

(*e*) the letting on charter of a qualifying ship for use for those purposes where the operation of the ship and the crew of the ship remain under the direction and control of the company, or

(*f*) the use of a qualifying ship for the purposes of transporting supplies or personnel to, or providing services in respect of, a mobile or fixed rig, platform, vessel or installation of any kind at sea;

''qualifying shipping trade'' means a trade, the income from which is within the charge to corporation tax, carried on in the relevant period, which consists solely of the carrying on of qualifying shipping activities or, in the case of a trade consisting partly of the carrying on of such activities and partly of the carrying on of other activities, that part of the trade consisting solely of the carrying on of qualifying shipping activities and which is treated by virtue of *subsection (3)* as a separate trade;

''relevant certificate'' means a certificate issued with the consent of the Minister for Finance by the Minister for the Marine and Natural Resources in relation to the letting on charter of a ship certifying, on the basis of a business plan and any other information supplied by the lessee to the Minister for the Marine and Natural Resources, that that Minister is satisfied that the lease is in respect of a ship which—

(*a*) will result in an upgrading and enhancement of the lessee's fleet leading to improved efficiency and the maintenance of competitiveness,

(*b*) (i) has the potential to create a reasonable level of additional sustainable employment and other socio-economic benefits in the State, or

(ii) will assist in maintaining or promoting the lessee's trade in the carrying on of a qualifying shipping activity and the maintenance of a reasonable level of sustainable employment and other socio-economic benefits in the State,

and

(*c*) will result in the leasing of a ship which complies with current environmental and safety standards;

''the relevant period'' means the period from the 1st day of January, 1987, to the 31st day of December, 2000;

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''specified capital allowances'' means capital allowances in respect of—

(*a*) expenditure incurred by any person in the relevant period on the provision of a qualifying ship which is in use in or is intended to be used in a qualifying shipping trade, or

(*b*) the diminished value by reason of wear and tear during the relevant period of a qualifying ship in use for the purposes of a qualifying shipping trade,

notwithstanding that any such capital allowances are not treated as trading expenses of the qualifying shipping trade.

(2) Before issuing a relevant certificate, the Minister for the Marine and Natural Resources shall be satisfied that the lease concerned is for bona fide commercial purposes and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) (*a*) Subject to *paragraph (b)*, where during the relevant period a company carries on qualifying shipping activities as part of a trade, those activities shall be treated for the purposes of the Tax Acts, other than any provision of those Acts relating to the commencement or cessation of a trade, as a separate trade distinct from all other activities carried on by the company as part of the trade, and any necessary apportionment shall be made of receipts or expenses.

(*b*) This subsection shall not apply in relation to a claim by the company for the set-off under *section 396(1)*—

(i) against income arising during the relevant period, of a loss incurred before the commencement of the relevant period, and

(ii) against income arising after the end of the relevant period, of a loss incurred during the relevant period.

(4) Notwithstanding any other provision of the Tax Acts apart from *subsection (5)*, for the purposes of granting relief from tax in respect of any income or profits arising in the relevant period or for the purposes of determining the amount of such income or profits which is chargeable to tax—

(*a*) specified capital allowances shall be allowed only—

(i) in computing the income from a qualifying shipping trade, or

(ii) in computing or charging to tax any income arising from the letting on charter of the qualifying ship to which the specified capital allowances refer, other than letting on charter which is a qualifying shipping activity,

and shall not be allowed in computing any other income or profits or in taxing any other trade or in charging any other income to tax,

(*b*) a loss incurred in the relevant period in a qualifying shipping trade shall not be set off—

(i) against any profits under *section 396(2)*, except to the extent of the amount of income from a qualifying shipping trade included in those profits, or

(ii) against the total profits of a claimant company under *section 420(1)*, except to the extent of the amount of income from a qualifying shipping trade included in those total profits,

and

(*c*) the letting on charter of a ship referred to in *paragraph (a)(ii)* in the course of a trade shall be deemed, notwithstanding *subsection (1)(c)* of *section 403*, to be a trade of leasing for the purposes of that section and to be a separate trade as provided for in *subsection (2)* of that section.

(5) As respects a ship a binding contract in writing for the acquisition or construction of which was concluded on or after the 1st day of July, 1996, *subsection (4)(c)* shall not apply in the case of a letting on charter of a ship referred to in that subsection where the lease in respect of the ship is a lease the terms of which comply with *clauses (I)* and *(II)* of *section 404(1)(b)(i)*, and where the lessee produces to the Revenue Commissioners a relevant certificate.

(6) A qualifying shipping trade shall not be regarded as a specified trade for the purposes of *section 403*.

Restriction on tax incentives on property investment.

[FA91 s24]

408.—(1) In this section—

''property investment scheme'' means any scheme or arrangement made for the purpose, or having the effect, of providing facilities, whether promoted by means of public advertisement or otherwise, for the public or a section of the public to share, either directly or indirectly and whether as beneficiaries under a trust or by any other means, in income or gains arising or deriving from the acquisition, holding or disposal of, or of an interest in, a building or structure or a part of a building or structure, but does not include a scheme or arrangement as respects which the Revenue Commissioners or, on appeal, the Appeal Commissioners, having regard to such information as may be produced to them, are of the opinion that—

(*a*) the manner in which persons share in the income or gains, and

(*b*) the number of persons who so share,

are in accordance with a practice which commonly prevailed in the State during the period of 5 years ending immediately before the 30th day of January, 1991, for the sharing of such income or gains by persons resident in the State and such that the persons so sharing qualified for relief under *section 305(1)(b)* or *308(4)*;

''specified interest'' means an interest in or deriving from a building or structure held by a person pursuant to a property investment scheme.

(2) Where a person holds a specified interest, then, as respects expenditure incurred or deemed to be incurred on or after the 30th day of January, 1991, *sections 305(1)(b)* and *308(4)* shall not apply as respects an allowance under *section 271* or *272* which is to be made

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to the person by reason of the holding by the person of the specified interest.

(3) The Appeal Commissioners shall hear and determine an appeal made to them under this section as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

Capital allowances: room ownership schemes.

[FA97 s24(1) to (3), (4)(a) and (b) and (5)]

409.—(1) In this section—

''hotel investment'' means capital expenditure incurred either on the construction of, or the acquisition of a relevant interest in, a building or structure which is to be regarded as an industrial building or structure within the meaning of *subsection (1)(d)* of *section 268*, other than a building or structure to which *subsection (3)* of that section relates;

''hotel partnership'' includes any syndicate, group or pool of persons, whether or not a partnership, through or by means of which a hotel investment is made;

''market value'' shall be construed in accordance with *section 548*;

''member'', in relation to a hotel partnership, includes every person who participates in that partnership or who has contributed capital, directly or indirectly, to that partnership;

''preferential terms'', in relation to the acquisition of an interest referred to in *subsection (3)(a)(i)*, means terms under which such interest is acquired for a consideration which, at the time of the acquisition, is or may be other than its market value.

(2) This section is for the purpose of counteracting any room ownership scheme entered into in connection with a hotel investment by a hotel partnership.

(3) For the purposes of this section—

(*a*) a scheme shall be a room ownership scheme in connection with a hotel investment if, at the time a hotel investment is made by a hotel partnership, there exists any agreement, arrangement, understanding, promise or undertaking (whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings) under or by virtue of which any member of that hotel partnership, or a person connected with such member, may—

(i) acquire on preferential terms an interest in, or

(ii) retain for use other than for the purposes of the trade of hotel-keeping,

any room or rooms in, or any particular part of, the building or structure which is the subject of the hotel investment, and

(*b*) where a hotel investment is made by one or more than one member of a hotel partnership, it shall be deemed to be made by the hotel partnership.

(4) Subject to *subsection (5)*, no allowance shall be made under *Chapter 1* of *Part 9* in respect of a hotel investment by a hotel partnership where, in connection with any such investment, there exists a room ownership scheme. Pt.12 S.409

(5) (*a*) Except where provided for in *paragraph (b)*, this section shall apply to a hotel investment the capital expenditure in respect of which is incurred on or after the 26th day of March, 1997.

(*b*) This section shall not apply to a hotel investment if, before the 26th day of March, 1997, in respect of a building or structure which is the subject of such investment—

(i) a binding contract in writing was entered into for the construction of, or the acquisition of a relevant interest in, the building or structure, or

(ii) an application for planning permission for the construction of the building or structure was received by a planning authority.

CHAPTER 5

Group relief

Group payments.

[CTA76 s105; FA92 s50(1)]

410.—(1) (*a*) In this section—

''trading or holding company'' means a trading company or a company whose business consists wholly or mainly in the holding of shares or securities of trading companies which are its 90 per cent subsidiaries;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(*b*) For the purposes of this section, a company shall be owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by 5 or fewer companies resident in the State of which none beneficially owns less than 5 per cent of that capital, and those companies shall be called the members of the consortium.

(2) References in this section to payments received by a company shall apply to any payments received by another person on behalf of or in trust for the company, but shall not apply to any payments received by the company on behalf of or in trust for another person.

(3) In determining for the purposes of this section whether one company is a 51 per cent subsidiary of another company, that other company shall be treated as not being the owner of—

(*a*) any share capital which it owns directly or indirectly in a company not resident in the State, or

(*b*) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt.

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(4) Where a company receives from another company (both being companies resident in the State) any payments to which this section applies, and either—

(*a*) the company making the payment is—

(i) a 51 per cent subsidiary of the other company or of a company so resident of which the other company is a 51 per cent subsidiary, or

(ii) a trading or holding company owned by a consortium the members of which include the company receiving the payment, or

(*b*) the company receiving the payment is a 51 per cent subsidiary of the company making the payment,

then, subject to *subsections (5)* to *(7)*, the payment shall be made without deduction of income tax and neither *section 238* nor *section 246* shall apply to the payment.

(5) This section shall apply to any payments which for the purposes of corporation tax are charges on income of the company making them or would be so if they were not deductible in computing profits or any description of profits or if *section 243(7)* did not apply to them, but shall not apply to payments received by a company on any investments if a profit on the sale of those investments would be treated as a trading receipt of that company.

(6) Where a company purports by virtue of *subsection (4)* to make any payment without deduction of income tax and income tax ought to have been deducted, the inspector may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) of the company making and the company receiving the payment are, in so far as possible, the same as they would have been if the income tax had been duly deducted.

(7) Where tax assessed under *subsection (6)* on the company which made the payment is not paid by that company before the expiry of 3 months from the date on which that tax is payable, that tax shall, without prejudice to the right to recover it from that company, be recoverable from the company which received the payment.

Surrender of relief between members of groups and consortia.

[CTA76 s107]

411.—(1) (*a*) For the purposes of this section and the following sections of this Chapter—

''holding company'' means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent subsidiaries and are trading companies;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

a company shall be owned by a consortium if all of the ordinary share capital of the company is directly and beneficially owned between them by 5 or fewer companies, and those companies shall be called the members of the consortium;

2 companies shall be deemed to be members of a group of companies if one company is the 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company.

(*b*) In applying for the purposes of this section and the following sections of this Chapter the definition of ''75 per cent subsidiary'' in *section 9*, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(*c*) References in this section and in the following sections of this Chapter to a company shall apply only to companies resident in the State, and in determining for the purposes of this section and the following sections of this Chapter whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(i) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade,

(ii) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt, or

(iii) any share capital which it owns directly or indirectly in a company not resident in the State.

(2) Relief for trading losses and other amounts eligible for relief from corporation tax may in accordance with this Chapter be surrendered by a company (called the ''surrendering company'') which is a member of a group of companies and, on the making of a claim by another company (called the ''claimant company'') which is a member of the same group, may be allowed to the claimant company by means of a relief from corporation tax called ''group relief''.

(3) Group relief shall also be available in accordance with the following provisions of this Chapter—

(*a*) where the surrendering company is a trading company owned by a consortium and is not a 75 per cent subsidiary of any company, and the claimant company is a member of the consortium,

(*b*) where the surrendering company is a trading company which —

(i) is a 90 per cent subsidiary of a holding company owned by a consortium, and

(ii) is not a 75 per cent subsidiary of a company other than the holding company,

and the claimant company is a member of the consortium, or

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(*c*) where the surrendering company is a holding company owned by a consortium and is not a 75 per cent subsidiary of any company, and the claimant company is a member of the consortium;

but no claim may be made by a member of a consortium if a profit on a sale of the share capital of the surrendering company or holding company which that member owns would be treated as a trading receipt of that member nor if the member's share in the consortium in the relevant accounting period of the surrendering company or holding company is nil.

(4) Subject to the following provisions of this Chapter, 2 or more claimant companies may make claims relating to the same surrendering company and to the same accounting period of that surrendering company.

(5) A payment for group relief shall not—

(*a*) be taken into account in computing profits or losses of either company for corporation tax purposes, and

(*b*) be regarded as a distribution or a charge on income for any of the purposes of the Corporation Tax Acts,

and, in this subsection, ''payment for group relief'' means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by means of group relief, being a payment not exceeding that amount.

Qualification for entitlement to group relief.

[CTA76 s108]

412.—(1) Notwithstanding that at any time a company (in this subsection referred to as ''the subsidiary company'') is a 75 per cent subsidiary or a 90 per cent subsidiary, within the meaning of *section 9*, of another company (in this section referred to as ''the parent company''), it shall not be treated at that time as such a subsidiary for the purposes of group relief unless additionally at that time—

(*a*) the parent company is beneficially entitled to not less than 75 per cent or, as the case may be, 90 per cent of any profits available for distribution to equity holders of the subsidiary company, and

(*b*) the parent company would be beneficially entitled to not less than 75 per cent or, as the case may be, 90 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

(2) Subject to *subsection (3)*, for the purposes of group relief a member's share in a consortium, in relation to an accounting period of the surrendering company, shall be whichever is the lowest in that period of the following percentages—

(*a*) the percentage of the ordinary share capital of the surrendering company beneficially owned by that member,

(*b*) the percentage to which that member is beneficially entitled of any profits available for distribution to equity holders of the surrendering company, and

(*c*) the percentage to which that member would be beneficially entitled of any assets of the surrendering company available for distribution to its equity holders on a winding up, Pt.12 S.412

and, if any of those percentages have fluctuated in that accounting period, the average percentage over the period shall be taken for the purposes of this subsection.

(3) In any case where the surrendering company is a subsidiary of a holding company owned by a consortium, for references in *subsection (2*) to the surrendering company there shall be substituted references to the holding company.

413.—(1) In this Chapter, ''fixed-rate preference shares'' means shares which— Profits or assets available for distribution.

[CTA76 s109; FA77 s42 and Sch1 PtIV par1(b)]

(*a*) are issued for consideration which is or includes new consideration,

(*b*) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities,

(*c*) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares,

and

(*d*) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares quoted on a stock exchange in the State.

(2) In this section, ''new consideration'' has the same meaning as in *section 135*.

(3) (*a*) In this subsection—

''normal commercial loan'' means a loan of or including new consideration and—

(i) which does not carry any right either to conversion into shares or securities of any other description or to the acquisition of additional shares or securities,

(ii) which does not entitle the loan creditor to any amount by means of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration loaned, and

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(iii) in respect of which the loan creditor is entitled on repayment to an amount which either does not exceed the new consideration loaned or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities quoted on a stock exchange in the State;

''ordinary shares'' means all shares other than fixed-rate preference shares.

(*b*) For the purposes of this Chapter, an equity holder of a company shall be any person who—

(i) holds ordinary shares in the company, or

(ii) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

and any reference in this Chapter to profits or assets available for distribution to a company's equity holders shall not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(4) *Subsection (6)* of *section 433* apart from *paragraph (b)* of that subsection shall apply for the purposes of *subsection (3)(b)(ii)* as it applies for the purposes of *Part 13*.

(5) Notwithstanding anything in *subsections (1)* to *(4)* but subject to *subsection (6)*, where—

(*a*) any person has directly or indirectly provided new consideration for any shares or securities in the company, and

(*b*) that person or any person connected with that person uses for the purposes of such person's trade assets which belong to the company and in respect of which there is made to the company any of the allowances specified in *Chapter 2* of *Part 9* or *section 670*, *673*, *674*, *677*, *680* or *765*,

then, for the purposes of this Chapter, that person and no other person shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(6) In any case where *subsection (5)* applies in relation to a bank in such circumstances that—

(*a*) the only new consideration provided by the bank as mentioned in *subsection (5)(a)* is provided in the normal course of its banking business by means of a normal commercial loan within the meaning of *subsection (3)*, and

(*b*) the cost to the company concerned of the assets within *subsection (5)(b)* which are used as mentioned in that subsection by the bank or a person connected with the bank is less than the amount of that new consideration,

references in *subsection (5)*, other than the reference in *subsection (5)(a)*, to shares or securities in the company shall be construed as a

reference to so much only of the loan referred to in *paragraph (a)* as is equal to the cost referred to in *paragraph (b)*. Pt.12 S.413

Meaning of "the profit distribution".

414.—(1) Subject to the following provisions of this Chapter, for the purposes of *section 412* the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company means the percentage to which the first company would be so entitled in the relevant accounting period on a distribution in money to those equity holders of— [CTA76 s110]

(*a*) an amount of profits equal to the total profits of the other company which arise in that accounting period (whether or not any of those profits are in fact distributed), or

(*b*) if there are no profits of the other company in that accounting period, profits of £100,

and in the following provisions of this Chapter that distribution is referred to as "the profit distribution".

(2) For the purposes of the profit distribution, it shall be assumed that no payment is made by means of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(3) Subject to *subsection (2)*, where an equity holder is entitled as such to a payment of any description which apart from this subsection would not be treated as a distribution, it shall nevertheless be treated as an amount to which the equity holder is entitled on the profit distribution.

Meaning of "the notional winding up".

415.—(1) Subject to the following provisions of this Chapter, for the purposes of *section 412* the percentage to which one company would be beneficially entitled of any assets of another company available for distribution to its equity holders on a winding up means the percentage to which the first company would be so entitled if the other company were to be wound up and on that winding up the value of the assets available for distribution to its equity holders (after deducting any liabilities to other persons) were equal to— [CTA76 s111]

(*a*) the excess, if any, of the total amount of the assets of the company, as shown in the balance sheet relating to its affairs as at the end of the relevant accounting period, over the total amount of those of its liabilities as so shown which are not liabilities to equity holders as such, or

(*b*) if there is no such excess or if the company's balance sheet is prepared to a date other than the end of the relevant accounting period, £100.

(2) In the following provisions of this Chapter, a winding up on the basis specified in *subsection (1)* is referred to as "the notional winding up".

(3) If on the notional winding up an equity holder would be entitled as such to an amount of assets of any description which apart from this subsection would not be treated as a distribution of assets, it shall nevertheless be treated, subject to *subsection (4)*, as an amount to which the equity holder is entitled on the distribution of assets on the notional winding up.

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(4) (*a*) In this subsection, ''new consideration'' has the same meaning as in *section 135*.

(*b*) Where an amount (in this subsection referred to as ''the returned amount''), which corresponds to the whole or any part of the new consideration provided by a person who is an equity holder of a company for any shares or securities in respect of which such person is an equity holder, is applied by the company directly or indirectly in the making of a loan to, or in the acquisition of any shares or securities in, the equity holder or any person connected with the equity holder, then, for the purposes of this Chapter—

(i) the total amount of the assets referred to in *subsection (1)(a)* shall be taken to be reduced by a sum equal to the returned amount, and

(ii) the amount of assets to which the equity holder is beneficially entitled on the notional winding up shall be taken to be reduced by a sum equal to the returned amount.

Limited right to profits or assets.

[CTA76 s112]

416.—(1) This section shall apply if any of the equity holders—

(*a*) to whom the profit distribution is made, or

(*b*) who is entitled to participate in the notional winding up,

holds as such equity holder any shares or securities which carry rights in respect of dividend or interest or assets on a winding up which are wholly or partly limited by reference to a specified amount or amounts (whether the limitation takes the form of the capital by reference to which a distribution is calculated or operates by reference to an amount of profits or assets or otherwise).

(2) Where this section applies, there shall be determined—

(*a*) the percentage of profits to which on the profit distribution the first company referred to in *section 414(1)* would be entitled, and

(*b*) the percentage of assets to which on the notional winding up the first company referred to in *section 415(1)* would be entitled,

if, to the extent that they are limited as mentioned in *subsection (1)*, the rights of every equity holder within that subsection (including the first company concerned if it is such an equity holder) had been waived.

(3) Where on the profit distribution the percentage of profits determined as mentioned in *subsection (2)(a)* is less than the percentage of profits determined under *section 414(1)* without regard to *subsection (2)(a)*, the lesser percentage shall be taken for the purposes of *section 412* to be the percentage of profits to which on the profit distribution the first company referred to in *section 414(1)* would be entitled as mentioned in that section.

(4) Where on the notional winding up the percentage of assets determined as mentioned in *subsection (2)(b)* is less than the percentage of assets determined under *section 415(1)* without regard to

subsection (2)(b), the lesser percentage shall be taken for the purposes of *section 412* to be the percentage to which on the notional winding up the first company referred to in *section 415(1)* would be entitled of any assets of the other company available for distribution to its equity holders on a winding up. Pt.12 S.416

417.—(1) This section shall apply if at any time in the relevant accounting period any of the equity holders— Diminished share of profits or assets.

[CTA76 s113]

(*a*) to whom the profit distribution is made, or

(*b*) who is entitled to participate in the notional winding up,

holds as such an equity holder any shares or securities which carry rights in respect of dividend or interest or assets on a winding up which are of such a nature (as, for example, if any shares will cease to carry a right to a dividend at a future time) that, if the profit distribution or the notional winding up were to take place in a different accounting period, the percentage to which, in accordance with the preceding provisions of this Chapter, that equity holder would be entitled of profits on the profit distribution or of assets on the notional winding up would be different from the percentage determined in the relevant accounting period.

(2) Where this section applies, there shall be determined—

(*a*) the percentage of profits to which on the profit distribution the first company referred to in *section 414(1)* would be entitled, and

(*b*) the percentage of assets to which on the notional winding up the first company referred to in *section 415(1)* would be entitled,

if the rights of the equity holders in the relevant accounting period were the same as they would be in the different accounting period referred to in *subsection (1)*.

(3) Where in the relevant accounting period an equity holder holds as such any shares or securities in respect of which arrangements exist by virtue of which, in that or any subsequent accounting period, the equity holder's entitlement to profits on the profit distribution or to assets on the notional winding up could be different as compared with the equity holder's entitlement if effect were not given to the arrangements, then, for the purposes of this section—

(*a*) it shall be assumed that effect would be given to those arrangements in a later accounting period, and

(*b*) those shares or securities shall be treated as though any variation in the equity holder's entitlement to profits or assets resulting from giving effect to the arrangements were the result of the operation of such rights attaching to the shares or securities as are referred to in *subsection (1)*.

(4) *Subsections (3)* and *(4)* of *section 416* shall apply for the purposes of this section as they apply for the purposes of that section, and accordingly references in those subsections to *subsection (2)(a)* and *subsection (2)(b)* of that section shall be construed respectively as references to *subsection (2)(a)* and *subsection (2)(b)* of this section.

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(5) In any case where *section 416* applies as well as this section, *section 416* shall be applied separately (in relation to the profit distribution and the notional winding up)—

(*a*) on the basis specified in *subsection (2)*, and

(*b*) without regard to that subsection,

and *subsections (3)* and *(4)* of *section 416* shall apply accordingly in relation to the percentages so determined as if for ''lesser'' there were substituted ''lowest''.

Beneficial percentage.

[CTA76 s114]

418.—For the purposes of *section 412* and *sections 414* to *417*—

(*a*) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company, and

(*b*) the percentage to which one company would be beneficially entitled of any assets of another company on a winding up,

means the percentage to which the first company is or would be so entitled either directly or through another company or other companies or partly directly and partly through another company or other companies.

The relevant accounting period, etc.

[CTA76 s115]

419.—(1) In this Chapter, ''the relevant accounting period'' means—

(*a*) in a case within *section 412(1)*, the accounting period current at the time in question, and

(*b*) in a case within *section 412(2)*, the accounting period in relation to which the share in the consortium is to be determined.

(2) For the purposes of *sections 413* to *418*, a loan to a company shall be treated as a security whether or not it is a secured loan and, if it is a secured loan, regardless of the nature of the security.

Losses, etc. which may be surrendered by means of group relief.

[CTA76 s116(1) to (8) and (10)]

420.—(1) Where in any accounting period the surrendering company has incurred a loss, computed as for the purposes of *section 396(2)*, in carrying on a trade, the amount of the loss may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period; but this subsection shall not apply to so much of a loss as is excluded from *section 396(2)* by *section 396(4)* or *663*.

(2) Where for any accounting period any capital allowances are to be made to the surrendering company which are to be given by discharge or repayment of tax or in charging its income under Case V of Schedule D and are to be available primarily against a specified class of income, so much of the amount of those capital allowances (exclusive of any carried forward from an earlier period) as exceeds its income of the relevant class arising in that accounting period (before deduction of any losses of any other period or of any capital allowances) may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(3) Where for any accounting period the surrendering company (being an investment company) may under *section 83(2)* deduct any amount as expenses of management disbursed for that accounting period, so much of that amount (exclusive of any amount deductible only by virtue of *section 83(3)*) as exceeds the company's profits of that accounting period may be set off for the purposes of corporation tax against the total profits of the claimant company (whether an investment company or not) for its corresponding accounting period.

(4) The surrendering company's profits of the period shall be determined for the purposes of *subsection (3)* without any deduction under *section 83* and without regard to any deduction to be made in respect of losses or allowances of any other period.

(5) References in *subsections (3)* and *(4)* to *section 83* shall not include references to that section as applied by *section 707* to companies carrying on life business.

(6) Where in any accounting period the surrendering company has paid any amount by means of charges on income, so much of that amount as exceeds its profits of the period may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(7) The surrendering company's profits of the period shall be determined for the purposes of *subsection (6)* without regard to any deduction to be made in respect of losses or allowances of any other period or to expenses of management deductible only by virtue of *section 83(3)*.

(8) In applying any of the preceding subsections in the case of a claim made by a company as a member of a consortium, only a fraction of the loss referred to in *subsection (1)*, or of the excess referred to in *subsection (2)*, *(3)* or *(6)*, as the case may be, may be set off under the subsection in question, and that fraction shall be equal to that member's share in the consortium, subject to any further reduction under *section 422(2)*.

(9) (*a*) References in the preceding subsections to a surrendering company shall not include references to a company carrying on life business.

(*b*) For the purposes of this section, ''life business'' shall be construed in accordance with *section 706(1)*.

Relation of group relief to other relief.

[CTA76 s117(1), (2), (3)(a), (b) and (d) and (4)]

421.—(1) In this section, ''relief derived from a subsequent accounting period'' means—

(*a*) relief under *section 308(4)* in respect of capital allowances to be made for an accounting period after the accounting period the profits of which are being computed,

(*b*) relief under *section 396(2)* in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed, and

(*c*) relief under *section 397* in respect of a loss incurred in an accounting period after the end of the accounting period the profits of which are being computed.

(2) Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period

before reduction by any relief derived from a subsequent accounting period, but as reduced by any other relief from tax (including relief in respect of charges on income under *section 243(2)*).

(3) That other relief shall be determined on the assumption that the company makes all relevant claims under *section 308(4)* or *396(2)*.

(4) The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for the first-mentioned accounting period.

Corresponding accounting periods.

[CTA76 s118]

422.—(1) For the purposes of group relief, any accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company shall correspond to that accounting period.

(2) Where an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—

(*a*) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity), and

(*b*) those profits against which the amount mentioned in *paragraph (a)* (as reduced where so required) may be set off shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity),

where—

A is the length of the period common to the 2 accounting periods,

B is the length of the accounting period of the surrendering company, and

C is the length of the corresponding accounting period of the claimant company.

Company joining or leaving group or consortium.

[CTA76 s119]

423.—(1) Subject to this section, group relief shall be given only if the surrendering company and the claimant company are members of the same group, or fulfil the conditions for relief for a consortium, throughout the whole of the surrendering company's accounting period to which the claim relates and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion 2 companies become or cease to be members of the same group, then, for the purposes specified in *subsection (3)*, it shall be assumed as respects each company that on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection) and—

(*a*) that the losses or other amounts of the true accounting period are apportioned to the component accounting periods on a time basis according to their lengths, and

(*b*) that the amount of total profits for the true accounting period of the company against which group relief may be allowed in accordance with *section 421(2)* is also so apportioned to the component accounting periods.

(3) Where the one company is the surrendering company and the other company is the claimant company—

(*a*) references in *section 420* to accounting periods, to profits, and to losses, allowances, expenses of management or charges on income of the surrendering company, shall be construed in accordance with *subsection (2)*;

(*b*) references in *subsection (1)* and in *section 422* to accounting periods shall be so construed that if the 2 companies are members of the same group in the surrendering company's accounting period they shall under *section 422* also be members of the same group in any corresponding accounting period of the claimant company;

(*c*) references in *section 422* to profits, and amounts to be set off against the profits, shall be so construed that an amount apportioned under *subsection (2)* to a component accounting period may fall to be reduced under *section 422(2)*.

(4) *Subsections (2)* and *(3)* shall apply with the necessary modifications where a company begins or ceases to fulfil the conditions for relief for a consortium, either as a surrendering company or as a claimant company, as they apply where 2 companies become or cease to be members of the same group.

Effect of arrangements for transfer of company to another group, etc.

[CTA76 s120]

424.—(1) In this section—

''control'' has the meaning assigned to it by *section 11*;

''third company'' means a company which, apart from any provision made by or under any arrangements specified in *subsection (3)(b)* or *(4)(b)*, is not a member of the same group of companies as the first company (within the meaning of *subsection (3)*) or, as the case may be, the trading company or holding company to which *subsection (4)* applies.

(2) For the purposes of this section, a company shall be a successor of another company if it carries on a trade which in whole or in part the other company has ceased to carry on and the circumstances are such that—

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(*a*) *section 400* applies in relation to the 2 companies as the predecessor and the successor within the meaning of that section, or

(*b*) the 2 companies are connected with each other.

(3) Where apart from this section 2 companies (in this subsection referred to respectively as ''the first company'' and ''the second company'') would be treated as members of the same group of companies and—

(*a*) in an accounting period one of the 2 companies has trading losses or other amounts eligible for relief from corporation tax which apart from this section it would be entitled to surrender as mentioned in *section 411(2)*, and

(*b*) arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period—

(i) the first company or any successor of the first company could cease to be a member of the same group of companies as the second company and could become a member of the same group of companies as a third company,

(ii) any person has or could obtain, or any persons together have or could obtain, control of the first company but not of the second company, or

(iii) a third company could begin to carry on the whole or any part of a trade which at any time in that accounting period is carried on by the first company, and could do so either as a successor of the first company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade,

then, for the purposes of this Chapter, the first company shall be treated as not being a member of the same group of companies as the second company.

(4) Where a trading company is owned by a consortium or is a 90 per cent subsidiary of a holding company owned by a consortium and—

(*a*) in any accounting period the trading company had trading losses or other amounts eligible for relief from corporation tax which apart from this section it would be entitled to surrender as mentioned in *section 411(2)*, and

(*b*) arrangements are in existence by virtue of which—

(i) the trading company or any successor of the trading company could, at some time during or after the expiry of that accounting period, become a 75 per cent subsidiary of a third company,

(ii) any person who owns, or any persons who together own, less than 50 per cent of the ordinary share capital of the trading company has or together have, or could at some time during or after the expiry of that

accounting period obtain, control of the trading company,

(iii) any person, other than a holding company of which the trading company is a 90 per cent subsidiary, either alone or together with connected persons, holds or could obtain, or controls or could control, the exercise of not less than 75 per cent of the votes which may be cast on a poll taken at a general meeting of the trading company in that accounting period or in any subsequent accounting period, or

(iv) a third company could begin to carry on, at some time during or after the expiry of that accounting period, the whole or any part of a trade which at any time in that accounting period is carried on by the trading company, and could do so either as a successor of the trading company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade,

then, for the purposes of this Chapter, the trading company shall be treated as though it were not (as the surrendering company) within *paragraph (a)*, *(b)* or *(c)* of *section 411(3)*.

(5) In any case where a trading company is a 90 per cent subsidiary of a holding company owned by a consortium, any reference in *subsection (4)* to the trading company, other than a reference in *paragraph (b)(iv)* of that subsection, shall be construed as including a reference to the holding company.

Leasing contracts: effect on claims for losses of company reconstructions.

[CTA76 s121]

425.—(1) Subject to this section, where—

(*a*) under a contract entered into after the 27th day of November, 1975, a company (in this section referred to as ''the first company'') incurs capital expenditure on the provision of machinery or plant which the first company lets to another person by another contract (in this section referred to as a ''leasing contract''),

(*b*) apart from this subsection the first company would be entitled to claim relief under *subsection (1)* or *(2)* of *section 396* in respect of losses incurred on the leasing contract, and

(*c*) in the accounting period for which an allowance under *section 283* or *285* in respect of the expenditure referred to in *paragraph (a)* is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period, a successor company will be able to carry on any part of the first company's trade which consists of or includes the performance of all or any of the obligations which apart from the arrangements would be the first company's obligations under the leasing contract,

then, in the accounting period specified in *paragraph (c)* and in any subsequent accounting period, the first company shall not be entitled to claim relief as mentioned in *paragraph (b)* except in computing its profits (if any) arising under the leasing contract.

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(2) For the purposes of this section, a company shall be a successor of the first company if the circumstances are such that—

(*a*) *section 400* applies in relation to the first company and the other company as the predecessor and the successor respectively within the meaning of that section, or

(*b*) the 2 companies are connected with each other.

(3) For the purposes of this section, losses incurred on a leasing contract and profits arising under such a contract shall be computed as if the performance of the leasing contract were a trade begun to be carried on by the first company, separately from any other trade which it may carry on, at the commencement of the letting under the leasing contract.

(4) In determining whether the first company would be entitled to claim relief as mentioned in *subsection (1)(b)*, any losses incurred on the leasing contract shall be treated as incurred in a trade carried on by that company separately from any other trade which it may carry on.

Partnerships involving companies: effect of arrangements for transferring relief.

426.—(1) For the purposes of this section, the amount of a company's share in the profits or loss of any accounting period of a partnership shall be such amount as is determined in accordance with *section 1009*.

[CTA76 s122(1) to (5)]

(2) *Subsection (3)* shall apply in relation to a company (in this section referred to as ''the partner company'') which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

(*a*) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, or

(*b*) in respect of the whole or any part of the cost of, or any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company, or any person connected with that company, receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

(3) (*a*) In this subsection, ''relevant accounting period of the partnership'' means any accounting period of the partnership in which any arrangements specified in *subsection (2)* are in existence or to which any such arrangements apply.

(*b*) In any case where this subsection applies in relation to the partner company—

(i) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income (within the meaning of

section 243) paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its profits of the several trade,

(ii) except in accordance with *subparagraph (i)*, no trading losses shall be available for set-off for the purposes of corporation tax against the profits of the company's several trade for the relevant accounting period of the partnership, and

(iii) except in accordance with *subparagraphs (i)* and *(ii)*, no amount which apart from this subsection would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of profits of its several trade for the relevant accounting period of the partnership.

(4) Where a company is a member of a partnership and tax in respect of any profits of the partnership is chargeable under Case IV or V of Schedule D, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—

(*a*) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a several trade carried on by the company, and

(*b*) any allowance to be made by discharge or repayment of tax or in charging income under Case V of Schedule D were an allowance made in taxing that trade.

Information as to arrangements for transferring relief, etc.

[CTA76 s123]

427.—(1) In this section, *section 417(3)* and *sections 424* to *426*, ''arrangements'' means arrangements of any kind, whether in writing or not.

(2) Where a company—

(*a*) makes a claim for group relief,

(*b*) being a party to a leasing contract (within the meaning of *section 425*) claims relief as mentioned in *subsection (1)(b)* of that section, or

(*c*) being a member of a partnership, claims any relief which, if *section 426(3)* applied in relation to it, it would not be entitled to claim,

and the inspector has reason to believe that any relevant arrangements may exist, or may have existed at any time material to the claim, then, at any time after the claim is made, the inspector may serve notice in writing on the company requiring it to furnish the inspector, within such time, being not less than 30 days, from the giving of the notice as the inspector may direct, with—

(i) a declaration in writing stating whether or not any such arrangements exist or existed at any material time,

(ii) such information as the inspector may reasonably require for the purpose of satisfying the inspector whether or not any such arrangements exist or existed at any material time, or

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(iii) both such a declaration and such information.

(3) In this section, ''relevant arrangements'', in relation to a claim within any of *paragraphs (a)* to *(c)* of *subsection (2)*, means arrangements referred to in the provision specified in the corresponding paragraph below—

(*a*) *section 417(3)* or *subsection (3)* or *(4)* of *section 424*,

(*b*) *section 425(1)(c)*, or

(*c*) *section 426(2)*.

(4) In a case within *paragraph (a)* of *subsection (2)*, a notice under that subsection may be served on the surrendering company (within the meaning of *section 411*) instead of or as well as on the company claiming relief.

(5) In a case within *paragraph (c)* of *subsection (2)*, a notice under that subsection may be served on the partners instead of or as well as on the company, and accordingly may require the partners, instead of or as well as the company, to furnish the declaration, information or declaration and information concerned.

Exclusion of double allowances, etc.

[CTA76 s124; FA97 s146(1) and Sch9 PtI par10(6)]

428.—(1) Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company or by giving group relief more than once.

(2) In accordance with *subsection (1)*, 2 or more claimant companies shall not, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in aggregate more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

(3) Where claims for group relief are made by more than one claimant company which relate to the same accounting period of the same surrendering company, and—

(*a*) all the claims so made are admissible only by virtue of *subsection (2)* or *(3)* of *section 423*, and

(*b*) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,

then, those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) Where claims for group relief are made by a claimant company as respects more than one surrendering company for group relief to be set off against its total profits for any one accounting period, and—

(*a*) all the claims so made are admissible only by virtue of *subsection (2)* or *(3)* of *section 423*, and

(*b*) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company, Pt.12 S.428

then, the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(5) The following provisions shall apply as respects a claim (in this subsection referred to as a ''consortium claim'') for group relief made by a company as a member of a consortium:

(*a*) a consortium claim, and a claim other than a consortium claim, shall not both have effect as respects the loss or other amount of the same accounting period of the same surrendering company unless each of the 2 claims is as respects a loss or other amount apportioned under *section 423(2)(a)* to a component of that accounting period, and the 2 components do not overlap;

(*b*) in *subsections (3)* and *(4)* consortium claims shall be disregarded;

(*c*) *paragraph (a)* shall apply according to the order in which claims are made.

(6) Without prejudice to *section 320(6)*, any reference in *Part 9*, *Chapter 1* of *Part 24*, *Chapter 1* of *Part 29* and *section 765* to an allowance made shall include a reference to an allowance which would be made but for the granting of group relief or but for that and but for an insufficiency of profits or other income against which to make it.

429.—(1) A claim for group relief— Claims and adjustments.

[CTA76 s125]

(*a*) need not be for the full amount available,

(*b*) shall require the consent of the surrendering company notified to the inspector in such form as the Revenue Commissioners may require, and

(*c*) shall be made within 2 years from the end of the surrendering company's accounting period to which the claim relates.

(2) A claim for group relief by a company as a member of a consortium shall require the consent of each other member of the consortium, notified to the inspector in such form as the Revenue Commissioners may require, in addition to the consent of the surrendering company.

(3) Where the inspector ascertains that any group relief which has been given is or has become excessive, he or she may make an assessment to corporation tax under Case IV of Schedule D in the amount which in his or her opinion ought to be charged.

(4) *Subsection (3)* is without prejudice to the making of an assessment under *section 919(5)(b)(iii)* and to the making of all such other

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adjustments by means of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has foregone relief in respect of a corresponding amount.

PART 13

Close Companies

CHAPTER 1

Interpretation and general

Meaning of "close company".

[CTA76 s94]

430.—(1) For the purposes of the Corporation Tax Acts, "close company" means a company under the control of 5 or fewer participators, or of participators who are directors, but does not include—

(*a*) a company not resident in the State,

(*b*) a registered industrial and provident society, being a society within the meaning of *section 698*,

(*c*) a building society within the meaning of *section 702*,

(*d*) a company controlled by or on behalf of the State and not otherwise a close company, or

(*e*) a company within *subsection (4)* or *section 431*.

(2) For the purposes of this section—

(*a*) a company shall be treated as controlled by or on behalf of the State only if it is under the control of the State, or of persons acting on behalf of the State, independently of any other person, and

(*b*) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company by virtue of being under the control of persons acting independently of the State.

(3) A company resident in the State (but not within *paragraph (b)* or *(c)* of *subsection (1)*) shall also be a close company if, on a full distribution of its distributable income, more than 50 per cent of that income would be paid directly or indirectly to 5 or fewer participators, or to participators who are directors.

(4) A company shall not be treated as a close company—

(*a*) if—

(i) it is controlled by a company which is not a close company, or by 2 or more companies none of which is a close company, and

(ii) it cannot be treated as a close company except by taking as one of the 5 or fewer participators requisite for its being so treated a company which is not a close company,

or

(*b*) if it cannot be treated as a close company except by virtue of *paragraph (c)* of *section 432(2)* and would not be a close company if the reference in that paragraph to participators did not include loan creditors who are companies other than close companies. Pt.13 S.430

(5) References in *subsection (4)* to a close company shall be treated as including a company which if resident in the State would be a close company.

(6) Where shares in any company (in this subsection referred to as ''the first company'') are at any time after the 5th day of April, 1976, held on trust for an exempt approved scheme (within the meaning of *Chapter 1* of *Part 30*), then, unless the scheme is established wholly or mainly for the benefit of persons who are, or are dependants of, employees or directors or past employees or directors of—

(*a*) the first company,

(*b*) an associated company of the first company,

(*c*) a company under the control of any director, or associate of a director, of the first company or of 2 or more persons each of whom is such a director or associate, or

(*d*) a close company,

the persons holding the shares shall for the purposes of *subsection (4)* be deemed to be the beneficial owners of the shares and in that capacity to be a company which is not a close company.

Certain companies with quoted shares not to be close companies.

[CTA76 s95]

431.—(1) In this section, ''share'' includes ''stock''.

(2) For the purposes of this section—

(*a*) a person shall be a principal member of a company—

(i) if such person possesses a percentage of the voting power in the company of more than 5 per cent and, where there are more than 5 such persons, if such person is one of the 5 persons who possess the greatest percentages, or

(ii) if (because 2 or more persons possess equal percentages of the voting power in the company) there are no such 5 persons, such person is one of the 6 or more persons (so as to include those 2 or more who possess equal percentages) who possess the greatest percentages,

(*b*) a principal member's holding shall consist of the shares which carry the voting power possessed by the principal member, and

(*c*) in determining the voting power which a person possesses, there shall be attributed to such person any voting power which for the purposes of *section 432* would be attributed to such person under *subsection (5)* or *(6)* of that section.

(3) Subject to this section, a company shall not be treated as being at any time a close company if—

(*a*) shares in the company carrying not less than 35 per cent of the voting power in the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and

(*b*) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been quoted in the official list of a recognised stock exchange.

(4) *Subsection (3)* shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.

(5) For the purposes of *subsection (3)*, shares in a company shall be deemed to be beneficially held by the public only if the shares—

(*a*) are within *subsection (6)*, and

(*b*) are not within the exceptions in *subsection (7)*,

and the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public shall be construed accordingly.

(6) Shares are within this subsection (as being beneficially held by the public) if the shares—

(*a*) are beneficially held by a company resident in the State which is not a close company, or by a company not so resident which would not be a close company if it were so resident,

(*b*) are held on trust for an exempt approved scheme (within the meaning of *Chapter 1* of *Part 30*), or

(*c*) are not comprised in a principal member's holding.

(7) (*a*) Shares shall be deemed not to be held by the public if the shares are held—

(i) by any director, or associate of a director, of the company,

(ii) by any company under the control of any such director or associate, or of 2 or more persons each of whom is such a director or associate,

(iii) by an associated company of the company, or

(iv) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within *subparagraph (ii)* or *(iii)*.

(*b*) References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could for the purposes of *section 432*

be attributed to that person under *subsection (5)* of that section. PT.13 S.431

432.—(1) For the purposes of this Part, a company shall be treated as another company's associated company at a particular time if, at that time or at any time within one year previously, one of the 2 companies has control of the other company, or both companies are under the control of the same person or persons.

Meaning of "associated company" and "control".

[CTA76 s102; FA96 s132(1) and Sch5 Pt1 par10(4)]

(2) For the purposes of this Part, a person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire—

(*a*) the greater part of the share capital or issued share capital of the company or of the voting power in the company,

(*b*) such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed, or

(*c*) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(3) Where 2 or more persons together satisfy any of the conditions of *subsection (2)*, they shall be taken to have control of the company.

(4) For the purposes of *subsection (2)*, a person shall be treated as entitled to acquire anything which such person is entitled to acquire at a future date or will at a future date be entitled to acquire.

(5) For the purposes of *subsections (2)* and *(3)*, there shall be attributed to any person any rights or powers of a nominee for such person, that is, any rights or powers which another person possesses on such person's behalf or may be required to exercise on such person's direction or behalf.

(6) For the purposes of *subsections (2)* and *(3)*, there may also be attributed to any person all the rights and powers of—

(*a*) any company of which such person has, or such person and associates of such person have, control,

(*b*) any 2 or more companies of which such person has, or such person and associates of such person have, control,

(*c*) any associate of such person, or

(*d*) any 2 or more associates of such person,

including the rights and powers attributed to a company or associate under *subsection (5)*, but excluding those attributed to an associate under this subsection, and such attributions shall be made under this

subsection as will result in the company being treated as under the control of 5 or fewer participators if it can be so treated.

Meaning of ''participator'', ''associate'', ''director'' and ''loan creditor''.

[CTA76 s103; FA97 s146(1) and Sch9 PtI par10(5)]

433.—(1) For the purposes of this Part, ''participator'', in relation to any company, means a person having a share or interest in the capital or income of the company and, without prejudice to the generality of the foregoing, includes—

(*a*) any person who possesses, or is entitled to acquire, share capital or voting rights in the company,

(*b*) any loan creditor of the company,

(*c*) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing ''distributions'' without regard to *section 436* or *437*) or any amounts payable by the company (in cash or in kind) to loan creditors by means of premium on redemption, and

(*d*) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for such person's benefit.

(2) (*a*) References in *subsection (1)* to being entitled to do anything apply where a person is entitled to do it at a future date or will at a future date be entitled to do it.

(*b*) *Subsection (1)* is without prejudice to any particular provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

(3) (*a*) In this subsection, ''relative'' means husband, wife, ancestor, lineal descendant, brother or sister.

