



Number 39 of 1997

TAXES CONSOLIDATION ACT, 1997

ARRANGEMENT OF PARTS, CHAPTERS AND SCHEDULES

INTERPRETATION AND BASIC CHARGING PROVISIONS

PART I

INTERPRETATION

PART 2

THE CHARGE TO TAX

- CHAPTER 1 *Income tax*
- CHAPTER 2 *Corporation tax*
- CHAPTER 3 *Capital gains tax*

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*
- CHAPTER 2 *Government and other public securities: interest payable without deduction of tax*
- CHAPTER 3 *Government and other public securities: exemptions from tax*
- CHAPTER 4 *Miscellaneous provisions*

PART 4

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE D CHARGE

- CHAPTER 1 *Supplementary charging provisions*
- CHAPTER 2 *Foreign dividends*
- CHAPTER 3 *Income tax: basis of assessment under Cases I and II*
- CHAPTER 4 *Income tax: basis of assessment under Cases III, IV and V*
- CHAPTER 5 *Computational provisions: corporation tax*
- CHAPTER 6 *Computational provisions: general*
- CHAPTER 7 *Special measures on discontinuance of, and change of basis of computation of profits or gains of, a trade or profession*
- CHAPTER 8 *Taxation of rents and certain other payments*
- CHAPTER 9 *Miscellaneous provisions*

PART 5

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE E CHARGE

- CHAPTER 1 *Basis of assessment, persons chargeable and extent of charge*
- CHAPTER 2 *Computational provisions*
- CHAPTER 3 *Expenses allowances and provisions relating to the general benefits in kind charge*
- CHAPTER 4 *Other benefit in kind charges*
- CHAPTER 5 *Miscellaneous charging provisions*

PART 6

COMPANY DISTRIBUTIONS, TAX CREDITS, FRANKED INVESTMENT INCOME AND ADVANCE CORPORATION TAX

- CHAPTER 1 *Taxation of company distributions*
- CHAPTER 2 *Meaning of distribution*
- CHAPTER 3 *Distributions and tax credits — general*
- CHAPTER 4 *Distributions out of certain exempt profits or gains or out of certain relieved income*
- CHAPTER 5 *Distributions out of certain income of manufacturing companies*
- CHAPTER 6 *Distributions — supplemental*
- CHAPTER 7 *Franked investment income*
- CHAPTER 8 *Advance corporation tax*
- CHAPTER 9 *Taxation of acquisition by a company of its own shares*

PART 7

INCOME TAX AND CORPORATION TAX EXEMPTIONS

- CHAPTER 1 *Income tax*
- CHAPTER 2 *Corporation tax*
- CHAPTER 3 *Income tax and corporation tax*

PART 8

ANNUAL PAYMENTS, CHARGES AND INTEREST

- CHAPTER 1 *Annual payments*
- CHAPTER 2 *Charges on income for corporation tax purposes*
- CHAPTER 3 *Principal provisions relating to the payment of interest*
- CHAPTER 4 *Interest payments by certain deposit takers*

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*
- CHAPTER 2 *Machinery or plant: initial allowances, wear and tear allowances, balancing allowances and balancing charges*
- CHAPTER 3 *Dredging: initial allowances and annual allowances*
- CHAPTER 4 *Miscellaneous and general*

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*
- CHAPTER 2 *Temple Bar Area*
- CHAPTER 3 *Designated areas, designated streets, enterprise areas
and multi-storey car parks in certain urban areas*
- CHAPTER 4 *Qualifying resort areas*
- CHAPTER 5 *Designated islands*
- CHAPTER 6 *Dublin Docklands Area*

PART 11

CAPITAL ALLOWANCES AND EXPENSES FOR CERTAIN ROAD VEHICLES

PART 12

PRINCIPAL PROVISIONS RELATING TO LOSS RELIEF, TREATMENT OF CER-
TAIN LOSSES AND CAPITAL ALLOWANCES, AND GROUP RELIEF

- CHAPTER 1 *Income tax: loss relief*
- CHAPTER 2 *Income tax: loss relief — treatment of capital
allowances*
- CHAPTER 3 *Corporation tax: loss relief*
- CHAPTER 4 *Income tax and corporation tax: treatment of certain
losses and certain capital allowances*
- CHAPTER 5 *Group relief*

PART 13

CLOSE COMPANIES

- CHAPTER 1 *Interpretation and general*
- CHAPTER 2 *Additional matters to be treated as distributions,
charges to tax in respect of certain loans and sur-
charges on certain undistributed income*

PART 14

TAXATION OF COMPANIES ENGAGED IN MANUFACTURING TRADES, CER-
TAIN TRADING OPERATIONS CARRIED ON IN SHANNON AIRPORT AND
CERTAIN TRADING OPERATIONS CARRIED ON IN THE CUSTOM HOUSE
DOCKS AREA

- CHAPTER 1 *Interpretation and general*
- CHAPTER 2 *Principal provisions*

PART 15

PERSONAL ALLOWANCES AND RELIEFS AND CERTAIN OTHER INCOME
TAX AND CORPORATION TAX RELIEFS

- CHAPTER 1 *Personal allowances and reliefs*
- CHAPTER 2 *Income tax and corporation tax: reliefs applicable to
both*
- CHAPTER 3 *Corporation tax reliefs*

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PART 16

INCOME TAX RELIEF FOR INVESTMENT IN CORPORATE TRADES — BUSINESS EXPANSION SCHEME AND SEED CAPITAL SCHEME

PART 17

PROFIT SHARING SCHEMES AND EMPLOYEE SHARE OWNERSHIP TRUSTS

CHAPTER 1 *Profit sharing schemes*

CHAPTER 2 *Employee share ownership trusts*

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*

CHAPTER 2 *Payments to subcontractors in certain industries*

TAXATION OF CHARGEABLE GAINS

PART 19

PRINCIPAL PROVISIONS RELATING TO TAXATION OF CHARGEABLE GAINS

CHAPTER 1 *Assets and acquisitions and disposals of assets*

CHAPTER 2 *Computation of chargeable gains and allowable losses*

CHAPTER 3 *Assets held in a fiduciary or representative capacity, inheritances and settlements*

CHAPTER 4 *Shares and securities*

CHAPTER 5 *Life assurance and deferred annuities*

CHAPTER 6 *Transfer of business assets*

CHAPTER 7 *Other reliefs and exemptions*

PART 20

COMPANIES' CHARGEABLE GAINS

CHAPTER 1 *General*

CHAPTER 2 *Provisions where companies cease to be resident in the State*

PART 21

MERGERS, DIVISIONS, TRANSFERS OF ASSETS AND EXCHANGES OF SHARES CONCERNING COMPANIES OF DIFFERENT MEMBER STATES

TRANSACTIONS IN LAND

PART 22

PROVISIONS RELATING TO DEALING IN OR DEVELOPING LAND AND DISPOSALS OF DEVELOPMENT LAND

CHAPTER 1 *Income tax and corporation tax: profits or gains from dealing in or developing land*

CHAPTER 2 *Capital gains tax: disposals of development land*

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

OTHER SPECIAL PROVISIONS

PART 23

FARMING AND MARKET GARDENING

- CHAPTER 1 *Interpretation and general*
CHAPTER 2 *Farming: relief for increase in stock values*

PART 24

TAXATION OF PROFITS OF CERTAIN MINES AND PETROLEUM TAXATION

- CHAPTER 1 *Taxation of profits of certain mines*
CHAPTER 2 *Petroleum taxation*

PART 25

INDUSTRIAL AND PROVIDENT SOCIETIES, BUILDING SOCIETIES, AND TRUSTEE SAVINGS BANKS

- CHAPTER 1 *Industrial and provident societies*
CHAPTER 2 *Building societies*
CHAPTER 3 *Trustee savings banks*

PART 26

LIFE ASSURANCE COMPANIES

- CHAPTER 1 *General provisions*
CHAPTER 2 *Special investment policies*
CHAPTER 3 *Provisions applying to overseas life assurance companies*

PART 27

UNIT TRUSTS AND OFFSHORE FUNDS

- CHAPTER 1 *Unit trusts*
CHAPTER 2 *Offshore funds*

PART 28

PURCHASE AND SALE OF SECURITIES

- CHAPTER 1 *Purchase and sale of securities*
CHAPTER 2 *Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits*

PART 29

PATENTS, SCIENTIFIC AND CERTAIN OTHER RESEARCH, KNOW-HOW AND CERTAIN TRAINING

- CHAPTER 1 *Patents*
CHAPTER 2 *Scientific and certain other research*
CHAPTER 3 *Know-how and certain training*

PART 30

OCCUPATIONAL PENSION SCHEMES, RETIREMENT ANNUITIES, PURCHASED LIFE ANNUITIES AND CERTAIN PENSIONS

- CHAPTER 1 *Occupational pension schemes*

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

CHAPTER 2 *Retirement annuities*
CHAPTER 3 *Purchased life annuities*
CHAPTER 4 *Miscellaneous*

PART 31

TAXATION OF SETTLORS, ETC., IN RESPECT OF SETTLED OR TRANSFERRED
INCOME

CHAPTER 1 *Revocable dispositions for short periods and certain
dispositions in favour of children*
CHAPTER 2 *Settlements on children generally*

PART 32

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION AND
SURCHARGE ON CERTAIN INCOME OF TRUSTEES

CHAPTER 1 *Estates of deceased persons in course of admin-
istration*
CHAPTER 2 *Surcharge on certain income of trustees*

PART 33

ANTI-AVOIDANCE

CHAPTER 1 *Transfer of assets abroad*
CHAPTER 2 *Miscellaneous*

PART 34

PROVISIONS RELATING TO THE RESIDENCE OF INDIVIDUALS

PART 35

DOUBLE TAXATION RELIEF

CHAPTER 1 *Principal reliefs*
CHAPTER 2 *Miscellaneous*

PART 36

MISCELLANEOUS SPECIAL PROVISIONS

MANAGEMENT PROVISIONS

PART 37

ADMINISTRATION

PART 38

RETURNS OF INCOME AND GAINS, OTHER OBLIGATIONS AND RETURNS,
AND REVENUE POWERS

CHAPTER 1 *Income tax: returns of income*
CHAPTER 2 *Corporation tax: returns of profits*
CHAPTER 3 *Other obligations and returns*
CHAPTER 4 *Revenue powers*
CHAPTER 5 *Capital gains tax: returns, information, etc.*

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

PART 39

ASSESSMENTS

- CHAPTER 1 *Income tax and corporation tax*
- CHAPTER 2 *Provision against double assessment and relief for error or mistake*
- CHAPTER 3 *Capital gains tax*

PART 40

APPEALS

- CHAPTER 1 *Appeals against income tax and corporation tax assessments*
- CHAPTER 2 *Appeals against capital gains tax assessments*
- CHAPTER 3 *Miscellaneous*

PART 41

SELF ASSESSMENT

PART 42

COLLECTION AND RECOVERY

- CHAPTER 1 *Income tax*
- CHAPTER 2 *Corporation tax*
- CHAPTER 3 *Capital gains tax*
- CHAPTER 4 *Collection and recovery of income tax on certain emoluments (PAYE system)*
- CHAPTER 5 *Miscellaneous provisions*

PART 43

PARTNERSHIPS AND EUROPEAN ECONOMIC INTEREST GROUPINGS (EEIG)

PART 44

MARRIED, SEPARATED AND DIVORCED PERSONS

- CHAPTER 1 *Income tax*
- CHAPTER 2 *Capital gains tax*

PART 45

CHARGING AND ASSESSING OF NON-RESIDENTS

- CHAPTER 1 *Income tax and corporation tax*
- CHAPTER 2 *Capital gains tax*

PART 46

PERSONS CHARGEABLE IN A REPRESENTATIVE CAPACITY

- CHAPTER 1 *Income tax and corporation tax*
- CHAPTER 2 *Capital gains tax*

PART 47

PENALTIES, REVENUE OFFENCES, INTEREST ON OVERDUE TAX AND OTHER SANCTIONS

- CHAPTER 1 *Income tax and corporation tax penalties*
- CHAPTER 2 *Other corporation tax penalties*
- CHAPTER 3 *Capital gains tax penalties*
- CHAPTER 4 *Revenue offences*
- CHAPTER 5 *Interest on overdue tax*
- CHAPTER 6 *Other sanctions*

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PART 48

MISCELLANEOUS AND SUPPLEMENTAL

PART 49

COMMENCEMENT, REPEALS, TRANSITIONAL PROVISIONS, ETC

SCHEDULE 1

SUPPLEMENTARY PROVISIONS CONCERNING THE EXTENSION OF CHARGE TO TAX TO PROFITS AND INCOME DERIVED FROM ACTIVITIES CARRIED ON AND EMPLOYMENTS EXERCISED ON THE CONTINENTAL SHELF

SCHEDULE 2

MACHINERY FOR ASSESSMENT, CHARGE AND PAYMENT OF TAX UNDER SCHEDULE C AND, IN CERTAIN CASES, SCHEDULE D

SCHEDULE 3

RELIEFS IN RESPECT OF INCOME TAX CHARGED ON PAYMENTS ON RETIREMENT, ETC

SCHEDULE 4

EXEMPTION OF SPECIFIED NON-COMMERCIAL STATE SPONSORED BODIES FROM CERTAIN TAX PROVISIONS

SCHEDULE 5

DESCRIPTION OF CUSTOM HOUSE DOCKS AREA

SCHEDULE 6

DESCRIPTION OF TEMPLE BAR AREA

SCHEDULE 7

DESCRIPTION OF CERTAIN ENTERPRISE AREAS

SCHEDULE 8

DESCRIPTION OF QUALIFYING RESORT AREAS

SCHEDULE 9

CHANGE IN OWNERSHIP OF COMPANY: DISALLOWANCE OF TRADING LOSSES

SCHEDULE 10

RELIEF FOR INVESTMENT IN CORPORATE TRADES: SUBSIDIARIES

SCHEDULE 11

PROFIT SHARING SCHEMES

SCHEDULE 12

EMPLOYEE SHARE OWNERSHIP TRUSTS

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

SCHEDULE 13

ACCOUNTABLE PERSONS FOR PURPOSES OF CHAPTER 1 OF PART 18

SCHEDULE 14

CAPITAL GAINS TAX: LEASES

SCHEDULE 15

LIST OF BODIES FOR PURPOSES OF *SECTION 610*

SCHEDULE 16

BUILDING SOCIETIES: CHANGE OF STATUS

SCHEDULE 17

REORGANISATION INTO COMPANIES OF TRUSTEE SAVINGS BANKS

SCHEDULE 18

ACCOUNTING FOR AND PAYMENT OF TAX DEDUCTED FROM RELEVANT
PAYMENTS AND UNDISTRIBUTED RELEVANT INCOME

SCHEDULE 19

OFFSHORE FUNDS: DISTRIBUTING FUNDS

SCHEDULE 20

OFFSHORE FUNDS: COMPUTATION OF OFFSHORE INCOME GAINS

SCHEDULE 21

PURCHASE AND SALE OF SECURITIES: APPROPRIATE AMOUNT IN RESPECT
OF THE INTEREST

SCHEDULE 22

DIVIDENDS REGARDED AS PAID OUT OF PROFITS ACCUMULATED BEFORE
GIVEN DATE

SCHEDULE 23

OCCUPATIONAL PENSION SCHEMES

SCHEDULE 24

RELIEF FROM INCOME TAX AND CORPORATION TAX BY MEANS OF CREDIT
IN RESPECT OF FOREIGN TAX

SCHEDULE 25

CONVENTION BETWEEN THE GOVERNMENT OF IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME

SCHEDULE 26

REPLACEMENT OF HARBOUR AUTHORITIES BY PORT COMPANIES

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCHEDULE 27

FORMS OF DECLARATIONS TO BE MADE BY CERTAIN PERSONS

SCHEDULE 28

STATEMENTS, LISTS AND DECLARATIONS

SCHEDULE 29

PROVISIONS REFERRED TO IN SECTIONS 1052, 1053 AND 1054

SCHEDULE 30

REPEALS

SCHEDULE 31

CONSEQUENTIAL AMENDMENTS

SCHEDULE 32

TRANSITIONAL PROVISIONS

ARRANGEMENT OF SECTIONS

INTERPRETATION AND BASIC CHARGING PROVISIONS

PART 1

INTERPRETATION

Section

1. Interpretation of this Act.
2. Interpretation of Tax Acts.
3. Interpretation of Income Tax Acts.
4. Interpretation of Corporation Tax Acts.
5. Interpretation of Capital Gains Tax Acts.
6. Construction of references to child in Tax Acts and Capital Gains Tax Acts.
7. Application to certain taxing statutes of Age of Majority Act, 1985.
8. Construction of certain taxing statutes in accordance with Status of Children Act, 1987.
9. Subsidiaries.
10. Connected persons.
11. Meaning of “control” in certain contexts.

PART 2

THE CHARGE TO TAX

CHAPTER 1

Income tax.

12. The charge to income tax.
13. Extension of charge to income tax to profits and income derived from activities carried on and employments exercised on the Continental Shelf.
14. Fractions of a pound and yearly assessments.
15. Rate of charge.
16. Income tax charged by deduction.
17. Schedule C.
18. Schedule D.
19. Schedule E.
20. Schedule F.

CHAPTER 2

Corporation tax

Section

21. The charge to corporation tax and exclusion of income tax and capital gains tax.
22. Reduced rate of corporation tax for certain income.
23. Application of *section 13* for purposes of corporation tax.
24. Companies resident in the State: income tax on payments made or received.
25. Companies not resident in the State.
26. General scheme of corporation tax.
27. Basis of, and periods for, assessment.

CHAPTER 3

Capital gains tax.

28. Taxation of capital gains and rate of charge.
29. Persons chargeable.
30. Partnerships.
31. Amount chargeable.

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.

32. Interpretation (*Chapter 1*).
33. Method of charge and payment.
34. Stock, dividends or interest belonging to the State.
35. Securities of foreign territories.

CHAPTER 2

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

36. Government securities.
37. Securities of certain State-owned companies.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

38. Certain State-guaranteed securities.
39. Securities of certain European bodies.
40. Securities of International Bank for Reconstruction and Development.
41. Securities of designated bodies under the Securitisation (Proceeds of Certain Mortgages) Act, 1995.

CHAPTER 3

Government and other public securities: exemptions from tax.

42. Exemption of interest on savings certificates.
43. Certain securities issued by Minister for Finance.
44. Exemption from corporation tax of certain securities issued by Minister for Finance.
45. Exemption of non-interest-bearing securities.
46. Exemption of premiums on Investment Bonds.
47. Certain securities of ACC Bank plc.
48. Exemption of premiums on certain securities.
49. Exemption of certain securities.
50. Securities of Irish local authorities issued abroad.

CHAPTER 4

Miscellaneous provisions.

51. Funding bonds issued in respect of interest on certain debts.

PART 4

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER 1

Supplementary charging provisions.

52. Persons chargeable.
53. Cattle and milk dealers.
54. Interest, etc. paid without deduction of tax under Schedule C.
55. Taxation of strips of securities.
56. Tax on quarries, mines and other concerns chargeable under Case I(b) of Schedule D.
57. Extension of charge to tax under Case III of Schedule D in certain circumstances.

Section

- 58. Charge to tax of profits or gains from unknown or unlawful source.
- 59. Charge to tax of income from which tax has been deducted.

CHAPTER 2

Foreign dividends.

- 60. Interpretation (*Chapter 2*).
- 61. Dividends entrusted for payment in the State.
- 62. Dividends paid outside the State and proceeds of sale of dividend coupons.
- 63. Exemption of dividends of non-residents.
- 64. Interest on quoted Eurobonds.

CHAPTER 3

Income tax: basis of assessment under Cases I and II.

- 65. Cases I and II: basis of assessment.
- 66. Special basis at commencement of trade or profession.
- 67. Special basis on discontinuance of trade or profession.
- 68. Short-lived businesses.
- 69. Changes of proprietorship.

CHAPTER 4

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

- 70. Case III: basis of assessment.
- 71. Foreign securities and possessions.
- 72. Charge to tax on sums applied outside the State in repaying certain loans.
- 73. Income from certain possessions in Great Britain or Northern Ireland.
- 74. Case IV: basis of assessment.
- 75. Case V: basis of assessment.

CHAPTER 5

Computational provisions: corporation tax.

- 76. Computation of income: application of income tax principles.
- 77. Miscellaneous special rules for computation of income.

Section

- 78. Computation of companies' chargeable gains.
- 79. Foreign currency: computation of income and chargeable gains.
- 80. Taxation of certain foreign currencies.

CHAPTER 6

Computational provisions: general.

- 81. General rule as to deductions.
- 82. Pre-trading expenditure.
- 83. Expenses of management of investment companies.
- 84. Expenses in relation to establishment or alteration of super-annuation schemes.
- 85. Deduction for certain industrial premises.
- 86. Cost of registration of trade marks.
- 87. Debts set off against profits and subsequently released.
- 88. Deduction for gifts to Enterprise Trust Ltd.

CHAPTER 7

Special measures on discontinuance of, and change of basis of computation of profits or gains of, a trade or profession

- 89. Valuation of trading stock at discontinuance of trade.
- 90. Valuation of work in progress at discontinuance of profession.
- 91. Receipts accruing after discontinuance of trade or profession.
- 92. Receipts and losses accruing after change treated as discontinuance.
- 93. Cash basis, etc: relief for certain individuals.
- 94. Conventional basis: general charge on receipts after change of basis.
- 95. Supplementary provisions as to tax under *section 91* or *94*.

CHAPTER 8

Taxation of rents and certain other payments.

- 96. Interpretation (*Chapter 8*).
- 97. Computational rules and allowable deductions.
- 98. Treatment of premiums, etc. as rent.
- 99. Charge on assignment of lease granted at undervalue.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

100. Charge on sale of land with right to reconveyance.
101. Relief for amount not received.
102. Deduction by reference to premium, etc. paid in computation of profits for purposes of Schedule D, Cases I and II.
103. Deduction by reference to premiums, etc. paid in computation of profits for purposes of this Chapter.
104. Taxation of certain rents and other payments.
105. Taxation of rents: restriction in respect of certain rent and interest.
106. Tax treatment of receipts and outgoings on sale of premises.

CHAPTER 9

Miscellaneous provisions.

107. Apportionment of profits.
108. Statement of profits.
109. Payments in respect of redundancy.
110. Securitisation of assets.
111. Allowance to owner of let mineral rights for expenses of management of minerals.

PART 5

PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER 1

Basis of assessment, persons chargeable and extent of charge.

112. Basis of assessment, persons chargeable and extent of charge.

CHAPTER 2

Computational provisions.

113. Making of deductions.
114. General rule as to deductions.
115. Fixed deduction for certain classes of persons.

CHAPTER 3

Expenses allowances and provisions relating to the general benefits in kind charge.

116. Interpretation (*Chapter 3*).
117. Expenses allowances.

Section

- 118. Benefits in kind: general charging provision.
- 119. Valuation of benefits in kind.
- 120. Unincorporated bodies, partnerships and individuals.

CHAPTER 4

Other benefit in kind charges.

- 121. Benefit of use of car.
- 122. Preferential loan arrangements.

CHAPTER 5

Miscellaneous charging provisions.

- 123. General tax treatment of payments on retirement or removal from office or employment.
- 124. Tax treatment of certain severance payments.
- 125. Tax treatment of benefits received under permanent health benefit schemes.
- 126. Tax treatment of certain benefits payable under Social Welfare Acts.
- 127. Tax treatment of restrictive covenants.
- 128. Tax treatment of directors of companies and employees granted rights to acquire shares or other assets.

PART 6

COMPANY DISTRIBUTIONS, TAX CREDITS, FRANKED INVESTMENT INCOME
AND ADVANCE CORPORATION TAX

CHAPTER 1

Taxation of company distributions.

- 129. Irish resident company distributions not generally chargeable to corporation tax.

CHAPTER 2

Meaning of distribution.

- 130. Matters to be treated as distributions.
- 131. Bonus issues following repayment of share capital.
- 132. Matters to be treated or not treated as repayments of share capital.
- 133. Limitation on meaning of “distribution” — general.

Section

134. Limitation on meaning of “distribution” in relation to certain payments made in respect of “foreign source” finance.
135. Distributions: supplemental.

CHAPTER 3

Distributions and tax credits — general.

136. Tax credit for certain recipients of distributions.
137. Disallowance of reliefs in respect of bonus issues.
138. Treatment of dividends on certain preference shares.
139. Dividends and other distributions at gross rate or of gross amount.

CHAPTER 4

Distributions out of certain exempt profits or gains or out of certain relieved income.

140. Distributions out of profits or gains from stallion fees, stud greyhound services fees and occupation of certain woodlands.
141. Distributions out of income from patent royalties.
142. Distributions out of profits of certain mines.
143. Distributions out of profits from coal, gypsum and anhydrite mining operations.
144. Distributions out of profits from trading within Shannon Airport.
145. Distributions out of profits from export of certain goods.
146. Provisions supplementary to *section 145*.

CHAPTER 5

Distributions out of certain income of manufacturing companies.

147. Distributions.
148. Treatment of certain deductions in relation to relevant distributions.
149. Dividends and other distributions at gross rate or of gross amount.
150. Tax credit for recipients of certain distributions.
151. Appeals.

CHAPTER 6

Distributions — supplemental

Section

152. Explanation of tax credit to be annexed to interest and dividend warrants.
153. Distributions to non-residents.
154. Attribution of distributions to accounting periods.
155. Restriction of certain reliefs in respect of distributions out of certain exempt or relieved profits.

CHAPTER 7

Franked investment income.

156. Franked investment income and franked payments.
157. Set-off of losses, etc. against franked investment income.
158. Set-off of loss brought forward or terminal loss against franked investment income in the case of financial concerns.

CHAPTER 8

Advance corporation tax.

159. Liability for advance corporation tax.
160. Set-off of advance corporation tax.
161. Rectification of excessive set-off of advance corporation tax.
162. Calculation of advance corporation tax where company receives distributions.
163. Tax credit recovered from company.
164. Restrictions as to payment of tax credit.
165. Group dividends.
166. Surrender of advance corporation tax.
167. Change of ownership of company: calculation and treatment of advance corporation tax.
168. Distributions to certain non-resident companies.
169. Non-distributing investment companies.
170. Interest in respect of certain securities.
171. Returns, payment and collection of advance corporation tax.
172. Application of Corporation Tax Acts.

CHAPTER 9

Taxation of acquisition by a company of its own shares

Section

173. Interpretation (*Chapter 9*).
174. Taxation of dealer's receipts on purchase of shares by issuing company or by its subsidiary.
175. Purchase of own shares by quoted company.
176. Purchase of unquoted shares by issuing company or its subsidiary.
177. Conditions as to residence and period of ownership.
178. Conditions as to reduction of vendor's interest as shareholder.
179. Conditions applicable where purchasing company is member of a group.
180. Additional conditions.
181. Relaxation of conditions in certain cases.
182. Returns.
183. Information.
184. Treasury shares.
185. Associated persons.
186. Connected persons.

PART 7

INCOME TAX AND CORPORATION TAX EXEMPTIONS

CHAPTER 1

Income tax.

187. Exemption from income tax and associated marginal relief.
188. Age exemption and associated marginal relief.
189. Payments in respect of personal injuries.
190. Certain payments made by the Haemophilia HIV Trust.
191. Taxation treatment of Hepatitis C compensation payments.
192. Payments in respect of thalidomide children.
193. Income from scholarships.
194. Child benefit.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

195. Exemption of certain earnings of writers, composers and artists.
196. Expenses of members of judiciary.
197. Bonus or interest paid under instalment savings schemes.
198. Certain interest not to be chargeable.
199. Interest on certain securities.
200. Certain foreign pensions.
201. Exemptions and reliefs in respect of tax under *section 123*.
202. Relief for agreed pay restructuring.
203. Payments in respect of redundancy.
204. Military and other pensions, gratuities and allowances.
205. Veterans of War of Independence.
206. Income from investments under Social Welfare (Consolidation) Act, 1993.
207. Rents of properties belonging to hospitals and other charities.
208. Lands owned and occupied, and trades carried on by, charities.
209. 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.
210. The Great Book of Ireland Trust.
211. Friendly societies.
212. Credit unions.
213. Trade unions.
214. Local authorities, etc.
215. Certain profits of agricultural societies.
216. Profits from lotteries.

CHAPTER 2

Corporation tax.

217. Certain income of Nítrigin Éireann Teoranta.
218. Certain income of Housing Finance Agency plc.
219. Income of body designated under Irish Takeover Panel Act, 1997.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 220. Profits of certain bodies corporate.
- 221. Certain payments to National Co-operative Farm Relief Services Ltd and certain payments made to its members.
- 222. Certain dividends from a non-resident subsidiary.

CHAPTER 3

Income tax and corporation tax.

- 223. Small enterprise grants.
- 224. Grants to medium and large industrial undertakings.
- 225. Employment grants.
- 226. Certain employment grants and recruitment subsidies.
- 227. Certain income arising to specified non-commercial state-sponsored bodies.
- 228. Income arising to designated bodies under the Securitisation (Proceeds of Certain Mortgages) Act, 1995.
- 229. Harbour authorities and port companies.
- 230. National Treasury Management Agency.
- 231. Profits or gains from stallion fees.
- 232. Profits from occupation of certain woodlands.
- 233. Stud greyhound service fees.
- 234. Certain income derived from patent royalties.
- 235. Bodies established for promotion of athletic or amateur games or sports.
- 236. Loan of certain art objects.

PART 8

ANNUAL PAYMENTS, CHARGES AND INTEREST

CHAPTER 1

Annual payments.

- 237. Annual payments payable wholly out of taxed income.
- 238. Annual payments not payable out of taxed income.
- 239. Income tax on payments by resident companies.
- 240. Provisions as to tax under *section 239*.
- 241. Income tax on payments by non-resident companies.
- 242. Annual payments for non-taxable consideration.

CHAPTER 2

Charges on income for corporation tax purposes

Section

243. Allowance of charges on income.

CHAPTER 3

Principal provisions relating to the payment of interest.

244. Relief for interest paid on certain home loans.
245. Relief for certain bridging loans.
246. Interest payments by companies and to non-residents.
247. Relief to companies on loans applied in acquiring interest in other companies.
248. Relief to individuals on loans applied in acquiring interest in companies.
249. Rules relating to recovery of capital and replacement loans.
250. Extension of relief under *section 248* to certain individuals in relation to loans applied in acquiring interest in certain companies.
251. 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.
252. Restriction of relief to individuals on loans applied in acquiring interest in companies which become quoted companies.
253. Relief to individuals on loans applied in acquiring interest in partnerships.
254. Interest on borrowings to replace capital withdrawn in certain circumstances from a business.
255. Arrangements for payment of interest less tax or of fixed net amount.

CHAPTER 4

Interest payments by certain deposit takers.

256. Interpretation (*Chapter 4*).
257. Deduction of tax from relevant interest.
258. Returns and collection of appropriate tax.
259. Alternative amount on account of appropriate tax.
260. Provisions supplemental to *sections 258* and *259*.
261. Taxation of relevant interest, etc.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 262. Statement furnished by relevant deposit taker.
- 263. Declarations relating to deposits of non-residents.
- 264. Conditions and declarations relating to special savings accounts.
- 265. Declarations by companies and pension schemes.
- 266. Declarations relating to deposits of charities.
- 267. Repayment of appropriate tax in certain cases.

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

- 268. Meaning of “industrial building or structure”.
- 269. Meaning of “the relevant interest”.
- 270. Meaning of “expenditure on construction of building or structure”.
- 271. Industrial building allowances.
- 272. Writing-down allowances.
- 273. Acceleration of writing-down allowances in respect of certain expenditure on certain industrial buildings or structures.
- 274. Balancing allowances and balancing charges.
- 275. Restriction of balancing allowances on sale of industrial building or structure.
- 276. Application of *sections 272 and 274* in relation to capital expenditure on refurbishment.
- 277. Writing off of expenditure and meaning of “residue of expenditure”.
- 278. Manner of making allowances and charges.
- 279. Purchases of certain buildings or structures.
- 280. Temporary disuse of building or structure.
- 281. Special provisions in regard to leases.
- 282. Supplementary provisions (*Chapter 1*).

CHAPTER 2

Machinery or plant: initial allowances, wear and tear allowances, balancing allowances and balancing charges

Section

- 283. Initial allowances.
- 284. Wear and tear allowances.
- 285. Acceleration of wear and tear allowances.
- 286. Increased wear and tear allowances for taxis and cars for short-term hire.
- 287. Wear and tear allowances deemed to have been made in certain cases.
- 288. Balancing allowances and balancing charges.
- 289. Calculation of balancing allowances and balancing charges in certain cases.
- 290. Option in case of replacement.
- 291. Computer software.
- 292. Meaning of “amount still unallowed”.
- 293. Application to partnerships.
- 294. Machinery or plant used partly for non-trading purposes.
- 295. Option in case of succession under will or intestacy.
- 296. Balancing allowances and balancing charges: wear and tear allowances deemed to have been made in certain cases.
- 297. Subsidies towards wear and tear.
- 298. Allowances to lessors.
- 299. Allowances to lessees.
- 300. Manner of making allowances and charges.
- 301. Application to professions, employments and offices.

CHAPTER 3

Dredging: initial allowances and annual allowances.

- 302. Interpretation (*Chapter 3*).
- 303. Allowances for expenditure on dredging.

CHAPTER 4

Miscellaneous and general.

- 304. Income tax: allowances and charges in taxing a trade, etc.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

305. Income tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax.
306. Meaning of basis period.
307. Corporation tax: allowances and charges in taxing a trade.
308. Corporation tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax.
309. Companies not resident in the State.
310. Allowances in respect of certain contributions to capital expenditure of local authorities.
311. Apportionment of consideration and exchanges and surrenders of leasehold interests.
312. Special provisions as to certain sales.
313. Effect, in certain cases, of succession to trade, etc.
314. Procedure on apportionment.
315. Property used for purposes of “exempted trading operations”.
316. Interpretation of certain references to expenditure and time when expenditure is incurred.
317. Treatment of grants.
318. Meaning of “sale, insurance, salvage or compensation moneys”.
319. Adjustment of allowances by reference to value-added tax.
320. Other interpretation (*Part 9*).
321. Provisions of general application in relation to the making of allowances and charges.

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.

322. Interpretation (*Chapter 1*).
323. Capital allowances in relation to construction of certain commercial premises.
324. Double rent allowance in respect of rent paid for certain business premises.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 325. Rented residential accommodation: deduction for certain expenditure on construction.
- 326. Rented residential accommodation: deduction for certain expenditure on conversion.
- 327. Rented residential accommodation: deduction for certain expenditure on refurbishment.
- 328. Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
- 329. Provisions supplementary to *sections 325 to 328.*

CHAPTER 2

Temple Bar Area.

- 330. Interpretation (*Chapter 2*).
- 331. Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.
- 332. Capital allowances in relation to construction or refurbishment of certain commercial premises.
- 333. Double rent allowance in respect of rent paid for certain business premises.
- 334. Rented residential accommodation: deduction for certain expenditure on construction.
- 335. Rented residential accommodation: deduction for certain expenditure on conversion.
- 336. Rented residential accommodation: deduction for certain expenditure on refurbishment.
- 337. Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
- 338. Provisions supplementary to *sections 334 to 337.*

CHAPTER 3

Designated areas, designated streets, enterprise areas and multi-storey car parks in certain urban areas.

- 339. Interpretation (*Chapter 3*).
- 340. Designated areas, designated streets and enterprise areas.
- 341. Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.
- 342. Capital allowances in relation to construction or refurbishment of certain commercial premises.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 343. Capital allowances in relation to construction or refurbishment of certain buildings or structures in enterprise areas.
- 344. Capital allowances in relation to construction or refurbishment of certain multi-storey car parks.
- 345. Double rent allowance in respect of rent paid for certain business premises.
- 346. Rented residential accommodation: deduction for certain expenditure on construction.
- 347. Rented residential accommodation: deduction for certain expenditure on conversion.
- 348. Rented residential accommodation: deduction for certain expenditure on refurbishment.
- 349. Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
- 350. Provisions supplementary to *sections 346 to 349.*

CHAPTER 4

Qualifying resort areas.

- 351. Interpretation (*Chapter 4*).
- 352. Accelerated capital allowances in relation to the construction or refurbishment of certain industrial buildings or structures.
- 353. Capital allowances in relation to the construction or refurbishment of certain commercial premises.
- 354. Double rent allowance in respect of rent paid for certain business premises.
- 355. Disclaimer of capital allowances on holiday cottages, holiday apartments, etc.
- 356. Rented residential accommodation: deduction for certain expenditure on construction.
- 357. Rented residential accommodation: deduction for certain expenditure on conversion.
- 358. Rented residential accommodation: deduction for certain expenditure on refurbishment.
- 359. Provisions supplementary to *sections 356 to 358.*

CHAPTER 5

Designated islands.

- 360. Interpretation (*Chapter 5*).
- 361. Rented residential accommodation: deduction for certain expenditure on construction.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 362. Rented residential accommodation: deduction for certain expenditure on conversion.
- 363. Rented residential accommodation: deduction for certain expenditure on refurbishment.
- 364. Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
- 365. Provisions supplementary to *sections 360 to 364.*

CHAPTER 6

Dublin Docklands Area

- 366. Interpretation (*Chapter 6*).
- 367. Qualifying areas.
- 368. Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.
- 369. Capital allowances in relation to construction or refurbishment of certain commercial premises.
- 370. Double rent allowance in respect of rent paid for certain business premises.
- 371. Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
- 372. Provisions supplementary to *section 371.*

PART 11

CAPITAL ALLOWANCES AND EXPENSES FOR CERTAIN ROAD VEHICLES.

- 373. Interpretation (*Part 11*).
- 374. Capital allowances for cars costing over certain amount.
- 375. Limit on renewals allowance for cars.
- 376. Restriction of deduction in respect of running expenses of cars.
- 377. Limit on deductions, etc. for hiring cars.
- 378. Cars: provisions as to hire-purchase, etc.
- 379. Cars: provisions where hirer becomes owner.
- 380. Provisions supplementary to *sections 374 to 379.*

PART 12

PRINCIPAL PROVISIONS RELATING TO LOSS RELIEF, TREATMENT OF CERTAIN LOSSES AND CAPITAL ALLOWANCES, AND GROUP RELIEF

CHAPTER 1

Income tax: loss relief

Section

- 381. Right to repayment of tax by reference to losses.
- 382. Right to carry forward losses to future years.
- 383. Relief under Case IV for losses.
- 384. Relief under Case V for losses.
- 385. Terminal loss.
- 386. Determination of terminal loss.
- 387. Calculation of amount of profits or gains for purposes of terminal loss.
- 388. Meaning of “permanently discontinued” for purposes of terminal loss.
- 389. Determination of claim for terminal loss.
- 390. Amount of assessment made under *section 238* to be allowed as a loss for certain purposes.

CHAPTER 2

Income tax: loss relief — treatment of capital allowances.

- 391. Interpretation (*Chapter 2*).
- 392. Option to treat capital allowances as creating or augmenting a loss.
- 393. Extent to which capital allowances to be taken into account for purposes of *section 392*.
- 394. Effect of giving relief under *section 381* by reference to capital allowances.
- 395. Relief affected by subsequent changes of law, etc.

CHAPTER 3

Corporation tax: loss relief.

- 396. Relief for trading losses other than terminal losses.
- 397. Relief for terminal loss in a trade.
- 398. Computation of losses attributable to exemption of income from certain securities.
- 399. Losses in transactions from which income would be chargeable under Case IV or V of Schedule D.

Section

- 400. Company reconstructions without change of ownership.
- 401. Change in ownership of company: disallowance of trading losses.

CHAPTER 4

Income tax and corporation tax: treatment of certain losses and certain capital allowances.

- 402. Foreign currency: tax treatment of capital allowances and trading losses of a company.
- 403. Restriction on use of capital allowances for certain leased assets.
- 404. Restriction on use of capital allowances for certain leased machinery or plant.
- 405. Restriction on use of capital allowances on holiday cottages.
- 406. Corporation tax: restriction on use of capital allowances on fixtures and fittings for furnished residential accommodation.
- 407. Restriction on use of losses and capital allowances for qualifying shipping trade.
- 408. Restriction on tax incentives on property investment.
- 409. Capital allowances: room ownership schemes.

CHAPTER 5

Group relief.

- 410. Group payments.
- 411. Surrender of relief between members of groups and consortia.
- 412. Qualification for entitlement to group relief.
- 413. Profits or assets available for distribution.
- 414. Meaning of “the profit distribution”.
- 415. Meaning of “the notional winding up”.
- 416. Limited right to profits or assets.
- 417. Diminished share of profits or assets.
- 418. Beneficial percentage.
- 419. The relevant accounting period, etc.
- 420. Losses, etc. which may be surrendered by means of group relief.
- 421. Relation of group relief to other relief.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 422. Corresponding accounting periods.
- 423. Company joining or leaving group or consortium.
- 424. Effect of arrangements for transfer of company to another group, etc.
- 425. Leasing contracts: effect on claims for losses of company reconstructions.
- 426. Partnerships involving companies: effect of arrangements for transferring relief.
- 427. Information as to arrangements for transferring relief, etc.
- 428. Exclusion of double allowances, etc.
- 429. Claims and adjustments.

PART 13

CLOSE COMPANIES

CHAPTER 1

Interpretation and general.

- 430. Meaning of “close company”.
- 431. Certain companies with quoted shares not to be close companies.
- 432. Meaning of “associated company” and “control”.
- 433. Meaning of “participator”, “associate”, “director” and “loan creditor”.
- 434. Distributions to be taken into account and meaning of “distributable income”, “investment income”, “estate income”, etc.
- 435. Information.

CHAPTER 2

Additional matters to be treated as distributions, charges to tax in respect of certain loans and surcharges on certain undistributed income.

- 436. Certain expenses for participators and associates.
- 437. Interest paid to directors and directors’ associates.
- 438. Loans to participators, etc.
- 439. Effect of release, etc. of debt in respect of loan under *section 438*.
- 440. Surcharge on undistributed investment and estate income.
- 441. Surcharge on undistributed income of service companies.

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

Section

- 442. Interpretation (*Part 14*).
- 443. Meaning of “goods”.
- 444. Exclusion of mining and construction operations.
- 445. Certain trading operations carried on in Shannon Airport.
- 446. Certain trading operations carried on in Custom House Docks Area.
- 447. Appeals.

CHAPTER 2

Principal provisions.

- 448. Relief from corporation tax.
- 449. Credit for foreign tax not otherwise credited.
- 450. Double taxation relief.
- 451. Treatment of income and gains of certain trading operations carried on in Custom House Docks Area from investments held outside the State.
- 452. Application of *section 130* to certain interest.
- 453. Transactions between associated persons.
- 454. Restriction of certain charges on income.
- 455. Restriction of certain losses.
- 456. Restriction of group relief.
- 457. Application of *section 448* where profits are charged to corporation tax at the reduced rate.

PART 15

PERSONAL ALLOWANCES AND RELIEFS AND CERTAIN OTHER INCOME TAX AND CORPORATION TAX RELIEFS

CHAPTER 1

Personal allowances and reliefs.

- 458. Deductions allowed in ascertaining taxable income and provisions relating to reductions in tax.

Section

- 459. General provisions relating to allowances, deductions and reliefs.
- 460. Rate of tax at which repayments are to be made.
- 461. Married and single personal allowances.
- 462. Additional amount for widowed parents and other single parents.
- 463. Special allowance for widowed parent following death of spouse.
- 464. Age allowance.
- 465. Incapacitated children.
- 466. Dependent relative.
- 467. Employed person taking care of incapacitated individual.
- 468. Relief for blind persons.
- 469. Relief for health expenses.
- 470. Relief for insurance against expenses of illness.
- 471. Relief for contributions to permanent health benefit schemes.
- 472. Employee allowance.
- 473. Allowance for rent paid by certain tenants.
- 474. Relief for fees paid to private colleges for full-time third level education.
- 475. Relief for fees paid for part-time third level education.
- 476. Relief for fees paid for training courses.
- 477. Relief for service charges.
- 478. Relief for payments made by certain persons in respect of alarm systems.
- 479. Relief for new shares purchased on issue by employees.
- 480. Relief for certain sums chargeable under Schedule E.

CHAPTER 2

Income tax and corporation tax: reliefs applicable to both.

- 481. Relief for investment in films.
- 482. Relief for expenditure on significant buildings and gardens.
- 483. Relief for certain gifts.
- 484. Relief for gifts for education in the arts.
- 485. Relief for gifts to third-level institutions.

CHAPTER 3

Corporation tax reliefs

Section

- 486. Corporation tax: relief for gifts to First Step.
- 487. Corporation tax: credit for bank levy.

PART 16

INCOME TAX RELIEF FOR INVESTMENT IN CORPORATE TRADES — BUSINESS EXPANSION SCHEME AND SEED CAPITAL SCHEME.

- 488. Interpretation (*Part 16*).
- 489. The relief.
- 490. Limits on the relief.
- 491. Restriction on relief where amounts raised exceed permitted maximum.
- 492. Certification in respect of an issue of eligible shares where aggregate of amounts raised by a company exceeds £250,000.
- 493. Individuals qualifying for relief.
- 494. Specified individuals.
- 495. Qualifying companies.
- 496. Qualifying trades.
- 497. Relevant trading operations.
- 498. Disposals of shares.
- 499. Value received from company.
- 500. Replacement capital.
- 501. Value received by persons other than claimants.
- 502. Prevention of misuse.
- 503. Claims.
- 504. Assessments for withdrawing relief.
- 505. Information.
- 506. Capital gains tax.
- 507. Application to subsidiaries.
- 508. Nominees and designated funds.

PART 17

PROFIT SHARING SCHEMES AND EMPLOYEE SHARE OWNERSHIP TRUSTS

CHAPTER 1

Profit sharing schemes

Section

- 509. Interpretation (*Chapter 1*).
- 510. Approved profit sharing schemes: appropriated shares.
- 511. The period of retention, release date and appropriate percentage.
- 512. Disposals of scheme shares.
- 513. Capital receipts in respect of scheme shares.
- 514. Company reconstructions, amalgamations, etc.
- 515. Excess or unauthorised shares.
- 516. Assessment of trustees in respect of sums received.
- 517. Payments to trustees of approved profit sharing scheme.
- 518. Costs of establishing profit sharing schemes.

CHAPTER 2

Employee share ownership trusts.

- 519. Employee share ownership trusts.

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.

- 520. Interpretation (*Chapter 1*).
- 521. Accountable persons.
- 522. Obligation on authorised insurers.
- 523. Deduction of tax from relevant payments.
- 524. Identification of, and issue of documents to, specified persons.
- 525. Returns and collection of appropriate tax.
- 526. Credit for appropriate tax borne.
- 527. Interim refunds of appropriate tax.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 528. Apportionment of credits or interim refunds of appropriate tax.
- 529. Limitation on credits or interim refunds of appropriate tax.

CHAPTER 2

Payments to subcontractors in certain industries.

- 530. Interpretation (*Chapter 2*).
- 531. Payments to subcontractors in certain industries.

TAXATION OF CHARGEABLE GAINS

PART 19

PRINCIPAL PROVISIONS RELATING TO TAXATION OF CHARGEABLE GAINS

CHAPTER 1

Assets and acquisitions and disposals of assets.

- 532. Assets.
- 533. Location of assets.
- 534. Disposals of assets.
- 535. Disposals where capital sums derived from assets.
- 536. Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases.
- 537. Mortgages and charges not to be treated as disposals.
- 538. Disposals where assets lost or destroyed or become of negligible value.
- 539. Disposals in cases of hire purchase and similar transactions.
- 540. Options and forfeited deposits.
- 541. Debts.
- 542. Time of disposal and acquisition.
- 543. Transfers of value derived from assets.

CHAPTER 2

Computation of chargeable gains and allowable losses.

- 544. Interpretation and general (*Chapter 2*).
- 545. Chargeable gains.
- 546. Allowable losses.
- 547. Disposals and acquisitions treated as made at market value.

Section

- 548. Valuation of assets.
- 549. Transactions between connected persons.
- 550. Assets disposed of in series of transactions.
- 551. Exclusion from consideration for disposals of sums chargeable to income tax.
- 552. Acquisition, enhancement and disposal costs.
- 553. Interest charged to capital.
- 554. Exclusion of expenditure by reference to income tax.
- 555. Restriction of losses by reference to capital allowances and renewals allowances.
- 556. Adjustment of allowable expenditure by reference to consumer price index.
- 557. Part disposals.
- 558. Part disposals before 6th day of April, 1978.
- 559. Assets derived from other assets.
- 560. Wasting assets.
- 561. Wasting assets qualifying for capital allowances.
- 562. Contingent liabilities.
- 563. Consideration due after time of disposal.
- 564. Woodlands.
- 565. Expenditure reimbursed out of public money.
- 566. Leases.

CHAPTER 3

Assets held in a fiduciary or representative capacity, inheritances and settlements.

- 567. Nominees, bare trustees and agents.
- 568. Liability of trustees, etc.
- 569. Assets of insolvent person.
- 570. Company in liquidation.
- 571. Chargeable gains accruing on disposals by liquidators and certain other persons.
- 572. Funds in court.
- 573. Death.

Section

- 574. Trustees of settlement.
- 575. Gifts in settlement.
- 576. Person becoming absolutely entitled to settled property.
- 577. Termination of life interest on death of person entitled.
- 578. Death of annuitant.
- 579. Non-resident trusts.

CHAPTER 4

Shares and securities.

- 580. Shares, securities, etc: identification.
- 581. Disposals of shares or securities within 4 weeks of acquisition.
- 582. Calls on shares.
- 583. Capital distributions by companies.
- 584. Reorganisation or reduction of share capital.
- 585. Conversion of securities.
- 586. Company amalgamations by exchange of shares.
- 587. Company reconstructions and amalgamations.
- 588. Demutualisation of assurance companies.
- 589. Shares in close company transferring assets at undervalue.
- 590. Attribution to shareholders of chargeable gains accruing to non-resident company.
- 591. Relief for individuals on certain reinvestment.
- 592. Reduced rate of capital gains tax on certain disposals of shares by individuals.

CHAPTER 5

Life assurance and deferred annuities.

- 593. Life assurance and deferred annuities.
- 594. Foreign life assurance and deferred annuities: taxation and returns.
- 595. Life assurance policy or deferred annuity contract entered into or acquired by company.

CHAPTER 6

Transfer of business assets.

- 596. Appropriations to and from stock in trade.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 597. Replacement of business and other assets.
- 598. Disposals of business or farm on “retirement”.
- 599. Disposals within family of business or farm.
- 600. Transfer of business to company.

CHAPTER 7

Other reliefs and exemptions.

- 601. Annual exempt amount.
- 602. Chattel exemption.
- 603. Wasting chattels.
- 604. Disposals of principal private residence.
- 605. Disposals to authority possessing compulsory purchase powers.
- 606. Disposals of work of art, etc., loaned for public display.
- 607. Government and certain other securities.
- 608. Superannuation funds.
- 609. Charities.
- 610. Other bodies.
- 611. Disposals to State, public bodies and charities.
- 612. Scheme for retirement of farmers.
- 613. Miscellaneous exemptions for certain kinds of property.

PART 20

COMPANIES’ CHARGEABLE GAINS

CHAPTER 1

General.

- 614. Capital distribution derived from chargeable gain of company: recovery of tax from shareholder.
- 615. Company reconstruction or amalgamation: transfer of assets.
- 616. Groups of companies: interpretation.
- 617. Transfers of assets, other than trading stock, within group.
- 618. Transfers of trading stock within group.
- 619. Disposals or acquisitions outside group.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 620. Replacement of business assets by members of group.
- 621. Depreciatory transactions in group.
- 622. Dividend stripping.
- 623. Company ceasing to be member of group.
- 624. Exemption from charge under *section 623* in case of certain mergers.
- 625. Shares in subsidiary member of group.
- 626. Tax on company recoverable from other members of group.

CHAPTER 2

Provisions where companies cease to be resident in the State.

- 627. Deemed disposal of assets.
- 628. Postponement of charge on deemed disposal under *section 627*.
- 629. Tax on non-resident company recoverable from another member of group or from controlling director.

PART 21

MERGERS, DIVISIONS, TRANSFERS OF ASSETS AND EXCHANGES OF SHARES CONCERNING COMPANIES OF DIFFERENT MEMBER STATES.

- 630. Interpretation (*Part 21*).
- 631. Transfer of assets generally.
- 632. Transfer of assets by company to its parent company.
- 633. Company reconstruction or amalgamation: transfer of development land.
- 634. Credit for tax.
- 635. Avoidance of tax.
- 636. Returns.
- 637. Other transactions.
- 638. Apportionment of amounts.

TRANSACTIONS IN LAND

PART 22

PROVISIONS RELATING TO DEALING IN OR DEVELOPING LAND AND DISPOSALS OF DEVELOPMENT LAND

CHAPTER 1

Income tax and corporation tax: profits or gains from dealing in or developing land

Section

- 639. Interpretation (*Chapter 1*).
- 640. Extension of charge under Case I of Schedule D to certain profits from dealing in or developing land.
- 641. Computation under Case I of Schedule D of profits or gains from dealing in or developing land.
- 642. Transfers of interests in land between certain associated persons.
- 643. Tax to be charged under Case IV on gains from certain disposals of land.
- 644. Provisions supplementary to *section 643*.
- 645. Power to obtain information.
- 646. Postponement of payment of income tax to be permitted in certain cases.
- 647. Postponement of payment of corporation tax to be permitted in certain cases.

CHAPTER 2

Capital gains tax: disposals of development land.

- 648. Interpretation (*Chapter 2*).
- 649. Companies chargeable to capital gains tax in respect of chargeable gains accruing on relevant disposals.
- 650. Exclusion of certain disposals.
- 651. Restriction of indexation relief in relation to relevant disposals.
- 652. Non-application of reliefs on replacement of assets in case of relevant disposals.
- 653. Restriction of relief for losses, etc. in relation to relevant disposals.

OTHER SPECIAL PROVISIONS

PART 23

FARMING AND MARKET GARDENING

CHAPTER 1

Interpretation and general

Section

- 654. Interpretation (*Part 23*).
- 655. Farming and market gardening profits to be charged to tax under Schedule D.
- 656. Farming: trading stock of discontinued trade.
- 657. Averaging of farm profits.
- 658. Farming: allowances for capital expenditure on construction of buildings and other works.
- 659. Farming: allowances for capital expenditure on the construction of farm buildings, etc. for control of pollution.
- 660. Farming: wear and tear allowances deemed to have been made in certain cases.
- 661. Farming: restriction of relief in respect of certain losses.
- 662. Income tax: restriction of relief for losses in farming or market gardening.
- 663. Corporation tax: restriction of relief for losses in farming or market gardening.
- 664. Relief for certain income from leasing of farm land.

CHAPTER 2

Farming: relief for increase in stock values.

- 665. Interpretation (*Chapter 2*).
- 666. Deduction for increase in stock values.
- 667. Special provisions for qualifying farmers.
- 668. Compulsory disposals of livestock.
- 669. Supplementary provisions (*Chapter 2*).

PART 24

TAXATION OF PROFITS OF CERTAIN MINES AND PETROLEUM TAXATION

CHAPTER 1

Taxation of profits of certain mines.

- 670. Mine development allowance.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 671. Marginal coal mine allowance.
- 672. Interpretation (*sections 672 to 683*).
- 673. Allowance in respect of development expenditure and exploration expenditure.
- 674. Expenditure on abortive exploration.
- 675. Exploration expenditure incurred by certain bodies corporate.
- 676. Expenditure incurred by person not engaged in trade of mining.
- 677. Investment allowance in respect of exploration expenditure.
- 678. Allowance for machinery and plant.
- 679. Exploration expenditure.
- 680. Annual allowance for mineral depletion.
- 681. Allowance for mine rehabilitation expenditure.
- 682. Marginal mine allowance.
- 683. Charge to tax on sums received from sale of scheduled mineral assets.

CHAPTER 2

Petroleum taxation.

- 684. Interpretation (*Chapter 2*).
- 685. Separation of trading activities.
- 686. Reduction of corporation tax.
- 687. Treatment of losses.
- 688. Treatment of group relief.
- 689. Restriction of relief for losses on certain disposals.
- 690. Interest and charges on income.
- 691. Restriction of set-off of advance corporation tax.
- 692. Development expenditure: allowances and charges.
- 693. Exploration expenditure: allowances and charges.
- 694. Exploration expenditure incurred by certain companies.
- 695. Abandonment expenditure: allowances and loss relief.
- 696. Valuation of petroleum in certain circumstances.
- 697. Treatment of certain disposals.

PART 25

INDUSTRIAL AND PROVIDENT SOCIETIES, BUILDING SOCIETIES, AND
TRUSTEE SAVINGS BANKS

CHAPTER 1

Industrial and provident societies

Section

- 698. Interpretation (*Chapter 1*).
- 699. Deduction as expenses of certain sums, etc.
- 700. Special computational provisions.
- 701. Transfer of shares held by certain societies to members of society.

CHAPTER 2

Building societies.

- 702. Union or amalgamation of, transfer of engagement between, societies.
- 703. Change of status of society.

CHAPTER 3

Trustee savings banks.

- 704. Amalgamation of trustee savings banks.
- 705. Reorganisation of trustee savings banks into companies.

PART 26

LIFE ASSURANCE COMPANIES

CHAPTER 1

General provisions.

- 706. Interpretation and general (*Part 26*).
- 707. Management expenses.
- 708. Acquisition expenses.
- 709. Companies carrying on life business.
- 710. Profits of life business.
- 711. Chargeable gains of life business.
- 712. Distributions received from Irish resident companies.
- 713. Investment income reserved for policy holders.
- 714. Life business: computation of profits.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 715. Annuity business: separate charge on profits.
- 716. General annuity business.
- 717. Pension business.
- 718. Foreign life assurance funds.
- 719. Deemed disposal and reacquisition of certain assets.
- 720. Gains or losses arising by virtue of *section 719*.
- 721. Life policies carrying rights not in money.
- 722. Benefits from life policies issued before 6th April, 1974.

CHAPTER 2

Special investment policies.

- 723. Special investment policies.
- 724. Transfer of assets into or out of special investment fund.
- 725. Special investment policies: breaches of conditions.

CHAPTER 3

Provisions applying to overseas life assurance companies.

- 726. Investment income.
- 727. General annuity and pension business.
- 728. Expenses of management.
- 729. Income tax, foreign tax and tax credit.
- 730. Tax credit in respect of distributions.

PART 27

UNIT TRUSTS AND OFFSHORE FUNDS

CHAPTER 1

Unit trusts.

- 731. Chargeable gains accruing to unit trusts.
- 732. Special arrangements for qualifying unit trusts.
- 733. Reorganisation of units in unit trust scheme.
- 734. Taxation of collective investment undertakings.
- 735. Certain unit trusts not to be collective investment undertakings.
- 736. Option for non-application of *section 735*.

Section

- 737. Special investment schemes.
- 738. Undertakings for collective investment.
- 739. Taxation of unit holders in undertakings for collective investment.

CHAPTER 2

Offshore funds.

- 740. Interpretation (*Chapter 2* and *Schedules 19* and *20*).
- 741. Disposals of material interests in non-qualifying offshore funds.
- 742. Offshore funds operating equalisation arrangements.
- 743. Material interest in offshore funds.
- 744. Non-qualifying offshore funds.
- 745. Charge to income tax or corporation tax of offshore income gain.
- 746. Offshore income gains accruing to persons resident or domiciled abroad.
- 747. Deduction of offshore income gain in determining capital gain.

PART 28

PURCHASE AND SALE OF SECURITIES

CHAPTER 1

Purchase and sale of securities.

- 748. Interpretation and application (*Chapter 1*).
- 749. Dealers in securities.
- 750. Persons entitled to exemption.
- 751. Traders other than dealers in securities.

CHAPTER 2

Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits.

- 752. Purchases of shares by financial concerns and persons exempted from tax.
- 753. Restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits.

PART 29

PATENTS, SCIENTIFIC AND CERTAIN OTHER RESEARCH, KNOW-HOW AND
CERTAIN TRAINING

CHAPTER 1

Patents

Section

- 754. Interpretation (*Chapter 1*).
- 755. Annual allowances for capital expenditure on purchase of patent rights.
- 756. Effect of lapse of patent rights.
- 757. Charges on capital sums received for sale of patent rights.
- 758. Relief for expenses.
- 759. Spreading of revenue payments over several years.
- 760. Capital sums: effect of death, winding up and partnership changes.
- 761. Manner of making allowances and charges.
- 762. Application of *Chapter 4* of *Part 9*.

CHAPTER 2

Scientific and certain other research.

- 763. Interpretation (*sections 764* and *765*).
- 764. Deduction for revenue expenditure on scientific research.
- 765. Allowances for capital expenditure on scientific research.
- 766. Deduction for certain expenditure on research and development.
- 767. Payment to universities and other approved bodies for research in, or teaching of, approved subjects.

CHAPTER 3

Know-how and certain training.

- 768. Allowance for know-how.
- 769. Relief for training of local staff before commencement of trading.

PART 30

OCCUPATIONAL PENSION SCHEMES, RETIREMENT ANNUITIES, PUR-
CHASED LIFE ANNUITIES AND CERTAIN PENSIONS

CHAPTER 1

Occupational pension schemes.

- 770. Interpretation and supplemental (*Chapter 1*).

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 771. Meaning of “retirement benefits scheme”.
- 772. Conditions for approval of schemes and discretionary approval.
- 773. General Medical Services: scheme of superannuation.
- 774. Certain approved schemes: exemptions and reliefs.
- 775. Certain approved schemes: provisions supplementary to *section 774(6)*.
- 776. Certain statutory schemes: exemptions and reliefs.
- 777. Charge to income tax in respect of certain relevant benefits provided for employees.
- 778. Exceptions to charge to tax under *section 777*.
- 779. Charge to income tax of pensions under Schedule E.
- 780. Charge to income tax on repayment of employees’ contributions.
- 781. Charge to income tax: commutation of entire pension.
- 782. Charge to tax: repayments to employer.

CHAPTER 2

Retirement annuities.

- 783. Interpretation and general (*Chapter 2*).
- 784. Retirement annuities: relief for premiums.
- 785. Approval of contracts for dependants or for life assurance.
- 786. Approval of certain other contracts.
- 787. Nature and amount of relief for qualifying premiums.

CHAPTER 3

Purchased life annuities.

- 788. Capital element in certain purchased annuities.
- 789. Supplementary provisions (*Chapter 3*).

CHAPTER 4

Miscellaneous.

- 790. Liability of certain pensions, etc. to tax.

PART 31

TAXATION OF SETTLORS, ETC. IN RESPECT OF SETTLED OR TRANSFERRED
INCOME

CHAPTER 1

*Revocable dispositions for short periods and certain dispositions in
favour of children*

Section

- 791. Income under revocable dispositions.
- 792. Income under dispositions for short periods.
- 793. Recovery of tax from trustee and payment to trustee of
excess tax recoupment.

CHAPTER 2

Settlements on children generally.

- 794. Interpretation and application (*Chapter 2*).
- 795. Income settled on children.
- 796. Irrevocable instruments.
- 797. Recovery of tax from trustee and payment to trustee of
excess tax recoupment.
- 798. Transfer of interest in trade to children.

PART 32

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION AND
SURCHARGE ON CERTAIN INCOME OF TRUSTEES

CHAPTER 1

Estates of deceased persons in course of administration.

- 799. Interpretation (*Chapter 1*).
- 800. Limited interest in residue.
- 801. Absolute interest in residue.
- 802. Supplementary provisions as to absolute interest in residue.
- 803. Special provisions as to certain interests.
- 804. Adjustments and information.

CHAPTER 2

Surcharge on certain income of trustees.

- 805. Surcharge on certain income of trustees.

PART 33

ANTI-AVOIDANCE

CHAPTER 1

Transfer of assets abroad

Section

- 806. Charge to income tax on transfer of assets abroad.
- 807. Deductions and reliefs in relation to income chargeable to income tax under *section 806*.
- 808. Power to obtain information.
- 809. Saver.
- 810. Application of Income Tax Acts.

CHAPTER 2

Miscellaneous.

- 811. Transactions to avoid liability to tax.
- 812. Taxation of income deemed to arise from transfers of right to receive interest from securities.
- 813. Taxation of transactions associated with loans or credit.
- 814. Taxation of income deemed to arise from transactions in certificates of deposit and assignable deposits.
- 815. Taxation of income deemed to arise on certain sales of securities.
- 816. Taxation of shares issued in place of cash dividends.
- 817. Schemes to avoid liability to tax under Schedule F.

PART 34

PROVISIONS RELATING TO THE RESIDENCE OF INDIVIDUALS.

- 818. Interpretation (*Part 34*).
- 819. Residence.
- 820. Ordinary residence.
- 821. Application of *sections 17* and *18(1)* and *Chapter 1* of *Part 3*.
- 822. Split year residence.
- 823. Deduction for income earned outside the State.
- 824. Appeals.
- 825. Residence treatment of donors of gifts to the State.

PART 35

DOUBLE TAXATION RELIEF

CHAPTER 1

Principal reliefs

Section

- 826. Agreements for relief from double taxation.
- 827. Application to corporation tax of arrangements made in relation to corporation profits tax under old law.
- 828. Capital gains tax: double taxation relief.
- 829. Treatment for double taxation relief purposes of foreign tax incentive reliefs.

CHAPTER 2

Miscellaneous.

- 830. Relief to certain companies liable to foreign tax.
- 831. Implementation of Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.
- 832. Provisions in relation to Convention for reciprocal avoidance of double taxation in the State and the United Kingdom of income and capital gains.
- 833. Convention with United States of America.
- 834. Relief in respect of ships documented under laws of United States of America.
- 835. Saver for arrangements made under section 362 of Income Tax Act, 1967.

PART 36

MISCELLANEOUS SPECIAL PROVISIONS.

- 836. Allowances for expenses of members of Oireachtas.
- 837. Members of the clergy and ministers of religion.
- 838. Special portfolio investment accounts.
- 839. Limits to special investments.
- 840. Business entertainment.
- 841. Voluntary Health Insurance Board: restriction of certain losses and deemed disposal of certain assets.
- 842. Replacement of harbour authorities by port companies.
- 843. Capital allowances for buildings used for third level educational purposes.

Section

- 844. Companies carrying on mutual business or not carrying on a business.
- 845. Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc.
- 846. Tax-free securities: exclusion of interest on borrowed money.
- 847. Tax relief for certain branch profits.
- 848. Designated charities: repayment of tax in respect of donations.

MANAGEMENT PROVISIONS

PART 37

ADMINISTRATION.

- 849. Taxes under care and management of Revenue Commissioners.
- 850. Appeal Commissioners.
- 851. Collector-General.
- 852. Inspectors of taxes.
- 853. Governor and directors of Bank of Ireland.
- 854. Appointment of persons for purposes of assessment of certain public offices.
- 855. Declaration to be made by Commissioners.
- 856. Disqualification of Commissioners in cases of personal interest.
- 857. Declarations on taking office.
- 858. Evidence of authorisation.
- 859. Anonymity of authorised officers in relation to certain matters.
- 860. Administration of oaths.
- 861. Documents to be in accordance with form prescribed by Revenue Commissioners.
- 862. Exercise of powers, etc. of Minister for Finance under Tax Acts.
- 863. Loss, destruction or damage of assessments and other documents.
- 864. Making of claims, etc.
- 865. Limit of time for repayment claims.
- 866. Rules as to delivery of statements.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 867. Amendment of statutory forms.
- 868. Execution of warrants.
- 869. Delivery, service and evidence of notices and forms.
- 870. Effect of want of form, error, etc. on assessments, charges, warrants and other proceedings.
- 871. Power to combine certain returns and assessments.
- 872. Use of information relating to other taxes and duties.
- 873. Proof that person is a Commissioner or officer.
- 874. Limitation of penalties on officers employed in execution of Tax Acts and Capital Gains Tax Acts.
- 875. Exemption of appraisements and valuations from stamp duty.

PART 38

RETURNS OF INCOME AND GAINS, OTHER OBLIGATIONS AND RETURNS,
AND REVENUE POWERS

CHAPTER 1

Income tax: returns of income.

- 876. Notice of liability to income tax.
- 877. Returns by persons chargeable.
- 878. Persons acting for incapacitated persons and non-residents.
- 879. Returns of income.
- 880. Partnership returns.
- 881. Returns by married persons.

CHAPTER 2

Corporation tax: returns of profits.

- 882. Particulars to be supplied by new companies.
- 883. Notice of liability to corporation tax.
- 884. Returns of profits.

CHAPTER 3

Other obligations and returns.

- 885. Obligation to show tax reference number on receipts.
- 886. Obligation to keep certain records.
- 887. Use of electronic data processing.

Section

- 888. Returns, etc. by lessors, lessees and agents.
- 889. Returns of fees, commissions, etc. paid by certain persons.
- 890. Returns by persons in receipt of income belonging to others.
- 891. Returns of interest paid or credited without deduction of tax.
- 892. Returns by nominee holders of securities.
- 893. Returns by certain intermediaries in relation to UCITS.
- 894. Returns of certain information by third parties.
- 895. Returns in relation to foreign accounts.
- 896. Returns in relation to material interest in offshore funds.
- 897. Returns of employees' emoluments, etc.
- 898. Returns of copies of rates and production of certain valuations.

CHAPTER 4

Revenue powers.

- 899. Inspector's right to make enquiries.
- 900. Power to require production of accounts and books.
- 901. Power to require delivery of books and papers relating to tax.
- 902. Power to obtain from certain persons particulars of transactions with and documents concerning tax liability of taxpayer.
- 903. Power of inspection: PAYE.
- 904. Power of inspection: tax deduction from payments to certain subcontractors.
- 905. Inspection of documents and records.
- 906. Authorised officers and Garda Síochána.
- 907. Application to Appeal Commissioners seeking determination that authorised officer justified in requiring information to be furnished by financial institutions.
- 908. Application to High Court seeking order requiring information to be furnished by financial institutions.
- 909. Power to require return of property.
- 910. Power to obtain information from Minister of the Government.
- 911. Valuation of assets: power to inspect.
- 912. Computer documents and records.

CHAPTER 5

Capital gains tax: returns, information, etc.

Section

- 913. Application of income tax provisions relating to returns, etc.
- 914. Returns by issuing houses, stockbrokers, auctioneers, etc.
- 915. Returns by nominee shareholders.
- 916. Returns by party to a settlement.
- 917. Returns relating to non-resident companies and trusts.

PART 39

ASSESSMENTS

CHAPTER 1

Income tax and corporation tax.

- 918. Making of assessments under Schedules C, D, E and F.
- 919. Assessments to corporation tax.
- 920. Granting of allowances and reliefs.
- 921. Aggregation of assessments.
- 922. Assessment in absence of return.
- 923. Function of certain assessors.
- 924. Additional assessments.
- 925. Special rules relating to assessments under Schedule E.
- 926. Estimation of certain amounts.
- 927. Rectification of excessive set-off, etc. of tax credit.
- 928. Transmission to Collector-General of particulars of sums to be collected.

CHAPTER 2

Provision against double assessment and relief for error or mistake.

- 929. Double assessment.
- 930. Error or mistake.

CHAPTER 3

Capital gains tax.

- 931. Making of assessments and application of income tax assessment provisions.

PART 40

APPEALS

CHAPTER 1

Appeals against income tax and corporation tax assessments

Section

- 932. Prohibition on alteration of assessment except on appeal.
- 933. Appeals against assessment.
- 934. Procedure on appeals.
- 935. Power to issue precepts.
- 936. Objection by inspector or other officer to schedules.
- 937. Confirmation and amendment of assessments.
- 938. Questions as to assessments or schedules.
- 939. Summoning and examination of witnesses.
- 940. Determination of liability in cases of default.
- 941. Statement of case for High Court.
- 942. Appeals to Circuit Court.
- 943. Extension of *section 941*.
- 944. Communication of decision of Appeal Commissioners.

CHAPTER 2

Appeals against capital gains tax assessments.

- 945. Appeals against assessments.
- 946. Regulations with respect to appeals.

CHAPTER 3

Miscellaneous.

- 947. Appeals against determination under *sections 98 to 100*.
- 948. Appeals against amount of income tax deducted under Schedule E.
- 949. Appeals against determinations of certain claims, etc.

PART 41

SELF ASSESSMENT.

- 950. Interpretation (*Part 41*).
- 951. Obligation to make a return.

Section

- 952. Obligation to pay preliminary tax.
- 953. Notices of preliminary tax.
- 954. Making of assessments.
- 955. Amendment of and time limit for assessments.
- 956. Inspector's right to make enquiries and amend assessments.
- 957. Appeals.
- 958. Date for payment of tax.
- 959. Miscellaneous (*Part 41*).

PART 42

COLLECTION AND RECOVERY

CHAPTER 1

Income tax.

- 960. Date for payment of income tax other than under self assessment.
- 961. Issue of demand notes and receipts.
- 962. Recovery by sheriff or county registrar.
- 963. Power of Collector-General and authorised officer to sue in Circuit Court or District Court.
- 964. Continuance of pending proceedings.
- 965. Evidence in proceedings in Circuit Court or District Court for recovery of income tax.
- 966. High Court proceedings.
- 967. Evidence of electronic transmission of particulars of income tax to be collected in proceedings for recovery of tax.
- 968. Judgments for recovery of income tax.
- 969. Duration of imprisonment for non-payment of income tax.
- 970. Recovery of income tax charged on profits not distrainable.
- 971. Priority of income tax debts over other debts.
- 972. Duty of employer as to income tax payable by employees.

CHAPTER 2

Corporation tax.

- 973. Collection of corporation tax.
- 974. Priority for corporation tax.

Section

975. Application of *sections 964(2), 980(8) and 981* for purposes of corporation tax.

CHAPTER 3

Capital gains tax.

976. Collection of capital gains tax.
977. Recovery of capital gains tax from shareholder.
978. Gifts: recovery of capital gains tax from donee.
979. Time for payment of capital gains tax assessed under *sections 977(3) or 978(2) and (3)*.
980. Deduction from consideration on disposal of certain assets.
981. Payment by instalments where consideration due after time of disposal.
982. Preferential payment.

CHAPTER 4

Collection and recovery of income tax on certain emoluments (PAYE system).

983. Interpretation (*Chapter 4*).
984. Application.
985. Method of collection.
986. Regulations.
987. Penalties for breach of regulations.
988. Registration of certain persons as employers and requirement to send certain notifications.
989. Estimation of tax due for income tax months.
990. Estimation of tax due for year.
991. Interest.
992. Appeals against estimates under *section 989 or 990*.
993. Recovery of tax.
994. Priority in bankruptcy, etc. of certain amounts.
995. Priority in winding up of certain amounts.
996. Treatment for tax purposes of certain unpaid remuneration.
997. Supplementary provisions (*Chapter 4*).

CHAPTER 5

Miscellaneous provisions

Section

- 998. Recovery of moneys due.
- 999. Taking by Collector-General of proceedings in bankruptcy.
- 1000. Priority in bankruptcy, winding up, etc. for sums recovered or deducted under *sections 531, 989 or 990.*
- 1001. Liability to tax, etc. of holder of fixed charge on book debts of company.
- 1002. Deduction from payments due to defaulters of amounts due in relation to tax.
- 1003. Payment of tax by means of donation of heritage items.
- 1004. Unremittable income.
- 1005. Unremittable gains.
- 1006. Poundage and certain other fees due to sheriffs or county registrars.

PART 43

PARTNERSHIPS AND EUROPEAN ECONOMIC INTEREST GROUPINGS
(EEIG)

- 1007. Interpretation (*Part 43*).
- 1008. Separate assessment of partners.
- 1009. Partnerships involving companies.
- 1010. Capital allowances and balancing charges in partnership cases.
- 1011. Provision as to charges under *section 757.*
- 1012. Modification of provisions as to appeals.
- 1013. Limited partnerships.
- 1014. Tax treatment of profits, losses and capital gains arising from activities of a European Economic Interest Grouping (EEIG).

PART 44

MARRIED, SEPARATED AND DIVORCED PERSONS

CHAPTER 1

Income tax

- 1015. Interpretation (*Chapter 1*).
- 1016. Assessment as single persons.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 1017. Assessment of husband in respect of income of both spouses.
- 1018. Election for assessment under *section 1017*.
- 1019. Assessment of wife in respect of income of both spouses.
- 1020. Special provisions relating to year of marriage.
- 1021. Repayment of tax in case of certain husbands and wives.
- 1022. Special provisions relating to tax on wife's income.
- 1023. Application for separate assessments.
- 1024. Method of apportioning reliefs and charging tax in cases of separate assessments.
- 1025. Maintenance in case of separated spouses.
- 1026. Separated and divorced persons: adaptation of provisions relating to married persons.
- 1027. Payments pursuant to certain orders under Judicial Separation and Family Law Reform Act, 1989, Family Law Act, 1995, and Family Law (Divorce) Act, 1996, to be made without deduction of income tax.

CHAPTER 2

Capital gains tax

- 1028. Married persons.
- 1029. Application of *section 1022* for purposes of capital gains tax.
- 1030. Separated spouses: transfers of assets.
- 1031. Divorced persons: transfers of assets.

PART 45

CHARGING AND ASSESSING OF NON-RESIDENTS

CHAPTER 1

Income tax and corporation tax

- 1032. Restrictions on certain reliefs.
- 1033. Entitlement to tax credit in respect of distributions.
- 1034. Assessment.
- 1035. Profits from agencies, etc.
- 1036. Control over residents.
- 1037. Charge on percentage of turnover.
- 1038. Merchanting profit.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Section

- 1039. Restrictions on chargeability.
- 1040. Application of *sections 1034 to 1039* for purposes of corporation tax.
- 1041. Rents payable to non-residents.

CHAPTER 2

Capital gains tax

- 1042. Charging and assessment of persons not resident or ordinarily resident: modification of general rules.
- 1043. Application of *sections 1034 and 1035* for purposes of capital gains tax.

PART 46

PERSONS CHARGEABLE IN A REPRESENTATIVE CAPACITY

CHAPTER 1

Income tax and corporation tax

- 1044. Bodies of persons.
- 1045. Trustees, guardians and committees.
- 1046. Liability of trustees, etc.
- 1047. Liability of parents, guardians, executors and administrators.
- 1048. Assessment of executors and administrators.
- 1049. Receivers appointed by court.
- 1050. Protection for trustees, agents and receivers.

CHAPTER 2

Capital gains tax

- 1051. Application of *Chapter 1* for purposes of capital gains tax.

PART 47

PENALTIES, REVENUE OFFENCES, INTEREST ON OVERDUE TAX AND OTHER SANCTIONS

CHAPTER 1

Income tax and corporation tax penalties

- 1052. Penalties for failure to make certain returns, etc.
- 1053. Penalty for fraudulently or negligently making incorrect returns, etc.
- 1054. Increased penalties in case of body of persons.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Section

- 1055. Penalty for assisting in making incorrect returns, etc.
- 1056. Penalty for false statement made to obtain allowance.
- 1057. Fine for obstruction of officers in execution of duties.
- 1058. Refusal to allow deduction of tax.
- 1059. Power to add penalties to assessments.
- 1060. Proceedings against executor or administrator.
- 1061. Recovery of penalties.
- 1062. Proceedings where penalty recoverable cannot be definitely ascertained.
- 1063. Time limit for recovery of fines and penalties.
- 1064. Time for certain summary proceedings.
- 1065. Mitigation and application of fines and penalties.
- 1066. False evidence: punishment as for perjury.
- 1067. Admissibility of statements and documents in criminal and tax proceedings.
- 1068. Failure to act within required time.
- 1069. Evidence of income.
- 1070. Saving for criminal proceedings.

CHAPTER 2

Other corporation tax penalties

- 1071. Penalties for failure to make certain returns.
- 1072. Penalties for fraudulently or negligently making incorrect returns, etc.
- 1073. Penalties for failure to furnish particulars required to be supplied by new companies.
- 1074. Penalties for failure to give notice of liability to corporation tax.
- 1075. Penalties for failure to furnish certain information and for incorrect information.
- 1076. Supplementary provisions (*Chapter 2*).

CHAPTER 3

Capital gains tax penalties

- 1077. Penalties for failure to make returns, etc. and for fraudulently or negligently making incorrect returns, etc.

CHAPTER 4

Revenue offences

Section

1078. Revenue offences.
1079. Duties of relevant person in relation to certain revenue offences.

CHAPTER 5

Interest on overdue tax

1080. Interest on overdue income tax and corporation tax.
1081. Effect on interest of reliefs given by discharge or repayment.
1082. Interest on overdue income tax and corporation tax in cases of fraud or neglect.
1083. Application of *sections 1080 to 1082* for capital gains tax purposes.

CHAPTER 6

Other sanctions

1084. Surcharge for late returns.
1085. Corporation tax — late returns: restriction of certain claims for relief.
1086. Publication of names of tax defaulters.

PART 48

MISCELLANEOUS AND SUPPLEMENTAL

1087. Charge and deduction of income tax not charged or deducted before passing of annual Act.
1088. Restriction on deductions in computing profits.
1089. Status of interest on certain unpaid taxes and duties.
1090. Income tax assessment to be conclusive of total income.
1091. Annexation of statements to interest warrants, etc.
1092. Disclosure of certain information to rating authorities, etc.
1093. Disclosure of information to Ombudsman.
1094. Tax clearance certificates in relation to certain licences.
1095. Tax clearance certificates in relation to public sector contracts.
1096. Assessment of Electricity Supply Board.

PART 49

COMMENCEMENT, REPEALS, TRANSITIONAL PROVISIONS, ETC

Section

- 1097. Commencement.
- 1098. Repeals.
- 1099. Saving for enactments not repealed.
- 1100. Consequential amendments to other enactments.
- 1101. Transitional provisions.
- 1102. Continuity and construction of certain references to old and new law.
- 1103. Continuance of officers, instruments and documents.
- 1104. Short title and construction.

SCHEDULE 1

SUPPLEMENTARY PROVISIONS CONCERNING THE EXTENSION OF CHARGE TO TAX TO PROFITS AND INCOME DERIVED FROM ACTIVITIES CARRIED ON AND EMPLOYMENTS EXERCISED ON THE CONTINENTAL SHELF

SCHEDULE 2

MACHINERY FOR ASSESSMENT, CHARGE AND PAYMENT OF TAX UNDER SCHEDULE C AND, IN CERTAIN CASES, SCHEDULE D

SCHEDULE 3

RELIEFS IN RESPECT OF INCOME TAX CHARGED ON PAYMENTS ON RETIREMENT, ETC

SCHEDULE 4

EXEMPTION OF SPECIFIED NON-COMMERCIAL STATE SPONSORED BODIES FROM CERTAIN TAX PROVISIONS

SCHEDULE 5

DESCRIPTION OF CUSTOM HOUSE DOCKS AREA

SCHEDULE 6

DESCRIPTION OF TEMPLE BAR AREA

SCHEDULE 7

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

DESCRIPTION OF CERTAIN ENTERPRISE AREAS

SCHEDULE 8

DESCRIPTION OF QUALIFYING RESORT AREAS

SCHEDULE 9

CHANGE IN OWNERSHIP OF COMPANY: DISALLOWANCE OF TRADING
LOSSES

SCHEDULE 10

RELIEF FOR INVESTMENT IN CORPORATE TRADES: SUBSIDIARIES

SCHEDULE 11

PROFIT SHARING SCHEMES

SCHEDULE 12

EMPLOYEE SHARE OWNERSHIP TRUSTS

SCHEDULE 13

ACCOUNTABLE PERSONS FOR PURPOSES OF CHAPTER 1 OF PART 18

SCHEDULE 14

CAPITAL GAINS TAX: LEASES

SCHEDULE 15

LIST OF BODIES FOR PURPOSES OF *SECTION 610*

SCHEDULE 16

BUILDING SOCIETIES: CHANGE OF STATUS

SCHEDULE 17

REORGANISATION INTO COMPANIES OF TRUSTEE SAVINGS BANKS

SCHEDULE 18

ACCOUNTING FOR AND PAYMENT OF TAX DEDUCTED FROM RELEVANT
PAYMENTS AND UNDISTRIBUTED RELEVANT INCOME

SCHEDULE 19

OFFSHORE FUNDS: DISTRIBUTING FUNDS

SCHEDULE 20

OFFSHORE FUNDS: COMPUTATION OF OFFSHORE INCOME GAINS

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

SCHEDULE 21

PURCHASE AND SALE OF SECURITIES: APPROPRIATE AMOUNT IN
RESPECT OF THE INTEREST

SCHEDULE 22

DIVIDENDS REGARDED AS PAID OUT OF PROFITS ACCUMULATED
BEFORE GIVEN DATE

SCHEDULE 23

OCCUPATIONAL PENSION SCHEMES

SCHEDULE 24

RELIEF FROM INCOME TAX AND CORPORATION TAX BY MEANS OF
CREDIT IN RESPECT OF FOREIGN TAX

SCHEDULE 25

CONVENTION BETWEEN THE GOVERNMENT OF IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

SCHEDULE 26

REPLACEMENT OF HARBOUR AUTHORITIES BY PORT COMPANIES

SCHEDULE 27

FORMS OF DECLARATIONS TO BE MADE BY CERTAIN PERSONS

SCHEDULE 28

STATEMENTS, LISTS AND DECLARATIONS

SCHEDULE 29

PROVISIONS REFERRED TO IN SECTIONS 1052, 1053 AND 1054

SCHEDULE 30

REPEALS

SCHEDULE 31

CONSEQUENTIAL AMENDMENTS

SCHEDULE 32

TRANSITIONAL PROVISIONS

ACTS REFERRED TO

Adoption Act, 1991	1991, No. 14
Adoption Acts, 1952 to 1991	
Age of Majority Act, 1985	1985, No. 2
Agricultural Act, 1931	1931, No. 8
Agricultural Acts, 1931 to 1980	
Aliens Act, 1935	1935, No. 14
Army Pensions Act, 1932	1932, No. 24
Army Pensions Acts, 1923 to 1980	
Assurance Companies Act, 1909	9 Edw. 7, c. 42
Auctioneers and House Agents Act, 1947	1947, No. 10
Bankers' Books Evidence Acts, 1879 and 1959	
Bankruptcy Act, 1988	1988, No. 27
Betting Act, 1931	1931, No. 27
Building Societies Act, 1989	1989, No. 17
Building Societies Acts, 1874 to 1989	
Capital Acquisitions Tax Act, 1976	1976, No. 8
Capital Gains Tax Act, 1975	1975, No. 20
Capital Gains Tax (Amendment) Act, 1978	1978, No. 33
Casual Trading Act, 1995	1995, No. 19
Central Bank Act, 1971	1971, No. 24
Central Fund Act, 1965	1965, No. 4
Central Fund (Permanent Provisions) Act, 1965	1965, No. 26
Charities Act, 1961	1961, No. 17
Civil Service Commissioners Act, 1956	1956, No. 45
Companies Act, 1963	1963, No. 33
Companies Act, 1990	1990, No. 33
Companies Acts, 1963 to 1990	
Companies (Amendment) Act, 1983	1983, No. 13
Connaught Rangers (Pensions) Act, 1936	1936, No. 37
Connaught Rangers (Pensions) Acts, 1936 to 1964	
Consumer Credit Act, 1995	1995, No. 24
Continental Shelf Act, 1968	1968, No. 14
Corporation Tax Act, 1976	1976, No. 7
Court Officers Act, 1926	1926, No. 27
Courts (Supplemental Provisions) Act, 1961	1961, No. 39
Courts Act, 1991	1991, No. 20
Courts of Justice Act, 1924	1924, No. 10
Courts of Justice Act, 1953	1953, No. 32
Criminal Assets Bureau Act, 1996	1996, No. 31
Criminal Procedure Act, 1967	1967, No. 12
Customs-Free Airport Act, 1947	1947, No. 5
Deeds of Arrangements Act, 1887	50 & 51 Vict., c. 57
Defence Act, 1954	1954, No. 18
Dentists Act, 1985	1985, No. 9
Diplomatic Relations and Immunities Act, 1967	1967, No. 8
Disclosure of Certain Information for Taxation and Other Purposes Act, 1996	1996, No. 25
Dublin Docklands Development Authority Act, 1997	1997, No. 7
Enforcement of Court Orders Act, 1926	1926, No. 18
Environmental Protection Agency Act, 1992	1992, No. 7
Export Promotion (Amendment) Act, 1987	1987, No. 13
Family Law Act, 1995	1995, No. 26
Family Law (Divorce) Act, 1996	1996, No. 33
Finance (1909-10) Act, 1910	10 Edw. 7 & 1 Geo. 5, c. 8
Finance (Excise Duties) (Vehicles) Act, 1952	1952, No. 24
Finance (Excise Duty on Tobacco Products) Act, 1977	1977, No. 32
Finance (Miscellaneous Provisions) Act, 1956	1956, No. 47
Finance (Miscellaneous Provisions) Act, 1958	1958, No. 28
Finance (Miscellaneous Provisions) Act, 1968	1968, No. 7
Finance (Profits of Certain Mines) (Temporary Relief from Taxation) Act, 1956	1956, No. 8
Finance (Taxation of Profits of Certain Mines) Act, 1974	1974, No. 17
Finance Act, 1894	57 & 58 Vict., c. 30
Finance Act, 1920	10 & 11 Geo. 5, c. 8
Finance Act, 1928	1928, No. 11
Finance Act, 1931	1931, No. 31
Finance Act, 1950	1950, No. 18
Finance Act, 1952	1952, No. 14
Finance Act, 1959	1959, No. 18
Finance Act, 1960	1960, No. 19
Finance Act, 1963	1963, No. 23
Finance Act, 1964	1964, No. 15
Finance Act, 1965	1965, No. 22
Finance Act, 1967	1967, No. 17
Finance Act, 1968	1968, No. 33

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Finance (No. 2) Act, 1968	1968, No. 37
Finance Act, 1969	1969, No. 21
Finance Act, 1970	1970, No. 14
Finance (No. 2) Act, 1970	1970, No. 25
Finance Act, 1971	1971, No. 23
Finance Act, 1972	1972, No. 19
Finance Act, 1973	1973, No. 19
Finance Act, 1974	1974, No. 27
Finance Act, 1975	1975, No. 6
Finance (No. 2) Act, 1975	1975, No. 19
Finance Act, 1976	1976, No. 16
Finance Act, 1977	1977, No. 18
Finance Act, 1978	1978, No. 21
Finance Act, 1979	1979, No. 11
Finance Act, 1980	1980, No. 14
Finance Act, 1981	1981, No. 16
Finance (No. 2) Act, 1981	1981, No. 28
Finance Act, 1982	1982, No. 14
Finance Act, 1983	1983, No. 15
Finance Act, 1984	1984, No. 9
Finance Act, 1985	1985, No. 10
Finance Act, 1986	1986, No. 13
Finance Act, 1987	1987, No. 10
Finance Act, 1988	1988, No. 12
Finance Act, 1989	1989, No. 10
Finance Act, 1990	1990, No. 10
Finance Act, 1991	1991, No. 13
Finance Act, 1992	1992, No. 9
Finance (No. 2) Act, 1992	1992, No. 28
Finance Act, 1993	1993, No. 13
Finance Act, 1994	1994, No. 13
Finance Act, 1995	1995, No. 8
Finance Act, 1996	1996, No. 9
Finance Act, 1997	1997, No. 22
Friendly Societies Act, 1896	59 & 60 Vict., c. 25
Friendly Societies Acts, 1896 to 1977	
Gaming and Lotteries Act, 1956	1956, No. 2
Harbours Act, 1996	1996, No. 11
Health Act, 1970	1970, No. 1
Health Acts 1947 to 1996	
Health Contributions Act, 1979	1979, No. 4
Higher Education Authority Act, 1971	1971, No. 22
Housing Act, 1966	1966, No. 21
Housing Finance Agency Act, 1981	1981, No. 37
Housing (Miscellaneous Provisions) Act, 1979	1979, No. 27
Income Tax Act, 1967	1967, No. 6
Income Tax (Amendment) Act, 1967	1967, No. 7
Income Tax (Amendment) Act, 1986	1986, No. 34
Industrial and Provident Societies Acts, 1893 to 1978	
Industrial Development Act, 1969	1969, No. 32
Industrial Development Act, 1972	1972, No. 9
Industrial Development Act, 1986	1986, No. 9
Industrial Development Act, 1993	1993, No. 19
Industrial Development Act, 1995	1995, No. 28
Industrial Development (Amendment) Act, 1991	1991, No. 30
Industrial Development (No. 2) Act, 1981	1981, No. 14
Industrial Training (Apprenticeship Levy) Act, 1994	1994, No. 3
Insurance Act, 1936	1936, No. 45
Insurance Act, 1989	1989, No. 3
Insurance Act, 1990	1990, No. 26
Insurance Acts, 1909 to 1969	
Interpretation Act, 1937	1937, No. 38
Irish Film Board Act, 1980	1980, No. 36
Irish Horseracing Industry Act, 1994	1994, No. 18
Irish Takeover Panel Act, 1997	1997, No. 5
Judicial Separation and Family Law Reform Act, 1989	1989, No. 6
Labour Services Act, 1987	1987, No. 15
Limited Partnership Act, 1907	7 Edw. 7, c. 24
Local Authorities (Higher Education) Grants Acts, 1968 to 1992	
Local Government Act, 1941	1941, No. 23
Local Government Act, 1946	1946, No. 24
Local Government (Financial Provisions)(No. 2) Act, 1983	1983, No. 21
Local Government (Planning & Development) Act, 1963	1963, No. 28
Local Government (Planning & Development) Acts, 1963 to 1993	
Local Government (Sanitary Services) Act, 1962	1962, No. 26

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Local Government (Toll Roads) Act, 1979	1979, No. 34
Local Government Services (Corporate Bodies) Act, 1971	1971, No. 6
Maritime Jurisdiction Act, 1959	1959, No. 22
Maritime Jurisdiction (Amendment) Act, 1988	1988, No. 9
Medical Practitioners Act, 1978	1978, No. 4
Mercantile Marine Act, 1955	1955, No. 29
Merchant Shipping Acts, 1894 to 1993	
Military Service Pensions Act, 1924	1924, No. 48
Military Service Pensions Act, 1934	1934, No. 43
Military Service Pensions Acts, 1924 to 1964	
Minerals Developments Act, 1940	1940, No. 31
Ministerial and Parliamentary Offices Act, 1938	1938, No. 38
National Lottery Act, 1986	1986, No. 28
Official Secrets Act, 1963	1963, No. 1
Oireachtas (Allowances to Members) Act, 1938	1938, No. 34
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1960	1960, No. 12
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992	1992, No. 3
Ombudsman Act, 1980	1980, No. 26
Patents Act, 1992	1992, No. 1
Pensions (Increase) Act, 1964	1964, No. 10
Petroleum and Other Minerals Development Act, 1960	1960, No. 7
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Policies of Assurances Act, 1867	30 & 31 Vict., c. 144
Post Office Savings Bank Act, 1861	24 & 25 Vict., c. 14
Probation of Offenders Act, 1907	7 Edw. 7, c. 17
Public Health (Ireland) Act, 1878	41 & 42 Vict., c. 52
Rates on Agricultural Land (Relief) Acts, 1939 to 1980	
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Acts, 1967 to 1991	
Regional Technical Colleges Act, 1992	1992, No. 16
Registration of Business Names Act, 1963	1963, No. 30
Road Traffic Act, 1961	1961, No. 24
Roads Act, 1920	10 & 11 Geo. 5, c. 72
Securitisation (Proceeds of Certain Mortgages) Act, 1995	1995, No. 35
Settled Land Act, 1882	45 & 46 Vict., c. 38
Shannon Free Airport Development Company Limited (Amendment) Act, 1970	1970, No. 9
Social Welfare (Consolidation) Act, 1993	1993, No. 27
Stamp Act, 1891	54 & 55 Vict., c. 39
State Property Act, 1954	1954, No. 25
Status of Children Act, 1987	1987, No. 26
Succession Act, 1965	1965, No. 27
Superannuation and Pensions Act, 1963	1963, No. 24
Temple Bar Area Renewal and Development Act, 1991	1991, No. 19
Tourist Traffic Act, 1939	1939, No. 24
Tourist Traffic Act, 1957	1957, No. 27
Tourist Traffic Acts, 1939 to 1995	
Trade Union Act, 1941	1941, No. 22
Trade Union Act, 1942	1942, No. 23
Trustee Savings Banks Act, 1989	1989, No. 21
Trustee Savings Banks Acts, 1863 to 1989	
Údarás na Gaeltachta Act, 1979	1979, No. 5
Unit Trusts Act, 1972	1972, No. 17
Unit Trusts Act, 1990	1990, No. 37
Urban Renewal Act, 1986	1986, No. 19
Value-Added Tax Act, 1972	1972, No. 22
Value-Added Tax Acts, 1972 to 1997	
Vocational Education Act, 1930	1930, No. 29
Vocational Education Acts, 1930 to 1993	
Voluntary Health Insurance Act, 1957	1957, No. 1
Waiver of Certain Tax, Interest and Penalties Act, 1993	1993, No. 24
Wealth Tax Act, 1975	1975, No. 25
Youth Employment Agency Act, 1981	1981, No. 32



Number 39 of 1997

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.

[30th November, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

INTERPRETATION AND BASIC CHARGING PROVISIONS

PART 1

INTERPRETATION

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

Interpretation of this Act.

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

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

“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.

Pr.1 S.1

(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.

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

[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)]

“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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“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.

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—

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)]

Pt.1 S.3

- (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.

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

[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)]

“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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“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; Pr.1 S.4

“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.

Pt.1 S.4

(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.

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

[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)]

“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*;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“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; Pr.1 S.5

“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 group-
ing 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, under-lease, 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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.1 S.5

“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. Pr.1 S.5

6.—For the purposes of the Tax Acts and the Capital Gains Tax Acts, except where the contrary intention appears— Construction of references to child in Tax Acts and Capital Gains Tax Acts.

(a) references in any of those Acts to a child (including references to a son or a daughter) include references to— [FA77 s36; FA92 s16]

(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.

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. Application to certain taxing statutes of Age of Majority Act, 1985. [FA86 s112(1) and (2)]

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

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 Construction of certain taxing statutes in accordance with Status of Children Act, 1987. [FA88 s74(1) and (2)]

Pt.1 S.8

(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”;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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

Pt.1 S.9

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.

10.—(1) In this section—

[FA96 s131(1) to (8)]

“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. Pr.1 S.10

(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.

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—

Meaning of “control” in certain contexts.

(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

[CTA76 s158]

(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

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—

The charge to income tax.

[ITA67 s4; FA80 s55]

Schedule C — *Section 17*;

Schedule D — *Section 18*;

Pt.2 S.12

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—

- (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

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.

Income tax charged by deduction.
[FA74 s5(2) and (3)]

(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.

Pt.2
Schedule C.

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

[ITA67 s47 and s51]

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.

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

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

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,

and

Pr.2 S.18

- (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 I* 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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.2 S.18

- (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.

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

[ITA67 s109 and
Sch2 rule2]

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; Pr.2 S.19
- (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.

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

SCHEDULE F

[CTA76 s83(2) and (3)]

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

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

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

(a) 38 per cent for—

(i) the financial year 1996, and

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

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.2 S.21

(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. Pr.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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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.

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

Application of *section 13* for purposes of corporation tax.
[CTA76 s140(1) and Sch2 Pt1 par34]

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.

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

[CTA76 s3]

(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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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

(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.

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.

Basis of, and periods for, assessment.

[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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

29.—(1) In this section—

Pr.2
Persons chargeable.

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

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

“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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.2 S.29

(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

32.—In this Chapter—

Interpretation
(Chapter 1).

“banker” includes a person acting as a banker;

[ITA67 s51]

“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.

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—

Method of charge
and payment.

[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.

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.

Stock, dividends or
interest belonging
to the State.

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

Pt.3 S.34

(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. Pr.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.

37.—(1) In this section, “securities” means any bonds, certificates of charge, debentures, debenture stock, notes, stock or other forms of security. Securities of certain State-owned companies.

[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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.3 S.37

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. Pr.3 S.42

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. Certain securities issued by Minister for Finance. [ITA67 s464; FA92 s42(1)(a); FA97 s45]

(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.

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”; Exemption from corporation tax of certain securities issued by Minister for Finance. [FA85 s69]

“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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) non-interest-bearing securities issued by the Minister for Finance at a discount, including Exchequer Bills and Exchequer Notes, and Pr.3 S.45
- (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.

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. Exemption of premiums on Investment Bonds.
[F(No.2)A68 s8; FA74 s86 and Sch2 PtI]

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. Certain securities of ACC Bank plc.
[ITA67 s468(3)]

- 48.**—(1) The securities to which this subsection applies are— Exemption of premiums on certain securities.
- (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, [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]
- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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 Pr.3 S.49
- (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.

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. Securities of Irish local authorities issued abroad.

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

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.3 S.50

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.

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

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

(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.

53.—(1) In this section—

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

“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.

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.

[ITA67 s55]

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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

55.—(1) In this section—

Taxation of strips of securities.

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

[FA97 s33]

“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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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.

Pt.4
Tax on quarries,
mines and other
concerns chargeable
under Case I(b) of
Schedule D.

(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.

[ITA67 s56(1) to
(3)]

(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.

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.

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

[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.

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—

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

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

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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.4 S.58

- (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.

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:

- (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.

Pt.4
Charge to tax of income from which tax has been deducted.

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

CHAPTER 2

Foreign dividends

60.—In this Chapter—

“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.

Interpretation
(*Chapter 2*).

[ITA67 s459]

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

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

Dividends entrusted for payment in the State.

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

62.—Where—

(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

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

[ITA67 s461]

PT.4 S.62

- (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.

64.—(1) In this section—

Pt.4
Interest on quoted
Eurobonds.

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

[ITA67 s462A;
FA94 s15]

“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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (c) declares that at the time the declaration is made the person Pr.4 S.64 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,
 - (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

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. Cases I and II: basis of assessment.

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

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

- (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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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

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

(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;

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

(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.

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

Short-lived
businesses.

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

[ITA67 s58A; FA95
s19]

(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

Pt.4 S.68

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. Pr.4 S.70

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—

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)]

- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) sections 70 and 71 shall apply as if section 71(2) were deleted, and Pr.4 S.73

(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.

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. Case IV: basis of assessment.
[ITA67 s79; FA96 s132(1) and Sch5 PtI par1(2)]

(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.

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

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

(b) any receipts in respect of any easement,

[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)]

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

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.

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

Miscellaneous special rules for computation of income.

- (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.

[CTA76 s12(1) to (7)]

- (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.

Pt.4 S.77

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.4 S.78

(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.

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

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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

change resulting directly from a change in a rate of exchange; Pr.4 S.79

“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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.4 S.79

(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.

80.—(1) In this section—

[FA93 s47(1) and (2)]

“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—

Pr.4 S.80

- (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

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.

General rule as to deductions.

[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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.4 S.81

- (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— Pt.4 S.83

- (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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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.

Pt.4
Debts set off
against profits and
subsequently
released.
[FA70 s24(1) and
(2)(a)]

(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.

88.—(1) In this section, “the company” means the company incorporated on the 30th day of October, 1991, as The Enterprise Trust Limited.

Deduction for gifts
to Enterprise Trust
Ltd.

[FA92 s56; FA96
s56(b); FA97 s64]

(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,

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

of any of the provisions of the Tax Acts, treated as having been discontinued for the purpose of computing tax. Pr.4 S.89

(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.

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:

Valuation of work in progress at discontinuance of profession.

[FA70 s23(1) to (3) and (5); FA81 s9(d)]

(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.

Pt.4 S.90

(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)*. Pt.4 S.91

(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)*.

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. Receipts and losses accruing after change treated as discontinuance.
[FA70 s22]

- (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

Pt.4 S.92

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, eighteenth-twentieths, and so on, reducing the fraction by one-twentieth for each year the individual had attained, up to the age of 64 years,

Pr.4 S.93

(c) where on that date the individual had attained the age of 65 years or any greater age, five-twentieths.

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—

Conventional basis:
general charge on
receipts after
change of basis.

(a) a change from a conventional basis to the earnings basis, or

[FA70 s26(1) to (4)]

(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

96.—(1) In this Chapter, except where the context otherwise requires—

Interpretation
(Chapter 8).

“easement” includes any right, privilege or benefit in, over or derived from premises;

[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]

“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; Pr.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)*. Pr.4 S.98

(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

Pt.4 S.98

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. Pr.4 S.100

(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.

101.—Where on a claim in that behalf the person chargeable proves— Relief for amount not received.

(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

[ITA67 s90; FA69 s28]

(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.

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;

Deduction by reference to premium, etc. paid in computation of profits for purposes of Schedule D, Cases I and II.

(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;

[ITA67 s91; FA75 s22(3) and Sch 2 PtIII]

(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 Pr.4 S.103
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.

PT.4 S.103

(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. Pr.4 S.105

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. Tax treatment of receipts and outgoings on sale of premises. [FA69 s26(1) to (4)]

(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

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. Apportionment of profits. [ITA67 s107; FA69 s65(1) and Sch5 PtI]

Pt.4 S.107

(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.

108.—Every statement of profits to be charged under Schedule D which is made by any person—

[ITA67 s68(1)]

(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.

109.—(1) In this section, "lump sum" and "rebate" have the same meanings respectively as in the Redundancy Payments Act, 1967.

[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]

(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. Pr.4 S.109

(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.

110.—(1) In this section—

Securitisation of assets.

“qualifying asset” means—

[FA91 s31; FA96 s55(1)]

(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,

(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

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.

Basis of assessment, persons chargeable and extent of charge.

[ITA67 s110; FA90 s19(a); FA91 s6]

(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

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.

Making of deductions.

[ITA67 s111(4) and s112; FA90 s19(b)(proviso)]

(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.

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.

General rule as to deductions.

[ITA67 Sch2 rule3; FA96 s132(2) and Sch5 PtIII]

Pt.5
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; Pr.5 S.116

“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.

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.

Expenses allowances.
[ITA67 s116; FA74 s86 and Sch2 PtI]

Pr.5 S.117

(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. Pr.5 S.118

(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*.

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*.

Valuation of benefits in kind.

[ITA67 s118(1), (2) and (4); FA69 s32(b) and (c)]

(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

Pt.5 S.119

- (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

121.—(1) (a) In this section—

Benefit of use of car.

“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;

[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 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;

- (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. Pr.5 S.121

- (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)*.

TABLE

Business mileage		Percentage (3)
lower limit (1)	upper limit (2)	
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)*.
- (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. Pr.5 S.121

- (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.

122.—(1) (a) In this section—

Preferential loan arrangements.

“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; [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)]

“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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

- (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 prerequisite of an office or employment with that person a sum equal to— Pr.5 S.122

- (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 prerequisite 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

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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

124.—(1) This section shall apply to the following payments—

Pr.5
Tax treatment of
certain severance
payments.

[FA93 s7(2)]

- (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*.

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;

Tax treatment of
benefits received
under permanent
health benefit
schemes.

[FA79 s8(1), (4),
(4A) and (6); FA86
s7; FA92 s7]

“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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.5 S.125

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

on foot of such benefits, and tax so chargeable shall be computed under *section 112(1)*, and Pr.5 S.126

(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),

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the tenor or effect of which is to restrict the individual as Pr.5 S.127
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

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.

(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

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.

Irish resident
company
distributions not
generally
chargeable to
corporation tax.

[CTA76 s2]

CHAPTER 2

Meaning of distribution

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

Matters to be
treated as
distributions.

[CTA76 s84]

Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up. Pr.6 S.130

(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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.130

(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. Pr.6 S.130

(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)*.

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.

Bonus issues following repayment of share capital.

[CTA76 s85]

(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. Pr.6 S.132

(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.

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—

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)]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.133

- (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—

- (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, Pr.6 S.133

- (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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.6 S.133

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.133

- (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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) Where the borrower mentioned in *subsection (5)* is a 75 per cent subsidiary of— Pt.6 S.134

(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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.135

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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.

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—

Disallowance of reliefs in respect of bonus issues.

[CTA76 s89]

- (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.

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

on relevant trading operations within the meaning of *Pr.6 S.138 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.

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—

Dividends and other distributions at gross rate or of gross amount.

[CTA76 s178; FA78 s28(6); FA97 s37 and Sch2 par1]

$$D = \frac{A \times D}{100}$$

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

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.

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)]

(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.

141.—(1) In this section—

Pt.6
Distributions out of
income from patent
royalties.

“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—

[CTA76 s170; FA92 s19(2); FA96 s32(2) and (3)(b); FA97 s146(1) and Sch9 par10(9)]

(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.

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

company's trade as is laid out for the purposes of Pr.6 S.141 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 than 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

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. Pr.6 S.141

(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.

142.—(1) In this section—

“exempted income” means income in respect of which a company has obtained relief under—

Distributions out of profits of certain mines.

[CTA76 s81]

(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

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. Pr.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

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. Pr.6 S.144

(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.

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—

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)]

(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 Pr.6 S.145
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. Pr.6 S.145

(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.

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

Provisions supplementary to *section 145*.

[CTA76 s65]

Pt.6 S.146

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

- (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. Pr.6 S.147

- (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

- (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—

$$F \times \frac{1}{2} \left[\frac{G}{100 - G} \right]$$

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

Pt.6 S.147

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. Pr.6 S.149

(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.

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) (1) or (v) of section 130(2)(d)*. Tax credit for recipients of certain distributions.
[FA 93 s46(1) and (2)]

(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.

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. Appeals.
[FA80 s51]

CHAPTER 6

Distributions — supplemental

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— Explanation of tax credit to be annexed to interest and dividend warrants.

- (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, [CTA76 s5 and s83(5)]
- (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.

Pt.6 S.152

- (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, Pr.6 S.154 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

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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

Pr.6 S.155

(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

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.

Franked investment income and franked payments.

[CTA76 s24]

(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.

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.

Set-off of losses, etc. against franked investment income.

[CTA76 s25(1) to (7); FA86 s55(1)(a); FA92 s49(1)]

(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.

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.

Pr.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)]

(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

Pt.6 S.158

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. Pr.6 S.160

(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*.

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.

Rectification of excessive set-off of advance corporation tax.

[FA83 s40]

162.—(1) In this section, references to a distribution or distributions shall not include references to a distribution or distributions—

Calculation of advance corporation tax where company receives distributions.

(a) made before the 9th day of February, 1983, or

[FA83 s41]

(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

Pt.6 S.162

- (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.

165.—(1) (a) In this section—

Group dividends.

“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;

[FA83 s44; FA92 s51(1); FA94 s55; FA96 s58(1)(a)]

“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.

(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.

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.

Pt.6
Surrender of
advance corporation
tax.

[FA83 s45; FA91
s69(a)]

(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.

Pt.6 S.166

(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.

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.

Change of ownership of company: calculation and treatment of advance corporation tax.

[FA83 s46(1) to (8)]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(3) *Sections 160, 162 and 171* shall apply to an accounting period Pr.6 S.167 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*.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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. Pr.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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.170

(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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.171

(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*; Pr.6 S.173

“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.

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;

Taxation of dealer’s receipts on purchase of shares by issuing company or by its subsidiary.

[FA91 s60]

“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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6 S.174

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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6
Conditions as to
residence and
period of
ownership.

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)*;

[FA91 s62]

“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. Pr.6 S.177

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. Conditions as to reduction of vendor's interest as shareholder.

(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. [FA91 s63]

(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

Pt.6 S.178

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.

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.

[FA91 s64]

(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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(7) Subject to *subsection (8)*, in *subsections (9) to (11)*, “relevant company” means the company making the purchase and any other company—

- (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 of 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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.6
Additional
conditions.

180.—(1) In this section, “group” has the same meaning as in *section 179*.

[FA91 s65]

(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.

181.—Where—

[FA91 s66]

(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*. Pr.6 S.182

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. Information. [FA91 s68(1) to (3)]

(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.

184.—(1) For the purposes of the Tax Acts and the Capital Gains Tax Acts— Treasury shares. [FA91 s70]

- (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.

PT.6 S.184

(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. Pr.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.

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: Connected persons. [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,

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.

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.

Age exemption and associated marginal relief.

(2) In this section, “the specified amount” means, subject to *section 187(2)*—

[FA80 s2(1) to (4) and (6) and (7); FA81 s1(b)(i); FA89 s1(b); FA94 s1(b); FA96 s132 and Sch5 Pt1 par12; FA97 s1(b)]

- (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

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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. Pr.7 S.189

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”. Certain payments made by the Haemophilia HIV Trust.

[FA90 s7]

(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.

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;

Taxation treatment of Hepatitis C compensation payments.

[FA96 s9]

“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.

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. Payments in respect of thalidomide children.

[FA73 s19(1) and (2); FA78 s7]

(2) Income which—

- (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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(4) Notwithstanding *subsection (3)*, a payment of income arising from a relevant scholarship which is—

- (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*.

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.

Child benefit.
[ITA67 s354; FA97 s146(1) and Sch9 PtI par1(26)]

195.—(1) In this section, “work” means an original and creative work which is within one of the following categories—

Exemption of certain earnings of writers, composers and artists.

- (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* Pr.7 S.195 (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.

(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 of 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.

Pt.7
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 Pr.7 S.200 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.

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,

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]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.7 S.201

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—

Pr.7 S.201

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.7 S.201

(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, Pr.7 S.202 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* Pr.7 S.202
(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.7 S.202

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)*;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (c) military gratuities and demobilisation pay granted to officers of the National Forces or the Defence Forces of Ireland on demobilisation; Pr.7 S.204
- (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.

205.—(1) In this section—

Veterans of War of Independence.

“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; [FA82 s9(1) and (2)]

“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.

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.

[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]

208.—(1) In this section, “charity” means any body of persons or trust established for charitable purposes only.

Pr.7
Lands owned and occupied, and trades carried on by, charities.

(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;

[ITA67 s334(1)(a) and (c), (2A) and (3); FA69 s33(1) and Sch4 PtI and s65(1) and Sch5 PtI; FA81 s11]

(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.

209.—Where any body of persons having consultative status with the United Nations Organisation or the Council of Europe—

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.

(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

[FA73 s20]

(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.

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—

The Great Book of Ireland Trust.

[FA91 s13]

(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 Clashanna Mills Trust Limited, and

(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.

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.

Pr.7
Credit unions.

[FA72 s43; CTA76 s164 and Sch 3 Pt II]

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.

Trade unions.

[ITA67 s336 and s339(2) and (4); F(MP)A68 s3(4) and Sch PtII; 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.

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.

Local authorities,
etc.

[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.

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.

Certain profits of
agricultural
societies.

[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.

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.

[ITA67 s350]

CHAPTER 2

Corporation tax

Certain income of
Nítrigin Éireann
Teoranta.

217.—Notwithstanding any provision of the Corporation Tax Acts, income—

[FA88 s39; FA92
s57]

(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.

218.—Notwithstanding any provision of the Corporation Tax Acts, income arising to the Housing Finance Agency plc—

[FA85 s24; FA90
s56]

(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.

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.

[FA97 s63]

Profits of certain
bodies corporate.

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.

[FA83 s32; FA87
s34; FA91 s41;
FA95 s44(1) and
(2); FA97 s49(1)
and (2)]

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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

6. The company incorporated on the 1st day of December, 1994, as Irish Thoroughbred Marketing Limited. Pr.7 S.220
7. The company incorporated on the 1st day of December, 1994, as Tote Ireland Limited.

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;

Certain payments to National Co-operative Farm Relief Services Ltd and certain payments made to its members.

[FA94 s52; FA95 s57]

“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.

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;

Certain dividends from a non-resident subsidiary.

[FA88 s41; FA91 s40]

“investment plan” means a plan of a company resident in the State which is directed towards the creation or maintenance of employment in the

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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*. Pr.7 S.222

(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

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— Small enterprise grants. [FA93 s37]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.7 S.223

(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 Thionsclaíochta*”, 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*,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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, Pr.7 S.226
- (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.

227.—(1) In this section, “non-commercial state-sponsored body” means a body specified in *Schedule 4*.

Certain income arising to specified non-commercial state-sponsored bodies.

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.7 S.227

- (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.

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.

[FA96 s39(1) and (2)]

Harbour authorities and port companies.

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)*,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

of the definition of “relevant body” which control Pr.7 S.229
harbours, situate within the State, in those
harbours.

(b) For the purposes of this section, where an account-
ing 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 har-
bour authority referred to in *paragraph (i)* of the definition of “rel-
evant 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.

230.—(1) Notwithstanding any provision of the Corporation Tax National Treasury
Acts, profits arising to the National Treasury Management Agency Management
in any accounting period shall be exempt from corporation tax. Agency.