(*b*) For the purposes of this Part but subject to *paragraph (c)*, ''associate'', in relation to a participator, means—

(i) any relative or partner of the participator,

(ii) the trustee or trustees of any settlement in relation to which the participator is, or any relative (living or dead) of the participator is or was, a settlor (''settlement'' and ''settlor'' having the same meanings respectively as in *section 10*), and

(iii) where the participator is interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, any other person interested in those shares or obligations,

and has a corresponding meaning in relation to a person other than a participator.

(*c*) *Paragraph (b)(iii)* shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

(i) if the trust relates exclusively to an exempt approved scheme (within the meaning of *Chapter 1* of *Part 30*), or

(ii) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of the directors or their relatives) and the individual in question is not (and could not as a result of the operation of the trust become), either on his or her own or with his or her relatives, the beneficial owner of more than 5 per cent of the ordinary share capital of the company,

and, in applying *subparagraph (ii)*, any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

(4) For the purposes of this Part, ''director'' includes any person—

(*a*) occupying the position of director by whatever name called,

(*b*) in accordance with whose directions or instructions the directors are accustomed to act,

(*c*) who is a manager of the company or otherwise concerned in the management of the company's trade or business, and

(*d*) who is, either on his or her own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control, 20 per cent or more of the ordinary share capital of the company.

(5) In *subsection (4)(d)*, ''either on his or her own or with one or more associates'' requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he or she does not own or control share capital on his or her own and, in *subsection (3)(c)(ii)*, ''either on his or her own or with his or her relatives'' has a corresponding meaning.

(6) (*a*) For the purposes of this Part but subject to *paragraph (b)*, ''loan creditor'', in relation to a company, means a creditor in respect of—

(i) any debt incurred by the company for—

(I) any money borrowed or capital assets acquired by the company,

(II) any right to receive income created in favour of the company, or

(III) 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),

or

(ii) any redeemable loan capital issued by the company.

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(*b*) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital issued or debt incurred by the company for money loaned by such person to the company in the ordinary course of that business.

(7) A person who is not the creditor in respect of any debt or loan capital to which *subsection (6)* applies but nevertheless has a beneficial interest in that debt or loan capital shall to the extent of that interest be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.

Distributions to be taken into account and meaning of ''distributable income'', ''investment income'', ''estate income'', etc.

[CTA76 s100; FA89 s27(1)]

434.—(1) In this section—

''distributable income'' of a company for an accounting period means—

(*a*) the income as computed in accordance with *subsection (4)*, increased by the amount of the company's franked investment income for the accounting period reduced by the tax credit comprised in that income, but

(*b*) where the aggregate of the amounts specified in *paragraphs (d)* to *(g)* of *subsection (4)* exceeds the income as computed in accordance with that subsection apart from those paragraphs, the amount of the excess shall, in computing the amount of the distributable income, be deducted from the amount of the company's franked investment income for the accounting period as so reduced;

''estate income'' means income (other than yearly or other interest) chargeable to tax under Case III, IV or V of Schedule D, and arising from the ownership of land (including any interest in or right over land) or from the letting furnished of any building or part of a building;

''investment income'' of a company means income other than estate income which, if the company were an individual, would not be earned income within the meaning of *section 3*, but does not include any interest or dividends on investments which, having regard to the nature of the company's trade, would be taken into account as trading receipts in computing trading income but for the fact that they have been subjected to tax otherwise than as trading receipts, or but for the fact that by virtue of *section 129* they are not to be taken into account in computing income for corporation tax;

''trading income'' means income arising from a trade (including farming) or profession in respect of which a company is chargeable to corporation tax under Case I or II of Schedule D;

''trading company'' means any company which exists wholly or mainly for the purpose of carrying on a trade and any other company whose income does not consist wholly or mainly of investment or estate income.

(2) For the purposes of *section 440*, the distributions of a company for an accounting period shall be taken to be the aggregate of—

(*a*) any dividends which are declared for or in respect of the accounting period and are paid or payable during the

accounting period or within 18 months after the end of the accounting period, and

(*b*) all distributions, other than dividends, made in the accounting period.

(3) Where—

(*a*) a period of account for or in respect of which a company declares a dividend is not an accounting period,

(*b*) the dividend is paid or payable during the period of account or within 18 months after the end of the period of account, and

(*c*) part of the period of account falls within an accounting period,

then, the proportion of the amount of the dividend to be treated for the purposes of *subsection (2)* as being for or in respect of the accounting period shall be the same as the proportion which that part of the period of account bears to the whole of that period.

(4) For the purposes of *subsection (1)*, the income of a company for an accounting period shall be the income for the accounting period, computed in accordance with the Corporation Tax Acts, exclusive of franked investment income, before deducting—

(*a*) any loss incurred in any trade or profession carried on by the company which is carried forward from an earlier, or carried back from a later, accounting period,

(*b*) any loss which if it were a profit would be chargeable to corporation tax on the company under Case III or IV of Schedule D and which is carried forward from an earlier accounting period or any expenses of management or any charges on income which are so carried forward, and

(*c*) any excess of deficiencies over surpluses which if such excess were an excess of surpluses over deficiencies would be chargeable to corporation tax on the company under Case V of Schedule D and which is carried forward from an earlier, or carried back from a later, accounting period,

and after deducting—

(*d*) any loss incurred in the accounting period in any trade or profession carried on by the company,

(*e*) any loss incurred in the accounting period which if it were a profit would be chargeable to corporation tax on the company under Case III or IV of Schedule D,

(*f*) any excess of deficiencies over surpluses which if such excess were an excess of surpluses over deficiencies would be chargeable to corporation tax on the company for the accounting period under Case V of Schedule D,

(*g*) any amount which is an allowable deduction—

(i) in computing the total profits for the accounting period in respect of expenses of management by virtue of *section 83(2)*, or

(ii) against the total profits for the accounting period in respect of charges by virtue of *section 243(2)*, and

(*h*) the amount of the corporation tax which apart from *section 448(2)* would be payable by the company for the accounting period if the tax were computed on the basis of the income determined in accordance with the preceding provisions of this subsection.

(5) For the purposes of *section 440*—

''distributable investment income'' of a company for an accounting period means—

(*a*) in a case where *paragraph (b)* of the definition of ''distributable income'' applies, the amount determined in accordance with that paragraph, and

(*b*) in any other case, the sum of the following amounts—

(i) the amount determined by applying to the amount of the distributable income exclusive of franked investment income (as reduced by the tax credit comprised in that income) the fraction—

$$\frac{A}{B}$$

where—

A is the amount of the investment income taken into account in computing the tax mentioned in *subsection (4)(h)*, and

B is the total amount of income so taken into account,

and

(ii) the amount of the franked investment income (as reduced by the tax credit comprised in that income),

but, in the case of a trading company, the distributable investment income shall be the amount determined in accordance with the preceding provisions of this definition reduced by 5 per cent;

''distributable estate income'' of a company for an accounting period means the amount determined by applying to the amount of the distributable income exclusive of franked investment income (as reduced by the tax credit comprised in that income) the fraction—

$$\frac{C}{D}$$

where—

C is the amount of the estate income taken into account in computing the tax mentioned in *subsection (4)(h)*, and

D is the total amount of income so taken into account, PT.13 S.434

but, in the case of a trading company, the distributable estate income shall be the amount determined in accordance with the preceding provisions of this definition reduced by 7.5 per cent.

(6) The amount for part of an accounting period of any description of income referred to in this section shall be a proportionate part of the amount for the whole period.

(7) Where a company is subject to any restriction imposed by law as regards the making of distributions, regard shall be had to this restriction in determining the amount of income on which a surcharge shall be imposed under *section 440*.

Information. [CTA76 s104]

435.—(1) The inspector may by notice in writing require any company which is, or appears to the inspector to be, a close company to furnish him or her within such time (not being less than 30 days) as may be specified in the notice with such particulars as he or she thinks necessary for the purposes of this Part.

(2) Where for the purposes of this Part any person in whose name any shares are registered is so required by notice in writing by the inspector, such person—

(*a*) shall state whether or not such person is the beneficial owner of the shares, and

(*b*) if not the beneficial owner of the shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in such person's name.

(3) *Subsection (2)* shall apply in relation to loan capital as it applies in relation to shares.

(4) (*a*) In this subsection, ''securities'' includes shares, stocks, bonds, debentures and debenture stock and any promissory note or other instrument evidencing indebtedness issued to a loan creditor of the company.

(*b*) For the purposes of this Part, the inspector may by notice in writing require—

(i) any company which appears to the inspector to be a close company to furnish him or her with particulars of any bearer securities issued by the company and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person, and

(ii) any person to whom securities were so issued, or any person to whom or through whom such securities were subsequently sold or transferred, to furnish the inspector with such further information as he or she may require with a view to enabling him or her to ascertain the names and addresses of the persons beneficially interested in the securities.

Additional matters to be treated as distributions, charges to tax in respect of certain loans and surcharges on certain undistributed income

Certain expenses for participators and associates.

[CTA76 s96]

436.—(1) Subject to the exceptions mentioned in *section 130*, ''distribution'', in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by *subsection (3)*.

(2) For the purposes of this section, any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.

(3) (*a*) Subject to *paragraph (b)*, where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature, the company shall be treated as making a distribution to such participator of an amount equal to so much of that expense as is not made good to the company by such participator.

(*b*) *Paragraph (a)* shall not apply to expense incurred in or in connection with the provision of benefits or facilities for a person to whom *section 118* applies as a director or employee of the company, or the provision for the spouse, children or dependants of any such person of any pension, annuity, lump sum, gratuity or other like benefit to be given on his or her death or retirement.

(4) Any reference in *subsection (3)* to expense incurred in or in connection with any matter shall include a reference to a proper proportion of any expense incurred partly in or in connection with that matter, and *section 119* shall apply for the purposes of *subsection (3)* as it applies for the purposes of *section 118*, references to *subsection (3)* being substituted for references to *section 118(1)*.

(5) *Subsection (3)* shall not apply if the company and the participator are both resident in the State and—

(*a*) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and

(*b*) the benefit to the participator arises on or in connection with the transfer of assets or liabilities by the company to the participator, or to the company by the participator.

(6) The question whether one company is a subsidiary of another company for the purpose of *subsection (5)* shall be determined as if it were a question whether it is a 51 per cent subsidiary of the other company, except that the other company shall be treated as not being the owner of—

(*a*) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade,

(*b*) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt, or

(*c*) any share capital which it owns directly or indirectly in a company not resident in the State. Pt.13 S.436

(7) (*a*) Where each of 2 or more close companies makes a payment to a person (in this paragraph referred to as ''the first-mentioned person'') who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then, each of those companies and any participator in it shall be treated as if the payment made to the first-mentioned person had been made by that company.

(*b*) This subsection shall apply with any necessary modifications in relation to the giving of any consideration and to the provision of any facilities as it applies in relation to the making of a payment.

Interest paid to directors and directors' associates.

437.—(1) In this section, ''interest'' includes any other consideration paid or given by the close company for the use of money advanced, or credit given, by any person, and references to interest paid shall be construed accordingly.

[CTA76 s97]

(2) For the purposes of this section, a person shall have a material interest in a company if the person, either on the person's own or with any one or more of the person's associates, or if any associate of the person with or without any such other associates, is the beneficial owner of, or is able, directly or through the medium of other companies or by any other indirect means, to control, more than 5 per cent of the ordinary share capital of the company.

(3) Subject to the exceptions mentioned in *section 130(1)*, this section shall apply where in any accounting period any interest is paid by a close company to, or to an associate of, a person—

(*a*) who is a director of the close company, or of any company which controls or is controlled by the close company, and

(*b*) who has a material interest—

(i) in the close company, or

(ii) where the close company is controlled by another company, in that other company.

(4) Where the total amount so paid to any person in the accounting period exceeds the limit imposed in that person's case, the excess shall be deemed to be a distribution made by the close company to that person.

(5) The limit shall be calculated in the first instance as an overall limit applying to the aggregate of all interest which is within *subsection (3)* and which was paid by the close company in the accounting period and, where there are 2 or more different recipients, that overall limit shall be apportioned between them according to the amounts of interest paid to them respectively.

(6) The overall limit shall be a sum equal to interest at 13 per cent per annum or such other rate of interest as the Minister for Finance may from time to time prescribe on whichever is the lesser of—

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(*a*) the total of the loans, advances and credits on which the interest within *subsection (3)* was paid by the close company in the accounting period or, if the total was different at different times in the accounting period, the average total over the accounting period, and

(*b*) the nominal amount of the issued share capital of the close company plus the amount of any share premium account (or other comparable account by whatever name called) of the company, taking both amounts as at the beginning of the accounting period.

(7) This section shall apply subject to *section 436(7)*.

Loans to participators, etc.

[CTA76 s98(1) to (7) and (9); FA83 s35]

438.—(1) (*a*) Subject to this section, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, the company shall be deemed for the purposes of this section to have paid in the year of assessment in which the loan or advance is made an annual payment of an amount which, after deduction of income tax at the standard rate for the year of assessment in which the loan or advance is made, is equal to the amount of the loan or advance.

(*b*) *Section 239* shall apply for the purposes of the charge, assessment and recovery of the tax referred to in *paragraph (a)*.

(*c*) The annual payment referred to in *paragraph (a)* shall not be a charge on the company's income within the meaning of *section 243*.

(2) For the purposes of this section, the cases in which a close company is to be regarded as making a loan to any person shall include a case where—

(*a*) that person incurs a debt to the close company, or

(*b*) a debt due from that person to a third person is assigned to the close company,

and in such a case the close company shall be regarded as making a loan of an amount equal to the debt; but *paragraph (a)* shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the period of credit given exceeds 6 months or is longer than that normally given to the company's customers.

(3) *Subsection (1)* shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—

(*a*) the amount of the loan, or that amount when taken together with any other outstanding loans which were made by the close company or any of its associated companies to the borrower, or to the spouse of the borrower, does not exceed £15,000,

(*b*) the borrower works full-time for the close company or any of its associated companies, and

(*c*) the borrower does not have a material interest in the close company or in any associated company of the close company but, if the borrower acquires such a material interest at a time when the whole or part of any such loan remains outstanding, the close company shall be regarded as making to the borrower at that time a loan of an amount equal to the sum outstanding.

(4) (*a*) Where, after a company has been assessed to tax under this section in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, relief shall be given from that tax or a proportionate part of that tax by discharge or repayment.

(*b*) Relief under this subsection shall be given on a claim which shall be made within 10 years from the end of the year of assessment in which the repayment is made.

(5) Where under arrangements made by any person otherwise than in the ordinary course of a business carried on by that person—

(*a*) a close company makes a loan or advance which apart from this subsection does not give rise to any charge on the company under *subsection (1)*, and

(*b*) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in *paragraph (b)* there is to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to the participator or associate.

(6) In *subsections (1)* and *(5)(b)*, the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity and to a company not resident in the State.

(7) For the purposes of this section, any participator in a company which controls another company shall be treated as being also a participator in that other company, and *section 437(2)* shall apply for the purpose of determining whether a person has for the purpose of *subsection (3)* a material interest in a company.

(8) For the purposes of this section and in relation to any loan or advance made on or after the 23rd day of May, 1983, *section 430(1)* shall apply as if *paragraph (b)* of that section were deleted.

Effect of release, etc. of debt in respect of loan under *section 438.*

[CTA76 s99(1), (2) and (4)]

439.—(1) Subject to this section, where a company is assessed or liable to be assessed under *section 438* in respect of a loan or advance and releases or writes off the whole or part of the debt in respect of the loan or advance, then—

(*a*) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to

the amount so released or written off shall be treated as income received by such person after deduction of income tax by virtue of *section 238* (at the standard rate for the year of assessment in which the whole or part of the debt was released or written off) from a corresponding gross amount,

(*b*) no repayment of income tax shall be made in respect of that income,

(*c*) notwithstanding *paragraph (a)*, the income included by virtue of that paragraph in the total income of that person shall be treated for the purposes of *sections 237* and *238* as not brought into charge to income tax, and

(*d*) for the purposes of *section 59(ii)*, any amount to be treated as income by virtue of *paragraph (a)* shall be treated as if income tax had been deducted from that amount at the standard rate for the year of assessment in which the whole or part of the debt was released or written off; but, where such amount (or the aggregate of such amounts if more than one) exceeds the amount of the individual's taxable income charged at the standard rate or the higher rate, the amount of the credit under *section 59(ii)* in respect of the excess shall not, notwithstanding anything in *section 59*, exceed the amount of the income tax, if any, charged on that excess.

(2) If the loan or advance referred to in *subsection (1)* was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and accordingly, if it is due from such person as personal representative within the meaning of *Chapter 1* of *Part 32*, the amount treated as received by such person shall be, as regards the higher rate of tax, included for the purposes of that Chapter in the aggregate income of the estate), and *subsection (1)* shall apply accordingly with the necessary modifications.

(3) This section shall be construed together with *section 438*.

Surcharge on undistributed investment and estate income.

[CTA76 s101; FA90 s47; FA97 s146(1) and Sch9 PtI par10(4)]

440.—(1) (*a*) Where for an accounting period of a close company the aggregate of the distributable investment income and the distributable estate income exceeds the distributions of the company for the accounting period, there shall be charged on the company an additional duty of corporation tax (in this section referred to as a ''surcharge'') amounting to 20 per cent of the excess.

(*b*) Notwithstanding *paragraph (a)*—

(i) a surcharge shall not be made on a company where the excess is equal to or less than the lesser of the following amounts—

(I) £500 or, if the accounting period is less than 12 months, £500 proportionately reduced, and

(II) where the company has one or more associated companies, £500 divided by one plus

the number of those associated companies or, if the accounting period is less than 12 months, £500 proportionately reduced divided by one plus the number of those associated companies;

(ii) where the excess is greater than the lesser amount on which by virtue of *subparagraph (i)* a surcharge would not be made, the amount of the surcharge shall not be greater than a sum equal to 80 per cent of the amount by which the excess is greater than that lesser amount.

(2) Where the aggregate of—

(*a*) the accumulated undistributed income of the company at the end of the accounting period, and

(*b*) any amount which, on or after the 27th day of November, 1975, was transferred to capital reserves or was used to issue shares, stock or securities as paid up otherwise than for new consideration (within the meaning of *section 135*) or was otherwise used so as to reduce the amount referred to in *paragraph (a)*,

is less than the excess referred to in *subsection (1)*, that subsection shall apply as if the amount of that aggregate were substituted for the excess.

(3) In applying *subsection (1)* to any accounting period of a company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any time in that part of that accounting period) shall be disregarded.

(4) In determining how many associated companies a company has in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and 2 or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.

(5) Where any amount on which a surcharge is made on a company under this section is distributed, the tax credit in respect of the distribution shall, except where otherwise provided, be that provided for by *section 136*.

(6) A surcharge made under this section on a company in respect of an accounting period (in this subsection referred to as ''the first-mentioned accounting period'')—

(*a*) shall be charged on the company for the earliest accounting period which ends on or after a day which is 12 months after the end of the first-mentioned accounting period, and

(*b*) shall be treated as corporation tax chargeable for that accounting period;

but where there is no such accounting period so ending, the surcharge shall be charged for, and treated as corporation tax of, the accounting period in respect of which it is made.

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(7) The provisions of the Corporation Tax Acts relating to—

(*a*) assessments to corporation tax,

(*b*) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(*c*) the collection and recovery of corporation tax,

shall apply in relation to a surcharge made under this section as they apply to corporation tax charged otherwise than under this section.

Surcharge on undistributed income of service companies.

[CTA76 s162(1) to (6); FA90 s48; FA95 s55(1); FA96 s52(1); FA97 s146(1) and Sch9 PtI par10(9)]

441.—(1) In this section, ''service company'' means, subject to *subsection (2)*—

(*a*) a close company whose business consists of or includes the carrying on of a profession or the provision of professional services,

(*b*) a close company having or exercising an office or employment, or

(*c*) a close company whose business consists of or includes the provision of services or facilities of whatever nature to or for—

(i) a company within either of the categories referred to in *paragraphs (a)* and *(b)*,

(ii) an individual who carries on a profession,

(iii) a partnership which carries on a profession,

(iv) a person who has or exercises an office or employment, or

(v) a person or partnership connected with any person or partnership referred to in *subparagraphs (i)* to *(iv)*;

but the provision by a close company of services or facilities to or for a person or partnership not connected with the company shall be disregarded for the purposes of this paragraph.

(2) Where the principal part of a company's income which is chargeable to corporation tax under Cases I and II of Schedule D and Schedule E is not derived from—

(*a*) carrying on a profession,

(*b*) providing professional services,

(*c*) having or exercising an office or employment,

(*d*) providing services or facilities (other than providing services or facilities to or for a person or partnership not connected with the company) to or for any person or partnership referred to in *subparagraphs (i)* to *(v)* of *subsection (1)(c)*, or

(*e*) any 2 or more of the activities specified in *paragraphs (a)* to *(d)*, Pt.13 S.441

the company shall be deemed not to be a service company.

(3) For the purposes of this section—

(*a*) a partnership shall be treated as connected with a company or individual (and a company or individual shall be treated as connected with a partnership) if any one of the partners in the partnership is connected with the company or individual, and

(*b*) a partnership shall be treated as connected with another partnership if any one of the partners in the partnership is connected with any one of the partners in the other partnership.

(4) (*a*) Where for an accounting period of a service company the aggregate of—

(i) 50 per cent of the distributable income, and

(ii) 50 per cent of the aggregate of the distributable investment income and the distributable estate income,

exceeds the distributions of the company for the accounting period, there shall be charged on the company an additional duty of corporation tax (in this section referred to as a ''surcharge'') amounting to 15 per cent of the excess.

(*b*) Notwithstanding *paragraph (a)*—

(i) a surcharge shall not be made on a company where the excess is equal to or less than the lesser of the following amounts—

(I) £500 or, if the accounting period is less than 12 months, £500 proportionately reduced, and

(II) where the company has one or more associated companies, £500 divided by one plus the number of those associated companies or, if the accounting period is less than 12 months, £500 proportionately reduced divided by one plus the number of those associated companies;

(ii) where the excess is greater than the lesser amount on which by virtue of *subparagraph (i)* a surcharge would not be made, the amount of the surcharge shall not be greater than a sum equal to 80 per cent of the amount by which the excess is greater than that lesser amount;

(iii) the surcharge shall apply to so much of the excess calculated under this subsection in respect of an accounting period of a company as is not greater than the excess of the aggregate of the distributable investment income and the distributable estate

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income of the accounting period over the distributions of the company for the accounting period as if the reference in this subsection apart from this subparagraph to 15 per cent were a reference to 20 per cent.

(5) *Section 440(1)* shall not apply in relation to a service company, but *subsections (2)* to *(7)* of *section 440* shall apply in relation to a surcharge made under this section as they apply in relation to a surcharge made under *section 440* with the substitution in *subsections (2)* and *(3)* of *section 440* of a reference to *subsection (4)* of this section for the reference to *subsection (1)* of that section.

(6) (*a*) *Subsections (2)*, *(3)*, *(6)* and *(7)* of *section 434* shall apply for the purposes of this section as they apply for the purposes of *section 434* or *440*, as the case may be.

(*b*) For the purposes of this section—

(i) the income of a company for an accounting period shall be its income computed for that period in accordance with *section 434(4)*;

(ii) ''distributable income'', ''distributable investment income'' and ''distributable estate income'' of a company for an accounting period have the same meanings respectively as in *subsections (1)* and *(5)* of *section 434* with the substitution for the reference to a trading company in each place where it occurs in *subsection (5)* of that section of a reference to a service company.

PART 14

Taxation of Companies Engaged in Manufacturing Trades, Certain Trading Operations Carried on in Shannon Airport and Certain Trading Operations Carried on in the Custom House Docks Area

CHAPTER 1

Interpretation and general

Interpretation (*Part 14*).

442.—(1) In this Part—

[FA80 s38 and s40; FA90 s40 and s41(6); FA91 s35]

''merchandise'' means goods other than goods within the meaning of *section 443*;

''relevant accounting period'' means an accounting period or part of an accounting period of a company ending on or before—

(*a*) where *subsection (11)* or *(12)* of *section 443* applies, the 31st day of December, 2000, or

(*b*) in any other case, the 31st day of December, 2010;

''relief under this Part'' means the reduction of corporation tax provided for in *section 448(2)*.

(2) For the purposes of this Part, where a part only of an accounting period of a company is a relevant accounting period, all amounts

referable to the accounting period shall be apportioned, on the basis of the proportion which the length of the relevant accounting period bears to the length of the accounting period of the company, for the purpose of ascertaining any amount required to be taken into account in respect of the relevant accounting period. PT.14 S.442

Meaning of ''goods''.

443.—(1) (*a*) In this Part, ''goods'' means, subject to this section, goods manufactured in the State in the course of a trade by the company which, in relation to the relevant accounting period, is the company claiming relief under this Part in relation to the trade.

[FA80 s39; FA81 s17(a); FA84 s45(b); FA87 s28(3), s29 and s31; S.I. No. 61 of 1988; FA90 s41(1); FA91 s32(1); FA92 s47; FA93 s44(1) and s47(3); FA94 s48(1); FA97 s146(1) and Sch9 PtI par11(1)]

(*b*) Where—

(i) there are 2 companies one of which manufactures goods and the other of which sells the goods in the course of its trade, and

(ii) one of the companies is a 90 per cent subsidiary of the other company or both companies are 90 per cent subsidiaries of a third company,

any goods manufactured in the State by one of the companies shall, when sold in the course of its trade by the other company, be deemed to have been manufactured in the State by that other company.

(*c*) *Sections 412* to *417* shall apply for the purposes of *paragraph (b)(ii)* as they apply for the purposes of *Chapter 5* of *Part 12*.

(2) The definition of ''goods'' shall include fish produced in the State on a fish farm in the course of a trade by the company which, in relation to the relevant accounting period, is the company claiming relief under this Part in relation to the trade, and references in this Part to manufactured shall be construed, in relation to fish, as including references to produced and cognate words shall be construed accordingly.

(3) The definition of ''goods'' shall include plants cultivated in the State, by the process of plant biotechnology known as ''micropropagation'' or ''plant cloning'', in the course of a trade by the company which, in relation to the relevant accounting period, is the company claiming relief under this Part in relation to the trade, and references in this Part to manufactured shall be construed, in relation to such plants, as including references to cultivated and cognate words shall be construed accordingly.

(4) The definition of ''goods'' shall include—

(*a*) meat processed in the State in an establishment approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1987 (S.I. No. 284 of 1987), and

(*b*) subject to *subsections (5)* and *(6)(a)(iii)*, fish which has been subjected to a process of manufacture in the State,

in the course of a trade by the company which, in the relevant accounting period, is the company claiming relief under this Part in relation to the trade, and references in this Part to manufactured and cognate words shall be construed accordingly.

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(5) (*a*) The definition of ''goods'' shall not include goods sold by retail by the company claiming relief under this Part.

(*b*) For the purposes of *paragraph (a)*, goods shall be deemed not to be sold by retail if they are sold—

(i) to a person who carries on a trade of selling goods of the class to which the goods so sold to such person belong,

(ii) to a person who uses goods of that class for the purposes of a trade carried on by such person, or

(iii) to a person, other than an individual, who uses goods of that class for the purposes of an undertaking carried on by such person.

(6) Without prejudice to the generality of *subsection (1)* and subject to *subsections (2)* to *(4)* and *(8)* to *(15)*, goods shall not for the purposes of this section be regarded as manufactured if they are goods which result from a process—

(*a*) which consists primarily of any one of the following—

(i) dividing (including cutting), purifying, drying, mixing, sorting, packaging, branding, testing or applying any other similar process to a product, produce or material that is acquired in bulk so as to prepare that product, produce or material for sale or distribution, or any combination of such processes,

(ii) applying methods of preservation, pasteurisation or maturation or other similar treatment to any foodstuffs, or any combination of such processes,

(iii) cooking, baking or otherwise preparing food or drink for human consumption which is intended to be consumed, at or about the time it is prepared, whether or not in the building or structure in which it is prepared or whether or not in the building to which it is delivered after being prepared,

(iv) improving or altering any articles or materials without imposing on them a change in their character, or

(v) repairing, refurbishing, reconditioning, restoring or other similar processing of any articles or materials, or any combination of such processes,

or

(*b*) which, subject to *subsection (1)(b)*, is not carried out by the company claiming relief under this Part.

(7) (*a*) In this subsection, ''the intervention agency'' means the Minister for Agriculture and Food, when exercising or performing any power or function conferred on that Minister by regulation 3 of the European Communities (Common Agricultural Policy) (Market Intervention) Regulations, 1973 (S.I. No. 24 of 1973), and any other person when exercising or performing any corresponding power or function in any Member State of the European Communities.

(*b*) Notwithstanding any other provision of the Tax Acts, the definition of ''goods'' shall not include goods sold to the intervention agency. PT.14 S.443

(*c*) For the purposes of *paragraph (b)*, the sale of goods to a person other than the intervention agency shall be deemed to be a sale to the intervention agency if and to the extent that those goods are ultimately sold to the intervention agency; but the rendering to the intervention agency of services consisting of the subjecting of meat belonging to the agency to a process of manufacture carried out in an establishment specified in *subsection (4)(a)* shall not be regarded as a sale of goods to the agency.

(8) For the purpose of relief under this Part, in relation to a company that carries on a trade which consists of or includes the repairing of ships—

(*a*) repairs carried out in the State to a ship shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for such repairs so carried out shall be regarded as an amount receivable from the sale of goods.

(9) (*a*) In this subsection, ''engineering services'' means design and planning services the work on the rendering of which is carried out in the State in connection with chemical, civil, electrical or mechanical engineering works executed outside the territories of the Member States of the European Communities.

(*b*) For the purpose of relief under this Part, in relation to a company which carries on a trade which consists of or includes the rendering of engineering services—

(i) the rendering in the State of such services shall be regarded as the manufacture in the State of goods, and

(ii) any amount receivable in payment for such services so rendered shall be regarded as an amount receivable from the sale of goods.

(10) (*a*) In this subsection, ''computer services'' means one or more of the following—

(i) data processing services,

(ii) software development services, and

(iii) technical or consultancy services relating to either or both services specified in *subparagraphs (i)* and *(ii)*,

the work on the rendering of which is carried out in the State in the course of a service undertaking in respect of which—

(I) (A) an employment grant was made by the Industrial Development Authority under section 25 of the Industrial Development Act, 1986, or

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(B) an employment grant was made by the Industrial Development Agency (Ireland) or Forbairt, as may be appropriate, under section 12(2) of the Industrial Development Act, 1993,

(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.

(*b*) For the purposes of relief under this Part, in relation to a company carrying on a trade which consists of or includes the rendering of computer services—

(i) the rendering of the computer services shall be regarded as the manufacture in the State of goods, and

(ii) any amount receivable in payment for the rendering of the computer services shall be regarded as an amount receivable from the sale of goods.

(11) (*a*) In this subsection, ''qualifying shipping activities'' and ''qualifying shipping trade'' have the same meanings respectively as in *section 407*.

(*b*) For the purposes of relief under this Part, in relation to a company carrying on a qualifying shipping trade—

(i) qualifying shipping activities carried on in the course of the qualifying shipping trade shall be regarded as the manufacture in the State of goods, and

(ii) any amount receivable from the carrying on of qualifying shipping activities shall be regarded as an amount receivable from the sale of goods.

(12) (*a*) In this subsection—

''export goods'' means goods which, in relation to the manufacturer of those goods, are goods for the purposes of this Part and which are exported by a Special Trading House which is not the manufacturer of the goods but which, in relation to the relevant accounting period, is the company claiming relief from tax by virtue of this subsection, where the selling by the Special Trading House of the goods so exported is selling by wholesale;

''selling by wholesale'' means selling goods of any class to a person who carries on a business of selling goods of that class or who uses goods of that class for the purposes of a trade or undertaking carried on by such person;

''Special Trading House'' means a company which exists solely for the purpose of carrying on a trade consisting solely of the selling of export goods manufactured by a firm which employs less than 200 persons.

(*b*) For the purposes of this subsection, goods shall be deemed to be exported when they are transported out of the State in the course of the selling by wholesale of those goods and are not subsequently transported into the State in the course of the selling by wholesale of those goods.

(*c*) For the purposes of relief under this Part, in relation to a Special Trading House—

(i) export goods when exported in the course of its trade by a Special Trading House shall be deemed to have been manufactured by the Special Trading House, notwithstanding that the manufacturer has claimed, or is entitled to claim, relief under this Part in respect of the sale by it of those goods, and

(ii) any amount receivable by the Special Trading House in payment for the sale of export goods shall be regarded as an amount receivable from the sale of goods.

(*d*) This subsection shall apply subject to the Export Promotion (Amendment) Act, 1987.

(13) For the purposes of relief under this Part, in relation to a company which carries on a trade, not being a relevant trading operation within the meaning of *section 445(7)(a)*, which consists of or includes the repair or maintenance of aircraft, aircraft engines or components—

(*a*) such repair or maintenance carried out in the State shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for such repair or maintenance so carried out shall be regarded as an amount receivable from the sale of goods.

(14) (*a*) In this subsection, ''film'' means a film which is produced—

(i) on a commercial basis with a view to the realisation of profit, and

(ii) wholly or principally for exhibition to the public in cinemas or by means of television broadcasting or for training or documentary purposes,

and in respect of which not less than 75 per cent of the work on the production is carried out in the State.

(*b*) For the purposes of relief under this Part, in relation to a company carrying on a trade which consists of or includes the production of a film—

(i) the production of the film by the company claiming the relief shall be regarded as the manufacture in the State of goods, and

(ii) any amount receivable for that production shall be regarded as an amount receivable from the sale of goods.

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(15) For the purposes of relief under this Part, in relation to a company which carries on a trade which consists of or includes the remanufacture and repair of computer equipment or of subassemblies where such equipment or subassemblies were originally manufactured by that company or a connected company—

(*a*) such remanufacture or repair carried out in the State shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for such remanufacture or repair so carried out shall be regarded as an amount receivable from the sale of goods.

(16) (*a*) In this subsection—

''agricultural society'' means a society—

(i) in relation to which both the following conditions are satisfied:

(I) the number of the society's members is not less than 50, and

(II) all or a majority of the society's members are persons who are mainly engaged in and derive the principal part of their income from husbandry,

or

(ii) to which a certificate under *paragraph (b)* relates;

''fishery society'' means a society—

(i) in relation to which both the following conditions are satisfied:

(I) the number of the society's members is not less than 20, and

(II) all or a majority of the society's members are persons who are mainly engaged in and derive the principal part of their income from fishing,

or

(ii) to which a certificate under *paragraph (c)* relates;

''qualifying goods'' means goods purchased by a society from its members where such goods, in relation to those members, are or would but for *subsection (7)* be goods for the purposes of this Part;

''qualifying society'' means an agricultural society or a fishery society—

(i) which carries on a trade which consists wholly or mainly of the selling by wholesale of qualifying goods, and

(ii) all or a majority of the members of which are agricultural societies or fishery societies;

"selling by wholesale" means selling goods of any class to a person who carries on a business of selling goods of that class or who uses goods of that class for the purposes of a trade or undertaking carried on by such person;

"society" means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978.

(*b*) The Minister for Finance may, on the recommendation of the Minister for Agriculture and Food, give a certificate entitling a society to be treated for the purposes of this subsection as an agricultural society notwithstanding that one or both of the conditions in *paragraph (i)* of the definition of "agricultural society" is or are not complied with in relation to the society.

(*c*) The Minister for Finance may, on the recommendation of the Minister for the Marine and Natural Resources, give a certificate entitling a society to be treated for the purposes of this subsection as a fishery society notwithstanding that one or both of the conditions in *paragraph (i)* of the definition of "fishery society" is or are not complied with in relation to the society.

(*d*) A certificate given under—

(i) paragraph (*a*) or (*b*) of section 70(2) of the Finance Act, 1963,

(ii) paragraph (*a*) or (*b*) of section 220(2) of the Income Tax Act, 1967, or

(iii) paragraph (*a*) or (*b*) of section 18(2) of the Finance Act, 1978,

shall, unless it has been revoked, be deemed to be a certificate given under *paragraph (b)* or *(c)*, as the case may be.

(*e*) A certificate given under *paragraph (b)* or *(c)*—

(i) shall have effect as from such date, whether before or after the date on which it is given, as may be stated in the certificate, and

(ii) shall be published in Iris Oifigiúil as soon as may be after the certificate is given.

(*f*) A certificate given under *paragraph (b)* or *(c)* may be revoked by the Minister for Finance at any time and notice of any such revocation shall be published as soon as may be in Iris Oifigiúil.

(*g*) For the purposes of relief under this Part, in relation to a qualifying society—

(i) qualifying goods sold by wholesale in the course of its trade by the qualifying society shall be deemed to have been manufactured by the qualifying society, notwithstanding that the society which manufactured those goods has claimed, or is entitled to claim, relief under this Part in respect of the sale by it of those goods, and

(ii) any amount receivable from the sale of qualifying goods by the qualifying society shall be regarded as an amount receivable from the sale of goods.

(17) (*a*) In this subsection—

''agricultural society'' and ''society'' have the same meanings respectively as in *subsection (16)*;

''milk product'' means butter, whey-butter, cream, cheese, condensed milk, dried or powdered milk, dried or powdered skim-milk, dried or powdered whey, chocolate crumb, casein, butter-oil, lactose, and any other product made wholly or mainly from milk or from a by-product of milk and approved for the purposes of this section by the Minister for Finance after consultation with the Minister for Agriculture and Food;

''qualifying company'' means a company to which a certificate under *paragraph (c)* relates;

''qualifying trade'' means a trade carried on by a company which consists wholly or mainly of the manufacture of milk products;

''relevant product'' means milk purchased by an agricultural society from its members, being milk sold by the agricultural society to a qualifying company.

(*b*) For the purposes of this subsection (other than this paragraph), where a trade consists partly of the manufacture of milk products, then, unless the trade consists mainly of the application of a process of pasteurisation to milk, the part of the trade which consists of the manufacture of milk products shall be treated as a separate trade.

(*c*) Where the Minister for Agriculture and Food is satisfied that a company—

(i) carried on a qualifying trade during the whole of the period of 3 years ending immediately before the day from which the certificate specified subsequently in this paragraph has effect,

(ii) is carrying on a qualifying trade and intends to continue to carry it on for a period which when added to the period for which it has been carrying it on will amount to not less than 3 years, or

(iii) intends to carry on a qualifying trade for a period of not less than 3 years,

that Minister may, after consultation with the Minister for Finance, give a certificate to the company stating that the company may be treated as a qualifying company for the purposes of this subsection, and, whenever such a certificate is given to a company, the company shall be so treated during the period for which the certificate has effect.

(*d*) A certificate given under *paragraph (c)*—

(i) shall have effect for the period beginning on such day, whether before or after the day on which it is given, as may be specified in the certificate and ending on the day which is 2 years after that day, and

(ii) may be revoked by the Minister for Agriculture and Food after consultation with the Minister for Finance.

(*e*) Notice of a revocation under *paragraph (d)* shall be published as soon as may be in Iris Oifigiúil and the revocation shall have effect as on and from the thirtieth day after the day on which it is so published.

(*f*) For the purposes of relief under this Part, in relation to the sale by an agricultural society of relevant products—

(i) relevant products shall be deemed to have been manufactured by the agricultural society, and

(ii) any amount receivable from the sale of relevant products by the agricultural society shall be regarded as an amount receivable from the sale of goods.

(18) For the purposes of relief under this Part, in relation to a company to which a profit or loss specified in *section 80* arises, the amount of any profit which is deemed by that section to be a profit or gain of the trade carried on by the company shall be regarded as an amount receivable from the sale of goods.

(19) (*a*) In this subsection, ''newspaper'' means a newspaper—

(i) the contents of each issue of which consist wholly or mainly, as regards the quantity of printed matter contained in the newspaper, of information on the principal current events and topics of general public interest,

(ii) the format of which is commonly regarded as newspaper format, and

(iii) which is—

(I) printed on newsprint,

(II) intended to be sold to the public, and

(III) normally published at least fortnightly.

(*b*) For the purposes of relief under this Part, in relation to a company which carries on a trade which consists of or includes the production in the State of a newspaper—

(i) the production of the newspaper (including the rendering of advertising services in the course of the production of the newspaper) by the company shall be regarded as the manufacture in the State of goods, and

(ii) any amount receivable—

(I) from the sale of copies of the newspaper, or

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(II) from the rendering by the company of advertising services in the course of the production of the newspaper,

shall be regarded as an amount receivable from the sale of goods.

(20) Subject to *subsection (19)*, for the purposes of this Part, where in a relevant accounting period a company renders advertising services in the course of a trade carried on by it which consists wholly or partly of the production of a newspaper, magazine or other similar product, then—

(*a*) any amount receivable in payment for the rendering of such services shall not be regarded as an amount receivable from the sale of goods, and

(*b*) for the purposes of *section 448*, the company's income from the trade for a relevant accounting period shall be regarded as not derived solely from the sale of goods and merchandise.

(21) For the purpose of relief under this Part, in relation to a company which carries on a trade which consists of or includes the rendering to another person of services by means of subjecting commodities or materials belonging to that person to any process of manufacturing—

(*a*) the rendering in the State of such services shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for services so rendered shall be regarded as an amount receivable from the sale of goods.

(22) The inspector may by notice in writing require a company, a Special Trading House (within the meaning of *subsection (12)*), a qualifying society (within the meaning of *subsection (16)*) or an agricultural society (within the meaning of *subsection (17)*), as the case may be, claiming relief from tax by virtue of *subsection (8)*, *(9)*, *(10)*, *(11)*, *(12)*, *(13)*, *(14)*, *(15)*, *(16)*, *(17)*, *(18)*, *(19)* or *(21)*, as the case may be, to furnish him or her with such information or particulars as may be necessary for the purpose of giving effect to that subsection, and *subsection (2)* of *section 448* shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this subsection.

Exclusion of mining and construction operations.

[FA80 s50]

444.—(1) For the purposes of relief under this Part, income from the sale of goods shall not include income from—

(*a*) any mining operations for the purpose of obtaining, whether by underground or surface working, any scheduled mineral, mineral compound or mineral substance (within the meaning of section 2 of the Minerals Development Act, 1940), or

(*b*) any construction operations (within the meaning of *Chapter 2* of *Part 18*).

(2) Where a company carries on a trade which consists of or includes the manufacture of goods and—

(*a*) in the course of the trade, it carries on any mining operations (within the meaning of *subsection (1)(a)*) from which it obtains any scheduled mineral, mineral compound or mineral substance of the kind referred to in that subsection, and

(*b*) any such mineral, mineral compound or mineral substance is not sold by the company in the course of the trade but forms the whole or part of the materials used in the manufacture of such goods or is to any extent incorporated in the goods in the course of their manufacture,

then, part of the income which apart from this subsection would be income from the sale of goods for the purposes of *section 448* shall be deemed for the purposes of *subsection (1)* to be income from such mining operations, and that part shall be such amount as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

(3) Where the amount receivable from a sale of goods includes consideration for the carrying out in relation to those goods of any construction operations (within the meaning of *Chapter 2* of *Part 18*), then, part of the income which apart from this subsection would be income from the sale of goods for the purposes of *section 448* shall be deemed for the purposes of *subsection (1)* to be income from such construction operations, and that part shall be such amount as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

Certain trading operations carried on in Shannon Airport.

[FA80 s39A(1) to (7) and (10); FA81 s17(b); FA86 s56(2); FA88 s35; FA91 s33; FA92 s52; FA96 s53]

445.—(1) In this section—

''the airport'' has the same meaning as in the Customs-Free Airport Act, 1947;

''company'' means any company carrying on a trade;

''the Minister'' means the Minister for Finance;

''qualified company'' means a company the whole or part of the trade of which is carried on in the airport;

''relevant trading operations'' means trading operations specified in a certificate given by the Minister under *subsection (2)*;

''trading operation'' means any trading operation which apart from this section and *section 443(13)* is not the manufacture of goods for the purpose of this Part but is carried on by a qualified company.

(2) Subject to *subsections (7)* and *(8)*, the Minister may give a certificate certifying that such trading operations of a qualified company as are specified in the certificate are, with effect from a date specified in the certificate, relevant trading operations for the purpose of this section, and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005.

(3) A certificate given under *subsection (2)* may be given either without conditions or subject to such conditions as the Minister considers proper and specifies in the certificate.

(4) Where in the case of a company in relation to which a certificate under *subsection (2)* has been given—

(*a*) the trade of the company ceases or becomes carried on wholly outside the airport, or

(*b*) the Minister is satisfied that the company has failed to comply with any condition subject to which the certificate was given,

the Minister may, by notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the notice.

(5) Where, in the case of a company in relation to which a certificate under *subsection (2)* has been given, the Minister is of the opinion that any activity of the company has had, or may have, an adverse effect on the use or development of the airport or is otherwise inimical to the development of the airport, then—

(*a*) the Minister may, by notice in writing served by registered post on the company, require the company to desist from such activity with effect from such date as may be specified in the notice, and

(*b*) if the Minister is not satisfied that the company has complied with the requirements of that notice, the Minister may, by a further notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the further notice.

(6) Where the Minister and a company in relation to which a certificate under *subsection (2)* has been given agree to the revocation of that certificate and its replacement by another certificate to be given to the company under *subsection (2)*, the Minister may, by notice in writing served by registered post on the company, revoke the first-mentioned certificate with effect from such date as may be specified in the notice; but this subsection shall not affect the operation of *subsection (4)* or *(5)*.

(7) The Minister shall not certify under *subsection (2)* that a trading operation is a relevant trading operation unless it is carried on in the airport and is within one or more of the following classes of trading operations—

(*a*) the repair or maintenance of aircraft,

(*b*) trading operations in relation to which the Minister is of the opinion, after consultation with the Minister for Public Enterprise, that they contribute to the use or development of the airport, or

(*c*) trading operations ancillary to any of those operations described in *paragraph (a)* or *(b)* or to any operations consisting apart from this section of the manufacture of goods.

(8) The Minister shall not certify under *subsection (2)* that any of the following trading operations is a relevant trading operation—

(*a*) the rendering of—

(i) services to embarking or disembarking aircraft passengers, including hotel, catering, money-changing or transport (other than air transport) services, or

(ii) services in connection with the landing, departure, loading or unloading of aircraft, Pt.14 S.445

(*b*) the operation of a scheduled air transport service,

(*c*) selling by retail, otherwise than by mail order or other distance selling, which satisfies the requirement of *subsection (7)(b)*,

(*d*) the sale of consumable commodities for the fuelling of aircraft or for shipment as aircraft stores.

(9) For the purposes of relief under this Part, in the case of a qualified company carrying on relevant trading operations—

(*a*) the relevant trading operations shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for anything sold, or any services rendered, in the course of the relevant trading operations shall be regarded as an amount receivable from the sale of goods.

(10) The inspector may by notice in writing require a company claiming relief from tax by virtue of this section to furnish him or her with such information or particulars as may be necessary for the purpose of giving effect to this section, and *subsection (2)* of *section 448* shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this section.

Certain trading operations carried on in Custom House Docks Area.

[FA80 s39B(1) to (6), (7)(a) and (b), (8) and (9); FA87 s30; FA91 s34; FA92 s53; FA94 s53; FA95 s65; FA97 s28]

446.—(1) In this section—

''the Area'' means, subject to *subsection (12)*, the Custom House Docks Area within the meaning of *section 322*;

''company'' means any company carrying on a trade;

''the Minister'' means the Minister for Finance;

''qualified company'' means a company to which the Minister has given a certificate under *subsection (2)*;

''relevant trading operations'' means trading operations specified in a certificate given by the Minister under *subsection (2)*;

''trading operation'' means any trading operation which apart from this section is not the manufacture of goods for the purposes of this Part.

(2) Subject to *subsections (7)* and *(9)*, the Minister may give a certificate certifying that such trading operations of a company as are specified in the certificate are, with effect from a date specified in the certificate, relevant trading operations for the purposes of this section, and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005.

(3) A certificate given under *subsection (2)* may be given either without conditions or subject to such conditions as the Minister considers proper and specifies in the certificate.

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(4) Where in the case of a company in relation to which a certificate under *subsection (2)* has been given—

(*a*) the trade of the company ceases or, except in the case of a company in relation to which the Minister has, in accordance with *subsection (9)*, given a certificate under *subsection (2)* and which has not yet commenced to carry on in the Area the trading operation or trading operations specified in the certificate, becomes carried on wholly outside the Area, or

(*b*) the Minister is satisfied that the company has failed to comply with any condition subject to which the certificate was given,

the Minister may, by notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the notice.

(5) Where, in the case of a company in relation to which a certificate under *subsection (2)* has been given, the Minister is of the opinion that any activity of the company has had, or may have, an adverse effect on the use or development of the Area or is otherwise inimical to the development of the Area, then—

(*a*) the Minister may, by notice in writing served by registered post on the company, require the company to desist from such activity with effect from such date as may be specified in the notice, and

(*b*) if the Minister is not satisfied that the company has complied with the requirements of that notice, the Minister may, by a further notice in writing served by registered post on the company, revoke the certificate with effect from such date as may be specified in the further notice.

(6) Where the Minister and a company in relation to which a certificate under *subsection (2)* has been given agree to the revocation of that certificate and its replacement by another certificate to be given to the company under *subsection (2)*, the Minister may, by notice in writing served by registered post on the company, revoke the first-mentioned certificate with effect from such date as may be specified in the notice; but this subsection shall not affect the operation of *subsection (4)* or *(5)*.

(7) Subject to *subsection (9)*, the Minister shall not certify under *subsection (2)* that a trading operation is a relevant trading operation unless—

(*a*) it is carried on in the Area,

(*b*) the Minister is satisfied that it will contribute to the development of the Area as an International Financial Services Centre, and

(*c*) it is within one or more of the following classes of trading operations—

(i) the provision for persons not ordinarily resident in the State of services, in relation to transactions in foreign currencies, which are of a type normally provided by a bank in the ordinary course of its trade,

(ii) the carrying on on behalf of persons not ordinarily resident in the State of international financial activities, including in particular—

(I) global money-management,

(II) international dealings in foreign currencies and in futures, options and similar financial assets which are denominated in foreign currencies,

(III) dealings in bonds, equities and similar instruments which are denominated in foreign currencies,

(IV) insurance and related activities, or

(V) the management of the whole or part of the investments and other activities of a specified collective investment undertaking (within the meaning of *section 734*),

(iii) the provision for persons not ordinarily resident in the State of services of, or facilities for, processing, control, accounting, communication, clearing, settlement or information storage in relation to financial activities,

(iv) dealing by a company in commodity futures or commodity options on behalf of persons not ordinarily resident in the State—

(I) other than on behalf of persons who—

(A) carry on a trade in which commodities of a type which are the subject of the futures or options, as the case may be, are used in the course of the carrying on of the trade, or

(B) would be regarded as connected with a person who carries on such a trade,

or

(II) where dealing in futures and options, some or all of which are commodity futures or commodity options, as the case may be, is the principal relevant trading operation carried on by the company,

(v) the development or supply of computer software for use in the provision of services or facilities of a type referred to in *subparagraph (iii)* or for the reprocessing, analysing or similar treatment of information in relation to financial activities, or

(vi) trading operations similar to or ancillary to any of those operations described in the preceding provisions of this section in relation to which the Minister is of the opinion that they contribute to the use of the Area as an International Financial Services Centre.

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(8) References in *subsection (7)* to any service or facility provided for, or any activity carried on on behalf of, a person not ordinarily resident in the State shall not include any such service or facility provided for, or any activity carried on on behalf of, the whole or any part of a trade carried on by that person in the State.

(9) Where the Minister would have certified a trading operation under *subsection (2)* but for the fact that the condition specified in *subsection (7)(a)* was not satisfied as respects the trading operation, the Minister may, notwithstanding that such condition is not satisfied, certify the trading operation under *subsection (2)* if the Minister is satisfied that—

(*a*) the trading operation is not carried on in the Area due to circumstances outside the control of the company carrying on the trading operation, and

(*b*) such company intends to carry on, and will commence to carry on, the trading operation in the Area within such period of time as the Minister may specify under *subsection (3)* as a condition subject to which the Minister gives the certificate under *subsection (2)* in respect of the trading operation.

(10) For the purpose of relief under this Part, in the case of a qualified company carrying on relevant trading operations—

(*a*) the relevant trading operations shall be regarded as the manufacture in the State of goods, and

(*b*) any amount receivable in payment for anything sold, or any services rendered, in the course of the relevant trading operations shall be regarded as an amount receivable from the sale of goods.

(11) The inspector may by notice in writing require a company claiming relief from tax by virtue of this section to furnish him or her with such information or particulars as may be necessary for the purpose of giving effect to this section, and *subsection (2)* of *section 448* shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this section.

(12) (*a*) For the purposes of this section, the Minister for Finance, after consultation with the Minister for the Environment and Local Government, may, by order direct that the definition of ''the Custom House Docks Area'' in *section 322* shall include such area or areas described in the order which but for the order would not be included in that definition and, where the Minister for Finance so orders, the definition of ''the Custom House Docks Area'' in that section shall for the purposes of this section be deemed to include that area or those areas.

(*b*) The Minister for Finance may, for the purposes of making an order under this section and an order under *section 322*, exercise the powers to make those orders by making one order for the purposes of both of those sections.

(*c*) The Minister for Finance may make orders for the purpose of this section and any order made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order

is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. PT.14 S.446

447.—An appeal to the Appeal Commissioners shall lie on any question arising under this Part in the like manner as an appeal would lie against an assessment to corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly. Appeals.

[FA80 s51]

CHAPTER 2

Principal provisions

448.—(1) (*a*) For the purposes of this section, ''relevant corporation tax'' means the corporation tax which, apart from this section, *sections 157*, *158*, *239*, *241*, *440*, *441*, *442* and *827* and *paragraphs 16* and *18* of *Schedule 32*, would be chargeable for the relevant accounting period exclusive of the corporation tax chargeable on the part of the company's profits attributable to chargeable gains for that period. Relief from corporation tax.

[FA80 s41(1) to (5) and (8) to (9); FA92 s54; F(No.2)A92 s1; FA94 s54(b); FA95 s61; FA97 s59(2) and Sch6 PtII par1(1) and (2)]

(*b*) For the purposes of *paragraph (a)*, the part of the company's profits attributable to chargeable gains for the relevant accounting period shall be taken to be the amount brought into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description.

(2) (*a*) Subject to *paragraph (b)*, where a company which carries on a trade which consists of or includes the manufacture of goods claims and proves as respects a relevant accounting period that during that period any amount was receivable in respect of the sale in the course of the trade of goods, corporation tax payable by the company for that period, in so far as it is referable to the income from the sale of those goods, shall be reduced by twenty-six thirty-sixths, and the corporation tax referable to the income from the sale of those goods shall be such an amount as bears to the relevant corporation tax the same proportion as the income from the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period.

(*b*) Where a company which carries on a trade which consists of or includes the manufacture of goods claims and proves as respects a relevant accounting period (being an accounting period beginning before the 1st day of April, 1997, and ending on or after that date) that during that period any amount was receivable in respect of the sale in the course of the trade of goods, corporation tax payable by the company for that period, in so far as it is referable to the income from the sale of those goods, shall be reduced—

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(i) by twenty-eight thirty-eighths, in so far as it is corporation tax charged on profits which under *section 26(3)* are apportioned to the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, and

(ii) by twenty-six thirty-sixths, in so far as it is corporation tax charged on profits which under *section 26(3)* are apportioned to the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998,

and the corporation tax referable to the income from the sale of those goods—

(I) shall, for the purposes of *subparagraph (i)*, be such an amount as bears to the part of the relevant corporation tax charged on profits which under *section 26(3)* are apportioned to the period beginning on the 1st day of January, 1996, and ending on the 31st day of March, 1997, the same proportion as the income from the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period, and

(II) shall, for the purposes of *subparagraph (ii)*, be such an amount as bears to the part of the relevant corporation tax charged on profits which under *section 26(3)* are apportioned to the period beginning on the 1st day of April, 1997, and ending on the 31st day of December, 1998, the same proportion as the income from the sale of those goods bears to the total income brought into charge to corporation tax for the relevant accounting period.

(3) For the purposes of *subsection (2)*, ''the income from the sale of those goods'' shall be taken to be such sum as bears to the amount of the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise the same proportion as the amount receivable by the company in the relevant accounting period from the sale in the course of the trade of goods bears to the total amount receivable by the company in the relevant accounting period from the sale in the course of the trade of goods and merchandise.

(4) For the purposes of *subsection (3)*, ''the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise'' shall be—

(*a*) in any case where the income from the trade is derived solely from sales of goods and merchandise, the amount of the company's income from the trade, and

(*b*) in any other case, such amount of the income from the trade as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

(5) (*a*) For the purposes of this Part, the amount receivable by a company in a relevant accounting period from the sale of goods or merchandise—

(i) shall be deemed to be reduced by the amount of any duty paid or payable by the company in respect of the goods or merchandise or in respect of the materials used in their manufacture, and

(ii) shall not include any amount in respect of value-added tax chargeable on the sale of the goods or merchandise.

(*b*) The inspector may by notice in writing require a company making a claim for relief under this Part to furnish him or her with such information or particulars as may be necessary for the purposes of giving effect to this subsection, and *subsection (2)* shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this subsection.

(6) A company shall not be entitled to relief under this Part in relation to a trade as respects a relevant accounting period unless it makes a claim for the relief under *subsection (2)* before the date on which the assessment for the accounting period which coincides with or includes that relevant accounting period becomes final and conclusive.

(7) (*a*) In this subsection—

''the airport'' and ''the Area'' have the same meanings respectively as in *sections 445* and *446*;

''the Minister'' means the Minister for Finance;

''qualified company'' includes, subject to *paragraph (i)*, a company which has not carried on trading operations in the Area or the airport and which intends to carry on trading operations which will be relevant trading operations;

''relevant subsection'' means *subsection (2)* of *section 445* or *subsection (2)* of *section 446*, as the case may be;

''relevant taxation'', in relation to an investor or a qualified company, means any tax imposed under the laws of any state by reason of the relief.

(*b*) Notwithstanding any other provision of this section but subject to *paragraph (c)*, where the Minister is satisfied that the conditions specified in *paragraph (d)* are met, the Minister may by notice in writing given to a qualified company reduce the fraction (in this subsection referred to as ''the relief'') by which corporation tax payable, in so far as it is referable to income from relevant trading operations, is to be, or but for this subsection would be, reduced under *subsection (2)* by specifying in the notice such lower fraction (in this subsection referred to as ''the revised relief'') as the Minister deems appropriate by which that corporation tax is to be reduced.

(*c*) The reduction of the relief so as to determine the revised relief shall be no greater than is necessary to secure the result specified in *paragraph (d)(iv)*.

(*d*) The conditions referred to in *paragraph (b)* are that—

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(i) some or all of the shares in the qualified company are owned directly or indirectly (within the meaning of *section 9*) by a company or companies (in this subsection referred to as ''the investors'') resident outside the State, or the qualified company is resident outside the State and is trading in the State through a branch or agency,

(ii) the qualified company (in this subparagraph referred to as the ''first-mentioned qualified company'') is carrying on, or is about to carry on, a trade in the State which includes or consists of relevant trading operations and with levels of activity and employment in the State in relation to those operations either in the first-mentioned qualified company, or in another qualified company with which the first-mentioned qualified company has entered into an agreement in order to carry on such operations, which, having regard to the certificate issued or to be issued to the first-mentioned qualified company or the other qualified company, as the case may be, under the relevant subsection, are substantial and contribute, or will contribute, to the development of the Area as an International Financial Services Centre, or to the development of the airport, as the case may be,

(iii) the manner in which the investors or the qualified company, as the case may be, would but for this subsection be subject to relevant taxation in respect of income from relevant trading operations would result in the qualified company ceasing to carry on relevant trading operations carried on by it, or not carrying on relevant trading operations, as the case may be, in the State, and

(iv) the revised relief would ensure that all or a substantial part of the relevant trading operations of the qualified company will continue to be carried on, or will be carried on, as the case may be, in the State to an extent that they will continue to contribute, or will contribute, to the development of the Area as an International Financial Services Centre, or to the development of the airport, as the case may be.

(*e*) Where the Minister has given a notice pursuant to *paragraph (b)*, *subsection (2)* shall apply as if the revised relief were substituted for the relief.

(*f*) Notwithstanding any other provision of this section, the Minister may, subject to *paragraph (c)*, by notice given in writing to the qualified company—

(i) increase or decrease the revised relief specified in a preceding notice given to the qualified company under this subsection, or

(ii) reinstate the relief,

and, where the Minister has given such notice, *paragraph (e)* shall apply as if the revised relief specified in the notice given under *paragraph (b)* were the revised relief

specified under this paragraph or the relief shall be reinstated, as the case may be. Pt.14 S.448

(*g*) A notice given by the Minister under this subsection specifying a revised relief or an increase or decrease in such revised relief or a reinstatement of the relief shall have effect from the date specified in the notice which may be a date preceding the date on which the notice is given.

(*h*) Subject to *paragraph (i)*, this subsection shall be construed together with *sections 445* and *446*.

(*i*) In so far as this subsection is to be construed together with *section 445*, it shall be so construed only in so far as the relevant trading operations carried on by a qualified company within the meaning of that section are trading operations which could be certified by the Minister as relevant trading operations for the purposes of *section 446* if they were carried on in the Area rather than the airport.

Credit for foreign tax not otherwise credited.

[FA80 s39C; FA94 s54(a); FA95 s63]

449.—(1) In this section—

''an amount receivable from the sale of goods'' means an amount which—

(*a*) being an amount receivable from the sale of computer software, or

(*b*) by virtue of *section 443(10)(b)(ii)*, *445(9)(b)* or *446(10)(b)*,

is regarded as receivable from the sale of goods for the purposes of relief under this Part;

''relevant foreign tax'', where borne by a company in respect of an amount receivable from the sale of goods, means tax—

(*a*) which under the laws of any foreign territory has been deducted from that amount,

(*b*) which corresponds to income tax or corporation tax,

(*c*) which has not been repaid to the company, and

(*d*) for which credit is not allowable under arrangements within the meaning of *Schedule 24*;

''the total amount receivable from the sale of goods'', in relation to a company in the course of a trade in a relevant accounting period, means the aggregate of amounts, receivable by the company in the course of the trade in the relevant accounting period, which are regarded by virtue of this Part as receivable from the sale of goods for the purposes of relief under this Part.

(2) For the purposes of this section—

(*a*) the amount of the corporation tax which apart from *subsection (3)* would be payable by a company and which is attributable to an amount receivable from the sale of goods shall be an amount equal to 10 per cent of the amount of the income of the company referable to the amount so receivable;

(*b*) the amount of any income of a company referable to an amount receivable from the sale of goods in the course of a trade in a relevant accounting period shall, subject to *paragraph 4(5)* of *Schedule 24*, be taken to be such sum as bears to the total amount of the income of the company from the sale of goods in the course of the trade for the relevant accounting period the same proportion as the amount receivable from the sale of goods bears to the total amount receivable by the company from the sale of goods in the course of the trade in the relevant accounting period;

(*c*) the total amount of income of a company from the sale of goods in the course of a trade in a relevant accounting period shall be taken to be the sum referred to in *subsection (3)* of *section 448*, which for the purposes of *subsection (2)* of that section is to be taken to be the income of the trade for the relevant accounting period referred to in the expression ''the income from the sale of those goods'' in *subsection (2)* of that section.

(3) The amount of corporation tax which apart from this subsection would be payable by a company for a relevant accounting period shall be reduced by so much of nine-tenths of any relevant foreign tax borne by the company in respect of an amount receivable from the sale of goods in that period in the course of a trade as does not exceed the corporation tax which would be so payable and which is attributable to the amount receivable from the sale of goods.

(4) Where as respects a relevant accounting period corporation tax payable by a company is by virtue of *section 448(7)* reduced by a fraction (referred to in that section as ''the revised relief''), then, in computing the reduction, if any, under *subsection (3)* of corporation tax payable by the company for the relevant accounting period, being corporation tax attributable to an amount receivable from the sale of goods which is an amount receivable in the course of relevant trading operations (within the meaning of *section 446*), this section shall apply as if—

(*a*) the reference in *subsection (2)(a)* to 10 per cent were a reference to a rate per cent determined by the formula—

$$C \times (1 - D)$$

where—

C is the rate per cent of corporation tax specified in *section 21(1)* for the financial year in which the relevant accounting period ends, and

D is the fraction referred to in *section 448(7)* as ''the revised relief'',

and

(*b*) the reference in *subsection (3)* to nine-tenths were a reference to a fraction determined by the formula—

$$\frac{100 - [C \times (1 - D)]}{100}$$

where C and D have the same meanings as in *paragraph (a)*.

450.—(1) (*a*) In this section—

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Double taxation relief.

[FA80 s39D; FA95 s62]

''appropriate inspector'', ''chargeable period'' and ''specified return date for the chargeable period'' have the same meanings respectively as in *Part 41*;

''arrangements'' and ''foreign tax'' have the same meanings respectively as in *paragraph 1(1)* of *Schedule 24*;

''credit institution'' means an undertaking whose business it is to receive deposits or other repayable funds from the public and to grant credit on its own account;

''group relevant payment'' means a relevant payment made to a relevant company by a company related to the relevant company;

''qualified company'' and ''relevant trading operations'' have, subject to *paragraph (e)*, the same meanings respectively as in *section 446*;

''relevant company'' means a qualified company, other than a credit institution or a 25 per cent subsidiary of a credit institution, the relevant trading operations of which—

(i) are wholly carried on by persons—

(I) who are employees of the qualified company or a company related to it and who are not employees of any employer other than the qualified company or the company related to it, as the case may be, and

(II) in respect of whom there does not exist any understanding or arrangement the purpose of which, or one of the purposes of which, is to provide for the engagement of the services of those persons, whether as employees or otherwise, should they cease to be employed by the qualified company or the company related to it, as the case may be,

and

(ii) are not managed or directed, whether directly or indirectly, by another qualified company other than a company related to the first-mentioned qualified company;

''relevant foreign tax'' means so much of the amount of foreign tax as—

(i) has been deducted from relevant payments,

(ii) would have been so deducted if the laws of the territory under which the tax was deducted prohibited the deduction of tax from such payments at a rate in excess of 10 per cent, and

(iii) has not been repaid;

''relevant payment'' means a payment of interest which—

(i) arises from a source within a territory in regard to which arrangements have the force of law, and

(ii) is regarded, subject to *paragraph (e)*, by virtue of *section 446(10)(b)* as receivable by a relevant company from the sale of goods for the purposes of relief under this Part.

(*b*) For the purposes of this section, a company shall be treated as related to another company at any relevant time if at that time one of the 2 companies is a 25 per cent subsidiary of the other company, or both companies are 25 per cent subsidiaries of the same company.

(*c*) For the purposes of *paragraph (b)*, a company (in this paragraph referred to as ''the subsidiary company'') shall not be deemed to be a 25 per cent subsidiary of another company (in this paragraph referred to as ''the parent company'') at any time if the percentage—

(i) of any profits, which are available for distribution to equity holders, of the subsidiary company at such time to which the parent company is beneficially entitled at such time, or

(ii) of any assets, which are available for distribution to equity holders on a winding up, of the subsidiary company at such time to which the parent company would be beneficially entitled at such time on a winding up of the subsidiary company,

is less than 25 per cent of such profits or assets, as the case may be, of the subsidiary company at such time, and *sections 413*, *414*, *415* and *418* shall, with any necessary modifications but without regard to *section 411(1)(c)* in so far as it relates to those sections, apply to the determination of the percentage of those profits or assets, as the case may be, to which a company is beneficially entitled as they apply to the determination for the purposes of *Chapter 5* of *Part 12* of the percentage of any such profits or assets to which a company is so entitled.

(*d*) For the purposes of this section, a company shall be deemed to be a 25 per cent subsidiary of another company if and so long as not less than 25 per cent of its ordinary share capital would be treated as owned directly or indirectly by that other company if *section 9* (other than *subsection (1)* of that section) were to apply for the purposes of this paragraph, and, where a company (in this paragraph referred to as ''that company'') would be treated for the purposes of this section as a 25 per cent

subsidiary of a credit institution which is not a company, if the credit institution were a company, that company shall be so treated for those purposes.

(*e*) For the purpose of this section apart from this paragraph—

(i) a payment made to a company in the course of relevant trading operations (within the meaning of *section 445*), being a payment which is regarded by virtue of *section 445(9)(b)* as receivable from the sale of goods for the purposes of relief under this Part, shall be treated as so regarded by virtue of *section 446(10)(b)*, and

(ii) if the company is a qualified company carrying on relevant trading operations (within the meaning of *section 445*), it shall be treated as being a qualified company carrying on relevant trading operations (within the meaning of *section 446*),

so long as the relevant trading operations (within the meaning of *section 445*) could be certified by the Minister for Finance as relevant trading operations for the purposes of *section 446* if they were carried on in the Area (within the meaning of *section 446*) rather than in the airport (within the meaning of *section 445*).

(2) Notwithstanding *paragraph 4* of *Schedule 24* but subject to *subsection (3)*, where a relevant company elects to have the amount of the credit, which is to be allowed to the company in respect of foreign tax deducted from group relevant payments made to the company in a relevant accounting period, computed as if, for the purposes of *paragraph 4* of *Schedule 24*, the amount of the corporation tax attributable to the income attributable to those group relevant payments were deemed to be increased by an amount which—

(*a*) shall be allocated by the company in such amounts and to such part of that income as the company thinks fit, and

(*b*) shall not exceed 35 per cent of the amount of corporation tax which—

(i) apart from this section would be payable by the company, and

(ii) is attributable to all relevant payments made to the company in the course of the trade in the accounting period,

the amount of that credit shall be so computed for those purposes.

(3) Where an election is made by a company under *subsection (2)* in respect of a relevant accounting period—

(*a*) any credit for foreign tax deducted from group relevant payments made to the company in the accounting period shall be computed as if the amount of foreign tax deducted from those group relevant payments were the amount of relevant foreign tax comprised in that amount, and

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(*b*) so much of that credit as would not have been allowed to the company apart from this section shall be disregarded for the purposes of *paragraph 7(3)(c)* of *Schedule 24*.

(4) (*a*) For the purposes of *subsection (2)*, the amount of corporation tax which apart from this section would be payable by a company and which is attributable to relevant payments made to the company shall be an amount determined by the formula—

$$A - B$$

where—

A is an amount equal to 10 per cent of the amount of the income of the company attributable to relevant payments, and

B is the credit which apart from this section would be allowed to the company in respect of foreign tax deducted from those payments.

(*b*) For the purposes of *paragraph (a)*—

(i) the amount of the income of a company attributable to relevant payments made to the company in the course of a trade in a relevant accounting period shall, subject to *paragraph 4(5)* of *Schedule 24*, be taken to be such sum as bears to the total amount of the income of the company from the sale of goods in the course of the trade in the relevant accounting period the same proportion as those relevant payments bear to the total amount receivable by the company from the sale of goods in the course of the trade in the accounting period, and

(ii) the total amount of income of a company from the sale of goods in the course of a trade in a relevant accounting period shall be taken to be the sum referred to in *subsection (3)* of *section 448* which, for the purposes of *subsection (2)* of that section, is to be taken to be the income of the trade for the relevant accounting period referred to in the expression ''the income from the sale of those goods'' in *subsection (2)* of that section.

(5) Where as respects a relevant accounting period corporation tax payable by a company is by virtue of *section 448(7)* reduced by a fraction (referred to in that section as ''the revised relief''), this section shall apply to the company as if the references to 10 per cent in the definition of ''relevant foreign tax'' in *subsection (1)* and in the definition of ''A'' in *subsection (4)(a)* were references to a rate per cent determined by the formula—

$$C \times (1 - D)$$

where—

C is the rate per cent of corporation tax specified in *section 21(1)* for the financial year in which the relevant accounting period ends, and

D is the fraction referred to in *section 448(7)* as ''the revised relief''.

(6) An election referred to in *subsection (2)* shall be made in writing to the appropriate inspector in relation to the company making the election on or before that company's specified return date for the chargeable period in respect of which it is making the election. Pt.14 S.450

Treatment of income and gains of certain trading operations carried on in Custom House Docks Area from investments held outside the State.

[FA88 s36(4); FA97 s66(1)]

451.—(1) In this section—

''the Area'' has the same meaning as it has for the purposes of *section 446*;

''foreign life assurance business'' means relevant trading operations within the meaning of *section 446* consisting of life assurance business with policy holders and annuitants who at the time such business is contracted reside outside the State and, as regards any policy issued or contract made, as the case may be, with such policy holders or annuitants in the course of such business, such policy or contract does not provide for—

(*a*) the granting of any additional contractual rights, or

(*b*) an option to have another policy or contract substituted for it,

at a time when the policy holder or annuitant, as the case may be, resides in the State;

''foreign unit trust business'' means relevant trading operations within the meaning of *section 446* consisting of the management of the investments of one or more qualifying unit trusts;

''qualifying unit trust'' means a unit trust scheme—

(*a*) which is a registered unit trust scheme within the meaning of the Unit Trusts Act, 1972,

(*b*) the business of which—

(i) is carried on in the Area, or

(ii) is not so carried on but is carried on in the State and would be carried on in the Area but for circumstances outside the control of the person or persons carrying on the business,

and

(*c*) as respects which all holders of units in the scheme are persons resident outside the State;

''tax'' means income tax, corporation tax or capital gains tax, as may be appropriate.

(2) Notwithstanding any other provision of the Tax Acts, the rate at which any tax is chargeable (before any credit is allowed for foreign tax) in respect of income arising or chargeable gains accruing from securities or possessions in any place outside the State that are investments of a foreign life assurance business or investments managed by a foreign unit trust business shall not exceed 10 per cent.

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Application of *section 130* to certain interest.

[FA88 s37; FA94 s49]

452.—(1) (*a*) In this section—

''qualified company'' and ''relevant trading operations'' have the same meanings as they have for the purposes of *sections 445* and *446*, but trading operations shall not be treated as relevant trading operations (within the meaning of *section 445*) if they are not trading operations which could be certified by the Minister for Finance as relevant trading operations for the purposes of *section 446* if they were carried on in the Area (within the meaning of *section 446*) rather than in the airport (within the meaning of *section 445*);

''resident of the United States of America'' has the meaning assigned to it by the Convention set out in *Schedule 25*.

(*b*) For the purposes of this section, a company shall be regarded as being a resident of a territory, other than the United States of America, if it is so regarded under arrangements made with the government of that territory and having the force of law by virtue of *section 826*.

(2) This section shall apply to so much of any interest as—

(*a*) is a distribution by virtue only of *section 130(2)(d)(iv)*,

(*b*) is payable by a qualified company in the course of carrying on relevant trading operations and would but for *section 130(2)(d)(iv)* be deductible as a trading expense in computing the amount of the company's income from the relevant trading operations, and

(*c*) is interest payable to a company which is a resident of the United States of America or of a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made.

(3) Where a company proves that this section applies to any interest payable by it for an accounting period and elects to have that interest treated as not being a distribution for the purposes of *section 130(2)(d)(iv)*, then, *section 130(2)(d)(iv)* shall not apply to that interest.

(4) An election under this section in relation to interest payable by a company for an accounting period shall be made in writing to the inspector and furnished together with the company's return of its profits for the period.

Transactions between associated persons.

[FA80 s44]

453.—(1) In this section, ''control'' has the same meaning as in *section 11*.

(2) Where a company making a claim for relief under this Part (in this subsection referred to as ''the buyer'') buys from another person (in this subsection referred to as ''the seller''), and—

(*a*) the seller has control over the buyer or, the seller being a body corporate or partnership, the buyer has control over the seller or some other person has control over both the seller and the buyer, and

(*b*) the price in the transaction is less than that which might have been expected to obtain if the parties to the transaction had been independent parties dealing at arm's length, Pt.14 S.453

then, the income or losses of the buyer and the seller shall be computed for any purpose of the Tax Acts as if the price in the transaction had been that which would have obtained if the transaction had been a transaction between independent persons dealing at arm's length.

(3) Where a company making a claim for relief under this Part (in this subsection referred to as ''the seller'') sells goods to another person (in this subsection referred to as ''the buyer'') and—

(*a*) the buyer has control over the seller or, the buyer being a body corporate or partnership, the seller has control over the buyer or some other person has control over both the seller and the buyer, and

(*b*) the goods are sold at a price greater than the price which they might have been expected to fetch if the parties to the transaction had been independent parties dealing at arm's length,

then, the income or losses of the buyer and the seller shall be computed for any purpose of the Tax Acts as if the goods had been sold by the seller to the buyer for the price which the goods would have fetched if the transaction had been a transaction between independent persons dealing at arm's length.

(4) For the purposes of *subsection (3)*, a company shall be deemed to sell goods where and to the extent that for the purposes of this Part any amount receivable by it in payment for any trading activity is regarded as an amount receivable from the sale of goods, and ''seller'' and ''buyer'' shall be construed accordingly.

(5) The inspector may by notice in writing require a company making a claim for relief under this Part to furnish him or her with such information or particulars as may be necessary for the purposes of this section, and *subsection (2)* of *section 448* shall apply as if the matters of which proof is required by that subsection included the information or particulars specified in a notice under this section.

Restriction of certain charges on income.

[CTA76 s10A(1)(a) and (b)(ii), (2) and (3); FA92 s46(1)(a); FA93 s50]

454.—(1) (*a*) In this section—

''trade'' means a trade carried on by a company which consists of or includes the manufacture of goods (including activities carried on in an accounting period which, if the company had sufficient profits in that period and made a claim for relief in respect of the trade under this Part for that period, would be regarded for the purposes of this Part as the manufacture of goods);

''income from the sale of goods'' in an accounting period in the course of a trade carried on by a company shall, subject to *section 422* as applied for the purposes of relief under *section 456*, be such income as would be ''the income from the sale of those goods'' in that period in the course of the trade for the purposes of a claim under *section 448(2)*, if—

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(i) no group relief under *section 456* or loss relief under *section 455(3)* were allowed against income from the trade in that period,

(ii) the company had sufficient profits, and

(iii) the company made a claim for relief under this Part;

''charges on income paid for the purpose of the sale of goods'' in the course of a trade in an accounting period shall be such amount as would be the amount of the income from the sale of goods in that period if, notwithstanding *section 448(4)*, ''the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise'' for the purposes of *section 448(3)* were the amount of so much of the charges on income paid wholly and exclusively for the purposes of the trade in that period as appears to the inspector or on appeal to the Appeal Commissioners to be referable to charges on income paid for the purpose of the sale of goods and merchandise;

''the sale of goods and merchandise'' in the course of a trade carried on by a company means the sale of such goods and merchandise as would respectively be treated as goods and merchandise for the purposes of a claim under this Part, if the company had a sufficiency of profits and had made such a claim.

(*b*) For the purposes of this section, where an accounting period begins before the 1st day of January, 2011, and ends on or after that date, it shall be divided into one part beginning on the day on which the accounting period begins and ending on the 31st day of December, 2010, and another part beginning on the 1st day of January, 2011, and ending on the day the accounting period ends, and both parts shall be treated as if they were separate accounting periods.

(2) Notwithstanding *section 243*, so much of the total amount of charges on income paid for the purpose of the sale of goods by a company in an accounting period ending on or before the 31st day of December, 2010, in the course of a trade or trades, as the case may be, shall not be allowed as a deduction against the total profits of the company for the period as exceeds the total amount, reduced by any loss relief under *section 455(3)*, of the company's income from the sale of goods in the course of the trade or trades, as the case may be, in the period.

(3) (*a*) Notwithstanding *section 448(3)*, the income of a company, referred to in the expression ''the income from the sale of those goods'', for any accounting period for the purposes of *section 448(2)* shall be the sum determined by *section 448(3)* for that period reduced by any charges on income paid for the purpose of the sale of goods which are allowed as a deduction against the total profits of the company for that period.

(*b*) Notwithstanding *section 4(4)(b)*, the income of a company, referred to in the expression ''total income brought into charge to corporation tax'', for any accounting period for the purposes of *section 448(2)* shall be the sum determined by *section 4(4)(b)* for that period reduced by any charges on income paid for the purposes of the sale of goods which are allowed as a deduction against the total profits of the company for that period.

(*c*) Where for any accounting period of a company—

(i) the corporation tax referable to the income of the company from the sale of goods is to be reduced under *section 448*, and

(ii) charges on income paid for the purpose of the sale of goods have been allowed as a deduction against total profits,

then, notwithstanding *section 148*, the charges on income paid for the purpose of the sale of goods shall be deducted from the amount of the relevant deduction in relation to the period for charges on income in *section 148(1)*.

Restriction of certain losses.

[CTA76 s16A; FA92 s46(1)(c)]

455.—(1) (*a*) In this section—

''trade'', ''income from the sale of goods'' and ''the sale of goods and merchandise'' have the same meanings respectively as in *section 454*;

''a loss from the sale of goods'' in the course of a trade in an accounting period shall be such amount as would be the amount of the income from the sale of goods in that period if, notwithstanding *section 448(4)*, ''the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise'' for the purposes of *section 448(3)* were the amount of so much of the loss, computed as for the purposes of *section 396(2)*, from the trade in the period as appears to the inspector or on appeal to the Appeal Commissioners to be referable to a loss incurred in the sale of goods and merchandise, but a loss such as is mentioned in *section 407(4)(b)* shall not be a loss from the sale of goods.

(*b*) *Section 454(1)(b)* shall apply for the purposes of this section as it applies for the purposes of *section 454*.

(2) Notwithstanding *section 396(2)* but subject to *subsections (6)* and *(7)*, for the purposes of that section the amount of a loss in a trade incurred by a company in an accounting period shall be deemed to be reduced by the amount of a loss from the sale of goods, if any, incurred in the trade by the company in the accounting period.

(3) Subject to *subsections (6)* and *(7)*, where in an accounting period a company carrying on a trade incurs a loss from the sale of goods, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against its income from the sale of goods—

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(*a*) of that accounting period, and

(*b*) if it was then carrying on the trade and if the claim so requires, of preceding accounting periods ending within the time specified in *subsection (4)*,

and, subject to any relief for an earlier loss, to the extent that the trading income of any of those accounting periods consists of or includes income from the sale of goods, that trading income shall then be reduced by so much of the loss as cannot be relieved against trading income of a later accounting period.

(4) For the purposes of *subsection (3)*, the time referred to in *paragraph (b)* of that subsection shall be the time immediately preceding the accounting period first-mentioned in *subsection (3)* equal in length to that accounting period; but the amount of the reduction which may be made under *subsection (3)* in the trading income of an accounting period falling partly before that time shall not exceed such part of the income from the sale of goods included in that trading income as bears to the income from the sale of goods the same proportion as the part of the accounting period falling within that time bears to the whole of that accounting period.

(5) (*a*) In *section 448(3)* and for the purposes of determining ''the amount'' in the expression ''the amount of the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise'', it shall be determined in accordance with *section 448(4)* as if no relief for a loss in a trade had been claimed under this section.

(*b*) Notwithstanding *section 448(3)*, for the purposes of determining ''the income'' in the expression ''the income from the sale of those goods'' in an accounting period for the purposes of *section 448(2)*, it shall be the sum determined by *section 448(3)* for that period reduced by any relief for a loss in a trade allowed under this section against income of the trade mentioned in *section 448(2)* in that period.

(6) This section shall not apply to so much of a company's loss from the sale of goods in the course of a trade in an accounting period as does not exceed the amount of the capital allowances under *Part 9* or *Chapter 1* of *Part 29* which are to be made for the accounting period in taxing the trade, and for the purposes of this subsection no account shall be taken of capital allowances other than capital allowances in respect of machinery or plant or an industrial building or structure—

(*a*) provided for the purposes of a project approved within the period of 2 years ending on the 31st day of December, 1988, by the Industrial Development Authority,

(*b*) the expenditure on the provision of which was incurred on or before the 31st day of March, 1995, and

(*c*) more than 50 per cent of the expenditure on the provision of which was incurred, or was the subject of a binding contract entered into, before the 1st day of April, 1992.

(7) This section shall not apply to so much of a company's loss from the sale of goods in the course of a trade in an accounting period as does not exceed the amount of the capital allowances under

section 323(2) deducted by the company in computing the loss which the company has incurred in that period in carrying on trading operations specified in a certificate given to it, and not subsequently revoked, by the Minister for Finance under *section 446*.

Restriction of group relief.

456.—(1) (*a*) In this section—

[CTA76 s116A(1)(a) and (b)(ii), (2) and (3), (4)(b) and (5); FA88 s34; FA92 s46(2)]

''trade'', ''income from the sale of goods'', ''charges on income paid for the purposes of the sale of goods'' and ''the sale of goods and merchandise'' have the same meanings respectively as in *section 454*;

''a loss from the sale of goods'' has the same meaning as in *section 455*;

''an excess of charges on income paid for the purpose of the sale of goods'' in the course of the trade in an accounting period shall be so much of an amount, being the amount by which the charges on income paid by a company for the purpose of the sale of goods in the course of the trade in that period exceed the income from the sale of goods in the course of the trade in that period, as does not exceed the excess referred to in *section 420(6)* as computed for the company for that period.

(*b*) *Section 454(1)(b)* shall apply for the purposes of this section as it applies for the purposes of *section 454*.

(2) (*a*) Notwithstanding *subsections (1)* and *(6)* of *section 420* and *section 421* but subject to *subsection (4)*, where in any accounting period ending on or before the 31st day of December, 2010, the surrendering company incurs a loss from the sale of goods or an excess of charges on income paid for the purpose of the sale of goods, that loss or excess may be set off for the purposes of corporation tax against income from a trade of the claimant company for its corresponding accounting period to the extent of that income or, if it is less, to the extent of the income from the sale of goods in the course of the trade reduced by—

(i) charges on income paid for the purposes of the sale of goods (within the meaning of *section 454*), and

(ii) any loss relief under *section 455(3)*;

but no other relief shall be given in respect of that loss or excess to a company other than the surrendering company.

(*b*) Group relief allowed under *paragraph (a)* shall reduce the income from a trade of the claimant company for an accounting period—

(i) before relief granted under *section 397* in respect of a loss incurred in a succeeding accounting period or periods, and

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(ii) after the relief granted under *section 396* in respect of a loss incurred in a preceding accounting period or periods.

(3) (*a*) For the purposes of *section 448(3)*, ''the amount of the company's income for the relevant accounting period from the sale in the course of the trade mentioned in that subsection of goods and merchandise'' shall be determined in accordance with *section 448(4)* as if no group relief had been allowed under this section.

(*b*) Notwithstanding *section 448(3)*, ''the income from the sale of those goods'' in an accounting period for the purposes of *section 448(2)* shall be the sum determined by *section 448(3)* for that period reduced by any group relief allowed under this section against income of the trade mentioned in *section 448(2)* in that period.

(4) This section shall not apply to so much of a loss from the sale of goods in the course of a trade in an accounting period as does not exceed the amount of the capital allowances under *section 323(2)* deducted by the surrendering company in computing the loss which the company has incurred in that period in carrying on trading operations specified in a certificate given to it, and not subsequently revoked, by the Minister for Finance under *section 446*.

(5) For the purposes of this section—

(*a*) in the case of a claim made by a company as a member of a consortium, only a fraction of a loss from the sale of goods or an excess of charges on income paid for the purpose of the sale of goods may be set off, and that fraction shall be equal to that member's share in the consortium, subject to any further reduction under *section 422(2)*, and

(*b*) *section 422* shall apply as if—

(i) for ''total profits'' in *subsection (2)(a)* of that section there were substituted ''income from a trade'', and

(ii) for ''those profits'' in *subsection (2)(b)* of that section there were substituted ''the income from the sale of goods in the course of a trade of the claimant company''.

Application of *section 448* where profits are charged to corporation tax at the reduced rate.

[CTA76 s28A(10); FA96 s44; FA97 s60(1)(b)]

457.—Where any part of the profits of an accounting period of a company is charged to corporation tax in accordance with *section 22*, then—

(*a*) for the purposes of *section 448*, the relevant corporation tax in relation to the accounting period shall be reduced by an amount determined by the formula—

$$\frac{R}{100} \times S$$

where—

R is the rate per cent specified in *section 22(1)* in relation to the accounting period, and

S is an amount equal to so much of the profits of the company for the accounting period as are charged to tax in accordance with *section 22(1)*,

and

(*b*) notwithstanding *section 4(4)(b)*, the income of a company, referred to in the expression ''total income brought into charge to corporation tax'', for the accounting period for the purposes of *section 448(2)* shall be the sum determined by *section 4(4)(b)* for that period reduced—

(i) in accordance with *sections 454* and *455*, and

(ii) by an amount equal to so much of the profits of the company for the accounting period as are charged to tax in accordance with *section 22(1)*.

PART 15

Personal Allowances and Reliefs and Certain Other Income Tax and Corporation Tax Reliefs

CHAPTER 1

Personal allowances and reliefs

Deductions allowed in ascertaining taxable income and provisions relating to reductions in tax.

[ITA67 s137; FA96 s132(1) and Sch5 par1(3); FA97 s8(8), s57(4) and s146(1) and Sch9 PtI par1(8)]

458.—(1) An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and makes a return in the prescribed form of the individual's total income shall be entitled—

(*a*) for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax (in the Income Tax Acts referred to as ''the taxable income'') to have such deductions as are specified in the provisions referred to in Part 1 of the Table to this section, but subject to those provisions, made from the individual's total income, and

(*b*) to have such reductions as are specified in the provisions referred to in Part 2 of that Table, but subject to those provisions, made in the income tax to be charged on the individual.

(2) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall apply for the purposes of claims for—

(*a*) any such deductions from total income as are specified in the provisions referred to in Part 1 of the Table to this section, and

(*b*) any such reductions in tax as are specified in the provisions referred to in Part 2 of the Table to this section.

TABLE

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Section 478

General provisions relating to allowances, deductions and reliefs.

[ITA67 s146, s149 and Sch4 par1(1) and par2(1) and (3) to (5); F(MP)A68 s3(4) and (5) and Sch PtIII and PtIV; FA96 s132(1) and Sch5 PtI par1(5) and (6)]

459.—(1) A claimant shall not be entitled to an allowance, deduction or relief under the provisions specified in the Table to *section 458* in respect of any income the tax on which the claimant is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which the claimant is liable to make to any other person.

(2) Except where otherwise provided, any allowance, deduction or relief under the provisions specified in the Table to *section 458* shall be given either by discharge or reduction of the assessment, or by repayment of the excess which has been paid, or by all of those means, as the case may require.

(3) Any claim shall be accompanied by a declaration and statement in the prescribed form signed by the claimant setting out—

(*a*) all the particular sources from which the claimant's income arises and the particular amount arising from each source,

(*b*) all particulars of any yearly interest or other annual payments reserved or charged on the claimant's income, whereby the claimant's income is or may be diminished, and

(*c*) all particulars of sums which the claimant has charged or may be entitled to charge on account of tax against any other person, or which the claimant has deducted, or may be entitled to deduct, out of any payment to which the claimant is or may be liable. Pt.15 S.459

(4) (*a*) The claim shall be made and proved in accordance with the powers and provisions under which tax under Schedule D is ascertained and charged.

(*b*) Where a claimant is not in the State, an affidavit stating the particulars required by the Income Tax Acts, and taken before any person who has authority to administer in the place where the claimant resides an oath with regard to any matter relating to the public revenue of the State, may be received by the Revenue Commissioners.

(*c*) Where satisfactory proof is given that a claimant is unable to attend in person, a claim on the claimant's behalf may be made by any guardian, trustee, attorney, agent or factor acting for the claimant.

(*d*) Where a person is assessable on behalf of any other person, such person may make a claim on behalf of that other person.

Rate of tax at which repayments are to be made.

[ITA67 s497; FA76 s7; FA96 s132(2) and Sch5 par1(23)]

460.—(1) Subject to *subsections (2)* and *(3)*, any repayment of income tax for any year of assessment to which any person may be entitled in respect of any allowance, deduction, relief or reduction under the provisions specified in the Table to *section 458* shall, except where otherwise provided by the Income Tax Acts, be made at the standard rate of tax or at the higher rate, as the case may be.

(2) In the case of any person who proves as regards any year that, by reason of the allowances, deductions or reliefs to which that person is entitled, he or she has no taxable income for that year, any repayment to be made shall be a repayment of the whole amount of the tax paid by him or her, whether by deduction or otherwise, in respect of his or her income for that year.

(3) In relation to repayments of tax, the amount of tax to be repaid under this section to any person for any year shall not exceed a sum equal to the difference between the amount of tax paid by that person, whether by deduction or otherwise, in respect of his or her income for that year and the amount of tax which would be payable by him or her for that year if his or her total income had been charged to tax in accordance with the Income Tax Acts.

Married and single personal allowances.