[FA91 s20(1) and
(3)]

(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.

231.—The profits or gains arising—

Profits or gains
from stallion fees.

- (a) (i) to the owner of a stallion, which is ordinarily kept on [FA69 s18(2)(b);
land in the State, from the sale of services of mares CTA76 s11(6);
within the State by the stallion, or FA85 s14(1)]
- (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 satis-
faction of the Appeal Commissioners, that the part-
ownership of the stallion was acquired and is held primar-
ily 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.

Pt.7
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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the manufacture of goods for the purpose of relief Pr.7 S.234
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 *sub-paragraph (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)*. Pr.7 S.235

(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.

“art object” has the meaning assigned to it by *subsection (2)(a)*;

[FA94 s19(1) to (6)]

“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

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.7 S.236

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. Pr.8 S.237

(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.

238.—(1) In this section, “the inspector” means such inspector as the Revenue Commissioners may direct. Annual payments not payable out of taxed income.

(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. [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)]

(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 104I(1)*, 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.

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 con- Pr.8 S.239
sequence 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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.8 S.239

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*.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

241.—(1) This section shall apply in relation to an accounting period of a company not resident in the State if the company is—

Pt.8
Income tax on
payments by non-
resident companies.

(a) required by virtue of *section 238(3)* to deliver an account to the Revenue Commissioners, and

[FA90 s51(1) and
(2)]

(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)*.

242.—(1) This section shall apply to any payment which is—

Annual payments
for non-taxable
consideration.

(a) an annuity or other annual payment charged with tax under Case III of Schedule D, other than—

[FA89 s89(2)]

(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

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

fide carrying on the business of a discount house in the State, Pr.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, Pr.8 S.244

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.8 S.244

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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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

Pr.8 S.244

- (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

PT.8 S.244

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, Pr.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) *Subsection (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”.

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

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)]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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. Pr.8 S.247

248.—(1) This section shall apply to a loan to an individual to defray money applied—

Relief to individuals on loans applied in acquiring interest in companies.

(a) in acquiring any part of the ordinary share capital of—

[FA74 s34 and s35(4) and (5); FA92 s14(4)]

(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

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—

“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

Pt.8
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)]

- (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.

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—

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.

(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.

[FA90 s11; FA93 s6]

252.—(1) In this section—

"loan" means a loan applied for any of the purposes specified in the principal section;

Restriction of relief to individuals on loans applied in acquiring interest in companies which become quoted companies.

"the principal section" means *section 248* as extended by *section 250*;

"quoted company" means a company whose shares or any class of whose shares—

[FA92 s14(1), (2) and (3); FA97 s10]

(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

(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

Pt.8 S.253

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; Pr.8 S.256

“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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.8 S.256

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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“relevant interest” means interest paid in respect of a relevant deposit; Pr.8 S.256

“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.

257.—(1) Where a relevant deposit taker makes a payment of relevant interest— Deduction of tax from relevant interest.

- (a) the relevant deposit taker shall deduct out of the amount of the payment the appropriate tax in relation to the payment, [FA 86 s32]
- (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*.

Pt.8
Returns and
collection of
appropriate tax.

[FA 86 s33(1) to
(9)(d) and (10);
FA97 s146(2) and
Sch9 PIII]

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. Pr.8 S.258

(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

Pt.8 S.258

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)*. Pr.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).

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

Provisions supplemental to *sections 258 and 259.*

[FA86 s33A; FA96 s42; FA97 s146(1) and Sch9 PtI par14]

(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). Pr.8 S.260

(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.

261.—Notwithstanding anything in the Tax Acts—

Taxation of relevant interest, etc.

(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; [FA 86 s35(1)(a) to (cc); FA93 s15(1)(b); FA94 s12(1)(a)]

(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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.8 S.261

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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (b) is made in such form as may be prescribed or authorised by Pr.8 S.263 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)*.

Pt.8
Conditions and
declarations relating
to special savings
accounts.

264.—(1) The following are the conditions referred to in *paragraph (a)* of the definition of “special savings account” in *section 256(1)*:

[FA86 s37A; FA92
s22(1)(c);
F(No.2)A92 s3(b);
FA93 s15(1)(c);
FA94 s12(1)(b)]

- (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; Pr.8 S.264
- (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.

(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.

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—

Declarations relating to deposits of charities.

[FA86 s38]

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.8 S.266

(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*

268.—(1) In this Part, “industrial building or structure” means a building or structure in use—

Meaning of
“industrial building
or structure”.

(a) for the purposes of a trade carried on in—

[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]

- (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. Pr.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.

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. Meaning of “the relevant interest”. [ITA67 s268]

(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.

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. 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)]

(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

PT.9 S.270

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.

271.—(1) In this section—

[ITA67 s254(1)(a), (b) and (c), (2A), (2B), (3) and (7); FA75 s34(2)(a)(i); CTA76 s 21(1) and Sch1 par17 and 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]

“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 Pr.9 S.271
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—

Pt.9 S.271

- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

chargeable period or more than one such period, shall not in the aggregate exceed— Pr.9 S.273

- (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

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.

Pt.9 S.273

- 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,

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)]

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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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 Pr.9 S.274
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.

Pt.9 S.274

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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 Pr.9 S.275
- (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.

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.

Application of sections 272 and 274 in relation to capital expenditure on refurbishment.

[FA91 s26]

(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.

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.

Writing off of expenditure and meaning of “residue of expenditure”.

[ITA67 s266; CTA76 s21(1) and Sch1 par25; FA97 s23(b)]

(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.

(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. Pt.9 S.278

(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—

“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)*.

Purchases of certain buildings or structures.

FA70 s19(1), (2) and (2A); FA90 s75; FA91 s23; FA97 s146(1) and Sch9 PtI par4(2)]

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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.

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.

Special provisions
in regard to leases.
[ITA67 s269]

(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.

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.

Supplementary
provisions (*Chapter 1*).
[ITA67 s263(2) and
(3)]

(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.

283.—(1) In this section—

[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]

“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 Pr.9 S.283
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.

Pt.9
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*. Pr.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.

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.

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]

(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

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. Pr.9 S.286

- (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.

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—

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)]

- (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.

¹O.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.

Pt.9
Calculation of
balancing
allowances and
balancing charges in
certain cases.

(2) Where—

[ITA67 s277]

- (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:

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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— Pr.9 S.290
- (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.

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— Computer software.
[ITA67 s241A(1)
and (2); FA94
s24(a)]

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.9 S.291

- (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. Pt.9 S.293

(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.

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— Machinery or plant used partly for non-trading purposes.

(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

[ITA67 s276; FA90 s79]

(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.

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: Option in case of succession under will or intestacy.

[ITA67 s278]

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

in such circumstances that the full amount of the profits Pr.9 S.296
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)*.

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,

Subsidies towards wear and tear.

[ITA67 s280; CTA76 s21(1) and Sch1 par33]

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)*.

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—

Allowances to lessors.

[ITA67 s241(5), s252 and s281; CTA76 s21(1) and Sch1 par6 and par16; FA80 s17(3)]

- (a) an initial allowance under *section 283*, and
- (b) a wear and tear allowance under *section 284*,

Pt.9 S.298

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).

“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;

[ITA67 s294(6), (8) and (10); CTA76 s21(1) and Sch1 par43]

“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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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

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.

Income tax:
allowances and
charges in taxing a
trade, etc.

(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.

[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]

(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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.9
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.

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

Meaning of basis
period.

[ITA67 s297;
CTA76 s21(1) and
Sch1 par45; FA90
s22(1)(b); FA96
s132(1) and Sch5
PtI par1(13)]

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. Pr.9 S.306

(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.

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

Corporation tax: allowances and charges in taxing a trade.

[CTA76 s14(1) and (2)]

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. Pt.9 S.308

(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 than 2 years from the end of the accounting period in which an allowance cannot be given full effect under *subsection (1)*.

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— Companies not resident in the State.

[CTA76 s21(4)]

- (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.

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;

Allowances in respect of certain contributions to capital expenditure of local authorities.

[FA78 s26]

“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. Pr.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.

312.—(1) In this section, “control”, in relation to a body corporate, means the power of a person to secure— Special provisions as to certain sales.

- (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 [ITA67 s299 other than subsection (4)(b)(iii); CTA76 s21(1) Sch1 par46; FA96 s132(1) and Sch5 PtI par1(15)]
- (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

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.

Effect, in certain cases, of succession to trade, etc.

[ITA67 s300; FA96 s132(2) and Sch5 PtII]

(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.

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.

Procedure on apportionment.

[ITA67 s301; CTA76 s21(1) and Sch1 par47]

(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.

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.

Property used for purposes of “exempted trading operations”.

[ITA67 s302; CTA76 s21(1) and Sch1 par48]

PT.9 S.315

(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 Pt1 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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

of the foregoing, the process does not consist primarily of— Pr.9 S.317

- (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

(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.

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.

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)]

(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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.9
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. Pr.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

322.—(1) In this Chapter, but subject to *subsection (2)*—

Interpretation
(*Chapter 1*).

“the Custom House Docks Area” means the area described in *paragraph 2 of Schedule 5*;

[FA86 s41; FA87 s27(1)(b) and (2); FA94 s36(c) and (d); FA95 s32(1)(a) and s33]

“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

Pt.10 S.322

- (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.

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—

[FA86 s42(1), (2), proviso to (4), and (7); FA92 s29(b)(ii); FA93 s30(1)(a)(ii); FA95 s32(1)(b)]

- (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—

(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.

Pt.10 S.323

(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, Pr.10 S.324

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.

(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, Pr.10 S.324

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.

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

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)]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.325

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 Pr.10 S.325

(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,

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 Pr.10 S.325

- (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.

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,

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)]

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—

(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.

(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—

“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;

Pr.10
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 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 Pr.10 S.327

(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. Pr.10 S.327

(10) *Section 329* shall apply for the purposes of supplementing this section.

328.—(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 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—

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)]

- (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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.10 S.328

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.

329.—(1) In *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)]

“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, 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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“lease”, “lessee”, “lessor” and “premium” have the same meanings respectively as in *Chapter 8 of Part 4*; Pr.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. Pr.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*.

Pt.10 S.330

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

following subsection were substituted for *subsection* Pr.10 S.331
(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.

PT.10 S.331

(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, Pr.10 S.332

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—

- (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. Pr.10 S.332

333.—(1) (a) In this section—

“lease”, “lessee”, “lessor” and “rent” have the same meanings respectively as in *Chapter 8 of Part 4*;

Double rent allowance in respect of rent paid for certain business premises.

“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;

[FA90 s33(1) and (2)(a); FA97 s150]

“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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.333

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, Pr.10 S.333 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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.333

“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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) is not less than 30 square metres and not more than— Pr.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. Pr.10 S.334

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.10 S.334

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.

335.—(1) In this section—

“conversion expenditure” means, subject to *subsection (2)*, expenditure incurred on—

[FA97 s152]

- (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, Pr.10 S.335

(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

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

from *subsection (5)(b)*) the lessor was treated as having incurred in Pr.10 S.335 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.

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

[FA97 s153]

(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; Pr.10 S.336

“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.

(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. Pr.10 S.336

(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—

“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—

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.

[FA97 s154]

- (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. Pr.10 S.337

(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*—

“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*;

Provisions
supplementary to
sections 334 to 337.

[FA97 s155]

“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.

(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; Pr.10 S.339

“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.

340.—(1) The Minister for Finance may, after consultation with the Minister for the Environment and Local Government, by order direct that—

Designated areas, designated streets and enterprise areas.

- (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.

[FA94 s39; FA95 s35(1)(b); FA97 s26(b)]

(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.

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)*.

[FA94 s40; FA95 s35(1)(c)]

(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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) in *subsection (2)(a)(i)* of that section “to which *subsection (3)* applies” were deleted, Pr.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*,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.10 S.341

(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, Pr.10 S.342

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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.10 S.342

(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:

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“(4) An industrial building allowance shall be of an amount equal to 50 per cent of the capital expenditure mentioned in *subsection (2)*.”, Pr.10 S.342

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.

PT.10
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, Pr.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 I 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:

“(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; Pr.10 S.344

“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,

- (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. Pr.10 S.344

(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.

345.—(1) In this section—

“qualifying lease” means, subject to *subsection (8)*, a lease in respect of a qualifying premises granted—

Double rent allowance in respect of rent paid for certain business premises.

(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

[FA90 s33(1) and (2)(a); FA94 s42; FA95 s35(1)(g); FA97 s26(c) and s27]

(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— Pr.10 S.345

- (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)*

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; Pr.10 S.345

“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.

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—

Rented residential accommodation: deduction for certain expenditure on construction.

[FA94 s43; FA95 s35(1)(h) and (2)(d)]

- (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

(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.

PT.10 S.346

(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.

347.—(1) In this section—

“conversion expenditure” means, subject to *subsection (2)*, expenditure incurred on—

[FA94 s44]

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(ii) which has not been previously in use as a dwelling, Pr.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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.347

“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— Pr.10 S.347

- (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.

Pt.10 S.347

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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; Pr.10 S.348

“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 Pr.10 S.348
- (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

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

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—

- (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. Pr.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

351.—In this Chapter—

Interpretation
(Chapter 4).

“lease”, “lessee”, “lessor” and “rent” have the same meanings respectively as in *Chapter 8* of *Part 4*; [FA95 s46(1)]

“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.

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)*.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

(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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

(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.

Pr.10 S.352

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—

Capital allowances in relation to construction or refurbishment of certain commercial premises.

- (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,

[FA95 s48; FA97 s146(1) and Sch9 PtI par19]

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

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—

“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;

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA95 s49; FA97 s27]

“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. Pr.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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.10 S.355

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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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

- (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. Pr.10 S.356

- (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.

357.—(1) In this section—

“conversion expenditure” means, subject to *subsection (2)*, expenditure incurred on—

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA95 s51]

- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.357

- (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. Pr.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.

PT.10 S.357

(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

- (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. Pr.10 S.358

(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*—

“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;

Provisions supplementary to *sections 356 to 358*.

[FA95 s53]

“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 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.

Pt.10 S.359

(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, Pr.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.

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—

[FA96 s66]

- (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

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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.

362.—(1) In this section—

“conversion expenditure” means, subject to *subsection (2)*, expenditure incurred on—

Rented residential accommodation: deduction for certain expenditure on conversion.

[FA96 s67]

(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—

- (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 Pr.10 S.362
- (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.

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) of payments of the kind mentioned in *paragraph (a)*, Pr.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.

364.—(1) In this section—

Pr.10
Residential
accommodation:
allowance to owner-
occupiers in respect
of certain
expenditure on
construction or
refurbishment.

“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—

[FA96 s69(1) to (3)
and (5)]

- (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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.10 S.365

(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

Pr.10 S.367

- (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.

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)*.

Accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures.

(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—

[FA97 s54]

- (a) in *subsection (1)* of that section the definition of “industrial development agency” were deleted,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.10 S.368

(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 Pr.10 S.369

(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

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— Pr.10 S.369
- (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—

“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;

Double rent allowance in respect of rent paid for certain business premises.

[FA90 s33(1) and (2)(a); FA97 s56]

“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

- (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 the 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,

Pr.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

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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,

Pr.10 S.370

shall not be a qualifying lease for the purposes of this section.

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—

Residential accommodation: allowance to owner-occupiers in respect of certain expenditure on construction or refurbishment.
[FA97 s57(1) to (3) and (5)]

- (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

- (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.

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; Pr.10 S.372

“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

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.

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)]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.11 S.373

- (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; Pr.11 S.373

(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)*.

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. Capital allowances for cars costing over certain amount. [FA73 s25; CTA76 s21(1) and Sch1 par62; FA97 s146(1) and Sch9 PtI par6(1)]

(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. Pr.11 S.375

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—

Restriction of deduction in respect of running expenses of cars.

[FA76 s32; FA95 s23(2); FA97 s21(2)]

(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.

Pt.11 S.376

(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.

Pr.11
Provisions
supplementary to
sections 374 to 379.

(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.

[FA73 s30(2) to (4);
CTA76 s164 and
Sch3 PtII]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

- (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.

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.

Pr.12
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)]

(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.

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.

Relief under Case
IV for losses.

[ITA67 s310; FA97
s146(1) and Sch9
PtI par1(22)]

(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.

384.—(1) In this section, “the person chargeable” has the same meaning as in *Chapter 8 of Part 4*.

Relief under Case
V for losses.

(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.

[ITA67 s89; FA69
s24; FA90 s18(1)(b)
and (c); FA97
s146(1) and Sch9
PtI par1(7)]

Pt.12 S.384

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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, Pr.12 S.387
- (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.

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—

Meaning of "permanently discontinued", for purposes of terminal loss.
[ITA67 s314(1)]

- (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)*.

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.

Determination of claim for terminal loss.
[ITA67 s315; F(MP)A68 s3(2) and Sch Pt1]

(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

Pt.12 S.389

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 I* 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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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

Pr.12 S.391

(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.

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.

Option to treat capital allowances as creating or augmenting a 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.

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.

Extent to which capital allowances to be taken into account for purposes of *section 392*.

[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.

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.

Effect of giving relief under *section 381* by reference to capital allowances.

[ITA67 s320]

Pt.12
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 Pr.12 S.396 (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.

(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.

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.

Relief for terminal loss in a trade.

[CTA76 s18(1) to (3)]

- (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. Pr.12 S.399

(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.

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;

Company reconstructions without change of ownership.

[CTA76 s20]

(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—

- (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, Pr.12 S.400

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 predecessor (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.

(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.

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,

Change in ownership of company: disallowance of trading losses.

[CTA76 s27(1) to (7)]

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). Pr.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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.401

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.

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

[CTA76 s14A;
FA94 s56(b)]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.402

- (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, Pr.12 S.403

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. Pr.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.

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;

Restriction on use of capital allowances for certain leased machinery or plant.
[FA94 s30(1) to (5) and (7)]

“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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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”. Pr.12 S.404

(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—

(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 Pr.12 S.404
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. Pr.12 S.404

(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*,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.404

(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

Pr.12 S.404

(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.

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*—

Restriction on use of capital allowances on holiday cottages.

[FA92 s25]

(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

Pt.12 S.405

- (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— Pr.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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.12 S.407

“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*.

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—

Restriction on tax incentives on property investment.

[FA91 s24]

- (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

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.

409.—(1) In this section—

[FA97 s24(1) to (3),
(4)(a) and (b) and
(5)]

“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. Pr.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

410.—(1) (a) In this section—

Group payments.

“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;

[CTA76 s105; FA92 s50(1)]

“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.

(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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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. Pr.12 S.411

- (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

Pt.12 S.411

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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, Pr.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.

- (a) are issued for consideration which is or includes new consideration, [CTA76 s109; FA77 s42 and Sch1 PtIV par1(b)]
- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.12 S.413

- (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)*. Pr.12 S.413

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—

Meaning of “the profit distribution”.
[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.

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—

Meaning of “the notional winding up”.
[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.

(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.

Pr.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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.417

(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)*.

421.—(1) In this section, "relief derived from a subsequent accounting period" means—

Relation of group relief to other relief.

(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,

[CTA76 s117(1), (2), (3)(a), (b) and (d) and (4)]

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.421

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.

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.

Effect of arrangements for transfer of company to another group, etc.

[CTA76 s120]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.12 S.424

(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, Pr.12 S.424

- (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.

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,

Leasing contracts:
effect on claims for
losses of company
reconstructions.

[CTA76 s121]

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.

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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, Pr.12 S.426

- (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.

427.—(1) In this section, *section 417(3)* and *sections 424 to 426*, “arrangements” means arrangements of any kind, whether in writing or not. Information as to arrangements for transferring relief, etc.

(2) Where a company—

[CTA76 s123]

- (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

(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 Pr.12 S.428 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,

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.

- (a) need not be for the full amount available, [CTA76 s125]
- (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

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. Pr.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.

431.—(1) In this section, “share” includes “stock”.

Certain companies with quoted shares not to be close companies.

(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.

[CTA76 s95]

(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. Pr.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

Pt.13 S.432

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”.

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—

[CTA76 s103; FA97 s146(1) and Sch9 PtI par10(5)]

- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) if the trust relates exclusively to an exempt approved Pr.13 S.433 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.

Pt.13 S.433

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

accounting period or within 18 months after the end of the accounting period, and Pr.13 S.434

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.13 S.434

- (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,

Pr.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*.

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. Information. [CTA76 s104]

(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. Pr.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.

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. Interest paid to directors and directors’ associates. [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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.13 S.437

- (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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) the borrower works full-time for the close company or any of its associated companies, and Pr.13 S.438

(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.

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—

Effect of release, etc. of debt in respect of loan under *section 438*.

[CTA76 s99(1), (2) and (4)]

(a) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to

Pt.13 S.439

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 Pt1 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; Pr.13 S.440

- (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.

Pt.13 S.440

(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)*, Pr.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

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.

Pr.14 S.442

- 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.
- (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.*

Meaning of “goods”.
[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)]

(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 “micro-propagation” 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.

(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 food-stuffs, 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.
- (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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.14 S.443

- (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. Pr.14 S.443

(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.

(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; Pr.14 S.443

“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)*—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (i) shall have effect for the period beginning on such day, Pr.14 S.443 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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.14 S.443

(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.

444.—(1) For the purposes of relief under this Part, income from the sale of goods shall not include income from—

[FA80 s50]

(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

Pr.14 S.444

(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.

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—

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]

- (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, Pr.14 S.445 loading or unloading of aircraft,

(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.

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.

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]

(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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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.

(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. Pr.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—

- (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 Pr.14 S.448
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 quali-
fied 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—

- (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. Pr.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.

449.—(1) In this section—

“an amount receivable from the sale of goods” means an amount which—

Credit for foreign tax not otherwise credited.

[FA80 s39C; FA94 s54(a); FA95 s63]

- (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—

Pr.14
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. Pr.14 S.450

(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

(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. Pr.14 S.450

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.

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)]

Pt.14
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,

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.

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—

Restriction of certain charges on income.

[CTA76 s10A(1)(a) and (b)(ii), (2) and (3); FA92 s46(1)(a); FA93 s50]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

- (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. Pr.14 S.454

(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)*.

455.—(1) (a) In this section—

Restriction of certain losses.

“trade”, “income from the sale of goods” and “the sale of goods and merchandise” have the same meanings respectively as in *section 454*; [CTA76 s16A; FA92 s46(1)(c)]

“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—

- (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*. Pr.14 S.455

456.—(1) (a) In this section—

Restriction of group relief.

“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*; [CTA76 s116A(1)(a) and (b)(ii), (2) and (3), (4)(b) and (5); FA88 s34; FA92 s46(2)]

“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

(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”.

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—

$$\frac{R}{100} \times S$$

Application of *section 448* where profits are charged to corporation tax at the reduced rate.

[CTA76 s28A(10); FA96 s44; FA97 s60(1)(b)]

where—

Pr.14 S.457

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

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—

Deductions allowed in ascertaining taxable income and provisions relating to reductions in tax.

(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

[ITA67 s137; FA96 s132(1) and Sch5 par1(3); FA97 s8(8), s57(4) and s146(1) and Sch9 PtI par1(8)]

(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

Part 1

- Section 328
- Section 337
- Section 349
- Section 364
- Section 371
- Section 461
- Section 462
- Section 463
- Section 464
- Section 465
- Section 466
- Section 467
- Section 468
- Section 469
- Section 471
- Section 472
- Section 473(2)
- Section 479
- Section 481
- Section 489

Paragraphs 12 and 20 of Schedule 32

Part 2

- Section 244
- Section 470
- Section 473(3)
- Section 474
- Section 475
- Section 476
- Section 477
- 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. Pr.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.

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. Rate of tax at which repayments are to be made. [ITA67 s497; FA76 s7; FA96 s132(2) and Sch5 par1(23)]

(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.

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— Married and single personal allowances.

(a) in a case in which the claimant is a married person who— [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)]

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.15 S.461

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— Pr.15 S.462

- (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.

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.

Special allowance for widowed parent following death of spouse.

[FA91 s4(1) and (2); FA96 s132(1) and Sch5 PtI par17]

(b) This section shall apply to an individual whose spouse dies in a year of assessment (in this section referred to as a “claimant”).

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.15 S.463

(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. Pr.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.

Pr.15 S.465

(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.

Pr.15 S.466

(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.

467.—(1) Subject to this section, where an individual for a year of assessment proves—

Employed person taking care of incapacitated individual.

(a) (i) that throughout the year of assessment he or she was totally incapacitated by physical or mental infirmity, or

[FA69 s3(1), (2) and (4); FA80 s19 and Sch1 PtIII par2; FA96 s3 and Sch1 par2]

(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*.

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.

Relief for blind persons.

[FA71 s11(1) and (2); FA85 s3 and Sch1; FA96 s3 and Sch1 par3]

(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

Pt.15 S.468

- (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.

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;

[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]

“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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(f) physiotherapy or similar treatment prescribed by a practitioner, Pr.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— Pr.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.

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 1973¹, Council Directive No. 88/357/EEC of 22 June 1988², and Council Directive No. 92/49/EEC of 18 June 1992³, 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—

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)]

¹O.J. No. L228 of 16.8.1973, p.3.

²O.J. No. L172 of 4.7.1988, p.1.

³O.J. No. L228 of 11.8.1992, p.1.

Pt.15 S.470

- (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 prerequisite 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. Pr.15 S.471

472.—(1) (a) In this section—

Employee allowance.

“*emoluments*” means emoluments to which *Chapter 4 of Part 42* applies or is applied, but does not include—

[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)]

(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.

(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, Pr.15 S.472
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.

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;

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]

“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.

- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) the amount equal to the appropriate percentage of Pr.15 S.473 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 Pr.15 S.473

(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.

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;

Relief for fees paid to private colleges for full-time third level education.

[FA95 s6(1) to (5)]

“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

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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) provides courses to which a scheme approved by the Minister under the Local Authority (Higher Education) Grants Acts, 1968 to 1992, applies, or Pr.15 S.475
- (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.

(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.

476.—(1) In this section—

Pt.15
Relief for fees paid
for training courses.

“An Foras” means An Foras Áiseanna Saothair;

[FA97 s8(1) to (7)
and (10) and (11)]

“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.

(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,

Pr.15 S.476

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.

“appropriate percentage”, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

[FA95 s7(1) to (8)]

“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.

(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)*,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.15 S.477

- (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.

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;

[FA96 s5]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“installation” means the placing in position, including any necessary wiring, drilling, plastering or similar work, of a relevant alarm system; Pr.15 S.478

“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;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“75 per cent subsidiary”, in relation to a company, Pr.15 S.479 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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.15 S.479

(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. Pr.15 S.480

(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

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 Pr.15 S.481 the Companies Acts, 1963 to 1990, or the Registration of Business Names Act, 1963, the words “Ireland”, “Irish”, “Éireann”, “Éire” or “national”,

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.

(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 Pr.15 S.481 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 (1)*, 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. Pr.15 S.481

(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.

(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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (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, Pr.15 S.481
- (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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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

Pr.15 S.481

(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.

482.—(1) (a) In this section—

“approved building” means a building to which *subsection (5)* applies;

Relief for expenditure on significant buildings and gardens.

“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—

[FA82 s19; FA93 s29; FA94 s18; FA95 s20; FA97 s17]

(i) by the Minister to be a garden which is intrinsically of significant horticultural,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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 incurred 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.

- (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.

(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. Pr.15 S.482

(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

Pt.15 S.482

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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (b) (i) is established on a permanent basis solely for the advancement wholly or mainly in the State of one or more approved subjects, Pr.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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.15 S.484

- (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—

Pr.15 S.485

- (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—

Pr.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

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.

Corporation tax: relief for gifts to First Step.

[FA93 s51; FA95 s67; FA97 s65]

(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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.15 S.486

- (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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(ii) reduced by the amount of such profit as is Pr.15 S.487 attributable to—

- (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—

(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; Pr.15 S.487

“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 Pr.15 S.487
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

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. Pr.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*).

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

[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 Pt1 par13(1)]

(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*;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.16 S.488

“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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

date on which the employment commences and ending 12 months after that date, and Pr.16 S.488

- (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.

PT.16
The relief.

489.—(1) This Part shall apply for affording relief from income tax where, subject to *subsection (2)*—

[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]

- (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)*, Pr.16 S.489

(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—

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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

Pr.16 S.489

- (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.

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.

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]

(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

PT.16 S.490

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.

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*.

[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)]

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

substituted for “£1,000,000” in each place where it occurs. Pr.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

Pt.16 S.491

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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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. Pr.16 S.492

(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)*,

- (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. Pr.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.

(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. Pr.16 S.493

(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).

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. Specified individuals.

[FA84 s14A; FA95 s17(1)(d); FA97 s9(b)]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.16 S.494

- (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)— Pr.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.

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*.

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)]

(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

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.

496.—(1) A trade shall be a qualifying trade if it complies with the requirements of this section.

Pr.16
Qualifying trades.

(2) The trade shall throughout the relevant period—

[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)]

(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)*),

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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(II) creating new or improved materials, products, Pr.16 S.496
devices, processes or services,

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 develop-
ment, sales promotion or consumer surveys,

(ii) quality control,

(iii) prospecting, exploring or drilling for minerals, pet-
roleum 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, investig-
ative 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 techni-
cal procedures in relation to such cultivation necessary for the pro-
duction 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. Pr.16 S.496

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)*. Relevant trading operations. [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.

(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 granted 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.

498.—(1) Where an individual disposes of any eligible shares before the end of the relevant period, then—

Pr.16
Disposals of shares.

(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

[FA84 s17; FA89
s9(d)]

(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—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

(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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(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. Pr.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.

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. Value received from company. [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. Pr.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

Pt.16 S.500

- (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,

Pr.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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

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)*,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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. Pr.16 S.503

(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.

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. Assessments for withdrawing relief. [FA84 s23; FA93 s25(i)(i); FA95 s17(1)(i)]

(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)*.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.16 S.504

(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. Pr.16 S.505

(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.

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 Capital gains tax. [FA84 s25]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.16 S.506

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—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) that the subsidiary is a 51 per cent subsidiary of the qualifying company, Pr.16 S.507
- (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*.

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. Nominees and designated funds. [FA84 s27 and FA85 s13(e)]

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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, Pr.16 S.508

- (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

509.—(1) In this Chapter and in *Schedule 11*—

Interpretation
(*Chapter 1*).

“the appropriate percentage”, in relation to any shares, shall be construed in accordance with *section 511(3)*; [FA82 s50]

“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)*;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.17 S.509

“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.

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—

[FA82 s51(1) to (7)]

(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—

- (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.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.17
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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(II) has reached pensionable age (within the meaning of section 2 of the Social Welfare (Consolidation) Act, 1993),

Pr.17 S.511

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.

(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 Pr.17 S.512

(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. Pr.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.

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;

Company
reconstructions,
amalgamations, etc.

[FA82 s55]

“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

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.

Pr.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.

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—

Assessment of trustees in respect of sums received.

[FA82 s57]

(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*.

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—

Payments to trustees of approved profit sharing scheme.

[FA82 s58; FA83 s24; FA84 s31(b); FA97 s146(1) and Sch9 PtI par12(3)]

(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.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

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.

Pr.17
Costs of
establishing profit
sharing schemes.
[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

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.

Employee share
ownership trusts.
[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—

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

under *Part 2 of Schedule 11*, any gain accruing to those first-men- Pr.17 S.519
tioned trustees on that transfer shall not be a chargeable gain.

(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

520.—(1) In this Chapter—

Interpretation
(Chapter 1).

“accountable person” has the meaning assigned to it by *section 521*; [FA87 s13; FA88

“appropriate tax”, in relation to a relevant payment, means—

s8(a)(i) and (ii);
FA92 s10]

- (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

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (ii) to the extent that the aggregate of the expenses and any other expenses incurred in that period exceeds a stated amount, Pr.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)]

Pt.18 S.521

(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. Pr.18 S.523

(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.

524.—(1) The specified person shall furnish to the accountable person concerned—

Identification of, and issue of documents to, specified persons.

(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—

[FA87 s16]

- (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.

Pt.18 S.524

(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)*. Pr.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.

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. Interim refunds of appropriate tax. [FA87 s19]

(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

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.18 S.527

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. Pr.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*).

“certificate of authorisation” means a certificate issued under *section 531(11)*; [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)]

“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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.18 S.530

- (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 Pr.18 S.530
(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;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.18 S.530

“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.

531.—(1) Subject to this section, where in the performance of a relevant contract in the case of which the principal is—

[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)]

- (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. Pr.18 S.531

(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

(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, Pr.18 S.531

- (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.

(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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

has throughout the qualifying period complied with Pr.18 S.531
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,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.18 S.531

- (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,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (ii) disposes of a certificate of authorisation otherwise than by the return of the certificate to the Revenue Commissioners, Pr.18 S.531
- (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.

TAXATION OF CHARGEABLE GAINS

PART 19

PRINCIPAL PROVISIONS RELATING TO TAXATION OF CHARGEABLE
GAINS

CHAPTER 1

Assets and acquisitions and disposals of assets

532.—All forms of property shall be assets for the purposes of the Capital Gains Tax Acts whether situated in the State or not, including—

Assets.
[CGTA75 s7(1);
FA80 s62(a)]

- (a) options, debts and incorporeal property generally,
- (b) any currency other than Irish currency, and
- (c) any form of property created by the person disposing of it, or otherwise becoming owned without being acquired.

533.—The situation of assets specified in this section shall, except where otherwise provided by *section 29*, be determined for the purposes of the Capital Gains Tax Acts in accordance with the following provisions:

Location of assets.
[CGTA75 s48]

- (a) the situation of rights or interests (otherwise than by means of security) in or over immovable property shall be that of the immovable property;
- (b) subject to this section, the situation of rights or interests (otherwise than by means of security) in or over tangible movable property shall be that of the tangible movable property;
- (c) subject to this section, a debt, secured or unsecured, shall be situated in the State only if the creditor is resident in the State;
- (d) shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, shall be situated in the country of that authority;
- (e) subject to *paragraph (d)*, registered shares or securities shall be situated where they are registered and, if registered in more than one register, where the principal register is situated;
- (f) a ship or aircraft shall be situated in the State only if the owner is resident in the State, and an interest or right in or over a ship or aircraft shall be situated in the State only if the person entitled to the interest or right is resident in the State;

Pt.19 S.533

- (g) the situation of goodwill as a trade, business or professional asset shall be at the place where the trade, business or profession is carried on;
- (h) patents, trade marks and designs shall be situated where they are registered and, if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade mark or design shall be situated in the State if they, or any rights derived from them, are exercisable in the State;
- (i) a judgment debt shall be situated where the judgment is recorded.

Disposals of assets.

[CGTA75 s8(1)]

534.—For the purposes of the Capital Gains Tax Acts—

- (a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and
- (b) there shall be a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and, generally, there shall be a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

Disposals where capital sums derived from assets.

[CGTA75 s8(2) and (7)]

535.—(1) In this section, “capital sum” means any money or money’s worth not excluded from the consideration taken into account in the computation of the gain under *Chapter 2* of this Part.

- (2) (a) Subject to *sections 536 and 537(1)* and to any other exceptions in the Capital Gains Tax Acts, there shall be for the purposes of those Acts a disposal of an asset by its owner where any capital sum is derived from the asset notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph shall apply in particular to—
 - (i) capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset,
 - (ii) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset,
 - (iii) capital sums received in return for forfeiture or surrender of a right or for refraining from exercising a right, and
 - (iv) capital sums received as consideration for use or exploitation of an asset.
- (b) Without prejudice to *paragraph (a)(ii)* but subject to *paragraph (c)*, neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue, and in

this paragraph “policy of insurance” does not include a policy of assurance on human life. Pr.19 S.535

- (c) *Paragraph (b)* shall not apply where the right to any capital sum within *paragraph (a)(ii)* is assigned after the event giving rise to the damage or injury to, or the loss or depreciation of, an asset has occurred, and for the purposes of the Capital Gains Tax Acts such an assignment shall be deemed to be a disposal of an interest in the asset concerned.

536.—(1) (a) Subject to *paragraph (b)*, where the recipient so claims, receipt of a capital sum within *subparagraph (i), (ii), (iii) or (iv) of section 535(2)(a)* derived from an asset which is not lost or destroyed shall not be treated as a disposal of the asset if—

Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases.

- (i) the capital sum is wholly applied in restoring the asset, or [CGTA75 s29(1) to (3) and (5)]
- (ii) the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum;

but, if the receipt is not treated as a disposal, all sums which, if the receipt had been so treated, would have been taken into account as consideration for that disposal in the computation of a gain accruing on the disposal shall be deducted from any expenditure allowable under *Chapter 2* of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

- (b) *Paragraph (a)* shall not apply to cases within *subparagraph (ii)* of that paragraph if immediately before the receipt of the capital sum there is no expenditure attributable to the asset under *paragraphs (a) and (b) of section 552(1)* or if the consideration for the part disposal deemed to be effected on receipt of the capital sum exceeds that expenditure.

(2) Where an asset is lost or destroyed and a capital sum received as compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is, within one year of receipt or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

- (a) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrued to such owner, and
- (b) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under *paragraph (a)*.

PT.19 S.536

(3) A claim shall not be made under *subsection (2)* if part only of the capital sum is applied in acquiring the new asset; but, if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

(a) the amount of the gain so accruing were reduced to the amount of that part of the capital sum not applied in acquiring the new asset (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under *paragraph (a)*.

(4) This section shall not apply in relation to a wasting asset.

Mortgages and charges not to be treated as disposals.

[CGTA75 s8(4), (5) and (6)]

537.—(1) The conveyance or transfer as security of an asset or of an interest or right in or over an asset, or the transfer of a subsisting interest or right as security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of the Capital Gains Tax Acts as involving any acquisition or disposal of the asset.

(2) Where a person entitled to an asset as security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, such person's dealings with the asset shall be treated for the purposes of the Capital Gains Tax Acts as if they were done through such person as nominee by the person entitled to the asset subject to the security, charge or incumbrance, and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person so entitled.

(3) An asset shall be treated as having been acquired free of any interest or right as security subsisting at the time of any acquisition of the asset, and as being disposed of free of any such interest or right subsisting at the time of the disposal and, where an asset is acquired subject to any such interest or right, the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.

Disposals where assets lost or destroyed or become of negligible value.

[CGTA75 s12(3), (4) and (5)]

538.—(1) Subject to the Capital Gains Tax Acts and in particular to *section 540*, the occasion of the entire loss, destruction, dissipation or extinction of an asset shall for the purposes of those Acts constitute a disposal of the asset whether or not any capital sum as compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.

(2) Where on a claim by the owner of an asset the inspector is satisfied that the value of an asset has become negligible, the inspector may allow the claim, and thereupon the Capital Gains Tax Acts shall apply as if the claimant had sold and immediately reacquired the asset for a consideration of an amount equal to the value specified in the claim.

(3) For the purposes of *subsections (1) and (2)*, a building and any permanent or semi-permanent structure in the nature of a building may be regarded as an asset separate from the land on which it is situated; but, where either of those subsections applies in accordance with this subsection, the person deemed to make the disposal of the building shall be treated as if such person had also sold and immediately reacquired the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time.

Pr.19 S.538

539.—A hire purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to such person shall be treated for the purposes of the Capital Gains Tax Acts, both in relation to such person and in relation to the person from whom the use and enjoyment of the asset is obtained, as if it amounted to an entire disposal of the asset to such person at the beginning of the period for which such person obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by means of repayment or discharge of tax or otherwise, as may be required where the period for which such person has the use and enjoyment of the asset terminates without the property in the asset passing to such person.

Disposals in cases of hire purchase and similar transactions.

[CGTA75 s10(2)]

540.—(1) In this section—

Options and forfeited deposits.

“quoted option” means an option which at the time of abandonment or other disposal is quoted and dealt in on a stock exchange in the State or elsewhere in the same manner as shares;

[CGTA75 s47(1) to (6) and (8) to (11); FA92 s63]

“traded option” means an option which at the time of abandonment or other disposal is quoted on a stock exchange or a futures exchange in the State or elsewhere;

references to an option include references to an option binding the grantor to grant a lease for a premium or to enter into any other transaction which is not a sale, and references to buying and selling in pursuance of an option shall be construed accordingly.

(2) Without prejudice to *sections 534 and 535*, the grant of an option, including—

- (a) the grant of an option binding the grantor to sell an asset the grantor does not own and, because the option is abandoned, never has occasion to own, and
- (b) the grant of an option binding the grantor to buy an asset which, because the option is abandoned, the grantor does not acquire,

shall constitute the disposal of an asset (being the option) for the purposes of the Capital Gains Tax Acts, but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.

(3) Where an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of the grantor’s obligations under the option shall be treated as a single transaction, and accordingly for the purposes of the Capital Gains Tax Acts—

- (a) if the option binds the grantor to sell, the consideration for the option shall be part of the consideration for the sale, and
- (b) if the option binds the grantor to buy, the consideration for the option shall be deducted from the cost of acquisition incurred by the grantor in buying in pursuance of the grantor's obligations under the option.

(4) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset for the purposes of the Capital Gains Tax Acts by that person; but, if an option is exercised, the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in exercise of that person's rights under the option shall be treated as a single transaction, and accordingly for the purposes of the Capital Gains Tax Acts—

- (a) if the option binds the grantor to sell, the cost of acquiring the option shall be part of the cost of acquiring the asset which is sold, and
- (b) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of the asset which is bought by the grantor of the option.

(5) (a) The abandonment of an option by the person for the time being entitled to exercise it shall constitute the disposal of an asset (being the option) for the purposes of the Capital Gains Tax Acts by that person.

- (b) Subject to *subsections (7) and (8)(a)*, the abandonment of an option by the person for the time being entitled to exercise it shall not for the purposes of the Capital Gains Tax Acts give rise to an allowable loss.

(6) In relation to the disposal by means of transfer of an option binding the grantor to sell or buy shares or securities which have a quoted market value on a stock exchange in the State or elsewhere, the option shall be regarded for the purposes of the Capital Gains Tax Acts as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier, but without prejudice to the application of the provisions of *Chapter 2* of this Part relating to wasting assets to other descriptions of options.

(7) Where an option, being an option to acquire assets exercisable by a person intending to use the assets, if acquired, for the purposes of a trade carried on by that person or which that person commences to carry on within 2 years of that person's acquisition of the option, is disposed of or abandoned, then—

- (a) if the option is abandoned, *subsection (5)(b)* shall not apply, and
- (b) *section 560(3)* shall not apply.

(8) (a) Where—

- (i) a quoted option to subscribe for shares in a company, or
- (ii) a traded option,

is disposed of or abandoned, then—

Pr.19 S.540

(I) if the option is abandoned, *subsection (5)(b)* shall not apply, and

(II) *section 560(3)* and *subsection (6)* shall not apply.

(b) Where a quoted option to subscribe for shares in a company is dealt in within 3 months after the taking effect, with respect to the company granting the option, of any reorganisation, reduction, conversion or amalgamation to which *section 584, 585, 586* or *587* applies (or within such longer period as the Revenue Commissioners may by notice in writing allow), the option shall for the purposes of *section 584, 585, 586* or *587* be regarded as the shares which could be acquired by exercising the option, and *section 548(3)* shall apply for determining its market value.

(9) This section shall apply in relation to an option binding the grantor both to sell and to buy as if it were 2 separate options with 50 per cent of the consideration attributed to each option.

(10) This section shall apply in relation to a forfeited deposit of purchase money or other consideration money for a prospective purchase or other transaction which is abandoned as it applies in relation to the consideration for an option which binds the grantor to sell and which is not exercised.

541.—(1) (a) For the purposes of the Capital Gains Tax Acts but subject to *paragraph (b)*, where a person incurs a debt to another person (being the original creditor), whether in Irish currency or in some other currency, no chargeable gain shall accrue to that creditor or to that creditor's personal representative or legatee on a disposal of the debt.

Debts.

[CGTA75 s46;
FA80 s62(b); FA96
s61(1); FA97 s78]

(b) *Paragraph (a)* shall not apply in the case of a debt on a security within the meaning of *section 585*.

(2) Subject to *subsection (1)* and *sections 585* and *586*, the satisfaction of a debt or part of a debt (including a debt on a security within the meaning of *section 585*) shall be treated for the purposes of the Capital Gains Tax Acts as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.

(3) Where property is acquired by a creditor in satisfaction of the creditor's debt or part of that debt, then, subject to *sections 585* and *586*, the property shall not be treated for the purposes of the Capital Gains Tax Acts as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but, if under *subsection (1)* (and in a case not within either *section 585* or *586*) no chargeable gain is to accrue on a disposal of the debt by the original creditor and a chargeable gain accrues to that creditor on a disposal by that creditor of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to exceed the chargeable gain which would have accrued if that creditor had acquired the property for a consideration equal to the amount of the debt or that part of the debt.

(4) For the purposes of the Capital Gains Tax Acts, a loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or the original creditor's personal representative or legatee at a time when the creditor or the creditor's personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more than one purchase through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.

(5) Where the original creditor is a trustee and the debt when created is settled property, *subsections (1) and (4)* shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled as against the trustee to the debt on its ceasing to be settled property and to that person's personal representative or legatee.

(6) This section shall not apply to a debt owed by a bank which is not in Irish currency and which is represented by a sum standing to the credit of a person in an account in the bank, unless it represents currency acquired by the holder for the personal expenditure outside the State of the holder or his or her family or dependants (including expenditure on the maintenance of any residence outside the State).

(7) For the purposes of this section, a debenture issued by any company shall be deemed to be a security (within the meaning of *section 585*) if it is issued—

- (a) on a reorganisation referred to in *section 584(2)* or in pursuance of the debenture's allotment on any such reorganisation,
- (b) in exchange for shares in or debentures of another company where the requirements of *section 586(2)* are satisfied in relation to the exchange,
- (c) under any arrangements referred to in *section 587(2)*,
- (d) in connection with any transfer of assets referred to in *section 631*,
- (e) in connection with any disposal of assets referred to in *section 632*,
- (f) in the course of a transaction which is the subject of an application under *section 637*, or
- (g) in pursuance of rights attached to any debenture within *paragraph (a), (b), (c), (d), (e) or (f)*.

(8) *Paragraphs (d), (e) and (f), and (in so far as it relates to debentures within those paragraphs) paragraph (g), of subsection (7)* shall apply as respects the disposal of a debenture on or after the 26th day of March, 1997.

542.—(1) (a) Subject to *paragraph (b) and subsection (2)*, for the purposes of the Capital Gains Tax Acts, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made shall be the time at which the contract is made

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(and not, if different, the time at which the asset is conveyed or transferred). Pr.19 S.542

- (b) Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied.
- (c) For the purposes of the Capital Gains Tax Acts, where an interest in land is acquired, otherwise than under a contract, by an authority possessing compulsory purchase powers, the time at which the disposal and acquisition is made shall be the time at which the compensation for the acquisition is agreed or otherwise determined (variations on appeal being disregarded for this purpose) or, if earlier, the time at which the authority enters on the land in pursuance of its powers.

(2) For the purposes of *subparagraphs (i) to (iv) of section 535(2)(a)*, the time of disposal shall be the time at which any capital sum is received.

543.—(1) Without prejudice to the generality of the provisions of the Capital Gains Tax Acts as to the transactions which are disposals of assets, any transaction which under this section is to be treated as a disposal of an asset—

Transfers of value derived from assets. [CGTA75 s45]

- (a) shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration, and
 - (b) in so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration or additional consideration for the disposal, shall be treated as not being at arm's length, and the consideration so obtainable, added to the consideration actually passing, shall be treated as the market value of what is acquired.
- (2) (a) Where a person having control of a company exercises that control so that value passes out of shares in the company owned by such person or a person with whom such person is connected, or out of rights over the company exercisable by such person or by a person with whom such person is connected, and passes into other shares in or rights over the company, that exercise of such person's control shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.
- (b) References in *paragraph (a)* to a person include references to 2 or more persons connected with one another.

(3) Where, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property, there is any adjustment of the rights and liabilities under the lease (whether or not involving the grant of a new lease) which as a whole is favourable to the lessor, that shall constitute a disposal by the lessee of an interest in the property.

(4) Where an asset is subject to any description of right or restriction, the extinction or abrogation in whole or in part of the right or restriction by the person entitled to enforce it shall constitute a disposal by that person of the right or restriction.

CHAPTER 2

Computation of chargeable gains and allowable losses

Interpretation and general (*Chapter 2*).

[CGTA75 s51(2), Sch1 pars1 and 5(3) and Sch4 par13; CGT(A)A78 s17 and Sch2]

544.—(1) In this Chapter, “renewals allowance” means a deduction allowable in computing profits, gains or losses for the purposes of the Income Tax Acts by reference to the cost of acquiring an asset in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.

(2) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits, gains or losses for the purposes of the Income Tax Acts shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession or employment are not chargeable to income tax or that losses are not allowable for those purposes.

(3) References in this Chapter to income or profits charged or chargeable to tax include references to income or profits taxed or, as the case may be, taxable by deduction at source.

(4) No deduction shall be allowable in a computation under the Capital Gains Tax Acts more than once from any sum or from more than one sum.

(5) For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be such method as appears to the inspector or on appeal the Appeal Commissioners to be just and reasonable.

(6) *Section 557* and the other provisions of the Capital Gains Tax Acts for apportioning on a part disposal expenditure which is deductible in computing a gain shall be operated before the operation of and without regard to—

(a) *section 1028(5)*,

(b) *section 597*, and

(c) any other provision making an adjustment to secure that neither a gain nor a loss accrues on a disposal.

(7) Any assessment to income tax or any decision on a claim under the Income Tax Acts, and any decision on an appeal under the Income Tax Acts against such an assessment or decision, shall be conclusive in so far as under any provision of the Capital Gains Tax Acts liability to tax depends on the provisions of the Income Tax Acts.

(8) In so far as the provisions of the Capital Gains Tax Acts require the computation of a gain by reference to events before the 6th day of April, 1974, all those provisions, including the provisions

fixing the amount of the consideration deemed to be given on a disposal or an acquisition, shall apply except in so far as expressly excluded. Pr.19 S.544

545.—(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no chargeable gain shall accrue on its disposal. Chargeable gains.

[CGTA75 s7(2) and s11; CGT(A)A78 s17 and Sch2]

(2) The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts.

(3) Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain.

546.—(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no allowable loss shall accrue on its disposal. Allowable losses.

[CGTA75 s7(2) and s12(1), (2), (6) and (7); CGT(A)A78 s16 and Sch1 par7]

(2) Except where otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(3) Except where otherwise expressly provided, the provisions of the Capital Gains Tax Acts which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly.

(4) A loss accruing to a person in a year of assessment for which the person is neither resident nor ordinarily resident in the State shall not be an allowable loss for the purposes of the Capital Gains Tax Acts unless under *section 29(3)* the person would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.

(5) Except where provided by *section 573*, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Acts—

(a) more than once in respect of any loss or part of a loss, and

(b) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts.

(6) For the purposes of *section 31*, where, on the assumption that there were no allowable losses to be deducted under that section, a person would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, any allowable losses to be deducted under that section shall be deducted—

(a) if the person would be so chargeable at 2 different rates, from the chargeable gains which would be so chargeable at the higher of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the lower of those rates, and

(b) if the person would be so chargeable at 3 or more rates, from the chargeable gains which would be so chargeable

Pt.19 S.546

at the highest of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the next highest of those rates, and so on.

Disposals and acquisitions treated as made at market value.

[CGTA75 s9; FA82 s62; FA92 s62]

547.—(1) Subject to the Capital Gains Tax Acts, a person's acquisition of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where—

- (a) the person acquires the asset otherwise than by means of a bargain made at arm's length (including in particular where the person acquires it by means of a gift),
 - (b) the person acquires the asset by means of a distribution from a company in respect of shares in the company, or
 - (c) the person acquires the asset wholly or partly—
 - (i) for a consideration that cannot be valued,
 - (ii) in connection with the person's own or another person's loss of office or employment or diminution of emoluments, or
 - (iii) otherwise in consideration for or in recognition of the person's or another person's services or past services in any office or employment or of any other service rendered or to be rendered by the person or another person.
- (2) (a) In this subsection, "shares" includes stock, debentures and any interests to which *section 587(3)* applies and any option in relation to such shares, and references in this subsection to an allotment of shares shall be construed accordingly.
- (b) Notwithstanding *subsection (1)* and *section 584(3)*, where a company, otherwise than by means of a bargain made at arm's length, allots shares in the company (in this subsection referred to as "the new shares") to a person connected with the company, the consideration which the person gives or becomes liable to give for the new shares shall for the purposes of the Capital Gains Tax Acts be deemed to be an amount (including a nil amount) equal to the lesser of—
- (i) the amount or value of the consideration given by the person for the new shares, and
 - (ii) the amount by which the market value of the shares in the company which the person held immediately after the allotment of the new shares exceeds the market value of the shares in the company which the person held immediately before the allotment or, if the person held no such shares immediately before the allotment, the market value of the new shares immediately after the allotment.
- (3) *Subsection (1)* shall not apply to the acquisition of an asset where—
- (a) there is no corresponding disposal of the asset, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (b) (i) there is no consideration in money or money's worth for the asset, or Pr.19 S.547
- (ii) the consideration for the asset is of an amount or value which is lower than the market value of the asset.
- (4) (a) Subject to the Capital Gains Tax Acts, a person's disposal of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where—
- (i) the person disposes of the asset otherwise than by means of a bargain made at arm's length (including in particular where the person disposes of it by means of a gift), or
- (ii) the person disposes of the asset wholly or partly for a consideration that cannot be valued.
- (b) *Paragraph (a)* shall not apply to a disposal by means of a gift made before the 20th day of December, 1974, and any loss incurred on a disposal by means of a gift made before that date shall not be an allowable loss.

548.—(1) Subject to this section, in the Capital Gains Tax Acts, “market value”, in relation to any assets, means the price which those assets might reasonably be expected to fetch on a sale in the open market. Valuation of assets. [CGTA75 s49(1) to (6); CTA76 s140(2) and Sch2 PtII par7]

(2) In estimating the market value of any assets, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at the same time.

- (3) (a) The market value of shares or securities quoted on a stock exchange in the State or in the United Kingdom shall, except where in consequence of special circumstances the prices quoted are by themselves not a proper measure of market value, be as follows—
- (i) in relation to shares or securities listed in the Stock Exchange Official List-Irish—
- (I) the price shown in that list at which bargains in the shares or securities were last recorded (the previous price), or
- (II) where bargains other than bargains done at special prices were recorded in that list for the relevant date, the price at which the bargains were so recorded or, if more than one such price was so recorded, a price halfway between the highest and the lowest of such prices,
- taking the amount under *clause (I)* if less than under *clause (II)* or if no such business was recorded on the relevant date, and taking the amount under *clause (II)* if less than under *clause (I)*, and
- (ii) in relation to shares or securities listed in the Stock Exchange Daily Official List—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.548

- (I) the lower of the 2 prices shown in the quotations for the shares or securities on the relevant date plus 25 per cent of the difference between those 2 figures, or
- (II) where bargains other than bargains done at special prices were recorded in that list for the relevant date, the price at which the bargains were so recorded or, if more than one such price was so recorded, a price halfway between the highest and the lowest of such prices,

taking the amount under *clause (I)* if less than under *clause (II)* or if no such bargains were recorded for the relevant date, and taking the amount under *clause (II)* if less than under *clause (I)*.

(b) Notwithstanding *paragraph (a)*—

- (i) where the shares or securities are listed in both of the Official Lists referred to in that paragraph for the relevant date, the lower of the 2 amounts as ascertained under *subparagraphs (i)* and *(ii)* of that paragraph shall be taken,
- (ii) this subsection shall not apply to shares or securities for which some other stock exchange affords a more active market, and
- (iii) if the stock exchange concerned, or one of the stock exchanges concerned, is closed on the relevant date, the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.

(4) Where shares and securities are not quoted on a stock exchange at the time at which their market value is to be determined by virtue of *subsection (1)*, it shall be assumed for the purposes of such determination that in the open market which is postulated for the purposes of *subsection (1)* there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if such prospective purchaser were proposing to purchase it from a willing vendor by private treaty and at arm's length.

(5) In the Capital Gains Tax Acts, "market value", in relation to any rights of unit holders in any unit trust (including any unit trust legally established outside the State) the buying and selling prices of which are published regularly by the managers of the trust, means an amount equal to the buying price (that is, the lower price) so published on the relevant date or, if none was published on that date, on the latest date before that date.

(6) If and in so far as any appeal against an assessment to capital gains tax or against a decision on a claim under the Capital Gains Tax Acts involves the question of the value of any shares or securities in a company resident in the State, other than shares or securities quoted on a stock exchange, that question shall be determined in the like manner as an appeal against an assessment made on the company.

(7) *Subsection (6)* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax. Pr.19 S.548

549.—(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset. Transactions between connected persons.

(2) Without prejudice to the generality of *section 547*, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length. [CGTA75 s33(1) to (6); FA89 s87]

(3) Where on the disposal a loss accrues to the person making the disposal, the loss shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in *subsection (1)*, being a disposal made at a time when they are connected persons.

(4) *Subsection (3)* shall not apply to a disposal by means of a gift in settlement if the gift and the income from it are wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.

(5) Where the asset mentioned in *subsection (1)* is an option to enter into a sale or other transaction given by the person making the disposal, a loss accruing to a person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person not connected with the person acquiring the asset.

(6) Where the asset mentioned in *subsection (1)* is subject to any right or restriction enforceable by the person making the disposal or by a person connected with that person, then (where the amount of the consideration for the acquisition is in accordance with *subsection (2)* deemed to be equal to the market value of the asset), that market value shall be what its market value would be if not subject to the right or restriction, reduced by the lesser of—

- (a) the market value of the right or restriction, and
- (b) the amount by which its extinction would enhance the value of the asset to its owner.

(7) Where the right or restriction referred to in *subsection (6)*—

- (a) is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with that person,
- (b) is an option or other right to acquire the asset, or
- (c) in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise,

then, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

Pt.19 S.549

(8) (a) Where a person disposes of an asset to another person in such circumstances that—

- (i) *subsection (7)* would but for this subsection apply in determining the market value of the asset, and
- (ii) the person is not chargeable to capital gains tax under *section 29* or *30* in respect of any gain accruing on the person's disposal of the asset,

then, as respects any subsequent disposal of the asset by the other person, that other person's acquisition of the asset shall for the purposes of the Capital Gains Tax Acts be deemed to be for an amount equal to the market value of the asset determined as if *subsection (7)* had not been enacted.