[ITA67 s138; FA80 s3; FA82 s2(3) and Sch1 par1(a)(i); FA88 s3(3) and Sch1 par(a); FA97 s3(1) and (3) and Sch1 par1(a)]

461.—The deductions specified in this section for the purpose of ascertaining the taxable income of an individual for a year of assessment shall be—

(*a*) in a case in which the claimant is a married person who—

(i) is assessed to tax for the year of assessment in accordance with *section 1017*, or

(ii) proves that his or her spouse is not living with him or her but is wholly or mainly maintained by him or her for the year of assessment and that the claimant is not entitled, in computing his or her income for tax

purposes for that year, to make any deduction in respect of the sums paid by him or her for the maintenance of his or her spouse,

a deduction of £5,800,

(*b*) in a case in which the claimant in the year of assessment is—

(i) a widowed person, a deduction of £3,400, or

(ii) a widowed person, other than a person to whom *paragraph (a)* applies, whose spouse has died in that year of assessment, a deduction of £5,800, and

(*c*) in any other case, a deduction of £2,900.

Additional amount for widowed parents and other single parents.

[ITA67 s138A(1) to (6); FA85 s4; FA97 s3(1) and (3) and Sch1 par1(b)]

462.—(1) (*a*) In this section, ''qualifying child'', in relation to any claimant and year of assessment, means—

(i) a child—

(I) born in the year of assessment,

(II) who, at the commencement of the year of assessment, is under the age of 16 years, or

(III) who, if over the age of 16 years at the commencement of the year of assessment—

(A) is receiving full-time instruction at any university, college, school or other educational establishment, or

(B) is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of such full-time instruction,

and

(ii) a child who is a child of the claimant or, not being such a child, is in the custody of the claimant and is maintained by the claimant at the claimant's own expense for the whole or part of the year of assessment.

(*b*) This section shall apply to an individual who is not entitled to a deduction mentioned in *paragraph (a)* or *paragraph (b)(ii)* of *section 461*.

(2) Subject to *subsection (3)*, where the claimant, being an individual to whom this section applies, proves for a year of assessment that

a qualifying child is resident with him or her for the whole or part of the year, the claimant shall be entitled—

(*a*) if he or she is an individual to whom *section 461(b)(i)* applies, to a deduction of £2,400, or

(*b*) if he or she is an individual to whom *section 461(c)* applies, to a deduction of £2,900;

but this section shall not apply for any year of assessment in the case of a husband or a wife where the wife is living with her husband, or in the case of a man and woman living together as man and wife.

(3) A claimant shall be entitled to only one deduction under *subsection (2)* for any year of assessment irrespective of the number of qualifying children resident with the claimant in that year.

(4) (*a*) The references in *subsection (1)(a)* to a child receiving full-time instruction at an educational establishment shall include references to a child undergoing training by any person (in this subsection referred to as ''the employer'') for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.

(*b*) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.

(5) (*a*) No deduction shall be allowed under this section for any year of assessment in respect of any child who is entitled in his or her own right to an income exceeding £720 in that year except that, if the amount of the excess is less than the deduction which would be allowable apart from this subsection, a deduction reduced by that amount shall be allowed.

(*b*) In calculating the income of the child for the purposes of *paragraph (a)*, no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment.

(6) Where any question arises as to whether any person is entitled to an allowance under this section in respect of a child over the age of 16 years as being a child who is receiving full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Science.

Special allowance for widowed parent following death of spouse.

[FA91 s4(1) and (2); FA96 s132(1) and Sch5 PtI par17]

463.—(1) (*a*) For the purposes of this section, ''qualifying child'', in relation to a claimant and a year of assessment, has the same meaning as in *section 462*, and the question of whether a child is a qualifying child shall be determined on the same basis as it would be for the purposes of *section 462*, and *subsections (3)*, *(4)* and *(6)* of that section shall apply accordingly.

(*b*) This section shall apply to an individual whose spouse dies in a year of assessment (in this section referred to as a ''claimant'').

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(2) Where a claimant proves, in relation to any of the 3 years of assessment immediately following the year of assessment in which the claimant's spouse dies, that—

(*a*) he or she has not remarried before the commencement of the year, and

(*b*) a qualifying child is resident with him or her for the whole or part of the year,

the claimant shall, in respect of each of the years in relation to which the claimant so proves, be entitled, in computing the amount of his or her taxable income, to have a deduction made from his or her total income as follows—

(i) for the first of those 3 years, £1,500,

(ii) for the second of those 3 years, £1,000, and

(iii) for the third of those 3 years, £500;

but this section shall not apply for any year of assessment in the case of a man and woman living together as man and wife.

Age allowance.

[FA74 s8(1); FA80 s19 and Sch1 PtIII par4; FA97 s3(1) and (3) and Sch1 par2]

464.—Where for any year of assessment an individual is entitled to a deduction under *section 461* and proves that at any time during that year of assessment—

(*a*) the individual, or

(*b*) in the case of a married person whose spouse is living with him or her and who is assessed to tax in accordance with *section 1017*, either the individual or the individual's spouse,

was of the age of 65 years or over, the individual shall, in addition to the allowance to which the individual is entitled under *section 461* for that year of assessment, be entitled to a deduction of—

(i) in a case where the individual is a married person whose spouse is living with him or her and the individual is assessed to tax in accordance with *section 1017*, £800, and

(ii) in any other case, £400.

Incapacitated children.

[ITA67 s141(1) to (6); FA86 s4; FA91 s126; FA96 s3 and Sch1 par1(c)]

465.—(1) Where a claimant proves that he or she has living at any time during a year of assessment any child who—

(*a*) is under the age of 16 years and is permanently incapacitated by reason of mental or physical infirmity, or

(*b*) if over the age of 16 years at the commencement of the year, is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of full-time instruction at any university, college, school or other educational establishment,

the claimant shall, subject to this section, be entitled in respect of each such child to a deduction of £700. PT.15 S.465

(2) (*a*) A child under the age of 16 years shall be regarded as permanently incapacitated by reason of mental or physical infirmity only if the infirmity is such that there would be a reasonable expectation that if the child were over the age of 16 years the child would be incapacitated from maintaining himself or herself.

(*b*) In the case of a child to whom *subsection (1)(b)* applies, the deduction shall be £700 or the amount expended by the claimant in the year of assessment on the maintenance of the child, whichever is the lesser.

(*c*) Any deduction under this section shall be in substitution for and not in addition to any deduction to which the claimant might be entitled in respect of the same child under *section 466*.

(3) Where the claimant proves for the year of assessment—

(*a*) that the claimant has the custody of and maintains at his or her own expense any child who, but for the fact that that child is not a child of the claimant, would be a child referred to in *subsection (1)*, and

(*b*) that neither the claimant nor any other individual is entitled to a deduction in respect of the same child under *subsection (1)* or under any other provision of this Part, or, if any other individual is entitled to such a deduction, that such other individual has relinquished his or her claim to that deduction,

the claimant shall be entitled to the same deduction in respect of the child as if the child were a child of the claimant.

(4) (*a*) The reference in *subsection (1)* to a child receiving full-time instruction at an education establishment shall include a reference to a child undergoing training by any person (in this subsection referred to as ''the employer'') for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.

(*b*) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed by the Revenue Commissioners.

(5) (*a*) No deduction shall be allowed under this section in respect of any child entitled in his or her own right to an income exceeding £2,100 a year except that, if the amount of the excess is less than the deduction which would be allowable apart from this subsection, a deduction reduced by that amount shall be allowed.

(*b*) In calculating the income of the child for the purposes of *paragraph (a)*, no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary, or other similar educational endowment.

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(6) Where any question arises as to whether any person is entitled to an allowance under this section in respect of a child over the age of 21 years as being a child who had become permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself after attaining that age but while in receipt of full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Science.

(7) Where for any year of assessment 2 or more individuals are or would but for this subsection be entitled under this section to relief in respect of the same child, the following provisions shall apply:

(*a*) only one deduction under this section shall be allowed in respect of the child;

(*b*) where the child is maintained by one parent only, that parent only shall be entitled to claim such deduction;

(*c*) where the child is maintained jointly by both parents, each parent shall be entitled to claim such part of such deduction as is proportionate to the amount expended by him or her on the maintenance of the child;

(*d*) in ascertaining for the purposes of this subsection whether a parent maintains a child and, if so, to what extent, any payment made by the parent for or towards the maintenance of the child which the parent is entitled to deduct in computing his or her total income for the purposes of the Income Tax Acts shall be deemed not to be a payment for or towards the maintenance of the child.

Dependent relative.

[ITA67 s142; FA77 s1; FA79 s1; FA82 s2 and Sch1 par1; FA97 s146(1) and Sch9 par1(10)]

466.—(1) In this section, ''specified amount'' means the aggregate of the payments to which an individual is entitled in a year of assessment in respect of an old age (contributory) pension at the maximum rate under the Social Welfare (Consolidation) Act, 1993, if throughout the year of assessment such individual is entitled to such a pension and—

(*a*) has no adult dependant or qualified children (within the meaning, in each case, of that Act),

(*b*) is over the age of 80 years (or such other age as may be specified in that Act for the time being in place of the age of 80 years), and

(*c*) is living alone.

(2) Where for any year of assessment a claimant proves that he or she maintains at his or her own expense any person, being—

(*a*) a relative of the claimant, or of the claimant's spouse, incapacitated by old age or infirmity from maintaining himself or herself,

(*b*) the widowed father or widowed mother of the claimant or of the claimant's spouse, whether incapacitated or not, or

(*c*) a son or daughter of the claimant who resides with the claimant and on whose services the claimant, by reason of old age or infirmity, is compelled to depend,

and being an individual whose total income from all sources for that year of assessment does not exceed, or does not exceed by £110 or more, a sum equal to the specified amount, the claimant shall be entitled in respect of each individual whom the claimant so maintains to a deduction of £110 reduced, if the total income of the individual so maintained exceeds the specified amount, by the amount of the excess.

(3) Where 2 or more individuals jointly maintain any individual referred to in *paragraphs (a)* to *(c)* of *subsection (2)*, the deduction to be made under this section shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that individual.

Employed person taking care of incapacitated individual.

[FA69 s3(1), (2) and (4); FA80 s19 and Sch1 PtIII par2; FA96 s3 and Sch1 par2]

467.—(1) Subject to this section, where an individual for a year of assessment proves—

(*a*) (i) that throughout the year of assessment he or she was totally incapacitated by physical or mental infirmity, or

(ii) that, being an individual who for the relevant year of assessment is assessed to tax in accordance with *section 1017*, the individual's spouse was throughout that year totally incapacitated by physical or mental infirmity, and

(*b*) that for the year of assessment he or she has employed a person for the purpose of having the care of the individual (being the individual or the individual's spouse) who is so incapacitated,

the individual shall, in computing the amount of his or her taxable income, be entitled to have a deduction made from his or her total income of—

(I) £7,500, if the amount ultimately borne by him or her in the year of assessment in employing the employed person is not less than £7,500, or

(II) the amount so borne, if it is less than £7,500.

(2) Not more than one deduction shall be allowed under this section to any claimant for any year of assessment.

(3) Where for any year of assessment a deduction is allowed to an individual under this section in respect of an employed person, the individual shall not be entitled to a deduction in respect of that person under *section 465* or *466*.

Relief for blind persons.

[FA71 s11(1) and (2); FA85 s3 and Sch1; FA96 s3 and Sch1 par3]

468.—(1) In this section, ''blind person'' means a person whose central visual acuity does not exceed 6/60 in the better eye with correcting lenses, or whose central visual acuity exceeds 6/60 in the better eye or in both eyes but is accompanied by a limitation in the fields of vision that is such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) Where an individual for a year of assessment proves that—

(*a*) he or she was for the whole or any part of the year of assessment a blind person, or

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(*b*) he or she is assessed to tax for the year in accordance with *section 1017* and that his or her spouse was for the whole or any part of the year a blind person,

the individual shall, in computing the amount of his or her taxable income for the year of assessment, be entitled to have a deduction of £700 made from his or her total income; but, in a case where *paragraph (b)* applies and the claimant proves in addition that he or she was for the whole or any part of the year a blind person, the claimant shall be entitled to a deduction of £1,600 in place of the deduction of £700.

Relief for health expenses.

[ITA67 s195B(3) and (6); FA67 s12(1), (2)(a) and (c), (3), (4) and (5)(a) and (b); FA69 s7; FA72 s9; FA80 s19 and Sch1 PtIII par2; FA86 s5; FA93 s10(1); FA94 s8; FA97 s146(1) and Sch9 PtI par2]

469.—(1) In this section—

''dependant'', in relation to an individual, means—

(*a*) where the individual is a married person who for the year of assessment is allowed a deduction mentioned in *section 461(a)*, the spouse of the individual,

(*b*) any person in respect of whom the individual is allowed for the year of assessment a deduction under *section 465* or *466*, and

(*c*) a child who for the year of assessment—

(i) (I) is under the age of 16 years, or

(II) if over the age of 16 years at the commencement of the year of assessment, is receiving full-time instruction at any university, college, school or other educational establishment, and

(ii) is a child of the individual or, not being such a child, is in the custody of the individual and is maintained by the individual at the individual's own expense for the whole or part of the year of assessment;

''health care'' means prevention, diagnosis, alleviation or treatment of an ailment, injury, infirmity, defect or disability, and includes care received by a woman in respect of a pregnancy other than routine maternity care, but does not include routine ophthalmic treatment or routine dental treatment;

''health expenses'' means expenses in respect of the provision of health care, being expenses representing the cost of—

(*a*) the services of a practitioner,

(*b*) diagnostic procedures carried out on the advice of a practitioner,

(*c*) maintenance or treatment in a hospital,

(*d*) drugs or medicines supplied on the prescription of a practitioner,

(*e*) the supply, maintenance or repair of any medical, surgical, dental or nursing appliance used on the advice of a practitioner,

(*f*) physiotherapy or similar treatment prescribed by a practitioner, Pt.15 S.469

(*g*) orthoptic or similar treatment prescribed by a practitioner, or

(*h*) transport by ambulance;

''hospital'' means—

(*a*) any institution which is provided and maintained by a health board for the provision of services pursuant to the Health Acts, 1947 to 1996,

(*b*) any institution in which services are provided on behalf of a health board pursuant to the Health Acts, 1947 to 1996,

(*c*) any hospital, nursing home, maternity home or other institution approved of for the purposes of this section by the Minister for Finance after consultation with the Minister for Health and Children;

''practitioner'' means any person who is—

(*a*) registered in the register established under section 26 of the Medical Practitioners Act, 1978,

(*b*) registered in the register established under section 26 of the Dentists Act, 1985, or,

(*c*) in relation to health care provided outside the State, entitled under the laws of the country in which the care is provided to practise medicine or dentistry there;

''qualified person'', in relation to an individual, means the individual personally or any dependant of the individual;

''routine dental treatment'' means the extraction, scaling and filling of teeth and the provision and repairing of artificial teeth or dentures;

''routine maternity care'' means—

(*a*) care received by a woman in respect of a pregnancy otherwise than as a patient maintained in a hospital, or

(*b*) care received by a woman in respect of a pregnancy as a patient maintained in hospital where the total length of the period or periods during which she is so maintained is not more than 14 days or during the first 14 days of such maintenance where the total length of such period or periods is more than 14 days;

''routine ophthalmic treatment'' means sight testing and advice as to the use of spectacles or contact lenses and the provision and repairing of spectacles or contact lenses.

(2) (*a*) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care for any one qualified person and the amount of which in the aggregate exceeds £100, the individual shall be entitled, for the purpose of ascertaining

the amount of the income on which he or she is to be charged to income tax, to have a deduction of the amount of the excess made from his or her total income.

(*b*) Where an individual proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care for qualified persons and which amount in the aggregate to more than £200, the individual shall be entitled, for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction of the amount by which the aggregate of the health expenses so computed exceeds £200 made from his or her total income, and such deduction shall be in substitution for and not in addition to a deduction under *paragraph (a)*.

(3) For the purposes of this section—

(*a*) (i) any expenses defrayed by a married man in a year of assessment shall be deemed to have been defrayed by his wife if for the year of assessment she is to be treated under the Income Tax Acts as living with him and she is assessed to tax in accordance with *section 1017*, or

(ii) any expenses defrayed by a married woman in a year of assessment shall be deemed to have been defrayed by her husband if for the year of assessment she is to be treated under the Income Tax Acts as living with him and he is assessed to tax in accordance with *section 1017*,

(*b*) any expenses defrayed out of the estate of a deceased person by his or her executor or administrator shall be deemed to have been defrayed by the deceased person immediately before his or her death, and

(*c*) expenses shall be regarded as not having been defrayed in so far as any sum in respect of, or by reference to, the health care to which they relate has been, or is to be, received, directly or indirectly, by the individual or the individual's estate, or by any dependant of the individual or such dependant's estate, from any public or local authority or under any contract of insurance or by means of compensation or otherwise.

(4) *Subsections (4)* to *(6)* of *section 465* shall, with any necessary modifications, apply for the purposes of determining whether relief is to be granted under this section as they apply in determining whether a deduction is to be allowed under that section; but, where the child's income exceeds the amount specified in *subsection (5)* of that section, relief under this section shall not be allowed.

(5) In making a claim for a deduction under this section, an individual who, after the end of the year of assessment for which the claim is made, has defrayed or is deemed to have defrayed any expenses relating to health care provided in that year may elect that all deductions to be allowed to him or her under this section for that year and for subsequent years of assessment shall be determined as if those expenses had been defrayed at the time when the health care to which they relate was provided.

(6) Notwithstanding *sections 458(2)* and *459(2)*—

(*a*) any claim for a deduction under this section— Pt.15 S.469

(i) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and

(ii) shall be accompanied by such statements in writing as regards any class of expenses by reference to which the deduction is claimed, including statements by persons to whom payments were made, as may be indicated by the prescribed form as being required as regard expenses of that class, and

(*b*) in all cases relief from tax consequent on the allowance of a deduction under this section shall be given by means of repayment.

Relief for insurance against expenses of illness.

[ITA67 s145(1), (2), (3) and (4); FA80 s19 and Sch1 PtIII par1; FA96 s7 and s132(1) and Sch5 PtI par1(4)]

470.—(1) In this section—

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''authorised insurer'' means any undertaking entered in The Register of Health Benefits Undertakings, lawfully carrying on such business of insurance referred to in the definition of ''relevant contract'' but, in relation to an individual, also means any undertaking authorised pursuant to Council Directive No. 73/239/EEC of 24 July 1973[1], Council Directive No. 88/357/EEC of 22 June 1988[2], and Council Directive No. 92/49/EEC of 18 June 1992[3], where a relevant contract was effected with the individual when the individual was not resident in the State but was resident in another Member State of the European Communities;

''relevant contract'', in relation to an individual, means a contract of insurance which provides specifically, whether in conjunction with other benefits or not, for the reimbursement or discharge, in whole or in part, of actual medical, surgical or nursing expenses (including the cost of maintenance at a hospital, nursing home or sanatorium) resulting from sickness of or accident to—

(*a*) the individual,

(*b*) the spouse of the individual, or

(*c*) the children or other dependants of the individual or of the spouse of the individual.

(2) Where an individual for a year of assessment proves that in the year preceding the year of assessment—

(*a*) the individual, or

(*b*) if the individual is a married person assessed to tax in accordance with *section 1017*, the individual's spouse,

has made a payment to an authorised insurer under a relevant contract, then, the income tax to be charged on the individual if the individual made the payment, or on the individual's spouse if the individual's spouse made the payment, for the year of assessment, other than in accordance with *section 16(2)*, shall be reduced by an amount which is the lesser of—

[1]O.J. No. L228 of 16.8.1973, p.3.
[2]O.J. No. L172 of 4.7.1988, p.1.
[3]O.J. No. L228 of 11.8.1992, p.1.

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(i) (I) where the payment covers no benefits other than such reimbursement or discharge as is referred to in the definition of ''relevant contract'', an amount equal to the appropriate percentage of the full amount of the payment, or

(II) where the payment covers benefits other than such reimbursement or discharge as is referred to in the definition of ''relevant contract'', an amount equal to the appropriate percentage of so much of the payment as is referable to such reimbursement or discharge,

and

(ii) the amount which reduces that income tax to nil.

(3) Where the income tax reduction of one of the spouses is ascertained in accordance with *subsection (2)*, then—

(*a*) if there is no income tax to be charged on the spouse for the year of assessment, other than in accordance with *section 16(2)*, in relation to which relief under *subsection (2)* may be given, the relief may be given in relation to income tax to be charged on the other spouse for that year, other than in accordance with *section 16(2)*, and

(*b*) if the amount so ascertained exceeds the income tax to be charged on the spouse for the year of assessment, other than in accordance with *section 16(2)*, the excess may be used to reduce the income tax to be charged on the other spouse for that year, other than in accordance with *section 16(2)*.

(4) Where relief is given under this section, no relief or deduction under any other provision of the Income Tax Acts shall be given or allowed in respect of the payment or part of a payment, as the case may be.

Relief for contributions to permanent health benefit schemes.

[FA79 s8(1), (2)(a) and (3)]

471.—(1) In this section—

''benefit'' and ''permanent health benefit scheme'' have the same meanings respectively as in *section 125*;

''contribution'', in relation to a permanent health benefit scheme, means any premium paid or other periodic payment made to the scheme in consideration of the right to benefit under it, being a premium or payment which bears a reasonable relationship to the benefits secured by it.

(2) Where an individual for a year of assessment proves that in that year of assessment he or she made a contribution or contributions to a bona fide permanent health benefit scheme or schemes, the individual shall be entitled, for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction of so much of the contributions as does not exceed 10 per cent of his or her total income for that year of assessment made from his or her total income.

(3) In a case where the amount of a contribution made by an employer to a permanent health benefit scheme is charged to income tax under *Chapter 3* of *Part 5* as a perquisite of the office or employment of a director or employee, that amount shall be deemed for the

purposes of *subsection (2)* to be a contribution made by the director or employee to the scheme in the year in respect of which it is so charged to income tax.

Employee allowance.

[ITA67 s138B, s195B(3) and (6); FA72 Sch1 PtIII par4; FA74 s64(2); FA80 s3; FA88 s3 and Sch1; FA91 s7; FA93 s10(1); FA94 s4; FA97 s146(1) and Sch9 PtI par1(9) and par5(3)]

472.—(1) (*a*) In this section—

''emoluments'' means emoluments to which *Chapter 4* of *Part 42* applies or is applied, but does not include—

(i) emoluments paid directly or indirectly by a body corporate (or by any person who would be regarded as connected with the body corporate) to a proprietary director of the body corporate or to the spouse or child of such a proprietary director, and

(ii) emoluments paid directly or indirectly by an individual (or by a partnership in which the individual is a partner) to the spouse or child of the individual;

''director'' means—

(i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person, and

(iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person who is or has been a director;

''proprietary director'' means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

''specified employed contributor'' means a person who is an employed contributor for the purposes of the Social Welfare (Consolidation) Act, 1993, but does not include a person—

(i) who is an employed contributor for those purposes by reason only of section 9(1)(*b*) of that Act, or

(ii) to whom Article 81, 82 or 83 of the Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 (S.I. No. 312 of 1996), applies.

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(*b*) For the purposes of the definition of ''proprietary director'', ordinary share capital which is owned or controlled as referred to in that definition by a person, being a spouse or a minor child of a director, or by a trustee of a trust for the benefit of a person or persons, being or including any such person or such director, shall be deemed to be owned or controlled by such director and not by any other person.

(2) The exclusion from the definition of ''emoluments'' of the emoluments referred to in *subparagraphs (i)* and *(ii)* of that definition shall not apply for any year of assessment to any such emoluments paid to an individual, being a child (other than a child who is a proprietary director) to whom *subparagraph (i)* or *(ii)* of that definition relates, if for that year—

(*a*) (i) the individual is a specified employed contributor, or

(ii) the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), in so far as they apply, have, in relation to any such emoluments paid to the individual in the year of assessment, been complied with by the person by whom the emoluments are paid,

(*b*) the conditions of the office or employment, in respect of which any such emoluments are paid, are such that the individual is required to devote, throughout the year of assessment, substantially the whole of the individual's time to the duties of the office or employment and the individual does in fact do so, and

(*c*) the amount of any such emoluments paid to the individual in the year of assessment are not less than £3,600.

(3) Where an individual is in receipt of profits or gains from an office or employment held or exercised outside the State, such profits or gains shall be deemed to be emoluments within the meaning of *subsection (1)* if such profits or gains—

(*a*) are chargeable to tax in the country in which they arise,

(*b*) on payment by the person making such payment, are subject to a system of tax deduction similar in form to that provided for in *Chapter 4* of *Part 42*,

(*c*) are chargeable to tax in the State on the full amount of such profits or gains under Schedule D, and

(*d*) if the office or employment was held or exercised in the State and the person was resident in the State, would be emoluments within the meaning of that subsection.

(4) Where for any year of assessment a claimant proves that his or her total income for the year consists of or includes emoluments (including, in a case where the claimant is a married person assessed to tax in accordance with *section 1017*, any emoluments of the claimant's spouse deemed to be income of the claimant by that section for the purposes referred to in that section)—

(*a*) a deduction of £800 shall be made from so much, if any, of the emoluments (but not including, in the case where the claimant is a married person so assessed, the emoluments,

if any, of the claimant's spouse) as arise to the claimant, and

(*b*) in the case where the claimant is a married person so assessed, a deduction of £800 shall be made from so much, if any, of the emoluments as arise to the claimant's spouse.

(5) Where a deduction under this section is to be made from emoluments for any year of assessment by virtue of the operation of *subsection (2)*, such deduction shall be given by means of repayment of tax.

Allowance for rent paid by certain tenants.

[ITA67 s142A and 195B(3) and (6); FA82 s5(1); FA85 s7(a); FA91 s8; FA93 s10(1); FA95 s5]

473.—(1) In this section—

''residential premises'' means property held under a tenancy, being—

(*a*) a building or part of a building used or suitable for use as a dwelling, and

(*b*) land which the occupier of a building or part of a building used as a dwelling has for his or her own occupation and enjoyment with the building or part of a building as its garden or grounds of an ornamental nature;

''rent'' includes any periodical payment in the nature of rent made in return for a special possession of residential premises or for the use, occupation or enjoyment of residential premises, but does not include so much of any rent or payment as—

(*a*) is paid or made to defray the cost of maintenance of or repairs to residential premises for which in the absence of agreement to the contrary the tenant would be liable,

(*b*) relates to the provision of goods or services,

(*c*) relates to any right or benefit other than the bare right to use, occupy and enjoy residential premises, or

(*d*) is the subject of a right of reimbursement or a subsidy from any source enjoyed by the person making the payment, unless such reimbursement or subsidy cannot be obtained;

''tenancy'' includes any contract, agreement or licence under or in respect of which rent is paid, but does not include—

(*a*) a tenancy which apart from any statutory extension is a tenancy for a freehold estate or interest or for a definite period of 50 years or more,

(*b*) a tenancy in relation to which the person beneficially entitled to the rent is a Minister of the Government, the Commissioners of Public Works in Ireland or a housing authority for the purposes of the Housing Act, 1966, or

(*c*) a tenancy in relation to which an agreement or provision exists under which the rent paid or part of it is or may be treated as consideration or part consideration, in whatever form, for the creation of a further or greater estate, tenancy or interest in the residential premises concerned or in any other property.

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(2) (*a*) In this subsection, ''the relevant limit'' means—

(i) in the case of a claimant entitled to a deduction under *section 461(a)*, £2,000,

(ii) in the case of a widowed person, £1,500, and

(iii) in any other case, £1,000.

(*b*) Where in relation to income tax for a year of assessment an individual (in this section referred to as ''the claimant'') proves that—

(i) at any time during the year of assessment he or she was of the age of 55 years or over, and

(ii) in the year of assessment, he or she has made a payment on account of rent in respect of residential premises which, during the period in respect of which the payment was made, was his or her only or main residence,

the claimant shall be entitled to a deduction of an amount equal to the lesser of—

(I) the aggregate of such payments proved to be so made, and

(II) the relevant limit.

(*c*) For the purposes of this subsection, where the claimant is a married person assessed to tax for the year of assessment in accordance with *section 1017*, any payments made by the claimant's spouse, in respect of which that spouse would have been entitled to relief under this section if he or she were assessed to tax for the year of assessment in accordance with *section 1016* (apart from *subsection (2)* of that section), shall be deemed to have been made by the claimant.

(3) (*a*) In this subsection—

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''the specified limit'' means—

(i) in the case of a claimant entitled to a deduction under *section 461(a)*, £1,000,

(ii) in the case of a widowed person, £750, and

(iii) in any other case, £500.

(*b*) Where in relation to income tax for a year of assessment a claimant would but for *paragraph (b)(i)* of *subsection (2)* be entitled to relief in accordance with that subsection, the income tax to be charged on the claimant for that year of assessment, other than in accordance with *section 16(2)*, shall be reduced by an amount which is the least of—

(i) the amount equal to the appropriate percentage of the aggregate of the payments referred to in *subsection (2)(b)(ii)* proved to be so made,

(ii) the appropriate percentage of the specified limit, and

(iii) the amount which reduces that income tax to nil.

(4) (*a*) Where a payment is made partly on account of rent and partly on account of anything which is not rent, such apportionment of the payment shall be made as is necessary in order to determine for the purposes of this section the amount paid on account of rent.

(*b*) Any apportionment required by this subsection shall be made by the inspector according to the best of his or her knowledge and judgment.

(5) Where a payment on account of rent is made in respect of any period, that payment shall be deemed for the purposes of this section to be made in the year in which the period falls; but, if the period falls partly in one year and partly in another year, the amount of the payment made in respect of that period shall be apportioned to each year in the proportion which the part of the period falling in that year bears to the whole of the period, and the amount so apportioned to a year shall be deemed for the purposes of this section to be paid in that year.

(6) (*a*) Any claim for relief under this section in respect of rent paid in a year of assessment shall be accompanied by—

(i) a certificate and statement, in a form prescribed by the Revenue Commissioners, signed by the claimant setting out—

(I) the name, address and income tax reference number of the claimant,

(II) the name, address and, as may be appropriate, the income tax or corporation tax reference number of the person or body of persons beneficially entitled to the rent under the tenancy under which the rent was paid,

(III) the postal address of the premises in respect of which the rent was paid, and

(IV) full particulars of the tenancy under which the rent was paid,

and

(ii) a receipt or acknowledgement in respect of such rent given in accordance with *subsection (8)*.

(*b*) Failure to furnish any of the particulars mentioned in *paragraph (a)(i)* or failure to furnish a receipt or acknowledgement mentioned in *paragraph (a)(ii)* shall be grounds for refusal of the claim; but—

(i) the inspector may waive the requirement at *paragraph (a)(i)(II)* on receipt of satisfactory proof that

the claimant's inability to comply with that requirement is bona fide, and

(ii) the inspector may waive the requirements at *paragraph (a)(ii)* on receipt of satisfactory proof of the total rent paid in the relevant period and on being furnished with the name and address of the person or body of persons to whom it was paid.

(7) (*a*) Any person aggrieved by a decision of the inspector on any question arising under *subsection (4)* or *(6)* may, by notice in writing to that effect given to the inspector within 30 days from the date on which notice of the decision is given to that person, make an application to have his or her claim for relief heard and determined by the Appeal Commissioners.

(*b*) Where an application is made under *paragraph (a)*, the Appeal Commissioners shall hear and determine the claim in the like manner as an appeal made to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(8) (*a*) Where a person (in this subsection referred to as ''the tenant'') who is entitled to relief under this section for a year of assessment, or who has reason to believe that he or she may be so entitled, requests a receipt or acknowledgement of the rent paid by him or her in that year, the person or body of persons beneficially entitled to the rent shall, within 7 days from the date of the request, give to the tenant a receipt or acknowledgement of the rent paid by the tenant in that year of assessment.

(*b*) Any receipt or acknowledgement given in accordance with this subsection shall be in writing and shall contain—

(i) the name and address of the tenant,

(ii) the name, address and, as may be appropriate, the income tax or corporation tax reference number of the person or body of persons giving the receipt or acknowledgement, and

(iii) the amount of the rent paid in the year of assessment and the period within that year in respect of which it is paid.

(9) (*a*) The Revenue Commissioners may make regulations, for the purpose of giving effect to this section, with respect to the allowance granted by this section, or to any matter ancillary or incidental thereto, or, in particular and without prejudice to the generality of the foregoing, to provide for—

(i) the proof by a claimant of a payment on account of rent,

(ii) the disclosure of information by a person in receipt of a payment on account of rent,

(iii) the maintenance of records and the production to and inspection by persons authorised by the Revenue Commissioners of such records and the taking by such persons of copies of or of extracts from such records, and

(iv) appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal.

(*b*) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(10) Any deduction made under this section shall be in substitution for and not in addition to any deduction to which the individual might be entitled in respect of the same payment under any other provision of the Income Tax Acts.

Relief for fees paid to private colleges for full-time third level education.

[FA95 s6(1) to (5)]

474.—(1) In this section—

''academic year'', in relation to an approved course, means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment;

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''approved college'' means a college in the State—

(*a*) which operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister, and

(*b*) which the Minister approves of for the purposes of this section;

''approved course'' means a full-time undergraduate course of study in an approved college which—

(*a*) is of at least 2 academic years' duration, and

(*b*) the Minister, having regard to a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister in relation to the quality of education to be offered on approved courses, approves of for the purposes of this section;

''dependant'', in relation to an individual, means a spouse or child of the individual or a person in respect of whom the individual is or was the legal guardian;

''the Minister'' means the Minister for Education and Science;

''qualifying fees'', in relation to an approved course and an academic year, means the amount of fees chargeable in respect of tuition to be provided in relation to that course in that year which, with the

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consent of the Minister for Finance, the Minister approves of for the purposes of this section.

(2) Subject to this section, where an individual for a year of assessment proves that he or she has, on his or her own behalf or on behalf of his or her dependant, made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with *section 16(2)*, shall be reduced by an amount which is the lesser of—

(*a*) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(*b*) the amount which reduces that income tax to nil.

(3) For the purposes of this section, a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum in respect of or by reference to such fees has been or is to be received, directly or indirectly, by the individual, or, as the case may be, his or her dependant, from any source whatever by means of grant, scholarship or otherwise.

(4) (*a*) Where the Minister is satisfied that an approved college, or an approved course in that college, no longer meets the appropriate code of standards laid down, the Minister may by notice in writing given to the approved college withdraw, with effect from the year of assessment following the year of assessment in which the notice is given, the approval of that college or course, as the case may be, for the purposes of this section.

(*b*) Where the Minister withdraws the approval of any college or course for the purposes of this section, notice of its withdrawal shall be published as soon as may be in Iris Oifigiúil.

(5) On or before the 1st day of July in each year of assessment, the Minister shall furnish the Revenue Commissioners with full details of—

(*a*) all colleges and courses in respect of which approval has been granted and not withdrawn for the purposes of this section, and

(*b*) the amount of the qualifying fees in respect of each such course for the academic year commencing in that year of assessment.

Relief for fees paid for part-time third level education.

[FA96 s15(1) to (5) and (8); FA97 s7]

475.—(1) In this section—

''academic year'', in relation to an approved course, means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment;

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''approved college'', in relation to a year of assessment, means a college or institution in the State, or a college or institution in another Member State of the European Communities providing distance education in the State, which—

(*a*) provides courses to which a scheme approved by the Minister under the Local Authority (Higher Education) Grants Acts, 1968 to 1992, applies, or

(*b*) operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister,

and which the Minister approves of for the purposes of this section;

''approved course'' means a part-time undergraduate course of study in an approved college which—

(*a*) is of at least 2 academic years' duration, and

(*b*) in the case of a course provided by a college to which *paragraph (b)* of the definition of ''approved college'' relates, the Minister, having regard to a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister in relation to the quality of education to be offered on such approved course, approves of for the purposes of this section;

''the Minister'' means the Minister for Education and Science;

''qualifying fees'', in relation to an approved course and an academic year, means the amount of fees chargeable in respect of tuition to be provided in relation to that course in that year and which, in relation to a course to which *paragraph (b)* of the definition of ''approved course'' relates, the Minister, with the consent of the Minister for Finance, approves of for the purposes of this section;

''qualifying individual'' means—

(*a*) an individual other than an individual who has been conferred with a certificate, diploma or degree in respect of the completion by him or her of an undergraduate course of study of not less than 2 academic years' duration, or

(*b*) an individual who has been conferred with a certificate or diploma as referred to in *paragraph (a)* and who is pursuing an approved course in respect of which the approved college certifies that the certificate or diploma, as the case may be, with which he or she has been conferred, has qualified him or her for exemption for one or more years of study from the normal duration of the approved course but is not otherwise an individual who is not a qualifying individual for the purposes of *paragraph (a)*.

(2) Subject to this section, where for a year of assessment a qualifying individual proves that he or she has on his or her own behalf made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the qualifying individual for that year of assessment, other than in accordance with *section 16(2)*, shall be reduced by an amount which is the lesser of—

(*a*) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(*b*) the amount which reduces that income tax to nil.

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(3) Notwithstanding *subsection (2)*, where for any year of assessment—

(*a*) the spouse of a qualifying individual is assessed to tax in accordance with *section 1017*, and

(*b*) qualifying fees are paid by the qualifying individual, or paid by that spouse on behalf of the qualifying individual, in respect of an approved course for the academic year in relation to that course commencing in that year of assessment,

then, relief under this section shall, except where *section 1023* applies, be granted to the spouse of the qualifying individual in respect of the qualifying fees so paid as if he or she were a qualifying individual and the qualifying fees had been paid by him or her on his or her own behalf.

(4) For the purposes of this section, a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum in respect of or by reference to such fees has been or is to be received directly or indirectly by the qualifying individual from any source whatever by means of grant, scholarship or otherwise.

(5) (*a*) Where the Minister is satisfied that a college, within the meaning of *paragraph (b)* of the definition of ''approved college'', or an approved course in that college, no longer meets the appropriate code of standards laid down, the Minister may by notice in writing given to the approved college withdraw, with effect from the year of assessment following the year of assessment in which the notice is given, the approval of that college or course, as the case may be, for the purposes of this section.

(*b*) Where the Minister withdraws the approval of any college or course for the purposes of this section, notice of its withdrawal shall be published as soon as may be in Iris Oifigiúil.

(6) On or before the 1st day of July in each year of assessment, the Minister shall furnish the Revenue Commissioners with full details of all—

(*a*) courses,

(*b*) colleges, and

(*c*) the amount of qualifying fees for the academic year commencing in that year of assessment in respect of courses referred to in *paragraph (a)*,

which the Minister has approved of for the purposes of this section.

(7) Where for the purposes of this section any question arises as to whether—

(*a*) a college is an approved college, or

(*b*) a course of study is an approved course,

the Revenue Commissioners may consult with the Minister.

Pt.15
Relief for fees paid for training courses.

[FA97 s8(1) to (7) and (10) and (11)]

476.—(1) In this section—

''An Foras'' means An Foras Áiseanna Saothair;

''approved course provider'' means a person providing approved courses who—

(*a*) operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be agreed between An Foras and the Minister, and

(*b*) is approved of by An Foras for the purposes of this section;

''approved course'' means a course of study or training, other than a postgraduate course, provided by an approved course provider which—

(*a*) is confined to—

(i) such aspects of information technology, or

(ii) such foreign languages,

as are approved of by the Minister, with the consent of the Minister for Finance, for the purposes of this section,

(*b*) is of less than 2 years' duration,

(*c*) results in the awarding of a certificate of competence, and

(*d*) having regard to a code of standards which from time to time may, with the consent of the Minister for Finance, be agreed between An Foras and the Minister in relation to—

(i) the quality and standard of training to be provided on the approved course, and

(ii) the methods and facilities to be used by the course provider in delivering the course and in assessing competence,

is approved of by An Foras for the purposes of this section;

''certificate of competence'', in relation to an approved course, means a certificate awarded in accordance with the standards set out in the code of standards referred to in *paragraph (d)* of the definition of ''approved course'' and certifying that a minimum level of competence has been achieved by the individual to whom the certificate is awarded;

''foreign language'' means a language other than an official language of the State;

''the Minister'' means the Minister for Enterprise, Trade and Employment;

''qualifying fees'', in relation to an approved course, means the amount of fees chargeable in respect of tuition to be provided in relation to such course where the net amount of such fees are not less than £250 and to the extent that they do not exceed £1,000.

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(2) (*a*) In this subsection, ''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year.

(*b*) Subject to this section, where an individual proves that—

(i) he or she has on his or her own behalf made a payment in respect of qualifying fees in respect of an approved course, and

(ii) has been awarded a certificate of competence in respect of that course,

the income tax to be charged on the individual, other than in accordance with *section 16(2)*, for the year of assessment in which that certificate of competence is awarded shall be reduced by an amount which is the lesser of—

(I) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(II) the amount which reduces that income tax to nil.

(3) Where for a year of assessment in which an individual is awarded a certificate of competence—

(*a*) the spouse of the individual is assessed to tax in accordance with *section 1017*, and

(*b*) qualifying fees are paid by the individual, or paid by that spouse on behalf of the individual, in respect of the approved course,

then, relief under this section shall, except where *section 1023* applies, be granted to the spouse of the individual in respect of the qualifying fees so paid as if the qualifying fees had been paid by him or her on his or her own behalf.

(4) Relief under this section shall not be given in respect of an individual for a year of assessment in respect of more than one approved course.

(5) For the purposes of this section, a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum, in respect of or by reference to such fees, has been or is to be received either directly or indirectly by an individual from any source whatever by means of grant, scholarship or otherwise.

(6) An Foras, where it is satisfied that an approved course provider, or an approved course provided by an approved course provider, no longer meets the appropriate code of standards laid down, may by notice in writing given to the approved course provider withdraw the approval of that course provider or approved course, as the case may be, from such date as it considers appropriate, and this section shall cease to apply to that course provider or that course, as the case may be, with effect from that date.

(7) (*a*) As soon as may be practicable after An Foras has—

(i) approved a course provider or a course for the purposes of this section, or

(ii) withdrawn such approval,

An Foras shall notify the Revenue Commissioners in writing of such approval or withdrawal of approval.

(*b*) Where any question arises as to whether for the purposes of this section—

(i) a course provider is an approved course provider, or

(ii) a training course is an approved course,

the Revenue Commissioners may consult with An Foras.

(8) Any relief under this section shall be in substitution for and not in addition to any relief to which the individual might be entitled to in respect of the same payment under any other provision of the Income Tax Acts.

(9) This section shall come into operation on such date as may be fixed by order of the Minister for Finance.

477.—(1) (*a*) In this section—

Relief for service charges.

[FA95 s7(1) to (8)]

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''claimant'' has the meaning assigned to it by *subsection (2)*;

''financial year'' means the period of 12 months ending on the 31st day of December in that year;

''group water supply scheme'' means a scheme referred to in the Housing (Improvement Grants) Regulations, 1983 (S.I. No. 330 of 1983);

''service'' means the provision by or on behalf of a local authority of—

(i) a supply of water for domestic purposes,

(ii) domestic refuse collection or disposal, or

(iii) domestic sewage disposal facilities;

''service charge'' means a charge imposed under—

(i) the Local Government (Financial Provisions) (No. 2) Act, 1983, or

(ii) section 65A (inserted by the Local Government (Sanitary Services) Act, 1962, and amended by the Local Government (Financial Provisions) (No. 2) Act, 1983) of the Public Health (Ireland) Act, 1878,

in respect of the provision by a local authority of any service or services, and ''service charges'' shall be construed accordingly;

''specified limit'' means £150.

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(*b*) References in this section to an amount paid on time shall mean payment of that amount by such date or dates as a local authority shall decide.

(2) Where in relation to income tax for a year of assessment an individual (in this section referred to as a ''claimant'') proves that in the financial year immediately before the year of assessment the amount which he or she was liable to pay in respect of service charges for that financial year has been paid in full and on time, the income tax to be charged on the claimant for that year of assessment, other than in accordance with *section 16(2)*, shall, subject to *subsections (3)* and *(5)*, be reduced by an amount which is the least of—

(*a*) the amount equal to the appropriate percentage of the amount proved to be so paid,

(*b*) the appropriate percentage of the specified limit, and

(*c*) the amount which reduces that income tax to nil.

(3) (*a*) In the case of a claimant assessed to tax for the year of assessment in accordance with *section 1017*, any payments made by the spouse of the claimant, in respect of which that spouse would have been entitled to relief under this section if the spouse were assessed to tax for the year of assessment in accordance with *section 1016* (apart from *subsection (2)* of that section), shall be deemed to have been made by the claimant.

(*b*) In the case of an individual who resides on a full-time basis in the premises to which the service charges relate and pays such service charges in accordance with the requirements of this section on behalf of the claimant, that claimant may disclaim the relief provided by this section in favour of the individual, and such disclaimer shall be in such form as the Revenue Commissioners may require.

(4) A claimant who wishes to claim relief under this section shall furnish to the local authority to which a payment in respect of the service charges referred to in *subsection (2)* is made the claimant's identifying number, known as the Revenue and Social Insurance (RSI) Number.

(5) (*a*) Any claim for relief under this section shall, unless the details referred to in *subsection (6)* in respect of a claimant are provided on the basis set out in *paragraph (c)* of that subsection, be accompanied by a certificate given in accordance with *subsection (6)* or, in a case to which *paragraph (a)(i)* of *subsection (7)* applies, a receipt or acknowledgement referred to in *clause (III)* of that paragraph.

(*b*) Failure to furnish a certificate or receipt or acknowledgment mentioned in *paragraph (a)*, or to be included in the return referred to in *subsection (6)(c)*, shall be grounds for refusal of the claim.

(6) (*a*) Where in a financial year—

(i) a claimant has furnished his or her identifying number in accordance with *subsection (4)*,

(ii) the total amount which he or she was liable to pay in respect of service charges for that year has been paid on time, and

(iii) arrears, if any, of service charges have been paid in accordance with guidelines in relation to the payment of arrears of service charges entitled ''*Finance Act, 1995 — Payment of Service Charges Arrears*'' issued to local authorities by the Department of the Environment,

the local authority to which payment was made shall, subject to *paragraph (c)*, give to the claimant a certificate in respect of such payment.

(*b*) A certificate given in accordance with this subsection shall contain—

(i) the name, address and the identifying number, known as the Revenue and Social Insurance (RSI) Number, of the claimant,

(ii) the name and address of the local authority giving the certificate,

(iii) the amount paid and the financial year in respect of which it was paid, and

(iv) confirmation that the payment referred to in *subparagraph (iii)* was paid on time and represents the full amount of the service charges which the claimant was liable to pay for the financial year for which the certificate was given.

(*c*) Each local authority shall, within one calendar month after the end of every financial year, provide the Revenue Commissioners with a return in such computerised format as the Revenue Commissioners may require for the purposes of giving effect to the relief provided for in this section and containing, in respect of every claimant who has furnished an identifying number mentioned in *subsection (4)*, the details specified in *subparagraphs (i)*, *(iii)* and *(iv)* of *paragraph (b)*; but where exceptionally the return provided by a local authority is not a complete return, a supplementary return in similar format shall be provided to the Revenue Commissioners not later than 2 months after the end of that financial year.

(*d*) Where a local authority makes a return in accordance with *paragraph (c)*, the certificate mentioned in *paragraph (a)* need not be given to any claimant referred to in such return.

(7) (*a*) Where the service consisting of the provision of domestic refuse collection or disposal—

(i) is provided and charged for by a person or body of persons other than a local authority and where such person or body of persons has—

(I) notified its provision to the local authority in whose functional area such service is provided,

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(II) furnished to that local authority such information as the local authority may from time to time request concerning that person or body of persons or the service provided by that person or body of persons, and

(III) given a receipt or acknowledgement to a claimant containing—

(A) the name, address and, as may be appropriate, the income tax or corporation tax reference number of the person or body of persons,

(B) the claimant's name and address,

(C) the amount paid, and

(D) the financial year in respect of which the payment for the service was paid,

or

(ii) if provided by a local authority or by a person or body of persons referred to in *subparagraph (i)(I)*, is charged for other than by means of a specified annual charge in respect of that service,

a claimant shall for the purposes of this section be deemed to have made a payment of £50 in respect of that service and shall be entitled to relief in respect of such an amount subject to this section other than—

(I) in a case where *subparagraph (i)* applies, *subsection (6)*, or

(II) in a case where *subparagraph (ii)* applies, *subsections (5)* and *(6)*.

(*b*) Where a service charge is imposed in respect of the provision of a service other than the service referred to in *paragraph (a)*, this subsection shall apply only where the claimant also qualifies for relief under this section in respect of such service charge.

(8) The provision of a supply of water for domestic purposes effected by a group water supply scheme shall be treated for the purposes of this section as if it were provided by a local authority, and a payment by an individual member of such a scheme in respect of such provision shall be deemed to be a payment in respect of service charges.

(9) Any deduction made under this section shall be in substitution for and not in addition to any deduction to which the individual might be entitled in respect of the same payment under any other provision of the Income Tax Acts.

Relief for payments made by certain persons in respect of alarm systems.

[FA96 s5]

478.—(1) In this section—

''appropriate percentage'', in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

''installation'' means the placing in position, including any necessary wiring, drilling, plastering or similar work, of a relevant alarm system;

''qualifying expenditure'', in relation to a qualifying individual, means expenditure incurred in the qualifying period in connection with either or both the provision and installation of a relevant alarm system in a premises which is the qualifying individual's sole or main residence, but does not include any expenditure in so far as it is in respect of the repair, maintenance or monitoring of such an alarm system;

''qualifying individual'', in relation to qualifying expenditure, means an individual who at the time the expenditure is incurred has attained the age of 65 years and who for the greater part of the year of assessment in which the expenditure is incurred lives alone;

''qualifying period'' means the period beginning on the 23rd day of January, 1996, and ending on the 5th day of April, 1998;

''relative'', in relation to a qualifying individual, includes a relation by marriage and a person in respect of whom the individual is or was the legal guardian;

''relevant alarm system'' means an electrical apparatus which when activated is designed to give notice to the effect that there is an intruder present or attempting to enter the premises in which it is installed.

(2) Where a claimant, being a qualifying individual or a relative of that individual, having made a claim in that behalf, proves that he or she has incurred qualifying expenditure in relation to the qualifying individual, the income tax to be charged on the claimant, other than in accordance with *section 16(2)*, for the year of assessment in which the expenditure is incurred shall be reduced by an amount which is the least of—

(*a*) the appropriate percentage of the qualifying expenditure,

(*b*) the appropriate percentage of £800, and

(*c*) the amount which reduces that income tax to nil.

(3) Any claim for relief under this section shall be in such form as may be prescribed by the Revenue Commissioners for the purpose and shall be accompanied by a receipt or receipts, as may be appropriate, for the amount of qualifying expenditure incurred; but, where the qualifying expenditure includes expenditure in respect of installation, the receipt in respect of such expenditure shall contain the installer's name and address and the installer's value-added tax registration number or income tax reference number.

(4) Any deduction made under this section shall be in substitution for and not in addition to any deduction to which the individual might be entitled in respect of the same payment under any other provision of the Income Tax Acts.

Pt.15
Relief for new shares purchased on issue by employees.

[FA86 s12(1) to (8); FA96 s12 and s132(1) and Sch5 PtI par15]

479.—(1) (*a*) In this section—

''director'' has the same meaning as in *Chapter 3* of *Part 5*;

''eligible employee'', in relation to a qualifying company, means—

(i) where the company is a trading company, a director or an employee of the company, or

(ii) where the company is a holding company, a director or an employee of the company or of a company which is its 75 per cent subsidiary;

''eligible shares'', in relation to a qualifying company, means new shares forming part of the ordinary share capital of the company which—

(i) are fully paid up,

(ii) throughout the period of 5 years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed,

(iii) are not subject to any restrictions other than restrictions which attach to all shares of the same class, and

(iv) are issued to and acquired by an eligible employee in relation to the company at not less than their market value at the time of issue;

''holding company'' means a company whose business consists wholly or mainly of the holding of shares or securities of trading companies which are its 75 per cent subsidiaries;

''market value'' shall be construed in accordance with *section 548*;

''qualifying company'' means a company which at the time the eligible shares are issued is—

(i) incorporated in the State,

(ii) resident in the State and not resident elsewhere, and

(iii) (I) a trading company, or

(II) a holding company;

''trading company'' means a company whose business consists wholly or mainly of the carrying on wholly or mainly in the State of a trade or trades;

"75 per cent subsidiary", in relation to a company, has the meaning assigned to it for the purposes of the Corporation Tax Acts by *section 9*, as applied for the purposes of *section 411* by *paragraphs (b)* and *(c)* of *subsection (1)* of that section.

(*b*) References in this section 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 section as disposing of any shares which he or she is treated by virtue of *section 587* as exchanging for other shares.

(*c*) Shares in a company shall not be treated for the purposes of this section as being of the same class unless they would be so treated if dealt in on a stock exchange in the State.

(2) Subject to this section, where an eligible employee in relation to a qualifying company subscribes for eligible shares in the qualifying company, the eligible employee shall be entitled to have a deduction made from his or her total income for the year of assessment in which the shares are issued of an amount equal to the amount of the subscription; but a deduction shall not be given to the extent to which the amount subscribed by an eligible employee for eligible shares issued to him or her in all years of assessment exceeds £5,000.

(3) *Subsection (2)* shall not apply as respects any amount subscribed for eligible shares if within the period of 5 years from the date of their acquisition—

(*a*) those shares are disposed of, or

(*b*) the eligible employee who made the subscription receives in respect of those shares any money or money's worth which does not constitute income in his or her hands for the purpose of income tax,

and there shall be made all such assessments, additional assessments or adjustments of assessments as are necessary to withdraw any relief from income tax already given under *subsection (2)* in respect of the amount subscribed; but, where an event mentioned in *paragraph (a)* or *(b)* occurs after the fourth anniversary of the date on which the shares were issued to the eligible employee, relief shall be withdrawn only to the extent of 75 per cent of the amount which would otherwise be withdrawn.

(4) Except where the shares are in a company whose ordinary share capital, at the time of acquisition of the shares by the eligible employee, consists of shares of one class only, the majority of the issued shares of the same class as the eligible shares shall be shares other than—

(*a*) eligible shares, and

(*b*) shares held by persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the qualifying company or any of its 75 per cent subsidiaries.

(5) In relation to shares in respect of which relief has been given under *subsection (2)* and not withdrawn, any question—

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(*a*) as to which (if any) such shares issued to an eligible employee at different times a disposal relates, or

(*b*) whether a disposal relates to such shares or to other shares,

shall for the purposes of this section be determined as for the purposes of *section 498*.

(6) Where there occurs in relation to any of the eligible shares of an eligible employee (in this subsection referred to as ''the original holding'') a transaction which results in a new holding (within the meaning of *section 584*) being equated with the original holding for the purposes of capital gains tax, then, for the purposes of *subsection (3)*—

(*a*) the new holding shall be treated as shares in respect of which relief under this section has been given,

(*b*) the transaction shall not be treated as involving a disposal of the original holding,

(*c*) the consideration for the disposal of the original holding to the extent that it consists of the new holding shall not be treated as money or money's worth, and

(*d*) a disposal of the whole or a part of the new holding shall be treated as a disposal of the whole or a corresponding part of the shares in respect of which relief has been given under this section.

(7) Any amount in respect of which relief is allowed under *subsection (2)* and not withdrawn shall be treated as a sum which by virtue of *section 554* is to be excluded from the sums allowable under *section 552*.

(8) An eligible employee shall not be entitled to relief under *subsection (2)* in respect of any shares unless the shares are subscribed for and issued for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Relief for certain sums chargeable under Schedule E.

[FA68 s3; FA72 Sch PtIII par4; FA74 s11 and s64(2) and SchI PtII; FA97 s146(1) and Sch9 PtI par5(3)]

480.—(1) (*a*) In this section—

''director'' and ''proprietary director'' have the same meanings respectively as in *section 472*;

''employee'', in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee;

''part-time director'', in relation to a body corporate, means a director who is not required to devote substantially the whole of his or her time to the service of the body corporate;

''proprietary employee'', in relation to a company, means an employee who is the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to

control, more than 15 per cent of the ordinary share capital of the company.

(*b*) For the purposes of the definitions of ''proprietary director'' and ''proprietary employee'', ordinary share capital which is owned or controlled as referred to in those definitions by a person, being a spouse or a minor child of a director or employee, or by a trustee of a trust for the benefit of a person or persons, being or including any such person or such director or employee, shall be deemed to be owned or controlled by such director or employee and not by any other person.

(2) (*a*) Subject to *paragraph (b)*, this section shall apply to any payment which is chargeable to tax under Schedule E and made to the holder of an office or employment to compensate for—

(i) a reduction or a possible reduction of future remuneration arising from a reorganisation of the business of the employer under whom the office or employment is held or a change in the working procedures, working methods, duties or rates of remuneration of such office or employment, or

(ii) a change in the place where the duties of the office or employment are performed.

(*b*) This section shall not apply to—

(i) a payment to which *section 123* applies, or

(ii) a payment to—

(I) a proprietary director,

(II) a part-time director,

(III) a proprietary employee, or

(IV) a person who is a part-time employee by reason of not being required to devote substantially the whole of his or her time to the service of his or her employer.

(3) Where an individual has received a payment to which this section applies, the individual shall be entitled, on making a claim in that behalf and on proof of the relevant facts to the satisfaction of the inspector, to have the total amount of income tax payable by the individual for the year of assessment for which the payment is chargeable reduced to the total of the following amounts—

(*a*) the amount of income tax which would have been payable by him or her for that year if he or she had not received the payment, and

(*b*) income tax on the whole of the payment at the rate ascertained in the manner specified in *subsection (4)*.

(4) There shall be ascertained the additional income tax, over and above the amount referred to in *subsection (3)(a)*, which would have been payable by the holder of the office or employment if his or her

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total income for the year of assessment referred to in *subsection (3)* had included one-third only of the payment, and the rate of income tax for the purposes of *subsection (3)(b)* shall then be ascertained by dividing the additional income tax computed in accordance with this subsection by an amount equal to one-third of the payment.

(5) (*a*) Relief from tax under this section shall in all cases be given by means of repayment.

(*b*) A claimant shall not be entitled to relief under this section in respect of any income the tax on which he or she is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment which he or she is liable to make to any other person.

CHAPTER 2

Income tax and corporation tax: reliefs applicable to both

Relief for investment in films.

[FA87 s35(1) to (20); FA96 s31(1); FA97 s30]

481.—(1) In this section—

''allowable investor company'', in relation to a qualifying company, means a company which is not connected with the qualifying company;

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this section;

''film'' means—

(*a*) as respects a film in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under *subsection (2)(a)*, a film of a kind which is included within the categories of films eligible for certification as set out in guidelines referred to in *subsection (2)*, or

(*b*) as respects any other film, a film which is produced—

(i) on a commercial basis with a view to the realisation of profit, and

(ii) wholly or principally for exhibition to the public in cinemas or by means of television broadcasting,

but does not include a film made for exhibition as an advertising programme or as a commercial;

''the Minister'' means the Minister for Arts, Heritage, Gaeltacht and the Islands;

''qualifying company'' means a company which—

(*a*) is incorporated in the State,

(*b*) is resident in the State and not resident elsewhere,

(*c*) exists solely for the purposes of the production and distribution of only one qualifying film, and

(*d*) does not contain in its name registered under either or both the Companies Acts, 1963 to 1990, or the Registration of Business Names Act, 1963, the words ''Ireland'', ''Irish'', ''Éireann'', ''Éire'' or ''national'', Pt.15 S.481

but *paragraph (d)* shall apply only as respects a film (being the film the company exists for the production and distribution of) in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under *subsection (2)(a)*;

''qualifying film'' means a film in respect of which the Minister has given a certificate under *subsection (2)* which has not been revoked under that subsection;

''qualifying individual'', in relation to a qualifying company, means an individual who is not connected with the company;

''qualifying period''—

(*a*) in relation to an allowable investor company, means the period commencing on the 23rd day of January, 1996, and ending on the 22nd day of January, 1999, and

(*b*) in relation to a qualifying individual, means the period commencing on the 23rd day of January, 1996, and ending on the 5th day of April, 1999;

''relevant deduction'' means a deduction of an amount equal to 80 per cent of a relevant investment;

''relevant investment'' means a sum of money which is—

(*a*) paid in the qualifying period to a qualifying company in respect of shares in the company by an allowable investor company on its own behalf or by a qualifying individual on that individual's own behalf, and is paid by the allowable investor company or by the qualifying individual, as the case may be, directly to the qualifying company,

(*b*) paid by the allowable investor company or the qualifying individual, as the case may be, for the purposes of enabling the qualifying company to produce a film in respect of which, at the time such sum of money is paid, the Minister has given notice in writing to the qualifying company that the Minister is satisfied for the time being that an application in writing containing such information as may be specified in guidelines referred to in *subsection (2)* has been made to enable the Minister to consider whether a certificate should be given to that company under that subsection, and

(*c*) used by the qualifying company within 2 years of the receipt of that sum for those purposes,

but does not include a sum of money paid to the qualifying company on terms which provide that it will be repaid, other than a provision for its repayment in the event of the Minister not giving a certificate under *subsection (2)*, and a reference to the making of a relevant investment shall be construed as a reference to the payment of such a sum to a qualifying company.

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(2) (*a*) (i) Subject to *subparagraph (ii)*, the Minister, on the making of an application by a qualifying company, may, in accordance with guidelines laid down by the Minister with the consent of the Minister for Finance, give a certificate to a qualifying company stating, in relation to a film to be produced by the company, that the film may be treated as a qualifying film for the purposes of this section.

(ii) In relation to a film in respect of which the Minister did not receive before the 29th day of April, 1997, the application to enable the Minister to consider whether a certificate should be given under this paragraph, nothing in this section shall be construed as obliging the Minister to give a certificate under this paragraph, and in any case where, in relation to a film, the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as the case may be, before application is made by a qualifying company, the Minister shall not give a certificate under this paragraph.

(iii) An application under this section shall be in such form as the Minister may direct and shall contain such information as may be specified in the guidelines referred to in *subparagraph (i)*.

(*b*) A certificate given by the Minister under *paragraph (a)* shall be subject to such conditions as the Minister may consider proper (having regard, in particular, to any contribution which the production of the film is expected to make to either or both the development of the film industry in the State and the promotion and expression of Irish culture) and specifies in the certificate, including—

(i) a condition that not less than—

(I) 75 per cent, or

(II) such lower percentage, not being less than 10 per cent, which in accordance with guidelines laid down under *paragraph (a)* the Minister specifies in the certificate,

of the work on the production of the film is carried out in the State,

(ii) subject to *paragraph (c)*, a condition that the amount per cent of the total cost of production of the film which may be met by relevant investments shall not exceed the amount per cent (in *paragraph (c)* referred to as ''the specified percentage'') specified in the certificate, and

(iii) a condition that the qualifying company shall, in respect of the qualifying film concerned, notify the Minister in writing of when the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as appropriate.

(*c*) (i) Subject to *subparagraphs (ii)* and *(iii)*, the specified percentage shall not exceed—

(I) where the total cost of production of the film does not exceed £4,000,000, 60 per cent,

(II) where the total cost of production of the film exceeds £4,000,000 and does not exceed £5,000,000, the amount per cent (in this subparagraph referred to as ''the allowable percentage'') where the amount of the allowable percentage is determined by the formula—

$$60 - \frac{E}{£100,000}$$

where E is the excess of the total cost of production of the film over £4,000,000, and

(III) where the total cost of production of the film exceeds £5,000,000, 50 per cent;

but, in any case to which *clause (I)*, *(II)* or *(III)* relates, the total cost of production of the film which is met by relevant investments shall not exceed £7,500,000, and where the percentage of the work on the production of the film carried out in the State (in this paragraph referred to as the ''lower percentage'') is less than 50 per cent, this paragraph shall be construed as if the reference to 60 per cent, the reference to the allowable percentage and the reference to 50 per cent were a reference to the lower percentage.

(ii) (I) In relation to a film (other than an animation film) in respect of which the principal photography commences at any time during the months of October, November, December and January, and the production of the film continues to completion without unreasonable delay from that time, or

(II) in relation to a film in respect of which post production work is to be carried out wholly or mainly in the State,

the references in *subparagraph (i)* to—

(A) 60 per cent shall be construed as a reference to 66 per cent,

(B) 50 per cent shall be construed as a reference to 55 per cent, and

(C) £7,500,000 shall be construed as a reference to £8,250,000.

(iii) In relation to a film in respect of which not less than one-half of the amount of the total cost of production met by relevant investments has been met by relevant investments paid by allowable investor

companies, the references in this paragraph (apart from this subparagraph) to—

(I) £7,500,000 shall be treated as a reference to £15,000,000 and

(II) £8,250,000 shall be treated as a reference to £16,500,000.

(*d*) The Minister may amend or revoke any condition (including a condition added by virtue of this paragraph) specified in the certificate, or add to such conditions, by giving notice in writing to the qualifying company concerned of the amendment, revocation or addition, and this section shall apply as if—

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

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

(*e*) Where a company fails to comply with any of the conditions to which a certificate issued to it under *paragraph (a)* is subject by virtue of *paragraph (b)* or *(d)*—

(i) that failure shall constitute the failure of an event to happen by reason of which relief is to be withdrawn under *subsection (11)*, and

(ii) the Minister may, by notice in writing served by registered post on the company, revoke the certificate.

(3) Subject to this section, where in an accounting period an allowable investor company makes a relevant investment, it shall, on making a claim in that behalf, be given a relevant deduction from its total profits for the accounting period; but, where the amount of the relevant deduction to which the allowable investor company is entitled under this section in an accounting period exceeds its profits for that accounting period, an amount equal to 125 per cent of the amount of that excess shall be carried forward to the succeeding accounting period and the amount so carried forward shall be treated for the purposes of this section as if it were a relevant investment made in that succeeding accounting period.

(4) (*a*) Subject to *paragraph (b)*, where in any period of 12 months (in *paragraph (b)* referred to as a ''12 month period'') ending on an anniversary of the 22nd day of January, 1996, the amount or the aggregate amount of the relevant investments made, or treated as made, by an allowable investor company, or by such company and all companies (which other companies are referred to in *paragraph (b)* as ''connected companies'') which at any time in that period would be regarded as connected with such company, exceeds £8,000,000—

(i) no relief shall be given under this section in respect of the amount of the excess, and

(ii) where there is more than one relevant investment, the inspector or, on appeal, the Appeal Commissioners shall make such apportionment of the relief available as shall be just and reasonable to allocate to each

relevant investment a due proportion of the relief available and, where necessary, to grant to each allowable investor company concerned an amount of relief proportionate to the amount of the relevant investment or the aggregate amount of the relevant investments made by it in the period.

(*b*) No relief shall be given under this section in respect of the amount or the aggregate amount of the relevant investments (in this paragraph referred to as ''the total amount'') made by an allowable investor company and its connected companies—

(i) to the extent that the amount of the relevant investment, or the total amount made in any one qualifying company, exceeds £3,000,000, and

(ii) where in any 12 month period the total amount exceeds £3,000,000, to the extent that the excess comprises a relevant investment or relevant investments made in a qualifying company to enable the company to produce a film, the total cost of production of which exceeds £4,000,000.

(5) Subject to this section, where in any year of assessment a qualifying individual makes a relevant investment, the individual shall, on making a claim in that behalf, be given a relevant deduction from his or her total income for that year of assessment.

(6) A relevant deduction shall not be given under this section in respect of any relevant investment made by a qualifying individual in a qualifying company in any year of assessment unless the amount of that relevant investment or the total amount of the relevant investments made by the individual in the qualifying company in that year is £200 or more and, for the purposes of this section in the case of a qualifying individual who is married and is assessed to tax for a year of assessment in accordance with *section 1017*, any relevant investment made by the qualifying individual's spouse in the qualifying company in that year of assessment shall be deemed to have been made by the qualifying individual.

(7) A relevant deduction shall not be given to a qualifying individual under this section for a year of assessment to the extent to which the amount of the relevant investment or the total amount of the relevant investments (whether or not made in the same qualifying company) made or treated as made by the individual in that year of assessment exceeds £25,000.

(8) Where for any year of assessment a greater relevant deduction would be given to a qualifying individual under this section but for either or both of the following reasons—

(*a*) an insufficiency of total income, or

(*b*) the operation of *subsection (7)*,

then, 125 per cent of the relevant deduction which cannot be given to the individual under this section for either or both of those reasons shall be carried forward to the next year of assessment and shall be treated for the purposes of this section as a relevant investment made by the individual in that next year; but an amount shall not be carried forward to any year of assessment after the year 1998-99.

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(9) To the extent that an amount once carried forward to a year of assessment under *subsection (8)* (and treated as a relevant investment made by a qualifying individual in that year of assessment) gives rise to a relevant deduction which is not deducted from the qualifying individual's total income for that year of assessment, the amount shall to that extent be carried forward again to the next year of assessment (and treated as a relevant investment made by the individual in that next year), and so on for succeeding years of assessment; but an amount shall not be carried forward to any year of assessment after the year 1998-99.

(10) A relevant deduction under this section shall be given to a qualifying individual for any year of assessment as follows—

(*a*) in the first instance, in respect of an amount of relevant investment carried forward from an earlier year of assessment in accordance with *subsection (8)* or *(9)*, and, in respect of such an amount so carried forward, for an earlier year of assessment in priority to a later year of assessment, and

(*b*) only thereafter, in respect of any other amount of relevant investment in respect of which a relevant deduction is to be given in that year of assessment.

(11) (*a*) A claim to relief under this section may be allowed at any time after the time specified in *paragraph (b)* in respect of the payment of a sum to a qualifying company, which, if it is used, within 2 years of its being paid, by the qualifying company for the production of a qualifying film, will be a relevant investment, if all the conditions for relief are or will be satisfied; but the relief shall be withdrawn if, by reason of the happening of any subsequent event including the revocation by the Minister of a certificate under *subsection (2)* or the failure of an event to happen which at the time the relief was given was expected to happen, the company or the individual, as the case may be, making the claim was not entitled to the relief allowed.

(*b*) The time referred to in *paragraph (a)* is the time when all of the following events have occurred—

(i) the payment in respect of which relief is claimed has been made, and

(ii) in relation to the qualifying film the principal photography has commenced, the first animation drawings have commenced or the first model movement has commenced, as appropriate.

(12) A claim for relief in respect of a relevant investment in a company shall not be allowed unless it is accompanied by a certificate issued by the company in such form as the Revenue Commissioners may direct and certifying that the conditions for the relief, in so far as they apply to the company and the qualifying film, are or will be satisfied in relation to that investment.

(13) Before issuing a certificate for the purposes of *subsection (12)*, a company shall furnish the authorised officer with—

(*a*) a statement to the effect that it satisfies or will satisfy the conditions for the relief in so far as they apply in relation to the company and a film,

(*b*) a copy of any notification required to be given to the Minister under *subsection (2)(b)(iii)*,

(*c*) a copy of the certificate, including a copy of any notice given by the Minister amending, revoking or adding a condition to that certificate, under *subsection (2)* in respect of the film, and

(*d*) such other information as the Revenue Commissioners may reasonably require.

(14) A certificate to which *subsection (12)* relates shall not be issued without the authority of the authorised officer.

(15) Any statement under *subsection (13)* shall—

(*a*) contain such information as the Revenue Commissioners may reasonably require,

(*b*) be in such form as the Revenue Commissioners may direct, and

(*c*) contain a declaration that it is correct to the best of the company's knowledge and belief.

(16) Where a company has issued a certificate for the purposes of *subsection (12)* or furnished a statement under *subsection (13)* and either—

(*a*) the certificate or statement was made fraudulently or negligently, or

(*b*) the certificate was issued in contravention of *subsection (14)*,

then—

(i) the company shall be liable to a penalty not exceeding £500 or, in the case of fraud, not exceeding £1,000, and such penalty may, without prejudice to any other method of recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise, and

(ii) no relief shall be given under this section and, if any such relief has been given, it shall be withdrawn.

(17) For the purpose of regulations made under *section 986*, no regard shall be had to the relief unless a claim for it has been duly made and admitted.

(18) An allowable investor company or a qualifying individual shall not be entitled to relief in respect of a relevant investment unless the relevant investment—

(*a*) has been made for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or

one of the main purposes of which is the avoidance of tax,

(*b*) has been or will be used in the production of a qualifying film, and

(*c*) is made at the risk of the allowable investor company or the qualifying individual, as the case may be, and—

(i) in a case where it is made by an allowable investor company, neither the company nor any person who would be regarded as connected with the company, or

(ii) in a case where it is made by a qualifying individual, neither the individual nor any person who would be regarded as connected with the individual,

is entitled to receive any payment in money or money's worth or other benefit directly or indirectly borne by or attributable to the qualifying company, other than a payment made on an arm's length basis for goods or services supplied or a payment out of the proceeds of exploiting the film to which the allowable investor company or the qualifying individual, as the case may be, is entitled under the terms subject to which the relevant investment is made.

(19) Where any relief has been given under this section which is subsequently found not to have been due or is to be withdrawn by virtue of *subsection (11)* or *(16)*, that relief shall be withdrawn by making an assessment to corporation tax or income tax, as the case may be, under Case IV of Schedule D for the accounting period or accounting periods, or the year of assessment or years of assessment, as the case may be, in which relief was given and, notwithstanding anything in the Tax Acts, such an assessment may be made at any time.

(20) (*a*) In this subsection, ''new ordinary shares'' means new ordinary shares forming part of the ordinary share capital of a qualifying company which, throughout the period of one year commencing on the date such shares 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.

(*b*) Subject to *paragraph (d)*, where an allowable investor company is entitled to relief under this section in respect of any sum or any part of a sum, or would be so entitled on making due claim, as a relevant deduction from its total profits for any accounting period, it shall not be entitled to any relief for that sum or that part of a sum, in computing its income or profits, or as a deduction from its income or profits, for any accounting period under any other provision of the Corporation Tax Acts or the Capital Gains Tax Acts.

(*c*) Subject to *paragraph (d)*, where a qualifying individual is entitled to relief under this section in respect of any sum or any part of a sum, or would be so entitled on making due claim, as a relevant deduction from his or her total income for any year of assessment—

(i) the individual shall not be entitled to any relief for that sum or that part of a sum in computing his or her total income, or as a deduction from his or her total income, for any year of assessment under any other provision of the Income Tax Acts, and

(ii) so much of that sum or that part of a sum as is equal to the amount of the relevant deduction given in relation thereto shall be treated as a sum which by virtue of *section 554*, is to be excluded from the sums allowable as a deduction in the computation of gains and losses for the purposes of the Capital Gains Tax Acts.

(*d*) Where an allowable investor company or a qualifying individual has made a relevant investment by means of a subscription for new ordinary shares of a qualifying company and none of those shares is disposed of by the allowable investor company or the qualifying individual, as the case may be, within one year of their acquisition by that company or that individual, as the case may be, then, the sums allowable as deductions from the consideration in the computation for the purpose of capital gains tax of the gain or loss accruing to the company or the individual, as the case may be, on the disposal of those shares shall be determined without regard to any relief under this section which the company or the individual, as the case may be, has obtained, or would be entitled on due claim to obtain, except that where those sums exceed the consideration they shall be reduced by an amount equal to the lesser of—

(i) the amount of the relevant deduction allowed to the allowable investor company or the qualifying individual, as the case may be, under this section in respect of the subscription for those shares, and

(ii) the amount of the excess;

but, if the disposal of shares is by a qualifying individual and the disposal is within *section 1028(5)*, this paragraph shall not apply.

(21) This section shall apply subject to *paragraph 22* of *Schedule 32*, which contains certain transitional provisions in relation to relief under this section.

Relief for expenditure on significant buildings and gardens.

[FA82 s19; FA93 s29; FA94 s18; FA95 s20; FA97 s17]

482.—(1) (*a*) In this section—

''approved building'' means a building to which *subsection (5)* applies;

''approved garden'' means a garden (other than a garden, being land occupied or enjoyed with an approved building as part of its garden or grounds of an ornamental nature) which, on application to the Minister and the Revenue Commissioners in that behalf by a person who owns or occupies the garden, is determined—

(i) by the Minister to be a garden which is intrinsically of significant horticultural,

scientific, historical, architectural or aesthetic interest, and

(ii) by the Revenue Commissioners to be a garden to which reasonable access is afforded to the public;

''approved object'', in relation to an approved building, has the meaning assigned to it by *subsection (6)*;

''authorised person'' means—

(i) an inspector or other officer of the Revenue Commissioners authorised by them in writing for the purposes of this section, or

(ii) a person authorised by the Minister in writing for the purposes of this section;

''chargeable period'' has the same meaning as in *section 321(2)*;

''the Minister'' means the Minister for Arts, Heritage, Gaeltacht and the Islands;

''public place'', in relation to an approved building in use as a tourist accommodation facility, means a part of the building to which all patrons of the facility have access;

''qualifying expenditure'', in relation to an approved building, means expenditure incurred by the person who owns or occupies the approved building on one or more of the following—

(i) the repair, maintenance or restoration of the approved building or the maintenance or restoration of any land occupied or enjoyed with the approved building as part of its garden or grounds of an ornamental nature, and

(ii) to the extent that the aggregate expenditure in a chargeable period, being the year 1997-98 and any subsequent year of assessment, or an accounting period of a company beginning on or after the 6th day of April, 1997, does not exceed £5,000—

(I) the repair, maintenance or restoration of an approved object in the approved building,

(II) the installation, maintenance or replacement of a security alarm system in the approved building, and

(III) public liability insurance for the approved building;

''relevant expenditure'', in relation to an approved garden, means—

(i) in the case of expenditure incurrred in a chargeable period, being the year 1997-98 and any subsequent year of assessment, or an accounting period of a company beginning on or after the 6th day of April, 1997, expenditure incurred by the person who owns or occupies the approved garden on one or more of the following—

(I) the maintenance or restoration of the approved garden, and

(II) to the extent that the aggregate expenditure in a chargeable period does not exceed £5,000—

(A) the repair, maintenance or restoration of an approved object in the approved garden,

(B) the installation, maintenance or replacement of a security alarm system in the approved garden, and

(C) public liability insurance for the approved garden, and

(ii) in any other case, expenditure on the maintenance or restoration of the garden;

''security alarm system'' means an electrical apparatus installed as a fixture in the approved building or in the approved garden which when activated is designed to give notice to the effect that there is an intruder present or attempting to enter the approved building or the approved garden, as the case may be, in which it is installed;

''tourist accommodation facility'' means an accommodation facility—

(i) registered in the register of guest houses maintained and kept by Bord Fáilte Éireann under Part III of the Tourist Traffic Act, 1939, or

(ii) listed in the list published or caused to be published by Bord Fáilte Éireann under section 9 of the Tourist Traffic Act, 1957.

(*b*) For the purposes of this section, expenditure shall not be regarded as having been incurred in so far as any sum in respect of or by reference to the work to which the expenditure relates has been or is to be received directly or indirectly by the person making a claim in respect of the expenditure under *subsection (2)* from the State, from any public or local authority, from any other person or under any contract of insurance or by means of compensation or otherwise.

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(*c*) For the purposes of this section, references to an approved building, unless the contrary intention is expressed, shall be construed as including a reference to any land occupied or enjoyed with an approved building as part of its garden or grounds of an ornamental nature.

(2) (*a*) Subject to this section, where a person (in this section referred to as ''the claimant''), having made a claim in that behalf, proves that the conditions specified in *paragraph (b)* have been met, then, the Tax Acts shall apply as if the amount of the qualifying expenditure referred to in *subparagraph (i)* of *paragraph (b)* were a loss sustained in the chargeable period referred to in that subparagraph in a trade carried on by the claimant separate from any trade actually carried on by the claimant.

(*b*) The conditions referred to in *paragraph (a)* are—

(i) that the claimant has incurred in a chargeable period qualifying expenditure in relation to an approved building,

(ii) that the claimant has on or before the 1st day of January in the chargeable period in respect of which the claim is made and in each of the chargeable periods comprising whichever is the shortest of the following periods—

(I) the period consisting of the chargeable periods since the 23rd day of May, 1994,

(II) the period consisting of the chargeable periods since a determination under *subsection (5)(a)(ii)* was made in relation to the building,

(III) the period consisting of the chargeable periods since the approved building was purchased or occupied by the claimant,

(IV) the period consisting of the 5 chargeable periods immediately preceding the chargeable period for which the claim is made,

provided Bord Fáilte Éireann (in this paragraph referred to as ''the Board'') with particulars of—

(A) the name, if any, and address of the approved building, and

(B) the days and times during the year when access to the approved building is afforded to the public or the period or periods during the year when the approved building is in use as a tourist accommodation facility, as the case may be,

such particulars being provided to the Board on the understanding by the person and the Board that they may be published by the Board or by another body concerned with the promotion of tourism, and

(iii) where the approved building was in use as a tourist accommodation facility in any of the chargeable periods applicable for the purposes of *subparagraph (ii)*, that the approved building was registered in the register of guest houses maintained and kept by the Board under Part III of the Tourist Traffic Act, 1939, or listed in the list published or caused to be published by the Board under section 9 of the Tourist Traffic Act, 1957, in those chargeable periods.

(*c*) Relief authorised by this subsection shall not apply for any chargeable period before the chargeable period in which the application concerned is made to the Revenue Commissioners under *subsection (5)(a)*.

(3) (*a*) Where—

(i) by virtue of *subsection (2)*, qualifying expenditure in a chargeable period is treated as if it were a loss sustained in the chargeable period in a trade carried on by the person separate from any trade actually carried on by that person, and

(ii) owing to an insufficiency of income, relief under the Tax Acts cannot be given for any part of the qualifying expenditure so treated (in this subsection referred to as ''the unrelieved amount''),

then, the Tax Acts shall apply as if the unrelieved amount were a loss sustained in the following chargeable period in a trade carried on by the person separate from any trade actually carried on by that person.

(*b*) Where owing to an insufficiency of income relief under the Tax Acts cannot be given by virtue of *paragraph (a)* for any part of the unrelieved amount, then, the Tax Acts shall apply as if that part of the unrelieved amount were a loss sustained in the chargeable period following the period referred to in *paragraph (a)* in a trade carried on by the person separate from any trade actually carried on by that person.

(*c*) Where in any chargeable period relief under the Tax Acts is due by virtue of 2 or more of the following provisions, that is, *subsection (2)* and *paragraphs (a)* and *(b)*, then, the following provisions shall apply:

(i) any relief due under those Acts by virtue of *paragraph (b)* shall be given in priority to any relief due under those Acts by virtue of *subsection (2)* or *paragraph (a)*, and

(ii) where relief has been given in accordance with *subparagraph (i)* or where no such relief is due, any relief due under those Acts by virtue of *paragraph (a)* shall be given in priority to relief due under those Acts by virtue of *subsection (2)*.

(4) No relief shall be allowed under this section for expenditure in respect of which relief may be claimed under any other provision of the Tax Acts.

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(5) (*a*) This subsection shall apply to a building in the State which, on application to the Minister and the Revenue Commissioners in that behalf by a person who owns or occupies the building, is determined—

(i) by the Minister to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and

(ii) by the Revenue Commissioners to be a building either—

(I) to which reasonable access is afforded to the public, or

(II) which is in use as a tourist accommodation facility for at least 6 months in any calendar year (in this subsection referred to as ''the required period'') including not less than 4 months in the period commencing on the 1st day of May and ending on the 30th day of September in any such year.

(*b*) Without prejudice to the generality of the requirement that reasonable access be afforded to the public, access to a building shall not be regarded as being reasonable access afforded to the public unless—

(i) access to the whole or a substantial part of the building is afforded at the same time,

(ii) subject to temporary closure necessary for the purposes of the repair, maintenance or restoration of the building, access is so afforded for not less than 60 days (including not less than 40 days during the period commencing on the 1st day of May and ending on the 30th day of September) in any year and on each such day access is afforded in a reasonable manner and at reasonable times for a period, or periods in the aggregate, of not less than 4 hours, and

(iii) the price, if any, paid by the public in return for that access is in the opinion of the Revenue Commissioners reasonable in amount and does not operate to preclude the public from seeking access to the building.

(*c*) Where under *paragraph (a)* the Minister makes a determination in relation to a building and, by reason of any alteration made to the building or any deterioration of the building subsequent to the determination being made, the Minister considers that the building is no longer a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which the Minister considers that the building ceased to be a building which is intrinsically of significant scientific, historical, architectural or aesthetic interest, and this subsection shall cease to apply to the building from that date.

(*d*) Where under *paragraph (a)* the Revenue Commissioners make a determination in relation to a building, and reasonable access to the building ceases to be afforded to the public or the building ceases to be used as a tourist accommodation facility for the required period, as the case may be, the Revenue Commissioners may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on which they consider that such access or such use, as the case may be, so ceased, and—

(i) this subsection shall cease to apply to the building from that date, and

(ii) if relief has been given under this section in respect of qualifying expenditure incurred in relation to that building in the period of 5 years ending on the date from which the revocation has effect, that relief shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to this subsection.

(*e*) Where—

(i) the Revenue Commissioners make a determination (in this paragraph referred to as the ''first-mentioned determination'') that a building is either a building to which reasonable access is afforded to the public or a building which is in use as a tourist accommodation facility for the required period,

(ii) such access ceases to be so afforded or such building ceases to be so used, as the case may be, in a chargeable period subsequent to the chargeable period in which the first-mentioned determination was made, and

(iii) on application to them in that chargeable period in that behalf by the person who owns or occupies the building, the Revenue Commissioners revoke the first-mentioned determination and make a further determination (in this paragraph referred to as the ''second-mentioned determination'') with effect from the date of revocation of the first-mentioned determination—

(I) in the case of a building in respect of which a determination was made that it is a building to which reasonable access is afforded to the public, that the building is a building which is in use as a tourist accommodation facility for the required period, or

(II) in the case of a building in respect of which a determination was made that it is a building which is in use as a tourist accommodation facility for the required period, that the building is a building to which reasonable access is afforded to the public,

then, *paragraph (d)* shall not apply on the revocation of the first-mentioned determination and for the purposes of that paragraph the second-mentioned determination

shall be treated as having been made at the time of the making of the first-mentioned determination.

(6) (*a*) In this subsection, ''approved object'', in relation to an approved building, means an object (including a picture, sculpture, print, book, manuscript, piece of jewellery, furniture, or other similar object) or a scientific collection which is owned by the owner or occupier of the approved building and which, on application to them in that behalf by that person, is determined—

(i) by the Minister, after consideration of any evidence in relation to the matter which such owner or occupier submits to the Minister and after such consultation (if any) as may seem to the Minister to be necessary with such person or body of persons as in the opinion of the Minister may be of assistance to the Minister, to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and

(ii) by the Revenue Commissioners, to be an object reasonable access to which is afforded, and in respect of which reasonable facilities for viewing are provided, in the building to the public.

(*b*) Without prejudice to the generality of the requirement that reasonable access be afforded, and that reasonable facilities for viewing be provided, to the public, access to and facilities for the viewing of an object shall not be regarded as being reasonable access afforded, or the provision of reasonable facilities for viewing, to the public unless, subject to such temporary removal as is necessary for the purposes of the repair, maintenance or restoration of the object as is reasonable—

(i) in a case where the approved building is a tourist accommodation facility, the object is displayed in a public place in the building, or

(ii) in the case of any other approved building—

(I) access to the object is afforded and such facilities for viewing the object are provided to the public on the same days and at the same times as access is afforded to the public to the approved building in which the object is kept, and

(II) the price, if any, paid by the public in return for such access is in the opinion of the Revenue Commissioners reasonable in amount and does not operate to preclude the public from seeking access to the object.

(*c*) Where under *paragraph (a)* the Minister makes a determination in relation to an object and, by reason of any alteration made to the object, or any deterioration of the object, subsequent to the determination being made, the Minister considers that the object is no longer an object which is intrinsically of significant national, scientific, historical or aesthetic interest, the Minister may, by notice in writing given to the owner or occupier of the building, revoke the determination with effect from the date on

which the Minister considers that the object ceased to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and this subsection shall cease to apply to the object from that date.

(*d*) Where under *paragraph (a)* the Revenue Commissioners make a determination in relation to an object and—

(i) reasonable access to the object ceases to be afforded, or reasonable facilities for the viewing of the object cease to be provided, to the public, or

(ii) the object ceases to be owned by the person to whom relief in respect of that qualifying expenditure has been granted under this section,

the Revenue Commissioners may, by notice in writing given to the owner or occupier of the approved building in which the object is or was kept, revoke that determination with effect from the date on which they consider that such access, such facilities for viewing or such ownership, as the case may be, so ceased, and—

(I) this subsection shall cease to apply to the object from that date, and

(II) if relief has been given under this section in respect of qualifying expenditure incurred in relation to that object in the period of 2 years ending on the date from which the revocation has effect, that relief shall be withdrawn and there shall be made all such assessments or additional assessments as are necessary to give effect to this subsection.

(7) (*a*) Where a person makes a claim under *subsection (2)*, an authorised person may at any reasonable time enter the building in respect of which the qualifying expenditure has been incurred for the purpose of inspecting, as the case may be, the building or an object or of examining any work in respect of which the expenditure to which the claim relates was incurred.

(*b*) Whenever an authorised person exercises any power conferred on him or her by this subsection, the authorised person shall on request produce his or her authorisation for the purposes of this section to any person concerned.

(*c*) Any person who obstructs or interferes with an authorised person in the course of exercising a power conferred on the authorised person by this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(8) Notwithstanding that the Revenue Commissioners have before the 23rd day of May, 1994, made a determination in accordance with *subsection (5)(a)(ii)* that a building is a building to which reasonable access is afforded to the public, relief under *subsection (2)*, in relation to qualifying expenditure incurred in a chargeable period beginning on or after the 1st day of January, 1995, in respect of the building shall not be given unless the person who owns or occupies the building satisfies the Revenue Commissioners on or before the 1st day of

January in the chargeable period that it is a building to which reasonable access is afforded to the public having regard to *subsection (5)(b)(ii)*.

(9) In respect of relevant expenditure incurred on or after the 6th day of April, 1993, this section shall, with any necessary modifications, apply in relation to an approved garden as it applies in relation to qualifying expenditure incurred in relation to an approved building.

(10) Any claim for relief under this section—

(*a*) shall be made in such form as the Revenue Commissioners may from time to time prescribe, and

(*b*) shall be accompanied by such statements in writing as regards the expenditure for which relief is claimed, including statements by persons to whom payments were made, as may be indicated by the prescribed form.

Relief for certain gifts.

[ITA67 s195B(3) and (6) and s547(1) to (3); CTA76 s140(1), s147(1) and (2) and Sch2 PtI par27; FA93 s10(1)]

483.—(1) (*a*) In this subsection, ''public moneys'' means moneys charged on or issued out of the Central Fund or provided by the Oireachtas.

(*b*) This section shall apply to a gift of money made to the Minister for Finance for use for any purpose for or towards the cost of which public moneys are provided and which is accepted by that Minister.

(2) Where a person who has made a gift to which this section applies claims relief from income tax or corporation tax by reference to the gift, *subsection (3)* or, as the case may be, *subsection (4)* shall apply.

(3) For the purposes of income tax for the year of assessment in which the person makes the gift, the amount of the gift shall be deducted from or set off against any income of the person chargeable to income tax for that year and income tax shall, where necessary, be discharged or repaid accordingly, and the total income of the person or, where the person is a married person whose income is deemed to be the income of his or her spouse, the total income of his or her spouse shall be calculated accordingly.

(4) For the purposes of corporation tax, where the person making the gift is a company, the amount of the gift shall be deemed to be a loss incurred by the company in a separate trade in the accounting period in which the gift is made.

Relief for gifts for education in the arts.

[ITA67 s195B(3) and (6); FA84 s32; FA93 s10(1)]

484.—(1) In this section—

''approved body'' means any body or institution in the State which may be approved of for the purposes of this section by the Minister for Finance and which—

(*a*) provides in the State any course one of the conditions of entry to which is related to the results of the Leaving Certificate Examination, a matriculation examination of a recognised university in the State or an equivalent examination held outside the State, or

(*b*) (i) is established on a permanent basis solely for the advancement wholly or mainly in the State of one or more approved subjects, Pt.15 S.484

(ii) contributes to the advancement of that subject or those subjects on a national or regional basis, and

(iii) is prohibited by its constitution from distributing to its members any of its assets or profits;

''approved subject'' means—

(*a*) the practice of architecture,

(*b*) the practice of art and design,

(*c*) the practice of music and musical composition,

(*d*) the practice of theatre arts,

(*e*) the practice of film arts, or

(*f*) any other subject approved of for the purpose of this section by the Minister for Finance.

(2) This section shall apply to a gift of money which—

(*a*) is made to an approved body for the purpose of assisting that body to promote the advancement in the State of any approved subject,

(*b*) is applied by the approved body for that purpose, and

(*c*) is not deductible in computing for the purposes of tax the profits or gains of a trade or profession or is not income to which *section 792* applies.

(3) (*a*) Where a person proves to have made a gift to which this section applies and claims relief from tax by reference to the gift, *subsection (4)* or, as the case may be, *subsection (5)* shall apply.

(*b*) In determining the net amount of the gift for the purposes of *subsection (4)* or *(5)*, the amount or value of any consideration received by the person as a result of making the gift, whether received directly or indirectly from the approved body to which the gift was made or otherwise, shall be deducted from the amount of the gift.

(4) (*a*) For the purposes of income tax for the year of assessment in which a person makes a gift to which this section applies, the net amount of the gift shall, subject to *subsection (5)*, be deducted from or set off against any income of the person chargeable to income tax for that year and tax shall where necessary be discharged or repaid accordingly, and the total income of the person or, where the person is a married person whose spouse is assessed to income tax in accordance with *section 1017*, the total income of the spouse shall be calculated accordingly.