(b) This subsection shall apply—

- (i) to disposals made on or after the 25th day of January, 1989, and
- (ii) for the purposes of the determination of any deduction to be made from a chargeable gain accruing on or after the 25th day of January, 1989, in respect of an allowable loss, notwithstanding that the loss accrued or but for this section would have accrued on a disposal made before that day.

(9) *Subsections (6)* and *(7)* shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, or to any right or restriction under a mortgage or other charge.

Assets disposed of in series of transactions.

[CGTA75 s34]

550.—Where a person is given, or acquires from one or more persons with whom such person is connected, by means of 2 or more transactions, assets of which the aggregate market value, when considered separately in relation to the separate other transactions, is less than the aggregate market value of those assets when considered together, then, for the purposes of the Capital Gains Tax Acts, the market value of the assets where relevant shall be taken to be the larger market value and that value shall be apportioned rateably to the respective disposals.

Exclusion from consideration for disposals of sums chargeable to income tax.

[CGTA75 s51(1) and Sch1 par2; CTA76 s140(2) and Sch2 PtII par8]

551.—(1) In this section, “rent” includes any rent charge, fee farm rent and any payment in the nature of a rent.

(2) There shall be excluded from the consideration for a disposal of an asset taken into account in the computation under this Chapter of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income, profits, gains or losses for the purposes of the Income Tax Acts of, the person making the disposal; but the exclusion from consideration under this subsection shall not be taken as applying to a computation in accordance with Case I of Schedule D for the purpose of restricting relief in respect of expenses of management under *section 707*.

(3) *Subsection (2)* shall not be taken as excluding from the consideration so taken into account any money or money's worth taken

into account in the making of a balancing charge under *Part 9* or Pr.19 S.551 under *Chapter 1 of Part 29*.

(4) This section shall not preclude the taking into account in a computation under this Chapter of the gain, as consideration for the disposal of an asset, of the capitalised value of a rent (as in a case where rent is exchanged for some other asset), or of a right of any other description to income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

552.—(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—

Acquisition, enhancement and disposal costs.

[CGTA75 s51(1) and Sch1 par3(1) to (5); CTA76 s140(2) and Sch2 PtII par9]

(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c) the incidental costs to the person of making the disposal.

(2) For the purposes of the Capital Gains Tax Act as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with—

(a) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

(3) (a) Where—

(i) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under *subsection (1)* in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.552

- (ii) that expenditure was defrayed out of borrowed money,
- (iii) the company charged to capital all or any part of the interest on that borrowed money referable to a period ending on or before the disposal, and
- (iv) the company is chargeable to capital gains tax in respect of the gain,

then, the sums so allowable under *subsection (1)* shall include the amount of that interest charged to capital except in so far as such interest has been taken into account for the purposes of relief under the Income Tax Acts, or could have been so taken into account but for an insufficiency of income or profits or gains.

- (b) Subject to *paragraph (a)*, no payment of interest shall be allowable as a deduction under this section.

(4) Without prejudice to *section 554*, there shall be excluded from the sums allowable as a deduction under this section any premium or other payment made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

(5) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which the person became absolutely entitled as legatee or as against the trustees of settled property—

- (a) any expenditure within *subsection (2)* incurred by the person in relation to the transfer of the asset to the person by the personal representatives or trustees, and
- (b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction under this section.

Interest charged to capital.

[CTA76 s128]

553.—Where—

- (a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under *section 552* in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,
- (b) that expenditure was defrayed out of borrowed money, and
- (c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

then, the sums so allowable shall, notwithstanding *section 552(3)(b)*, include the amount of that interest charged to capital.

554.—(1) There shall be excluded from the sums allowable under *section 552* as a deduction any expenditure allowable as a deduction in computing the profits or gains or losses of a trade or profession for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains, and this subsection shall apply irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

Pr.19
Exclusion of
expenditure by
reference to income
tax.

[CGTA75 s51(1)
and Sch1 par4]

(2) Without prejudice to *subsection (1)*, there shall be excluded from the sums allowable under *section 552* as a deduction any expenditure which, if the assets or all the assets to which the computation relates were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were chargeable to income tax, would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of the Income Tax Acts.

555.—(1) *Section 554* shall not require the exclusion from the sums allowable as a deduction under *section 552* of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made but, in the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of that expenditure.

Restriction of losses
by reference to
capital allowances
and renewals
allowances.

[CGTA75 s51(1)
and Sch1 par 5(1),
(2) and (4)]

(2) Where the person making the disposal acquired the asset—

(a) by a transfer to which *section 289(6)* or *295* applies, or

(b) by a transfer by means of a sale in relation to which an election under *section 312(5)* was made,

then, this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except in so far as any loss to the transferor was restricted under those sections) been made to the person making the disposal (being the transferee) and, where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection may be taken into account in relation to the transferor shall also be taken into account in relation to the transferee, and so on for any series of transfers before the disposal.

(3) The amount of capital allowances to be taken into account under this section in relation to a disposal includes any allowances to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event, and of any balancing charge to which effect might have been so given but for the making of an election under *section 290*.

Pt.19
Adjustment of
allowable
expenditure by
reference to
consumer price
index.

556.—(1) In this section—

“the consumer price index number” means the All Items Consumer Price Index Number compiled by the Central Statistics Office;

“the consumer price index number relevant to any year of assessment” means the consumer price index number at the mid-February before the commencement of that year expressed on the basis that the consumer price index at mid-November, 1968, was 100.

(2) (a) For the purposes of computing the chargeable gain accruing to a person on the disposal of an asset, each sum (in this section referred to as “deductible expenditure”) allowable as a deduction from the consideration for the disposal under *paragraphs (a) and (b) of section 552(1)* shall be adjusted by multiplying it by the figure (in this section referred to as “the multiplier”) specified in *subsection (5)* or determined under *subsection (6)*, as the case may be.

(b) This subsection shall not apply in relation to deductible expenditure where the person making the disposal had incurred the expenditure in the period of 12 months ending on the date of the disposal.

(3) For the purposes of the Capital Gains Tax Acts, it shall be assumed that an asset held by a person on the 6th day of April, 1974, was sold and immediately reacquired by such person on that date, and there shall be deemed to have been given by such person as consideration for the reacquisition an amount equal to the market value of the asset at that date.

(4) *Subsections (2) and (3)* shall not apply in relation to the disposal of an asset if as a consequence of the application of those subsections—

(a) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if those subsections did not apply, or

(b) a loss would so accrue and either a smaller loss or a gain would accrue if those subsections did not apply,

and accordingly, in a case to which *paragraph (a) or (b)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to *subsections (2) and (3)*; but, in a case where this subsection would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the relevant asset was acquired by the owner for a consideration such that neither a gain nor a loss accrued to the owner on making the disposal.

(5) In relation to the disposal of an asset made in the year 1997-98, the multiplier shall be the figure mentioned in *column (2)* of the Table to this subsection opposite the mention in *column (1)* of that Table of the year of assessment in which the deductible expenditure was incurred.

[CGT(A)A78 s3,
s16 and Sch1 par1;
S.I. No. 157 of
1997]

TABLE

Year of assessment in which deductible expenditure incurred (1)	Multiplier (2)
1974-75	6.112
1975-76	4.936
1976-77	4.253
1977-78	3.646
1978-79	3.368
1979-80	3.039
1980-81	2.631
1981-82	2.174
1982-83	1.829
1983-84	1.627
1984-85	1.477
1985-86	1.390
1986-87	1.330
1987-88	1.285
1988-89	1.261
1989-90	1.221
1990-91	1.171
1991-92	1.142
1992-93	1.101
1993-94	1.081
1994-95	1.063
1995-96	1.037
1996-97	1.016

(6) (a) The Revenue Commissioners shall make regulations specifying the multipliers, determined in accordance with *paragraph (b)*, in relation to the disposal of an asset made in the year 1998-99 and shall make corresponding regulations in relation to the disposal of an asset made in each subsequent year of assessment.

(b) The multiplier, in relation to the disposal of an asset made in the year 1998-99 or any subsequent year of assessment, shall be the quotient, rounded up to 3 decimal places, obtainable by dividing the consumer price index number relevant to the year of assessment in which the disposal is made by the consumer price index number relevant to the year of assessment in which the deductible expenditure was incurred.

(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.

(8) A capital sum which under *section 536(1)(a)* is to be deducted from any expenditure allowable as a deduction in computing a gain on the disposal of an asset shall be deducted from the sum applied in restoring the asset before *subsection (2)* is applied to the residue, if any, of that sum.

(9) An amount determined in accordance with *subsection (3)* in respect of an asset shall be reduced by any expenditure within *section*

Pt.19 S.556

565 which relates to the asset and which was incurred before the 6th day of April, 1974, and *subsection (2)* shall apply to the residue of that amount.

Part disposals.

[CGTA75 s51(1)
and Sch1 par6]

557.—(1) Where a person disposes of an interest or rights in or over an asset and, generally wherever on the disposal of an asset, any description of property derived from that asset remains undisposed of, the sums which under *paragraphs (a) and (b) of section 552(1)* are attributable to the asset shall be apportioned both for the purposes of the computation under this Chapter of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of.

(2) Such portion of the expenditure shall be allowable as a deduction in computing under this Chapter the amount of the gain accruing on the disposal as bears the same proportion to the total of those sums as the value of the consideration for the disposal bears to the aggregate of that value and the market value of the property which remains, and the balance of the expenditure shall be attributed to the property which remains undisposed of.

(3) Any apportionment to be made in pursuance of this section shall be made before the operation of *section 555* and, if after a part disposal there is a subsequent disposal of an asset, the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to *subsection (4)*, be those referable to the sums which under *paragraphs (a) and (b) of section 552(1)* are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under that section.

(4) This section shall not be taken as requiring the apportionment of any expenditure which on the facts is wholly attributable to the asset or part of the asset which is disposed of or wholly attributable to the asset or part of the asset which remains undisposed of.

Part disposals
before 6th day of
April, 1978.

[CGT(A)A78 s16
and Sch1 par10(1)
and (2)]

558.—(1) Where on or after the 6th day of April, 1974, but before the 6th day of April, 1978, a person made a disposal (to which paragraph 6 of Schedule 1 to the Capital Gains Tax Act, 1975, applied) of an asset held by such person on the 6th day of April, 1974, and—

(a) the amount of the chargeable gain which accrued on that disposal was determined under paragraph 18 of Schedule 1 to the Capital Gains Tax Act, 1975, and

(b) any property derived from that asset remained undisposed of on the 6th day of April, 1978,

then, for the purpose of determining the balance of the expenditure which under *section 557* is to be attributed to the property which remains undisposed of, it shall be assumed that on the disposal the amount of the chargeable gain referred to in *paragraph (a)* had been determined, not under paragraph 18 of Schedule 1 to the Capital Gains Tax Act, 1975, but on the assumption that the asset was disposed of and immediately reacquired by the person on the 6th day of April, 1974.

(2) Where on or after the 6th day of April, 1974, but before the 6th day of April, 1978, a person made a disposal (to which paragraph 6 of Schedule 1 to the Capital Gains Tax Act, 1975, applied) of an

asset acquired by such person on a death which occurred on or after the 6th day of April, 1974, and— Pr.19 S.558

- (a) the amount of the chargeable gain which accrued on that disposal was determined on the basis that the asset had been acquired by such person on a date earlier than the date of that death, and
- (b) any property derived from that asset remained undisposed of on the 6th day of April, 1978,

then, notwithstanding *subsection (1)*, for the purpose of determining the balance of the expenditure which under *section 557* is to be attributed to the property which remains undisposed of, it shall be assumed that on the disposal the amount of the chargeable gain referred to in *paragraph (a)* had been determined as if *section 14(1)* of the Capital Gains Tax Act, 1975 (as amended by *section 6* of the Capital Gains Tax (Amendment) Act, 1978) or, as the case may be, *section 15(4)(b)* of the Capital Gains Tax Act, 1975 (as amended by *section 7* of the Capital Gains Tax (Amendment) Act, 1978) had applied at the date of that disposal.

559.—(1) If and in so far as, in a case where assets have been merged or divided or have changed their nature, or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in respect of the other asset under *paragraphs (a) and (b) of section 552(1)* shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

Assets derived from other assets.
[CGTA75 s51(1) and Sch1 par7]

(2) The appropriate proportion shall be computed by reference to the market value at the time of disposal of the assets (including rights or interests in or over the assets) which have not been disposed of and the consideration received in respect of the assets (including rights or interests in or over the assets) disposed of.

560.—(1) In this Chapter—

Wasting assets.

“the residual or scrap value”, in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section;

[CGTA75 s51(1) and Sch1 pars 8 and 9]

“wasting asset” means an asset with a predictable life not exceeding 50 years, but so that—

- (a) freehold land shall not be a wasting asset whatever its nature and whatever the nature of the buildings or works on that land,
- (b) “life”, in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal,
- (c) plant and machinery shall in every case be regarded as having a predictable life of less than 50 years, and in estimating that life it shall be assumed that its life will end when

it is finally put out of use as being unfit for further use and that it will be used in the normal manner and to the normal extent and will be so used throughout its life as so estimated, and

(d) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Revenue Commissioners.

(2) The question as to what is the predictable life of an asset, and the question as to what is its predictable residual or scrap value, if any, at the end of that life, shall, in so far as those questions are not immediately answered by the nature of the asset, be taken in relation to any disposal of the asset as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

(3) In the computation under this Chapter of the gain accruing on the disposal of a wasting asset, it shall be assumed—

(a) that any expenditure attributable to the asset under *section 552(1)(a)*, after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nil at the end of its life, and

(b) that any expenditure attributable to the asset under *section 552(1)(b)* is written off at a uniform rate from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nil at the end of its life.

(4) Where any expenditure attributable to the asset under *section 552(1)(b)* creates or increases a residual or scrap value of the asset, the residual or scrap value to be deducted under *subsection (3)(a)* shall be the residual or scrap value so created or increased.

(5) Any expenditure written off under this section shall not be allowable as a deduction under *section 552*.

Wasting assets
qualifying for
capital allowances.

[CGTA75 s51(1)
and Sch1 par10]

561.—(1) *Subsections (3) to (5) of section 560* shall not apply in relation to a disposal of an asset—

(a) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used solely for the purposes of a trade or profession and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under *paragraph (a) or (b) of section 552(1)*, or

(b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

(2) In the case of the disposal of an asset which in the period of ownership of the person making the disposal has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for

part of that period, or which has otherwise qualified in part only for capital allowances— Pr.19 S.561

- (a) the consideration for the disposal and any expenditure attributable to the asset under *paragraph (a) or (b) of section 552(1)* shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,
- (b) the computation under this Chapter of the gain on the disposal shall be made separately in relation to the apportioned parts of the expenditure and consideration,
- (c) *subsections (3) to (5) of section 560* shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade or profession or to the expenditure qualifying for capital allowances,
- (d) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on that person, that apportionment shall be employed for the purposes of this section, and
- (e) subject to *paragraph (d)*, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under *paragraph (a)*.

562.—(1) No allowance shall be made under *section 552*—

Contingent liabilities.

- (a) in the case of a disposal by means of assigning a lease of land or other property, for any liability remaining with or assumed by the person making the disposal by means of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease; [CGTA75 s51(1) and Sch1 par11]
- (b) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed—
 - (i) as vendor of land or of any estate or interest in land,
 - (ii) as a lessor, or
 - (iii) as grantor of an option binding that person to sell land or an interest in land or to grant a lease of land;
- (c) for any contingent liability in respect of a warranty or representation made on a disposal by means of a sale or lease of any property other than land.

(2) Where it is shown to the satisfaction of the inspector that any contingent liability mentioned in *subsection (1)* has become enforceable and is being or has been enforced, such adjustment, whether by means of discharge or repayment of tax or otherwise, shall be made as may be necessary.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19
Consideration due
after time of
disposal.

[CGTA75 s44(2);
CTA76 s140(2) and
Sch2 PtII par6]

563.—(1) (a) In the computation of a chargeable gain, consideration for the disposal shall be taken into account without any discount for postponement of the right to receive any part of the consideration and without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent.

(b) Where any part of the consideration taken into account in accordance with *paragraph (a)* is shown to the satisfaction of the inspector to be irrecoverable, such adjustment, whether by means of discharge or repayment of tax or otherwise, shall be made as the case may require.

(2) *Subsection (1)* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

Woodlands.

[CGTA75 s51(1)
and Sch1 par12]

564.—(1) In the computation under this Chapter of the gain accruing on the disposal by an individual of woodland, there shall be excluded—

(a) consideration for the disposal of trees growing on the land, and

(b) notwithstanding *section 535(2)*, capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such land.

(2) In the computation under this Chapter of the gain, so much of the cost of woodland as is attributable to trees growing on the land shall be disregarded.

(3) References in this section to trees include references to saleable underwood.

Expenditure
reimbursed out of
public money.

[CGTA75 s51(1)
and Sch1 par3(7)]

565.—There shall be excluded from the computation under this Chapter of a gain accruing on a disposal any expenditure which has been or is to be met directly or indirectly by any government, by any board established by statute or by any public or local authority whether in the State or elsewhere.

Leases.

[CGTA75 s51(1)]

566.—*Schedule 14* shall apply for the purposes of the Capital Gains Tax Acts.

CHAPTER 3

Assets held in a fiduciary or representative capacity, inheritances and settlements

Nominees, bare
trustees and agents.

[CGTA75 s8(3),
s15(10), s51(1) and
Sch4 par2; FA73
s33(4) and (7)]

567.—(1) References in the Capital Gains Tax Acts to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, or would have such a right if that other person were not an infant or other person under disability, subject only to satisfying any outstanding charge, lien or right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

(2) In relation to assets held by a person (in this subsection referred to as “the first-mentioned person”) as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled), the Capital Gains Tax Acts shall apply as if the property were vested in, and the acts of the first-mentioned person in relation to the assets were the acts of, the person or persons for whom the first-mentioned person is the nominee or trustee (acquisitions from or disposals to the first-mentioned person by that person or those persons being disregarded accordingly).

Pr.19 S.567

(3) 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 capital gains tax be deemed to be the agent of that person.

(4) *Schedule 1* shall apply for the purpose of supplementing *subsection (3)*.

568.—(1) Capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of one or more of those trustees or personal representatives.

Liability of trustees, etc.

[CGTA75 s51(1) and Sch4 par12]

(2) Subject to *section 567(2)*, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of the Capital Gains Tax Acts as accruing to or chargeable on any other person, nor shall any trustee or personal representative be regarded for the purposes of those Acts as an individual.

569.—(1) In this section, “deed of arrangement” means a deed of arrangement to which the Deeds of Arrangement Act, 1887, applies.

Assets of insolvent person.

[CGTA75 s40]

(2) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement, the Capital Gains Tax Acts shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to such person by the bankrupt or debtor being disregarded accordingly), and tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from such trustee or assignee.

(3) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of the Capital Gains Tax Acts be regarded as held by a personal representative of the deceased, and—

(a) *subsection (2)* shall not apply after the death, and

(b) *section 573(2)* shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if the trustee or assignee were a personal representative.

Pt.19 S.569

(4) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of the Capital Gains Tax Acts be regarded as held by a personal representative of the deceased, and *subsection (2)* shall not apply.

Company in liquidation.

[CGTA75 s41]

570.—Where assets of a company are vested in a liquidator under section 230 of the Companies Act, 1963, or otherwise, the Capital Gains Tax Acts shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were acts of, the company (acquisitions from or disposals to the liquidator by the company being disregarded accordingly).

Chargeable gains accruing on disposals by liquidators and certain other persons.

[FA83 s56]

571.—(1) In this section—

“accountable person” means—

- (a) a liquidator of a company, or
- (b) any person entitled to an asset by means of security or to the benefit of a charge or encumbrance on an asset or, as the case may be, any person appointed to enforce or give effect to the security, charge or encumbrance;

“the company” has the meaning assigned to it by *subsection (6)*;

“the debtor” has the meaning assigned to it by *subsection (5)*;

“referable capital gains tax” has the meaning assigned to it by *subsection (2)*;

“referable corporation tax” has the meaning assigned to it by *subsection (3)*;

“relevant disposal” has the same meaning as in *section 648*.

(2) In this section—

(a) in a case where no chargeable gains other than the chargeable gains mentioned in *subsection (5)(a)* (in this subsection referred to as “the referable gains”) accrued to the debtor in the year of assessment, “referable capital gains tax” means the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the referable gains;

(b) in a case where, in addition to the referable gains, other chargeable gains accrued to the debtor in the year of assessment and, in charging all of those gains to capital gains tax without regard to *subsection (5)*, the same rate of tax would apply, and either—

(i) none of the disposals on which the chargeable gains accrued is a relevant disposal, or

(ii) each of the disposals is a relevant disposal,

“referable capital gains tax” means an amount of tax determined by the formula—

$$\frac{A}{B} \times C$$

where—

A is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the referable gains if no other chargeable gains accrued to the debtor in the year of assessment and if no deductions or reliefs were to be allowed against the referable gains,

B is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of all chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment, if no deductions or reliefs were to be allowed against those chargeable gains, and

C is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the total amount of chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment;

(c) in any other case, “referable capital gains tax” means the amount of capital gains tax which apart from *subsection (5)* and taking into account—

(i) all other chargeable gains accruing to the debtor in the year of assessment, and

(ii) where appropriate, *sections 546(6), 601(3) and 653,*

would be the amount of capital gains tax appropriate to the referable gains.

(3) In this section—

(a) in a case where no chargeable gains other than—

(i) the chargeable gains mentioned in *subsection (6)(a)* (in this subsection referred to as “the referable gains”), or

(ii) any chargeable gains accruing on a relevant disposal,

accrued to the company in the accounting period, “referable corporation tax” means the amount of capital gains tax which apart from *subsection (6)* would be assessable on the company in respect of the referable gains on the assumptions that—

(I) notwithstanding any provision to the contrary in the Corporation Tax Acts, capital gains tax was to be charged in respect of the referable gains in accordance with the Capital Gains Tax Acts, and

(II) accounting periods were years of assessment,

or, if it is less, the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period;

- (b) in a case where, in addition to the referable gains, other chargeable gains (not being chargeable gains accruing on a relevant disposal) accrued to the company in the accounting period and, on the assumptions made in *paragraph (a)*, in charging all of those gains to capital gains tax without regard to *subsection (6)*, the same rate of tax would apply, “referable corporation tax” means an amount of tax determined by the formula—

$$\frac{D}{E} \times F$$

where—

D is the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, would be assessable on the company in respect of the referable gains if no other chargeable gains accrued to the company in the accounting period and if no deductions or reliefs were to be allowed against the referable gains,

E is the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, would be assessable on the company in respect of all chargeable gains including the referable gains (but not including chargeable gains accruing on a relevant disposal) which accrued to the company in the accounting period, if no deductions or reliefs were to be allowed against those chargeable gains, and

F is the amount (in this subsection referred to as “the notional amount”) of capital gains tax which apart from *subsection (6)* would in accordance with *section 78(2)* be calculated in relation to the company for the accounting period in respect of all chargeable gains including the referable gains or, if it is less, the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period;

- (c) (i) in any other case, “referable corporation tax” means, subject to *subparagraph (ii)*, the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, and taking into account—

(I) all other chargeable gains (not being chargeable gains accruing on a relevant disposal) accruing to the company in the accounting period, and

(II) where appropriate, *sections 546(6)* and *653*,

would be the amount of capital gains tax appropriate to the referable gains;

- (ii) in any case in which *subparagraph (i)* applies, if the notional amount is greater than the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period, “referable corporation tax” shall mean an amount determined by the formula—

$$\frac{G}{H} \times K$$

where—

G is the amount which under *subparagraph (i)* would be the referable corporation tax,

H is the notional amount, and

K is the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period.

(4) (a) In any case where, in calculating an amount of referable capital gains tax or referable corporation tax under *subsection (2)(c)* or *(3)(c)*, deductions or reliefs were to be allowed against chargeable gains accruing in a year of assessment or in an accounting period and apart from this subsection those deductions or reliefs (or part of them) would be set against 2 or more chargeable gains chargeable at the same rate of capital gains tax, then, those deductions or reliefs (or, as the case may be, that part of them) shall, in so far as is necessary to calculate the amount of referable capital gains tax or referable corporation tax, be apportioned between the chargeable gains chargeable at the same rate in proportion to the amounts of those chargeable gains.

(b) In the case of chargeable gains accruing to a company (not being chargeable gains accruing on a relevant disposal), any reference in *paragraph (a)* to a rate of tax shall be construed as a reference to the rate of capital gains tax which would be applicable to those gains on the assumptions made in *subsection (3)(a)*.

(5) Where *section 537(2)* or *570* applies in respect of the disposal of an asset in a year of assessment by an accountable person, then, notwithstanding any provision of the Capital Gains Tax Acts—

(a) any referable capital gains tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,

(b) the referable capital gains tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and

(c) referable capital gains tax paid by the accountable person shall discharge a corresponding amount of the liability to capital gains tax, for the year of assessment in which the disposal is made, of the person (in this section referred to as “the debtor”) who apart from this subsection is the chargeable person in relation to the disposal.

(6) Where *section 78(8)* or *537(2)* applies in respect of the disposal (not being a relevant disposal) of an asset in an accounting period of a company by an accountable person, then, notwithstanding any provision of the Corporation Tax Acts—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.571

- (a) any referable corporation tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,
- (b) the referable corporation tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and
- (c) referable corporation tax paid by the accountable person shall discharge a corresponding amount of the liability to corporation tax, for the accounting period in which the disposal is made, of the company (in this section referred to as “the company”) which apart from this subsection is the chargeable person in relation to the disposal.

(7) Notwithstanding any provision of the Capital Gains Tax Acts or of the Corporation Tax Acts, the amount of referable capital gains tax or referable corporation tax, as the case may be, which under this section is assessable on an accountable person in relation to a disposal, shall be recoverable by an assessment on the accountable person to income tax under Case IV of Schedule D for the year of assessment in which the disposal occurred on an amount the income tax on which at the standard rate for that year of assessment is equal to the amount of the referable capital gains tax or referable corporation tax, as the case may be.

(8) Where tax is paid by an accountable person under this section and it is established that the amount of tax paid is excessive, appropriate relief by means of repayment or otherwise shall be given to the accountable person.

(9) Subject to *subsections (5)(c) and (6)(c)*, nothing in this section shall affect the amount of chargeable gains on which—

- (a) the debtor is chargeable to capital gains tax, or
- (b) the company is chargeable to corporation tax.

Funds in court.

[CGTA75 s42]

572.—(1) In this section—

“the Accountant” means the Accountant attached to the court or a deputy appointed by the Minister for Justice, Equality and Law Reform;

“court” means the High Court except where the reference is to the Circuit Court;

“funds in court” means any moneys (and investments representing such moneys), annuities, stocks, shares or other securities standing or to be placed to the account of the Accountant in the books of the Bank of Ireland or any company, and includes boxes and other effects.

(2) For the purposes of *section 567(2)*, funds in court shall be regarded as held by the Accountant as nominee for the persons entitled to or interested in the funds or, as the case may be, for their trustees.

(3) Where funds in court standing to an account in the books of the Accountant are invested or after investment are realised, the method by which the Accountant effects the investment or the realisation of investments shall not affect the question as to whether there

is for the purposes of the Capital Gains Tax Acts an acquisition or, as the case may be, a disposal of an asset representing funds in court standing to that account, and in particular there shall for those purposes be an acquisition or disposal of assets notwithstanding that the investment of funds in court standing to an account in the books of the Accountant, or the realisation of funds which have been so invested, is effected by setting off in the Accountant's accounts investment in one account against realisation of investments in another.

(4) This section shall apply with any necessary modifications to funds in the Circuit Court as it applies to funds in court.

573.—(1) In this section, references to assets of which a deceased person was competent to dispose are references to assets of the deceased which the deceased could if of full age and capacity have disposed of by will, assuming that all the assets were situated in the State and that the deceased was domiciled in the State, and include references to the deceased's severable share in any assets to which immediately before his or her death he or she was beneficially entitled as a joint tenant.

Death.

[CGTA75 s14;
CGT(A)A78 s6(1)]

(2) For the purposes of the Capital Gains Tax Acts, the assets of which a deceased person was competent to dispose—

(a) shall be deemed to be acquired on his or her death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death; but

(b) shall not be deemed to be disposed of by him or her on his or her death (whether or not they were the subject of a testamentary disposition).

(3) Allowable losses sustained by an individual in the year of assessment in which he or she dies may, in so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year, and there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to this subsection.

(4) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence and domicile at the date of death.

(5) Where any asset is acquired by a person as legatee no chargeable gain shall accrue to the personal representatives, but the legatee shall be treated as if the personal representatives' acquisition of the asset had been the legatee's acquisition of the asset.

(6) Where not more than 2 years, or such longer period as the Revenue Commissioners may by notice in writing allow, after a death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will or under the law relating to intestacies or otherwise, are varied by a deed of family

Pt.19 S.573

arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of the Capital Gains Tax Acts.

Trustees of settlement.

[CGTA75 s15(1), (9) and (11)]

574.—(1) (a) In relation to settled property, the trustees of a settlement shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees) and, subject to *paragraph (b)*, that body shall be treated as being resident and ordinarily resident in the State unless the general administration of the trusts is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State.

(b) A person carrying on a business which consists of or includes the management of trusts, and acting as trustees of a trust in the course of that business, shall be treated in relation to that trust as not resident in the State if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his or her death) domiciled, resident or ordinarily resident in the State and, if in such a case the trustees or a majority of them are or are treated in relation to that trust as not resident in the State, the general administration of the trust shall be treated as ordinarily carried on outside the State.

(2) Where any amount of capital gains tax assessed on the trustees or any one trustee of a settlement in respect of a chargeable gain accruing to the trustee is not paid within 6 months from the date when it becomes payable by the trustees or trustee and, before or after the expiration of that period of 6 months, the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, then, that person may, at any time within 2 years from the time when that amount of tax became payable, be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding the amount of capital gains tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

(3) For the purposes of this section, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another trustee or set of trustees (and in particular where settled land within the meaning of the Settled Land Act, 1882, is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

575.—A gift in settlement, whether revocable or irrevocable, shall be a disposal of the entire property thereby becoming settled property notwithstanding that the donor has some interest as a beneficiary under the settlement and notwithstanding that the donor is a trustee or the sole trustee of the settlement.

Pr.19
Gifts in settlement.
[CGTA75 s15(2)]

576.—(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, all the assets forming part of the settled property to which the person becomes so entitled shall be deemed for the purposes of the Capital Gains Tax Acts to have been disposed of by the trustee, and immediately reacquired by the trustee in the trustee's capacity as a trustee within *section 567(2)*, for a consideration equal to their market value.

Person becoming absolutely entitled to settled property.
[CGTA75 s15(3) and (8)]

(2) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, any allowable loss which has accrued to the trustee in respect of property which is, or is represented by, the property to which that person becomes so entitled (including any allowable loss carried forward to the year of assessment in which that occasion falls), being a loss which cannot be deducted from chargeable gains accruing to the trustee in that year, but before that occasion, shall be treated for the purposes of the Capital Gains Tax Acts as if it were an allowable loss accruing at that time to the person becoming so entitled, instead of to the trustee.

577.—(1) (a) In this section, “life interest”, in relation to a settlement—

Termination of life interest on death of person entitled.

(i) includes a right under the settlement to the income of, or the use or occupation of, settled property for the life of a person (or for the lives of persons) other than the person entitled to the right,

[CGTA75 s15(4), (5), (5A), (6) and (12); CGT(A)A78 s7(1); FA97 s73(1)]

(ii) does not include any right which is contingent on the exercise of the discretion of the trustee or the discretion of some other person, and

(iii) does not include an annuity, notwithstanding that the annuity is payable out of or charged on settled property or the income of settled property except where some or all of the settled property is appropriated by the trustees as a fund out of which the annuity is payable and there is no right of recourse to settled property not so appropriated, or to the income of settled property not so appropriated.

(b) Without prejudice to *subsection (4)(b)*, where under *paragraph (a)(iii)* an annuity is to be treated as a life interest in relation to a settlement, the settled property or the part of the settled property appropriated by the trustees as a fund out of which the annuity is payable shall, while the annuity is payable and on the occasion of the death of the annuitant, be treated for the purposes of *subsection (3)* as being settled property under a separate settlement.

(2) Where by virtue of *section 576(1)* the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes absolutely

entitled to the assets as against the trustee, then, if that occasion is the termination of a life interest by the death of the person entitled to that interest—

- (a) no chargeable gain shall accrue on the disposal, and
- (b) the reacquisition under that section shall be deemed to be for a consideration equal to the market value of the assets at the date of the death.

(3) On the termination of a life interest in possession in all or any part of settled property, the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of the Capital Gains Tax Acts at that time to be disposed of by the trustee, and immediately reacquired by the trustee, for a consideration equal to the whole or a corresponding part of the market value of the asset.

(4) For the purposes of *subsection (3)*—

- (a) a life interest which is a right to part of the income of settled property shall be treated as a life interest in a corresponding part of the settled property, and
- (b) if there is a life interest in a part of the settled property and, where that interest is a life interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the life interest subsists shall while it subsists be treated for the purposes of this subsection as being settled property under a separate settlement.

(5) (a) Subject to *paragraph (b)*, where—

- (i) as a consequence of a termination, on the death of the person entitled to it, of a life interest in settled property, *subsection (3)* applies, and
- (ii) an asset which forms the whole or any part of that settled property—
 - (I) is comprised in an inheritance (within the meaning of the Capital Acquisitions Tax Act, 1976) taken on the death, and
 - (II) is exempt from tax in relation to the inheritance under section 55 of that Act, or that section as applied by section 39 of the Finance Act, 1978,

that asset shall for the purposes of *subsection (3)*, be excluded from the assets deemed to be disposed of and immediately reacquired.

- (b) Where, in a year of assessment, in respect of an asset an exemption from tax in relation to an inheritance referred to in *paragraph (a)* ceases to apply, then, the chargeable gain which but for *paragraph (a)* would have accrued to the trustee on the termination of the life interest in accordance with *subsection (3)* shall be deemed to accrue

to the trustee in that year of assessment and shall accordingly be included in the return required to be made by the trustee concerned under *section 951* for that year of assessment.

Pr.19 S.577

578.—*Sections 576(1) and 577(3)* shall apply where an annuity which is not a life interest within the meaning of *section 577* is terminated by the death of the annuitant as they apply on the termination of a life interest (within the meaning of that section) by the death of the person entitled to that life interest.

Death of annuitant.

[CGTA75 s15(7)]

579.—(1) This section shall apply as respects chargeable gains accruing to the trustees of a settlement where the trustees are not resident and not ordinarily resident in the State, and where the settlor or one of the settlors is domiciled and either resident or ordinarily resident in the State, or was domiciled and either resident or ordinarily resident in the State when such settlor made the settlement.

Non-resident trusts.

[CGTA75 s37]

(2) (a) Any beneficiary under the settlement who is domiciled and either resident or ordinarily resident in the State in any year of assessment shall be treated for the purposes of the Capital Gains Tax Acts as if an apportioned part of the amount, if any, on which the trustees would have been chargeable to capital gains tax under *section 31*, if domiciled and either resident or ordinarily resident in the State in that year of assessment, had been chargeable gains accruing to the beneficiary in that year of assessment.

(b) For the purposes of this section, any amount referred to in *paragraph (a)* shall be apportioned in such manner as is just and reasonable between persons having interests in the settled property, whether the interest is a life interest or an interest in reversion, and so that the chargeable gain is apportioned as near as may be according to the respective values of those interests, disregarding in the case of a defeasible interest the possibility of defeasance.

(3) For the purposes of this section—

(a) where in any of the 5 years ending with that in which the chargeable gain accrues a person has received a payment or payments out of the income of the settled property made in exercise of a discretion, such person shall be regarded, in relation to that chargeable gain, as having an interest in the settled property of a value equal to that of an annuity of a yearly amount equal to 20 per cent of the total of the payments so received by such person in those 5 years, and

(b) where a person (in this paragraph referred to as “the recipient”) receives at any time after the chargeable gain accrues a capital payment made out of the settled property in exercise of a discretion, being a payment which represents the chargeable gain in whole or in part, then, except in so far as any part of the gain has been attributed under this section to some other person who is domiciled and resident or ordinarily resident in the State, the recipient shall, if domiciled and resident or ordinarily resident

in the State, be treated as if the chargeable gain or, as the case may be, the part of the chargeable gain represented by the capital payment, had accrued to the recipient at the time when the recipient received the capital payment.

(4) In the case of a settlement made before the 28th day of February, 1974—

(a) *subsection (2)* shall not apply to a beneficiary whose interest is solely in the income of the settled property and who cannot, by means of the exercise of any power of appointment or power of revocation or otherwise, obtain for himself or herself, whether with or without the consent of any other person, any part of the capital represented by the settled property, and

(b) payment of capital gains tax chargeable on a gain apportioned to a beneficiary in respect of an interest in reversion in any part of the capital represented by the settled property may be postponed until that person becomes absolutely entitled to that part of the settled property, or disposes of the whole or any part of his or her interest, unless he or she can, by any means described in *paragraph (a)*, obtain for himself or herself any of it at any earlier time,

and, for the purposes of this subsection, property added to a settlement after the settlement is made shall be regarded as property under a separate settlement made at the time when the property is so added.

(5) In any case in which the amount of any capital gains tax payable by a beneficiary under a settlement in accordance with this section is paid by the trustees of the settlement, such amount shall not for the purposes of income tax or capital gains tax be regarded as a payment to such beneficiary.

(6) This section shall not apply in relation to a loss accruing to the trustees of the settlement.

CHAPTER 4

Shares and securities

Shares, securities,
etc: identification.

[CGT(A)A78 s16
and Sch1 par4]

580.—(1) For the purposes of identifying shares acquired with shares subsequently disposed of, in so far as the shares are of the same class, shares acquired at an earlier time shall for the purposes of the Capital Gains Tax Acts be deemed to have been disposed of before shares acquired at a later time.

(2) Shares shall not be treated for the purposes of this section as being of the same class unless, if dealt with on a stock exchange, they would be so treated, but shall be treated in accordance with this section notwithstanding that they are identified in a different way by a disposal or by the transfer or delivery giving effect to the disposal.

(3) This section shall apply to securities as it applies to shares.

(4) This section apart from *subsection (2)* shall apply in relation to any assets as it applies in relation to shares where the assets are of a

nature to be dealt in without identifying the particular assets disposed of or acquired. Pr.19 S.580

(5) (a) This subsection shall apply in relation to the disposal of any assets to which paragraph 13 of Schedule 1 to the Capital Gains Tax Act, 1975, applied, where—

(i) any such assets were on the 6th day of April, 1978, comprised in a holding of the kind referred to in that paragraph,

(ii) the holding consisted of assets acquired on different dates, and

(iii) before the 6th day of April, 1978, there had been a disposal of assets which if that disposal had not taken place would have been comprised in the holding on that date.

(b) For the purposes of applying *subsection (1)* in relation to each disposal to which this subsection applies—

(i) shares acquired on different dates shall be treated as if they were distinguishable parts of a single asset (in this subsection referred to as “the holding”) acquired respectively on the separate dates on which they were acquired and for the consideration for which they were acquired, and

(ii) it shall be assumed that, on each occasion before the 6th day of April, 1978, on which a disposal was made of shares in the holding, each of the distinguishable parts of the holding as it existed immediately before the disposal was reduced, both as regards the number of shares comprised in that part and the expenditure attributable to that part under *paragraphs (a) and (b) of section 552(1)*, in the same proportion as the number of shares so disposed of bears to the number of shares comprised in the holding immediately before that disposal, and

(iii) the number of shares comprised in each such part on the 6th day of April, 1978, and the expenditure attributable (apart from *section 556*) to that part under *paragraphs (a) and (b) of section 552(1)* shall, in relation to a disposal made on or after that date, be the number and expenditure respectively determined in accordance with this subsection.

(c) Nothing in this subsection shall affect the computation of any chargeable gain or allowable loss in relation to any disposal of assets made before the 6th day of April, 1978.

(6) This section shall apply subject to *section 581*.

581.—(1) For the purposes of the Capital Gains Tax Acts, where the same person in the same capacity disposes of shares of the same class as shares which such person acquired within 4 weeks preceding the disposal, the shares disposed of shall be identified with the shares so acquired within those 4 weeks.

Disposals of shares or securities within 4 weeks of acquisition.

[CGTA75 s51(1) and Sch1 par14(1) to (5)]

Pt.19 S.581

(2) For the purposes of the Capital Gains Tax Acts, where the quantity of shares of the same class disposed of exceeds the quantity of shares of the same class acquired within the period of 4 weeks preceding the disposal, the excess shall be identified with shares of the same class acquired otherwise than within the period of 4 weeks.

(3) Where a loss accrues to a person on the disposal of shares and such person reacquires shares of the same class within 4 weeks after the disposal, that loss shall not be allowable under *section 538* or *546* otherwise than by deduction from a chargeable gain accruing to such person on the disposal of the shares reacquired; but, if the quantity of shares so reacquired is less than the quantity so disposed of, such proportion of the loss shall be allowable under *section 538* or *546* as bears the same proportion to the loss on the disposal as the quantity not reacquired bears to the quantity disposed of.

(4) In the case of a man and his wife living with him—

(a) *subsections (1) and (2)* shall, with the necessary modifications, apply where shares are acquired by one of them and shares of the same class are disposed of within 4 weeks by the other, and

(b) *subsection (3)* shall, with the necessary modifications, apply also where a loss on the disposal accrues to one of them and the acquisition after the disposal is made by the other.

(5) This section shall apply to securities as it applies to shares.

Calls on shares.

[CGT(A)A78 s16 and Sch1 par3]

582.—Where, as respects an issue of shares in or debentures of a company, a person gives any consideration on a date which is more than 12 months after the date on which the shares or debentures were allotted, the consideration shall, in the computation of a gain accruing to such person on a disposal of the shares or debentures, be deemed for the purposes of *section 556* to be expenditure incurred on the date on which the consideration was given.

Capital distributions by companies.

[CGTA75 s51(1) and Sch2 par1]

583.—(1) In this section, “capital distribution” means any distribution from a company (including a distribution in the course of dissolving or winding up the company) in money or money’s worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

(2) Where a person receives or becomes entitled to receive in respect of shares in a company any capital distribution from the company (other than a new holding within the meaning of *section 584*), such person shall be treated for the purposes of the Capital Gains Tax Acts as if such person had in consideration of that capital distribution disposed of an interest in the shares.

Reorganisation or reduction of share capital.

[CGTA75 s51(1) and Sch2 par2(1) to (7) and (9); CGT(A)A78 s16 and Sch1 par5]

584.—(1) In this section—

“new holding”, in relation to any original shares, means the shares in and debentures of the company which as a result of the reorganisation or reduction of capital represent the original shares (including such, if any, of the original shares as remain);

“original shares” means shares held before and concerned in the reorganisation or reduction of capital;

references to a reorganisation of a company's share capital include— Pr.19 S.584

- (a) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company, and
- (b) any case where there is more than one class of shares and the rights attached to shares of any class are altered;

references to a reduction of share capital do not include the paying off of redeemable share capital and, where shares in a company are redeemable by the company otherwise than by the issue of shares or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

(2) This section shall apply for the purposes of the Capital Gains Tax Acts in relation to any reorganisation or reduction of a company's share capital.

(3) Subject to *subsections (4) to (8)*, a reorganisation or reduction of a company's share capital shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it; but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

- (4) (a) Where on a reorganisation or reduction of a company's share capital a person gives or becomes liable to give any consideration for such person's new holding or any part of it, that consideration shall, in the computation of a gain accruing to such person on a disposal of the new holding or any part of it, be deemed for the purposes of *section 556* to be expenditure incurred on the date the consideration was given and, if the new holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.
- (b) Notwithstanding *paragraph (a)*, there shall not be treated as consideration given for the acquisition of the new holding—
 - (i) any surrender, cancellation or other alteration of the original shares or of the rights attached to the original shares, or
 - (ii) any consideration consisting of any application, in paying up the shares or debentures or any part of them, of any assets of the company, or of any dividend or other distribution declared out of those assets but not made;

but, if *section 816* applies in relation to the issue of any of the shares, the sum in cash which the person would have received if the person had not exercised the option to receive additional share capital instead of a sum in cash shall be treated for the purposes of this subsection as consideration given for those shares.

(5) Where on a reorganisation or reduction of a company's share capital a person receives (or is deemed to receive), or becomes entitled to receive, any consideration other than the new holding for the disposal of an interest in the original shares, and in particular—

- (a) where under *section 583* such person is to be treated as if such person had in consideration of a capital distribution disposed of an interest in the original shares, or
- (b) where such person receives (or is deemed to receive) a consideration from other shareholders in respect of a surrender of rights derived from the original shares,

such person shall be treated as if the new holding resulted from such person having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the new holding being treated in accordance with *subsection (3)* as the same asset).

(6) Where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding, it is necessary to apportion the cost of acquisition of any of the original shares between the part which is disposed of and the part which is retained, the apportionment shall be made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the new holding as may be required to offset any liability attaching to the new holding but forming part of the cost to be apportioned), and any corresponding apportionment for the purposes of *subsection (5)* shall be made in the like manner.

(7) Notwithstanding *subsection (6)*—

- (a) where a new holding—
 - (i) consists of more than one class of shares in or debentures of the company and one or more of those classes is of shares or debentures which, at any time not later than the end of the period of 3 months beginning on the date on which the reorganisation or reduction of capital took effect, or of such longer period as the Revenue Commissioners may by notice in writing allow, had quoted market values on a recognised stock exchange in the State or elsewhere, or
 - (ii) consists of more than one class of rights of unit holders and one or more of those classes is of rights the prices of which were published regularly by the managers of the scheme at any time not later than the end of that period of 3 months (or longer if so allowed), and
- (b) where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or securities or rights of unit holders forming part of a new holding of the kind referred to in *paragraph (a)*, it is necessary to apportion costs of acquisition between the part that is disposed of and the part that is retained,

then, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first

day (whether that day fell before the reorganisation or reduction of capital took effect or later) on which market values or prices were quoted or published for the shares, debentures or rights mentioned in *paragraph (a) or (b)* (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned) and, for the purposes of this subsection, the day on which a reorganisation of share capital involving the allotment of shares or debentures or unit holders' rights takes effect shall be the day following the day on which the right to renounce any allotment expires.

Pr.19 S.584

(8) Where a person receives or becomes entitled to receive in respect of any shares in or debentures of a company a provisional allotment of shares in or debentures of the company and such person disposes of such person's rights, *section 583* shall apply as if the amount of the consideration for the disposal were a capital distribution received by such person from the company in respect of the first-mentioned shares, and as if such person had, instead of disposing of the rights, disposed of an interest in those shares.

585.—(1) In this section—

Conversion of securities.

“conversion of securities” includes—

[CGTA75 s51(1) and Sch2 par3]

- (a) a conversion of securities of a company into shares in the company,
- (b) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and
- (c) any exchange of securities effected in pursuance of any enactment which provides for the compulsory acquisition of any shares or securities and the issue of securities or other securities instead;

“security” includes any loan stock or similar security, whether of any government or of any public or local authority or of any company and whether secured or unsecured but excluding securities within *section 607*.

(2) *Section 584* shall apply with any necessary modifications in relation to the conversion of securities as it applies in relation to the reorganisation or reduction of a company's share capital.

586.—(1) Subject to *section 587*, where a company issues shares or debentures to a person in exchange for shares in or debentures of another company, *section 584* shall apply with any necessary modifications as if the 2 companies were the same company and the exchange were a reorganisation of its share capital.

Company amalgamations by exchange of shares.

[CGTA75 s51(1) and Sch2 par4; FA82 s63(1)(a) and (2)]

(2) This section shall apply only where—

- (a) the company issuing the shares or debentures has, or in consequence of the exchange will have, control of the other company, or
- (b) the first-mentioned company issues the shares or debentures in exchange for shares as the result of a general offer made to members of the other company or any class of them (with or without exceptions for persons connected

with the first-mentioned company), the offer being made in the first instance on a condition such that if it were satisfied the first-mentioned company would have control of the other company.

(3) (a) In this subsection, “shares” includes stock, debentures and any interests to which *section 587(3)* applies and also includes any option in relation to such shares.

(b) This section shall not apply to the issue by a company of shares in the company by means of an exchange referred to in *subsection (1)* unless it is shown that the exchange is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

Company reconstructions and amalgamations.

[CGTA75 s51(1) and Sch2 par5; FA82 s63(1)(b) and (2)]

587.—(1) In this section, “scheme of reconstruction or amalgamation” means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise.

(2) Where under any arrangement between a company and the persons holding shares in or debentures of the company or any class of such shares or debentures, being an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation, another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of the first-mentioned shares or debentures, but the first-mentioned shares or debentures are either retained by those persons or cancelled, then, those persons shall be treated as exchanging the first-mentioned shares or debentures for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue), and accordingly *section 586(1)* shall apply to such exchange of shares or debentures.

(3) *Subsection (2)* shall apply in relation to a company which has no share capital as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company, and *sections 584* and *586* shall apply accordingly.

(4) (a) In this subsection, “shares” has the same meaning as in *section 586(3)*.

(b) This section shall not apply to the issue by a company of shares in the company under a scheme of reconstruction or amalgamation referred to in *subsection (2)* unless it is shown that the reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

588.—(1) In this section—

Pr.19
Demutualisation of
assurance
companies.

“assurance company” has the same meaning as in section 3 of the Insurance Act, 1936;

[CGTA75 s51(1)
and Sch2 par5A;
FA97 s70]

“free shares”, in relation to a member of the assurance company, means any shares issued by the successor company to that member in connection with the arrangement but for no new consideration;

“member”, in relation to the assurance company, means a person who is or has been a member of it, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

“new consideration” means consideration other than—

- (a) consideration provided directly or indirectly out of the assets of the assurance company or the successor company, or
- (b) consideration derived from a member’s shares or other rights in the assurance company or the successor company.

(2) This section shall apply as on and from the 21st day of April, 1997, in respect of an arrangement between a company and its members, being an arrangement to which *subsection (2)* of *section 587* applies by virtue of *subsection (3)* of that section, and where the company is an assurance company which carries on a mutual life business.

(3) Where in connection with the arrangement there is conferred on a member of the assurance company concerned any rights—

- (a) to acquire shares in another company (in this section referred to as the “successor company”) in priority to other persons,
- (b) to acquire shares in the successor company for consideration of an amount or value lower than the market value of the shares, or
- (c) to free shares in the successor company,

then, any such rights so conferred on a member shall be regarded for the purposes of capital gains tax as an option (within the meaning of *section 540*) granted to and acquired by such member for no consideration and having no value at the time of that grant and acquisition.

(4) Where in connection with the arrangement shares in the successor company are issued to a member of the assurance company concerned, and such shares are treated under *section 587* as having been exchanged by the member for the interest in the company possessed by the member, those shares shall, notwithstanding *section 584*, be regarded for the purposes of *section 552(1)*—

- (a) as having been issued to the member for a consideration given by the member of an amount or value equal to the amount or value of any new consideration given by the member for the shares or, if no new consideration is given, as having been issued for no consideration, and

- (b) as having, at the time of their issue to the member, a value equal to the amount or value of the new consideration so given or, if no new consideration is given, as having no value;

but this subsection is without prejudice to the operation where applicable of *subsection (3)*.

(5) *Subsection (6)* shall apply in any case where—

- (a) in connection with the arrangement, shares in the successor company are issued by that company to trustees on terms which provide for the transfer of those shares to members of the assurance company concerned for no new consideration, and

- (b) the circumstances are such that in the hands of the trustees the shares constitute settled property.

(6) (a) Where this subsection applies, then, for the purposes of capital gains tax—

- (i) the shares shall be regarded as acquired by the trustees for no consideration,

- (ii) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by the member for no consideration and as having no value at the time of its acquisition, and

- (iii) where on the occasion of a member becoming absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on the member becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within *section 567(2)*, for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees, and accordingly *section 576(1)* shall not apply in relation to that occasion.

- (b) Reference in *paragraph (a)* to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include reference to the case where the member would become so entitled but for being a minor or otherwise under a legal disability.

Shares in close company transferring assets at undervalue.

[CGTA75 s35(1) to (3) and (5); CTA76 s140(2) and Sch 2 PtII par3(1)]

589.—(1) Where a close company transfers an asset to any person otherwise than by means of a bargain made at arm's length and for a consideration of an amount or value less than the market value of the asset, an amount equal to the difference shall be apportioned among the issued shares of the company, and the holders of those shares shall be treated in accordance with *subsections (2) and (3)*.

(2) For the purposes of the computation of a chargeable gain accruing on the disposal of any of those shares by the person owning them on the date of transfer, an amount equal to the amount so apportioned to that share shall be excluded from the expenditure allowable as a deduction under *section 552(1)(a)* from the consideration for the disposal.

(3) Where the person owning any of those shares at the date of transfer is itself a close company, an amount equal to the amount apportioned to the shares so owned under *subsection (1)* to that close company shall be apportioned among the issued shares of that close company, and the holders of those shares shall be treated in accordance with *subsection (2)*, and so on through any number of close companies. Pr.19 S.589

(4) This section shall apply to a company within *section 590* as it applies to a close company.

590.—(1) This section shall apply as respects a chargeable gain accruing to a company—

Attribution to shareholders of chargeable gains accruing to non-resident company.

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

(b) which would be a close company if it were resident in the State.

[CGTA75 s36; CTA76 s129(6)(c) and (7), s140(2) and s159 and Sch2 PtII pars4 and 5]

(2) Subject to this section, any person who at the time when the chargeable gain accrues to the company—

(a) is resident or ordinarily resident in the State,

(b) if an individual, is domiciled in the State, and

(c) holds shares in the company,

shall be treated for the purposes of the Capital Gains Tax Acts as if a part of the chargeable gain had accrued to that person.

(3) The part of the chargeable gain referred to in *subsection (2)* shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.

(4) This section shall not apply in relation to—

(a) any amount in respect of the chargeable gain which is distributed, whether by means of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company or to creditors of the company within 2 years from the time when the chargeable gain accrued to the company,

(b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used only for the purposes of a trade carried on by the company wholly outside the State,

(c) a chargeable gain accruing on the disposal of currency or of a debt within *section 541(6)*, where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the State, or

(d) a chargeable gain in respect of which the company is chargeable to capital gains tax by virtue of *subsection (3)* or (7) of *section 29* or to corporation tax by virtue of *section 25(2)(b)*.

(5) *Subsection (4)(a)* shall not prevent the making of an assessment in pursuance of this section but, if by virtue of *subsection (4)(a)* this section is excluded, all such adjustments, whether by means of repayment or discharge of tax or otherwise, shall be made as will give effect to *subsection (4)(a)*.

(6) The amount of capital gains tax paid by a person in pursuance of *subsection (2)* (in so far as not reimbursed by the company) shall be allowable as a deduction in the computation under the Capital Gains Tax Acts of a gain accruing on the disposal by the person of the shares by reference to which the tax was paid.

(7) To the extent that it would reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment, this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person, and, subject to this subsection, this section shall not apply in relation to a loss accruing to the company.

(8) Where the person owning any of the shares in the company at the time when the chargeable gain accrued to the company is itself a company which is not resident in the State but which would be a close company if it were resident in the State, an amount equal to the amount apportioned under *subsection (3)* out of the chargeable gain to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with *subsection (2)*, and so on through any number of companies.

(9) Where any tax payable by any person by virtue of *subsection (2)* is paid by the company to which the chargeable gain accrues, or in a case under *subsection (8)* is paid by any such other company, the amount so paid shall not, for the purposes of income tax or for the purposes of the Capital Gains Tax Acts, be regarded as a payment to the person by whom the tax was originally payable.

(10) Where any tax payable by any company by virtue of *subsection (2)* is paid by the company to which the chargeable gain accrues, or in a case under *subsection (8)* is paid by any such other company, the amount so paid shall not for the purposes of corporation tax be regarded as a payment to the company by which the tax was originally payable.

(11)(a) In this subsection—

“group” shall be construed in accordance with *subsections (1)* (excluding *paragraph (a)*), *(3)* and *(4)* of *section 616*;

“non-resident group” of companies—

- (i) in the case of a group none of the members of which is resident in the State, means that group, and
- (ii) in the case of a group 2 or more members of which are not resident in the State, means the members not resident in the State.

(b) For the purposes of this section—

- (i) *sections 617* to *620* shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

companies resident in the State which are members of a group of companies, and Pr.19 S.590

- (ii) *sections 623 and 625* shall apply as if for any reference in those sections to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the State.

591.—(1) In this section—

“director” has the same meaning as in *section 116*;

Relief for individuals on certain reinvestment.

“eligible shares” and “ordinary shares” have the same meanings respectively as in *section 488*;

[FA93 s27(1) to (5) (apart from proviso to (5)) and (6) to (13); FA94 s65(b); FA95 s74(1); FA96 s62(1); FA97 s75(1)]

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

“holding company” means a company whose business consists wholly or mainly in the holding of shares in, or securities of, one or more companies which are trading companies and which are its 51 per cent subsidiaries;

“material disposal” has the meaning assigned to it by *subsection (5)*;

“ordinary share capital” has the same meaning as in *section 2*;

“the original holding” has the meaning assigned to it by *subsection (2)*;

“qualifying company” has the meaning assigned to it by *subsection (7)*;

“qualifying investment” has the meaning assigned to it by *subsection (6)*;

“the reinvestor” has the meaning assigned to it by *subsection (2)*;

“the specified period” has the meaning assigned to it by *subsection (6)(b)*;

“trade” includes a profession, and “trading company”, “trading group”, “qualifying trade” (within the meaning of *subsection (8)*) and “qualifying trading operations” (within the meaning of that subsection) 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 holding company and one or more trading companies which are 51 per cent subsidiaries of the holding company;

“unquoted company” means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange;

“51 per cent subsidiary” has the meaning assigned to it by *section 9*.

(2) (a) Subject to this section, where the consideration which an individual (in this section referred to as “the reinvestor”) obtains for any material disposal by him or her of shares in or securities of any company (in this section referred to as “the original holding”) is applied by him or her within the period of 3 years from the date of that disposal in acquiring a qualifying investment, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the qualifying investment.

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

- (i) the disposal of the qualifying investment is a material disposal for the purposes of this section, and
- (ii) the consideration for that disposal is applied by the reinvestor within the period of 3 years from the date of that disposal in acquiring another qualifying investment,

the reinvestor shall be treated as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the other qualifying investment and any further qualifying investment which is acquired in a similar manner.