(*b*) Notwithstanding *paragraph (a)*, relief under this section shall not be given to a person for a year of assessment—

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(i) if the net amount of the gift (or the aggregate of the net amounts of gifts) made by the person in that year, being a gift or gifts, as the case may be, to which this section applies, does not exceed £100, or

(ii) to the extent to which the net amount of the gift (or the aggregate of the net amounts of gifts) made by the person in that year, being a gift or gifts, as the case may be, to which this section applies, exceeds £10,000.

(5) Where a gift to which this section applies is made by a company—

(*a*) the net amount of the gift shall for the purposes of corporation tax be deemed to be a loss incurred by the company in a separate trade in the accounting period of the company in which the gift is made, and

(*b*) the references in *subsection (4)(b)* to a year of assessment shall be construed as references to an accounting period of the company.

(6) (*a*) The Minister for Finance may, by notice in writing given to the body or institution, as the case may be, withdraw the approval of any body or institution for the purposes of this section, and on the giving of the notice the body or institution shall cease to be an approved body as respects any gifts made after the date of the notice referred to in *paragraph (b)*.

(*b*) Where the Minister for Finance withdraws the approval of any body or institution for the purposes of this section, notice of its withdrawal shall be published as soon as may be in Iris Oifigiúil.

Relief for gifts to third-level institutions.

[FA97 s16]

485.—(1) In this section—

''approved institution'' means an institution in the State in receipt of public funding which provides courses to which a scheme approved by the Minister under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, applies, or any body established in the State for the sole purpose of raising funds for such an institution;

''approved project'' means a project in respect of which the Minister has given a certificate under *subsection (2)* which certificate has not been revoked under that subsection;

''project'' means one or more of the following—

(*a*) the undertaking of research,

(*b*) the acquisition of equipment,

(*c*) infrastructural development in institutions specified in the guidelines referred to in *subsection (2)(a)(i)*, and

(*d*) the provision of facilities designed to increase student numbers in areas of skills needs;

''Minister'' means the Minister for Education and Science;

"relevant gift" means a gift of money which—

(*a*) on or after the 6th day of April, 1997, is made to an approved institution for the sole purpose of funding an approved project,

(*b*) is or will be applied by the approved institution for that purpose, and

(*c*) apart from this section is not deductible in computing for the purposes of tax the profits or gains of a trade or profession, or is not income to which *section 792* applies or is not a gift of money to which *section 484* applies.

(2) (*a*) (i) The Minister, on the making of an application by an approved institution, may, in accordance with guidelines laid down by the Minister with the consent of the Minister for Finance, give a certificate to that institution stating that a project may be treated as an approved project for the purposes of this section.

(ii) An application under this subsection shall be in such form as the Minister may direct and shall contain such information as may be specified in the guidelines referred to in *subparagraph (i)*.

(iii) The Minister shall consult the Higher Education Authority in relation to an application under this subsection.

(*b*) (i) A certificate given by the Minister under *paragraph (a)* shall be subject to such conditions as the Minister may consider proper and specifies in the certificate (including a condition as to the amount or the percentage amount of the total cost of the approved project which shall be met by relevant gifts).

(ii) The Minister may amend or revoke any condition specified in a certificate given under *paragraph (a)*, or add to such conditions, by giving notice in writing to the approved institution of the amendment, revocation or addition, and this section shall apply as if—

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

(II) a condition so revoked was not specified in the notice.

(*c*) Where an approved institution fails to comply with any of the conditions to which a certificate given to it under *paragraph (a)* is subject by virtue of *paragraph (b)*, the Minister may, by notice in writing given to the institution, revoke the certificate and the project shall cease to be an approved project as respects any gifts made to the institution after the date of the Minister's notice.

(3) Where it is proved to the satisfaction of the Revenue Commissioners that a person has made a relevant gift and the person claims relief from tax by reference to that gift, *subsection (6)* or, as the case may be, *subsection (7)* shall apply.

(4) Where a relevant gift is made by a chargeable person within the meaning of *Part 41*, a claim under this section shall be made with

the return required to be delivered by that person under *section 951* for the chargeable period in which the gift is made.

(5) In determining the net amount of the gift for the purposes of *subsection (6)* or *(7)*, the amount or value of any consideration received by the person concerned as a result of making the gift, whether received directly or indirectly from the approved institution to which the gift was made or otherwise, shall be deducted from the amount of the gift.

(6) For the purposes of income tax for the year of assessment in which a person makes a gift to which this section applies, the net amount of the gift shall be deducted from or set off against any income of the person chargeable to income tax for that year and tax shall where necessary be discharged or repaid accordingly, and the total income of the person or, where the person's spouse is assessed to income tax in accordance with *section 1017*, the total income of the spouse shall be calculated accordingly.

(7) Where a relevant gift is made by a company, the net amount of the gift shall for the purposes of corporation tax be deemed to be a loss incurred by the company in a separate trade in the accounting period of the company in which the gift is made.

(8) Relief under this section shall not be given to a person for any year of assessment or accounting period, as the case may be, if the net amount of the gift (or the aggregate of the net amounts of gifts) made by such person in that year or accounting period, as the case may be, is less than £1,000.

(9) Every approved institution, when required to do so by notice from the Minister, shall within the time limited by the notice prepare and deliver to the Minister a return containing particulars of the aggregate amount of relevant gifts received by the institution in respect of each approved project.

(10) Where any question arises as to whether for the purposes of this section—

(*a*) an institution is an approved institution,

(*b*) a project is an approved project, or

(*c*) a gift is a relevant gift,

the Revenue Commissioners may consult with the Minister.

(11) For the purposes of a claim to relief under this section, an approved institution shall, on acceptance of a relevant gift, give to the person making the relevant gift a receipt which shall—

(*a*) contain a statement that—

(i) it is a receipt for the purposes of this section,

(ii) the institution is an approved institution for the purposes of this section,

(iii) the gift in respect of which the receipt is given is a relevant gift for the purposes of this section, and

(iv) the project in respect of which the relevant gift has been made is an approved project,

(*b*) show— PT.15 S.485

(i) the name and address of the person making the relevant gift,

(ii) the amount of the relevant gift in both figures and words,

(iii) the date of the relevant gift,

(iv) the full name of the approved institution,

(v) the date on which the receipt was issued, and

(vi) particulars of the approved project in respect of which the relevant gift has been made,

and

(*c*) be signed by a duly authorised official of the approved institution.

CHAPTER 3

Corporation tax reliefs

Corporation tax: relief for gifts to First Step.

[FA93 s51; FA95 s67; FA97 s65]

486.—(1) In this section, ''First Step'' means the company incorporated under the Companies Acts, 1963 to 1990, on the 20th day of September, 1990, as First Step Limited.

(2) This section shall apply to a gift of money which—

(*a*) before the 1st day of January, 2000, is made to First Step,

(*b*) is applied by First Step solely for the objects for which it was incorporated, and

(*c*) is not deductible in computing for the purposes of corporation tax the profits or gains of a trade or profession or is not income to which *section 792* applies.

(3) Where a company makes a gift to which this section applies and claims relief from tax by reference to the gift, the net amount of the gift shall for the purposes of corporation tax be deemed to be a loss incurred by the company in a separate trade in the accounting period of the company in which the gift is made.

(4) (*a*) In determining the net amount of the gift for the purposes of this section, the amount or value of any consideration received by the company as a result of making the gift, whether received directly or indirectly from First Step or any other person, shall be deducted from the amount of the gift.

(*b*) Relief under this section shall not be given to a company for an accounting period—

(i) if the net amount of the gift (or the aggregate of the net amounts of gifts) made by the company in that accounting period, being a gift or gifts, as the case may be, to which this section applies, does not exceed £500,

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(ii) to the extent to which the net amount of the gift (or the aggregate of the net amounts of gifts) made by the company in that accounting period, being a gift or gifts, as the case may be, to which this section applies, exceeds £100,000,

(iii) in respect of a gift made at any time in the year ended on the 31st day of May in the year 1996, 1997, 1998 or 1999, if at that time the aggregate of the net amounts of all gifts to which this section applies made to First Step within that year exceeds £1,500,000, or

(iv) in respect of a gift made at any time in the period commencing on the 1st day of June, 1999, and ending on the 31st day of December, 1999, if at that time the aggregate of the net amounts of all gifts to which this section applies made to First Step within that period exceeds £875,000.

(5) A claim under this section shall be made with the return required to be delivered under *section 951* for the accounting period in which the gift is made.

(6) Where a company makes a gift in respect of which relief is not to be given by virtue of *subparagraph* (iii) or (iv) of *subsection (4)(b)*, First Step shall, by notice in writing given to the company within 30 days of the making of the gift, advise the company accordingly.

(7) Where a gift to which this section applies is made by a company in an accounting period of the company which is less than 12 months, the amounts specified in *subparagraphs (i)* and *(ii)* of *subsection (4)(b)* shall be proportionately reduced.

Corporation tax: credit for bank levy.

[FA92 s45; FA95 s56; FA97 s146(1) and Sch9 PtI par16(1)]

487.—(1) (*a*) In this section—

''accounting profit'' means the amount of profit, after taxation and before extraordinary items—

(i) shown in the profit and loss account—

(I) in the case of a company resident in the State, which is required under section 148 of the Companies Act, 1963, to be laid before the annual general meeting of the company, or which would be so shown but for subsection (4) of section 149 of that Act, and

(II) in the case of a company not resident in the State and carrying on a trade in the State through a branch or agency, of that branch or agency and which is certified by the auditor appointed under section 160 of the Companies Act, 1963, or under the law of the state in which the company is incorporated and which corresponds to that section, as presenting a true and fair view of the profit or loss attributable to that branch or agency,

(ii) reduced by the amount of such profit as is attributable to— Pt.15 S.487

(I) dividends received from companies resident in the State which are members of the group of which that company is a member,

(II) gains on disposal of capital assets,

(III) relevant trading operations within the meaning of *section 446*,

(IV) trading operations carried on outside of the State and in respect of which the company is chargeable to corporation tax in the State and to tax on income in another state, and

(V) dividends received from companies not resident in the State,

and

(iii) increased—

(I) as respects income from sources specified in *subparagraphs (III)*, *(IV)* and *(V)* of *paragraph (ii)*, by an amount determined by the formula—

$$\frac{100}{R} \times T$$

where—

T is the corporation tax chargeable in respect of that income computed in accordance with the provisions of the Corporation Tax Acts and after allowing relief under *Parts 14* and *35*, and

R is the rate of corporation tax for the accounting period concerned and to which *section 21* relates, but where part of the accounting period falls in one financial year and the other part falls in the financial year succeeding the first-mentioned financial year, R shall be determined by applying the formula specified in *section 78(3)(b)*, and

(II) by the amount of stamp duty charged under section 64 of the Finance Act, 1989, section 108 of the Finance Act, 1990, section 200 of the Finance Act, 1992, or section 142 of the Finance Act, 1995, and under section 94 of the Finance Act, 1986, as has been taken into account in computing that amount of profit, after taxation and before extraordinary items;

''adjusted group base tax'', in relation to a relevant period, means—

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(i) an amount determined by the formula—

$$\frac{T \times P}{B}$$

where—

T is the group base tax,

P is the group profit of the relevant period, and

B is the group base profit,

or

(ii) if it is greater, the group advance corporation tax of the relevant period;

''advance corporation tax'', in relation to a relevant period, means the aggregate of the amounts of advance corporation tax paid or treated as paid by a company, and not repaid, under *Chapter 8* of *Part 6*, in respect of distributions made in accounting periods falling wholly or partly within the relevant period and, where an accounting period falls partly within a relevant period, the aggregate shall include a part of the advance corporation tax so paid proportionate to the part of the accounting period falling within the relevant period;

''base profit'', in relation to a company, means 50 per cent of the aggregate of the amounts of accounting profit of a company for accounting periods falling wholly or partly in the period beginning on the 1st day of April, 1989, and ending on the 31st day of March, 1991, and, where an accounting period falls partly within that period, the aggregate shall include a part of the accounting profit of the accounting period proportionate to the part of the accounting period falling within that period;

''base tax'' means 50 per cent of the aggregate of the corporation tax chargeable on a company, exclusive of the corporation tax on the part of the company's profits attributable to chargeable gains and before the set-off of advance corporation tax under *Chapter 8* of *Part 6*, for accounting periods falling wholly or partly in the period beginning on the 1st day of April, 1989, and ending on the 31st day of March, 1991, and, where an accounting period falls partly within that period, the aggregate shall include a part of the corporation tax so chargeable for the accounting period proportionate to the part of the accounting period falling within that period;

''group advance corporation tax'', in relation to a relevant period, means the aggregate of the amounts of advance corporation tax in relation to the relevant period of companies which throughout the relevant period are members of the group;

''group base profit'' means the aggregate of the amounts of base profit of companies which throughout the relevant period are members of the group;

''group base tax'' means the aggregate of the amounts of base tax of companies which throughout the relevant period are members of the group, but where the amount of the group base tax is an amount which is—

(i) greater than 43 per cent, or

(ii) lower than 10 per cent,

of the group base profit, computed in accordance with this section but without regard to *subparagraphs (III)*, *(IV)* and *(V)* of *paragraph (ii)*, or *subparagraph (I)* of *paragraph (iii*), of the definition of ''accounting profit'', the group base tax shall be deemed to be an amount equal to 25 per cent of the group base profit as so computed;

''group profit'', in relation to a relevant period, means the aggregate of the amounts of profit of the relevant period of companies which throughout that period are members of the group;

''group tax liability'', in relation to a relevant period, means the aggregate of the amounts of tax liability of the relevant period of companies which throughout that period are members of the group;

''levy payment'' means the aggregate of the amounts charged in the year 1992 or in any later year under section 200 of the Finance Act, 1992, or section 142 of the Finance Act, 1995, and which have been paid, on or before the date by which the amounts are payable, by companies which are members of a group;

''profit'', in relation to a relevant period, means the aggregate of the accounting profit, computed on the same basis as that on which the base profit of the company is computed, of a company for accounting periods falling wholly or partly within the relevant period, and, where an accounting period falls partly within a relevant period, the aggregate shall include a part of the accounting profit of the accounting period proportionate to the part of the accounting period falling within that relevant period;

''relevant period'', in relation to a levy payment, means a period beginning on the 1st day of April preceding the date on or before which the levy payment is to be made and ending on the 31st day of March next after that date;

''tax liability'', in relation to a relevant period, means the aggregate of the corporation tax which apart from this section would be chargeable on a company, exclusive of the corporation tax on the part of the company's profits attributable to chargeable gains and before the set-off of advance corporation tax under *Chapter 8* of *Part 6*, for accounting periods

falling wholly or partly within the relevant period and, where an accounting period falls partly within that period, the aggregate shall include a part of the corporation tax so chargeable for the accounting period proportionate to the part of the accounting period falling within that period.

(*b*) For the purposes of this section—

(i) 2 companies shall be deemed to be members of a group if one company is a 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company; but—

(I) in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

(A) any share capital which it owns directly in a company if a profit on a sale of the shares would be treated as a trading receipt of its trade, or

(B) any share capital which it owns indirectly, and which is owned directly by a company for which a profit on a sale of the shares would be a trading receipt,

and

(II) a company which is an assurance company within the meaning of *section 706* shall not be a member of a group,

(ii) *sections 412* to *418* shall apply for the purposes of this paragraph as they apply for the purposes of *Chapter 5* of *Part 12*,

(iii) a company and all its 75 per cent subsidiaries shall form a group and, where that company is a member of a group as being itself a 75 per cent subsidiary, that group shall comprise all its 75 per cent subsidiaries and the first-mentioned group shall be deemed not to be a group; but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company, and accordingly references to group advance corporation tax, group base profit, group base tax, group profit and group tax liability shall be construed as if they were respectively references to advance corporation tax, base profit, base tax, profit and tax liability of that company,

(iv) the part of a company's profits attributable to chargeable gains for an accounting period shall be taken to be the amount brought

into the company's profits for that period for the purposes of corporation tax in respect of chargeable gains before any deduction for charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of more than one description,

(v) the income or profit attributable to any trading operations or dividends shall be such amount of the income or profit as appears to the inspector or on appeal to the Appeal Commissioners to be just and reasonable, and

(vi) corporation tax chargeable in respect of any income shall be the corporation tax which would not have been chargeable but for that income.

(2) Where for a relevant period in relation to a levy payment the group tax liability exceeds the adjusted group base tax of that relevant period, all or part of the levy payment, not being greater than the excess of the group tax liability over the adjusted group base tax, may be set against the group tax liability of the relevant period in accordance with this section.

(3) (*a*) In this subsection, ''appropriate inspector'' has the same meaning as in *section 950*.

(*b*) Where under *subsection (2)* an amount of levy payment may be set against the group tax liability of a relevant period, so much (in this paragraph referred to as ''the apportionable part'') of the amount as bears to that amount the same proportion as the tax liability of the relevant period of a company which is a member of the group bears to the group tax liability of the relevant period shall be apportioned to the company, and the companies which are members of the group may, by giving notice in writing to the appropriate inspector within a period of 9 months after the end of the relevant period, elect to have the apportionable part apportioned in such manner as is specified in the notice.

(4) Where an amount is apportioned to a company under *subsection (3)*, that amount shall be set against the tax liability of the relevant period of the company and, to the extent that an amount is so set off, it shall be treated for the purposes of the Corporation Tax Acts as if it were a payment of corporation tax made on the day on which that corporation tax is to be paid; but an amount or part of an amount which is to be treated as if it were a payment of corporation tax may not be repaid to a company by virtue of a claim to relief under the Corporation Tax Acts or for any other reason.

(5) Where under *subsection (4)* an amount is to be set against the tax liability of a relevant period of a company and the tax liability of the relevant period consists of the aggregate of corporation tax chargeable for more accounting periods than one, the amount shall be set against the corporation tax of each of those accounting periods in the proportion which the corporation tax of the accounting period or the part of the accounting period, as the case may be, and which

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is included in the tax liability of the relevant period bears to the tax liability of the relevant period.

(6) Where—

(*a*) the end of an accounting period (in this subsection referred to as ''the first-mentioned accounting period'') of a company which is a member of a group does not coincide with the end of the relevant period,

(*b*) the tax liability of—

(i) one or more accounting periods of the company ending after the end of the first-mentioned accounting period, or

(ii) one or more accounting periods of any other member of the group ending after the end of the first-mentioned accounting period,

is to be taken into account in determining the amount of the levy payment which may be set off under this section against the corporation tax of—

(I) the first-mentioned accounting period, or one or more accounting periods ending before the end of that period, of the company, or

(II) one or more accounting periods of any other member of the group ending on or before the end of the first-mentioned accounting period,

and

(*c*) on the specified return date (within the meaning of *section 950*) it is not possible—

(i) for the first-mentioned accounting period, or any other accounting period ending before the end of that period, of the company, or

(ii) for one or more accounting periods of any other member of the group ending on or before the end of the first-mentioned accounting period,

to determine the amount of the levy payment which may be so set off,

then, the amount of levy payment which may be set off under this section against the corporation tax of an accounting period shall be taken to be the amount which would have been so set off if a period of 12 months ending on the last day of the most recent accounting period of the parent company (being a member of the group which is not a subsidiary of any other member of the group) which ends in the relevant period were the relevant period; but, where a part only of that period of 12 months falls after the 31st day of March, 1992, the amount to be set off under this subsection shall be reduced to an amount proportionate to the part of that period of 12 months falling after that day.

(7) (*a*) A company shall deliver, as soon as they become available, such particulars as are required to determine the amount of levy payment which apart from *subsection (6)*

is to be set off against the corporation tax of an accounting period. Pt.15 S.487

(*b*) Where an amount of levy payment has been set off against corporation tax of an accounting period under *subsection (6)* and the company delivers such particulars as are required to be delivered in accordance with *paragraph (a)*, the inspector shall adjust any computation or assessment by reference to the difference between these amounts and any amount of corporation tax overpaid shall be repaid and any amount of corporation tax underpaid shall be paid.

(8) (*a*) An amount of tax to be repaid under *subsection (7)* shall be repaid with interest in all respects as if it were a repayment of preliminary tax under *section 953(7)*.

(*b*) Interest shall not be charged under *section 1080* on any amount of tax underpaid under this subsection unless the amount is not paid within one month of the date on which the amount of the underpayment is notified to the chargeable person by the inspector, and the amount of tax so unpaid shall not be treated as part of the tax payable for the chargeable period for the purposes of *section 958(4)(b)*.

PART 16

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

488.—(1) In this Part— Interpretation (*Part 16*).

[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 PtI par13(1)]

''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*;

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''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.

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The relief.

[FA84 s12(1), (3) to (6A), (8) and (10) to (11); FA85 s13(b); FA87 s8(b); FA90 s10(b) and s34(1)(a) and (b)(ii), (2) and (4); FA91 s15(1)(a); FA93 s25(b)(i), (iii), (iv), (v) and (vi); FA95 s17(b); FA96 s17]

489.—(1) This Part shall apply for affording relief from income tax where, subject to *subsection (2)*—

(*a*) an individual who qualifies for the relief subscribes for eligible shares in a qualifying company,

(*b*) those shares are issued to the individual for the purpose of raising money for a qualifying trade being carried on by the company or which the company intends to carry on, and

(*c*) the company provides satisfactory evidence, and it appears to the Revenue Commissioners after such consultation, if any, as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, that the money was used, is being used or is intended to be used—

(i) for the purposes of—

(I) enabling the company, or enlarging its capacity, to undertake qualifying trading operations,

(II) enabling the company to engage in, or assisting the company in—

(A) research and development,

(B) the acquisition of technological information and data,

(C) the development of new or existing products or services, or

(D) the provision of new products or services,

(III) enabling the company to identify new markets, and to develop new and existing markets, for its products and services, or

(IV) enabling the company to increase its sales of products or provision of services,

and

(ii) with a view to the creation or maintenance of employment—

(I) in the company, or

(II) in the case of qualifying trading operations referred to in *section 496(2)(a)(ix)*, in either or both a company contracted to construct the advance factory building concerned and a company which enters into a lease for its use.

(2) Where the money raised for the purpose specified in *subsection (1)(b)* was used, is being used or is intended to be used—

(*a*) for the purposes of qualifying trading operations referred to in *section 496(2)(a)(iv)* and in respect of which money is raised or intended to be raised under this Part by virtue of *section 496(2)(a)(iv)(II)*, the evidence referred to in

subsection (1)(c) shall include the certificate referred to in *section 496(5)*,

(*b*) for the purposes of qualifying trading operations referred to in *section 496(2)(a)(vii)*, the evidence referred to in *subsection (1)(c)* shall include the certificate referred to in *section 496(7)*,

(*c*) for the purposes of qualifying trading operations referred to in *section 496(2)(a)(x)* (in this paragraph referred to as ''the operations''), the evidence referred to in *subsection (1)(c)* shall include a certificate by an industrial development agency certifying that it is satisfied that the operations—

(i) have the potential to result in the commencement of qualifying trading operations referred to in *subparagraphs (i)*, *(ii)* and *(viii)* of *section 496(2)(a)*, and

(ii) have commenced,

(*d*) for the purposes of qualifying trading operations referred to in *section 496(2)(a)(xii)*, the evidence referred to in *subsection (1)(c)* shall include the certificate referred to in *section 496(8)*,

(*e*) for the purpose of the construction and the leasing of an advance factory building, the evidence referred to in *subsection (1)(c)* shall include a certificate by an industrial development agency certifying that it has satisfied itself that—

(i) the building is or will be an advance factory building, and

(ii) (I) the advance factory building is or will be situated in an area which, on the basis of guidelines agreed with the consent of the Minister for Finance between the industrial development agency and the Minister for Enterprise, Trade and Employment or the Minister for Arts, Heritage, Gaeltacht and the Islands (as may be appropriate in the circumstances), was or is in particular need of development and of the creation of opportunities for employment, and

(II) the construction of the advance factory building contributes or will contribute significantly to meeting those needs, and

(*f*) for the purposes of relevant trading operations, the evidence referred to in *subsection (1)(c)* shall include a certificate under *section 497(2)*.

(3) Subject to *subsections (4)* and *(5)*, relief in respect of the amount subscribed by an individual for any eligible shares shall be given as a deduction of that amount from his or her total income for the year of assessment in which the shares are issued.

(4) Where—

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(*a*) in accordance with *section 508*, relief is due in respect of an amount subscribed as nominee for a qualifying individual by the managers of a designated fund, and

(*b*) the eligible shares in respect of which the amount is subscribed are issued in the year of assessment following the year of assessment in which that amount was subscribed to the designated fund,

the individual may elect by notice in writing to the inspector to have the relief due given as a deduction from his or her total income for the year of assessment in which the amount was subscribed to the designated fund, instead of (as provided for in *subsection (3)*) as a deduction from his or her total income for the year of assessment in which the shares are issued.

(5) (*a*) Subject to this subsection, a specified individual may, in relation to a relevant investment made by such individual (being that individual's first such investment), elect by notice in writing to the inspector to have the relief due given as a deduction from such individual's total income for any one of the 5 years of assessment immediately before the year of assessment in which the eligible shares in respect of that investment are issued which such individual nominates for the purpose, instead of (as provided for in *subsection (3)*) as a deduction from the specified individual's total income for the year of assessment in which the shares are issued, and accordingly, subject to *section 490* and *paragraphs (c)* and *(d)*, for the purpose of granting such relief (but for no other purpose of this Part) the shares shall be deemed to have been issued in the year of assessment so nominated.

(*b*) Where the specified individual makes a subsequent relevant investment (being that individual's second such investment)—

(i) in the same company as such individual's first such investment, and

(ii) within either the year of assessment following the end of the year of assessment in which such individual's first such investment was made or the year of assessment subsequent to that year,

then, the specified individual may, in relation to such individual's second such investment, elect by notice in writing to the inspector to have the relief due given as a deduction from such individual's total income for any one of the 5 years of assessment immediately before the year of assessment in which the eligible shares in respect of such individual's first such investment were issued which such individual nominates for the purpose, instead of (as provided for in *subsection (3)*) as a deduction from such individual's total income for the year of assessment in which the eligible shares in respect of such individual's second such investment are issued, and accordingly, subject to *section 490* and *paragraphs (c)* and *(d)*, for the purpose of granting such relief (but for no other purpose of this Part) the shares issued in respect of the second such investment shall be deemed to have been issued in the year of assessment so nominated.

(*c*) Where any of the years of assessment following the year of assessment nominated under *paragraph (a)* or *(b)*, as the case may be, precede the year of assessment in which the eligible shares in respect of the specified individual's first relevant investment are in fact issued, *subsections (3)* to *(5)* of *section 490* shall operate to give relief in such years of assessment as may be nominated by such individual for that purpose.

(*d*) To the extent that the amount of the relief which would be due in respect of the specified individual's first relevant investment or second relevant investment, as the case may be, has not been given in accordance with *paragraphs (a)* to *(c)* it shall, subject to *subsections (3)* to *(5)* of *section 490*, be given for the year of assessment in which the eligible shares in respect of the first such investment or the second such investment, as the case may be, are in fact issued or, if appropriate, a subsequent year of assessment.

(*e*) This subsection shall apply in respect of not more than 2 relevant investments made by a specified individual on or after the 2nd day of June, 1995.

(6) References in this Part to the amount of the relief are references to the amount of the deduction given under *subsection (3)*, *(4)* or *(5)* (as may be appropriate).

(7) (*a*) Subject to *paragraphs (b)* and *(c)*, the relief shall be given on a claim and shall not be allowed—

(i) (I) in the case of a relevant investment, unless and until the company commences to carry on the relevant trading operations, and

(II) in any other case, unless and until the company has carried on the trade for 4 months, and

(ii) if the company is not carrying on that trade at the time when the shares are issued, unless the company—

(I) expends not less than 80 per cent of the money subscribed for the shares on research and development work which is connected with and undertaken with a view to the carrying on of the trade, and begins to carry on the trade within 3 years after that time,

or

(II) otherwise begins to carry on the trade within 2 years after that time.

(*b*) In the case of qualifying trading operations referred to in *section 496(2)(a)(ix)*, for the purposes of *paragraph (a)*, the trade shall be deemed to have commenced on the date on which the construction of the advance factory building commenced.

(*c*) In the case of qualifying trading operations referred to in *section 496(2)(a)(x)*, for the purposes of *paragraph (a)*, the trade shall be deemed to have commenced on the

date on which the certificate referred to in *subsection (2)(c)* was issued.

(8) Subject to *subsection (7)(a)(i)*, a claim for relief may be allowed at any time if the conditions for the relief are then satisfied.

(9) In the case of a claim allowed before the end of the relevant period, the relief shall be withdrawn if by reason of any subsequent event it appears that the claimant was not entitled to the relief allowed.

(10) In the case of a claim allowed before a specified individual commences a relevant employment with the company in which that individual has made a relevant investment (being that individual's first such investment), the relief shall be withdrawn if the specified individual fails to commence such employment—

(*a*) within the year of assessment in which the investment is made, or

(*b*) if later, within 6 months of the date of—

(i) where the investment consists of the subscription of only one amount for eligible shares, that subscription, or

(ii) where the investment consists of the subscription of more than one amount for eligible shares, the last such subscription.

(11) Where by reason of its being wound up, or dissolved without winding up, the company carries on the qualifying trade for a period shorter than 4 months, *subsection (7)(a)(i)* shall apply as if it referred to that shorter period but only if it is shown that the winding up or dissolution was for bona fide commercial reasons and not as part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax.

(12) Subject to *section 506*, no account shall be taken of the relief, in so far as it is not withdrawn, in determining whether any sums are excluded by virtue of *section 554* from the sums allowable as a deduction in the computation of gains and losses for the purposes of the Capital Gains Tax Acts.

(13) Where an individual is entitled to relief under this section in respect of a subscription by him or her for eligible shares in a company, he or she shall not be entitled to relief in respect of that subscription under *section 479*.

(14) (*a*) In this subsection, ''distribution'' has the same meaning as in the Corporation Tax Acts.

(*b*) For the purposes of this subsection, an amount specified or implied shall include an amount specified or implied in a foreign currency.

(*c*) This subsection shall apply to shares in a company where any agreement, arrangement or understanding exists which could reasonably be considered to eliminate the risk that the person beneficially owning those shares—

(i) might, at or after a time specified in or implied by that agreement, arrangement or understanding, be

unable to realise directly or indirectly in money or money's worth an amount so specified or implied, other than a distribution, in respect of those shares, or

(ii) might not receive an amount so specified or implied of distributions in respect of those shares.

(*d*) The reference in this subsection to the person beneficially owning shares shall be deemed to be a reference to both that person and any person connected with that person.

(*e*) Relief from income tax shall not be allowed under this Part in respect of the amount subscribed for any shares to which this subsection applies.

(15) This section shall apply only where the shares concerned are issued in the period commencing on the 6th day of April, 1984, and ending on the 5th day of April, 1999.

Limits on the relief.

[ITA67 s195B(3) and (6); FA84 s13(1) to (2C); FA87 s9; FA93 s10(1) and s25(c)(i); FA96 s18]

490.—(1) (*a*) Subject to *section 508* and *paragraph (b)*, the relief shall not be given in respect of any amount subscribed by an individual for eligible shares issued to the individual by any company in any year of assessment unless the amount or total amount subscribed by the individual for the eligible shares issued to the individual by the company in that year is £200 or more.

(*b*) In the case of an individual who is a married person assessed to tax for a year of assessment in accordance with *section 1017*, any amount subscribed by the individual's spouse for eligible shares issued to that spouse in that year of assessment by the company shall be deemed to have been subscribed by the individual for eligible shares issued to the individual by the company.

(2) The relief shall not be given to the extent to which the amount or total amount subscribed by an individual for eligible shares issued to the individual in any year of assessment (whether or not by the same company) exceeds £25,000.

(3) (*a*) Where in any year of assessment a greater amount of relief would be given to an individual in respect of the amount or the total amount subscribed by the individual for eligible shares (in this subsection referred to as ''the relevant subscription'') issued to the individual in that year or, where *section 489(4)* applies, in the following year of assessment but for either or both of the following reasons—

(i) an insufficiency of total income, or

(ii) the operation of *subsection (2)*,

the amount of the relief which would be given but for those reasons less the amount or the aggregate amount of any relief in respect of the relevant subscription which is given in that year of assessment shall be carried forward to the next year of assessment, and shall be treated

for the purposes of the relief as an amount subscribed directly by the individual for eligible shares issued to the individual in that next year.

(*b*) This subsection shall not apply for any year of assessment subsequent to the year 1998-99.

(4) (*a*) If and in so far as an amount once carried forward to a year of assessment under *subsection (3)* (and treated as an amount subscribed directly by an individual for eligible shares issued to the individual in that year of assessment) is not deducted from his or her total income for that year of assessment, it shall be carried forward again to the next year of assessment (and treated as an amount subscribed directly by the individual for eligible shares issued to the individual in that next year), and so on for succeeding years of assessment.

(*b*) This subsection shall not apply for any year of assessment subsequent to the year 1998-99.

(5) The relief shall be given to an individual for any year of assessment in the following order—

(*a*) in the first instance, in respect of an amount carried forward from an earlier year of assessment in accordance with *subsection (3)* or *(4)* and, in respect of such an amount so carried forward, for an earlier year of assessment in priority to a later year of assessment, and

(*b*) only thereafter, in respect of any other amount for which relief is to be given in that year of assessment.

Restriction on relief where amounts raised exceed permitted maximum.

[FA84 s13A; FA89 s9; FA91 s15(1)(c) and s17(1)(b) and (c); FA93 s25(d)(i)(II) and FA96 s19(1) and (2); FA97 s146(1) and Sch9 par13(2)]

491.—(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*) Subject to this section, where a company raises any amount through the issue of eligible shares (in this section referred to as ''the relevant issue''), relief shall not be given in respect of the excess of the amount over the amount determined by the formula—

£1,000,000 – A

where A is the lesser of—

(i) £1,000,000, and

(ii) an amount equal to the aggregate of all amounts raised by the company through the issue of eligible shares at any time before the relevant issue.

(*b*) Notwithstanding *paragraph (a)*, in the case of a company which, or whose qualifying subsidiary, either carries on or intends to carry on qualifying trading operations referred to in *section 496(2)(a)(iv)*, this section shall apply, in relation to that company and money raised or intended to be raised by it under this Part by virtue of *section 496(2)(a)(iv)(II)*, as if in the formula in *paragraph (a)* and in the formula in *subsection (3)* ''£100,000'' were

substituted for ''£1,000,000'' in each place where it occurs. Pt.16 S.491

(3) Where a company raises any amount through a relevant issue and that company is associated (within the meaning of this section) with one or more other companies, then, as respects that company, relief shall not be given in respect of the excess of the amount so raised over the amount determined by the formula—

£1,000,000 – B

where B is an amount equal to so much as does not exceed £1,000,000 of the aggregate of all amounts raised through the issue of eligible shares at any time before or on the date of the relevant issue (other than the amount raised through the relevant issue) by all of the companies (including that company) which are associated within the meaning of this section.

(4) For the purposes of this section, a company shall be associated with another company where—

(*a*) in the case of that company, or a company which is, or was at any time, its qualifying subsidiary, and

(*b*) that other company, or a company which is, or was at any time, its qualifying subsidiary,

it could reasonably be considered that—

(i) both companies act in pursuit of a common purpose,

(ii) any person or any group of persons or groups of persons having a reasonable commonality of identity have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or

(iii) both companies are under the control of any person or group of persons or groups of persons having a reasonable commonality of identity;

but for the purposes of this section a company shall not be considered as associated with another company by reason only of the fact that a subscription for eligible shares in both companies is made by a person or persons having the management of an investment fund designated under *section 508* as nominee for any person or group or groups of persons.

(5) In determining for the purposes of the formula in *subsection (2)(a)* or, as the case may be, the formula in *subsection (3)* the amount to which *paragraph (ii)* of the definition of ''A'' in *subsection (2)(a)* or, as the case may be, the amount to which the definition of ''B'' in *subsection (3)* relates, account shall not be taken of any amount—

(*a*) which is subscribed by a person other than an individual who qualifies for relief, or

(*b*) in respect of which relief is precluded by virtue of *section 490*.

(6) Where as a consequence of *subsection (2)* or *(3)* the giving of relief would be precluded on claims in respect of shares issued to 2

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or more individuals, the available relief shall be divided between them respectively in proportion to the amounts which have been subscribed by them for the shares to which their claims relate and which apart from this section would be eligible for relief.

Certification in respect of an issue of eligible shares where aggregate of amounts raised by a company exceeds £250,000.

[FA84 s13B; FA96 s20; FA97 s146(1) and Sch9 par13(3)]

492.—(1) (*a*) In this section, ''relevant certificate'' means a certificate from an authority (within the meaning of this section) given to a company in relation to a relevant issue, certifying, on the basis of a business plan of the company and any other information which the company supplies to the authority or which the authority may reasonably request the company to furnish to it, that, having regard to the amount of money raised or to be raised by the relevant issue, the authority is satisfied that—

(i) the purpose or purposes specified in *section 489(1)(c)(i)* for which the money raised or to be raised is intended to be used has or have the potential to create a reasonable level of additional sustainable employment in the company, or

(ii) the money raised or to be raised is necessary to secure the survival of the company and maintain a reasonable level of sustainable employment.

(*b*) In considering whether to give a relevant certificate to a company, an authority shall have regard only to such guidelines for that purpose as may from time to time be agreed—

(i) with the consent of the Minister for Finance, between the certifying agency and the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for Enterprise, Trade and Employment or the Minister for the Marine and Natural Resources or the Minister for Tourism, Sport and Recreation (as may be appropriate in the circumstances), or

(ii) between the certifying Minister and the Minister for Finance,

and those guidelines may, without prejudice to the generality of the foregoing, include provision—

(I) for the submission to the authority by the company concerned, in relation to its business plan, of an annual progress report in a form to be specified by the authority,

(II) to ensure that money raised through a relevant issue is used by a company or its qualifying subsidiary only for one or more of the purposes specified in *section 489(1)(c)(i)* and for no other purposes,

(III) that the issue of the certificate does not represent any form of approval by the authority of the commercial viability of the qualifying trading operations carried on or to be carried on by the company concerned, and

(IV) for regarding as null and void from its date of issue a relevant certificate where the company concerned fails to comply with its business plan or any modification of that plan which may be agreed between it and the authority.

(2) In this section, ''combined certificate'' means a certificate given by an authority to a company which comprises—

(*a*) (i) a certificate referred to in *section 489(2)(c)*,

(ii) an approval of a development and marketing plan referred to *section 495(6)(a)*,

(iii) (I) an approval of a development and marketing plan referred to in *section 495(4)(a)*, and

(II) a certificate referred to in *section 496(7)*,

or

(iv) a certificate referred to in *section 496(8)*,

and

(*b*) a relevant certificate.

(3) In this section, ''authority'' means—

(*a*) in respect of qualifying trading operations referred to in *subparagraph (i)*, *(ii)*, *(vi)* or *(x)* of *section 496(2)(a)*, Forbairt, the Industrial Development Agency (Ireland), the Shannon Free Airport Development Company Limited or Údarás na Gaeltachta (as may be appropriate); but, for the purposes of qualifying trading operations referred to in *subparagraph (i)* of *section 496(2)(a)*, ''authority'' shall mean Bord Iascaigh Mhara in the case of those qualifying trading operations in respect of which Bord Iascaigh Mhara administers a scheme of assistance to grant aid,

(*b*) in respect of qualifying trading operations referred to in *subparagraph (vii)*, *(viii)* or *(xi)* of *section 496(2)(a)*, the Minister for Agriculture and Food,

(*c*) in respect of qualifying trading operations referred to in *subparagraph (xii)* of *section 496(2)(a)*, the Minister for Arts, Heritage, Gaeltacht and the Islands,

(*d*) in respect of qualifying trading operations referred to in *subparagraph (xiii)* of *section 496(2)(a)*, Bord Fáilte Éireann, and

(*e*) in respect of qualifying trading operations referred to in *subparagraph (xiv)* of *section 496(2)(a)*, An Bord Tráchtála.

(4) An authority shall not issue a combined certificate unless and until all necessary conditions have been satisfied for the issue of—

(*a*) in the first instance (as may be appropriate)—

(i) the certificate referred to in *subparagraph (i)* or *(iv)*, as the case may be, of *subsection (2)(a)*,

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(ii) the approval referred to in *subsection (2)(a)(ii)*, or

(iii) the approval and certificate referred to in *subsection (2)(a)(iii)*,

and

(*b*) only thereafter, the relevant certificate.

(5) (*a*) Subject to this section, where on or after the 23rd day of January, 1996, a company raises any amount through the issue of eligible shares (in this section referred to as ''the relevant issue'') for the purpose of qualifying trading operations other than those operations referred to in *section 496(2)(a)(ix)*, relief shall not be given in respect of the excess of the amount over the amount determined by the formula set out in the Table to this subsection unless the company produces to the Revenue Commissioners a relevant certificate or a combined certificate.

(*b*) Where the company referred to in *paragraph (a)* is associated with one or more other companies within the meaning of *section 491*, then, A in the formula set out in the Table to this subsection shall include the aggregate of the amounts raised through the issue of eligible shares at any time before or on the date of the relevant issue (other than the amount raised through the relevant issue) by all the companies so associated (including that company).

TABLE

£250,000 – A

where A is the lesser of—

(i) £250,000, or

(ii) an amount equal to the aggregate of all amounts raised by the company through the issue of eligible shares before or on the date of the relevant issue (other than the amount raised through the relevant issue).

(6) *Subsections (5)* and *(6)* of *section 491* shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.

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. Pt.16 S.493

(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.

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(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).

Specified individuals.

[FA84 s14A; FA95 s17(1)(d); FA97 s9(b)]

494.—(1) An individual shall be a specified individual if he or she qualifies for relief in respect of a relevant investment and complies with this section.

(2) (*a*) Subject to *paragraph (b)*, the individual, in each of the 3 years of assessment preceding the year of assessment which precedes the year of assessment in which that individual makes a relevant investment (being that individual's first such investment), shall not have been in receipt of income chargeable to tax otherwise than under—

(i) Schedule E, or

(ii) Case III of Schedule D in respect of profits or gains from an office or employment held or exercised outside the State,

in excess of the lesser of—

(I) the aggregate of the amounts, if any, of that individual's income chargeable to tax under Schedule E and under Case III of Schedule D in respect of the profits or gains referred to in *subparagraph (ii)*, and

(II) £15,000.

(*b*) *Paragraph (a)* shall not apply to an individual who makes a subscription for eligible shares in a qualifying company which carries on or intends to carry on qualifying trading operations referred to in *section 496(2)(a)(iv)*.

(3) The individual shall throughout the relevant period possess at least 15 per cent of—

(*a*) as respects a subscription for eligible shares made before the 2nd day of June, 1995, the issued share capital, or

(*b*) as respects a subscription for eligible shares made on or after that date, the issued ordinary share capital,

of the company in which that individual makes a relevant investment.

(4) (*a*) For the purposes of *paragraph (b)* and *subsections (5)* and *(6)*, ''specified date'', in relation to a relevant investment in a company, means—

(i) where the investment consists of the subscription of only one amount for eligible shares, the date of that subscription, or

(ii) where that investment consists of the subscription of more than one amount for eligible shares, the date of the last such subscription.

(*b*) Subject to *subsections (5)* and *(6)*, the individual at the specified date, in relation to that individual's first relevant investment in a company, or within the period of 12 months immediately preceding that date, either directly or indirectly, shall not possess or have possessed, or shall not be or have been entitled to acquire, more than 15 per cent of—

(i) the issued ordinary share capital,

(ii) the loan capital (within the meaning of *section 493(5)*) and the issued share capital, or

(iii) the voting power,

of any company other than—

(I) the company in which that individual makes that relevant investment, or

(II) a company to which *subsection (5)* applies.

(5) This subsection shall apply to a company which during a period of 5 years ending on the specified date in relation to an individual's first relevant investment in a company—

(*a*) was not entitled to any assets, other than cash on hands or a sum of money on deposit (within the meaning of *section 895*) not exceeding £100,

(*b*) did not carry on a trade, profession, business or other activity including the making of investments, and

(*c*) did not pay charges on income within the meaning of *section 243*.

(6) (*a*) For the purposes of *paragraph (b)*—

(i) ''accounting period'' means an accounting period determined in accordance with *section 27*, and

(ii) a company shall be regarded as a company which carries on wholly or mainly trading operations referred to in *paragraph (b)(i)* only if in each of the 3 accounting periods referred to in *paragraph (b)(ii)* the total amount receivable from sales made or services rendered in the course of such 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.

(*b*) An individual shall not be regarded as failing to satisfy the requirements of *subsection (4)* merely by reason of the fact that the individual does not satisfy those requirements in relation to only one company (other than the

company in which the individual makes his or her first relevant investment or a company to which *subsection (5)* applies)— Pt.16 S.494

(i) which exists wholly or mainly for the purpose of carrying on trading operations other than trading operations consisting of dealing in shares, securities, land, currencies, futures or traded options, and

(ii) where the total amount receivable by that company from sales made and services rendered in the course of that company's trading operations did not exceed £100,000 in each of that company's 3 accounting periods immediately preceding the accounting period of that company in which the specified date occurs in relation to that individual's first relevant investment.

(7) An individual shall not be regarded as ceasing to comply with *subsection (3)* merely by reason of the fact that the company in which the individual makes a relevant investment is wound up, or dissolved without winding up, before the end of the relevant period but only if it is shown that the winding up or dissolution is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax.

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 PtI 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 (or, in the case of a winding up otherwise than under the Companies Act, 1963, 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 bona fide 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

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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.

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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 (within the meaning of *section 481*) shall not be regarded as qualifying trading operations for the purposes of this Part,

(ii) the rendering of services (other than relevant trading operations within the meaning of *section 446*) in the course of a service industry (within the meaning of the Industrial Development Act, 1986) 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 (within the meaning of *section 446*) carried on for the purposes of or in connection with trading operations on an exchange facility established in the Custom House Docks Area (within the meaning of *section 322*),

(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 (being a board referred to in the Schedule to the Industrial Development Act, 1995) 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)*,

(*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)*),

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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, Pt.16 S.496

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. Pt.16 S.496

Relevant trading operations.

497.—(1) For the purposes of this Part, ''relevant trading operations'' means qualifying trading operations (other than those operations referred to in *section 496(2)(a)(ix)*) in respect of which a certifying agency or a certifying Minister, as the case may be (in this section referred to as ''the authority''), has given a certificate under *subsection (2)*.