(3) (a) Where an individual is not entitled to be treated in accordance with *subsection (2)* solely by reason of not having satisfied the requirements of either or both *paragraphs (a) and (e) of subsection (6)*, and—

- (i) all the other requirements of this section have been satisfied,
- (ii) the capital gains tax on the disposal of the original holding has been paid in full, and
- (iii) the individual has, throughout a period of 2 years beginning within the specified period, been a full-time employee or a full-time director of the qualifying company,

then, the individual—

- (I) shall be entitled on making a claim in that behalf to such repayment of capital gains tax as would secure that the tax which is ultimately borne by the individual does not exceed the tax which would have been borne by the individual if he or she had been entitled to be treated in accordance with *subsection (2)*, and
- (II) shall be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until the individual disposes of the qualifying investment, and *subsection (2)(b)* shall apply for the purposes of this subsection as it applies for the purposes of *subsection (2)*.

(b) No repayment of tax under this subsection shall carry Pr.19 S.591 interest.

(4) *Subsection (2)* shall not apply if part only of the amount or value of the consideration for the material disposal of the original holding is applied, within the period of 3 years from the date of that disposal, in acquiring a qualifying investment but, if all of the amount of that consideration except for a part which is less than the amount of the gain accruing on the disposal is so applied, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal were reduced to the amount of the consideration not applied in acquiring a qualifying investment, and the balance of the gain shall be treated as if it did not accrue until the reinvestor disposes of the qualifying investment.

(5) For the purposes of this section, the disposal of shares in or securities of a company shall be a material disposal if—

- (a) throughout the period of 3 years ending with the date of the disposal, or
- (b) in a case where the company commenced to trade at any time in the period mentioned in *paragraph (a)*, throughout the period beginning at that time and ending with the date of the disposal,

the following conditions are satisfied—

- (i) the company has been a trading company or a holding company, and
- (ii) the reinvestor has been a full-time employee, part-time employee, full-time director or part-time director of the company or, if that company is a member of a trading group, of one or more companies which are members of the trading group.

(6) For the purposes of this section, an individual shall be regarded as acquiring a qualifying investment where he or she acquires any eligible shares in a qualifying company if—

- (a) he or she holds not less than 5 per cent of the ordinary share capital of the company at any time in the period (in this subsection referred to as “the initial period”) beginning on the date of the acquisition of the eligible shares and ending on the date which is one year after the date of the disposal of the original holding,
- (b) he or she holds not less than 15 per cent of the ordinary share capital of the company at any time in the period (in this section referred to as “the specified period”) beginning on the date of the acquisition of the eligible shares and ending on the date which is 3 years after the date of the disposal of the original holding,
- (c) within the specified period, the company uses the money raised through the issue of the eligible shares for the purposes of enabling it, or enlarging its capacity, to undertake qualifying trading operations (within the meaning of *subsection (8)*),
- (d) the company is not—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.591

- (i) the company in which the original holding has subsisted, or
 - (ii) a company that was a member of the same trading group as that company,
- and
- (e) he or she becomes at any time within the initial period, and is throughout the period beginning at that time and—
 - (i) ending at the end of the specified period, or
 - (ii) in a case where the company is wound up or dissolved without winding up and the conditions mentioned in *subsection (7)(d)* are satisfied, ending at the time of the commencement of the winding up or dissolution of the company,
- a full-time employee or a full-time director of the company.
- (7) (a) For the purposes of this section and subject to *paragraphs (b) to (d)*, a company shall be a qualifying company if it is incorporated in the State and if—
 - (i) it is throughout the specified period—
 - (I) an unquoted company resident in the State and not resident elsewhere, and
 - (II) a company which exists wholly for the purposes of carrying on wholly or mainly in the State of one or more qualifying trades,
- and
- (ii) it is not at any time in the specified period—
 - (I) under the control of another company (or of another company and any person connected with that other company), or
 - (II) without being under the control of another company, a 51 per cent subsidiary of that other company.
- (b) A company shall be deemed not to have ceased to be a qualifying company solely by virtue of shares in the company commencing, at any time in the specified period, to be quoted on the market known as the Developing Companies Market of the Irish Stock Exchange.
 - (c) A company shall cease to be a qualifying company if at any time in the specified 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.
 - (d) Notwithstanding *paragraph (c)*, a company shall be deemed not to have ceased to be a qualifying company

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

solely by virtue of the application of that paragraph Pr.19 S.591 where—

- (i) it is shown that the winding up or dissolution is for bona fide commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of income tax, corporation tax or capital gains tax, and
- (ii) the company's net assets, if any, are distributed to its members within 3 years from the commencement of the dissolution or the winding up.

(8) (a) In this subsection, “qualifying trading operations”, in relation to a trade, means all the operations of the trade excluding those of dealing in shares, securities, land, currencies, futures or traded options.

(b) A trade shall be a qualifying trade for the purposes of *subsection (7)* if throughout the specified period the trade—

- (i) is conducted on a commercial basis and with a view to the realisation of profits, and
- (ii) consists wholly or mainly of qualifying trading operations,

and a trade which during the specified period consists partly of qualifying trading operations and partly of other trading operations shall be regarded for the purposes of this subsection as a trade which consists wholly or mainly of qualifying trading operations only if the total amount receivable in the specified period by the company carrying on the trade 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 specified period.

(9) A claim for relief under this section may be made after the making of a material disposal and the acquisition of eligible shares in a qualifying company if all the conditions for the relief are or will be satisfied, but the relief shall be withdrawn if, by reason of the subsequent happening of any event or failure of an event to happen which at the time the relief was claimed was expected to happen, the individual by whom the relief was claimed is not entitled to the relief so claimed.

(10) The withdrawal of relief under *subsection (9)* shall be made—

- (a) for the year of assessment in which the happening or failure to happen, as the case may be, of the event giving rise to the withdrawal of the relief occurred, and
- (b) in accordance with *subsection (11)*,

and both—

- (i) details of the happening or the failure to happen, as the case may be, of the event giving rise to the withdrawal of relief, and

(ii) the amount to be treated as a gain under *subsection (11)*,

shall be included in the return required to be made by the individual concerned under *section 951* for that year of assessment.

(11) (a) Notwithstanding any other provision of the Capital Gains Tax Acts, where relief is to be withdrawn under *subsection (9)* for any year of assessment, such amount (in this subsection referred to as “the relevant amount”) of the chargeable gain which accrued to the reinvestor on the disposal of the original holding as was treated under *subsection (2)* or *(4)* as not accruing at that time—

(i) reduced in accordance with *paragraph (b)*, and

(ii) increased in accordance with *paragraph (c)*,

shall be treated as a gain which accrued in that year of assessment.

(b) The amount by which the relevant amount is to be reduced under *paragraph (a)(i)* is an amount equal to the aggregate of—

(i) to the extent that such excess has not been deducted in years of assessment subsequent to the year of assessment in which the disposal of the original holding occurred, the excess of the amount of the losses which would have been deducted under *section 31* in the year of assessment in which the disposal of the original holding occurred, if relief under this section had not been claimed, over the amount of such losses which were so deducted in that year, and

(ii) any amount of chargeable gains in the year of assessment in which the disposal of the original holding occurred in respect of which the reinvestor would not by virtue of *section 601* have been charged to capital gains tax if relief under this section had not been claimed.

(c) The amount by which the relevant amount is to be increased under *paragraph (a)(ii)* is an amount determined by the formula—

$$G \times \frac{R}{100} \times M$$

where—

G is the relevant amount reduced in accordance with *paragraph (b)*,

R is the rate per cent specified in *section 1080(1)*, and

M is the number of months in the period beginning on the date on which capital gains tax for the year of assessment in which the disposal of the original holding occurred was due and payable and ending on the date on which capital gains tax for the year of assessment for which the withdrawal of relief is to be made is due and payable.

(12) A chargeable gain or the balance of a chargeable gain which under *subsection (2) or (4)*, as may be appropriate, is treated as accruing at a date later than the date of the disposal on which it accrued shall not be so treated for the purposes of *section 556*. Pr.19 S.591

(13) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of any assets some or part of which are shares or other securities to the acquisition or disposal of which a claim under this section relates and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

(14) This section shall not apply unless the acquisition of a qualifying investment was made for bona fide commercial reasons and not wholly or partly for the purposes of realising a gain from the disposal of the qualifying investment.

592.—(1) In this section—

“disposal” does not include a relevant disposal within the meaning of *section 648*;

“ordinary share capital” has the same meaning as in *section 2*;

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

“period of ownership”, in relation to an individual making a disposal of qualifying shares, means the individual’s period of continuous ownership of the shares in the same capacity ending on the date of such disposal and, for the purposes of this definition, where the shares were acquired by the individual on the death of that individual’s spouse so that the individual’s period of ownership would apart from this definition be treated as having commenced on the date of that death, the individual’s period of ownership shall be deemed to be extended to include the individual’s spouse’s period of ownership ending on that date;

“qualifying company” shall be construed in accordance with *subsection (2)*;

“qualifying shares”, in relation to a company, means ordinary shares of the company which are fully paid up and which carry no present or future preferential rights to dividends or to the company’s assets on its winding up and no present or future preferential right to be redeemed;

“qualifying trade” shall be construed in accordance with *subsection (4)*;

“qualifying trading operations”, in relation to a trade, means all the operations of the trade excluding those of dealing in shares, securities, land, currencies, futures or traded options;

“the specified period”, in relation to the disposal of qualifying shares, means the period of 3 years immediately preceding the date of the disposal of those shares;

“trade” includes a profession, and “qualifying trade” and “qualifying trading operations” shall be construed accordingly;

Reduced rate of capital gains tax on certain disposals of shares by individuals.

[FA94 s66(1) to (8); FA96 s63(1); FA97 s76, s146(1) and Sch9 PtI par 18(3)]

“unquoted company” means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market.

(2) For the purposes of this section, a company shall be a qualifying company in relation to the disposal of qualifying shares where—

(a) at the date of acquisition of those shares, it is an unquoted company which is resident in the State and not resident elsewhere and which has an issued share capital the market value of which is not more than £25,000,000, and

(b) throughout the specified period, it is a company which is resident in the State and not resident elsewhere and—

(i) which exists wholly or mainly for the purposes of the carrying on of one or more qualifying trades, or

(ii) the business of which consists—

(I) wholly or mainly of the holding of shares in one or more connected companies, or

(II) wholly or mainly of both the holding of such shares and the carrying on of one or more qualifying trades.

(3) (a) A company shall be regarded as having satisfied the condition referred to in *subsection (2)(b)(i)* only if throughout the specified period not less than 75 per cent of the market value of all the issued share capital of the company derives from the carrying on by the company of one or more qualifying trades.

(b) A company shall be regarded as having satisfied the condition referred to in *clause (I)* or *(II)*, as the case may be, of *subsection (2)(b)(ii)* only if throughout the specified period not less than 75 per cent of the market value of all the issued share capital of the company derives from the carrying on of one or more qualifying trades by the connected companies or, as the case may be, by the company and the connected companies.

(c) In a case where a connected company (in this paragraph referred to as “the first-mentioned company”) is a company whose business consists of the holding of shares in one or more companies, references in *paragraph (b)* to the connected companies shall be construed as including references to the companies which are connected with the first-mentioned company.

(4) For the purposes of this section, a trade shall be a qualifying trade if throughout the specified period it consists of qualifying trading operations and, where during that period a trade consists partly of qualifying trading operations and partly of other trading operations, the part of the trade which consists of other trading operations shall be treated as a separate trade.

(5) For the purposes of this section, where a company (in this subsection referred to as “the first-mentioned company”) holds shares in another company, that other company shall be regarded as connected with the first-mentioned company if—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) at the date of the acquisition of those shares by the first-mentioned company it was an unquoted company, Pr.19 S.592

(b) it is resident in the State and not resident elsewhere, and

(c) not less than 20 per cent of the total voting rights in the company are exercisable by the first-mentioned company.

(6) As respects chargeable gains accruing to an individual on the disposal of qualifying shares in a qualifying company in a case where the individual's period of ownership of those shares is not less than 3 years, *section 28(3)* shall apply as if the reference in that section to 40 per cent were a reference to 26 per cent.

(7) (a) In this subsection and in *subsection (8)*, "original shares" and "new holding" have the same meanings respectively as in *section 584*.

(b) If the time when an individual acquires qualifying shares would be determined under *section 584, 585, 586 or 587*, it shall be determined in the same way for the purposes of this section where the following conditions are satisfied—

(i) both the original shares and the new holding constitute qualifying shares, and

(ii) the individual is not treated under *section 584(4)* as giving or becoming liable to give any consideration, other than the original shares, for the acquisition of the new holding.

(8) (a) In a case where *subsection (7)(b)* applies and the new holding is held for a period of not less than 3 years, *subsection (2)* shall apply as if—

(i) in *paragraph (a)* of that subsection "at the date of acquisition of the original shares" were substituted for "at the date of acquisition of those shares",

(ii) where the company in which the new holding subsists is not the company in which the original shares subsisted, in *paragraph (a)* of that subsection "the company in which the original shares subsisted is" were substituted for "it is", and

(iii) in *paragraph (b)* of that subsection "the company in which the new holding subsists is" were substituted for "it is".

(b) In a case where *subsection (7)(b)* applies and the new holding is held for a period of less than 3 years, *subsection (2)* shall apply—

(i) as if in *paragraph (a)* of that subsection "at the date of acquisition of the original shares" were substituted for "at the date of acquisition of those shares", and

(ii) where the company in which the new holding subsists is not the company in which the original shares subsisted as if—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.592

- (I) in *paragraph (a)* of that subsection “the company in which the original shares subsisted is” were substituted for “it is”,
- (II) in *paragraph (b)* of that subsection “throughout that part of the specified period commencing on the date of the acquisition of the new holding, the company in which the new holding subsists is” were substituted for “throughout the specified period, it is”, and
- (III) the conditions referred to in *paragraph (b)* of that subsection applied also to the company in which the original shares subsisted but only in relation to the part of the specified period which does not include the part of that period mentioned in *clause (II)*.

CHAPTER 5

Life assurance and deferred annuities

Life assurance and deferred annuities.
[CGTA75 s20]

593.—(1) This section shall apply for the purposes of the Capital Gains Tax Acts as respects any policy of assurance or contract for a deferred annuity on the life of any person.

(2) No chargeable gain shall accrue on the disposal of or of an interest in the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money's worth.

(3) Subject to *subsection (2)*, the occasion of the payment of the sum or sums assured by a policy of assurance or of the first instalment of a deferred annuity, and the occasion of the surrender of a policy of assurance or of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to the first and further instalments of the annuity.

(4) In *subsection (3)*, the reference to payment of the sum assured shall include a reference to the transfer of investments or other assets to the owner of the policy in accordance with the policy.

Foreign life assurance and deferred annuities: taxation and returns.

[CGTA75 s20A;
FA93 s24; FA95
s68; FA97 s74(1)]

594.—(1) (a) (i) For the purposes of this section, a policy of assurance or contract for a deferred annuity on the life of any person, being a policy issued or a contract made before the 20th day of May, 1993, shall be treated as a policy issued or contract made, as the case may be, after that date if there is a variation of the policy or contract on or after that date which directly or indirectly increases the benefits secured by, or extends the term of, the policy or contract, as the case may be.

(ii) For the purposes of *subparagraph (i)*, where a policy of assurance issued or a contract made

before the 20th day of May, 1993, provides an option to have another policy or contract substituted for it or to have any of its terms changed, any change in the terms of the policy or contract made in pursuance of the option shall be deemed to be a variation of the policy or contract, as the case may be. Pr.19 S.594

(b) Subject to *subsection (2)*, this section shall be construed together with *subsections (3) and (4)* of *section 593* as if *subsection (3)* of that section were not subject to *subsection (2)* of that section.

(c) (i) In this paragraph and in *subsection (3)*—

“assurance company” has the same meaning as in *section 3* of the *Insurance Act, 1936*;

“excluded policy” means a policy of assurance or contract for a deferred annuity on the life of any person where the policy is issued to or the contract is made with, as the case may be, a person who did not continuously reside outside the State throughout the period of 6 months commencing on the date of issue or the date of contract, as the case may be;

“life assurance fund” has the same meaning as in the *Insurance Acts 1909 to 1969*;

“relevant company” means a company which is—

(I) resident in the State, or

(II) chargeable under *Case III* of *Schedule D* by virtue of *section 726* in respect of its income from the investment of its life assurance fund.

(ii) *Subsection (2)* shall apply to any policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, on or after the 20th day of May, 1993—

(I) otherwise than by an assurance company which is a relevant company, or

(II) being a policy or contract which is an excluded policy issued or made, as the case may be, by a relevant company to which *section 710(2)* applies.

(2) (a) In this subsection, “relevant gain” means a chargeable gain arising on a disposal of or of an interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies, including a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for a consideration in money or money’s worth.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.594

- (b) *Section 593(2)* shall not apply in respect of any disposal of or of any interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies.
- (c) A relevant gain shall be computed as if *section 556* had not been enacted.
- (d) Notwithstanding *section 31*, the total amount of chargeable gains accruing to a person chargeable in a year of assessment after deducting any allowable losses shall not be less than the total amount of any relevant gains accruing to the person in that year, and accordingly any deduction for allowable losses made in computing the total amount of chargeable gains so accruing shall not exceed the total amount of chargeable gains so accruing which are not relevant gains.
- (e) Notwithstanding *section 601* or *1028(4)*, an individual shall be charged to capital gains tax on the amount of any relevant gains accruing to the individual.

(3) As respects a policy of assurance or a contract for a deferred annuity to which *subsection (2)* applies, *section 895* shall apply with any necessary modifications—

- (a) (i) to a relevant company, and
 - (ii) to every person carrying on in the State a trade or business in the ordinary course of the operations of which such person acts as an intermediary in or in connection with the issue of such a policy, or the making of such a contract,

in the same manner as it applies to every intermediary within the meaning of that section, and

- (b) to a person resident or ordinarily resident in the State who is entitled to any amount payable under such a policy or contract, being an amount payable otherwise than in the event of the death of a person specified in the terms of the policy or the contract, as the case may be, in the same manner as it applies to a person resident in the State opening an account, in which a deposit which such person beneficially owns is held, at a location outside the State,

as if references in that section to—

- (i) a deposit were references to any payment made by a person resident or ordinarily resident in the State in respect of such a policy or contract,
- (ii) a foreign account were references to such a policy or contract,
- (iii) the opening of a foreign account were references to the issue of such a policy or the making of such a contract, and
- (iv) a relevant person were references to a person who in the normal course of such person's trade or business would issue such a policy or make such a contract.

(4) (a) In this subsection, “reinsurance contract” means any contract or other agreement for reinsurance or reinsurance in respect of—

- (i) any policy of assurance on the life of any person, or
- (ii) any class of such policies.

(b) Where apart from this paragraph a reinsurance contract would not be a policy of assurance on the life of any person for the purposes of the Capital Gains Tax Acts, it shall be deemed to be such a policy for those purposes.

(c) *Subsections (2) and (3)* shall not apply to, and shall be deemed never to have applied to, reinsurance contracts; but, where apart from this paragraph a reinsurance contract would not be a relevant policy within the meaning of *section 595* for the purposes of that section, it shall be deemed not to be such a policy for those purposes.

(d) (i) Subject to *paragraph (e)*, where *subsection (2)* would (apart from *paragraph (c)*) apply to a reinsurance contract in respect of any policy of assurance on the life of any person, being a policy issued on or after the 1st day of January, 1995, *section 593(2)* shall not apply in respect of any disposal or deemed disposal on or after the 1st day of January, 1995, of, or of any interest in, rights of the insured company under the reinsurance contract to the extent that—

- (I) those rights refer to that policy, and
- (II) the insured company could receive, otherwise than on the death, disablement or disease of any person or one of a class of persons to whom that policy refers, payment on a disposal of those rights the aggregate amount of which would exceed the aggregate amount of payment made by it in respect of those rights.

(ii) *Subparagraph (i)* shall apply as if—

- (I) as respects any reinsurance contract made before the 20th day of May, 1993, that contract were made on that day, and
- (II) as respects any reinsurance contract made or modified on or after the 1st day of January, 1995, there were deleted from *subparagraph (i)* “being a policy issued on or after the 1st day of January, 1995.”.

(iii) *Subparagraphs (i) and (ii) of subsection (1)(a)* shall apply for the purposes of this paragraph as if for “the 20th day of May, 1993” there were substituted “the 1st day of January, 1995”.

(e) *Paragraph (d)* shall not apply to any disposal of or of any interest in rights under a reinsurance contract, being a disposal resulting directly from the death, disablement or disease of a person or one of a class of persons to whom the reinsurance contract refers; but in computing any gain or loss in respect of a disposal or deemed disposal of or

of any interest in rights of the insured company under a reinsurance contract—

- (i) there shall be excluded from the sums allowable under *section 552* so much of any payment made by the insured company under the reinsurance contract as is paid in respect of an entitlement to a payment on the death, disablement or disease of a person, or one of a class of persons, and
- (ii) there shall be added to the consideration taken into account under *Chapter 2* of this Part the market value of an entitlement for any period, commencing on or after the most recent acquisition or deemed acquisition by the insured company of those rights, to a payment on the death, disablement or disease of a person, or one of a class of persons, to the extent that the insured company held the entitlement for that period in place of any return which would otherwise have accrued under the reinsurance contract and increased that consideration.

Life assurance policy or deferred annuity contract entered into or acquired by company.

[CGTA75 s20B;
FA94 s58]

595.—(1) (a) In this section—

“relevant disposal” means a disposal of or an interest in the rights under any relevant policy, other than—

- (i) a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for a consideration in money or money’s worth, or
- (ii) a disposal resulting directly from the death, disablement or disease of a person, or one of a class of persons, specified in the terms of the policy;

“relevant gain” means a chargeable gain arising on a relevant disposal;

“relevant policy” means a policy of life assurance or a contract for a deferred annuity on the life of any person, entered into or acquired by a company on or after the 11th day of April, 1994, which is not a policy to which *section 594(2)* applies.

- (b) (i) For the purposes of this section, a policy of assurance or a contract for a deferred annuity on the life of any person, entered into by a company before the 11th day of April, 1994, shall be treated as a policy or contract, as the case may be, entered into on or after that date if there is a variation of the policy or contract on or after that date which directly or indirectly increases the benefits secured by, or extends the term of, the policy or contract, as the case may be.

(ii) For the purposes of *subparagraph (i)*, where a policy or contract entered into by a company before the 11th day of April, 1994, provides an option to have another policy or contract substituted for it or to have any of its terms changed, any change in the terms of the policy or contract which is made in pursuance of the option shall be deemed to be a variation of the policy or contract, as the case may be.

Pr.19 S.595

(c) Subject to *subsection (2)*, this section shall be construed together with *subsections (3) and (4)* of *section 593*, as if *subsection (3)* of that section were not subject to *subsection (2)* of that section.

(2) *Section 593(2)* shall not apply in respect of any relevant disposal.

(3) (a) For the purposes of the Corporation Tax Acts—

(i) any relevant gain arising to a company shall be treated as if it were the net amount of a gain from the gross amount of which corporation tax has been deducted at the standard rate (within the meaning of *section 3*) of income tax,

(ii) the amount to be taken into account in respect of the relevant gain in computing in accordance with *section 78* the company's chargeable gains, for the accounting period in which the relevant gain arises, shall be that gross amount, and

(iii) the corporation tax treated as deducted from that gross amount shall—

(I) be set off against the corporation tax assessable on the company for that accounting period, or

(II) in so far as it cannot be set off in accordance with *clause (I)*, be repaid to the company.

(b) *Paragraph (a)* shall be disregarded for the purposes of *section 546(2)*.

(c) This subsection shall be construed together with the Corporation Tax Acts.

(4) For the purposes of this section, a contract, being a policy of life assurance or a contract for a deferred annuity on the life of any person, shall be treated as having been entered into by a company before the 11th day of April, 1994, if—

(a) (i) a document referable to the contract was served on the company in pursuance of *section 52* of the Insurance Act, 1989, before the 11th day of April, 1994, and

(ii) the company entered into the contract on or before the 22nd day of April, 1994,

or

(b) (i) the contract was entered into before the 30th day of June, 1994, by the company,

(ii) before the 11th day of April, 1994—

(I) there was in existence a binding agreement in writing under which the company was obliged to acquire land, and

(II) preliminary commitments or agreements had been entered into by the company—

(A) to obtain a loan, which was to be secured on the land, to defray money applied in acquiring the land, and

(B) to enter into the contract primarily for the purpose of repaying the loan,

and

(iii) the agreement under which the loan was advanced obliges the company to apply any payment made to it under the contract to the repayment of the loan before any other application by it of such payment.

CHAPTER 6

Transfer of business assets

Appropriations to and from stock in trade.

[CGTA75 s51(1) and Sch1 par15; FA90 s86]

596.—(1) Where an asset acquired by a person otherwise than as trading stock of a trade carried on by the person is appropriated by that person for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if that person had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to that person, that person shall be treated for the purposes of the Capital Gains Tax Acts as having by such appropriation disposed of the asset by selling it for its then market value.

(2) Where at any time an asset forming part of the trading stock of a person's trade is appropriated by the person for any other purpose or is retained by the person on that person ceasing to carry on the trade, that person shall be treated for the purposes of the Capital Gains Tax Acts as having acquired the asset at that time for a consideration equal to the amount brought into the accounts of the trade in respect of the asset for the purposes of income tax on the appropriation or on that person ceasing to carry on the trade, as the case may be.

(3) *Subsection (1)* shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if the person is chargeable to income tax in respect of the profits of the trade under Case I of Schedule D, and instead elects that the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for the purposes of income tax, be treated as reduced by the amount of the chargeable gain or increased by the amount of the allowable loss referred to in that subsection and, where that subsection does not apply by reason of such an election, the profits of the trade shall be computed accordingly; but—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) if a person making an election under this subsection is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others, and
- (b) an election under this subsection shall not be made in any case where the application of *subsection (1)* would give rise to an allowable loss.

597.—(1) In this section, “farming”, “trade”, “profession”, “office” and “employment” have the same meanings respectively as in the Income Tax Acts, but not so as to apply the provisions of those Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued or as set up and commenced, and “a trade of dealing in or developing land” shall include a business of dealing in or developing land regarded as a trade under those Acts.

Pr.19 S.596
Replacement of
business and other
assets.

[CGTA75 s28;
CGT(A)A78 s9]

(2) This section shall apply with the necessary modifications in relation to—

- (a) the discharge of the functions of a public authority,
- (b) the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits,
- (c) a profession, office or employment,
- (d) such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed,
- (e) the activities of a body of persons, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within *subsection (3)(b)* only if they are both occupied and used by the body and in the case of other specified assets only if they are used by the body,
- (f) such of the activities of a body of persons established for the sole purpose of promoting athletic or amateur games or sports as are directed to that purpose, and

(g) farming,

as it applies in relation to a trade.

(3) The following shall be assets for the purpose of this section—

- (a) plant or machinery;
- (b) except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.597

- (i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade,
- (ii) any land occupied (as well as used) only for the purposes of the trade, provided that where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, the trade shall be treated for the purposes of this subsection as if it were not a trade of dealing in or developing land;

(c) goodwill.

(4) (a) Where—

- (i) the consideration which a person carrying on a trade obtains for the disposal of, or of that person's interest in, assets (in this section referred to as "the old assets") used only for the purposes of the trade throughout the period of ownership is applied by that person in acquiring other assets, or an interest in other assets (in this section referred to as "the new assets"),
- (ii) the new assets on their acquisition are taken into use and used only for the purposes of the trade, and
- (iii) the old assets and the new assets are assets of a kind specified in *subsection (3)*,

then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the old assets did not accrue until that person ceases to use the new assets for the purposes of the trade.

(b) Where the consideration for the disposal of the new assets is applied in acquiring other new assets which on the acquisition are taken into use and used only for the purposes of the trade and are assets specified in *subsection (3)*, then, the person carrying on the trade shall be treated as if the chargeable gain accruing on the disposal of the old assets did not accrue until that person ceases to use the other new assets for the purposes of the trade and any further new assets which are acquired in a similar manner, taken into use, and used only, for the purposes of the trade and are assets specified in *subsection (3)*.

(5) *Subsection (4)* shall not apply if part only of the amount or value of the consideration for the disposal of or of the interest in the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of or of the interest in the old assets is so applied, then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal of the old assets were reduced to the amount of consideration not applied in the acquisition of the new assets (and if not all chargeable gain with a proportionate reduction in the amount of the chargeable gain)

and the balance of the gain (or chargeable gain) shall be treated as if it did not accrue until that person ceases to use the new assets for the purposes of the trade. Pr.19 S.597

(6) A chargeable gain or the balance of a chargeable gain which under *subsection (4) or (5)*, as may be appropriate, is treated as accruing on a date later than the date of the disposal on which it accrued shall not be so treated for the purposes of *section 556*.

(7) This section shall apply only if the acquisition of or of the interest in the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of or of the interest in the old assets, or at such earlier or later time as the Revenue Commissioners may by notice in writing allow; but, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets are, or the interest in the new assets is, acquired in pursuance of the contract, and when that fact is ascertained all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in the Capital Gains Tax Acts on the time within which assessments may be made.

(8) This section shall not apply unless the acquisition of or of the interest in the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of or of the interest in the new assets.

(9) Where over the period of ownership or any substantial part of the period of ownership part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, together with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of or of an interest in the building or structure and other land.

(10) Where the old assets were not used for the purposes of the trade throughout the period of ownership, this section shall apply as if a part of the asset representing its use for the purposes of the trade, having regard to the time and extent to which it was and was not used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of or of the interest in the asset.

(11) (a) This section shall apply in relation to a person who carries on 2 or more trades which are in different localities, but which are concerned wholly or mainly with goods or services of the same kind, as if, in relation to the assets used for the purposes of the trades, the trades were the same trade.

(b) This section shall apply in relation to a person who ceases to carry on a trade or trades (in this paragraph referred to as “the old trade or trades”) which the person has carried on for a period of 10 years or more and commences to carry on another trade or trades (in this paragraph referred to as “the new trade or trades”) within a period of 2 years from the date on which the person ceased to carry on the old trade or trades as if, in relation

Pt.19 S.597

to the old assets used for the purposes of one of the old trades and the new assets used for the purposes of the new trade, the 2 trades were the same trade.

(12) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under *subsection (4) or (5)* applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

Disposals of business or farm on "retirement".

[CGTA75 s26(1) to (6); FA90 s84(c)(iii); FA91 s42(b); FA95 s71(1); FA96 s60(1)]

598.—(1) (a) In this section and in *section 599*—

"chargeable business asset" means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by—

- (i) the individual,
- (ii) the individual's family company, or
- (iii) a company which is a member of a trading group of which the holding company is the individual's family company,

other than an asset on the disposal of which no gain accruing would be a chargeable gain;

"family company", in relation to an individual, means, subject to *paragraph (b)*, a company the voting rights in which are—

- (i) as to not less than 25 per cent, exercised by the individual, or
- (ii) as to not less than 75 per cent, exercisable by the individual or a member of his or her family and, as to not less than 10 per cent, exercisable by the individual himself or herself;

"family", in relation to an individual, means the husband or wife of the individual, and a relative of the individual or of the individual's husband or wife, and "relative" means brother, sister, ancestor or lineal descendant;

"full-time working director" means a director required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent subsidiaries;

"qualifying assets", in relation to a disposal, includes—

(i) the chargeable business assets of the individual Pr.19 S.598 which apart from tangible movable property he or she has owned for a period of not less than 10 years ending with the disposal, and

(ii) the shares or securities which the individual has owned for a period of not less than 10 years ending with the disposal, being shares or securities of a company which has been a trading or a farming company and the individual's family company or a member of a trading group of which the holding company is that individual's family company during a period of not less than 10 years ending with the disposal and of which he or she has been a working director for a period of not less than 10 years during which period he or she has been a full-time working director of that company for a period of not less than 5 years;

“trade”, “farming”, “profession”, “office” and “employment” have the same meanings respectively as in the Income Tax Acts;

“trading company” means a company whose business consists wholly or mainly of the carrying on of one or more trades or professions;

“trading group” means a group of companies consisting of the holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions;

“75 per cent subsidiary” has the meaning assigned to it by *section 9*.

(b) For the purposes of the definition of “family company”, where a company which is a holding company would not but for this paragraph be an individual's family company, but would be such a company if the individual had not at any time on or after the 6th day of April, 1987, and before the 6th day of April, 1990, disposed of shares in the company to a child (within the meaning of *section 599*) of the individual, the company shall be deemed to be the individual's family company.

(c) In this section, references to the disposal of the whole or part of an individual's qualifying assets include references to the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the individual exercising that office or employment.

(d) For the purposes of the definition of “qualifying assets”, there shall be taken into account—

(i) the period of ownership of a spouse of the individual as if it were a period of ownership of the individual,

- (ii) where the chargeable business assets are new assets within the meaning of *section 597*, the period of ownership of the old assets as if it were a period of ownership of the new assets,
 - (iii) where the qualifying assets are shares or securities in a family company to which *section 600* applies, the period immediately before the transfer to the company of chargeable business assets during which those assets were owned by the individual as if it were a period of ownership of the individual of the qualifying assets or a period throughout which he or she was a full-time working director, as may be appropriate, and
 - (iv) a period immediately before the death of the spouse of the individual throughout which the deceased was a full-time working director as if it were a period throughout which the individual was a full-time working director.
- (2) (a) Subject to this section, where an individual who has attained the age of 55 years disposes of the whole or part of his or her qualifying assets, then—
- (i) if the amount or value of the consideration for the disposal does not exceed £250,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;
 - (ii) if the amount or value of the consideration for the disposal exceeds £250,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and £250,000.
- (b) For the purposes of *paragraph (a)*, the amount of capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.
- (3) For the purposes of *subsection (2)*, the consideration on the disposal of qualifying assets by the individual shall be aggregated, and nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets.
- (4) Where a disposal of qualifying assets includes a disposal of shares or securities of the individual's family company, the amount of the consideration to be taken into account for the purposes of *subsection (2)* in respect of those shares or securities shall be the proportion of the consideration for those shares or securities which is equal to—
- (a) in a case where the individual's family company is not a holding company, the proportion which the part of the value of the company's chargeable assets at the time of the disposal which is attributable to the value of the company's chargeable business assets bears to the whole of that value, and

- (b) in a case where the individual's family company is a holding company, the proportion which the part of the value of the chargeable assets of the trading group (excluding shares or securities of one member of the group held by another member of the group) at the time of the disposal which is attributable to the value of the chargeable business assets of the trading group bears to the whole of that value;

Pr.19 S.598

but nothing in this section shall affect liability on any gains calculated by reference to the balance of the consideration for the disposal of those shares or securities.

(5) For the purposes of *subsection (4)*, every asset shall be a chargeable asset except one on the disposal of which by the company or a member of the trading group, as the case may be, at the time of the disposal of the shares or securities, no gain accruing to the company or member of the trading group, as the case may be, would be a chargeable gain.

- (6) (a) The total of the amounts of relief given under this section for any year of assessment and all years of assessment before such year shall not exceed such amount as would reduce the total amount of capital gains tax chargeable for all those years of assessment below the amount which would be chargeable if the disposals of qualifying assets had all been made in the year of assessment.

(b) Where at any time the relief given under this section exceeds the amount of relief which would be given if the disposals of qualifying assets for the year of assessment and all years of assessment before such year had been made in the year of assessment, any necessary adjustment may be made by means of assessment or additional assessment and such assessment may be made at any time not more than 10 years after the end of the year of assessment in which the last of such disposals is made.

(c) For the purposes of this subsection, a disposal of qualifying assets other than a disposal of the whole of such assets, by a husband to a wife or by a wife to a husband shall, notwithstanding *section 1028(5)*, be taken into account at the market value of the assets.

(7) *Subsection (2)* shall apply where under *section 583* an individual is treated as disposing of interests in shares or securities of his or her family company in consideration of a capital distribution from the company (not being a distribution consisting of chargeable business assets) in the course of dissolving or winding up the company as it applies where he or she disposes of shares or securities of the company.

- 599.—(1) (a) In this section, “child”, in relation to a disposal, includes a nephew or a niece who has worked substantially on a full-time basis for the period of 5 years ending with the disposal in carrying on, or assisting in the carrying on of, the trade, business or profession concerned or the work of, or connected with, the office or employment concerned.

Disposals within family of business or farm.

[CGTA75 s27; CGT(A)A78 s8; FA90 s85; FA95 s72; FA96 s132(2) and Sch5 Pt II]

(b) Subject to this section, where an individual who has attained the age of 55 years disposes of the whole

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.599

or part of his or her qualifying assets to his or her child, relief shall be given in respect of the capital gains tax chargeable on any gain accruing on the disposal.

(c) For the purposes of *paragraph (b)*, the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(2) Nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets by an individual who makes a disposal within *subsection (1)*.

(3) *Section 598(4)* shall apply to a disposal within *subsection (1)* as it applies to a disposal within *section 598(2)*.

(4) (a) Where assets comprised in a disposal to a child in respect of which relief has been granted under this section are, within 6 years of the disposal by the individual concerned, disposed of by the child, the capital gains tax which if *subsection (1)* had not applied would have been charged on the individual on his or her disposal of those assets to the child shall be assessed and charged on the child, in addition to any capital gains tax chargeable in respect of the gain accruing to the child on the child's disposal of those assets.

(b) An assessment to give effect to this subsection shall not be out of time if made within 10 years after the end of the year of assessment in which the assets are disposed of by the child.

(5) The consideration on a disposal within *subsection (1)* shall not be taken into account for the purposes of aggregation under *section 598(3)*.

Transfer of business to company.

600.—(1) In this section—

[CGTA75 s51(1) and Sch2 par6; FA92 s61]

“net chargeable gains” means chargeable gains less allowable losses; references to the business, in relation to shares or consideration received in exchange for the business, include references to assets of the business referred to in *subsection (2)*.

(2) This section shall apply for the purposes of the Capital Gains Tax Acts where a person who is not a company transfers to a company a business as a going concern, together with the whole of the assets of the business or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares (in this section referred to as “the new assets”) issued by the company to the person transferring the business.

(3) The amount determined under *subsection (5)* shall be deducted from the aggregate (in this section referred to as “the gain on the old assets”) of the net chargeable gains.

(4) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—

(a) the amount determined under *subsection (5)* shall be apportioned between the new assets as a whole, and

- (b) the sums allowable as a deduction under *section 552(1)(a)* Pr.19 S.600 shall be reduced by the amount apportioned to the new asset under *paragraph (a)*,

and, if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under *paragraph (a)* shall be in accordance with their market values at the time they were acquired by the transferor.

- (5) (a) In this subsection, “the cost of the new assets” means any sums which would be allowable as a deduction under *section 552(1)(a)* if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

- (b) The amount referred to in *subsections (3) and (4)(a)* shall be such portion of the gain on the old assets as bears the same proportion to the total of such gains as the cost of the new assets bears to the value of the whole of the consideration received by the transferor in exchange for the business.

(6) This section shall not apply to the transfer by a person of a business to a company wholly or partly in exchange for shares issued by the company, unless it is shown that the transfer is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

CHAPTER 7

Other reliefs and exemptions

601.—(1) An individual shall not be chargeable to capital gains tax for a year of assessment if the amount on which he or she is chargeable to capital gains tax under *section 31* for that year does not exceed £1,000.

Annual exempt amount.
[CGTA75 s16;
CGT(A)A78 s16,
s17, Sch1 par8 and
Sch2; FA92 s59]

(2) Where the amount on which an individual is chargeable to capital gains tax under *section 31* for a year of assessment exceeds £1,000, only the excess of that amount over £1,000 shall be charged to capital gains tax for that year.

(3) Where, on the assumption that *subsection (2)* did not apply, an individual would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, the relief to be given under that subsection in respect of the first £1,000 of chargeable gains shall be given—

- (a) if the individual would be so chargeable at 2 different rates, in respect of the chargeable gains which would be so chargeable at the higher of those rates and, in so far as relief cannot be so given, in respect of the chargeable gains which would be so chargeable at the lower of those rates, and
- (b) if the individual would be so chargeable at 3 or more rates, in respect of the chargeable gains which would be so chargeable at the highest of those rates and, in so far as relief cannot be so given, in respect of the chargeable gains which would be so chargeable at the next highest of those rates, and so on.

Pt.19 S.601

(4) In the case of an individual who dies in the year of assessment, this section shall apply with the substitution for the reference to the individual of a reference to his or her personal representatives, and the amount of chargeable gains shall be that on which the personal representatives are chargeable in respect of gains accruing before death.

(5) Relief shall not be given under this section where relief is allowed under *section 598* or *599*.

Chattel exemption.
[CGTA75 s17]

602.—(1) In this section, tangible movable property shall not include a wasting asset within the meaning of *section 560*.

(2) Subject to this section, a gain accruing on a disposal by an individual of an asset which is tangible movable property shall not be a chargeable gain if the amount or value of the consideration for the disposal does not exceed £2,000.

(3) (a) The amount of capital gains tax chargeable in respect of a gain accruing on a disposal within *subsection (2)* for a consideration the amount or value of which exceeds £2,000 shall not exceed 50 per cent of the difference between the amount of that consideration and £2,000.

(b) For the purposes of this subsection, the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(4) *Subsections (2)* and *(3)* shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under the Capital Gains Tax Acts the amount of a loss accruing on the disposal by an individual of tangible movable property the consideration for the disposal shall, if less than £2,000, be deemed to be £2,000 and the losses which are allowable losses shall be restricted accordingly.

(5) Where 2 or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person—

(a) to the same person, or

(b) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the 2 or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in tax and in allowable losses under *subsections (3)* and *(4)*, and this subsection shall also apply where the assets or some of the assets are disposed of on different occasions, and one of those occasions falls after the 28th day of February, 1974, but before the 6th day of April, 1974, but not so as to make any gain accruing on a disposal before the 6th day of April, 1974, a chargeable gain.

(6) Where the disposal is of a right or interest in or over tangible movable property, then—

(a) in the first instance, *subsections (2)* to *(4)* shall be applied in relation to the asset as a whole, taking the consideration as including, in addition to the consideration for

the disposal (in this subsection referred to as “the actual consideration”), the market value of what remains undisposed of, Pr.19 S.602

(b) if the sum of the actual consideration and that market value exceeds £2,000, the limitation on the amount of tax in *subsection (3)* shall be to 50 per cent of the difference between that sum and £2,000 multiplied by the fraction equal to the actual consideration divided by that sum, and

(c) if that sum is less than £2,000, any loss shall be restricted under *subsection (4)* by deeming the consideration to be the actual consideration plus that fraction of the difference between that sum and £2,000.

(7) This section shall not apply—

(a) in relation to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market, or

(b) in relation to a disposal of currency of any description.

603.—(1) Subject to this section, no chargeable gain shall accrue on the disposal of or of an interest in an asset which is tangible movable property and a wasting asset. Wasting chattels. [CGTA75 s18]

(2) *Subsection (1)* shall not apply to a disposal of or of an interest in an asset where—

(a) from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade or profession and that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under *paragraph (a) or (b) of section 552(1)*, or

(b) the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.

(3) In the case of the disposal of or of an interest in an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for part of that period, or which has otherwise qualified in part only for capital allowances—

(a) the consideration for the disposal and any expenditure attributable to the asset or interest under *paragraph (a) or (b) of section 552(1)* shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,

(b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and

Pt.19 S.603

(c) *subsection (1)* shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade or profession, or to the expenditure qualifying for capital allowances.

(4) *Subsection (1)* shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.

Disposals of principal private residence.

[CGTA75 s25; FA79 s35; FA80 s61(c); FA84 s67; FA97 s146(1) and Sch9 PtI par9(2)]

604.—(1) In this section, “the period of ownership”—

(a) where the individual has had different interests at different times, shall be taken to begin from the first acquisition taken into account in determining the expenditure which under the Capital Gains Tax Acts is allowable as a deduction in computing the amount of the gain to which this section applies, and

(b) for the purposes of *subsections (3) to (5)*, shall not include any period before the 6th day of April, 1974.

(2) This section shall apply to a gain accruing to an individual on the disposal of or of an interest in—

(a) a dwelling house or part of a dwelling house which is or has been occupied by the individual as his or her only or main residence, or

(b) land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the site of the dwelling house) not exceeding one acre;

but, where part of the land occupied with a residence is and part is not within this subsection, then, that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(3) The gain shall not be a chargeable gain if the dwelling house or the part of a dwelling house has been occupied by the individual as his or her only or main residence throughout the period of ownership or throughout the period of ownership except for all or any part of the last 12 months of that period.

(4) Where *subsection (3)* does not apply, such portion of the gain shall not be a chargeable gain as represents the same proportion of the gain as the length of the part or parts of the period of ownership during which the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence, but inclusive of the last 12 months of the period of ownership in any event, bears to the length of the period of ownership.

(5) (a) In this subsection, “period of absence” means a period during which the dwelling house or part of a dwelling house was not the individual’s only or main residence and throughout which he or she had no residence or main residence eligible for relief under this section.

(b) For the purposes of *subsections (3) and (4)*—

(i) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the State, and

Pr.19 S.604

(ii) in addition, any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling house or the part of a dwelling house in consequence of the situation of the individual's place of work or in consequence of any condition imposed by the individual's employer requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of the employee's duties,

shall be treated as if in that period of absence the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence if both before and after the period the dwelling house (or the part in question) was occupied by the individual as his or her only or main residence.

(6) Where the gain accrues from the disposal of a dwelling house or part of a dwelling house part of which is used exclusively for the purposes of a trade, business or profession, the gain shall be apportioned and *subsections (2) to (5)* shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

(7) Where at any time in the period of ownership there is a change in the dwelling house or the part of it which is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling house for the purpose of a trade, business or profession or for any other purpose, the relief given by this section may be adjusted in such manner as the inspector and the individual may agree, or as the Appeal Commissioners may on an appeal consider to be just and reasonable.

(8) For the purposes of this section, an individual shall not be treated as having more than one main residence at any one time and in so far as it is necessary to determine which of 2 or more residences is an individual's main residence for any period—

(a) that question may be determined by agreement between the inspector and the individual on the latter giving notice in writing to the inspector by the end of the year 1975-76 or within 2 years from the beginning of that period if that is later, and

(b) failing such agreement, the question shall be determined by the inspector, whose determination may be as respects either the whole or specified parts of the period of ownership in question,

and notice of any determination by the inspector under *paragraph (b)* shall be given to the individual who may appeal to the Appeal Commissioners against that determination within 21 days of service of the notice.

(9) In the case of a man and his wife living with him—

- (a) there may be for the purposes of this section only one residence or main residence for both so long as they are living together and, where a notice under *subsection (8)(a)* affects both the husband and his wife, it must be made by both,
- (b) if the one disposes of, or of his or her interest in, the dwelling house or part of a dwelling house which is their only or main residence to the other, or if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the disposal or from whom it passes on death,
- (c) if *paragraph (b)* applies but the dwelling house or part of a dwelling house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was the only or main residence of the one as if it was also the only or main residence of the other, and
- (d) any notice under *subsection (8)(b)* which affects a residence owned by the husband and a residence owned by the wife shall be given to each and either may appeal under that subsection.

(10) This section shall also apply in relation to a gain accruing to a trustee on a disposal of settled property, being an asset within *subsection (2)*, where during the period of ownership of the trustee the dwelling house or the part of a dwelling house mentioned in that subsection has been the only or main residence of an individual entitled to occupy it under the terms of the settlement, and in this section as so applied—

- (a) references to the individual shall be taken as references to the trustee except in relation to the occupation of the dwelling house or the part of a dwelling house, and
 - (b) the notice which may be given to the inspector under *subsection (8)(a)* shall be a joint notice by the trustee and the person entitled to occupy the dwelling house or the part of a dwelling house.
- (11) (a) In this subsection, “dependent relative”, in relation to an individual, means a relative of the individual, or of the wife or husband of the individual, who is incapacitated by old age or infirmity from maintaining himself or herself, or the widowed father or widowed mother (whether or not he or she is so incapacitated) of the individual or of the wife or husband of the individual.
- (b) Where as respects a gain accruing to an individual on the disposal of, or of an interest in, a dwelling house or part of a dwelling house which is, or has at any time in his or her period of ownership been, the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration, the individual so claims, such relief shall be given in respect of it and of its garden or grounds as would be given under this section if the dwelling house (or part of the dwelling house) had been the individual's only or main residence in the period of residence by the dependent relative, and shall be so

given in addition to any relief available under this section Pr.19 S.604
apart from this subsection; but no more than one dwelling
house (or part of a dwelling house) may qualify for relief
as being the residence of a dependent relative of the
claimant at any one time.

(12) (a) In this subsection—

“base date”, in relation to an asset disposed of by an individual, means the date of acquisition by the individual of the asset or, if the asset was held by the individual on the 6th day of April, 1974, that date;

“base value”, in relation to an asset disposed of by an individual, means the amount or value of the consideration, in money or money’s worth, given by the individual or on his or her behalf wholly and exclusively for the acquisition of the asset exclusive of the incidental costs to the individual of the acquisition or, if the asset was held by the individual on the 6th day of April, 1974, the market value of the asset on that date;

“current use value” and “development land” have the same meanings respectively as in *section 648*.

(b) Where—

- (i) a gain accrues to an individual on the disposal of or of an interest in an asset which is development land, and
- (ii) apart from this subsection relief would be given under this section in respect of the disposal of that asset (being an asset within *subsection (2)* or *(11)*),

then, subject to *paragraph (c)*, that relief shall be given in respect of the gain (or where appropriate in respect of a portion of the gain) only to the extent (if any) to which such relief would be given if, in computing the chargeable gain accruing on the disposal (notwithstanding that the disposal was a disposal of development land), there were excluded from the computation—

- (I) the amount (if any) by which the base value of the asset exceeds the current use value of the asset on the base date,
- (II) the amount by which the consideration for the disposal of the asset exceeds the current use value of the asset on the date of the disposal,
- (III) if the asset was not held by the individual on the 6th day of April, 1974, such proportion (if any) of the incidental costs to the individual of the acquisition of the asset as would be referable to the amount (if any) referred to in *subparagraph (I)*, and
- (IV) such proportion of the incidental costs to the individual of the disposal of the asset as would be referable to the amount referred to in *subparagraph (II)*.

Pt.19 S.604

- (c) *Paragraph (b)* shall not apply to a disposal made by an individual in any year of assessment if the total consideration in respect of all disposals made by that individual in that year and to which that paragraph would otherwise apply does not exceed £15,000.

(13) Apportionments of consideration shall be made wherever required by this section and in particular where a person disposes of a dwelling house only part of which is the person's only or main residence.

(14) This section shall not apply in relation to a gain if the acquisition of or of the interest in the dwelling house or the part of the dwelling house was made wholly or mainly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain in so far as the gain is attributable to any expenditure which was incurred after the beginning of the period of ownership and wholly or mainly for the purpose of realising a gain from the disposal.

Disposals to
authority possessing
compulsory
purchase powers.

[CGT(A)A78 s5]

605.—(1) Where a person makes a disposal of or of an interest in property situate in the State (in this section referred to as “the original assets”) to an authority possessing compulsory purchase powers and claims and proves to the satisfaction of the Revenue Commissioners that—

- (a) the disposal would not have been made but for—
- (i) the exercise of those powers, or
 - (ii) the giving by the authority of formal notice of its intention to exercise those powers,
- (b) the whole of the consideration for the disposal and no more is applied in acquiring other property situate in the State or an interest in such other property (in this section referred to as “the replacement assets”), and
- (c) the original assets and the replacement assets are within one, and the same one, of the classes of assets specified in *subsection (5)*,

then, for the purposes of the Capital Gains Tax Acts, the disposal shall not be treated as involving any disposal of the original assets and the acquisition shall not be treated as involving any acquisition of the replacement assets or any part of those assets, but the original assets and the replacement assets shall be treated as the same assets acquired as the original assets were acquired.

(2) In a case where *subsection (1)* would apply but for the fact that an amount in excess of the amount or value of the consideration for the disposal concerned is applied as described in *paragraph (b)* of that subsection—

- (a) the person making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if, in consideration of that excess, that person had acquired at the time of the acquisition of the replacement assets a portion of those assets which bears to the whole the same proportion as the amount of the excess bears to the amount or value of the consideration applied in acquiring the replacement assets, and

(b) *subsection (1)* shall apply to the remainder of those assets Pr.19 S.605 and to the original assets.

(3) In a case where *subsection (1)* would apply but for the fact that part of the amount or value of the consideration for the disposal concerned is not applied as described in *paragraph (b)* of that subsection—

(a) the person making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if, in consideration of that part, that person had disposed of an interest in the original assets, and

(b) *subsection (1)* shall apply to the remainder of those assets and to the replacement assets.

(4) This section shall apply only if the acquisition of the replacement assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of the original assets, or at such earlier or later time as the Revenue Commissioners may by notice in writing allow; but, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without ascertaining whether the replacement assets are acquired in pursuance of the contract, and when that fact is ascertained all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in the Capital Gains Tax Acts on the time within which assessments may be made.

(5) The classes of assets referred to in *subsection (1)* shall be as follows:

Class 1

Assets of a trade carried on by the person making the disposal which consist of—

(a) plant or machinery;

(b) except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

(i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade,

(ii) any land occupied (as well as used) only for the purposes of the trade, provided that where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, the trade shall be treated for the purposes of this subsection as if it were not a trade of dealing in or developing land;

(c) goodwill.

Any land or buildings, not being land or buildings within Class 1, but excluding a dwelling house or part of a dwelling house in relation to which the person making the disposal would be entitled to claim relief under *section 604*.

Disposals of work of art, etc., loaned for public display.

[FA91 s43(1) and (2)]

606.—(1) This section shall apply to an object, being any picture, print, book, manuscript, sculpture, piece of jewellery or work of art which—

- (a) in the opinion of 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, has a market value of not less than £25,000 at the date when the object is loaned to a gallery or museum in the State, being a gallery or museum approved of by the Revenue Commissioners for the purposes of this section, and
- (b) is the subject of or included in a display to which the public is afforded reasonable access in the gallery or museum to which it has been loaned for a period (in this section referred to as “the qualifying period”) of not less than 6 years from the date the object is so loaned.

(2) Where after the end of the qualifying period a disposal of an object to which this section applies is made by the person who had loaned the object in the circumstances described in *subsection (1)*, the disposal shall be treated for the purposes of the Capital Gains Tax Acts as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

Government and certain other securities.

[CGTA75 s19; FA82 s41(a); FA84 s66; FA88 s70(2); FA89 s32 and s95(2); FA92 s24(2); FA96 s39(1) and (5)]

607.—(1) The following shall not be chargeable assets—

- (a) securities (including savings certificates) issued under the authority of the Minister for Finance,
- (b) stock issued by—
 - (i) a local authority, or
 - (ii) a harbour authority mentioned in the First Schedule to the Harbours Act, 1946,
- (c) land bonds issued under the Land Purchase Acts,
- (d) debentures, debenture stock, certificates of charge or other forms of security issued by the Electricity Supply Board, Bord Gáis Éireann, Radio Telefís Éireann, ICC Bank plc, Bord Telecom Éireann, Irish Telecommunications Investments plc, Córas Iompair Éireann, ACC Bank plc, Bord na Móna, Aerlínte Éireann, Teoranta, Aer Lingus, Teoranta or Aer Rianta, Teoranta,
- (e) securities issued by the Housing Finance Agency under section 10 of the Housing Finance Agency Act, 1981,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(f) securities issued by a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995, Pr.19 S.607

(g) securities issued in the State, with the approval of the Minister for Finance, by the European Community, the European Coal and Steel Community, the International Bank for Reconstruction and Development, the European Atomic Energy Community or the European Investment Bank, and

(h) securities issued by An Post and guaranteed by the Minister for Finance.

(2) (a) All futures contracts which—

(i) are unconditional contracts for the acquisition or disposal of any of the instruments referred to in *subsection (1)* or any other instruments to which this section applies by virtue of any other enactment (whenever enacted), and

(ii) require delivery of the instruments in respect of which the contracts are made,

shall not be chargeable assets.

(b) The requirement in *paragraph (a)* that the instrument be delivered shall be treated as satisfied where a person who has entered into a futures contract dealt in or quoted on a futures exchange or stock exchange closes out the futures contract by entering into another futures contract, so dealt in or quoted, with obligations which are reciprocal to those of the contract so closed out and are thereafter settled in respect of both futures contracts by means (if any) of a single cash payment or receipt.

608.—(1) (a) In this subsection, “financial futures” and “traded options” mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State. Superannuation funds. [CGTA75 s21; FA88 s30(1) and (2)(b); FA91 s38]

(b) For the purposes of *subsection (2)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(2) A gain shall not be a chargeable gain if accruing to a person from the person’s disposal of investments held by that person as part of a fund approved under *section 774, 784(4) or 785(5)*.

(3) Where part only of a fund is approved under a section referred to in *subsection (2)*, the gain shall be exempt from being a chargeable gain to the same extent only as income derived from the assets would be exempt under that section.

(4) For the purposes of this section, the fund set up under section 6A of the Oireachtas (Allowances to Members) Act, 1938 (inserted

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.19 S.608

by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1960), shall be deemed to be a fund approved under *section 774*.

Charities.

[CGTA75 s22]

609.—(1) Subject to *subsection (2)*, a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.

(2) Where property held on charitable trusts ceases to be subject to charitable trusts—

(a) the trustees shall be treated as if they had disposed of and immediately reacquired the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and

(b) if and in so far as any of that property represents directly or indirectly the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,

and an assessment to capital gains tax chargeable by virtue of *paragraph (b)* may be made at any time not more than 10 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.

Other bodies.

[CGTA75 s23;
FA89 s33; FA91
s20(2) and s44;
FA94 s32(5); FA95
s44(1) and (3);
FA96 s39(1) and (6)
and s64; FA97
s49(1) and (3)]

610.—(1) A gain shall not be a chargeable gain if it accrues to a body specified in *Part 1 of Schedule 15*.

(2) A gain shall not be a chargeable gain if it accrues to a body specified in *Part 2 of Schedule 15* in respect of a disposal by that body of an asset to the Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994).

Disposals to State,
public bodies and
charities.

[CGTA75 s39;
CGT(A)A78 s10]

611.—(1) (a) Where a disposal of an asset is made otherwise than under a bargain at arm's length—

(i) to the State,

(ii) to a charity, or

(iii) to any of the bodies within *section 28(3)* of the Finance Act, 1931,

section 547 shall not apply but, if the disposal is for no consideration or for a consideration not exceeding the sums which would be allowable as a deduction under *sections 552* and *828(4)* for the purposes of computing a chargeable gain, then—

(I) the disposal and acquisition shall be treated for the purposes of the Capital Gains Tax Acts as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(II) where the disposal is to a person within *subparagraph (ii)* or *(iii)* and the asset is later disposed of by that person in such circumstances that if a gain accrued on the later disposal it would be a chargeable gain, the capital gains tax which would have been chargeable in respect of the gain accruing on the earlier disposal if *section 547* had applied in relation to it shall be assessed and charged on the person making the later disposal in addition to any capital gains tax chargeable in respect of the gain accruing to that person on the later disposal. Pr.19 S.611

(b) Where relief was given under this subsection in respect of a disposal to a person of an asset, being a disposal made before the 20th day of December, 1978, and there is a later disposal of the asset by the person on or after that date, *paragraph (a)(II)* shall apply as if the first-mentioned disposal were the earlier disposal referred to in that paragraph.

(c) An assessment to give effect to *paragraph (a)(II)* shall not be out of time if made within 10 years after the end of the year of assessment in which the asset concerned is disposed of by the person making the later disposal.

(d) For the purposes of *paragraph (a)(II)*, the amount of the capital gains tax which would have been chargeable in respect of the gain accruing on the earlier disposal shall be the amount of tax which would not have been chargeable but for that gain.

(2) Where under *section 576(1)* or *577(3)* any assets or parts of any assets forming part of settled property are deemed to be disposed of and reacquired by the trustee, and—

(a) where the assets deemed to be disposed of under *section 576(1)* are reacquired on behalf of the State, a charity or a body within *section 28(3)* of the Finance Act, 1931, or

(b) the assets which or parts of which are deemed to be disposed of and reacquired under *section 577(3)* are held for the purposes of the State, a charity or a body within *section 28(3)* of the Finance Act, 1931,

then, if no consideration is received by any person for or in connection with any transaction by virtue of which the State, the charity or other body becomes so entitled or the assets are so held, the disposal and acquisition of the assets to which the State, the charity or other body becomes so entitled or of the assets which are held as mentioned in *paragraph (b)* shall be treated for the purposes of Capital Gains Tax Acts as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

612.—For the purposes of the Capital Gains Tax Acts, an amount by means of capital sum or premium provided under the European Communities (Retirement of Farmers) Regulations, 1974 (S.I. No. 116 of 1974), whether or not an annuity is granted in place of such capital sum or premium, shall not be deemed to form part of the Scheme for retirement of farmers. [CGTA75 s30]

consideration for the disposal in relation to which such capital sum or premium is provided.

Miscellaneous exemptions for certain kinds of property.

[CGTA75s24]

613.—(1) The following shall not be chargeable gains—

- (a) any bonus payable under an instalment saving scheme within the meaning of section 53 of the Finance Act, 1970;
- (b) any prize under section 22 of the Finance (Miscellaneous Provisions) Act, 1956;
- (c) any sum obtained by means of compensation or damages for any wrong or injury suffered by an individual in his or her person or in his or her profession.

(2) Winnings from betting (including pool betting), lotteries, sweepstakes or games with prizes shall not be chargeable gains, and rights to winnings obtained by participating in any pool betting, lottery, sweepstake or game with prizes shall not be chargeable assets.

(3) No chargeable gain shall accrue on the disposal of a right to or to any part of—

- (a) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants,
- (b) an annuity granted otherwise than under a contract for a deferred annuity by a company as part of its business of granting annuities on human life, whether or not including instalments of capital, or
- (c) annual payments due under a covenant made by any person and not secured on any property.

(4) (a) No chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including in particular an annuity or life interest and the reversion to an annuity or life interest)—

- (i) by the person for whose benefit the interest was created by the terms of the settlement, or
- (ii) by any other person except one who acquired, or derives that person's title from one who acquired, the interest for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement.

(b) Subject to *paragraph (a)*, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes as the holder of that interest absolutely entitled as against the trustee to any settled property, the person shall be treated as disposing of the interest in consideration of obtaining that settled property, but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by the trustee under *section 576(1)*.

PART 20

COMPANIES' CHARGEABLE GAINS

CHAPTER 1

General

614.—(1) In this section, “capital distribution” has the same meaning as in *section 583*.

Capital distribution derived from chargeable gain of company: recovery of tax from shareholder.

(2) This section shall apply where a person connected with a company resident in the State receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

[CTA76 s126]

(a) the capital so distributed derives from the disposal after the 5th day of April, 1976, of assets in respect of which a chargeable gain accrues to the company, or

(b) the distribution constitutes such a disposal of assets.

(3) Where the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date when it becomes payable by the company, the person referred to in *subsection (2)* may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(a) not exceeding the amount or value of the capital distribution which that person has received or became entitled to receive, and

(b) not exceeding a proportion equal to that person's share of the capital distribution made by the company of corporation tax on the amount and at the rate charged in respect of that gain in the assessment in which that tax was charged.

(4) A person paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.

(5) This section is without prejudice to any liability of the person receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to such person by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

615.—(1) In this section—

“scheme of reconstruction or amalgamation” means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies;

Company reconstruction or amalgamation: transfer of assets.

[CTA76 s127; CGT(A)A78 s13]

“trading stock” has the same meaning as in *section 89*.

(2) Subject to this section, where—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.20 S.615

- (a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company,
- (b) at the time of the transfer both companies are resident in the State, and
- (c) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, in so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by means of the transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of *section 556* the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of the assets.

(3) This section shall not apply in relation to an asset which until the transfer formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Groups of companies: interpretation.

[CTA76 s129(1) to (6)(b); FA90 s58]

616.—(1) For the purposes of this section and of the following sections of this Part—

- (a) references to a company shall, subject to *section 621(1)*, apply only to a company, as limited by *subsection (2)*, which is resident in the State;
- (b) a principal company and all its 75 per cent subsidiaries shall form a group, and where a principal 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;
- (c) “principal company” means a company of which another company is a 75 per cent subsidiary;
- (d) in applying 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;
- (e) “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the State.

(2) For the purposes of this section and of the following sections of this Part, references to a company shall apply only to—

- (a) a company within the meaning of the Companies Act, 1963,
- (b) a company constituted under any other Act or a charter or letters patent or (although resident in the State) formed under the law of a country or territory outside the State,

(c) a registered industrial and provident society, being a society within the meaning of *section 698*, and Pr.20 S.616

(d) a building society incorporated or deemed by virtue of *section 124(2)* of the Building Societies Act, 1989, to be incorporated under that Act.

(3) For the purposes of this section and of the following sections of this Part, a group shall remain the same group so long as the same company remains the principal company of the group and, if at any time the principal company of a group becomes a 75 per cent subsidiary of another company, the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company is the principal company or a 75 per cent subsidiary, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

(4) For the purposes of this section and of the following sections of this Part, the passing of a resolution or the making of an order or any other act for the winding up of a company shall not be regarded as the occasion of that company or of any 75 per cent subsidiary of that company ceasing to be a member of a group of companies.

(5) (a) The following sections of this Part, except in so far as they relate to the recovery of tax, shall also apply in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if—

(i) such bodies were companies within the meaning of those sections,

(ii) any such bodies charged with related functions and subsidiaries of any of them formed a group, and

(iii) any 2 or more such bodies charged at different times with the same or related functions were members of a group.

(b) *Paragraph (a)* shall apply subject to any enactment by virtue of which property, rights, liabilities or activities of one such body mentioned in that paragraph are to be treated for corporation tax as those of another such body.

(6) For the purposes of this Part—

(a) *section 557* and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain shall be operated before the operation of and without regard to—

(i) *section 617(1)*, and

(ii) any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal;

(b) *section 589* shall not apply where the transfer is a disposal to which *section 617(1)* applies.

Pt.20
Transfers of assets,
other than trading
stock, within group.

[CTA76 s130]

617.—(1) Notwithstanding any provision in the Capital Gains Tax Acts fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except where provided by *subsections (2) and (3)*, be treated, in so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other member's disposal neither a gain nor a loss would accrue to that other member; but, where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

(2) *Subsection (1)* shall not apply where the disposal is—

- (a) a disposal of a debt from a member of a group of companies effected by satisfying the debt or part of it, or
- (b) a disposal of redeemable shares in a company on the occasion of their redemption,

and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under *section 583* is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (within the meaning of that section) from that company, whether or not involving a reduction of capital.

(3) For the purposes of *subsection (1)*, in so far as the consideration for the disposal consists of money or money's worth by means of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

Transfers of trading
stock within group.

[CTA76 s131]

618.—(1) Where a member of a group of companies acquires an asset as trading stock from another member of the group and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring the asset shall be treated for the purposes of *section 596* as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where a member of a group of companies disposes of an asset to another member of the group and the asset formed part of the trading stock of a trade carried on by the member disposing of the asset but is acquired by the other member otherwise than as trading stock of a trade carried on by that other member, the member disposing of the asset shall be treated for the purposes of *section 596* as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

Disposals or
acquisitions outside
group.

[CTA76 s132;
CGT(A)A78 s14;
FA92 s73]

619.—(1) Where a company which is or has been a member of a group of companies disposes of an asset which it acquired from another member of the group at a time when both were members of the group, *section 555* shall apply in relation to any capital allowances made to the other member (in so far as not taken into account in relation to a disposal of the asset by that other member), and so on as respects previous transfers of the asset between members of the

group, but this shall not be taken as affecting the consideration for which an asset is deemed under *section 617(1)* to be acquired. Pr.20 S.619

(2) (a) *Section 556* shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of the asset by the member disposing of the asset.

(b) Notwithstanding *paragraph (a)*, where at any time after the asset was acquired or provided by the group so taken as a single person and before the 24th day of April, 1992, there was an acquisition (in this paragraph referred to as “the later acquisition”) of the asset by a member of the group from another member of the group as a result of a relevant disposal (within the meaning of *section 648*), this subsection shall apply as if the reference in *paragraph (a)* to the acquisition or provision of the asset by the group were a reference to the later acquisition or, where there was more than one, the last such acquisition.

620.—For the purposes of *section 597*, all the trades carried on by members of a group of companies shall be treated as a single trade (except in a case of one member of the group acquiring, or acquiring the interest in, the new assets from another member or disposing of, or disposing of the interest in, the old assets to another member). Replacement of business assets by members of group. [CTA76 s133]

621.—(1) For the purposes of this section—
“securities” includes any loan stock or similar security whether secured or unsecured; Depreciatory transactions in group. [CTA76 s138]

references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group;

a “group of companies” may consist of companies some or all of which are not resident in the State.

(2) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under *section 538(2)* that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(3) This section shall apply as respects a disposal of shares in or securities of a company (in this section referred to as an “ultimate disposal”) if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after the 6th day of April, 1974, and for this purpose “depreciatory transaction” means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of *subsection (4)*;

but a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been taken into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) The conditions referred to in *subsection (3)(b)* are—

- (a) that the company, the shares in which or securities of which are the subject of the ultimate disposal, or any 75 per cent subsidiary of that company, was a party to the transaction, and
- (b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(5) Without prejudice to the generality of *subsection (3)*, the cancellation of any shares in or securities of one member of a group of companies under section 72 of the Companies Act, 1963, shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in *subsection (4)*.

(6) Where the person making the ultimate disposal is or has at any time been a member of the group of companies referred to in *subsection (3)* or *(4)*, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the depreciatory transaction; but, if the person making the ultimate disposal is not a member of that group when disposing of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(7) The inspector, the Appeal Commissioners or the judge of the Circuit Court shall make the decision under *subsection (6)* on the basis that the allowable loss ought not to reflect any diminution in the value of the company's assets attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after the 6th day of April, 1974, which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(8) (a) Where under *subsection (6)* a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares in or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 10 years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal.

(b) Notwithstanding *paragraph (a)*, the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (c) All such adjustments, whether by means of discharge or repayment of tax or otherwise, as are required to give effect to this subsection may be made at any time. Pr.20 S.621

622.—(1) This section shall apply where one company (in this section referred to as “the first company”) has a holding in another company (in this section referred to as “the second company”) and the following conditions are fulfilled— Dividend stripping.
[CTA76 s139]

- (a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent of all holdings of the same class in the second company,
- (b) that the first company is not a dealing company in relation to the holding,
- (c) that a distribution is or has been made on or after the 6th day of April, 1974, to the first company in respect of the holding, and
- (d) that the effect of the distribution is that the value of the holding is or has been materially reduced.
- (2) (a) Where this section applies in relation to a holding, *section 621* shall apply in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which *section 617* applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.
- (b) Notwithstanding *paragraph (a)*, the distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been taken into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.
- (3) This section shall be construed together with *section 621*.
- (4) For the purposes of this section, a company shall be a dealing company in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company’s trading profits.
- (5) References in this section to a holding in a company are references to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—
- (a) a company’s holdings of different classes in another company shall be treated as separate holdings, and
- (b) holdings of shares or securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.
- (6) For the purposes of *subsection (1)*—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.20 S.622

- (a) all a company's holdings of the same class in another company shall be treated as ingredients constituting a single holding, and
- (b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent of all holdings of that class.

Company ceasing to be member of group.

[CTA76 s135 and FA96 s51]

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

- (a) 2 or more companies shall be associated companies if by themselves they would form a group of companies;
- (b) a chargeable gain shall be deferred on a replacement of business assets if, by one or more claims under *section 597*, a chargeable gain on the disposal of those assets is treated as not accruing until the new assets within the meaning of that section cease to be used for the purpose of a trade carried on by the company making the claim;
- (c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion;
- (d) references to a company ceasing to be a member of a group of companies shall not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved where the winding up or dissolution of the member or the other member, as the case may be, 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 is the avoidance of tax.

(2) Where a company (in this section referred to as “the chargeable company”) ceases to be a member of a group of companies, this section shall apply as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell within the period of 10 years ending with the time when the company ceases to be a member of the group.

(3) (a) Where 2 or more associated companies (in this subsection referred to as “the associated companies”) cease to be members of a group at the same time—

- (i) *subsection (2)* shall not apply as respects an acquisition by one from another of the associated companies, and
- (ii) where—
 - (I) a dividend has been paid or a distribution has been made by one of the associated companies

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

to a company which is not one of the associated companies, and Pr.20 S.623

- (II) the dividend so paid or the distribution so made has been paid or made, as the case may be, wholly or partly out of profits which derive from the disposal of any asset by one to another of the associated companies,

the amount of the dividend paid or the amount or value of the distribution made, to the extent that it is paid or made, as the case may be, out of those profits, shall be deemed for the purposes of the Capital Gains Tax Acts to be consideration (in addition to any other consideration) received by the member of the group or former member of the group in respect of a disposal, being a disposal which gave rise to or was caused by the associated companies ceasing to be members of the group.

- (b) *Paragraph (a)(ii)* shall not apply to a distribution other than a dividend where a company ceases to be a member of a group of companies before the 23rd day of April, 1996.

(4) If when the chargeable company ceases to be a member of the group the chargeable company, or an associated company also leaving the group, owns otherwise than as trading stock—

- (a) the asset referred to in *subsection (2)*, or
(b) property on the acquisition of which a chargeable gain in relation to the asset has been deferred on a replacement of business assets,

the chargeable company shall be treated for the purposes of the Capital Gains Tax Acts as if immediately after its acquisition of the asset it had sold and immediately reacquired the asset at market value at that time.

(5) Where any of the corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date when it becomes payable, then—

- (a) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and
(b) a company which owned the asset on that date or when the chargeable company ceased to be a member of the group,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax, and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

(6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 10 years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of and reacquired an asset, all such

PT.20 S.623

recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by means of assessment or by means of discharge or repayment of tax, as may be required in consequence of this section shall be made.

Exemption from charge under section 623 in case of certain mergers.

[CTA76 s136]

624.—(1) *Section 623* shall not apply in a case where—

(a) as part of a merger a company (in this section referred to as “company A”) ceases to be a member of a group of companies (in this section referred to as “the A group”), and

(b) it is shown that the merger was carried out for bona fide commercial reasons and that the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section, “merger” means an arrangement (including a series of arrangements)—

(a) whereby one or more companies (in this section referred to as “the acquiring company” or, as the case may be, “the acquiring companies”) none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A,

(b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies, and

(c) in respect of which the conditions in *subsection (4)* are fulfilled.

(3) For the purposes of *subsection (2)*, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in *subsection (2)(c)* are—

(a) that not less than 25 per cent by value of each of the interests acquired as mentioned in *paragraphs (a) and (b)* of *subsection (2)* consists of a holding of ordinary share capital, and the remainder of the interest or, as the case may be, of each of the interests acquired as mentioned in *paragraph (b)* of that subsection consists of a holding of share capital (of any description) or debentures or both,

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in *subsection (2)(a)* is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in *subsection (2)(b)*, and

- (c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in *subsection (2)(a)*, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in *subsection (2)(b)*, Pr.20 S.624

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

(5) Notwithstanding *section 616(1)(a)*, references in this section to a company shall include references to a company resident outside the State.

- 625.—(1)** (a) This section shall apply if a company (in this section referred to as “the subsidiary”) ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section referred to as “the chargeable company”) which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell within the period of 10 years ending on the date on which the subsidiary ceases to be a member of the group. Shares in subsidiary member of group.
[CTA76 s137]

- (b) References in this section to a company ceasing to be a member of a group of companies shall not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) The chargeable company shall be treated for the purposes of the Capital Gains Tax Acts as if immediately before the earlier occasion it had sold and immediately reacquired the shares referred to in *subsection (1)(a)* at market value at that time.

(3) Where before the subsidiary ceases to be a member of the group the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been chargeable in consequence of this section may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.

(4) Where any of the corporation tax assessed on a company in consequence of this section, or in pursuance of *subsection (3)*, is not paid within 6 months from the date when it becomes payable, then—

- (a) a company which is on that date, or was on the earlier occasion, the principal company of the group, and
- (b) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.20 S.625

may at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax, and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company or, as the case may be, from the company assessed under *subsection (3)*.

(5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 10 years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion, there shall be made all such adjustments of tax, whether by means of assessment or by means of discharge or repayment of tax, as may be required in consequence of this section.

(6) For the purposes of this section, there shall be a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if—

- (a) *section 586* or *587* applies to shares in a company so as to equate them with shares in or debentures of another company, and
- (b) the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.

(7) Where by virtue of *section 587* shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of the shares being so treated.

Tax on company recoverable from other members of group.

[CTA76 s134]

626.—(1) Where at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within 6 months from the date when it becomes payable by the company, then, if the tax so assessed included any amount in respect of chargeable gains—

- (a) a company which at the time when the gain accrued was the principal company of the group, and
- (b) any other company which in any part of the period of 2 years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it or, where the asset is an interest or right in or over another asset, owned either asset or any part of either asset,

may at any time within 2 years from the time when the tax became payable be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount and at the rate charged in respect of that gain in the assessment on the company to which the chargeable gain accrued.

(2) A company paying any amount of tax under *subsection (1)* shall be entitled to recover a sum of that amount—

- (a) from the company to which the chargeable gain accrued, or

(b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under *paragraph (b)* shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued and, in so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of that asset (or, where that asset is an interest or right in or over another asset, owned either asset or any part of either asset) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over that asset, was disposed of by that company.

CHAPTER 2

Provisions where companies cease to be resident in the State

627.—(1) (a) In this section and in *section 628*—

Deemed disposal of assets.

“designated area”, “exploration or exploitation activities” and “exploration or exploitation rights” have the same meanings respectively as in *section 13*;

[FA97 s42]

“exploration or exploitation assets” means assets used or intended for use in connection with exploration or exploitation activities carried on in the State or in a designated area;

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

“the new assets” and “the old assets” have the meanings respectively assigned to them by *section 597*.

(b) For the purposes of this section and *section 628*, a company shall not be regarded as ceasing to be resident in the State by reason only that it ceases to exist.

(2) (a) In this subsection—

“control” shall be construed in accordance with *subsections (2) to (6) of section 432* as if in *subsection (6)* of that section for “5 or fewer participators” there were substituted “persons resident in a relevant territory”;

“excluded company” means a company 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;

“foreign company” means a company which—

(i) is not resident in the State,

(ii) is under the control of a person or persons resident in a relevant territory, and

(iii) is not under the control of a person or persons resident in the State;

“relevant territory” means—

- (i) the United States of America, or
- (ii) a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made.

(b) Subject to *paragraph (c)*, this section and *section 628* shall apply to a company (in this section referred to as a “relevant company”) if at any time (in this section and in *section 628* referred to as “the relevant time”) on or after the 21st day of April, 1997, the company ceases to be resident in the State.

(c) This section and *section 628* shall not apply to a company which is an excluded company.

(3) A relevant company shall be deemed for the purposes of the Capital Gains Tax Acts—

(a) to have disposed of all its assets, other than assets excepted from this subsection by *subsection (5)*, immediately before the relevant time, and

(b) to have immediately reacquired them,

at the market value of the assets at that time.

(4) *Section 597* shall not apply where a relevant company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time, and

(b) acquires the new assets, or its interest in those assets, after the relevant time,

unless the new assets are excepted from this subsection by *subsection (5)*.

(5) Where at any time after the relevant time a relevant company carries on a trade in the State through a branch or agency—

(a) any assets which, immediately after the relevant time, are situated in the State and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from *subsection (3)*, and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from *subsection (4)*,

and references in this subsection to assets situated in the State include references to exploration or exploitation assets and to exploration or exploitation rights.

628.—(1) (a) In this section—

“deemed disposal” means a disposal which by virtue of *section 627(3)* is deemed to have been made;

“foreign assets” of a company means any assets of the company which immediately after the relevant time are situated outside the State and are used in or for the purposes of a trade carried on by the company outside the State.

Postponement of charge on deemed disposal under *section 627*.

[FA97 s43]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (b) For the purposes of this section, a company shall be a 75 per cent subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital (within the meaning of *section 2*) is owned directly by that other company. Pr.20 S.628

(2) Where—

- (a) immediately after the relevant time a company (in this section referred to as “the company”) to which this section applies by virtue of *section 627* is a 75 per cent subsidiary of another company (in this section referred to as “the principal company”) which is resident in the State, and
- (b) the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after the relevant time,

the Capital Gains Tax Acts shall apply subject to *subsections (3) to (6)*.

(3) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

- (a) that deemed disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses, and
- (b) the whole of that single chargeable gain shall be treated as not accruing to the company on that disposal but an equivalent amount (in this section referred to as “the postponed gain”) shall be taken into account in accordance with *subsections (4) and (5)*.
- (4) (a) In this subsection, “the appropriate proportion” means the proportion which the chargeable gain taken into account in determining the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.
- (b) Where at any time within 10 years after the relevant time the company disposes of any assets (in this subsection referred to as “relevant assets”) the chargeable gains on which were taken into account in determining the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain at that time the whole or the appropriate proportion of the postponed gain in so far as not already taken into account under this subsection or *subsection (5)*.

(5) Where at any time within 10 years after the relevant time—

- (a) the company ceases to be a 75 per cent subsidiary of the principal company, or
- (b) the principal company ceases to be resident in the State,

there shall be deemed to accrue to the principal company as a chargeable gain—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.20 S.628

- (i) where *paragraph (a)* applies, at that time, and
- (ii) where *paragraph (b)* applies, immediately before that time,

the whole of the postponed gain in so far as not already taken into account under this subsection or *subsection (4)*.

(6) Where at any time—

- (a) the company has allowable losses which have not been allowed as a deduction from chargeable gains, and
- (b) a chargeable gain accrues to the principal company under *subsection (4)* or *(5)*,

then, if and to the extent that the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

Tax on non-resident company recoverable from another member of group or from controlling director.

629.—(1) In this section—

“chargeable period” means a year of assessment or an accounting period, as the case may be;

[FA97 s44]

“controlling director”, in relation to a company, means a director of the company who has control of the company (construing control in accordance with *section 432*);

“director”, in relation to a company, has the same meaning as in *section 116*, and includes any person within *section 433(4)*;

“group” has the meaning which would be given by *section 616* if in that section references to residence in the State were omitted and for references to “75 per cent subsidiaries” there were substituted references to “51 per cent subsidiaries”, and references to a company being a member of a group shall be construed accordingly;

“specified period”, in relation to a chargeable period, means the period beginning with the specified return date for the chargeable period (within the meaning of *section 950*) and ending 3 years after the time when a return under *section 951* for the chargeable period is delivered to the appropriate inspector (within the meaning of *section 950*);

“tax” means corporation tax or capital gains tax, as the case may be.

(2) This section shall apply at any time on or after the 21st day of April, 1997, where tax payable (being tax which but for *section 627* or *628* would not be payable) by a company (in this section referred to as “the taxpayer company”) for a chargeable period (in this section referred to as “the chargeable period concerned”) is not paid within 6 months after the date on or before which the tax is due and payable.

(3) The Revenue Commissioners may, at any time before the end of the specified period in relation to the chargeable period concerned, serve on any person to whom *subsection (4)* applies a notice—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) stating the amount which remains unpaid of the tax payable by the taxpayer company for the chargeable period concerned and the date on or before which the tax became due and payable, and

(b) requiring that person to pay that amount within 30 days of the service of the notice.

(4) (a) This subsection shall apply to any person, being—

(i) a company which is, or during the period of 12 months ending with the time when the gain accrued was, a member of the same group as the taxpayer company, and

(ii) a person who is, or during that period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(b) This subsection shall apply in any case where the gain accrued before the 21st day of April, 1998, with the substitution in *paragraph (a)(i)* of “beginning with the 21st day of April, 1997, and” for “of 12 months”.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due by such person, and such person may recover any such amount paid on foot of a notice under this section from the taxpayer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

PART 21

MERGERS, DIVISIONS, TRANSFERS OF ASSETS AND EXCHANGES OF SHARES CONCERNING COMPANIES OF DIFFERENT MEMBER STATES

630.—In this Part—

Interpretation (*Part 21*).

“bilateral agreement” means arrangements having the force of law by virtue of *section 826*; [FA92 s64]

“company” means a company from a Member State;

“company from a Member State” has the meaning assigned to it by Article 3 of the Directive;

“the Directive” means Council Directive No. 90/434/EEC of 23 July 1990¹ on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States;

“Member State” means a Member State of the European Communities;

¹O.J. No. L225, 20.8.1990, p. 1.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.21 S.630

“receiving company” means the company to which the whole or part of a trade is transferred in the course of a transfer;

“securities” means shares and debentures;

“shares” includes stock;

“transfer” means the transfer by a company of the whole or part of its trade in the circumstances set out in *section 631(1)* or *634(2)*, as the case may be;

“transferring company” means the company by which the whole or part of a trade is transferred in the course of a transfer.

Transfer of assets generally.

[FA92 s65]

631.—(1) (a) This section shall apply where a company transfers the whole of a trade carried on by it in the State to another company and the consideration for the transfer consists solely of the issue to the transferring company of securities (in this section referred to as “the new assets”) in the receiving company.

(b) A company which transfers part of a trade to another company shall be treated for the purposes of this section as having carried on that part of its trade as a separate trade.

(2) (a) The transfer shall not be treated as giving rise to any allowance or charge provided for by *section 307* or *308*.

(b) There shall be made to or on the receiving company in accordance with *sections 307* and *308* all such allowances and charges as would, if the transferring company had continued to carry on the trade and had continued to use the transferred assets for the purposes of the trade, have been made to or on the transferring company in respect of any assets transferred in the course of the transfer, and the amount of any such allowance or charge shall be computed as if the receiving company had been carrying on the trade since the transferring company began to do so and as if everything done to or by the transferring company had been done to or by the receiving company.

(c) This subsection shall not apply as respects assets transferred in the course of a transfer if in consequence of the transfer, or a transaction of which the transfer is a part, the Corporation Tax Acts are to apply subject to *subsections (6) to (9)* of *section 400*.

(3) For the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts—

(a) the transfer shall not be treated as involving any disposal by the transferring company, and

(b) the receiving company shall be treated as if the assets transferred to it in the course of the transfer were acquired by it at the same time and for the same consideration at which they were acquired by the transferring company and as if all things done by the transferring company relating to the assets transferred in the course of the transfer had been done by the receiving company.

(4) Where, at any time within a period of 6 years commencing on the day on which the assets were transferred in the course of the transfer, the transferring company disposes of the new assets then, for the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts, in computing any chargeable gain on the disposal of any new assets—

- (a) the aggregate of the chargeable gains less allowable losses which but for *subsection (3)(a)* would have been chargeable on the transferring company shall be apportioned between the new assets as a whole, and
- (b) the sums allowable as a deduction under *section 552(1)(a)* shall be reduced by the amount apportioned to the new asset under *paragraph (a)*,

and, if the securities which comprise the new assets are not all of the same type, the apportionment between the securities under *paragraph (a)* shall be in accordance with their market value at the time they were acquired by the transferring company.

(5) *Subsections (2) to (4)* shall not apply if—

- (a) immediately after the time of the transfer—
 - (i) the assets transferred in the course of the transfer are not used for the purposes of a trade carried on by the receiving company in the State,
 - (ii) the receiving company would not be chargeable to corporation tax or capital gains tax in respect of any chargeable gains accruing to it on a disposal, if it were to make such a disposal, of any assets (other than cash) acquired in the course of the transfer, or
 - (iii) any of the assets are assets in respect of which, by virtue of being of a description specified in a bilateral agreement, the receiving company is to be regarded as not liable in the State to corporation tax or capital gains tax on gains accruing to it on a disposal,

or

- (b) the transferring company and the receiving company jointly so elect by notice in writing to the inspector, and such notice shall be made by the time by which a return is to be made by the transferring company under *section 951* for the accounting period in which the transfer takes place.

632.—(1) Where a company disposes of an asset used for the purposes of a trade carried on by it in the State to another company which holds all of the securities representing the company's capital and but for this section the companies would not be treated in accordance with *section 617* in respect of the asset, then, if—

Transfer of assets by company to its parent company.

[FA92 s66]

- (a) immediately after the disposal the company acquiring the asset commences to use the asset for the purposes of a trade carried on by it in the State, and
- (b) the disposal is not, or does not form part of, a transfer to which *section 631* applies,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.21 S.632

sections 617 to 619 shall apply as if the companies were resident in the State.

(2) *Subsection (5) of section 631* shall apply with any necessary modification for the purposes of this section as if references in that subsection to *subsections (2) to (4)* of that section were references to *subsection (1)* of this section.

Company reconstruction or amalgamation: transfer of development land.

633.—Where a company, for the purposes of or in connection with a scheme of reconstruction or amalgamation (within the meaning of *section 615*), disposes of an asset which consists of development land (within the meaning of *section 648*) to another company and—

[FA92 s67]

- (a) the disposal is not made in the course of a transfer to which *section 631* applies, and
- (b) the company disposing of the asset and the company acquiring the asset would, if—
 - (i) the definition of “chargeable gains” in *section 78(4)*, and
 - (ii) *section 649(1)*,were deleted, be treated in accordance with *section 615(2)* in respect of that asset,

then, the companies shall be treated for the purposes of the Capital Gains Tax Acts as if the asset was acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of *section 556* the acquiring company shall be treated as if the acquisition of the asset by the other company had been the acquiring company’s acquisition of the asset.

Credit for tax.

634.—(1) In this section—

[FA92 s69]

“law of the Member State which has the effect of deferring a charge to tax on a gain” means any law of the Member State concerned which provides—

- (a) that the gain accruing to the transferring company on the disposal of the assets in the course of the transfer is to be treated as not accruing until the disposal of the assets by the receiving company,
- (b) that the receiving company is to be treated as having acquired the assets for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal to tax in that Member State, neither a gain nor a loss would accrue to the transferring company on the transfer and the receiving company is to be treated as if the acquisition of the assets by the transferring company had been the receiving company’s acquisition of the assets, or
- (c) such other deferral of a charge to tax as corresponds to *paragraph (a)* or *(b)*;

“relevant certificate given by the tax authorities of a Member State” Pr.21 S.634 means a certificate so given and which states—

- (a) whether gains accruing to the transferring company on the transfer would have been chargeable to tax under the law of the Member State but for—
 - (i) the Directive, or
 - (ii) any provision of the law of the Member State which has the effect of deferring a charge to tax on a gain in the case of such a transfer,
 - (b) if those gains accruing would have been so chargeable, the amount of tax which would have been payable under that law if, in so far as is permitted under that law, any losses arising on the transfer are set against any gains so arising and any deductions and reliefs available to the transferring company under that law other than the provisions mentioned in *paragraph (a)* had been claimed.
- (2) Where—
- (a) a company resident in the State transfers the whole or part of a trade which immediately before the time of the transfer it carried on in a Member State (other than the State) through a branch or agency to a company not resident in the State,
 - (b) the transfer includes the whole of the assets of the transferring company used for the purposes of the trade or the part of the trade or the whole of those assets other than cash, and
 - (c) the consideration for the transfer consists wholly or partly of the issue to the transferring company of securities in the receiving company,

then, tax specified in a relevant certificate given by the tax authorities of the Member State in which the trade was so carried on shall be treated for the purposes of *Chapter 1 of Part 35* as tax—

- (i) payable under the law of that Member State, and
- (ii) in respect of which credit may be allowed under a bilateral agreement.

635.—Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts, *sections 631 to 634* shall not apply as respects a transfer or disposal unless it is shown that the transfer or disposal, as the case may be, is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax, corporation tax or capital gains tax. Avoidance of tax.
[FA92 s70]

636.—(1) In this section, “appropriate inspector” has the same meaning as in *section 950*. Returns.
[FA92 s71]

(2) Where *section 631, 632, 633 or 634* applies in relation to a transfer or disposal, the transferring company shall make a return of

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.21 S.636

the transfer or disposal, as the case may be, to the appropriate inspector in such form as the Revenue Commissioners may require.

(3) Where corporation tax or capital gains tax payable by a company is to be reduced by virtue of *section 634*, a return under this section shall include a relevant certificate given by the tax authorities of the Member State in which the trade was carried on immediately before the time of the transfer.

(4) A company shall make a return under this section within 9 months from the end of the accounting period in which the transfer occurs.

Other transactions.

[FA92 s72]

637.—(1) The Revenue Commissioners may, on an application being made to them in writing in respect of a transaction—

(a) of a type specified in the Directive, and

(b) to which this Part does not apply,

give such relief as appears to them to be just and reasonable for the purposes of giving effect to the Directive.

(2) An application under this section shall be made in such form as the Revenue Commissioners may require.

Apportionment of amounts.

[FA92 s74]

638.—Where for the purposes 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 period) of 2 or more companies, 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 companies 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 and be heard by the Appeal Commissioners or to make representations to them in writing.

TRANSACTIONS IN LAND

PART 22

PROVISIONS RELATING TO DEALING IN OR DEVELOPING LAND AND DISPOSALS OF DEVELOPMENT LAND

CHAPTER 1

Income tax and corporation tax: profits or gains from dealing in or developing land

Interpretation
(Chapter 1).

[F(MP)A68 s16(1),
(2) and (4)]

639.—(1) In this Chapter, except where the context otherwise requires—

“company” includes any body corporate;

“development”, in relation to any land, means—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) the construction, demolition, extension, alteration or reconstruction of any building on the land, or
- (b) the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use,

and “developing” and “developed” shall be construed accordingly;

“market value”, in relation to any property, means the price which that property might reasonably be expected to fetch if sold in the open market;

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

any reference to the disposal of an interest in land includes a reference to the creation of an interest, and any reference to the acquisition of an interest in land includes a reference to the acquisition of an interest which ceases on the acquisition.

(2) For the purposes of this Chapter—

- (a) a person shall not be regarded as disposing of an interest in land by reason of the person conveying or transferring the interest by means of security or of the person granting a lease of the land on terms which do not require the payment of any fine, premium or like sum, and
- (b) an option or other right to acquire or dispose of any interest in any land shall be deemed to be an interest in the land.

(3) This Chapter shall apply notwithstanding *Chapter 8 of Part 4*.

640.—(1) For the purposes of *subsection (2)*—

- (a) a dealing in land shall be regarded as taking place where a person having an interest in any land disposes, as regards the whole or any part of the land, of that interest or of an interest which derives from that interest, and
- (b) a person who secures the development of any land shall be regarded as developing that land.

Extension of charge under Case I of Schedule D to certain profits from dealing in or developing land.

[F(MP)A68 s17;
FA81 s28]

(2) (a) Where apart from this section all or some of the activities of a business of dealing in or developing land would not be regarded as activities carried on in the course of a trade within Schedule D but would be so regarded if every disposal of an interest in land included among such activities (including a disposal of an interest in land which apart from this section is a disposal of the full interest in the land which the person carrying on the business had acquired) were treated as fulfilling the conditions specified in *paragraph (b)*, the business shall be deemed to be wholly a trade within Schedule D or, as the case may be, part of such a trade, and the profits or gains of that business shall be charged to tax under Case I of Schedule D accordingly.

(b) The conditions referred to in *paragraph (a)* are—

PT.22 S.640

- (i) that the disposal was a disposal of the full interest in the land which the person carrying on the business had acquired, and
- (ii) that the interest disposed of had been acquired by such person in the course of the business.

(3) Where an interest in land is disposed of in the course of the winding up of a company, the company shall for the purposes of this section be deemed not to have ceased to carry on the trade or business which it carried on before the commencement of the winding up until the completion of the disposal, or of the last such disposal where there is more than one, and the question whether any such disposal was made in the course of a business of dealing in or developing land which is, or is to be deemed to be, a trade or part of a trade shall accordingly be determined without regard to the fact that the company is being wound up.

Computation under Case I of Schedule D of profits or gains from dealing in or developing land.

641.—(1) Where a business of dealing in or developing land is, or is to be regarded as, a trade within Schedule D or a part of such a trade, the provisions applicable to Case I of that Schedule shall, as respects the computation of the profits or gains of the business, apply subject to *subsections (2) to (4)*.

[F(MP)A68 s18;
FA81 s29(2)(a)]

- (2) (a) Any consideration (other than rent or an amount treated as rent under *section 98*) for the disposal of an interest in any land or in a part of any land shall be treated as a consideration for the disposal of trading stock and accordingly shall be taken into account as a trading receipt.
- (b) Any interest in any land which is held by a person carrying on a trade (in this section referred to as “the trader”) and which has become trading stock of the trade shall thereafter, until the discontinuance of the trade, continue to be such trading stock.
- (c) Where the trader has acquired an interest in any land otherwise than for consideration in money or money’s worth, the trader shall, subject to *paragraph (d)*, be deemed to have purchased the interest for a consideration equal to its market value at the time of acquisition.
- (d) Where at the time of acquisition of an interest in any land the trade had not been commenced or the interest was not then appropriated as trading stock, the trader shall be deemed to have purchased the interest for a consideration equal to its market value at the time of its appropriation as trading stock.
- (e) Any consideration (other than receipts within *section 75(I)(b)*) the profits or gains arising from which are by virtue of that section chargeable to tax under Case V of Schedule D) for the granting by the trader of any right in relation to the development of any land shall be taken into account as a trading receipt.

(3) Account shall not be taken of any sum (in this subsection referred to as “the relevant sum”) which is paid or is payable at any time by the trader as consideration for the forfeiture or surrender of the right of any person to an annuity or other annual payment unless—

- (a) the annuity or other annual payment arises under—
- (i) a testamentary disposition, or
 - (ii) a liability incurred for—
 - (I) valuable and sufficient consideration all of which is required to be taken into account in computing for the purposes of income tax or corporation tax the income of the person to whom that consideration is given, or
 - (II) consideration given to a person who—
 - (A) has not at any time carried on a business of dealing in or developing land which is, or is to be regarded as, a trade or a part of a trade, and
 - (B) is not and was not at any time connected with any of the following persons—
 - (aa) the trader,
 - (bb) a person who is or was at any time connected with the trader, and
 - (cc) any other person who, in the course of a business of dealing in or developing land which is, or is to be regarded as, a trade or a part of a trade, holds or held an interest in land on which the annuity or other annual payment was charged or reserved,

or

- (b) the relevant sum is required to be taken into account in computing for the purposes of income tax or corporation tax the profits or gains of a trade of dealing in or developing land carried on by the person to whom the relevant sum is payable.

- (4) (a) *Paragraph (b)* shall apply where—
- (i) a sum (in this subsection referred to as “the relevant sum”) is payable—
 - (I) by a person (in this subsection referred to as “the relevant person”) who is not the trader, and
 - (II) as consideration for the forfeiture or surrender of the right (in this subsection referred to as “the right”) of any person to an annuity or other annual payment,
 - (ii) the relevant sum is not required to be taken into account in computing for the purposes of income tax or corporation tax the profits or gains of a trade of dealing in or developing land carried on by the person to whom the relevant sum is payable, and

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.22 S.641

- (iii) the trader incurs expenditure (in this subsection referred to as “the cost”) in acquiring any interest (in this subsection referred to as “the interest”) in land on which the annuity or other annual payment had been reserved or charged.

(b) Where this paragraph applies—

- (i) the trader shall be treated as having expended in acquiring the interest an amount equal to the amount which would have been expended if the right had not been forfeited or surrendered, and
- (ii) the excess of the cost over the amount determined in accordance with *subparagraph (i)* shall be treated for the purposes of *subsection (3)* as having been payable by the trader as consideration for the forfeiture or surrender of the right.

(c) For the purposes of this subsection, all such apportionments and valuations shall be made as appear to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

(d) This subsection shall not apply where the relevant person carries on a trade of dealing in or developing land and pays the relevant sum in the course of carrying on that trade.

Transfers of interests in land between certain associated persons.

[F(MP)A68 s19]

642.—(1) Where an interest in land is disposed of by any person (in this subsection referred to as “the disponer”) to a person connected with the disponer (in this subsection referred to as “the transferee”) and—

- (a) the interest is disposed of at a price greater than its market value, and
- (b) the price—
 - (i) is not to be taken into account in relation to the disponer in computing for tax purposes the profits or gains of a trade which is or includes a business of dealing in or developing land, but
 - (ii) is to be so taken into account in relation to the transferee,

the transferee shall for tax purposes be deemed to have acquired the interest at a price equal to the market value of the interest at the time of its acquisition by the transferee.

(2) (a) Where an interest in land is disposed of by any person (in this subsection referred to as “the disponer”) to a person connected with the disponer (in this subsection referred to as “the transferee”) and—

- (i) the interest is disposed of at a price less than its market value, and
- (ii) the price—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(I) is not to be taken into account in relation to the transferee in computing for tax purposes the profits or gains of a trade which is or includes a business of dealing in or developing land, but

(II) is to be so taken into account in relation to the disponent,

the disponent shall for tax purposes be deemed to have disposed of the interest at a price equal to the market value of the interest at the time of the disposal by the disponent.

(b) A disposal by means of gift shall be regarded for the purposes of this subsection as being a disposal at a nominal price.

(3) In the application of this section to a case in which a lease is granted, any reference to price shall be construed as a reference to the fine, premium or like sum payable for the grant of the lease.

643.—(1) In this section and in *section 644*—

“capital amount” means any amount in money or money’s worth which apart from this section is not to be included in any computation of income for the purposes of the Tax Acts, and other expressions which include the word “capital” shall be construed accordingly;

Tax to be charged under Case IV on gains from certain disposals of land.

[F(MP)A68 s20; FA81 s29(3)]

“chargeable period” means an accounting period of a company or a year of assessment;

“land” includes any interest in land, and references to the land include references to all or any part of the land;

“share” includes stock;

references to property deriving its value from land include references to—

(a) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value or the greater part of its value directly or indirectly from land, and

(b) any option, consent or embargo affecting the disposition of land.

(2) This section shall not apply to a gain accruing to an individual which by virtue of *section 604* is exempt from capital gains tax or which would be so exempt but for *subsection (14)* of that section.

(3) This section shall apply in any case where—

(a) land or any property deriving its value from land is acquired with the sole or main object of realising a gain from disposing of the land,

(b) land is held as trading stock, or

- (c) land is developed by a company with the sole or main object of realising a gain from disposing of the land when developed,

and any gain of a capital nature is obtained from disposing of the land—

- (i) by the person acquiring, holding or developing the land, or by a person connected with that person, or
- (ii) where any arrangement or scheme is effected as respects the land which enables the gain to be realised directly or indirectly by any transaction, or by any series of transactions, by any person who is a party to or concerned in the arrangement or scheme,

and this subsection shall apply whether that gain is obtained by any such person for that person's benefit or for the benefit of any other person.

(4) Where this section applies, the whole of any gain mentioned in *subsection (3)* shall for the purposes of the Tax Acts be treated—

- (a) as being income which arises at the time when the gain is realised and which constitutes profits or gains chargeable to tax under Case IV of Schedule D for the chargeable period in which the gain is realised, and
- (b) subject to *subsections (5) to (17)*, as being income of the person by whom the gain is realised.

(5) For the purposes of this section, land shall be treated as disposed of if, by any one or more transactions or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land or control over the land is effectively disposed of, and references in *subsection (3)* to the acquisition or development of land or property with the sole or main object of realising a gain from disposing of the land shall be construed accordingly.

(6) For the purposes of this section—

- (a) where, whether by a premature sale or otherwise, a person directly or indirectly makes available to another person the opportunity of realising a gain, the gain of that other person shall be treated as having been obtained for that other person by the first-mentioned person, and
- (b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose is discerned in those transactions or if there is other sufficient evidence of a common purpose.

(7) In applying this section, account shall be taken of any method, direct or indirect, by which—

- (a) any property or right is transferred or transmitted to another person, or
- (b) the value of any property or right is enhanced or diminished,

and accordingly the occasion of the transfer or transmission of any property or right by whatever method and the occasion when the

value of any property or right is enhanced may be treated as an occasion on which tax becomes chargeable under this section. Pr.22 S.643

(8) *Subsection (7)* shall apply in particular to—

- (a) sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
- (b) any method by which any property or right, or the control of any property or right, is transferred or transmitted to any person by assigning—
 - (i) share capital or other rights in a company,
 - (ii) rights in a partnership, or
 - (iii) an interest in settled property,
- (c) the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo, and
- (d) the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.

(9) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land and allowing only such expenses as are attributable to the land disposed of, and in applying this subsection—

- (a) where an interest in land is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case, and
- (b) account may be taken of the adjustments to be made in computing such profits or gains under *sections 99(2)* and *100(4)*.

(10) *Paragraph (c)* of *subsection (3)* shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop that land was formed, and which would not be within *paragraph (a)* or *(b)* of that subsection, and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.

(11) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person (whether or not put at the disposal of the first-mentioned person), *subsection (4)(b)* shall apply to the gain or that part of the gain with the substitution of that other person for the person by whom the gain was realised.

(12) Where there is a disposal of shares in—

- (a) a company which holds land as trading stock, or
- (b) a company which owns directly or indirectly 90 per cent or more of the ordinary share capital of another company which holds land as trading stock,

and all the land so held is disposed of in the normal course of its trade by the company which held the land, and so as to procure that all opportunity of profit in respect of the land arises to that company, then, notwithstanding *subsection (3)(i)*, this section shall not apply to any gain accruing to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under *subsection (3)(ii)*).

(13) In ascertaining for the purposes of this section the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum or articles of association or other document, shall not be conclusive.

(14) For the purposes of ascertaining whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is just and reasonable.

(15) In applying this section—

(a) any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable, and

(b) all such valuations shall be made as may be necessary to give effect to this section.

(16) For the purposes of this section, partners, trustees of settled property or personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being partners, trustees or personal representatives.

(17) This section shall apply to a person, whether resident in the State or not, if all or any part of the land in question is situated in the State.

Provisions
supplementary to
section 643.

[F(MP)A68 s21;
FA81 s29(3)]

644.—(1) (a) Where a person (in this subsection referred to as “the first-mentioned person”) is assessed to tax under *section 643* and that assessment to tax arises in consequence of and in respect of consideration receivable by another person (in this subsection referred to as “the second-mentioned person”)—

(i) the first-mentioned person shall be entitled to recover from the second-mentioned person any part of that tax which the first-mentioned person has paid,

(ii) if any part of that tax remains unpaid at the expiration of 6 months from the date when it became due and payable, it shall be recoverable from the second-mentioned person as though the second-mentioned person were the person so assessed, but without prejudice to the right to recover the tax from the first-mentioned person, and

(iii) for the purposes of *subparagraph (i)*, the inspector shall on request furnish a certificate specifying the amount of income in respect of which

tax has been paid and the amount of tax so paid, Pr.22 S.644
and the certificate shall be evidence until the
contrary is proved of any facts stated in the cer-
tificate.

- (b) For the purposes of this subsection, any amount which by virtue of *section 643* is treated as the income of a person shall, notwithstanding any other provision of the Tax Acts, be treated as the highest part of the person's income.

(2) Where it appears to the Revenue Commissioners that any person entitled to any consideration or other amount chargeable to tax under *section 643* is not resident in the State, they may direct that *section 238* shall apply to any payment forming part of that amount as if the payment were an annual payment charged with tax under Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under *subsection (1)(a)(ii)*.

(3) *Section 643* shall apply subject to any provision of the Tax Acts deeming income to be income of a particular person.

(4) Where by virtue of *section 643(3)(c)* any person is charged to tax on the realisation of a gain, and by virtue of *section 643(10)* the computation of the gain proceeded on the basis that the land or some other property was appropriated at any time as trading stock, that land or other property shall also be treated on that basis for the purposes of *section 596*.

(5) Where by virtue of *section 643(11)* the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised and the tax has been paid, then, for the purposes of *sections 551* and *554*, the person for whom the capital amount was obtained or the person by whom the gain was realised, as may be appropriate, shall be regarded as having been charged to the tax so paid.

645.—(1) The inspector may by notice in writing require any person to furnish him or her within such time as may be specified in the notice (not being less than 30 days) with such particulars as the inspector thinks necessary for the purposes of *sections 643* and *644*. Power to obtain information.
[F(MP)A68 s22;
FA81 s29(3)]

(2) The particulars which a person is obliged to furnish under this section, if required by notice to do so, shall include particulars as to—

- (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
- (b) transactions or arrangements which in the opinion of the inspector should properly be examined for the purposes of *sections 643* and *644*, notwithstanding that in the opinion of the person to whom the notice is given no liability to tax arises under those sections, and
- (c) whether the person to whom the notice is given has taken or is taking any transactions or arrangements of a description specified in the notice and, if so, what transactions or arrangements, and what part the person has taken or is taking in those transactions or arrangements.

PT.22 S.645

(3) Notwithstanding anything in *subsection (2)*, a solicitor shall not be deemed for the purposes of *subsection (2)(c)* to have taken part in any transaction or arrangements by reason only that he or she has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him or her on behalf of a client, be compellable under this section, except with the consent of the client, to do more than state that he or she is or was acting on behalf of a client, and give the name and address of the client.

Postponement of payment of income tax to be permitted in certain cases.

[F(MP)A68 s23(1) to (3) and (5)]

646.—(1) In this section, “basis period”, in relation to any year of assessment, means the period on the profits or gains of which income tax for that year is finally computed under Case I of Schedule D in respect of the trade or, where by virtue of the Income Tax Acts the profits or gains of any other period are taken to be the profits or gains of that period, that other period.

(2) Where—

- (a) a person (in this section referred to as “the vendor”) carrying on a trade of dealing in or developing land (in this section referred to as “the trade”) disposes in the course of the trade of the full interest acquired by the person in any land,
- (b) the person to whom the disposition is made (in this section referred to as “the purchaser”) is not connected with the vendor,
- (c) the terms subject to which the disposition is made provide for the grant of a lease of the land by the purchaser to the vendor,
- (d) a sum representing the value of the vendor’s right to be granted a lease is to be taken into account as a consideration for the disposal in computing the profits or gains of the trade, and
- (e) within 6 months after the time of the disposition, a lease of the land in accordance with those terms is granted by the purchaser to the vendor,

subsections (3) and (4) shall apply in relation to income tax for a year of assessment in the basis period for which the disposition is made.

(3) Where, at the time when any amount of income tax charged by an assessment in respect of the profits or gains of the trade would but for this subsection become due and payable, the vendor—

- (a) retains the leasehold interest acquired by the vendor from the purchaser, and
- (b) has not disposed, as regards the whole or any part of the land, of an interest derived from that leasehold interest,

then, a part of that amount of income tax equal to 90 per cent of so much of such tax as would not have been chargeable if no sum had to be taken into account as mentioned in *subsection (2)(d)* shall be payable in 9 equal instalments at yearly intervals the first of which is payable on the 1st day of January in the year following that in

which but for this subsection that amount of income tax would have been payable. Pr.22 S.646

(4) Where, in a case in which the postponement of payment of any amount of income tax has been authorised by *subsection (3)*, the vendor—

- (a) ceases to retain the leasehold interest acquired by the vendor from the purchaser,
- (b) disposes, as regards the whole or any part of the land, of an interest derived from that leasehold interest,
- (c) being an individual, dies, or
- (d) being a company, commences to be wound up,

then, that amount of income tax or, as the case may be, so much of that amount of income tax as has not already become due and payable shall become due and payable forthwith.

647.—(1) Where—

- (a) for any accounting period the profits of a company consist of or include income from a trade of dealing in or developing land in the course of which the company disposes of the full interest acquired by it in any land,
- (b) in relation to that disposal, the conditions specified in *paragraphs (b) to (e) of section 646(2)* are satisfied, and
- (c) at the time when any amount of corporation tax charged by an assessment for that accounting period would but for this section become due and payable the company—
 - (i) retains the leasehold interest acquired by it from the person to whom the disposition is made, and
 - (ii) has not disposed, as regards the whole or any part of the land, of an interest derived from that leasehold interest,

Postponement of payment of corporation tax to be permitted in certain cases.

[CTA76 s150]

then, a part of that amount of corporation tax equal to 90 per cent of so much of that amount as would not have been chargeable if no sum had to be taken into account as mentioned in *section 646(2)(d)* shall be payable in 9 equal instalments at yearly intervals the first of which shall be payable on the expiration of 12 months from the date on which but for this section that amount of corporation tax would have been payable.

(2) Where, in a case in which the postponement of payment of any amount of corporation tax has been authorised by *subsection (1)*, the company—

- (a) ceases to retain the leasehold interest acquired by it,
- (b) disposes, as regards the whole or any part of the land, of an interest derived from that leasehold interest, or
- (c) commences to be wound up,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.22 S.647

then, that amount of corporation tax or, as the case may be, so much of that amount of corporation tax as has not already become due and payable shall become due and payable forthwith.

CHAPTER 2

Capital gains tax: disposals of development land

Interpretation
(Chapter 2).

648.—In this Chapter—

[FA82 s36(1)]

“the Act of 1963” means the Local Government (Planning and Development) Act, 1963;

“compulsory disposal” means a disposal to an authority possessing compulsory purchase powers, which is made pursuant to the exercise of those powers or the giving of formal notice of intention to exercise those powers, other than a disposal to which section 29 of the Act of 1963 applies;

“current use value”—

- (a) in relation to land at any particular time, means the amount which would be the market value of the land at that time if the market value were calculated on the assumption that it was at that time and would remain unlawful to carry out any development (within the meaning of section 3 of the Act of 1963) in relation to the land other than development of a minor nature, and
- (b) in relation to shares in a company (being shares deriving their value or the greater part of their value directly or indirectly from land, other than shares quoted on a stock exchange) at any particular time, means the amount which would be the market value of the shares at that time if the market value were calculated on the same assumption, in relation to the land from which the shares so derive value, as is mentioned in *paragraph (a)*;

“development land” means land in the State the consideration for the disposal of which, or the market value of which at the time at which the disposal is made, exceeds the current use value of that land at the time at which the disposal is made, and includes shares deriving their value or the greater part of their value directly or indirectly from such land, other than shares quoted on a Stock Exchange;

“development of a minor nature” means development (not being development by a local authority or a statutory undertaker within the meaning of section 2 of the Act of 1963) which, under or by virtue of section 4 of the Act of 1963, is exempted development for the purposes of the Local Government (Planning and Development) Acts, 1963 to 1993;

“relevant disposal” means a disposal of development land made on or after the 28th day of January, 1982.

649.—(1) Notwithstanding any provision to the contrary in the Corporation Tax Acts, a company shall not be chargeable to corporation tax in respect of chargeable gains accruing to it on relevant disposals, and accordingly—

Pr.22
Companies chargeable to capital gains tax in respect of chargeable gains accruing on relevant disposals.

- (a) such gains shall not be regarded as profits of the company for the purposes of corporation tax, and
- (b) the company shall be chargeable to capital gains tax under the Capital Gains Tax Acts in respect of those gains.

[FA82 s36(4) to (6); FA92 s68(a)]

(2) *Sections 617 and 621 to 626* shall apply with any necessary modifications in relation to capital gains tax to which a company is chargeable on chargeable gains accruing to the company on a relevant disposal as they apply in relation to corporation tax on chargeable gains, and references in those sections to corporation tax shall be construed as including references to capital gains tax.

- (3) (a) Where a company which is or has been a member of a group of companies (within the meaning of *section 616*) makes a relevant disposal of an asset which, as a result of a disposal which was not a relevant disposal, the company had acquired from another member of that group at a time when both were members of the group, the amount of the chargeable gain accruing on the relevant disposal and the capital gains tax on that gain shall be computed as if all members of the group for the time being were the same person and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of the asset by the member disposing of the asset.
- (b) Notwithstanding *paragraph (a)*, where under *section 618(2) or 623* a member of the group (in this paragraph referred to as “the first-mentioned member”) had been treated as having acquired or reacquired the asset at a time later than the original acquisition or provision of the asset by the first-mentioned member or by another member of the group, as the case may be, *paragraph (a)* shall apply as if the reference in that paragraph to the acquisition or provision of the asset by the group were a reference to its acquisition or reacquisition so treated as having been made by the first-mentioned member.

650.—*Sections 651 to 654* shall not apply to a relevant disposal made by an individual in any year of assessment if the total consideration in respect of all relevant disposals made by that individual in that year does not exceed £15,000.