[FA84 s16A; FA95 s17(1)(g); FA96 s24; FA97 s9(d)]

(2) Subject to this section, the authority may, in respect of qualifying trading operations carried on or to be carried on by a company, give a certificate to the company certifying that the authority is satisfied, on the basis of such information as is supplied to the authority by the company or which the authority may reasonably require the company to furnish, that the carrying on of such qualifying trading operations by the company is or will be a bona fide new venture which, having regard to—

(*a*) the potential for the creation of additional sustainable employment, and

(*b*) the desirability of minimising the displacement of existing employment,

may be eligible—

(i) in the case of qualifying trading operations referred to in *section 496(2)(a)(v)*, based on guidelines agreed, with the consent of the Minister for Finance, between the certifying agency and the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for Enterprise, Trade and Employment (as may be appropriate in the circumstances), for the payment of the grants or the financial assistance referred to in *section 496(2)(a)(ii)* within a reasonable period after the completion of the feasibility study carried out in relation to the trading operations concerned in accordance with *section 496(2)(a)(v)*, and

(ii) in any other case but subject to *subsection (4)*, based on guidelines agreed—

(I) with the consent of the Minister for Finance, between the certifying agency and the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for Enterprise, Trade and Employment or the Minister for the Marine and Natural Resources or the Minister for Tourism, Sport and Recreation (as may be appropriate in the circumstances), or

(II) between the certifying Minister and the Minister for Finance,

to be grant aided under a scheme of assistance administered by the authority.

(3) The carrying on of qualifying trading operations referred to in *subsection (2)* by a company shall not be regarded as not being a bona fide new venture by reason only that they were carried on as or as part of a trade by another person at any time before the issue of the eligible shares in respect of which relief is claimed.

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(4) A certificate to which *subsection (2)* relates may be given by—

(*a*) the Industrial Development Agency (Ireland) in respect of qualifying trading operations referred to in *section 496(2)(a)(iv)*,

(*b*) the Minister for Agriculture and Food in respect of qualifying trading operations referred to in *section 496(2)(a)(viii)*, or

(*c*) the Minister for Arts, Heritage, Gaeltacht and the Islands in respect of qualifying trading operations referred to in *section 496(2)(a)(xii)*,

without regard to whether such operations are eligible to be grant-aided but, in considering whether to give such a certificate, the agency or the Minister, as the case may be, shall have regard to such guidelines in relation to the giving of such a certificate as may be agreed—

(i) with the consent of the Minister for Finance, between the agency and the Minister for Enterprise, Trade and Employment, or

(ii) between the Minister for Agriculture and Food or the Minister for Arts, Heritage, Gaeltacht and the Islands (as may be appropriate) and the Minister for Finance.

(5) Bord Fáilte Éireann shall not give a certificate under *subsection (2)* in a case where the value of a company's interests in land and buildings (excluding fixtures and fittings) is or is intended to be greater than 50 per cent of the value of its assets as a whole.

(6) An authority shall not give a certificate under *subsection (2)* unless the company concerned undertakes in writing to furnish the authority when requested to do so with such details in relation to the carrying on of the qualifying trading operations as the authority may specify.

(7) (*a*) For the purposes of this Chapter, as respects a relevant investment made on or after the 10th day of May, 1997, a certificate under *subsection (2)* may, instead of being given by the authority, be given by a County Enterprise Board (being a board referred to in the Schedule to the Industrial Development Act, 1995) to a company carrying on or intending to carry on one or more qualifying trading operations mentioned in *subparagraphs (i)*, *(ii)* and *(v)* of *section 496(2)(a)*, and *subsections (2)* and *(6)* shall, subject to the modification specified in *paragraph (b)* and any other necessary modification, apply accordingly.

(*b*) The modification referred to in *paragraph (a)* is that for the purposes of this subsection, the guidelines of the kind mentioned in *paragraphs (i)* and *(ii)* of *subsection (2)* shall be agreed between the Minister for Finance and the Minister for Arts, Heritage, Gaeltacht and the Islands or the Minister for Enterprise, Trade and Employment, as may be appropriate in the circumstances.

Pt.16
Disposals of shares.

[FA84 s17; FA89 s9(d)]

498.—(1) Where an individual disposes of any eligible shares before the end of the relevant period, then—

(*a*) in a case where the disposal is otherwise than by means of a bargain made at arm's length, the individual shall not be entitled to any relief in respect of those shares, and

(*b*) in any other case, the amount of relief to which the individual is entitled in respect of those shares shall be reduced by the amount or value of the consideration which the individual receives for those shares.

(2) *Subsection (1)* shall not apply to a disposal made by a wife to her husband at a time when she is treated as living with him for income tax purposes in accordance with *section 1015* or to a disposal made at such a time by him to her; but where shares issued to one of them have been transferred to the other by a transaction inter vivos—

(*a*) that subsection shall apply on the disposal of the shares by the transferee to a third person, and

(*b*) if at any time the wife ceases to be treated as living with her husband for income tax purposes in accordance with *section 1015* and any of those shares have not been disposed of by the transferee before that time, any assessment for withdrawing relief in respect of those shares shall be made on the transferee.

(3) (*a*) For the purposes of this subsection, references to an option or an agreement shall include references to a right or obligation to acquire or grant an option or enter into an agreement, and references to the exercise of an option shall include references to the exercise of an option which may be acquired or granted by the exercise of such a right or under such an obligation.

(*b*) Where in the relevant period an individual, either directly or indirectly—

(i) (I) acquires an option where the exercise of the option, either under the terms of the option or under the terms of any arrangement or undertaking subject to which or otherwise in connection with which the option is acquired, would—

(A) bind the person from whom the option was acquired or any other person, or

(B) cause that person or such other person,

to purchase or otherwise acquire any eligible shares for a price which, having regard to the terms of the option or the terms of such arrangement or undertaking and the net effect of those terms considered as a whole, is other than the market value of the eligible shares at the time the purchase or acquisition is made, or

(II) enters into an agreement where, either under the terms of the agreement or under the terms of any arrangement or understanding subject to which or otherwise in connection with which the agreement is made, it would—

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(A) bind the person with whom the agreement is made or any other person, or

(B) cause that person or such other person,

to purchase or otherwise acquire any eligible shares in the manner described in *clause (I)*,

or

(ii) (I) grants to any person an option where the exercise of the option, either under the terms of the option or under the terms of any arrangement or understanding subject to which or otherwise in connection with which the option is granted, would bind the individual to dispose, or cause the individual to dispose, of any eligible shares to the person to whom the individual granted the option or any other person for a price which, having regard to the terms of the option or the terms of such arrangement or understanding and the net effect of those terms considered as a whole, is other than the market value of the eligible shares at the time the disposal is made, or

(II) enters into an agreement where, either under the terms of the agreement or under the terms of any arrangement or understanding subject to which or otherwise in connection with which the agreement is made, it would bind the individual to dispose, or cause the individual to dispose, of any eligible shares to the person with whom the agreement is made or any other person in the manner described in *clause (I)*,

the individual shall not be entitled to any relief in respect of the shares to which the option or the agreement relates.

(4) Where an individual holds ordinary shares of any class in a company and the relief has been given in respect of some shares of that class but not others, any disposal by the individual of ordinary shares of that class in the company shall be treated for the purposes of this section as relating to those in respect of which relief has been given under this Part rather than to others.

(5) Where the relief has been given to an individual in respect of shares of any class in a company which have been issued to the individual at different times, any disposal by the individual of shares of that class shall be treated for the purposes of this section as relating to those issued earlier rather than to those issued later.

(6) Where shares in respect of which the relief was given have by virtue of any such allotment mentioned in *subsection (1)* of *section 584* (not being an allotment for payment) been treated under *subsection (3)* of that section as the same asset as a new holding—

(*a*) the new holding shall be treated for the purposes of *subsection (4)* as shares in respect of which the relief has been given, and

(*b*) a disposal of the whole or part of the new holding shall be treated for the purposes of this section as a disposal of the whole or a corresponding part of those shares. Pt.16 S.498

(7) Shares in a company shall not be treated for the purposes of this section as being of the same class unless they would be so treated if dealt in on a stock exchange in the State.

Value received from company.

499.—(1) In this section, ''ordinary trade debt'' means any debt for goods or services supplied in the ordinary course of a trade or business where the credit period given does not exceed 6 months and is not longer than that normally given to the customers of the person carrying on the trade or business.

[FA84 s18]

(2) In this section—

(*a*) any reference to a payment or transfer to an individual includes a reference to a payment or transfer made to the individual indirectly or to his or her order or for his or her benefit, and

(*b*) any reference to an individual includes a reference to an associate of the individual and any reference to the company includes a reference to any person connected with the company.

(3) For the purposes of this section, an individual shall receive value from a company where the company—

(*a*) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to the individual for giving up his or her right to any of the company's share capital or any security on its cancellation or extinguishment,

(*b*) repays any debt owed to the individual other than—

(i) an ordinary trade debt incurred by the company, or

(ii) any other debt incurred by the company—

(I) on or after the earliest date on which the individual subscribed for the shares in respect of which the relief is claimed, and

(II) otherwise than in consideration of the extinguishment of a debt incurred before that date,

(*c*) makes to the individual any payment for giving up his or her right to any debt on its extinguishment other than—

(i) a debt in respect of a payment of the kind mentioned in *paragraph (d)* or *(e)* of *section 493(3)*, or

(ii) a debt of the kind mentioned in *subparagraph (i)* or *(ii)* of *paragraph (b)*,

(*d*) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of the individual to a third person,

(*e*) makes a loan or advance to the individual,

(*f*) provides a benefit or facility for the individual,

(*g*) transfers an asset to the individual for no consideration or for consideration less than its market value or acquires an asset from the individual for consideration exceeding its market value, or

(*h*) makes to the individual any other payment except a payment of the kind mentioned in *paragraph (a)*, *(b)*, *(c)*, *(d)* or *(e)* of *section 493(3)* or a payment in discharge of an ordinary trade debt.

(4) For the purposes of this section, an individual shall also receive value from the company where the individual receives in respect of ordinary shares held by the individual any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution within *section 495(8)*.

(5) For the purposes of this section, an individual shall also receive value from the company where any person who for the purposes of *section 493* would be treated as connected with the company—

(*a*) purchases any of its share capital or securities which belong to the individual, or

(*b*) makes any payment to the individual for giving up any right in relation to any of the company's share capital or securities.

(6) The value received by an individual shall be—

(*a*) in a case within *paragraph (a)*, *(b)* or *(c)* of *subsection (3)*, the amount receivable by the individual or, if greater, the market value of the shares, securities or debt in question,

(*b*) in a case within *subsection (3)(d)*, the amount of the liability,

(*c*) in a case within *subsection (3)(e)*, the amount of the loan or advance,

(*d*) in a case within *subsection (3)(f)*, the cost to the company of providing the benefit or facility less any consideration given for it by the individual,

(*e*) in a case within *subsection (3)(g)*, the difference between the market value of the asset and the consideration (if any) given for it,

(*f*) in a case within *subsection (3)(h)*, the amount of the payment,

(*g*) in a case within *subsection (4)*, the amount of the payment or, as the case may be, the market value of the asset, and

(*h*) in a case within *subsection (5)*, the amount receivable by the individual or, if greater, the market value of the shares or securities in question.

(7) For the purposes of *subsection (3)(d)*, a company shall be treated as having released or waived a liability where the liability is

not discharged by payment within 12 months of the time when it ought to have been discharged by payment. Pt.16 S.499

(8) For the purposes of *subsection (3)(e)*, there shall be treated as if it were a loan made by the company to the individual—

(*a*) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company, and

(*b*) the amount of any debt due from the individual to a third person which has been assigned to the company.

(9) Where an individual who subscribes for eligible shares in a company—

(*a*) has, before the issue of the shares but within the relevant period, received any value from the company, or

(*b*) on or after their issue but before the end of the relevant period, receives any such value,

then, the amount of the relief to which the individual is entitled in respect of the shares shall be reduced by the value so received.

(10) Where by virtue of this section any relief is withheld or withdrawn in the case of an individual to whom ordinary shares in a company have been issued at different times, the relief shall be withheld or withdrawn in respect of shares issued earlier rather than in respect of shares issued later.

500.—(1) In this section— Replacement capital.

''subsidiary'' means a subsidiary of a kind which a qualifying company may have by virtue of *section 507*; [FA84 s19]

''trade'' includes any business, profession or vocation, and references to a trade previously carried on include references to part of such a trade.

(2) An individual to whom *subsection (3)* applies shall not be entitled to relief in respect of any shares in a company where at any time in the relevant period the company or any of its subsidiaries—

(*a*) begins to carry on, as its trade or as a part of its trade, a trade previously carried on at any time in that period otherwise than by the company or any of its subsidiaries, or

(*b*) acquires the whole or greater part of the assets used for the purposes of a trade previously so carried on.

(3) This subsection shall apply to an individual where—

(*a*) any person or group of persons to whom an interest amounting in the aggregate to more than a 50 per cent share in the trade (as previously carried on) belonged at any time in the relevant period is a person or a group of persons to whom such an interest in the trade carried on by the company, or any of its subsidiaries, belongs or has at any such time belonged, or

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(*b*) any person or group of persons who controls or at any such time has controlled the company is a person or a group of persons who at any such time controlled another company which previously carried on the trade,

and the individual is that person or one of those persons.

(4) An individual shall not be entitled to relief in respect of any shares in a company where—

(*a*) the company comes to acquire all of the issued share capital of another company at any time in the relevant period, and

(*b*) any person or group of persons who controls or has at any such time controlled the company is a person or a group of persons who at any such time controlled that other company,

and the individual is that person or one of those persons.

(5) For the purposes of *subsection (3)*—

(*a*) the person or persons to whom a trade belongs and, where a trade belongs to 2 or more persons, their respective shares in that trade shall be determined in accordance with *paragraphs (a)* and *(b)* of *subsection (1)*, and *subsections (2)* and *(3)*, of *section 400*, and

(*b*) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person.

Value received by persons other than claimants.

[FA84 s20]

501.—(1) The relief to which an individual is entitled in respect of any shares in a company shall be reduced in accordance with *subsection (4)* if at any time in the relevant period the company repays, redeems or repurchases any of its share capital which belongs to any member other than—

(*a*) that individual, or

(*b*) another individual whose relief is thereby reduced by virtue of *section 499(3)*,

or makes any payment to any such member for giving up such member's right to any of the company's share capital on its cancellation or extinguishment.

(2) *Subsection (1)* shall not apply in relation to the redemption of any share capital for which the redemption date was fixed before the 26th day of January, 1984.

(3) Where—

(*a*) after the 5th day of April, 1984, a company issues share capital (in this subsection referred to as ''the original shares'') of nominal value equal to the authorised minimum (within the meaning of the Companies (Amendment) Act, 1983) for the purposes of complying with the requirements of section 6 of that Act, and

(*b*) after the registrar of companies has issued the company with a certificate under section 6 of that Act the company issues eligible shares, Pt.16 S.501

subsection (1) shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

(4) Where *subsection (1)* applies, the amount of relief to which an individual is entitled shall be reduced by the amount receivable by the member or, if greater, the nominal value of the share capital in question and, where apart from this subsection 2 or more individuals would be entitled to relief, the reduction shall be made in proportion to the amounts of relief to which those individuals would have been entitled apart from this subsection.

(5) Where at any time in the relevant period a member of a company receives or is entitled to receive any value from the company within the meaning of this subsection, then, for the purposes of *section 493(4)* in its application to any subsequent time—

(*a*) the amount of the company's issued ordinary share capital, and

(*b*) the amount of the part of that capital which consists of the shares relevant to *section 493(4)* and the amount of the part consisting of the remainder,

shall each be treated as reduced in accordance with *subsection (6)*.

(6) The amount of each of the parts mentioned in *subsection (5)(b)* shall be treated as equal to such proportion of that amount as the amount subscribed for that part less the relevant value bears to the amount subscribed, and the amount of the issued share capital shall be treated as equal to the sum of the amounts treated under this subsection as the amount of those parts respectively.

(7) In *subsection (5)(b)*, the reference to the part of the capital which consists of the shares relevant to *section 493(4)* is a reference to the part consisting of shares which (within the meaning of that section) the individual directly or indirectly possesses or is entitled to acquire, and in *subsection (6)* ''the relevant value'', in relation to each of the parts mentioned in that subsection, means the value received by the member or members entitled to the shares of which that part consists.

(8) For the purposes of *subsection (5)*, a member of a company receives or is entitled to receive value from the company within the meaning of that subsection in any case in which an individual would receive value from the company by virtue of *paragraph (d)*, *(e)*, *(f)*, *(g)* or *(h)* of *section 499(3)* (but treating as excepted from *paragraph (h)* all payments made for full consideration), and the value received shall be determined as for the purposes of that section.

(9) For the purposes of *subsection (8)*, a person shall be treated as entitled to receive anything which the person is entitled to receive at a future date or will at a future date be entitled to receive.

(10) Where by virtue of this section any relief is withheld or withdrawn in the case of an individual to whom ordinary shares in the company have been issued at different times, the relief shall be withheld or withdrawn in respect of shares issued earlier rather than in respect of shares issued later.

Pt.16
Prevention of misuse.

[FA84 s21]

502.—An individual shall not be entitled to relief in respect of any shares unless the shares are subscribed and issued for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Claims.

[FA84 s22; FA93s25(h); FA95 s17(1)(h)(i)]

503.—(1) A claim for the relief in respect of eligible shares issued by a company in any year of assessment shall be made—

(*a*) not earlier than—

(i) in the case of a relevant investment, the date on which the company commences to carry on the relevant trading operations, and

(ii) in any other case, the end of the period of 4 months mentioned in *section 489(7)(a)(i)(II)*,

and

(*b*) not later than 2 years after the end of that year of assessment or, if that period of 4 months ended after the end of that year, not later than 2 years after the end of that period.

(2) A claim for relief in respect of eligible shares in a company shall not be allowed unless it is accompanied by a certificate issued by the company in such form as the Revenue Commissioners may direct and certifying that the conditions for the relief, in so far as they apply to the company and the trade, are satisfied in relation to those shares.

(3) Before issuing a certificate under *subsection (2)*, a company shall furnish the inspector with a statement to the effect that it satisfies the conditions for the relief, in so far as they apply in relation to the company and the trade, and has done so at all times since the beginning of the relevant period.

(4) No such certificate shall be issued without the authority of the inspector or where the company or a person connected with the company has given notice to the inspector under *section 505(2)*.

(5) Any statement under *subsection (3)* shall—

(*a*) contain such information as the Revenue Commissioners may reasonably require,

(*b*) be in such form as the Revenue Commissioners may direct, and

(*c*) contain a declaration that it is correct to the best of the company's knowledge and belief.

(6) Where a company has issued a certificate under *subsection (2)* or furnished a statement under *subsection (3)*, and—

(*a*) the certificate or statement is made fraudulently or negligently, or

(*b*) the certificate was issued in contravention of *subsection (4)*,

the company shall be liable to a penalty not exceeding £500 or, in the case of fraud, £1,000, and such penalty may, without prejudice to any other method of recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise.

(7) For the purpose of regulations made under *section 986*, no regard shall be had to the relief unless a claim for it has been duly made and admitted.

(8) For the purposes of *section 1080*, income tax charged by an assessment—

(*a*) shall be regarded as due and payable notwithstanding that relief from the tax (whether by discharge or repayment) is subsequently given on a claim for the relief, but

(*b*) shall, unless paid earlier or due and payable later, be regarded as paid, to the extent that relief from tax is due under this Part, on the date of the making of the claim on which the relief is given,

and *section 1081* shall not apply in consequence of any discharge or repayment for giving effect to the relief.

Assessments for withdrawing relief.

[FA84 s23; FA93 s25(*i*)(i); FA95 s17(1)(i)]

504.—(1) Where any relief has been given which is subsequently found not to have been due, that relief shall be withdrawn by the making of an assessment to income tax under Case IV of Schedule D for the year of assessment for which the relief was given.

(2) Where any relief given in respect of shares for which either a married person or his or her spouse has subscribed, and which were issued while the married person was assessed in accordance with *section 1017*, is to be withdrawn by virtue of a subsequent disposal of those shares by the person who subscribed for them and at the time of the disposal the married person is not so assessable, any assessment for withdrawing that relief shall be made on the person making the disposal and shall be made by reference to the reduction of tax flowing from the amount of the relief regardless of any allocation of that reduction under *subsections (2)* and *(3)* of *section 1024* or of any allocation of a repayment of income tax under *section 1020*.

(3) Subject to this section, any assessment for withdrawing relief which is made by reason of an event occurring after the date of the claim may be made within 10 years after the end of the year of assessment in which that event occurs.

(4) No assessment for withdrawing relief in respect of shares issued to any person shall be made by reason of any event occurring after his or her death.

(5) Where a person has, by a disposal or disposals to which *section 498(1)(b)* applies, disposed of all the ordinary shares issued to the person by a company, no assessment for withdrawing relief in respect of any of those shares shall be made by reason of any subsequent event unless it occurs at a time when the person is connected with the company within the meaning of *section 493*.

(6) *Subsection (3)* is without prejudice to *section 924(2)(c)*.

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(7) In its application to an assessment made by virtue of this section, *section 1080* shall apply as if the date on which the income tax charged by the assessment becomes due and payable were—

(*a*) in the case of relief withdrawn by virtue of *section 493*, *495*, *496*, *498* or *501(1)* in consequence of any event after the grant of the relief, the date of that event;

(*b*) in the case of relief withdrawn by virtue of *section 498(1)* in consequence of a disposal after the grant of the relief, the date of the disposal;

(*c*) in the case of relief withdrawn by virtue of *section 499* in consequence of a receipt of value after the grant of the relief, the date of the receipt;

(*d*) in the case of relief withdrawn by virtue of *section 502*—

(i) in so far as effect has been given to the relief in accordance with regulations under *section 986*, the 5th day of April in the year of assessment in which effect was so given, and

(ii) in so far as effect has not been so given, the date on which the relief was granted;

(*e*) in the case of relief withdrawn by virtue of—

(i) a specified individual failing or ceasing to hold a relevant employment, or

(ii) an individual ceasing to be a specified individual,

the date of the failure or the cessation, as the case may be.

(8) For the purposes of *subsection (7)*, the date on which the relief shall be granted is the date on which a repayment of tax for giving effect to the relief was made or, if there was no such repayment, the date on which the inspector issued a notice to the claimant showing the amount of tax payable after giving effect to the relief.

Information.

[FA84 s24(1) to (8)]

505.—(1) Where an event occurs by reason of which any relief given to an individual is to be withdrawn by virtue of *section 493*, *498* or *499*, the individual shall within 60 days of coming to know of the event give a notice in writing to the inspector containing particulars of the event.

(2) Where an event occurs by reason of which any relief in respect of any shares in a company is to be withdrawn by virtue of *section 495*, *496*, *499*, *500*, *501* or *502*—

(*a*) the company, and

(*b*) any person connected with the company who has knowledge of that matter,

shall within 60 days of the event or, in the case of a person within *paragraph (b)*, of that person coming to know of it, give a notice in writing to the inspector containing particulars of the event or payment.

(3) Where the inspector has reason to believe that a person has not given a notice which the person is required to give under *subsection (1)* or *(2)* in respect of any event, the inspector may by notice in writing require that person to furnish him or her within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this Part.

(4) Where relief is claimed in respect of shares in a company and the inspector has reason to believe that it may not be due by reason of any arrangement or scheme mentioned in *section 493(11)*, *495(10)* or *502*, the inspector may by notice in writing require any person concerned to furnish him or her within such time (not being less than 60 days) as may be specified in the notice with—

(*a*) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and

(*b*) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

(5) References in *subsection (4)* to the person concerned are, in relation to *sections 493(11)* and *502*, references to the claimant and, in relation to *sections 495(10)* and *502*, references to the company and any person controlling the company.

(6) Where relief has been given in respect of shares in a company—

(*a*) any person who receives from the company any payment or asset which may constitute value received (by that person or another) for the purposes of *section 499* or *501(5)*, and

(*b*) any person on whose behalf such a payment or asset is received,

shall, if so required by the inspector, state whether the payment or asset received by that person or on that person's behalf is received on behalf of any person other than that person and if so the name and address of that other person.

(7) Where relief has been claimed in respect of shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state whether the shares which are or were held by that person or on that person's behalf are or were held on behalf of any person other than that person and if so the name and address of that other person.

(8) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

Capital gains tax.

[FA84 s25]

506.—(1) The sums allowable as deductions from the consideration in the computation for the purposes of capital gains tax of the gain or loss accruing to an individual on the disposal of shares in respect of which any relief has been given and not withdrawn shall be determined without regard to that relief, except that where those

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sums exceed the consideration they shall be reduced by an amount equal to the lesser of—

(*a*) the amount of that relief, and

(*b*) the excess;

but this subsection shall not apply to a disposal within *section 1028(5)*.

(2) In relation to shares in respect of which relief has been given and not withdrawn, any question—

(*a*) as to which of any such shares issued to a person at different times a disposal relates, or

(*b*) whether a disposal relates to such shares or to other shares,

shall for the purposes of capital gains tax be determined as for the purposes of *section 498*.

(3) Where an individual holds ordinary shares in a company and the relief has been given in respect of some of the shares but not others, then, if there is a reorganisation (within the meaning of *section 584*) affecting those shares, *section 584(3)* shall apply separately to the shares in respect of which the relief has been given and to the other shares (so that the shares of each kind shall be treated as a separate holding of original shares and identified with a separate new holding).

(4) There shall be made all such adjustments of capital gains tax, whether by means of assessment or by means of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.

Application to subsidiaries.

[FA84 s26; FA85 s13(d); FA91 s15(1)(f)]

507.—(1) A qualifying company may in the relevant period have one or more subsidiaries if—

(*a*) the conditions in *subsection (2)* are satisfied in respect of the subsidiary or each subsidiary and, except where provided in *subsection (3)*, continue to be so satisfied until the end of the relevant period, and

(*b*) the subsidiary or each subsidiary is a company—

(i) within *section 495(3)(a)(i)*, or

(ii) which exists solely for the purpose of carrying on any trade which consists solely of any one or more of the following trading operations—

(I) the purchase of goods or materials for use by the qualifying company or its subsidiaries,

(II) the sale of goods or materials produced by the qualifying company or its subsidiaries, or

(III) the rendering of services to or on behalf of the qualifying company or its subsidiaries.

(2) The conditions referred to in *subsection (1)(a)* are—

(*a*) that the subsidiary is a 51 per cent subsidiary of the qualifying company,

(*b*) that no other person has control of the subsidiary within the meaning of *section 11*, and

(*c*) that no arrangements are in existence by virtue of which the conditions in *paragraphs (a)* and *(b)* could cease to be satisfied.

(3) The conditions referred to in *subsection (1)(a)* shall not be regarded as ceasing to be satisfied by reason only of the fact that the subsidiary or the qualifying company is wound up or dissolved without winding up if—

(*a*) it is shown that the winding up or dissolution is for bona fide 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 net assets, if any, of the subsidiary or, as the case may be, the qualifying company 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.

(4) Where a qualifying company has one or more subsidiaries in the relevant period, this Part shall apply subject to *Schedule 10*.

Nominees and designated funds.

[FA84 s27 and FA85 s13(e)]

508.—(1) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee shall be treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by that individual.

(2) (*a*) Relief shall be given, and *section 490(1)(a)* shall not apply, in respect of an amount subscribed as nominee for an individual by a person or persons having the management of an investment fund designated by the Revenue Commissioners for the purposes of this section (in this Part referred to as ''the managers of a designated fund'') where the amount so subscribed forms part of the fund.

(*b*) Except where provided by *paragraph (a)*, relief shall not be given in respect of an amount subscribed as nominee for an individual by a person or persons having the management of an investment fund where the amount so subscribed forms part of the fund.

(3) The Revenue Commissioners may, if they think fit, having regard to the facts of the particular case and after such consultation, if any, as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, and subject to such conditions, if any, as they think proper to attach to the designation, designate an investment fund for the purposes of this Part.

(4) (*a*) The Revenue Commissioners may, by notice in writing given to the managers of a designated investment fund, withdraw the designation given for the purposes of this section to the fund in accordance with *subsection (3)* and, on the giving of the notice, the fund shall cease to be a

designated fund as respects any subscriptions made after the date of the notice referred to in *paragraph (b)*.

(*b*) Where the Revenue Commissioners withdraw the designation of any fund for the purposes of this section, notice of the withdrawal shall be published as soon as may be in Iris Oifigiúil.

(5) Where an individual claims relief in respect of eligible shares in a company which have been issued to the managers of a designated fund as nominee for the individual, *section 503(2)* shall apply as if it required—

(*a*) the certificate referred to in that section to be issued by the company to the managers, and

(*b*) the claim for relief to be accompanied by a certificate issued by the managers, in such form as the Revenue Commissioners may authorise, furnishing such information as the Revenue Commissioners may require and certifying that the managers hold certificates issued to them by the companies concerned, for the purposes of *section 503(2)* in respect of the holdings of eligible shares shown on the managers' certificate.

(6) The managers of a designated fund may be required by a notice given to them by an inspector or other officer of the Revenue Commissioners to deliver to the officer within the time limited by the notice a return of the holdings of eligible shares shown on certificates issued by them in accordance with *subsection (5)* in the year of assessment to which the return relates.

(7) *Section 503(6)* shall not apply in relation to any certificate issued by the managers of a designated fund for the purposes of *subsection (5)*.

(8) Without prejudice to the generality of *subsection (3)*, the Revenue Commissioners shall designate a fund for the purposes of this Part only if they are satisfied that—

(*a*) the fund is established under irrevocable trusts for the sole purpose of enabling individuals who qualify for the relief (in this subsection referred to as ''qualifying individuals'') to invest in eligible shares of a qualifying company, and

(*b*) under the terms of the trusts it is provided that—

(i) the entire fund is to be invested without undue delay in eligible shares,

(ii) the fund is to subscribe only for shares which, subject to the circumstances of the qualifying individuals participating in the fund (in this subsection referred to as ''participants''), qualify those participants for relief,

(iii) pending investment in eligible shares, any moneys subscribed for the purchase of shares are to be placed on deposit in a separate account with a bank licensed to transact business in the State,

(iv) any amounts received by means of dividends or interest are, subject to a commission in respect of management expenses at a rate not exceeding a rate

which shall be specified in the deed of trust under which the fund has been established, to be paid without undue delay to the participants,

(v) any charges to be made by means of management or other expenses in connection with the establishment, the running, the winding down or the termination of the fund shall be at a rate not exceeding a rate which shall be specified in the deed of trust under which the fund is established,

(vi) audited accounts of the fund are submitted annually to the Revenue Commissioners as soon as may be after the end of each period for which accounts of the fund are made up,

(vii) the managers, the trustees of the fund and any of their associates are not for the time being connected either directly or indirectly with any company whose shares comprise part of the fund,

(viii) any discounts on eligible shares received by the trustees or managers of the fund are accepted solely for the benefit of the participants,

(ix) the fund is a closed fund and the closing date for participation precedes the making of the first investment,

(x) if a limit is placed on the size of the fund or a minimum amount for investment is stipulated, any subscriptions not accepted are to be returned without undue delay, and

(xi) no participant is allowed to have any shares in any company in which the fund has invested transferred into his or her name until 5 years have elapsed from the date of the issue of the shares to the fund.

PART 17

Profit Sharing Schemes and Employee Share Ownership Trusts

CHAPTER 1

Profit sharing schemes

Interpretation (*Chapter 1*).

509.—(1) In this Chapter and in *Schedule 11*—

[FA82 s50]

''the appropriate percentage'', in relation to any shares, shall be construed in accordance with *section 511(3)*;

''approved scheme'' shall be construed in accordance with *section 510(1)*;

''the company concerned'' has the meaning assigned to it by *paragraph 3(1)* of *Schedule 11*;

''group scheme'' and, in relation to such a scheme, ''participating company'' have the meanings respectively assigned to them by *paragraph 3(2)* of *Schedule 11*;

''initial market value'', in relation to any shares, shall be construed in accordance with *section 510(2)*;

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''locked-in value'', in relation to any shares, shall be construed in accordance with *section 512(1)*;

''market value'', in relation to any shares, shall be construed in accordance with *section 548*;

''participant'' shall be construed in accordance with *section 510(1)(a)*;

''the period of retention'' has the meaning assigned to it by *section 511(1)(a)*;

''the release date'' has the meaning assigned to it by *section 511(2)*;

''shares'' includes stock;

''the trust instrument'', in relation to an approved scheme, means the instrument referred to in *paragraph 3(3)(c)* of *Schedule 11*;

''the trustees'', in relation to an approved scheme or a participant's shares, means the body of persons for the establishment of which the scheme shall provide as mentioned in *paragraph 3(3)* of *Schedule 11*.

(2) Any provision of this Chapter with respect to—

(*a*) the order in which any of a participant's shares are to be treated as disposed of for the purposes of this Chapter, or

(*b*) the shares in relation to which an event is to be treated as occurring for any such purpose,

shall apply notwithstanding any direction given to the trustees with respect to shares of a particular description or to shares appropriated to the participant at a particular time.

(3) For the purposes of capital gains tax—

(*a*) no deduction shall be made from the consideration for the disposal of any shares by reason only that an amount determined under this Chapter is chargeable to income tax,

(*b*) any charge to income tax by virtue of *section 513* shall be disregarded in determining whether a distribution is a capital distribution within the meaning of *section 583*, and

(*c*) nothing in any provision referred to in *subsection (2)* shall affect the rules applicable to the computation of a gain accruing on a part disposal of a holding of shares or other securities which were acquired at different times.

Approved profit sharing schemes: appropriated shares.

[FA82 s51(1) to (7)]

510.—(1) In this Chapter, references to an approved scheme are references to a scheme approved of as is mentioned in *subsection (3)* and, in relation to such a scheme—

(*a*) any reference to a participant is a reference to an individual to whom the trustees of the scheme have appropriated shares, and

(*b*) subject to *section 514*, any reference to a participant's shares is a reference to the shares which have been appropriated to the participant by the trustees of an approved scheme.

(2) Any reference in this Chapter to the initial market value of any of a participant's shares is a reference to the market value of those shares determined— Pt.17 S.510

(*a*) except where *paragraph (b)* applies, on the date on which the shares were appropriated to the participant, and

(*b*) if the Revenue Commissioners and the trustees of the scheme agree in writing, on or by reference to such earlier date or dates as may be provided for in the agreement.

(3) This section shall apply where the trustees of a profit sharing scheme approved of in accordance with *Part 2* of *Schedule 11* appropriate shares—

(*a*) which have previously been acquired by the trustees, and

(*b*) as to which the conditions in *Part 3* of that Schedule are fulfilled,

to an individual who participates in the scheme.

(4) Notwithstanding anything in the Income Tax Acts, a charge to tax shall not be made on any individual in respect of the receipt of a right to receive the beneficial interest in shares passing or to be passed to that individual by virtue of such an appropriation of shares as is mentioned in *subsection (3)*.

(5) Notwithstanding anything in the approved scheme concerned or in the trust instrument or in *section 511*, for the purposes of capital gains tax a participant shall be treated as absolutely entitled to his or her shares as against the trustees.

(6) Where the trustees of an approved scheme acquire any shares as to which the conditions in *Part 3* of *Schedule 11* are fulfilled and, within the period of 18 months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme—

(*a*) *section 805* shall not apply to income consisting of dividends on those shares received by the trustees, and

(*b*) any gain accruing to the trustees on the appropriation of those shares shall not be a chargeable gain,

and, for the purpose of determining whether any shares are appropriated within that period of 18 months, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.

(7) The Revenue Commissioners may by notice in writing require any person to furnish to them, within such time as they may direct (but not being less than 30 days), such information as they think necessary for the purposes of their functions under this Chapter, including in particular information to enable them—

(*a*) to determine whether to approve of a scheme or withdraw an approval already given, and

(*b*) to determine the liability to tax, including capital gains tax, of any participant in an approved scheme.

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The period of retention, release date and appropriate percentage.

[FA82 s52; FA86 s11; FA97 s50(a)]

511.—(1) (*a*) In this Chapter, ''the period of retention'', in relation to any of a participant's shares, means the period beginning on the date on which those shares are appropriated to the participant and ending on the second anniversary of that date or, if it is earlier—

(i) the date on which the participant ceases to be an employee or director of a relevant company by reason of injury or disability or on account of his or her being dismissed by reason of redundancy (within the meaning of the Redundancy Payments Acts, 1967 to 1991),

(ii) the date on which the participant reaches pensionable age (within the meaning of section 2 of the Social Welfare (Consolidation) Act, 1993), or

(iii) the date of the participant's death.

(*b*) In *paragraph (a)*, ''relevant company'' means the company concerned or, if the scheme in question is a group scheme, a participating company and, in the application of *paragraph (a)* to a participant in a group scheme, the participant shall not be treated as ceasing to be an employee or director of a relevant company until such time as he or she is no longer an employee or director of any of the participating companies.

(2) In this Chapter, ''the release date'', in relation to any of a participant's shares, means—

(*a*) as on and from the 10th day of May, 1997, the third anniversary of the date on which the shares were appropriated to the participant, and

(*b*) before the 10th day of May, 1997, the fifth anniversary of the date on which the shares were appropriated to the participant.

(3) Subject to *section 515(4)*, for the purposes of the provisions of this Chapter charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of the individual's shares, any reference to the appropriate percentage in relation to those shares shall be determined according to the time of that event, as follows—

(*a*) as respects such an occurrence as on and from the 10th day of May, 1997—

(i) if the event occurs before the third anniversary of the date on which the shares were appropriated to the participant and *subparagraph (ii)* does not apply, the appropriate percentage shall be 100 per cent, and

(ii) if, in a case where at the time of the event the participant—

(I) has ceased to be an employee or director of a relevant company as mentioned in *subsection (1)(a)(i)*, or

(II) has reached pensionable age (within the meaning of section 2 of the Social Welfare (Consolidation) Act, 1993),

the event occurs before the third anniversary of the date on which the shares were appropriated to the participant, the appropriate percentage shall be 50 per cent, and

(*b*) as respects such an occurrence before the 10th day of May, 1997—

(i) if the event occurs before the fourth anniversary of the date on which the shares were appropriated to the participant and *subparagraph (iii)* does not apply, the appropriate percentage shall be 100 per cent,

(ii) if the event occurs on or after the fourth anniversary and before the fifth anniversary of the date on which the shares were appropriated to the participant and *subparagraph (iii)* does not apply, the appropriate percentage shall be 75 per cent, and

(iii) if, in a case where at the time of the event the participant—

(I) has ceased to be an employee or director of a relevant company as mentioned in *subsection (1)(a)(i)*, or

(II) has reached pensionable age (within the meaning of section 2 of the Social Welfare (Consolidation) Act, 1993),

the event occurs before the fifth anniversary of the date on which the shares were appropriated to the participant, the appropriate percentage shall be 50 per cent.

(4) No scheme shall be approved of as is mentioned in *section 510(3)* unless the Revenue Commissioners are satisfied that, whether under the terms of the scheme or otherwise, every participant in the scheme is bound in contract with the company concerned—

(*a*) to permit his or her shares to remain in the hands of the trustees throughout the period of retention,

(*b*) not to assign, charge or otherwise dispose of his or her beneficial interest in his or her shares during that period,

(*c*) if he or she directs the trustees to transfer the ownership of his or her shares to him or her at any time before the release date, to pay to the trustees before the transfer takes place a sum equal to income tax at the standard rate on the appropriate percentage of the locked-in value of the shares at the time of the direction, and

(*d*) not to direct the trustees to dispose of his or her shares at any time before the release date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of the sale.

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(5) No obligation placed on the participant by virtue of *subsection (4)(c)* shall be construed as binding his or her personal representatives to pay any sum to the trustees.

(6) Any obligation imposed on a participant by virtue of *subsection (4)* shall not prevent the participant from—

(*a*) directing the trustees to accept an offer for any of his or her shares (in this paragraph referred to as ''the original shares'') if the acceptance or agreement will result in a new holding (within the meaning of *section 584*) being equated with the original shares for the purposes of capital gains tax,

(*b*) directing the trustees to agree to a transaction affecting his or her shares or such of those shares as are of a particular class, if the transaction would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting—

(i) all the ordinary share capital of the company in question or, as the case may be, all the shares of the class in question, or

(ii) all the shares, or shares of the class in question, held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved scheme,

(*c*) directing the trustees to accept an offer of cash, with or without other assets, for his or her shares if the offer forms part of a general offer made to holders of shares of the same class as his or her shares or of shares in the same company and made in the first instance on a condition such that if it is satisfied the person making the offer will have control (within the meaning of *section 11*) of that company, or

(*d*) agreeing, after the expiry of the period of retention, to sell the beneficial interest in his or her shares to the trustees for the same consideration as in accordance with *subsection (4)(d)* would be required to be obtained for the shares themselves.

(7) If in breach of his or her obligation under *subsection (4)(b)* a participant assigns, charges or otherwise disposes of the beneficial interest in any of his or her shares, the participant shall as respects those shares be treated for the purposes of this Chapter as if, at the time they were appropriated to him or her, he or she was ineligible to participate in the scheme, and *section 515* shall apply accordingly.

Disposals of scheme shares.

[FA82 s53]

512.—(1) Subject to *sections 514* and *515(6)*, any reference in this Chapter to the locked-in value of any of a participant's shares at any time shall be construed as follows:

(*a*) if before that time the participant has become chargeable to income tax by virtue of *section 513* on a percentage of the amount or value of any capital receipt (within the meaning of that section) which is referable to those shares, the locked-in value of the shares shall be the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has

been more than one such receipt, the aggregate of those receipts, and

(*b*) in any other case, the locked-in value of the shares shall be their initial market value.

(2) Where the trustees dispose of any of a participant's shares at any time before the release date or, if it is earlier, the date of the participant's death, the participant shall, subject to *subsections (3)* and *(4)*, be chargeable to income tax under Schedule E for the year of assessment in which the disposal takes place on the appropriate percentage of the locked-in value of the shares at the time of the disposal.

(3) Subject to *subsection (4)*, if on a disposal of shares within *subsection (2)* the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, *subsection (2)* shall apply as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.

(4) Where at any time before the disposal of any of a participant's shares a payment was made to the trustees to enable them to exercise rights arising under a rights issue, *subsections (2)* and *(3)* shall, subject to *subsection (5)(b)*, apply as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one such payment, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.

(5) (*a*) In this subsection, ''shares'', in relation to shares allotted or to be allotted on a rights issue, includes securities and rights of any description.

(*b*) For the purposes of *subsection (4)*—

(i) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue, and

(ii) in relation to a particular disposal, the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals,

and any reference in *subsection (4)* or *subparagraph (i)* to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being rights to be allotted, on payment, other shares in the same company.

(6) Where the disposal referred to in *subsection (2)* is made from a holding of shares appropriated to the participant at different times, then, in determining for the purposes of this Chapter—

(*a*) the initial market value and the locked-in value of each of those shares, and

(*b*) the percentage which is the appropriate percentage in relation to each of those shares,

the disposal shall be treated as being of shares appropriated earlier before those appropriated later.

(7) Where at any time the participant's beneficial interest in any of his or her shares is disposed of, the shares in question shall be treated for the purposes of this Chapter as having been disposed of at that time by the trustees for (subject to *subsection (8)*) the like consideration as was obtained for the disposal of the beneficial interest, and for the purpose of this subsection there shall be no disposal of the participant's beneficial interest if and at the time when that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of the law of the State.

(8) Where—

(*a*) a disposal of shares within *subsection (2)* is a transfer to which *section 511(4)(c)* applies,

(*b*) the Revenue Commissioners are of the opinion that any other disposal within that subsection is not at arm's length and accordingly direct that this subsection shall apply, or

(*c*) a disposal of shares within that subsection is one which is treated as taking place by virtue of *subsection (7)* and takes place within the period of retention,

the proceeds of the disposal for the purposes of this Chapter shall be taken to be equal to the market value of the shares at the time of the disposal.

Capital receipts in respect of scheme shares.

[FA82 s54]

513.—(1) Subject to this section, where, in respect of or by reference to any of a participant's shares, the trustees become or the participant becomes entitled, before the release date, to receive any money or money's worth (in this section referred to as a ''capital receipt''), the participant shall be chargeable to income tax under Schedule E for the year of assessment in which the entitlement arises on the appropriate percentage (determined as at the time when the trustees become or the participant becomes so entitled) of the amount or value of the receipt.

(2) Money or money's worth shall not be a capital receipt for the purposes of this section if or, as the case may be, to the extent that—

(*a*) it constitutes income in the hands of the recipient for the purposes of income tax,

(*b*) it consists of the proceeds of a disposal within *section 512*, or

(*c*) it consists of new shares within the meaning of *section 514*.

(3) Where, pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, the trustees—

(*a*) dispose of some of the rights arising under a rights issue within the meaning of *section 512(5)(b)*, and

(*b*) use the proceeds of that disposal to exercise other such rights,

the money or money's worth which constitutes the proceeds of that disposal shall not be a capital receipt for the purposes of this section. Pt.17 S.513

(4) Where apart from this subsection the amount or value of a capital receipt would exceed the sum which, immediately before the entitlement to the receipt arose, was the locked-in value of the shares to which the receipt is referable, *subsection (1)* shall apply as if the amount or value of the receipt were equal to that locked-in value.

(5) *Subsection (1)* shall not apply in relation to a receipt if the entitlement to it arises after the death of the participant to whose shares it is referable.

(6) *Subsection (1)* shall not apply in relation to any receipt the amount or value of which (after any reduction under *subsection (4)*) does not exceed £10.

Company reconstructions, amalgamations, etc.

[FA82 s55]

514.—(1) In this section—

''new shares'' means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding;

''the corresponding shares'', in relation to any new shares, means those shares in respect of which the new shares were issued or which the new shares otherwise represent.

(2) This section shall apply where there occurs in relation to any of a participant's shares (in this section referred to as ''the original holding'') a transaction (in this section referred to as a ''company reconstruction'') which results in a new holding (within the meaning of *section 584*) being equated with the original holding for the purposes of capital gains tax.

(3) (*a*) Where shares are issued as part of a company reconstruction in circumstances such that *section 131(2)* applies, those shares shall be treated for the purposes of this section as not forming part of the new holding.

(*b*) Nothing in this Chapter shall affect the application of *section 130(2)(c)* or *132(2)*.

(4) Subject to this section, references in this Chapter to a participant's shares shall be construed, after the time of the company reconstruction, as being or, as the case may be, as including, references to any new shares, and for the purposes of this Chapter—

(*a*) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding,

(*b*) the date on which any new shares are to be treated as having been appropriated to the participant shall be the date on which the corresponding shares were appropriated, and

(*c*) the conditions in *Part 3* of *Schedule 11* shall be treated as fulfilled with respect to any new shares if those conditions were (or were treated as) fulfilled with respect to the corresponding shares.