Exclusion of certain disposals.
[FA82 s37]

651.—For the purposes of computing the chargeable gain accruing to a person on a relevant disposal, the adjustment of sums allowable as deductions from the consideration for the disposal which under *section 556(2)* would otherwise be made shall be made only to—

Restriction of indexation relief in relation to relevant disposals.
[FA82 s38]

- (a) such part of the amount or value of the consideration in money or money’s worth given by the person or on the person’s behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition, as is equal to the current use value of the asset at the date of the acquisition together with

such proportion of the incidental costs to the person of the acquisition as would be referable to such value, or

- (b) in the case of an asset to which *section 556(3)* applies, such part of the market value of the asset on the 6th day of April, 1974, as is equal to the current use value of the asset on that date.

Non-application of reliefs on replacement of assets in case of relevant disposals.

652.—(1) Consideration obtained for a relevant disposal shall not be regarded for the purposes of relief under *section 597* as having been obtained for the disposal of old assets within the meaning of that section.

[FA82 s39; FA95 s73(1); FA97 s77(1)]

- (2) (a) In this subsection, “the relevant local authority”, in relation to a relevant disposal, 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 land being disposed of is situated.

- (b) *Subsection (1)* shall not apply to a relevant disposal where the relevant local authority gives a certificate in writing to the person making the disposal stating that the land being disposed of is subject to a use which, on the basis of guidelines issued by the Minister for the Environment and Local Government, is inconsistent with the protection and improvement of the amenities of the general area within which that land is situated or is otherwise damaging to the local environment.

- (3) (a) In this subsection—

“assets of an authorised racecourse” means assets of a racecourse which is an authorised racecourse where the assets are used for the provision of appropriate facilities or services to carry on horseracing at race meetings or to accommodate persons associated with horseracing, including members of the public;

“authorised racecourse” has the same meaning as in section 2 of the Irish Horseracing Industry Act, 1994.

- (b) Subject to *paragraph (c)*, *subsection (1)* shall not apply to consideration obtained for a relevant disposal where—

(i) throughout a period of 5 years ending with the time of disposal the old assets, and

(ii) the new assets within the meaning of *section 597*, are assets of an authorised racecourse.

- (c) *Section 597* shall apply in relation to assets of an authorised racecourse as if—

(i) references in *subsection (4)* and (5) of that section to new assets ceasing to be used for the purposes of a trade included a reference to new assets ceasing to be assets of an authorised racecourse, and

(ii) *subsection (1)(b)* had not been enacted.

- (4) *Section 605* shall not apply to a relevant disposal.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(5) (a) In this subsection, “farming” has the same meaning as in *Pr.22 S.652 section 654.*

(b) *Subsection (4)* shall not apply to a relevant disposal made to an authority possessing compulsory purchase powers where—

(i) at the time of the disposal the original assets (within the meaning of *section 605*) consist of land occupied and used only for the purposes of farming, and

(ii) the disposal is made—

(I) for the purposes of enabling the authority to construct, widen or extend a road or part of a road, or

(II) for a purpose connected with or ancillary to the construction, widening or extension of a road or part of a road by the authority.

(6) *Subsections (1)* and *(4)* shall not apply to a relevant disposal made by a body of persons established for the sole purpose of promoting athletic or amateur games or sports, being a disposal which is made in relation to such of the activities of that body as are directed to that purpose.

653.—(1) Notwithstanding any provision to the contrary in the Capital Gains Tax Acts, any losses accruing on disposals which are not relevant disposals shall not, in the computation of a person’s liability to capital gains tax in respect of chargeable gains accruing on relevant disposals, be deducted from the amount of those chargeable gains.

Restriction of relief for losses, etc. in relation to relevant disposals.

[FA82 s40(1) and (2)]

(2) In the computation of the amount on which under *section 31* capital gains tax is to be charged on chargeable gains accruing on relevant disposals, any allowable losses accruing on relevant disposals may be deducted in accordance with that section but, in so far as they are so deducted, they shall not be treated as relevant allowable losses within the meaning of *section 78(4)* for the purposes of the calculation required to be made under *section 78(2)*, and for the purposes of this subsection any necessary assessments or additional assessments, as may be appropriate, may be made.

OTHER SPECIAL PROVISIONS

PART 23

FARMING AND MARKET GARDENING

CHAPTER 1

Interpretation and general

654.—In this Part other than in *section 664*—

Interpretation (*Part 23*).

“farming” means farming farm land, that is, land in the State wholly or mainly occupied for the purposes of husbandry, other than market garden land;

[ITA67 s54(1); FA74 s13(1); FA75 s12; FA78 s12(1); FA83 s120 and Sch4]

Pt.23 S.654

“market garden land” means land in the State occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops), and “market gardening” shall be construed accordingly;

“occupation”, in relation to any land other than market garden land, means having the use of that land or having the right by virtue of any easement (within the meaning of *section 96*) to graze livestock on that land.

Farming and market gardening profits to be charged to tax under Schedule D.

655.—(1) For the purposes of the Tax Acts, farming shall be treated as the carrying on of a trade or, as the case may be, of part of a trade, and the profits or gains of farming shall be charged to tax under Case I of Schedule D.

[ITA67 s54(2)(a); FA69 s65(1) and Sch5 PtI; FA74 s15; FA83 s11]

(2) Notwithstanding anything to the contrary in *Part 43*, farming carried on by any person, whether solely or in partnership, shall be treated as the carrying on of a single trade; but this subsection shall not prejudice or restrict the operation of *Chapter 3* of *Part 4* where a partnership trade of farming is set up and commenced or is permanently discontinued.

(3) Market gardening shall, for the purposes of the Tax Acts in relation to the person by whom it is carried on, be treated as a trade, and the profits or gains of market gardening shall be charged to tax under Case I of Schedule D.

Farming: trading stock of discontinued trade.

656.—(1) In this section, “specified return date for the chargeable period” has the same meaning as in *section 950*.

[ITA67 s 62(1) proviso; FA96 s11]

(2) Where trading stock of a trade of farming is transferred by a farmer (in this subsection referred to as “the transferor”) to another farmer (in this subsection referred to as “the transferee”), the transferor and the transferee may jointly elect that—

(a) *section 89(2)(b)* shall not apply, and

(b) in computing their respective profits or gains from farming, the transferor and the transferee shall include such stock at the value at which the stock is included in the accounts of the transferor at the date of discontinuance,

and such election shall be made in writing on or before the specified return date for the chargeable period in which the stock is transferred.

Averaging of farm profits.

657.—(1) In this section—

[FA74 s16(1) to (2) and (4) to (5) and s20B (apart from proviso to subsection (2)(b)); FA75 s14(1)(a) and (b); FA77 s10; FA81 s10; FA83 s120 and Sch4; FA90 s20(2); FA97 s146(2) and Sch9 PtII]

“an individual to whom *subsection (1)* applies” means an individual carrying on farming in a year of assessment and—

(a) who at any time in the year of assessment is also carrying on either solely or in partnership another trade or profession,

(b) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment also carrying on either solely or in partnership another trade or profession, other than a trade consisting solely of the provision of accommodation in buildings on the farm land

occupied by the individual, the provision of such accommodation being ancillary to the farming of that farm land, Pr.23 S.657

- (c) who at any time in the year of assessment is a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company, or
- (d) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company,

but *paragraphs (b) and (d)* shall not apply in a case where the wife of an individual is treated for tax purposes as not living with her husband;

“company” means a company within the meaning of the Companies Act, 1963;

“director” includes a person holding any office or employment under a company.

(2) The definition of “an individual to whom *subsection (1)* applies” shall apply in the case of a married person whose wife is carrying on farming, and shall apply in such a case as if the references to the individual were references to the individual’s wife.

(3) For the purposes of *paragraphs (c) and (d)* of the definition of “an individual to whom *subsection (1)* applies”, ordinary share capital which is owned or controlled in the manner referred to in those paragraphs by a person, being the spouse or a minor child of a director, or by the 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.

- (4) (a) Subject to *paragraph (b)*, where an assessment in respect of profits or gains from farming is made for any year of assessment on an individual, other than an individual to whom *subsection (1)* applies, the individual may on giving notice in writing to that effect to the inspector within 30 days after the date of the notice of assessment elect to be charged to income tax for that year in respect of those profits or gains in accordance with *subsection (5)*, and—
 - (i) the Income Tax Acts shall apply in relation to the assessment as if the notice given to the inspector were a notice of appeal against the assessment under *section 933*, and
 - (ii) the assessment shall be amended as necessary so as to give effect to the election so made by the individual.
- (b) This subsection shall not apply as respects any year of assessment where for either of the 2 immediately preceding years of assessment the individual was not charged to

tax in respect of profits or gains from farming in accordance with *section 65(1)*.

(5) (a) An individual who is to be charged to income tax for a year of assessment in respect of profits or gains from farming in accordance with this subsection shall be so charged under Case I of Schedule D on the full amount of those profits or gains determined on a fair and just average of the profits or gains from farming of the individual in each of the 3 years ending on the date in the year of assessment to which it has been customary to make up accounts or, where it has not been customary to make up accounts, on the 5th day of April in the year of assessment.

(b) Any profits or gains arising to, and any loss sustained by, the individual in the 3 years referred to in *paragraph (a)* in the carrying on of farming shall be aggregated for the purposes of this subsection.

(6) (a) Subject to *paragraph (b)* and *subsection (7)*, where as respects a year of assessment an individual duly elects in accordance with *subsection (4)*, the individual shall be charged to income tax for that year and for each subsequent year of assessment in respect of profits or gains from farming in accordance with *subsection (5)*.

(b) This subsection shall not apply for any year of assessment in which the individual—

(i) is an individual to whom *subsection (1)* applies, or

(ii) is not chargeable to tax on profits or gains from farming.

(7) Where for a year of assessment an individual is by virtue of *subsection (6)* chargeable to income tax in respect of profits or gains from farming in accordance with *subsection (5)* and the individual was so chargeable for each of the 3 years of assessment immediately preceding the year of assessment, he or she may, by notice in writing given to the inspector with the return required under *section 951* for the year of assessment, elect to be charged to tax for that year of assessment in accordance with *Chapter 3 of Part 4*; but, where in the case of an individual *subsection (6)* does not apply for any year of assessment by reason of *paragraph (b)(i)* of that subsection, the individual shall be deemed to be entitled to elect and to have duly elected, as respects that year of assessment, in accordance with this subsection.

(8) Where as respects a year of assessment an individual duly elects or is deemed to have elected in accordance with *subsection (7)*—

(a) the individual shall be charged to income tax for that year and for each subsequent year of assessment in accordance with *Chapter 3 of Part 4*, and

(b) there shall be made such assessment or assessments, if any, as may be necessary to secure that the amount of profits or gains from farming on which the individual is charged for each of the 2 years of assessment immediately preceding the year preceding the year of assessment, as respects which the individual elects or is deemed to have elected

in accordance with *subsection (7)*, shall be not less than the amount on which the individual is charged by virtue of *subsection (6)* in accordance with *subsection (5)* for the year preceding the year of assessment. Pr.23 S.657

(9) In determining for any year of assessment what capital allowances, balancing allowances or balancing charges are to be made to or on an individual in taxing a trade of farming in accordance with *subsection (5)*, the individual shall be deemed to be chargeable for that year of assessment in respect of the profits or gains of the trade in accordance with *section 65(1)*.

(10) Nothing in this section shall prejudice or restrict the operation of *section 67* in any case where a trade of farming is permanently discontinued.

(11) Where for any year of assessment a loss is aggregated with profits or gains in accordance with *subsection (5)(b)* and the amount of the loss is in excess of the profits or gains, one-third of the amount of such excess shall be deemed for the purposes of *Chapter 1 of Part 12* to be a loss sustained in the trade of farming in the final year of the 3 years on the average of the profits or gains of which the individual is to be charged to tax for that year of assessment, and any loss so aggregated shall not be eligible for relief under any provision of the Income Tax Acts apart from this subsection.

(12) The profits or gains from farming on which an individual is to be charged to tax for any year of assessment by virtue of *subsection (6)* in accordance with *subsection (5)* shall be deemed to be the profits or gains from farming of that individual in determining his or her total income for that year for the purposes of the Income Tax Acts apart from this section, and any provision of those Acts relating to the delivery of any return, account (including balance sheet), statement, declaration, book, list or other document or the furnishing of any particulars shall apply as if this section had not been enacted.

658.—(1) This section shall apply to any person carrying on farming, the profits or gains of which are chargeable to tax in accordance with *section 655*.

Farming: allowances for capital expenditure on construction of buildings and other works.

(2) (a) Where a person to whom this section applies incurs, for the purpose of a trade of farming land occupied by such person, any capital expenditure on the construction of farm buildings (excluding a building or part of a building used as a dwelling), fences, roadways, holding yards, drains or land reclamation or other works, there shall be made to such person during a writing-down period of 7 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as “farm buildings allowances”) in respect of that expenditure and such allowances shall be made in taxing the trade.

[FA74 s22(1) to (3) and (5) to (11); CTA76 s21(1) and Sch1 par70; FA83 s15; FA93 s34(2); FA94 s23]

(b) As respects each of the first 6 years of the writing-down period, the farm buildings allowance to be made under this subsection shall be 15 per cent of the capital expenditure referred to in *paragraph (a)* and, as respects the last year of the writing-down period, the farm buildings allowance to be made under this subsection shall be 10 per cent of that expenditure.

(c) Where the capital expenditure referred to in *paragraph (a)* was incurred before the 27th day of January, 1994, this section shall apply subject to *paragraph 23* of *Schedule 32*.

(3) For the purposes of the application to this section of *section 321*, “basis period” has the meaning assigned to it by *section 306*.

(4) Where for any year of assessment an individual is not chargeable to income tax in respect of profits or gains from farming in accordance with *Chapter 3* of *Part 4*, and that year is a year of assessment in respect of which, if the individual had been so chargeable, he or she could have claimed a farm buildings allowance under this section, that allowance shall for the purposes of this section be deemed to have been made for that year of assessment and shall not be carried forward and set off against profits or gains chargeable for any subsequent year of assessment.

(5) Any capital expenditure incurred by a person about to carry on farming but before commencing farming shall for the purposes of this section be treated as if it had been incurred on the first day on which the person commences farming.

(6) Any claim for a farm buildings allowance to be made to a person under this section shall be included in the annual statement required to be delivered by the person under the Income Tax Acts of the profits or gains from farming, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(7) Any claim for a farm buildings allowance under this section 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.

(8) The Appeal Commissioners shall hear and determine an appeal to them made under *subsection (7)* as if it were an appeal against an assessment to 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.

(9) Subject to *subsection (10)*, where a person who is entitled to a farm buildings allowance under this section in respect of capital expenditure incurred for the purpose of farming farm land transfers such person’s interest in that farm land or any part of that farm land to another person, that other person shall, to the exclusion of the first-mentioned person, be entitled to the allowances under this section for the chargeable periods following the chargeable period in which the transfer of interest took place.

(10) Where the transfer of interest to which *subsection (9)* refers takes place in relation to part of the farm land, *subsection (9)* shall apply to so much of the allowance as is properly referable to that part of the land as if it were a separate allowance.

(11) Where expenditure is incurred partly for the purposes of farming and partly for other purposes, *subsection (2)* 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 farming.

(12) No farm buildings 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 has been made in respect of that expenditure under *Chapter 1 of Part 9*. Pr.23 S.658

(13) Expenditure shall not be regarded for the purposes of this section as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person.

659.—(1) This section shall apply to any person—

(a) carrying on farming, the profits or gains of which are chargeable to tax in accordance with *section 655*,

Farming: allowances for capital expenditure on the construction of farm buildings, etc. for control of pollution.

(b) for whom, in respect of capital expenditure to which *paragraph (c)* refers and in respect of farm land occupied by him or her, a farm nutrient management plan has been drawn up by an agency or planner approved to draw up such plans by the Department of Agriculture and Food, and drawn up in accordance with—

[FA97 s20(1) to (13)]

(i) the guidelines in relation to such plans entitled “Farm Nutrient Management Plan” issued by the Department of Agriculture, Food and Forestry on the 21st day of March, 1997, or

(ii) a plan drawn up under the scheme known as the Rural Environment Protection Scheme (REPS) or the scheme known as the Erne Catchment Nutrient Management Scheme, both being schemes administered by the Department of Agriculture and Food,

and

(c) who incurs capital expenditure on or after the 6th day of April, 1997, and before the 6th day of April, 2000, on the construction of those farm buildings (excluding a building or part of a building used as a dwelling) or structures specified in the Table to this section in the course of a trade of farming land occupied by such person where such building or structures are constructed in accordance with that farm nutrient management plan and are certified as being necessary by that agency or planner for the purpose of securing a reduction in or the elimination of any pollution arising from the trade of farming.

(2) Subject to the provisions of Article 6 of Council Regulation (EEC) No. 2328/91 of 15 July 1991¹ on improving the efficiency of agricultural structures, as amended, and subject to *subsection (3)*, where a person to whom this section applies—

(a) has delivered to the Department of Agriculture and Food, a farm nutrient management plan referred to in *subsection (1)(b)*, and

(b) incurs capital expenditure to which *subsection (1)* applies,

¹O.J. No. L218 of 6.8.1991, p. 1.

there shall be made to such person during a writing-down period of 8 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as “farm pollution control allowances”) in respect of that expenditure and such allowances shall be made in taxing the trade.

(3) The farm pollution control allowances to be made in accordance with *subsection (2)* in respect of capital expenditure incurred in a chargeable period shall be—

(a) as respects the first year of the writing-down period referred to in *subsection (2)*—

(i) where the capital expenditure incurred has not exceeded £20,000, an amount equal to 50 per cent of that expenditure, or

(ii) where the capital expenditure incurred has exceeded £20,000, an amount equal to £10,000,

(b) as respects the next 6 years of that writing-down period, an amount equal to 15 per cent of the balance of that expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*, and

(c) as respects the last year of that writing-down period, an amount equal to 10 per cent of the balance of that expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*.

(4) For the purposes of the application to this section of *section 321*, “basis period” has the meaning assigned to it by *section 306*.

(5) Any claim by a person for a farm pollution control allowance to be made to such person shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains from farming, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(6) Any claim for a farm pollution control allowance 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 the person of the decision, appeal to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them made under *subsection (6)* as if it were an appeal against an assessment to 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.

(8) Subject to *subsection (9)*, where a person who is entitled to farm pollution control allowances in respect of farm land occupied by the person transfers his or her interest in that farm land or any part of that farm land to another person, that other person shall, to the exclusion of the first-mentioned person, be entitled to the allowances under this section for the chargeable periods following the chargeable period in which the transfer of interest took place.

(9) Where the transfer of interest to which *subsection (8)* refers took place in relation to part of the farm land, *subsection (8)* shall

apply to so much of the farm pollution control allowance as is properly referable to that part of the land as if it were a separate allowance. Pr.23 S.659

(10) Where expenditure is incurred partly for a purpose for which a farm pollution control allowance is to be made and partly for another purpose, *subsection (2)* shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the first-mentioned purpose.

(11) No farm pollution control allowance shall be made in respect of any expenditure if for the same or any other chargeable period an allowance is or has been made in respect of that expenditure under *Chapter 1 of Part 9 or section 658*.

(12) Expenditure shall not be regarded for the purposes of this section as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person.

(13) For the purposes only of determining, in relation to a claim for a farm pollution control allowance, whether and to what extent capital expenditure incurred on the construction of a building or structure to which this section applies is incurred or not incurred in the period specified in *subsection (1)(c)*, only such an amount of that capital expenditure as is properly attributable to work on the construction of the building or structure actually carried out during that 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.

TABLE

Farm Buildings and Structures to Which Allowances for the Control of Pollution Apply

1. Waste storage facilities including slurry tanks.
2. Soiled water tanks.
3. Effluent tanks.
4. Tank fences and covers.
5. Dungsteeds and manure pits.
6. Yard drains for storm and soiled water removal.
7. Walled silos, silage bases and silo aprons.
8. Housing for cattle, including drystock accommodation, byres, loose houses, slatted houses, sloped floor houses and kennels, roofed feed or exercise yards where such houses or structures eliminate soiled water.
9. Housing for sheep and unroofed wintering structures for sheep and sheep dipping tanks.

660.—(1) In this section—

“balancing allowance” and “balancing charge” have the same meanings respectively as in *Chapter 2 of Part 9*;

“wear and tear allowance” means an allowance made under *section 284*.

Farming: wear and tear allowances deemed to have been made in certain cases.

[FA74 s25; CTA76 s21(1) and Sch1 par71; FA78 s14(c)]

(2) In determining whether any, and if so what, wear and tear allowance, balancing allowance or balancing charge in respect of machinery or plant is to be made to or on any person for any chargeable period in taxing a trade of farming, 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, in relation to every such previous chargeable period—

- (a) the profits or gains from farming had been chargeable to tax under Case I of Schedule D,
- (b) those profits or gains had been charged to tax in accordance with section 58 of the Income Tax Act, 1967, and not in an amount determined under section 21 of the Finance Act, 1974,
- (c) farming had been carried on by that person since the date on which that person acquired the machinery or plant,
- (d) the machinery or plant had been used by that person solely for the purposes of farming since that date, and
- (e) 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.

(3) There shall be taken into account for the purposes of this section every previous chargeable period in which the machinery or plant concerned belonged to the person and—

- (a) during which the machinery or plant was not used by the person for the purposes of farming,
- (b) in respect of which the person was charged to tax on an amount determined in accordance with section 21 of the Finance Act, 1974,
- (c) during which farming was not carried on by the person, or
- (d) during which farming was carried on by the person in such circumstances that the full amount of the profits or gains of farming was not liable to be charged to tax under Case I of Schedule D.

(4) In the case of a company (within the meaning of *section 4(1)*), *subsection (2)(c)* shall not alter the periods which are to be taken as chargeable periods but, if during any period 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 period 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)*.

Farming: restriction of relief in respect of certain losses.

[FA78 s15(1) and (2); FA83 s120 and Sch4]

661.—(1) This section shall apply to a loss sustained by a person in the carrying on of farming in any year of assessment, being a year for which such person was not chargeable to tax in respect of profits or gains from farming.

(2) No relief shall be given under *section 382* in respect of a loss to which this section applies by deducting such loss from or setting

it off against the amount of the profits or gains from farming assessed for any year of assessment. Pr.23 S.661

662.—(1) In this section—

“prior 3 years”, in relation to a loss incurred in a year of assessment, means the last 3 years of assessment before that year;

“prior period of loss” means the prior 3 years or, if losses were incurred in successive years of assessment amounting in the aggregate to a period longer than 3 years (and ending when the prior 3 years end), that longer period.

Income tax:
restriction of relief
for losses in farming
or market
gardening.

[FA74 s27(1) to (6);
FA75 s33(2) and
Sch1 PtII; FA96
s132(2) and Sch5
PtII]

(2) (a) Any loss (including any amount in respect of allowances which by virtue of *section 392* is to be treated as a loss) incurred in a trade of farming or market gardening shall not be available for relief under *section 381* unless it is shown that, for the year of assessment in which the loss is claimed to have been incurred, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade.

(b) Without prejudice to *paragraph (a)*, any loss (including any amount in respect of allowances which by virtue of *section 392* is to be treated as a loss) incurred in any year of assessment in a trade of farming or market gardening shall not be available for relief under *section 381* if in each of the prior 3 years a loss was incurred in carrying on that trade.

(c) For the purposes of this section, the fact that a trade of farming or market gardening was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(d) This subsection shall not restrict relief for any loss or any capital allowance where it is shown by the claimant—

(i) that the whole of the claimant’s farming or market gardening activities in the year following the prior 3 years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if those activities had been undertaken by a competent farmer or market gardener, and

(ii) that if such farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, such farmer or market gardener could not reasonably have expected those activities to become profitable until after the end of the year following the prior period of loss.

(e) This subsection shall not restrict relief where the carrying on of the trade forms part of and is ancillary to a larger trading undertaking.

(3) In ascertaining for the purposes of this section whether a loss was incurred in any year, the rules applicable to Case I of Schedule D shall be applied.

PT.23 S.662

(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of a year of assessment by reason of its being set up and commenced, or discontinued, or both, in that year, *subsection (2)* shall apply in relation to that trade as regards that part of that year.

(5) *Subsection (2)* shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior 3 years, and for the purposes of this subsection a trade shall be treated as discontinued and a new trade set up in any event which under the Income Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.

(6) Notwithstanding *subsection (5)*, where at any time there has been a change in the persons engaged in carrying on a trade of farming or market gardening, this section shall apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after the change without any discontinuance and as if a person and another person with whom such person is connected were the same person.

Corporation tax:
restriction of relief
for losses in farming
or market
gardening.

663.—(1) In this section—

“prior 3 years”, in relation to a loss incurred in an accounting period, means the last 3 years before the beginning of the accounting period.

[CTA76 s17]

“prior period of loss” means the prior 3 years or, if losses were incurred in successive accounting periods amounting in all to a period longer than 3 years (and ending when the prior 3 years end), that longer period.

(2) (a) Any loss incurred in a trade of farming or market gardening shall not be available for relief under *section 396(2)* unless it is shown that, for the accounting period in which the loss is claimed to have been incurred, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade.

(b) (i) In this paragraph, “loss computed without regard to capital allowances” means a loss ascertained in accordance with the rules of Case I of Schedule D but so that, notwithstanding *sections 307* and *308*, no account shall be taken of any allowance or charge which otherwise would be taken into account under those sections.

(ii) Without prejudice to *paragraph (a)*, any loss incurred in any accounting period in a trade of farming or market gardening shall not be available for relief under *section 396(2)* if a loss computed without regard to capital allowances was incurred in carrying on that trade in that accounting period and in each of the accounting periods wholly or partly comprised in the prior 3 years.

(c) For the purposes of this section, the fact that a trade of farming or market gardening was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(d) This subsection shall not restrict relief for any loss where it is shown by the claimant company— Pr.23 S.663

(i) that the whole of its farming or market gardening activities in the year following the prior 3 years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if those activities had been undertaken by a competent farmer or market gardener, and

(ii) that if such farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, such farmer or market gardener could not reasonably have expected those activities to become profitable until after the end of the year following the prior period of loss.

(e) This subsection shall not restrict relief where the carrying on of the trade forms part of and is ancillary to a larger trading undertaking.

(3) *Subsection (2)* shall not restrict relief for any loss if the trade was set up and commenced within the prior 3 years, and for the purposes of this subsection a trade shall be treated as discontinued and a new trade set up in any event which under the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade; but a trade shall not be treated as discontinued if under *section 400(6)* it is not to be treated as discontinued for the purpose of capital allowances and charges.

(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of an accounting period by reason of its being set up and commenced, or discontinued, or both, in that accounting period, *subsection (2)* shall apply in relation to that trade as regards that part of that accounting period.

(5) Notwithstanding *subsection (3)*, where at any time there has been a change in the persons engaged in carrying on a trade of farming or market gardening, this section shall apply to any person, who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after the change without any discontinuance and as if a person and another person with whom such person is connected were the same person, and accordingly relief from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's accounting periods.

664.—(1) (a) In this section—

“farm land” means land in the State wholly or mainly occupied for the purposes of husbandry and includes a building (other than a building or part of a building used as a dwelling) situated on the land and used for the purposes of farming that land;

“lease”, “lessee”, “lessor” and “rent” have the same meanings respectively as in *Chapter 8 of Part 4*;

Relief for certain income from leasing of farm land.

[ITA67 s195B(3) and (6); FA85 s10, FA87 s2, FA91 s10; FA93 s10(1); FA96 s10, s132(1) and Sch5 PtI par14]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

“qualifying lease” means a lease of farm land which is—

- (i) in writing or evidenced in writing,
- (ii) for a definite term of 5 years or more, and
- (iii) made on an arm’s length basis between a qualifying lessor or qualifying lessors and a lessee or lessees who is, or each of whom is, a qualifying lessee in relation to the qualifying lessor or the qualifying lessors;

“qualifying lessee”, in relation to a qualifying lessor or qualifying lessors, means an individual—

- (i) who is not connected with the qualifying lessor or with any of the qualifying lessors, and
- (ii) who uses any farm land leased by him or her from the qualifying lessor or the qualifying lessors for the purposes of a trade of farming carried on by him or her solely or in partnership;

“qualifying lessor” means an individual who—

- (i) is aged 55 years or over or is permanently incapacitated by reason of mental or physical infirmity from carrying on a trade of farming, and
- (ii) has not after the 30th day of January, 1985, leased the farm land which is the subject of the qualifying lease from a person or persons, who is or are, or one of whom is, connected with him or her, on terms which are not such as might have been expected to be included in a lease if the negotiations for the lease had been at arm’s length;

“the specified amount”, in relation to any surplus or surpluses (within the meaning of *section 97(1)*) arising in respect of the rent or the rents from any farm land let under a qualifying lease or qualifying leases, means, subject to *paragraph (b)*, the lesser of—

- (i) the amount of that surplus or the aggregate amount of those surpluses,
- (ii) as respects a qualifying lease or qualifying leases made—
 - (I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, £2,000,
 - (II) in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, £2,800,
 - (III) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991, £2,000,

(IV) in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996— Pr.23 S.664

(A) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) £3,000, in any other case, or

(V) on or after the 23rd day of January, 1996—

(A) £6,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) £4,000, in any other case,

and

(iii) where the rent or rents was or were not receivable in respect of a full year's letting or lettings, such amount as bears to the amount determined in accordance with *clause (I), (II), (III), (IV) or (V)*, as may be appropriate, of *subparagraph (ii)* the same proportion as the amount of the rent or the aggregate amount of the rents bears to the amount of the rent or the aggregate amount of the rents which would be receivable for a full year's letting or lettings.

(b) Where the income of a qualifying lessor consists of or includes rent or rents—

(i) from a qualifying lease or qualifying leases made in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, and from a qualifying lease made—

(I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, or

(II) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991,

the specified amount shall not exceed £2,800;

(ii) from a qualifying lease or qualifying leases made in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996, and from a qualifying lease made before the 30th day of January, 1991, the specified amount shall not exceed—

(I) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) £3,000, in any other case;

(iii) from a qualifying lease or qualifying leases made on or after the 23rd day of January, 1996, and from a qualifying lease made at any other time, the specified amount shall not exceed—

(I) £6,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) £4,000, in any other case.

(2) Where for any year of assessment—

(a) the total income of a qualifying lessor consists of or includes any profits or gains chargeable to tax under Case V of Schedule D, and

(b) any surplus or surpluses (within the meaning of *section 97(1)*) arising in respect of the rent or rents from any farm land let under a qualifying lease or qualifying leases has been or have been taken into account in computing the amount of those profits or gains,

the qualifying lessor shall in determining that total income be entitled to a deduction of the lesser of—

(i) the specified amount in relation to the surplus or surpluses, and

(ii) the amount of the profits or gains.

(3) The amount of any deduction due under *subsection (2)* shall—

(a) where by virtue of *section 1017* a woman's income is deemed to be her husband's income, be determined separately as regards the part of his income which is his by virtue of that section and the part which is his apart from that section, or

(b) where by virtue of *section 1017* a man's income is deemed to be his wife's income, be determined separately as regards the part of her income which is hers by virtue of that section and the part which is hers apart from that section,

and where *section 1023* applies any deduction allowed by virtue of *subsection (2)* shall be allocated to the person and to his or her spouse as if they were not married.

(4) (a) For the purposes of *subsection (2)*, where a single qualifying lease relates to both farm land and other property, goods or services, only such amount, if any, of the surplus arising in respect of the rent payable under the lease as is determined by the inspector and after such apportionments of rent, expenses and other deductions as are necessary, according to the best of the inspector's knowledge and judgment, to be properly attributable to the lease of the farm land shall be treated as a surplus arising in respect of a rent from farm land let under a qualifying lease.

(b) Any amount which by virtue of *paragraph (a)* is determined by the inspector may be amended by the Appeal

Commissioners or by the Circuit Court on the hearing or Pr.23 S.664
the rehearing of an appeal against that determination.

(5) For the purposes of determining the amount of any relief to be granted under this section, the inspector may by notice in writing require the lessor to furnish such information as the inspector considers necessary.

(6) (a) *Subsections (1) and (2) of section 459 and section 460 shall apply to a deduction under this section 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 a deduction under this section.*

CHAPTER 2

Farming: relief for increase in stock values

665.—In this Chapter—

Interpretation
(Chapter 2).

“accounting period”, in relation to a person, means—

[FA96 s133]

(a) where the person is a company, an accounting period determined in accordance with *section 27*, or

(b) where the person is not a company, a period of one year ending on the date to which the accounts of the person are usually made up,

but, where accounts have not been made up or where accounts have been made up for a greater or lesser period than one year, the accounting period shall be such period not exceeding one year as the Revenue Commissioners may determine;

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

“company” has the same meaning as in *section 4*;

“period of account”, in relation to a person, means a period for which the accounts of the person have been made up;

“person” means a person resident in the State and not resident elsewhere and, unless the contrary intention appears, includes a company;

“specified return date for the chargeable period” has the same meaning as in *section 950*;

“trading income”, in relation to the trade of farming, means—

(a) where the person is a company, the income from the trade computed in accordance with the rules applicable to Case I of Schedule D, or

(b) in the case of any other person, the profits or gains of the trade computed in accordance with the rules applicable to Case I of Schedule D;

PT.23 S.665

“trading stock”, in relation to the trade of farming, has the same meaning as in *section 89* and, in determining the value of a person’s trading stock at any time for the purposes of a deduction under *section 666*, to the extent that at or before that time any payments on account have been received by the person in respect of any trading stock, the value of that stock shall be reduced accordingly.

Deduction for increase in stock values.

[FA96 s134; FA97 s18]

666.—(1) Subject to this Chapter, where—

- (a) a person carries on in an accounting period the trade of farming in respect of which the person is within the charge to tax under Case I of Schedule D, and
- (b) the value of the person’s trading stock of that trade at the end of the accounting period (in this Chapter referred to as its “closing stock value”) exceeds the value of the trading stock of that trade at the beginning of the accounting period (in this Chapter referred to as its “opening stock value”),

the person shall, in the computation for the purposes of tax of the trading income of that trade, be entitled to a deduction under this section equal to 25 per cent of the amount of that excess as if the deduction were a trading expense incurred in the accounting period, and the amount of that excess is referred to in this Chapter as the person’s “increase in stock value”.

(2) In the case of a company—

- (a) the amount of the deduction under this section in an accounting period shall not exceed the amount of the company’s trading income for that period after all reductions of income for that period by virtue of *sections 396* and *397* and after all deductions and additions for that period by virtue of *sections 307* and *308* and before any deduction allowed by virtue of this section, and
- (b) where a deduction allowed by virtue of this section in computing the company’s income from the trade of farming for an accounting period applies for an accounting period (in this subsection referred to as “the relevant period”), the company shall not be entitled to—
 - (i) a deduction under *section 307* or *308* for any accounting period later than the relevant period in respect of any allowance treated as a trading loss of the trade before the commencement of the relevant period,
 - (ii) a set-off of a loss under *section 396* for any accounting period later than the relevant period in respect of a loss sustained in the trade before the commencement of the relevant period, or
 - (iii) a set-off of a loss under *section 397* for any accounting period earlier than the relevant period in respect of a loss sustained in the trade.

(3) In the case of a person other than a company, where a deduction allowed by virtue of this section in computing the person’s trading profits of the trade of farming for an accounting period applies for a year of assessment (in this subsection referred to as “the relevant year”)—

- (a) the person shall not be entitled to relief—
- (i) under *section 382* for any year of assessment later than the relevant year in respect of a loss sustained in the trade before the commencement of the relevant year, or
 - (ii) under *section 385* for any year of assessment earlier than the relevant year in respect of a loss sustained in the trade,
- (b) *section 304(4)* or that section as applied by any other provision of the Income Tax Acts shall not apply as respects a capital allowance or part of a capital allowance which is or is deemed to be all or part of a capital allowance for the relevant year and to which full effect has not been given in that year because there were no profits or gains chargeable for that year or there was an insufficiency of profits or gains chargeable for that year,
- (c) *section 392* shall not apply to the capital allowances or any part of such allowances for the relevant year, and
- (d) the amount of any deduction given under this section shall not exceed the amount of the person's trading income from the trade of farming for the relevant year before any deduction allowed by virtue of this section.
- (4) (a) A deduction shall not be allowed under this section in computing a company's trading income for any accounting period which ends on or after the 6th day of April, 1999.
- (b) Any deduction allowed by virtue of this section in computing the profits or gains of the trade of farming for an accounting period of a person other than a company shall not apply for any purpose of the Income Tax Acts for any year of assessment later than the year 1998-99.
- (5) A person shall not be entitled to a deduction under this section for any chargeable period unless a written claim for such a deduction is made on or before the specified return date for that chargeable period.
- (6) This section shall apply to a trade of farming carried on by a partnership as it applies to a trade of farming carried on by a person.

667.—(1) In this section, “qualifying farmer” means an individual who—

Special provisions for qualifying farmers.

- (a) in the year 1993-94 or any subsequent year of assessment first qualifies for grant aid under the Scheme of Installation Aid for Young Farmers operated by the Department of Agriculture and Food under Council Regulation (EEC) No. 797/85 of 12 March 1985¹ or that Regulation as may be revised from time to time, or
- (b) (i) first becomes chargeable to income tax under Case I of Schedule D in respect of profits or gains from the

[FA94 Sch6; FA96 s135; FA97 s19]

¹O.J. No. L93 of 30.3.1985, p.6.

trade of farming for the year 1993-94 or any subsequent year of assessment,

(ii) has not attained the age of 35 years at the commencement of the year of assessment referred to in *subparagraph (i)*, and

(iii) at any time in the year of assessment so referred to—

(I) is the holder of a qualification set out in the Table to this section (in this subparagraph referred to as “the Table”) and, in the case of a qualification set out in subparagraph (c), (d), (e), (f) or (g) of paragraph 3, or in paragraph 4, of the Table, is also the holder of a certificate issued by Teagasc — The Agricultural and Food Development Authority (in this section referred to as “Teagasc”) certifying that such person has satisfactorily attended a course of training in farm management the aggregate duration of which exceeded 80 hours; but, where Teagasc certifies that any other qualification corresponds to a qualification set out in the Table, that other qualification shall for the purposes of this subsection be treated as if it were the corresponding qualification so set out,

(II) (A) has satisfactorily attended full-time a course at a third-level institution in any discipline for a period of not less than 2 years’ duration, and

(B) is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in either or both agriculture and horticulture the aggregate duration of which exceeded 180 hours,

or

(III) if born before the 1st day of January, 1968, is the holder of a certificate issued by Teagasc certifying that such person has satisfactorily attended a course of training in either or both agriculture and horticulture the aggregate duration of which exceeded 180 hours.

(2) In the case of a qualifying farmer—

(a) *section 666(1)* shall apply as if “100 per cent” were substituted for “25 per cent”;

(b) *paragraph (a)* shall apply in computing a person’s trading profits for an accounting period in the case of an individual who becomes a qualifying farmer—

(i) on or after the 6th day of April, 1993, and before the 6th day of April, 1995, for the year of assessment 1995-96 and for each of the 3 immediately succeeding years of assessment,

(ii) on or after the 6th day of April, 1995, and before the 6th day of April, 1997, for the year of assessment in

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

which the individual becomes a qualifying farmer Pr.23 S.667
and for each of the 3 immediately succeeding years
of assessment, or

- (iii) on or after the 6th day of April, 1997, and before the 6th day of April, 1999, for the year of assessment in which the person becomes a qualifying farmer and for the immediately succeeding year of assessment.

TABLE

1. Qualifications awarded by Teagasc:
 - (a) Certificate in Farming;
 - (b) Diploma in Commercial Horticulture;
 - (c) Diploma in Amenity Horticulture;
 - (d) Diploma in Pig Production;
 - (e) Diploma in Poultry Production.
2. Qualifications awarded by the Farm Apprenticeship Board:
 - (a) Certificate in Farm Management;
 - (b) Certificate in Farm Husbandry;
 - (c) Trainee Farmer Certificate.
3. Qualifications awarded by a third-level institution:
 - (a) Degree in Agricultural Science awarded by the National University of Ireland through the National University of Ireland, Dublin;
 - (b) Degree in Horticultural Science awarded by the National University of Ireland through the National University of Ireland, Dublin;
 - (c) Degree in Veterinary Science awarded by the National University of Ireland through the National University of Ireland, Dublin;
 - (d) Degree in Rural Science awarded by the National University of Ireland through the National University of Ireland, Cork or by the University of Limerick;
 - (e) Diploma in Rural Science awarded by the National University of Ireland through the National University of Ireland, Cork;
 - (f) Degree in Dairy Science awarded by the National University of Ireland through the National University of Ireland, Cork;
 - (g) Diploma in Dairy Science awarded by the National University of Ireland through the National University of Ireland, Cork.
4. Certificates awarded by the National Council for Educational Awards:
 - (a) National Certificate in Agricultural Science studied through Kildalton Agricultural College and Waterford Regional Technical College;
 - (b) National Certificate in Business Studies (Agribusiness) studied through the Franciscan Brothers Agricultural College, Mountbellew, and Galway Regional Technical College.

668.—(1) In this section—

“excess” means the excess of the relevant amount over the value of the stock to which this section applies at the beginning of the accounting period in which the disposal takes place;

“relevant amount” means the amount of any income received by a person as a result or in consequence of a disposal of stock to which this section applies;

“stock to which this section applies” means all cattle forming part of the trading stock of the trade of farming, where such cattle are compulsorily disposed of on or after the 6th day of April, 1993, under any statute relating to the eradication or control of diseases in livestock, and for the purposes of this section all cattle shall be regarded as compulsorily disposed of where, in the case of any disease eradication scheme relating to the eradication or control of brucellosis in livestock, all eligible cattle for the purposes of any such scheme, together with such other cattle as are required to be disposed of, are disposed of.

(2) Where stock to which this section applies is disposed of in an accounting period by a person carrying on the trade of farming, the person may elect to have the excess treated in accordance with *subsections (3) to (5)*, and such election shall be made in such form and contain such information as the Revenue Commissioners may require.

(3) (a) Notwithstanding any other provision of the Tax Acts apart from *paragraph (b)*, where a person elects in accordance with *subsection (2)*, the excess shall be disregarded as respects the accounting period in which it arises and shall instead be treated for the purposes of the Tax Acts as arising in equal instalments in each of the 2 immediately succeeding accounting periods.

(b) Notwithstanding *paragraph (a)*, where the person further elects, the excess shall be treated as arising in such equal instalments in the accounting period in which it arises and in the immediately succeeding accounting period.

(4) Where, not later than the end of the succeeding accounting period or succeeding accounting periods, as appropriate, referred to in *subsection (3)*, the person incurs expenditure on the replacement of cattle in an amount not less than the relevant amount, the person shall be deemed to be entitled to a deduction under *section 666* in respect of the amount of the excess, that section being applied as if “100 per cent” were substituted for “25 per cent”; but, where the expenditure incurred on such replacement is less than the relevant amount, the deduction under *section 666* in each of the 2 accounting periods referred to in *paragraph (a) or (b) of subsection (3)* shall be reduced to an amount that bears the same proportion to the excess as the expenditure incurred in those 2 accounting periods bears to the relevant amount.

(5) An election under this section shall be made by notice in writing made on or before the specified return date for the chargeable period in which the stock to which this section applies is compulsorily disposed of.

669.—(1) (a) Where a person has acquired or disposed of trading stock otherwise than in the normal conduct of the trade of farming, the person shall be treated for the purposes of this Chapter as having, at the beginning or end of the relevant period of account, trading stock of such value as appears to the inspector (or on appeal to the Appeal Commissioners) to be just and reasonable having regard to all the circumstances of the case.

Pr.23
Supplementary
provisions (*Chapter*
2).

[FA96 s137]

(b) Where the value of a person's trading stock at the beginning of a period of account is not calculated on the basis used for the calculation of the value of the trading stock at the end of that period, the value of the trading stock at the beginning of that period shall for the purposes of this Chapter be treated as being what it would have been if it had been calculated on that basis.

(2) (a) In any case where a person's accounting period does not coincide with a period of account or with 2 or more consecutive periods of account, the person's increase in stock value in the accounting period shall be determined for the purposes of *section 666* not in accordance with *subsection (1)* of that section but by reference to a period (in this section referred to as "the reference period") determined in accordance with this subsection.

(b) In any case where the beginning of a person's accounting period does not coincide with the beginning of a period of account, the reference period shall begin at the beginning of the period of account which is current at the beginning of the person's accounting period.

(c) In any case where the end of the person's accounting period does not coincide with the end of a period of account, the reference period shall end at the end of the period of account which is current at the end of the person's accounting period.

(d) In any case where *paragraph (b)* does not apply, the reference period shall begin at the beginning of the person's accounting period and, in any case where *paragraph (c)* does not apply, the reference period shall end at the end of the person's accounting period.

(3) (a) In any case where *subsection (2)(a)* applies, a person's increase in stock value in the accounting period shall be determined for the purposes of *section 666* by the formula—

$$\frac{A \times (C - O)}{N}$$

where—

A is the number of months in the person's accounting period,

C is the value of the person's trading stock at the end of the reference period,

O is the value of the person's trading stock at the beginning of the reference period, and

N is the number of months in the reference period.

- (b) In any case where a person's increase in stock value in an accounting period is to be determined in accordance with *paragraph (a)*, then, in *section 666* and in *subsections (4) to (6)*, any reference to the person's closing stock value shall be construed as a reference to the value of the person's trading stock at the end of the reference period.
- (4) (a) A person shall not be entitled to a deduction under *section 666* for an accounting period if that accounting period ends by virtue of the person ceasing to—
- (i) carry on the trade of farming,
 - (ii) be resident in the State, or
 - (iii) be within the charge to tax under Case I of Schedule D in respect of that trade.
- (b) In any case where a person's increase in stock value in an accounting period is to be determined in accordance with *subsection (3)(a), paragraph (a)* shall apply as if the reference in that paragraph to the person's accounting period were a reference to any of the accounting periods comprised in the person's reference period.
- (5) (a) Subject to *paragraphs (b) to (d)*, where a person claims a deduction under *section 666* and, immediately before the beginning of an accounting period, the person was not carrying on the trade to which the claim relates, then, unless—
- (i) the person acquired the initial trading stock of that trade on a sale or transfer from another person on that person's ceasing to carry on that trade, and
 - (ii) the stock so acquired is or is included in the person's trading stock as valued at the beginning of the accounting period,
- the person shall be treated for the purposes of *section 666* and *subsections (1) to (4)* as having at the beginning of the accounting period trading stock of such value as appears to the inspector to be just and reasonable.
- (b) In determining for the purposes specified in *paragraph (a)* the value of trading stock to be attributed to a person at the beginning of the accounting period, the inspector shall have regard to all the relevant circumstances of the case and in particular to—
- (i) movements during the person's accounting period in the costs of items of a kind comprised in the person's trading stock during that period, and
 - (ii) changes during that period in the volume of the trade in question carried on by the person.

- (c) The Appeal Commissioners dealing with an appeal from Pr.23 S.669 the decision of an inspector on a claim in a case where in accordance with *paragraph (a)* the inspector has attributed to a person at the beginning of an accounting period trading stock of a particular value shall, in hearing and determining the appeal in so far as it relates to the value of the trading stock to be so attributed, determine such value as appears to the Appeal Commissioners to be just and reasonable, having regard to those factors to which the inspector is required to have regard by virtue of *paragraph (b)*.
- (d) In any case where *subsection (2)(a)* applies to a person's accounting period, for any reference in *paragraphs (a)* to (c) to that accounting period there shall be substituted a reference to the reference period.

(6) In any case where a person's accounting period or reference period consists of a number of complete months and a fraction of a month, any reference in this section to the number of months in the period shall be construed as including that fraction of a month (and in any case where any such period is less than one month any such reference shall be construed as a reference to that fraction of a month of which the period consists).

PART 24

TAXATION OF PROFITS OF CERTAIN MINES AND PETROLEUM TAXATION

CHAPTER 1

Taxation of profits of certain mines

670.—(1) In this section—

Mine development allowance.

“mine” means a mine operated 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, but, in relation to capital expenditure incurred before the 6th day of April, 1960, “mine” means an underground excavation made for the purpose of getting minerals;

[ITA67 s245; CTA76 s21(1) and Sch1 par10; FA80 s17(3); FA96 s132(2) and Sch5 PtII]

references to capital expenditure incurred in connection with a mine shall be construed as references to capital expenditure incurred—

- (a) in the development of the mine on searching for, or on discovering and testing, mineral deposits or winning access to such deposits, or
- (b) on the construction of any works which are of such a nature that when the mine has ceased to be operated they are likely to have so diminished in value that their value will be nil or almost nil,

but as excluding references to—

- (i) any expenditure on the acquisition of the site of the mine or of the site of any such works or of rights in or over any such site,

- (ii) any expenditure on the acquisition of, or of rights over, the deposits, or
- (iii) any expenditure on works constructed wholly or mainly for subjecting the raw product of the mine to any process except a process designed for preparing the raw product for use as such;

references to assets representing capital expenditure incurred in connection with a mine shall be construed as including—

- (a) in relation to expenditure on searching for, discovering and testing deposits, references to any information or other results obtained from any search, exploration or enquiry on which the expenditure was incurred,
- (b) references to any part of such assets, and
- (c) in the case of any such assets destroyed or damaged, references to any insurance moneys or other compensation moneys in respect of such destruction or damage.

(2) Expenditure shall not for the purposes of this section be regarded as having been incurred by a person carrying on the trade of working a mine in so far as the expenditure has been or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any other person (not being a person who has carried on the trade of working that mine).

(3) Any person who carries on the trade of working a mine and who has on or after the 6th day of April, 1946, incurred any capital expenditure in connection with the mine may apply for an allowance (in this section referred to as a “mine development allowance”) in respect of that capital expenditure.

(4) Application for a mine development allowance for any chargeable period may be made to the inspector not later than 24 months after the end of that period.

(5) (a) Subject to *paragraph (b)*, the following provisions shall apply in relation to the amount of a mine development allowance for any chargeable period in respect of any capital expenditure incurred in connection with a mine:

- (i) the inspector shall estimate to the best of his or her judgment the life (in this subsection referred to as “the estimated life”) of the deposits, but shall not estimate such life at more than 20 years;
- (ii) the inspector shall then estimate the amount of the difference (in this subsection referred to as “the estimated difference”) between the capital expenditure incurred in connection with the mine and the amount which in his or her opinion the assets representing that capital expenditure are likely to be worth at the end of the estimated life;
- (iii) the inspector shall, subject to this section, allow as the mine development allowance for that chargeable period an amount equal to a sum which bears to the estimated difference the same proportion as the length of that chargeable period bears to the length of the estimated life;

- (iv) if capital expenditure incurred in connection with the mine was incurred during that chargeable period, then, that chargeable period shall for the purposes of *subparagraph (iii)* be taken to comprise so much only of that chargeable period as is subsequent to the date on which the capital expenditure was incurred. Pr.24 S.670

- (b) The total of the mine development allowances shall not exceed the estimated difference.

(6) A mine development allowance to any person carrying on the trade of working a mine shall be made in taxing that trade, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(7) A mine development allowance shall not be made in respect of any capital expenditure incurred in connection with a mine in any case where the asset representing that capital expenditure is an asset in respect of which an allowance may be made under *section 284*.

(8) Where a mine development allowance for any chargeable period has been made in respect of capital expenditure incurred in connection with a mine, then, for that chargeable period *section 85* shall not apply as respects any such asset.

(9) Any capital expenditure incurred on or after the 6th day of April, 1946, in connection with a mine by a person about to carry on the trade of working the mine but before commencing such trade shall be treated for the purposes of this section as if it had been incurred on the first day of the commencement of such trade.

(10) Where mine development allowances in respect of any capital expenditure incurred in connection with a mine have been made and the mine has finally ceased to be operated, the following provisions shall apply:

- (a) the inspector shall review the mine development allowances;

- (b) if on such review it appears that the amount of the difference (in this subsection referred to as “the difference”) between the capital expenditure incurred in connection with the mine and the amount which the assets representing that capital expenditure at such cessation were worth at such cessation exceeds the total of the mine development allowances, then, further mine development allowances equal to the excess may be made for any chargeable period (being the chargeable period in which the mine has finally ceased to be operated or any previous chargeable period), but the total of such further mine development allowances shall not amount to more than the excess and if necessary effect may be given to this paragraph by means of repayment;

- (c) if on such review it appears that the difference is less than the total of the mine development allowances, then, the deficiency or the total of the mine development allowances, whichever is the less, shall be treated as a trading receipt of the trade of working the mine accruing immediately before such cessation.

(11) Where the person (in this subsection referred to as “the vendor”) carrying on the trade of working a mine sells to any other person (not being a person who succeeds the vendor in that trade)

any asset representing capital expenditure incurred in connection with the mine and by reference to which mine development allowances have been made, the following provisions shall apply:

- (a) if the total of the mine development allowances when added to the sum realised on the sale of that asset is less than that capital expenditure by any amount (in this subsection referred to as “the unexhausted allowance”), then, further mine development allowances may be granted to the vendor in respect of any chargeable period (being the chargeable period of such sale or any previous chargeable period), but the total of such further mine development allowances shall not exceed the unexhausted allowance;
- (b) if the total of the mine development allowances when added to the sum realised on the sale of that asset exceeds that capital expenditure, then, the amount of such excess or the total of the mine development allowances, whichever is the less, shall be treated as a trading receipt of the trade accruing immediately before the sale.

(12) Where—

- (a) mine development allowances in respect of any capital expenditure incurred in connection with a mine have been made to a person (in this subsection referred to as “the original trader”) carrying on the trade of working the mine, and
- (b) another person (in this subsection referred to as “the successor”) succeeds to that trade,

mine development allowances may continue to be made in respect of that capital expenditure to the successor, but in no case shall the amount of such allowances exceed the amount to which the original trader would have been entitled if the original trader had continued to carry on that trade.

(13) Where for any chargeable period a company was entitled to relief from tax by virtue of Chapter II or Chapter III of Part XXV of the Income Tax Act, 1967, then, for the purposes of *subsections (5) and (10) to (12)*, there shall be deemed to have been made for that chargeable period in respect of any expenditure the full mine development allowance which on due claim could have been made for that chargeable period in respect of that expenditure, unless that allowance has in fact been made.

(14) An appeal to the Appeal Commissioners shall lie on any question arising under this section in the like manner as an appeal would lie against an assessment, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

Marginal coal mine allowance.

[FA74 s74; CTA76 s140(1), s164, Sch2 PtI par48 and Sch3 PtII]

671.—(1) In this section, “marginal coal mine” means a coal mine in the State being worked for the purpose of the production of coal and in respect of which the Minister for the Marine and Natural Resources gives a certificate stating that that Minister is satisfied that the profits derived or to be derived from the working of that mine are such that, if tax is to be charged on those profits in accordance with the Income Tax Acts, other than this section, the mine is unlikely to continue to be worked.

(2) The Minister for Finance, after consultation with the Minister for the Marine and Natural Resources, may direct in respect of a marginal coal mine that for any particular year of assessment the tax chargeable on the profits of that mine shall be reduced to such amount (including nil) as may be specified by the Minister for Finance. Pr.24 S.671

(3) Where a person is carrying on the trade of working a coal mine in respect of which the Minister for Finance gives a direction under *subsection (2)* in respect of a year of assessment, an allowance shall be made as a deduction in charging the profits of that trade to tax for that year of assessment of such amount as will ensure that the tax charged in respect of the profits of that trade shall equal the amount specified by that Minister.

(4) This section shall apply for corporation tax as it applies for income tax, and references to the Income Tax Acts, to years of assessment and to a deduction in charging the profits of a trade shall apply as if they were or included respectively references to the Corporation Tax Acts, to accounting periods and to a deduction made in computing the trading income for corporation tax.

672.—(1) In this section and in *sections 673 to 683*, except where otherwise provided or the context otherwise requires—

Interpretation
(*sections 672 to 683*).

“development expenditure” means capital expenditure—

[F(TPCM)A74
s1(1), (2), (6) and
(7); CTA76 s21(1)
and Sch1 par63;
FA96 s132(1) and
Sch5 PtI par8]

- (a) on the development of a qualifying mine, or
- (b) on the construction of any works in connection with a qualifying mine which are of such a nature that, when the mine ceases to be operated, they are likely to have so diminished in value that their value will be nil or almost nil,

and includes interest on money borrowed to meet such capital expenditure, but does not include expenditure on—

- (i) the acquisition of the site of the mine or the site of any such works or of rights in or over any such site,
- (ii) the acquisition of a scheduled mineral asset, or
- (iii) works constructed wholly or mainly for subjecting the raw product of the mine to any process except a process designed for preparing the raw product for use as such;

“exploration expenditure” means capital expenditure on searching in the State for deposits of scheduled minerals or on testing such deposits or winning access to such deposits, and includes capital expenditure on systematic searching for areas containing scheduled minerals and searching by drilling or other means for scheduled minerals in those areas, but does not include expenditure on operations in the course of working a qualifying mine or expenditure which is development expenditure;

“mine development allowance” has the same meaning as in *section 670*;

“qualifying mine” means a mine being worked for the purpose of obtaining scheduled minerals;

Pt.24 S.672

“scheduled mineral asset” means a deposit of scheduled minerals or land comprising such a deposit or an interest in or right over such deposit or land;

“scheduled minerals” means minerals specified in the Table to this section occurring in non-bedded deposits of such minerals.

(2) Except where provided for in *sections 674 to 676*, expenditure shall not be regarded for the purposes of this section and *sections 673 to 683* as having been incurred by a person carrying on the trade of working a qualifying mine in so far as the expenditure has been or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any other person (not being a person who has carried on the trade of working that mine).

(3) The Minister for Finance may by regulations add minerals occurring in non-bedded deposits of such minerals to the Table to this section.

(4) Every regulation made under *subsection (3)* 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.

TABLE

SCHEDULED MINERALS

Barytes
Felspar
Serpentinous marble
Quartz rock
Soapstone
Ores of copper
Ores of gold
Ores of iron
Ores of lead
Ores of manganese
Ores of molybdenum
Ores of silver
Ores of sulphur
Ores of zinc.

Allowance in respect of development expenditure and exploration expenditure.