(5) In relation to shares comprised in the new holding, *section 512(1)* shall apply as if the references in that section to the initial market value of the shares were references to their locked-in value

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immediately after the company reconstruction, which shall be determined by—

(*a*) ascertaining the aggregate amount of locked-in value immediately before the reconstruction of those shares comprised in the original holding which had at that time the same locked-in value, and

(*b*) distributing that amount proportionately among—

(i) such of those shares as remain in the new holding, and

(ii) any new shares in relation to which those shares are the corresponding shares,

according to their market value immediately after the date of the reconstruction, and *section 512(1)(a)* shall apply only to capital receipts after the date of the reconstruction.

(6) For the purposes of this Chapter, where as part of a company reconstruction the trustees become entitled to a capital receipt (within the meaning of *section 513*), their entitlement to the capital receipt shall be taken to arise before the new holding comes into being and, for the purposes of *subsection (5)*, before the date on which the locked-in value of any shares comprised in the original holding falls to be ascertained.

(7) In relation to a new holding, any reference in this section to shares includes securities and rights of any description which form part of the new holding for the purposes of *section 584*.

Excess or unauthorised shares.

[FA82 s56; FA95 s16]

515.—(1) Where the total of the initial market values of all the shares appropriated to an individual in any one year of assessment (whether under a single approved scheme or under 2 or more such schemes) exceeds £10,000, *subsections (4)* to *(7)* shall apply to any excess shares, that is, any share which caused that limit to be exceeded and any share appropriated after that limit was exceeded.

(2) For the purposes of *subsection (1)*, where a number of shares is appropriated to an individual at the same time under 2 or more approved schemes, the same proportion of the shares appropriated at that time under each scheme shall be regarded as being appropriated before the limit of £10,000 is exceeded.

(3) Where the trustees of an approved scheme appropriate shares to an individual at a time when the individual is ineligible to participate in the scheme by virtue of *Part 4* of *Schedule 11*, *subsections (4)* to *(7)* shall apply in relation to those shares, and in those subsections those shares are referred to as ''unauthorised shares''.

(4) For the purposes of any provision of this Chapter charging an individual to income tax under Schedule E by reason of the occurrence of an event relating to any of the individual's shares—

(*a*) the appropriate percentage in relation to excess shares or unauthorised shares shall in every case be 100 per cent, and

(*b*) without prejudice to *section 512(6)*, the event shall be treated as relating to shares which are not excess shares or unauthorised shares before shares which are. Pt.17 S.515

(5) Excess shares or unauthorised shares which have not been disposed of before the release date, or if it is earlier, the date of the death of the participant whose shares they are, shall be treated for the purposes of this Chapter as having been disposed of by the trustees immediately before the release date or, as the case may require, the date of the participant's death, for a consideration equal to their market value at that time.

(6) The locked-in value at any time of any excess shares or unauthorised shares shall be their market value at that time.

(7) Where there has been a company reconstruction to which *section 514* applies, a new share (within the meaning of that section) shall be treated as an excess share or unauthorised share if the corresponding share (within the meaning of that section) or, if there was more than one corresponding share, each of them was an excess share or an unauthorised share.

Assessment of trustees in respect of sums received.

[FA82 s57]

516.—Where in connection with a direction to transfer the ownership of a participant's shares to which *paragraph (c)* of *section 511(4)* applies the trustees receive such a sum as is referred to in that paragraph—

(*a*) the trustees shall be chargeable to income tax under Case IV of Schedule D on an amount equal to the appropriate percentage of the locked-in value of the shares at the time of the direction, and

(*b*) the amount on which the participant is to be charged to income tax as a result of the transfer shall be deemed to be an amount from which income tax has been deducted at the standard rate pursuant to *section 238*.

Payments to trustees of approved profit sharing scheme.

[FA82 s58; FA83 s24; FA84 s31(b); FA97 s146(1) and Sch9 PtI par12(3)]

517.—(1) Subject to *subsections (3)* and *(4)*, as respects any accounting period, any sum expended in that accounting period by the company concerned or, in the case of a group scheme, by a participating company in making a payment or payments to the trustees of an approved scheme shall be included—

(*a*) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains for that accounting period of a trade carried on by that company, or

(*b*) if that company is an investment company within the meaning of *section 83* or a company in the case of which that section applies by virtue of *section 707*, in the sums to be deducted under *section 83(2)* as expenses of management in computing the profits of the company for that accounting period for the purposes of corporation tax,

only if one of the conditions in *subsection (2)(b)* is fulfilled.

(2) (*a*) In this subsection, ''the relevant period'' means the period of 9 months beginning on the day following the end of

the period of account in which the sum mentioned in *subsection (1)* is charged as an expense of the company incurring the expenditure or such longer period as the Revenue Commissioners may allow by notice in writing given to that company.

(*b*) The conditions referred to in *subsection (1)* are—

(i) that before the expiry of the relevant period the sum mentioned in *subsection (1)* is applied by the trustees in the acquisition of shares for appropriation to individuals who are eligible to participate in the scheme by virtue of their being or having been employees or directors of the company making the payment, and

(ii) that the sum is necessary to meet the reasonable expenses of the trustees in administering the scheme.

(3) (*a*) In this subsection, ''trading income'', in relating to any trade, means the income from the trade computed in accordance with the rules applicable to Case I of Schedule D before any deduction under this Chapter and after any set-off or reduction of income by virtue of *section 396* or *397*, and after any deduction or addition by virtue of *section 307* or *308*, and after any deduction by virtue of *section 666*.

(*b*) No deduction shall be allowed under this section or under any other provision of the Tax Acts in respect of so much of any sum or the aggregate amount of any sums expended by a participating company in an accounting period in the manner referred to in *subsection (1)* as exceeds the company's—

(i) trading income for that accounting period, in the case of a company to which *paragraph (a)* of that subsection applies, or

(ii) income for that accounting period, in the case of a company to which *paragraph (b)* of that subsection applies, after taking into account any sums which apart from this section are to be deducted under *section 83(2)* as expenses of management in computing the profits of the company for the purposes of corporation tax.

(4) The deduction to be allowed under this section or under any other provision of the Tax Acts in respect of any sum or the aggregate amount of any sums expended by a participating company in an accounting period in the manner referred to in *subsection (1)* shall not exceed such sum as is in the opinion of the Revenue Commissioners reasonable, having regard to the number of employees or directors of the company making the payment who have agreed to participate in the scheme, the services rendered by them to that company, the levels of their remuneration, the length of their service or similar factors.

(5) For the purposes of this section, the trustees of an approved scheme shall be taken to apply sums paid to them in the order in which the sums are received by them.

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Costs of establishing profit sharing schemes.

518.—(1) This section shall apply to a sum expended on or after the 10th day of May, 1997, by a company in establishing a profit sharing scheme which the Revenue Commissioners approve of in accordance with *Part 2* of *Schedule 11* and under which the trustees acquire no shares before such approval is given.

[FA82 s58A; FA97 s50(b)]

(2) A sum to which this section applies shall be included—

(*a*) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or

(*b*) if the company is an investment company within the meaning of *section 83* or a company in the case of which that section applies by virtue of *section 707*, in the sums to be deducted under *section 83(2)* as expenses of management in computing the profits of the company for the purposes of corporation tax.

(3) In a case where—

(*a*) *subsection (2)* applies, and

(*b*) the approval is given after the end of the period of 9 months beginning on the day following the end of the accounting period in which the sum is expended,

then, for the purpose of *subsection (2)*, the sum shall be treated as expended in the accounting period in which the approval is given and not in the accounting period mentioned in *paragraph (b)*.

CHAPTER 2

Employee share ownership trusts

Employee share ownership trusts.

519.—(1) (*a*) This section shall apply to an employee share ownership trust which the Revenue Commissioners have approved of as a qualifying employee share ownership trust in accordance with *Schedule 12* and which approval has not been withdrawn.

[FA97 s51]

(*b*) This section shall be construed together with *Schedule 12*.

(2) Where, in an accounting period of a company, the company expends a sum—

(*a*) in establishing a trust to which this section applies, or

(*b*) in making a payment by means of contribution to the trustees of a trust which at the time the sum is expended is a trust to which this section applies, and—

(i) at that time the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed, and

(ii) before the expiry of the expenditure period the sum is expended by the trustees for one or more of the qualifying purposes,

then, the sum shall be included—

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(I) in the sums to be deducted in computing for the purposes of Schedule D the profits or gains for the accounting period of a trade carried on by that company, or

(II) if the company is an investment company within the meaning of *section 83* or a company in the case of which that section applies by virtue of *section 707*, in the sums to be deducted under *section 83(2)* as expenses of management in computing the profits of the company for that accounting period for the purposes of corporation tax.

(3) Where—

(*a*) *subsection (2)(a)* applies, and

(*b*) the trust is established after the end of the period of 9 months beginning on the day following the end of the accounting period in which the sum is expended by the company,

then, for the purposes of *subsection (2)*, the sum shall be treated as expended in the accounting period in which the trust is established and not in the accounting period mentioned in *paragraph (b)*.

(4) For the purposes of *subsection (2)(b)(i)*, the question whether one company is controlled by another shall be construed in accordance with *section 432*.

(5) For the purposes of *subsection (2)(b)(ii)*—

(*a*) each of the following shall be a qualifying purpose—

(i) the acquisition of shares in the company which established the trust,

(ii) the repayment of sums borrowed,

(iii) the payment of interest on sums borrowed,

(iv) the payment of any sum to a person who is a beneficiary under the terms of the trust deed, and

(v) the meeting of expenses,

and

(*b*) the expenditure period shall be the period of 9 months beginning on the day following the end of the accounting period in which the sum is expended by the company or such longer period as the Revenue Commissioners may allow by notice given to the company.

(6) For the purposes of this section, the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them, irrespective of the number of companies making payments.

(7) *Section 805* shall not apply to income consisting of dividends in respect of securities held by a trust to which this section applies.

(8) Where the trustees of a trust to which this section applies transfer securities to the trustees of a profit sharing scheme approved

under *Part 2* of *Schedule 11*, any gain accruing to those first-mentioned trustees on that transfer shall not be a chargeable gain. Pt.17 S.519

(9) Notwithstanding anything in *subsections (1)* to *(8)*, where the Revenue Commissioners in accordance with *Schedule 12* withdraw approval of an employee share ownership trust as a qualifying employee share ownership trust, then, as on and from the date from which that withdrawal has effect, this section shall not apply in relation to—

(*a*) any sum expended by a company in making a payment to that trust,

(*b*) income consisting of dividends in respect of securities held by that trust, or

(*c*) the transfer of securities to a profit sharing scheme approved under *Part 2* of *Schedule 11*.

PART 18

Payments in Respect of Professional Services by Certain Persons and Payments to Subcontractors in Certain Industries

CHAPTER 1

Payments in respect of professional services by certain persons

Interpretation (*Chapter 1*).

520.—(1) In this Chapter—

[FA87 s13; FA88 s8(a)(i) and (ii); FA92 s10]

''accountable person'' has the meaning assigned to it by *section 521*;

''appropriate tax'', in relation to a relevant payment, means—

(*a*) where such payment does not include value-added tax, a sum representing income tax on the amount of that payment at the standard rate in force at the time of payment, and

(*b*) where such payment includes value-added tax, a sum representing income tax at the standard rate in force at the time of payment on the amount of that payment exclusive of the value-added tax;

''authorised insurer'' has the same meaning as in *section 470*;

''basis period for a year of assessment'', in relation to a specified person, means—

(*a*) where a relevant payment is to be included in a computation of profits or gains of that person for the purposes of Case I or II of Schedule D, the period on the profits or gains of which income tax for that year is to be finally computed for the purposes of Case I or II of Schedule D, and—

(i) where 2 basis periods overlap, the period common to both shall be deemed for the purposes of this Chapter to fall in the second basis period only,

(ii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, the interval shall be deemed to be part of the second basis period, and

(iii) the reference in *subparagraph (i)* to the overlapping of 2 periods shall be construed as including a reference to the coincidence of 2 periods or to the inclusion of one period in another, and the reference to the period common to both shall be construed accordingly,

and

(*b*) in any other case, the year of assessment;

''contract of insurance'' means a contract between an authorised insurer and a subscriber in respect of such insurance as is referred to in the definition of ''relevant contract'' in *section 470(1)*;

''income tax month'' means a month beginning on the 6th day of any of the months of April to March in any year;

''member'', in relation to a contract of insurance, means a person who is named in the relevant policy of insurance and who has been accepted for insurance by an authorised insurer;

''practitioner'' has the same meaning as in *section 469*;

''professional services'' includes—

(*a*) services of a medical, dental, pharmaceutical, optical, aural or veterinary nature,

(*b*) services of an architectural, engineering, quantity surveying or surveying nature, and related services,

(*c*) services of accountancy, auditing or finance and services of financial, economic, marketing, advertising or other consultancies,

(*d*) services of a solicitor or barrister and other legal services,

(*e*) geological services, and

(*f*) training services provided on behalf of An Foras Áiseanna Saothair;

''relevant medical expenses'' means expenses incurred in respect of professional services provided by a practitioner, being expenses that are or may become the subject of a claim for their reimbursement or discharge in whole or in part under a contract of insurance but not including any such expenses that—

(*a*) under the terms of the contract of insurance may (except in the case of certain expenses that in the opinion of the authorised insurer concerned are unusually large) be the subject of a claim for their discharge or reimbursement only—

(i) after the expiry of a stated period of 12 months in which the expenses are incurred, and

(ii) to the extent that the aggregate of the expenses and any other expenses incurred in that period exceeds a stated amount, Pt.18 S.520

or

(*b*) are incurred in respect of professional services provided by a practitioner outside the State;

''relevant payment'' means a payment made by—

(*a*) an accountable person in respect of professional services whether or not such services are provided to the accountable person making the payment, or

(*b*) an authorised insurer to a practitioner in accordance with *section 522*, or otherwise, in the discharge of a claim in respect of relevant medical expenses under a contract of insurance,

but excludes—

(i) emoluments within the scope of *Chapter 4* of *Part 42* to which that Chapter applies, and

(ii) payments under a relevant contract (within the meaning of *section 530*) from which tax has been deducted in accordance with *subsection (1)* of *section 531*, or would have been so deducted but for *subsection (12)* of that section;

''specified person'', in relation to a relevant payment, means the person to whom that payment is made;

''subscriber'', in relation to a contract of insurance, means a person (other than an authorised insurer) who is a party to the contract and in whose name the relevant policy of insurance is registered.

(2) For the purposes of this Chapter—

(*a*) any reference in this Chapter to the amount of a relevant payment shall be construed as a reference to the amount which would be the amount of that payment if no appropriate tax were to be deducted from that payment, and

(*b*) in relation to a specified person, appropriate tax referable to—

(i) an accounting period, or

(ii) a basis period for a year of assessment,

means the appropriate tax deducted from a relevant payment which is taken into account in computing the specified person's profits or gains for that period and where there is more than one such relevant payment in that period the aggregate of the appropriate tax deducted from such payments.

521.—(1) In this Chapter, ''accountable person'' means, subject to *subsection (2)*, a person specified in *Schedule 13*. Accountable persons.

[FA87 s14; FA92 s11(1)]

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(2) Where any of the persons specified in *Schedule 13* is a body corporate, ''accountable person'' includes any subsidiary of that body corporate where such subsidiary is resident in the State and, for the purposes of this subsection, ''subsidiary'' has the meaning assigned to it by section 155 of the Companies Act, 1963.

(3) For the purposes of this Chapter, the Minister for Finance may by regulations extend or restrict the meaning of ''accountable person'' by adding or deleting one or more persons to or from, as the case may be, the list of persons specified in *Schedule 13*.

(4) Where regulations are proposed to be made under *subsection (3)*, a draft of the regulations shall be laid before Dáil Éireann and the regulations shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

Obligation on authorised insurers.

[FA87 s14A; FA88 s 8(c)]

522.—Subject to *section 523(1)*, where under a contract of insurance a claim is made to an authorised insurer in respect of relevant medical expenses—

(*a*) the insurer shall discharge the claim by making payment to the extent of the amount of the benefit, if any, due under the contract, to the practitioner who provided the professional services to the subscriber or member concerned to whom the relevant medical expenses relate, and

(*b*) the subscriber or member, as the case may be, shall be acquitted and discharged of such amount as is represented by the payment as if the subscriber or member had made such payment.

Deduction of tax from relevant payments.

[FA87 s15; FA88 s8(d)]

523.—(1) (*a*) An accountable person making a relevant payment shall deduct from the amount of the payment the appropriate tax in relation to the payment.

(*b*) The specified person to whom the amount is payable shall allow such deduction on receipt of the residue of the payment.

(*c*) The accountable person making the deduction and, if the accountable person is an authorised insurer, any subscriber or member on whose behalf the accountable person is making the relevant payment shall be acquitted and discharged of such amount as is represented by the deduction, as if the amount had actually been paid.

(2) Where—

(*a*) in accordance with *section 522*, a relevant payment has been made to a practitioner by an authorised insurer, and

(*b*) in accordance with *subsection (1)*, the practitioner has allowed a deduction of appropriate tax in respect of that payment and a subscriber or member has been acquitted and discharged of so much money as is represented by the deduction,

the practitioner shall, if any amount in respect of the relevant medical expenses to which the relevant payment relates has been paid by the subscriber or member, pay to the subscriber or member, as the

case may be, an amount equal to the amount by which the aggregate of the amount paid by the subscriber or member and the amount of the relevant payment exceeds the relevant medical expenses.

(3) (*a*) The Minister for Finance may make such regulations as that Minister considers necessary or expedient for the purpose of giving full effect to this Chapter in so far as it relates to authorised insurers and the making of payments under contracts of insurance in respect of relevant medical expenses, and, in particular but without prejudice to the generality of the foregoing, regulations under this subsection may—

(i) specify the circumstances and the manner in which a payment (other than a relevant payment) may be made or claimed in respect of relevant medical expenses, and

(ii) provide for the indemnification of an individual against claims in respect of relevant medical expenses, or any other claims arising out of acts done or omitted to be done by the individual pursuant to this Chapter or regulations made under this subsection in so far as this Chapter relates or those regulations relate to authorised insurers and the making of payments under contracts of insurance in respect of relevant medical expenses.

(*b*) Every regulation made under this subsection shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) The provisions of the Tax Acts relating to the computation of profits or gains shall not be affected by the deduction of appropriate tax from relevant payments in accordance with *subsection (1)*, and accordingly the amount of such relevant payments shall be taken into account in computing the profits or gains of the specified person for tax purposes.

Identification of, and issue of documents to, specified persons.

[FA87 s16]

524.—(1) The specified person shall furnish to the accountable person concerned—

(*a*) in the case of a specified person resident in the State or a person having a permanent establishment or fixed base in the State—

(i) details of the specified person's income tax or corporation tax number, as may be appropriate, and

(ii) if the relevant payment includes an amount in respect of value-added tax, the specified person's value-added tax registration number, and

(*b*) in the case of a specified person other than a person mentioned in *paragraph (a)*, details of the specified person's country of residence and the specified person's tax reference in that country.

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(2) Where the specified person has complied with *subsection (1)*, the accountable person, on making a relevant payment, shall give to such person in a form prescribed by the Revenue Commissioners particulars of—

(*a*) the name and address of the specified person,

(*b*) the specified person's tax reference as furnished in accordance with *paragraph (a)(i)* or *(b)* of *subsection (1)*,

(*c*) the amount of the relevant payment,

(*d*) the amount of the appropriate tax deducted from that payment, and

(*e*) the date on which the payment is made.

Returns and collection of appropriate tax.

[FA87 s17]

525.—(1) Within 10 days from the end of every income tax month, an accountable person shall remit to the Collector-General all amounts of appropriate tax which the accountable person is liable under this Chapter to deduct from relevant payments made by the accountable person during that income tax month.

(2) Each remittance under *subsection (1)* shall be accompanied by a return containing, in relation to each specified person to whom a relevant payment has been made in the income tax month concerned, the particulars required by the return.

(3) A return shall be required to be made by an accountable person for an income tax month notwithstanding that no relevant payments were made by the accountable person in that income tax month.

(4) Every return shall be in a form prescribed by the Revenue Commissioners and shall include a declaration to the effect that the return is correct and complete.

(5) The Collector-General shall give the accountable person a receipt for the total amount so remitted.

(6) The provisions of the Income Tax Acts relating to the collection and recovery of income tax shall, in so far as they are applicable, apply to the collection and recovery of appropriate tax.

Credit for appropriate tax borne.

[FA87 s18]

526.—(1) Where in relation to an accounting period a specified person is within the charge to corporation tax and has borne appropriate tax referable to that accounting period, the specified person may, subject to *section 529*, claim to have the amount of appropriate tax specified in *subsection (4)* set against corporation tax chargeable for that accounting period and, where such appropriate tax exceeds such corporation tax, to have the excess refunded to the specified person.

(2) Where in relation to a year of assessment a specified person is within the charge to income tax and has borne appropriate tax referable to the basis period for that year of assessment, the specified person may, subject to *section 529*, claim to have the amount of appropriate tax specified in *subsection (4)* set against the income tax chargeable for the year of assessment and, where such appropriate tax exceeds such income tax, to have the excess refunded to the specified person.

(3) The specified person shall, in respect of each claim under *subsection (1)* or *(2)*, furnish, in respect of each amount of appropriate tax included in the claim, the form given to the specified person by an accountable person in accordance with *section 524(2)*. Pt.18 S.526

(4) The amount of the appropriate tax to be set against corporation tax for an accounting period or against income tax for a year of assessment in accordance with *subsection (1)* or *(2)* shall be the total of the appropriate tax referable to the accounting period or to the basis period for the year of assessment, as the case may be, which is included in the forms furnished in accordance with *subsection (3)* and not repaid under this Chapter.

Interim refunds of appropriate tax.

[FA87 s19]

527.—(1) A specified person may make a claim for an interim refund of the whole or part of the appropriate tax referable to an accounting period or to a basis period for a year of assessment, as the case may be (in this section referred to as ''the first-mentioned period''), and the inspector shall, if he or she is satisfied that the specified person making the claim has complied with the requirements of *subsection (2)*, make such refund as is specified in *subsection (3)* and, subject to those requirements as modified by *subsection (4)(a)*, make such refund as is specified in that subsection.

(2) The requirements of this subsection are—

(*a*) that the profits or gains for the accounting period or for the basis period for the year of assessment, as the case may be, immediately preceding the first-mentioned period have been finally determined for tax purposes,

(*b*) that the amount of tax which was payable for that accounting period or year of assessment corresponding to that basis period has been paid (whether by credit for appropriate tax or otherwise), and

(*c*) that the specified person shall, in respect of each relevant payment included in the claim, furnish to the inspector the form given to the specified person by an accountable person in accordance with *section 524(2)*.

(3) The amount of the tax to be refunded shall be the excess of the total of the appropriate tax included in the forms furnished in accordance with *subsection (2)(c)* (and not already repaid under the provisions of this section) over the amount of tax referred to in *subsection (2)(b)* less the amount which the specified person is liable to pay or remit—

(*a*) under the Value-Added Tax Act, 1972, and the regulations made under that Act,

(*b*) under *Chapter 4* of *Part 42* and the regulations made under that Chapter, and

(*c*) in respect of employment contributions under the Social Welfare (Consolidation) Act, 1993, and the regulations made under that Act.

(4) (*a*) Where the first-mentioned period is the period in which the trade or profession of the specified person has been set up and commenced, *paragraphs (a)* and *(b)* of *subsection (2)* shall not apply and the inspector shall, in accordance with this subsection, make an interim refund to the

specified person in respect of appropriate tax deducted from relevant payments taken, or to be taken, into account in computing the profits or gains of the trade or profession.

(*b*) For the purposes of determining the amount of the interim refund, the inspector shall determine—

(i) an amount equal to the amount of tax at the standard rate on an amount determined by the formula—

$$E \times \frac{A}{B} \times \frac{C}{P}$$

where—

A is the estimated total amount of the relevant payments to be taken into account as income in computing for tax purposes the profits or gains of the first-mentioned period,

B is the estimated total sum of all amounts to be so taken into account as income in computing those profits or gains,

C is the estimated number of months or fractions of months comprised in the period in respect of which the claim to the refund is made,

E is the estimated amount to be laid out or expended wholly and exclusively by the specified person in the first-mentioned period for the purposes of the trade or profession, and

P is the estimated number of months or fractions of months comprised in the first-mentioned period,

and the inspector shall make the estimates referred to in this formula to the best of his or her knowledge and belief and in accordance with the information available to him or her, and

(ii) the amount of appropriate tax deducted from the relevant payments in respect of which forms have been furnished in accordance with *subsection (2)(c)* after deducting from that amount any amount of such tax already refunded for the period in respect of which the claim to a refund is made.

(*c*) The inspector shall refund an amount of appropriate tax equal to the lesser of the amounts determined at *subparagraphs (i)* and *(ii)* of *paragraph (b)*.

(5) Where the specified person claims and proves the presence of particular hardship, the Revenue Commissioners may waive (in whole or in part) one or more of the conditions for the making of a refund specified in this section and, where they so waive such a condition or conditions, they shall determine, having regard to all the circumstances and taking into account the objects and intentions of *subsections (1)* to *(4)*, an amount of a refund or a further refund which they consider to be just and reasonable and they shall authorise the inspector to make such refund or such further refund, as the case may be, accordingly.

(6) For the purposes of this section, the income of a specified person for an accounting period or a basis period for a year of assessment shall be the total of all amounts received or receivable by the specified person which are taken into account in computing the profits or gains of the specified person's trade or profession for that period. PT.18 S.527

528.—Where the form referred to in either *section 526(3)* or *527(2)(c)* relates to 2 or more specified persons, any necessary apportionment shall be made for the purposes of giving effect to *sections 526* and *527*. Apportionment of credits or interim refunds of appropriate tax.

[FA87 s20]

529.—No amount of appropriate tax shall be set off or refunded more than once under this Chapter, and any amount of appropriate tax refunded in accordance with *section 527* shall not be available for set-off under *section 526*. Limitation on credits or interim refunds of appropriate tax.

[FA87 s21]

CHAPTER 2

Payments to subcontractors in certain industries

530.—(1) In this Chapter— Interpretation (*Chapter 2*).

[FA70 s17(1) and (13); FA72 Sch1 PtIII par4; FA76 s21; FA92 s28(a); FA95 s18(1)(a); FA96 s41(a); FA97 s13(1)(a), s146(1) and Sch9 PtI par5(3)]

''certificate of authorisation'' means a certificate issued under *section 531(11)*;

''certificates of deduction'' has the meaning assigned to it by *section 531(6)(f)*;

''construction operations'' means operations of any of the following descriptions—

(*a*) the construction, alteration, repair, extension, demolition or dismantling of buildings or structures,

(*b*) the construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including walls, roadworks, power lines, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage,

(*c*) the installation in any building or structure of systems of heating, lighting, air-conditioning, soundproofing, ventilation, power supply, drainage, sanitation, water supply, burglar or fire protection,

(*d*) the external cleaning of buildings (other than cleaning of any part of a building in the course of normal maintenance) or the internal cleaning of buildings and structures, in so far as carried out in the course of their construction, alteration, extension, repair or restoration,

(*e*) operations which form an integral part of, or are preparatory to, or are for rendering complete such operations as are described in *paragraphs (a)* to *(d)*, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works,

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(*f*) operations which form an integral part of, or are preparatory to, or are for rendering complete, the drilling for or extraction of minerals, oil, natural gas or the exploration for, or exploitation of, natural resources,

(*g*) the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the construction operations referred to in *paragraphs (a)* to *(f)*;

''the contractor'' has the meaning assigned to it by the definition of ''relevant contract'';

''director'' means—

(*a*) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(*b*) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person,

(*c*) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person who is or has been a director;

''employee'', in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee;

''forestry operations'' means operations of any of the following descriptions—

(*a*) the thinning, lopping or felling of trees in woods, forests or other plantations,

(*b*) with effect from the 6th day of October, 1997, the planting of trees in woods, forests or other plantations,

(*c*) with effect from the 6th day of October, 1997, the maintenance of woods, forests and plantations and the preparation of land, including woods or forests which have been harvested, for planting,

(*d*) the haulage or removal of thinned, lopped or felled trees,

(*e*) the processing (including cutting or preserving) of wood from thinned, lopped or felled trees in sawmills or other like premises,

(*f*) the haulage for hire of materials, machinery or plant for use, whether used or not, in any of the operations referred to in *paragraphs (a)* to *(e)*;

''meat processing operations'' means operations of any of the following descriptions—

(*a*) the slaughter of cattle, sheep or pigs,

(*b*) the division (including cutting or boning), sorting, packaging (including vacuum packaging) or branding of, or the application of any other similar process to, the carcasses or any part of the carcasses of slaughtered cattle, sheep or pigs,

(*c*) the application of methods of preservation (including cold storage) to the carcasses or any part of the carcasses of slaughtered cattle, sheep or pigs,

(*d*) the loading or unloading of the carcasses or any part of the carcasses of slaughtered cattle, sheep or pigs at any establishment where any of the operations referred to in *paragraphs (a)* to *(c)* are carried on;

''the principal'' has the meaning assigned to it by the definition of ''relevant contract'';

''proprietary director'', means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

''proprietary employee'' means an employee who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

''qualifying period'' means the period of 3 years, or such shorter period as the inspector may allow, ending on the 5th day of April in the year preceding the year of assessment which is the first year of assessment of the period in respect of which a certificate of authorisation is sought;

''relevant contract'' means a contract (not being a contract of employment) whereby a person (in this Chapter referred to as ''the contractor'') is liable to another person (in this Chapter referred to as ''the principal'')—

(*a*) to carry out relevant operations,

(*b*) to be answerable for the carrying out of such operations by others, whether under a contract with the contractor or under other arrangements made or to be made by the contractor, or

(*c*) to furnish the contractor's own labour or the labour of others in the carrying out of such operations,

but, as respects relevant contracts entered into on or after the 15th day of May, 1996, a separate relevant contract shall be deemed to exist between the principal and each individual member of a gang or group of persons, including a partnership in respect of which the principal has not received a relevant payments card, where relevant operations are performed collectively by the gang or group, notwithstanding that any payment or part of a payment in respect of such relevant operations is made by the principal to one or more of the gang or group or to some other person;

''relevant operations'' means construction operations, forestry operations or meat processing operations, as the case may be;

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''relevant payments card'' has the meaning assigned to it by *section 531(12)*;

''relevant tax deduction card'' has the meaning assigned to it by *section 531(6)(c)(ii)*;

''subcontractor'' has the meaning assigned to it by *section 531(1)*.

(2) In relation to a case where a subcontractor is chargeable to corporation tax, unless the context otherwise requires, references in this Chapter to tax shall include references to corporation tax and references to a year of assessment shall include references to an accounting period.

(3) For the purposes of the definition of ''proprietary director'' and ''proprietary employee'', ordinary share capital which is owned or controlled as referred to in those definitions by a person, being a spouse or a minor child of a director or employee, or by a trustee of a trust for the benefit of a person or persons, being or including any such person or such director or employee, shall be deemed to be owned or controlled by such director or employee and not by any other person.

Payments to subcontractors in certain industries.

[FA70 s17(2) to (12) and (14) to (17); FA76 s21; FA78 s46; FA81 s7; FA90 s131; FA92 s28(b) to (h); FA95 s18(1)(b) and (c); FA96 s41(b), (c) and (d); FA97 s13(1)(b) and (c)]

531.—(1) Subject to this section, where in the performance of a relevant contract in the case of which the principal is—

(*a*) a person who, in respect of the whole or any part of the relevant operations to which the contract relates, is the contractor under another relevant contract,

(*b*) a person—

(i) carrying on a business which includes the erection of buildings or the manufacture, treatment or extraction of materials for use, whether used or not, in construction operations,

(ii) carrying on a business of meat processing operations in an establishment approved and inspected in accordance with the European Communities (Fresh Meat) Regulations, 1987 (S.I. No. 284 of 1987), or

(iii) carrying on a business which includes the processing (including cutting and preserving) of wood from thinned or felled trees in sawmills or other like premises or the supply of thinned or felled trees for such processing,

(*c*) a person connected with a company carrying on a business mentioned in *paragraph (b)*,

(*d*) a local authority, a public utility society (within the meaning of section 2 of the Housing Act, 1966) or a body referred to in subparagraph (i) or (ii) of section 12(2)(*a*) or section 19 or 45 of that Act,

(*e*) a Minister of the Government,

(*f*) any board established by or under statute, or

(*g*) a person who carries on any gas, water, electricity, hydraulic power, dock, canal or railway undertaking,

the principal makes a payment, or as respects relevant contracts entered into on or after the 15th day of May, 1996, is deemed to make a payment pursuant to *subsection (3)*, to another person (whether the contractor or not and in this section referred to as ''the subcontractor''), the principal shall deduct from the payment and pay to the Collector-General tax at the rate of 35 per cent of the amount of such payment.

(2) A person carrying on a business shall not be deemed to be a person of a kind specified in *subsection (1)(b)* by reason only of the fact that in the course of that business such person erects buildings for the use or occupation of such person or employees of such person.

(3) As respects relevant contracts entered into on or after the 15th day of May, 1996, where relevant operations are performed by a gang or group of persons, including a partnership in respect of which the principal has not received a relevant payments card, and notwithstanding that any payment or part of a payment in respect of such relevant operations is made by the principal to one or more of the gang or group or to some other person, then, for the purposes of this section and any regulations made under this section, such payment or part of a payment shall be deemed to have been made by the principal to the individual members of that gang or group in the proportions in which the payment or any amount in respect of the payment is to be divided amongst them.

(4) In computing for the purposes of Schedule D the profits or gains arising or accruing to a subcontractor who receives a payment from which tax has been deducted in accordance with *subsection (1)*, the payment shall be treated as being of an amount equal to the aggregate of the net amount received after deduction of the tax and the amount of the tax deducted.

(5) In so far as a subcontractor is chargeable to tax in respect of any profits or gains arising or accruing to the subcontractor from a trade or vocation, the subcontractor shall be treated as having paid on account of tax so chargeable any tax which was deducted from payments taken into account in the computation of those profits or gains and which has not been repaid or for which a set-off has not been made, and the Revenue Commissioners shall make regulations for giving effect to this subsection and those regulations shall, in particular, include provision—

(*a*) as to the manner in which, and the periods for which, tax deducted under this section is to be taken into account as a sum paid on account of the liability to tax of a subcontractor,

(*b*) for repayment, on due claim made for a period (in this paragraph referred to as ''the repayment period'') commencing on the 6th day of April in a year of assessment and ending on the 5th day of the month following the date of the payment or, if the payment was made on or before the 5th day of a month, ending on the 5th day of that month, of such portion of the tax deducted from payments received by a subcontractor during the repayment period (reduced by any amount of such tax repaid or set off) as appears to the Revenue Commissioners to exceed the proportionate part of the amount of tax for which the subcontractor is liable or is estimated to be liable for that year of assessment, and

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(*c*) for repayment in cases where the total of the tax deducted from payments received by a subcontractor and not repaid to the subcontractor exceeds the aggregate of—

(i) the amount of tax for which the subcontractor is liable, and

(ii) any amount which the subcontractor is liable to remit—

(I) under the Value-Added Tax Act, 1972,

(II) under the Capital Gains Tax Acts,

(III) under *Chapter 4* of *Part 42*, and

(IV) in respect of—

(A) employment contributions and self-employment contributions under the Social Welfare Acts,

(B) health contributions under the Health Contributions Act, 1979, and

(C) Employment and Training Levy under the Youth Employment Agency Act, 1981, as amended by the Labour Services Act, 1987.

(6) The Revenue Commissioners shall make regulations with respect to the assessment (including estimated assessment), charge, collection and recovery of tax deductible under *subsection (1)* and the regulations may, in relation to such tax, include any matters which might be included in regulations under *section 986* in relation to tax deductible under *Chapter 4* of *Part 42* and, without prejudice to the generality of the foregoing, regulations under this subsection may include provision for—

(*a*) (i) the issue for a year of assessment, or, in relation to such class or classes of subcontractor as may be specified in the regulations, for such longer period as may be so specified, of certificates of authorisation,

(ii) the refusal to issue, appeal against refusal to issue, recall or cancellation of certificates of authorisation and the surrender of such certificates, and

(iii) the production of documents or other material, including a photograph of the subcontractor or, in a case where the subcontractor is not an individual, a photograph of the individual by whom the certificate of authorisation will be produced in accordance with *subsection (12)(a)*, in support of an application for a certificate of authorisation;

(*b*) (i) the making, before the entering into of a relevant contract, by the persons who intend to enter into such a contract of a declaration, in a specified form, to the effect that, having regard to guidelines published by the Revenue Commissioners for the information of such persons as to the distinctions between contracts of employment and relevant contracts and without prejudice to the question of whether a particular

contract is a contract of employment or a relevant contract, they have satisfied themselves that in their opinion the contract which they propose to enter into is not a contract of employment,

(ii) the publication of guidelines by the Revenue Commissioners for the purposes of *subparagraph (i)*, and

(iii) the keeping by principals of every such declaration and the inspection of any or all such declarations;

(*c*) the keeping by principals of—

(i) such records as may be specified in the regulations,

(ii) relevant payments cards and the entry on those cards of such particulars as may be specified in the regulations,

(iii) cards (in this Chapter referred to as ''relevant tax deduction cards'') in such form as may be prescribed by the regulations and containing particulars of any deductions under *subsection (1)* and the entry on those cards of such other particulars as may be specified in the regulations;

(*d*) the making to the Revenue Commissioners of such returns relating to the payments made by principals as may be specified in the regulations and the inspection of the records referred to in *paragraph (c)* (including the cards referred to in that paragraph);

(*e*) the keeping by subcontractors of such records as may be specified in the regulations containing particulars of payments received by them, and the inspection of such records;

(*f*) the completion by principals of certificates of tax deducted (in this Chapter referred to as ''certificates of deduction'') from payments made to subcontractors and, as respects relevant contracts entered into on or after the 15th day of May, 1996, the entry on certificates of deduction of such particulars as may be specified in the regulations;

(*g*) the furnishing by subcontractors to principals of all such information or particulars as are required by principals to enable principals to comply with any provision of regulations made under this section;

(*h*) the sending to subcontractors, in cases where tax was deducted under *subsection (1)* from payments made to them, of statements containing particulars of their liability (if any) to tax for a year of assessment.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

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(8) The provisions of every enactment and of the Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971), which apply to the recovery of any amount of tax which a principal of the kind referred to in *subsection (1)* is liable under this section and those Regulations to pay to the Collector-General shall apply to the recovery of any amount of interest payable on that tax as if that amount of interest were a part of that tax.

(9) Where an amount of tax which a person who is or is deemed to be a principal of the kind referred to in *subsection (1)* is liable under this section and any regulations under *subsection (6)* to pay to the Collector-General is not so paid, simple interest on the amount shall be paid by the person to the Collector-General and shall be calculated from the date on which the amount became due for payment at a rate of 1.25 per cent for each month or part of a month during which the amount remains unpaid.

(10) *Subsection (9)* shall apply to tax recoverable from a person by virtue of a notice under Regulation 12(1) of the Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971), as if the tax were tax which the person was liable under those Regulations to remit for the last income tax month (within the meaning of those Regulations) of the year, or, as appropriate, of the months ending in the accounting period, to which the notice relates.

(11) (*a*) The Revenue Commissioners shall, on application to them in that behalf by a person, issue to the person a certificate (in this section referred to as a ''certificate of authorisation'') if they are satisfied—

(i) that the person is or is about to become a subcontractor engaged in the business of carrying out relevant contracts,

(ii) that the business is or will be carried on from a fixed place of business established in a permanent building and has or will have such equipment, stock and other facilities as in the opinion of the Revenue Commissioners are required for the purposes of the business,

(iii) that in connection with the business records to which *section 886(2)* refers are being or will be kept, and any other records normally kept in connection with such a business are being or will be kept properly and accurately,

(iv) that—

(I) the person, any partnership in which the person is or was a partner and any company (within the meaning of the Companies Act, 1963) of which the person is or was a proprietary director or proprietary employee,

(II) in a case where the person is a partnership, each partner, and

(III) in a case where the person is a company, each director of the company and any person who is either the beneficial owner of, or able, directly or indirectly, to control, more than 15 per cent of the ordinary share capital of the company,

has throughout the qualifying period complied with all the obligations imposed by the Tax Acts, the Capital Gains Tax Acts or the Value-Added Tax Act, 1972, in relation to—

(A) the payment or remittance of the taxes required to be paid or remitted under those Acts,

(B) the delivery of returns, and

(C) requests to supply to an inspector accounts of, or other information about, any business carried on,

by that individual, partnership or company, as the case may be, and

(v) that there is good reason to expect that that person, partnership or company will comply with the obligations referred to in *subparagraph (iii)* in relation to periods ending after the date of termination of the qualifying period.

(*b*) A person in respect of whom the Revenue Commissioners are not satisfied in relation to any one or more of the matters specified in *subparagraphs (i)* to *(iv)* of *paragraph (a)* shall nevertheless, for the purposes of the issue of a certificate of authorisation, be treated as a person in respect of whom they are so satisfied if the Revenue Commissioners are of the opinion that in all the circumstances such person's failure to satisfy them in relation to such matter or matters ought to be disregarded for those purposes.

(*c*) A certificate of authorisation issued under this subsection shall be valid for such period as the Revenue Commissioners may provide by regulations made pursuant to *subsection (6)*.

(12) (*a*) Where a subcontractor to whom a certificate of authorisation has been issued produces it to a principal, the principal shall apply to the Revenue Commissioners for a card (in this Chapter referred to as a ''relevant payments card'') in respect of the subcontractor.

(*b*) Where on such application the Revenue Commissioners are satisfied that a relevant payments card in respect of the subcontractor ought to be issued to the principal, they shall issue such a card to the principal who on receiving the card shall, subject to *subsection (13)*, be entitled during the income tax year (or the unexpired portion of the income tax year) to which the relevant payments card relates to make payments without deduction of tax to the subcontractor named in the card.

(13) (*a*) Where it appears to the Revenue Commissioners that—

(i) a certificate of authorisation was issued on the basis of false or misleading information,

(ii) a certificate of authorisation would not have been issued if information obtained subsequent to its issue had been available at the date of its issue,

(iii) a person to whom a certificate of authorisation was issued has permitted it to be misused,

(iv) in the case of a certificate issued to a company, there has been a change in control (within the meaning of *section 432*) of the company,

(v) a person to whom a certificate of authorisation was issued has failed to comply with any of the obligations imposed on such person by the Tax Acts, the Capital Gains Tax Acts, the Value-Added Tax Act, 1972, or by any regulations made thereunder in relation to—

(I) the payment or remittance of the taxes required to be paid or remitted under any of those Acts,

(II) the delivery of returns, and

(III) requests to supply to an inspector accounts of, or other information about, any business carried on by such person,

or

(vi) the business of carrying out relevant contracts in relation to which the certificate of authorisation was issued has ceased to be carried on by the person to whom the certificate was issued,

the Revenue Commissioners may at any time cancel the certificate and give notice in writing to that effect to any principal.

(*b*) Where a principal receives a notice under *paragraph (a)*, the principal shall—

(i) deduct tax in accordance with *subsection (1)* from any payments made to the person to whom the notice relates on or after the date of receipt of the notice, and

(ii) return to the Revenue Commissioners any relevant payments cards issued to the principal in relation to that person and any relevant tax deduction card kept by the principal in relation to that person.

(*c*) The Revenue Commissioners shall advise a person in relation to whom a notice under *paragraph (a)* was issued of the issue of such notice and shall require such person to return to them forthwith the certificate of authorisation issued to such person.

(14) (*a*) Where any person—

(i) for the purpose of obtaining a certificate of authorisation or a relevant payments card makes any false statement or furnishes any document which is false in a material particular,

(ii) disposes of a certificate of authorisation otherwise than by the return of the certificate to the Revenue Commissioners,

(iii) fails to return a certificate of authorisation to the Revenue Commissioners when required to do so in accordance with *subsection (13)(c)*,

(iv) is in possession of a certificate of authorisation that was not issued to such person by the Revenue Commissioners, or

(v) produces to a principal a certificate of authorisation after such person has been advised by the Revenue Commissioners of the issue of a notice under *subsection (13)(c)*,

such person shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.

(*b*) Any person who aids, abets, counsels or procures—

(i) the obtaining of a certificate of authorisation by means of a false statement,

(ii) the use by any person, other than the person to whom it was issued by the Revenue Commissioners, of a certificate of authorisation, or

(iii) the production to a principal of a document that is not a certificate of authorisation but purports to be such a certificate,

shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.

(*c*) Any person who—

(i) fails to enter on a relevant payments card or relevant tax deduction card such particulars as are required to be entered on that card by virtue of this section and any regulations made under this section,

(ii) fails to return to the Revenue Commissioners the relevant payments card or relevant tax deduction card in accordance with *subsection (13)(b)*,

(iii) returns to the Revenue Commissioners any such card on which are entered particulars which are incorrect in any material particular,

(iv) fails to comply with any provision of regulations made under this section requiring such person—

(I) to make any declaration,

(II) to provide any information or particulars to principals, or

(III) to keep or produce any records, documents or declarations,

(v) fails to give a subcontractor from whom tax has been deducted under *subsection (1)* a certificate of deduction in the prescribed form containing such particulars as are required to be entered in that certificate by virtue of any regulations made under this section, or

(vi) being a company to which a certificate of authorisation has been issued under *subsection (11)*, fails to notify the Revenue Commissioners of a change in control (within the meaning of *section 432*) of the company,

shall be guilty of an offence and shall be liable on summary conviction to a fine of £1,000.

(15) Notwithstanding any other enactment, summary proceedings in respect of offences under this section may be instituted within 10 years of the commission of the offence.

(16) *Section 987*(4), *subsection (4)* of *section 1052* (other than as that subsection applies in relation to proceedings for the recovery of a penalty in relation to a return referred to in *sections 879* and *880*), *subsections (3)* and *(7)* of *section 1053* and *sections 1068* and *1069* shall, with any necessary modifications, apply for the purposes of this section and any regulations made under this section as they apply for the purposes of those provisions.

(17) Any person who is aggrieved by a refusal by the Revenue Commissioners to issue a certificate of authorisation under this section may, by notice in writing to that effect given to the Revenue Commissioners within 30 days from the date of such refusal, apply to have such person's application heard and determined by the Appeal Commissioners.

(18) The Appeal Commissioners shall hear and determine an appeal made to them under *subsection (17)* as if it were an appeal against an assessment to income tax and, subject to *subsection (19)*, the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(19) On the hearing of an appeal made under *subsection (17)*, the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under this section.

(20) For the purposes of the hearing or rehearing of an appeal under *subsection (17)*, the Revenue Commissioners may nominate any of their officers to act on their behalf.