673.—(1) Subject to *subsections (2) and (3)*, where a person carrying on the trade of working a qualifying mine incurs on or after the 6th day of April, 1974, any development expenditure or exploration expenditure and makes application under *section 670* for a mine development allowance for a chargeable period in respect of such expenditure—

[F(TPCM)A74 s2(1) and (4); CTA76 s21(1) and Sch1 par64; FA90 s39(a)]

- (a) that expenditure shall be deemed to be expenditure in respect of which that allowance may be granted, whether or not in the case of exploration expenditure a deposit of scheduled minerals is found as a result of the expenditure,
- (b) the amount of such allowance for that chargeable period shall be equal to the total amount of—
 - (i) the exploration expenditure, and

(ii) in the case of development expenditure, the amount of the difference between that expenditure and the amount which in the opinion of the inspector the assets representing that expenditure are likely to be worth at the end of the estimated life of the qualifying mine, and

Pr.24 S.673

(c) in relation to a case in which this section has applied, any reference in the Tax Acts to an allowance made under *section 670* shall be construed as including a reference to an allowance made under that section by virtue of this section.

(2) For the purposes of this section, no account shall be taken of exploration expenditure incurred before the 1st day of April, 1990, as a result of which a deposit of scheduled minerals is not found if the expenditure was incurred more than 10 years before the date on which the person carrying on the trade of working a qualifying mine commenced to carry on that trade.

(3) No allowance shall be made under *subsection (1)* in respect of expenditure incurred before the 6th day of April, 1974, whether or not such expenditure is by virtue of any provision of the Tax Acts deemed to have been incurred on or after that date.

674.—(1) (a) Where a person who commences to carry on a trade of working a qualifying mine has incurred exploration expenditure and that expenditure was not incurred in connection with the qualifying mine, then, subject to *paragraph (b)*, in taxing the trade for the chargeable period in which the person commences to carry on the trade, there shall be made an allowance of an amount equal to the amount of that expenditure.

Expenditure on abortive exploration.

[F(TPCM)A74 s3(2) to (5); CTA76 s21(1) and Sch1 par65; FA90 s39(b)]

(b) For the purposes of *paragraph (a)*, no account shall be taken of exploration expenditure incurred before the 1st day of April, 1990, if the expenditure was incurred more than 10 years before the date on which the person commences to carry on the trade of working the qualifying mine.

(2) Where in a case referred to in *subsection (1)* the person concerned is a body corporate and there was or is, after all or part of the expenditure referred to in that subsection had been incurred by the body corporate, a change in ownership (within the meaning of *Schedule 9*) of the body corporate or of a body corporate that is a parent body or a wholly-owned subsidiary (within the meaning of *section 675*) of the first-mentioned body corporate, no allowance shall be made under this section in respect of any part of that expenditure incurred before the date of the change in ownership; but, in any case where part of the ordinary share capital of any body corporate is acquired by a Minister of the Government, such acquisition shall be disregarded in determining whether or not there was or is such a change in ownership.

(3) Where a person commences to carry on the trade of working a qualifying mine but has not incurred the exploration expenditure incurred in connection with that mine, no allowance shall be made under this section or by virtue of *section 673* in respect of exploration expenditure incurred by that person before the date on which that person commences to carry on that trade.

PT.24 S.674

(4) Subject to *paragraphs 16 and 18 of Schedule 32*, a person shall not be entitled to an allowance in respect of the same expenditure both under this section and under some other provision of the Tax Acts.

Exploration
expenditure
incurred by certain
bodies corporate.

[F(TPCM)A74 s4;
CTA76 s21(1) and
Sch1 par66; FA90
s39(c)]

675.—(1) Subject to *subsection (2)*, where exploration expenditure, in respect of which an allowance may be claimed by virtue of *section 673 or 674*, or (as respects expenditure incurred on or after the 1st day of April, 1990) by virtue of *section 673* as applied by *section 679*, is or has been incurred by a body corporate (in this section referred to as “the exploration company”) and—

- (a) another body corporate is or is deemed to be a wholly-owned subsidiary of the exploration company, or
- (b) the exploration company is or is deemed to be a wholly-owned subsidiary of another body corporate,

then, the expenditure or so much of it as the exploration company specifies—

- (i) in the case referred to in *paragraph (a)*, may at the election of the exploration company be deemed to have been incurred by such other body corporate (being a body corporate which is or is deemed to be a wholly-owned subsidiary of the exploration company) as the exploration company specifies,
- (ii) in the case referred to in *paragraph (b)*, may at the election of the exploration company be deemed to have been incurred by the body corporate (in this paragraph referred to as “the parent body”) of which the exploration company was, at the time the expenditure was incurred, a wholly-owned subsidiary or by such other body corporate (being a body corporate which is or is deemed to be a wholly-owned subsidiary of the parent body) as the exploration company specifies,

and, in a case where that expenditure was incurred on a date before the incorporation of the body corporate so specified, *sections 672 to 683* shall apply in relation to the granting of any allowance in respect of that expenditure as if that body corporate had been in existence at the time the expenditure was incurred and had incurred the expenditure at that time.

- (2) (a) The same expenditure shall not be taken into account in relation to more than one trade by virtue of this section.
- (b) Subject to *paragraphs 16 and 18 of Schedule 32*, an allowance shall not be granted in respect of the same expenditure both by virtue of this section and under some other provision of the Tax Acts.

(3) A body corporate shall for the purposes of *subsection (1)* be deemed to be a wholly-owned subsidiary of another body corporate if and so long as all of its ordinary share capital is owned by that other body corporate, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate; but, where part of the ordinary share capital of any body corporate is held by a Minister of the Government and the remainder of the ordinary share capital of that body corporate is held by another body corporate, the

first-mentioned body corporate shall for the purposes of *subsection (1)* be deemed to be a wholly owned subsidiary of the last-mentioned body corporate. Pr.24 S.675

(4) *Subsections (5) to (10) of section 9* shall apply for the purpose of determining the amount of ordinary share capital held in a body corporate through other bodies corporate.

676.—(1) Where—

- (a) a person incurs exploration expenditure which results in the finding of a deposit of scheduled minerals, and
- (b) without having carried on any trade which consists of or includes the working of that deposit and without any allowance or deduction under or by virtue of *sections 672 to 683* having been made to the person in respect of that expenditure, the person sells any assets representing that expenditure to another person,

Expenditure incurred by person not engaged in trade of mining.

[F(TPCM)A74 s5; CTA76 s21(1) and Sch1 par67]

then, if that other person carries on such a trade in connection with that deposit, that other person shall for the purposes of *sections 672 to 683* be deemed to have incurred, for the purposes of the trade and in connection with the deposit, exploration expenditure equal to the lesser of—

- (i) the amount of the exploration expenditure represented by the assets, and
- (ii) the price paid by that other person for the assets,

and that expenditure shall be deemed to have been incurred by that other person on the date on which that other person commences to carry on that trade.

(2) A person who by virtue of *subsection (1)* is deemed to have incurred an amount of exploration expenditure shall be deemed not to have incurred that amount of expenditure unless the working of the deposit results in the production of scheduled minerals in reasonable commercial quantities.

(3) Subject to *paragraphs 16 and 18 of Schedule 32*, a deduction or allowance in respect of the same expenditure shall not be made both under this section and under some other provision of the Tax Acts.

(4) *Section 677* shall not apply to expenditure in respect of which an allowance is made by virtue of this section.

677.—(1) Where a person carrying on the trade of working a qualifying mine incurs on or after the 6th day of April, 1974, exploration expenditure in relation to which *section 673* applies, there shall, in addition to any mine development allowance made in respect of such expenditure, be made to the person in taxing the trade for the chargeable period for which such mine development allowance is made an allowance (which shall be known as an “exploration investment allowance”) equal to 20 per cent of such expenditure, and *section 670(6)* shall apply to an exploration investment allowance as it applies to a mine development allowance.

Investment allowance in respect of exploration expenditure.

[F(TPCM)A74 s6; CTA76 s21(1) and Sch1 par68]

- (2) (a) No allowance shall be made under this section in respect of exploration expenditure—
 - (i) incurred before the 6th day of April, 1974, whether or not such expenditure is by virtue of any provision

of the Tax Acts deemed to have been incurred on or after that date, or

(ii) which is deemed to be incurred by a person other than the person who incurred the expenditure.

(b) *Paragraph (a)* shall not apply in respect of expenditure deemed under *section 675* to have been incurred by a body corporate other than the body corporate which incurred the expenditure.

Allowance for machinery and plant.

[F(TPCM)A74 s7(1), (3) and (4); CTA76 s21 and Sch1 pars57, 58, 59 and 69; FA71 s22(3) and (4), s23, s24 and s25; FA97 s146(1) and Sch9 PtI par7(1)]

678.—(1) Where on or after the 6th day of April, 1974, 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) is provided for use for the purposes of the trade of working a qualifying mine, that machinery or plant shall, if it is not qualifying machinery or plant, be deemed for the purpose of *section 285* to be qualifying machinery or plant.

(2) Where on or after the 6th day of April, 1974, a person carrying on the trade of working a qualifying mine incurs capital expenditure on the provision 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) for the purposes of that trade, there shall be made to the person for the chargeable period related to the expenditure an allowance equal to 20 per cent of the expenditure, and such allowance shall be made in taxing the trade.

(3) For the purposes of ascertaining the amount of any allowance to be made to any person under *section 284* in respect of expenditure incurred during a chargeable period on any qualifying machinery or plant, no account shall be taken of an allowance under *subsection (2)* in respect of that expenditure, and in *section 284(4)* “the allowances on that account” and “the allowances” where it occurs before “exceed” shall each be construed as not including a reference to any allowance made under *subsection (2)* to the person by whom the trade of working a qualifying mine is carried on.

(4) Where an allowance under *subsection (2)* has been made to any person in respect of expenditure incurred on the provision of qualifying machinery or plant and the machinery or plant is sold by that person without the machinery or plant having been used by that person for the purposes of the trade of working a qualifying mine or before the expiration of the period of 2 years from the day on which the machinery or plant began to be so used, the allowance shall be withdrawn and all such additional assessments and adjustments of assessments shall be made as may be necessary for or in consequence of the withdrawal of the allowance.

(5) For the purposes of this section—

(a) the day on which any expenditure is incurred shall be taken to be the day when the sum in question becomes payable,

(b) expenditure shall not be regarded as having been 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,

(c) any expenditure incurred for the purposes of a trade by a person about to carry on the trade shall be treated as if that expenditure had been incurred by that person on the first day on which that person carries on the trade,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(d) capital expenditure shall not include any expenditure which is allowed to be deducted in computing for the purposes of tax the profits or gains of a trade carried on by the person incurring the expenditure, and

(e) *subsections (2) and (3) of section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under this section.

(6) For the purposes of the Income Tax Acts, any claim by a person for an allowance under this section in taxing the person's trade shall be included in the annual statement required to be delivered under those Acts of the profits or gains of the person's trade and 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 provision of qualifying machinery or plant and giving such particulars as show that the allowance is to be made.

(7) *Section 304(4)* shall apply in relation to an allowance under *subsection (2)* as it applies in relation to allowances to be made under *Part 9*.

679.—(1) (a) In this section—

Exploration
expenditure.

“exploration company” means a company, the business of which for the time being consists primarily of exploring for scheduled minerals;

[F(TPCM)A 74
s7A; FA90 s39(d)]

“exploring for scheduled minerals” means searching in the State for deposits of scheduled minerals or testing such deposits or winning access to such deposits, and includes the systematic searching for areas containing scheduled minerals and searching by drilling or other means for scheduled minerals within those areas, but does not include operations which are operations in the course of developing or working a qualifying mine.

(b) This section shall apply as respects expenditure incurred on or after the 1st day of April, 1990.

(2) Subject to *subsections (3) to (5)*, for as long as a company—

- (a) is an exploration company,
- (b) does not carry on a trade of working a qualifying mine, and
- (c) incurs capital expenditure (including such expenditure incurred on the provision of plant and machinery) for the purposes of exploring for scheduled minerals,

the company shall be deemed for the purposes of *sections 673, 674(3), 677 and 678* and the other provisions of the Tax Acts, apart from *section 672, subsections (1), (2) and (4) of section 674* and *sections 675, 676, 680, 681, 682 and 683*—

- (i) to be carrying on a trade of working a qualifying mine,
- (ii) to come within the charge to corporation tax in respect of that trade when it first incurs the capital expenditure referred to in *paragraph (c)*, and

- (iii) to incur for the purposes of that trade that expenditure incurred on the provision of plant and machinery,

so that all allowances or charges to be made for an accounting period by virtue of this subsection and *section 673, 677 or 678* shall be given effect by treating the amount of any allowance as a trading expense of that trade in the period and by treating the amount on which any such charge is to be made as a trading receipt of that trade in the period.

(3) Where by virtue of *subsection (2)* a company is to be treated as incurring a loss in a trade in an accounting period, the company—

- (a) shall be entitled to relief in respect of the loss under *section 157, subsections (1) to (3) of section 396 and subsections (1) and (2) of section 397* as if for “trading income from the trade” or “trading income”, wherever occurring in *sections 396 and 397*, there were substituted “profits (of whatever description)”, and
- (b) subject to *subsection (4)(b)(ii)*, shall not otherwise be entitled to relief in respect of the loss or to surrender relief under *section 420(1)* in respect of the loss.
- (4) (a) Any asset representing exploration expenditure in respect of which an allowance or deduction has been made to a company by virtue of *subsection (2)* and *section 673* shall for the purposes of *section 670(11)* be treated as an asset representing capital expenditure incurred in connection with the mine which the company is deemed to be working by virtue of *subsection (2)*, and the company shall not cease to be deemed to be carrying on the trade of working that mine, so as to be within the charge to corporation tax in respect of that trade, before any sale of such an asset in the event of such a sale.
- (b) Subject to *paragraph (c)*, where a company begins at any time (in this paragraph and in *paragraph (c)* referred to as “the relevant time”) to carry on a trade of working a qualifying mine and accordingly ceases to be deemed to carry on such a trade, the company shall be treated as carrying on the same trade before and after that time for the purposes of—
- (i) any allowance, charge or trade receipt treated as arising by reference to any capital expenditure incurred before the relevant time, and
- (ii) relief, other than by virtue of *subsection (3)*, under *section 396(1)* for any losses arising before the relevant time, in so far as relief has not already been given for those losses by virtue of this section.
- (c) *Paragraph (b)* shall not apply where there is a change in the ownership of the company within a period of—
- (i) 12 months ending at the relevant time, or
- (ii) 24 months beginning at the relevant time.
- (d) *Schedule 9* shall apply for the purposes of supplementing this subsection.

(5) (a) Notwithstanding any other provision of the Tax Acts, Pr.24 S.679 where an allowance or deduction has been given by virtue of this section in respect of any expenditure, no other allowance or deduction shall be given by virtue of any provision of the Tax Acts, including this section, in respect of that expenditure.

(b) Paragraph (b) of section 261 shall apply to a company for as long as it is deemed by virtue of subsection (2) to be carrying on a trade of working a qualifying mine as if “who is not a company within the charge to corporation tax in respect of the payment” were deleted from that paragraph.

680.—(1) Where a person carrying on the trade of working a qualifying mine incurs after the 31st day of March, 1974, capital expenditure on the acquisition of a scheduled mineral asset entitling such person to work deposits of scheduled minerals and in connection with that trade commences to work those deposits, such person shall be entitled to mine development allowances under section 670 in respect of that capital expenditure to the extent that such person would have been entitled to such allowances if that capital expenditure had been capital expenditure incurred in the development of the mine, but section 673 shall not apply in respect of any such expenditure.

Annual allowance for mineral depletion.

[F(TPCM)A74 s8; CTA76 s140 and Sch2 PtI par37]

(2) Where a person who commences to carry on the trade of working a qualifying mine on or after the 6th day of April, 1974, incurred capital expenditure before that date on the acquisition of a scheduled mineral asset in connection with that mine, such person shall for the purposes of this section be deemed to have incurred that expenditure on the day on which such person commences to carry on that trade, and subsection (1) shall apply accordingly.

681.—(1) (a) In this section—

Allowance for mine rehabilitation expenditure.

“integrated pollution control licence” means a licence granted under section 83 of the Environmental Protection Agency Act, 1992;

[F(TPCM)A74 s8A(1) to (9); FA96 s34; FA97 s146(1) and Sch9 PtI par7(2)]

“mine rehabilitation fund”, in relation to a qualifying mine, means a fund—

(i) which consists of amounts paid by a person carrying on the trade of working a qualifying mine to another person (in this section referred to as “the fund holder”) not connected with the first-mentioned person,

(ii) which is obliged to be maintained under the terms—

(I) of a State mining facility, or

(II) of any other agreement in writing to which the Minister is a party and to which the State mining facility is subject,

(iii) the sole purpose of which is to have available at the time a qualifying mine ceases to be worked such amount as is specified in a certificate given

by the Minister under *subsection (2)* as being the amount which in the Minister's opinion could reasonably be expected to be necessary to meet rehabilitation expenditure in relation to the qualifying mine, and

- (iv) no part of which may be paid to the person, or a person connected with that person, who is working or has worked the qualifying mine except where—
 - (I) the fund holder has been authorised in writing by the Minister, and by either or both the relevant local authority and the Environmental Protection Agency, to make a payment to the person or the connected person, as the case may be, for the purposes of incurring rehabilitation expenditure in relation to the qualifying mine, or
 - (II) an amount may be paid to the person or the connected person, as the case may be, after a certificate of completion of rehabilitation in relation to the qualifying mine has been submitted to and approved by—
 - (A) the Minister, and
 - (B) either or both the relevant local authority and the Environmental Protection Agency;

“the Minister” means the Minister for the Marine and Natural Resources;

“qualifying mine” means a mine being worked for the purpose of obtaining scheduled minerals, dolomite and dolomitic limestone, calcite and gypsum, or any of those minerals;

“rehabilitation expenditure” means expenditure incurred in connection with the rehabilitation of the site of a mine or part of a mine, being expenditure incurred by a person who has ceased to work the mine in order to comply with any condition—

- (i) of a State mining facility,
- (ii) subject to which planning permission for development consisting of the mining and working of minerals was granted, or
- (iii) subject to which an integrated pollution control licence for an activity specified in the First Schedule to the Environmental Protection Agency Act, 1992, was granted;

“rehabilitation” includes landscaping and the carrying out of any activities which take place after the mine ceases to be worked and which are required by a condition subject to which planning permission for development consisting of the mining and working

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

of minerals, or an integrated pollution control licence, was granted; Pr.24 S.681

“relevant local authority”, in relation to a qualifying mine, 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 mine is situated;

“relevant payments” means payments specified in accordance with *paragraph (b)(iii) of subsection (2)* in a certificate given under that subsection and which are paid at or about the time specified in the certificate;

“State mining facility”, in relation to a mine, means a State mining lease, a State mining licence or a State mining permission granted by the Minister in relation to the mine.

(b) For the purposes of this section—

- (i) any reference to the site of a mine includes a reference to land used in connection with the working of the mine, and
- (ii) the net cost to any person of the rehabilitation of the site of a mine shall be the excess, if any, of rehabilitation expenditure over any receipts attributable to the rehabilitation (whether for spoil or other assets removed from the site or for tipping rights or otherwise).

(c) For the purposes of this section, *subsections (2) and (3) of section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under this section.

(2) (a) Where in relation to a fund the Minister is of the opinion that—

- (i) the matters set out in *paragraphs (i), (ii) and (iv)* of the definition of “mine rehabilitation fund” are satisfied, and
- (ii) the sole purpose of the fund is to have available at the time a qualifying mine ceases to be worked such amount as could reasonably be expected to be necessary to meet rehabilitation expenditure in relation to the qualifying mine,

the Minister may give a certificate to that effect.

(b) A certificate given under *paragraph (a)* shall, in addition to the information specified in that paragraph, specify—

- (i) the number of years, being the Minister’s opinion of the life (in this section referred to as “the estimated life”) of the mine remaining at the time the certificate is given,
- (ii) the amount which in the Minister’s opinion could reasonably be expected to be necessary to meet

rehabilitation expenditure in relation to the qualifying mine, and

- (iii) the amounts (in this section referred to as “the scheduled payments”) required to be paid to the fund holder, and the times at which such amounts are to be paid, so as to achieve the purpose specified in *paragraph (a)(ii)*.
- (c) The Minister may, by notice in writing given to a person to whom a certificate has been given under this section, amend the certificate.
- (3) (a) An allowance equal to so much of any rehabilitation expenditure in relation to a qualifying mine as does not exceed the net cost of the rehabilitation of the site of the mine shall be made to a person under this section for the chargeable period related to the expenditure.
 - (b) Expenditure incurred by a person after the person ceases to carry on the trade of working a qualifying mine shall be treated as having been incurred on the last day on which the person carried on the trade.
- (4) (a) Subject to *paragraphs (b) and (c)*, where the Minister has issued a certificate under *subsection (2)* in respect of a mine rehabilitation fund related to a qualifying mine, an allowance shall be made to the person who—
 - (i) is working the qualifying mine, and
 - (ii) is obliged to make relevant payments to the fund holder in relation to the fund,

for any chargeable period which falls wholly or partly in the period (in this subsection referred to as “the funding period”) commencing on the date on which the Minister gives the certificate and ending at the end of the estimated life of the mine, and the amount of the allowance shall be an amount determined by the formula—

$$E \times \frac{N}{12} \times \frac{1}{L}$$

where—

E is the aggregate of the scheduled payments,

N is the number of months in the chargeable period, or the part of the chargeable period falling in the funding period, and

L is the number of years in the estimated life of the mine.

- (b) The aggregate of the amounts of allowances under this subsection for a chargeable period and all preceding chargeable periods shall not exceed the aggregate of the amounts of relevant payments made in the chargeable period or its basis period and in all preceding chargeable periods or their basis periods.

- (c) Where effect cannot be given to an allowance or part of an allowance under this subsection for a chargeable period by virtue of *paragraph (b)*, the allowance or the part of the allowance, as the case may be, shall be added to the amount of an allowance under this subsection for the following chargeable period and, subject to *paragraph (b)*, shall be deemed to be part of the allowance for that period or, if there is no such allowance for that period, shall be deemed to be the allowance for that period, and so on for succeeding periods. Pr.24 S.681

(5) Where the Minister by notice in writing amends a certificate under *subsection (2)(c)* in a chargeable period or its basis period—

- (a) if the aggregate of the amounts of allowances made under *subsection (4)* for the chargeable period and all preceding chargeable periods exceeds the aggregate of the amounts of allowances which would have been made under that subsection for those chargeable periods if the certificate had been amended in accordance with the notice at the time the certificate was given, an amount equal to the amount of the excess shall be treated as a trading receipt of the chargeable period in which, or in the basis period for which, the certificate was amended, and
- (b) if the aggregate of the amounts of allowances which would have been made under *subsection (4)* for the chargeable period and all preceding chargeable periods if the certificate had been amended in accordance with the notice at the time the certificate was given exceeds the aggregate of the amounts of allowances made under that subsection for those chargeable periods, the allowance under *subsection (4)* for the chargeable period shall, subject to *subsection (4)(b)*, be increased by an amount equal to the excess.
- (6) (a) Subject to *paragraph (b)*, an amount received by a person who is working or has worked a qualifying mine, or by a person connected with such a person, from the fund holder of a mine rehabilitation fund in relation to the qualifying mine, or otherwise in connection with the mine rehabilitation fund, shall be treated as trading income of the person in accordance with this section.
- (b) The amount to be treated as trading income for a chargeable period shall not exceed the excess of the aggregate of the amounts of allowances made under *subsections (4)* and *(5)* in that chargeable period and in any preceding chargeable periods over the aggregate amounts treated under this subsection or *subsection (5)* as trading income for all preceding chargeable periods.
- (c) An amount to be treated under this subsection as trading income of a person shall be treated as income of—
- (i) where the amount is received at any time when the person is working the qualifying mine, the chargeable period in which, or in the basis period for which, the amount is received, and
- (ii) in any other case, the chargeable period in which the mine ceases to be worked.

(d) Notwithstanding *paragraph (c)*, where an amount is to be treated as income of a chargeable period in accordance with *subparagraph (ii)* of that paragraph, the amount shall be assessed for the chargeable period in which, or in the basis period for which, the amount is received, and details of the receipt of the amount shall be included in the return required to be made by the person under *section 951* for that chargeable period.

(7) Where a person (in this subsection referred to as “the first-mentioned person”) ceases to work a qualifying mine and any obligations of the first-mentioned person to rehabilitate the site of the mine are transferred to any other person, that other person shall be treated for the purposes of this section as if that other person had worked the qualifying mine and as if everything done to or by the first-mentioned person had been done to or by that other person.

(8) As respects any person who incurs rehabilitation expenditure in respect of which an allowance is made under *subsection (3)*—

(a) rehabilitation expenditure shall not otherwise be deductible in computing income of the person for any purpose of income tax or corporation tax,

(b) an allowance shall not be made in respect of the expenditure under any provision of the Tax Acts other than this section, and

(c) to the extent that any receipts are taken into account under *subsection (1)(b)(ii)* to determine the net cost of the rehabilitation of the site of a mine, those receipts shall not constitute income of the person for any purpose of income tax or corporation tax.

(9) An allowance under this section made to a person who is carrying on a trade of working a mine shall be made in taxing that trade, and *section 304(4)* shall apply in relation to an allowance under *subsection (4)* as it applies in relation to allowances to be made under *Part 9*.

Marginal mine allowance.

[F(TPCM)A74 s10; CTA76 s140(1), s164, Sch2 PtI par38 and Sch3 PtII]

682.—(1) In this section, “marginal mine” means a qualifying mine in respect of which the Minister for the Marine and Natural Resources gives a certificate stating that that Minister is satisfied that the profits derived or to be derived from the working of that mine are such that, if tax is to be charged on those profits in accordance with the Income Tax Acts, other than this section, the mine is unlikely to be worked or to continue to be worked.

(2) The Minister for Finance, after consultation with the Minister for the Marine and Natural Resources, may direct in respect of a marginal mine that for any particular year of assessment the tax chargeable on the profits of that qualifying mine shall be reduced to such amount (including nil) as may be specified by the Minister for Finance.

(3) Where a person is carrying on the trade of working a qualifying mine in respect of which the Minister for Finance gives a direction under *subsection (2)* in respect of a year of assessment, an allowance (which shall be known as a “marginal mine allowance”) shall be made as a deduction in charging the profits of that trade to income tax for that year of assessment of such amount or amounts as will

ensure that the tax charged in respect of the profits of that trade shall equal the amount specified by that Minister. Pr.24 S.682

(4) This section shall apply for corporation tax as it applies for income tax, and the references to the Income Tax Acts, to a year of assessment and to charging the profits of that trade to income tax shall apply as if they were respectively references to the Corporation Tax Acts, to an accounting period and to computing the profits of that trade for the purposes of corporation tax.

683.—(1) In this section—

“chargeable period” means an accounting period of a company or a year of assessment;

any reference to the sale of a right to a scheduled mineral asset includes a reference to the grant of a licence to work scheduled minerals.

Charge to tax on sums received from sale of scheduled mineral assets.

[F(TPCM)A74 s11;
CTA76 s140(1) and
Sch2 PtI par39;
FA81 s9(e)]

(2) Where a person resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, the person shall, subject to this section, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by the person on an amount equal to that sum; but where the person is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid, elects by notice in writing to the inspector to be charged to tax for that year of assessment and for each of the 5 succeeding years of assessment on an amount equal to one-sixth of that sum, the person shall be so charged.

(3) (a) In this subsection, “tax” shall mean income tax, unless the seller of the scheduled mineral asset, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.

(b) Subject to *paragraph (c)*, where a person not resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, then—

(i) the person shall be charged to tax in respect of that sum under Case IV of Schedule D for the chargeable period in which the sum is received by the person, and

(ii) *section 238* shall apply to that sum as if it were an annual payment payable otherwise than out of profits or gains brought into charge to tax.

(c) Where the person referred to in *paragraph (b)* is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid elects by notice in writing to the Revenue Commissioners that the sum shall be treated for the purpose of tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in his or her income chargeable to tax for each of those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election; but—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.24 S.683

- (i) the election shall not affect the amount of tax to be deducted and accounted for under *section 238*,
- (ii) where any sum is deducted under *section 238*, any adjustments necessary to give effect to the election shall be made by means of repayment of tax, and
- (iii) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately to be paid for that year is less than the amount of tax paid for that year.

(4) Where the scheduled mineral asset sold by a person was acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, *subsections (2) and (3)* shall apply as if any capital sum received by the person when the person sells the asset were reduced by the amount of that sum; but nothing in this subsection shall affect the amount of tax to be deducted and accounted for under *section 238* by virtue of *subsection (3)*, and where any sum is deducted under *section 238* any adjustment necessary to give effect to this subsection shall be made by means of repayment of tax.

(5) Where by virtue of an order made by the Minister for the Marine and Natural Resources under section 14 of the Minerals Development Act, 1940, scheduled minerals or rights to work such minerals are acquired and that Minister pays compensation to any person in respect of such acquisition, that person shall be deemed for the purposes of this section to have sold a scheduled mineral asset for a capital sum equal to the amount of compensation paid to that person, and *subsections (2) to (4)* shall apply to the compensation as they apply to a capital sum received in respect of a sale of a scheduled mineral asset.

CHAPTER 2

Petroleum taxation

Interpretation
(Chapter 2).

684.—(1) In this Chapter—

[FA92 s75; FA95
s42(a)]

“abandonment activities”, in relation to a relevant field or any part of it, means those activities of a person, whether carried on by the person or on behalf of the person, which comply with the requirements of a petroleum lease held by the person, or, if the person is a company, held by the company or a company associated with it, in respect of—

- (a) the closing down, decommissioning or abandonment of the relevant field or the part of it, as the case may be, or
- (b) the dismantlement or removal of the whole or a part of any structure, plant or machinery which is not situated on dry land and which has been brought into use for the purposes of transporting as far as dry land petroleum won from the relevant field or from the part of it, as the case may be;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“abandonment expenditure”, in relation to a relevant field or any part of it, means expenditure incurred on abandonment activities in relation to the field or the part of it, as the case may be; Pr.24 S.684

“chargeable period” means an accounting period of a company or a year of assessment;

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

“development expenditure” means capital expenditure incurred in connection with a relevant field on the provision for use in carrying on petroleum extraction activities of—

- (a) machinery or plant,
- (b) any works, buildings or structures, or
- (c) any other assets,

which are of such a nature that when the relevant field ceases to be worked they are likely to be so diminished in value that their value will be nil or almost nil, but does not include—

- (i) expenditure on any vehicle suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles,
- (ii) expenditure on any building or structure for use as a dwelling house, shop or office or for any purpose ancillary to the purposes of a dwelling house, shop or office,
- (iii) (I) expenditure incurred on petroleum exploration activities, and
(II) payments made to the Minister for the Marine and Natural Resources on the application for, or in consideration of the granting of, a licence (other than a petroleum lease) or other payments made to that Minister in respect of the holding of the licence,
- (iv) expenditure on the acquisition of the site of a relevant field, or of the site of any works, buildings or structures or of rights in or over any such site,
- (v) expenditure on the acquisition of, or of rights in or over, deposits of petroleum,
- (vi) expenditure on—
 - (I) machinery or plant, or
 - (II) works, buildings or structures,provided for the processing or storing of petroleum won in the course of carrying on petroleum extraction activities, other than the initial treatment and storage of such petroleum,

or

- (vii) any interest payment,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

and “assets representing development expenditure” shall be construed accordingly and shall include any results obtained from any search or enquiry on which the expenditure was incurred;

“dry land” means land not permanently covered by water;

“exploration expenditure” means—

- (a) capital expenditure incurred on petroleum exploration activities, and
- (b) payments made to the Minister for the Marine and Natural Resources on the application for, or in consideration of the granting of, a licence (other than a petroleum lease) or other payments made to that Minister in respect of the holding of the licence,

but does not include any interest payment, and “assets representing exploration expenditure” shall be construed accordingly and shall include any results obtained from any search, exploration or enquiry on which the expenditure was incurred;

“initial treatment and storage”, in relation to petroleum won from a relevant field, means the doing of any of the following—

- (a) subjecting petroleum so won to any process of which the sole purpose is to enable the petroleum to be safely stored, safely loaded into a tanker or safely accepted for refining,
- (b) separating petroleum so won and consisting of gas from other petroleum so won,
- (c) separating petroleum won and consisting of gas of a kind that is transported and sold in normal commercial practice from other petroleum so won and consisting of gas,
- (d) liquefying petroleum so won and consisting of gas of such a kind as is mentioned in *paragraph (c)* for the purpose of transporting such petroleum,
- (e) subjecting petroleum so won to any process so as to secure that petroleum disposed of without having been refined has the quality that is normal for petroleum so disposed of from the relevant field, or
- (f) storing petroleum so won before its disposal or its appropriation to refining or to any use, except use in—
 - (i) winning petroleum from a relevant field, including searching in that field for and winning access to such petroleum, or
 - (ii) transporting as far as dry land petroleum that is won from a place not on dry land,

but does not include any activity carried on as part of or in association with the refining of petroleum;

“licence” means—

- (a) an exploration licence,

- (b) a lease undertaking,
- (c) a licensing option,
- (d) a petroleum prospecting licence,
- (e) a petroleum lease, or
- (f) a reserved area licence,

granted in respect of an area in the State or a designated area under the Petroleum and Other Minerals Development Act, 1960, and which was granted subject to—

- (i) the licensing terms set out in the Notice entitled “Ireland Exclusive Offshore Licensing Terms” presented to each House of the Oireachtas on the 29th day of April, 1975,
- (ii) licensing terms presented to each House of the Oireachtas on a day or days which fall after the 29th day of April, 1975, or
- (iii) licensing terms to which *paragraph (i)* or *(ii)* relates, as amended or varied from time to time;

“licensed area” means an area in respect of which a licence is in force;

“mining trade” means a trade consisting only of working a mine which is a qualifying mine or, in the case of a trade consisting partly of such an activity and partly of one or more other activities, the part of the trade consisting only of working such a mine which is treated by virtue of *section 685* as a separate trade;

“petroleum” means petroleum (within the meaning of section 2(1) of the Petroleum and Other Minerals Development Act, 1960) won or capable of being won under the authority of a licence;

“petroleum activities” means any one or more of the following activities—

- (a) petroleum exploration activities,
- (b) petroleum extraction activities, and
- (c) the acquisition, enjoyment or exploitation of petroleum rights;

“petroleum exploration activities” means activities of a person carried on by the person or on behalf of the person in searching for deposits of petroleum in a licensed area, in testing or appraising such deposits or in winning access to such deposits for the purposes of such searching, testing or appraising, where such activities are carried on under a licence (other than a petroleum lease) authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it;

“petroleum extraction activities” means activities of a person carried on by the person or on behalf of the person under a petroleum lease authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it in—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.24 S.684

- (a) winning petroleum from a relevant field, including searching in that field for and winning access to such petroleum,
- (b) transporting as far as dry land petroleum so won from a place not on dry land, or
- (c) effecting the initial treatment and storage of petroleum so won from the relevant field;

“petroleum profits”, in relation to a company which is chargeable to corporation tax on its profits, means the income of the company from petroleum activities and any amount to be included in its total profits in respect of chargeable gains accruing to the company from disposals of petroleum-related assets;

“petroleum-related asset” means any of the following assets or any part of such an asset—

- (a) any petroleum rights,
- (b) any asset representing exploration expenditure or development expenditure,
- (c) shares deriving their value or the greater part of their value, whether directly or indirectly, from petroleum activities, other than shares dealt in on a stock exchange;

“petroleum rights” means rights to petroleum to be extracted or to interests in, or to the benefit of, petroleum, and includes an interest in a licence;

“petroleum trade” means a trade consisting only of trading activities which are petroleum activities or, in the case of a trade consisting partly of such activities and partly of other activities, the part of the trade consisting only of trading activities which are petroleum activities which is treated by virtue of *section 685* as a separate trade;

“qualifying mine” has the same meaning as in *section 672*;

“relevant field” means an area in respect of which a licence, being a petroleum lease, is in force.

(2) For the purposes of this Chapter, 2 companies shall be associated with one another if—

- (a) one company is a 51 per cent subsidiary of the other company,
- (b) each company is a 51 per cent subsidiary of a third company, or
- (c) one company is owned by a consortium of which the other company is a member,

and for the purposes of *paragraph (c)* a company shall be owned by a consortium if all the ordinary share capital of that company is directly and beneficially owned between them by 5 or fewer companies, which companies are in this Chapter referred to as “the members of the consortium”.

685.—(1) Where a person carries on any petroleum activities as part of a trade and those activities apart from any other activity would constitute a trade, those activities shall be treated for the purposes of the Tax Acts and the Capital Gains Tax Acts as a separate trade distinct from all other activities carried on by the person as part of the trade, and any necessary apportionment shall be made of receipts and expenses.

Pr.24
Separation of
trading activities.
[FA92 s76]

(2) Where a person works a qualifying mine as part of a trade, that activity shall be treated for the purposes of this Chapter as a separate trade distinct from all other activity carried on by the person as part of the trade, and any necessary apportionment shall be made of receipts and expenses.

686.—(1) In this section—

Reduction of
corporation tax.

“petroleum profits on which corporation tax falls finally to be borne”, in relation to a company, means the amount of the petroleum profits of the company after making all deductions and giving or allowing all reliefs that for the purposes of corporation tax are made from, or given or allowed against, or are treated as reducing—

[FA92 s77; FA95
s42(b)]

- (a) those profits, or
- (b) income or chargeable gains, if any, included in those profits;

“relevant petroleum lease” means a petroleum lease in respect of a relevant field, being a field discovered by petroleum exploration activities carried on under a licence (other than a petroleum lease) which authorises the carrying on of those activities for a period which, apart from any extension of the period or revision or renewal of the licence—

- (a) is not longer than 10 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2003,
- (b) is longer than 10 years but not longer than 15 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2007, or
- (c) is longer than 15 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2013,

but a petroleum lease in respect of a relevant field shall be a relevant petroleum lease where—

- (i) the field was discovered under a lease which is not a licence,
- (ii) the lease under which the field was discovered expired before the petroleum lease is granted, and
- (iii) the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2003.

- (2) (a) Subject to *paragraph (b)*, corporation tax payable by a company for an accounting period shall be reduced by the amount, if any, determined by the formula—

$$I \times \frac{R - 25}{100}$$

where—

I is the amount for the accounting period of the income to which this section applies, and

R is the rate per cent of corporation tax specified in *section 21(1)* for the financial year or years in which the accounting period falls.

(b) Notwithstanding *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 of corporation tax are in force under *section 21(1)* for each of those years, then, R in *paragraph (a)* shall be the 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.

(3) The income to which this section applies shall be the income of a company for an accounting period determined by the formula—

$$(F - G) \times \frac{S}{T}$$

where—

F is the amount for the accounting period of the company’s petroleum profits on which corporation tax falls finally to be borne,

G is the amount to be included in the company’s profits brought into charge to corporation tax for the accounting period in respect of chargeable gains accruing to the company from disposals of petroleum-related assets,

S is the aggregate of the income of the company for the accounting period which is—

(a) trading income attributable to sales of petroleum won by the company, or

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) income, other than trading income, from the enjoyment or exploitation of petroleum rights,

under a relevant petroleum lease granted to the company or a company associated with the company, and

T is the aggregate of the income of the company for the accounting period from its petroleum trade or other petroleum activities.

(4) For the purposes of *subsection (3)*, the income of a company for an accounting period which is trading income attributable to sales of petroleum won by the company under a relevant petroleum lease shall be the income, if any, determined by the formula—

$$O \times \frac{P}{Q}$$

where—

O is the income of the company for the accounting period from its petroleum trade,

P is the aggregate of money or money's worth receivable by the company from sales in the accounting period of petroleum won by it under the relevant petroleum lease, and

Q is the aggregate of money or money's worth receivable by the company from sales of petroleum in the accounting period in the course of carrying on its petroleum trade.

687.—(1) Notwithstanding *sections 381* and *396(2)*—

Treatment of losses.

(a) as respects a loss incurred by a person in a petroleum trade, relief shall not be given—

[FA92 s78]

(i) under *section 381* against any income other than income arising from petroleum activities, or

(ii) under *section 396(2)* against any profits other than petroleum profits,

and

(b) as respects any loss, other than a loss incurred in a petroleum or a mining trade, incurred by a person, relief shall not be given—

(i) under *section 381* against income arising from petroleum activities, or

(ii) under *section 396(2)* against petroleum profits.

(2) Notwithstanding *sections 383* and *399(1)*, the amount of any income of a person which is within the charge to tax under Case IV of Schedule D, and which is income arising from petroleum activities, shall not be reduced by the amount of any loss which may be relieved under *section 383* or *399(1)*, other than a loss incurred in petroleum activities, and the amount of any loss so incurred shall not be treated under either of those sections as reducing the amount of any income other than income arising from petroleum activities.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.24 S.687

(3) Notwithstanding *sections 305(1)(b)* and *308(4)*, a capital allowance which is to be given by discharge or repayment of tax, or in charging income under Case V of Schedule D, shall not to any extent be given effect—

(a) under *section 305* against income arising from petroleum activities, or

(b) under *section 308(4)* against petroleum profits.

Treatment of group relief.

[FA92 s79]

688.—(1) In this section, “claimant company” and “surrendering company” have the meanings respectively assigned to them by *section 411*.

(2) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief shall not be allowed against any petroleum profits of the claimant company except to the extent that the claim relates to—

(a) a loss incurred by the surrendering company in a petroleum or mining trade, or

(b) charges on income paid, other than to a connected person, by the surrendering company which consist of payments made wholly and exclusively for the purposes of such a trade,

and group relief in respect of any such loss incurred by the surrendering company, or in respect of any charge on income paid by the surrendering company which is a payment made wholly and exclusively for the purposes of the petroleum or mining trade, shall not be allowed against any profits of the claimant company other than its petroleum profits.

Restriction of relief for losses on certain disposals.

[FA92 s80(1) and (2)]

689.—(1) Notwithstanding any provision of the Capital Gains Tax Acts or of the Corporation Tax Acts relating to the deduction of allowable losses for the purposes of capital gains tax or of corporation tax on chargeable gains—

(a) an allowable loss accruing on a disposal of an asset other than a petroleum-related asset shall not be deducted from the amount of a chargeable gain accruing on a disposal of a petroleum-related asset, and

(b) an allowable loss accruing on a disposal of a petroleum-related asset shall not be deducted from the amount of a chargeable gain accruing on a disposal of an asset other than a petroleum-related asset.

(2) *Subsection (11)* of *section 597* shall apply as respects the application of that section to a disposal of assets which have been used by the person disposing of them for the purposes of a petroleum trade as if each reference in that subsection to a “trade” or “trades” were respectively a reference to a “petroleum trade” or “petroleum trades” within the meaning of this Chapter.

Interest and charges on income.

[FA92 s81(1) to (5) and (7)]

690.—(1) In computing the amount of—

(a) a person’s profits or gains for the purposes of income tax, or

arising from a petroleum trade, no deduction shall be made in respect of—

- (i) any interest payable by the person to a connected person to the extent that the amount of the interest exceeds for whatever reason the amount which, having regard to all the terms on which the money in respect of which it is payable was borrowed and the standing of the borrower, might have been expected to be payable if the lender and the borrower had been independent parties dealing at arm's length,
- (ii) interest payable by the person on any money borrowed to meet expenditure incurred on petroleum exploration activities, or
- (iii) interest payable by the person on any money borrowed to meet expenditure incurred in acquiring petroleum rights from a connected person.

(2) *Section 130(2)(d)(iv)* shall not apply to so much of any interest as—

- (a) would but for *section 130(2)(d)(iv)* be deductible in computing the amount of a company's income from a petroleum trade,
- (b) would not be precluded by *subsection (1)* from being so deducted, 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,

and for the purposes of *paragraph (c)* "resident of the United States of America" has the meaning assigned to it by the Convention set out in *Schedule 25*, and 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*.

(3) Notwithstanding *section 243*—

- (a) no deduction shall be allowed from that part of a company's profits which consists of petroleum profits in respect of—
 - (i) a charge on income paid by the company to a connected person, or
 - (ii) any other charge on income paid by the company unless it is a payment made wholly and exclusively for the purposes of a petroleum or mining trade carried on by the company,

and

- (b) no deduction shall be allowed from that part of a company's profits which consists of profits other than petroleum profits in respect of any charge on income paid by the company which is a payment made wholly and exclusively

for the purposes of a petroleum trade carried on by the company.

(4) In applying *section 237* to any annual payment made by a person whose profits or gains for the purposes of income tax arise wholly or partly from petroleum activities—

(a) the profits or gains arising from those activities shall not be treated as profits or gains which have been brought into charge to income tax—

(i) where the annual payment is made to a connected person, or

(ii) unless (but subject to *subparagraph (i)*) the payment is made wholly and exclusively for the purposes of a petroleum or mining trade carried on by the person making the payment,

and

(b) profits or gains, other than profits or gains arising from petroleum activities, shall not be treated as profits or gains which have been brought into charge to income tax where the annual payment is made wholly and exclusively for the purposes of a petroleum trade carried on by the person making the payment.

(5) Relief shall not be allowed—

(a) under *section 396(7)* in respect of a payment to which *subsection (3)(a)(i)* applies, or

(b) under *section 390* in respect of a payment to which *subsection (4)(a)(i)* applies,

where the payment is made wholly and exclusively for the purposes of a petroleum trade.

(6) In any case where for an accounting period of a company charges on income paid by the company are allowable under *section 243*—

(a) such amount of those charges as, by virtue of *subsection (3)*—

(i) is not allowable against a part of the company's profits, but

(ii) is allowable against the remaining part (in this subsection referred to as "other profits") of its profits,

exceeds the other profits, and

(b) the amount of that excess is greater than the amount, if any, by which the total of the charges on income which, subject to *subsection (3)*, are allowable to the company under *section 243* exceeds the total of the company's profits,

then, for the purpose of enabling the company to surrender the excess referred to in *paragraph (a)* by means of group relief, *section 420(6)* shall apply as if—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (I) the reference in that section to the amount paid by the surrendering company by means of charges on income were a reference to so much of that amount as by virtue of *subsection (3)* is allowable only against the company's other profits, and Pr.24 S.690
- (II) the reference in that section to the surrendering company's profits were a reference to its other profits only.

691.—(1) *Section 160* shall apply subject to *subsection (2)*.

Restriction of set-off of advance corporation tax.

(2) Where advance corporation tax is paid by a company (in this subsection referred to as “the distributing company”) in respect of a distribution made by it to an associated company resident in the State— [FA92 s82]

- (a) that advance corporation tax shall not be set against the distributing company's liability to corporation tax on any income included in its petroleum profits, and
- (b) if the benefit of any amount of that advance corporation tax is surrendered under *section 166* by the distributing company to another company, the corresponding amount of advance corporation tax which under that section that other company is treated for the purposes of *section 160* as having paid shall not be set against that other company's liability to corporation tax on any income included in its petroleum profits.

(3) This section shall not apply as respects any distribution made before the 24th day of April, 1992.

692.—(1) Subject to *subsection (4)*, the provisions of the Tax Acts relating to allowances and charges in respect of capital expenditure shall apply in relation to a petroleum trade as if each reference in those provisions to machinery or plant included a reference to assets, not being machinery or plant, representing development expenditure.

Development expenditure: allowances and charges.

[FA92 s83; FA96 s132(1) and Sch5 PtI par18]

(2) In relation to assets representing development expenditure, *section 284(2)* shall, subject to *subsection (3)*, apply as if the reference in *paragraph (a)(i)* of that section to 15 per cent were a reference to 100 per cent.

(3) Assets representing development expenditure shall not be treated for the purposes of *section 284(1)* as being in use for the purposes of a petroleum trade at the end of any chargeable period or its basis period which ends before the commencement of production of petroleum in commercial quantities from the relevant field in connection with which the assets were provided.

(4) The following provisions shall not apply as respects development expenditure—

- (a) *Chapters 1* and *3* of *Part 9*,
- (b) *section 283*,
- (c) *section 670*,
- (d) *Chapter 1* of *Part 29*,

(e) *sections 763 to 765*, and

(f) *section 768*.

(5) (a) For the purposes of this section, assets representing development expenditure shall be deemed to include assets (in this subsection referred to as “leased assets”) provided for leasing to a person carrying on a petroleum trade where such leased assets would, if they had been provided by that person, be assets representing development expenditure, and where this paragraph applies—

(i) *section 284* shall apply as if the trade for the purposes of which the leased assets are (or would under *section 298(1)* be regarded as being) in use were a petroleum trade carried on by the lessor, and

(ii) *section 403* shall apply as if each reference in that section to machinery or plant included a reference to assets, not being machinery or plant, representing development expenditure.

(b) For the purposes of *subsection (4)*, capital expenditure on the provision of leased assets shall be deemed to be development expenditure.

Exploration expenditure: allowances and charges.

[FA92 s84; FA97 s146(1) and Sch9 PtI par16(2)]

693.—(1) Subject to *subsections (5) and (16)*, where a person carrying on a petroleum trade has incurred any exploration expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) there shall be made to the person for the chargeable period related to the expenditure an allowance equal to the amount of the expenditure.

(2) (a) Subject to *paragraph (b)*, where a person carrying on a petroleum trade has incurred any exploration expenditure in respect of which an allowance has been made to the person under *subsection (1)* and disposes of assets representing any amount of that expenditure, a charge (in this section referred to as a “balancing charge”) equal to the net amount or value of the consideration in money or money’s worth received by the person on the disposal shall be made on the person for the chargeable period related to the disposal or, if the disposal occurs after the date on which the trade is permanently discontinued, for the chargeable period related to the discontinuance.

(b) The amount on which a balancing charge is made shall not exceed the amount of the allowance made to the person under *subsection (1)* in respect of the amount of exploration expenditure represented by the assets disposed of.

(3) Where any assets representing exploration expenditure are destroyed, those assets shall for the purposes of *subsection (2)* be treated as if they had been disposed of immediately before their destruction, and any sale, insurance, salvage or compensation moneys received in respect of the assets by the person carrying on the petroleum trade shall be treated as if those moneys were consideration received on that disposal.

(4) Where a person disposes of any assets representing exploration expenditure incurred by the person in connection with an area which at the time of the disposal is, or which subsequently becomes,

a relevant field (or part of such a field), the person who acquires the assets shall, if that person carries on a petroleum trade which consists of or includes the working of the relevant field (or, as the case may be, the part of the relevant field), be deemed for the purposes of this section to have incurred—

- (a) on the day on which that person acquires the assets, or
- (b) if later, on the day on which that person commences to work the area connected with the assets as a relevant field (or, as the case may be, as part of the relevant field),

an amount of exploration expenditure equal to the lesser of—

- (i) the amount of the exploration expenditure represented by the assets, and
 - (ii) the amount or value of the consideration given by that person on the acquisition of the assets.
- (5) (a) Any exploration expenditure incurred by a person before the person commences to carry on a petroleum trade shall be treated for the purposes of *subsection (1)* as if that expenditure had been incurred by that person on the first day on which that person carries on the petroleum trade.
- (b) Notwithstanding *paragraph (a)*, no account shall be taken for the purposes of this subsection of expenditure incurred in connection with an area which is not a relevant field, or part of such a field, being worked in the course of carrying on the petroleum trade, if the expenditure was incurred more than 25 years before that first day.

(6) Where a person incurs exploration expenditure before commencing to carry on a petroleum trade and *subsection (5)* applies as respects that expenditure and, before the person commences to carry on that trade, the person disposes of assets representing any amount of that expenditure, the allowance to be made to the person under this section in respect of that expenditure shall be reduced by the net amount or value of any consideration in money or money's worth received by the person on that disposal.

(7) For the purposes of this section other than for the purposes of *subsections (4) and (5)(a)*, the day on which any expenditure is incurred shall be taken to be the day on which the sum in question becomes payable.

(8) Any allowance or balancing charge made to or on a person under this section shall be made to or on the person in taxing the person's petroleum trade but, subject to *subsection (4)*, such allowance shall not be made in respect of the same expenditure in taxing more than one such trade.

(9) *Section 304(4)* shall apply in relation to an allowance under this section as it applies in relation to an allowance to be made under *Part 9*.

(10) *Section 307(2)(a)* shall apply for the purposes of this section, and *subsections (2) to (7) of section 321* shall apply for the interpretation of this section.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.24 S.693

(11) *Subsections (2) and (3) of section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance or a balancing charge is to be made under this section.

(12) References to capital expenditure in *Part 9* and in *section 670, Chapter 1 of Part 29* and *sections 763 to 765* shall be deemed not to include references to expenditure which is exploration expenditure, and exploration expenditure shall be deemed not to be expenditure on know-how for the purposes of *section 768*.

(13) Notwithstanding *subsection (12)*, the following provisions—

- (a) *section 312*,
- (b) *subsections (1) and (2) of section 316*,
- (c) *section 317(2)*,
- (d) *section 318*, and
- (e) *subsections (4) and (5) of section 320*,

shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of *Part 9* and *Chapter 1 of Part 29*.

(14) *Part 19* shall apply as if—

- (a) the reference in *section 551(3)* to a balancing charge included a reference to a balancing charge under this section, and
- (b) references in *section 555* to a capital allowance (or capital allowances) and to a balancing charge included references respectively to an allowance (or allowances) and a balancing charge under this section.

(15) *Section 319* shall apply as if *subsections (1) and (2)* of that section included references to this section.

(16) For the purposes of this section, a person shall be deemed not to be carrying on a petroleum trade unless and until the person is carrying on in the course of that trade trading activities which are petroleum extraction activities.

(17) Any reference in this section to assets representing any exploration expenditure shall be construed as including a reference to a part of or share in any such assets, and any reference in this section to a disposal or acquisition of any such assets shall be construed as including a reference to a disposal or acquisition of a part of or share in any such assets.

694.—(1) For the purposes of *section 693*, where exploration expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) is incurred by a company (in this section referred to as an “exploration company”) and—

- (a) another company is a wholly-owned subsidiary of the exploration company, or
- (b) the exploration company is at the time the exploration expenditure is incurred a wholly-owned subsidiary of

Exploration expenditure incurred by certain companies.

[FA92 s85]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

another company (in this section referred to as “the parent company”), Pr.24 S.694

then, the expenditure or so much of it as the exploration company specifies—

(i) in the case referred to in *paragraph (a)*, may at the election of the exploration company be deemed to have been incurred by such other company (being a wholly-owned subsidiary of the exploration company) as the exploration company specifies, and

(ii) in the case referred to in *paragraph (b)*, may at the election of the exploration company be deemed to have been incurred by the parent company or by such other company (being a wholly-owned subsidiary of the parent company) as the exploration company specifies.

(2) Where under *subsection (1)* exploration expenditure incurred by an exploration company is deemed to have been incurred by another company (in this subsection referred to as “the other company”)—

(a) the expenditure shall be deemed to have been incurred by the other company at the time at which the expenditure was actually incurred by the exploration company,

(b) in a case where the expenditure was incurred at a time before the incorporation of the other company, that company shall be deemed to have been in existence at the time the expenditure was incurred, and

(c) in the application of *section 693* to a petroleum trade carried on by the other company, the expenditure shall be deemed—

(i) to have been incurred by the other company for the purposes of that trade, and

(ii) not to have been met directly or indirectly by the exploration company.

(3) The same expenditure shall not be taken into account in relation to more than one trade by virtue of this section.

(4) A deduction or allowance shall not be made in respect of the same expenditure both by virtue of this section and under some other provision of the Tax Acts.

(5) A company shall for the purposes of *subsection (1)* be deemed to be a wholly-owned subsidiary of another company if and so long as all 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, and *paragraph 6* of *Schedule 9* shall apply for the purposes of supplementing this subsection as if the reference in that paragraph to that Schedule were a reference to this subsection.

PT.24
Abandonment
expenditure:
allowances and loss
relief.

695.—(1) In this section, “abandonment losses” means so much of a loss in a petroleum trade incurred by a person in a chargeable period as does not exceed the total amount of allowances which—

[FA92 s86]

- (a) are to be made to the person for that chargeable period under this section, and
- (b) have been taken into account in determining the amount of that loss in the petroleum trade.

(2) Subject to *subsections (5) to (9)*, where in a chargeable period a person, who is or has been carrying on in relation to a relevant field or a part of it petroleum extraction activities other than effecting the initial treatment and storage of petroleum that is won from the relevant field, incurs abandonment expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) in relation to the field or the part of it, as the case may be, there shall be made to the person for the chargeable period an allowance equal to the amount of the expenditure.

- (3) (a) Subject to *paragraph (b)*, as respects so much of a loss in a petroleum trade incurred by a person in a chargeable period as is an abandonment loss, the 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 chargeable period and the 3 chargeable periods immediately preceding it will not exceed the amount which would have been borne by the person if the person’s income arising from petroleum activities for each of those chargeable periods had been reduced by the lesser of—

- (i) the abandonment loss, and
- (ii) so much of the abandonment loss as could not on that claim be treated as reducing such income of a later chargeable period.

- (b) Relief under *paragraph (a)* in respect of a loss shall be deemed for the purposes of the Tax Acts to be relief given under *section 381(1)* such that—

- (i) no further relief shall be given under *section 381(1)* in respect of so much of an abandonment loss as is an amount in respect of which relief has been given under *paragraph (a)*, and
- (ii) *subsections (3) to (7) of section 381* and *section 392* shall apply to relief under *paragraph (a)* as they apply to relief under *section 381*.

- (c) As respects so much of a loss in a petroleum trade incurred by a person in a chargeable period as is an abandonment loss, *subsections (2) and (3) of section 396* shall apply as if the time specified in *subsection (3)* of that section were a period of 3 years ending immediately before the chargeable period in which the loss is incurred.

(4) So much of the abandonment losses, if any, incurred by a person on or before the day on which the person permanently discontinues to carry on a petroleum trade (in this subsection referred to as “the first-mentioned trade”) as would not apart from this subsection be allowed against or treated as reducing the person’s or any

other person's income or profits, shall be treated as incurred by the person in the first chargeable period of the first petroleum trade (in this section referred to as "the new trade") to be carried on by the person after the permanent discontinuance of the first-mentioned trade as a trading expense of the new trade. Pr.24 S.695

(5) Where a petroleum trade carried on by a person has been permanently discontinued, any abandonment expenditure incurred by the person after the discontinuance shall be treated for the purposes of *subsection (2)* as if that expenditure had been incurred by the person on the last day on which the person carries on the petroleum trade.

(6) For the purposes of this section other than *subsections (4)* and *(5)*, the day on which any expenditure is incurred shall be taken to be the day on which the sum in question becomes payable.

(7) Any allowance made to a person under this section shall be made in taxing the person's petroleum trade, but such allowance shall not be made in respect of the same expenditure in taxing more than one trade.

(8) References to capital expenditure in *Part 9* and in *section 670*, *Chapter 1* of *Part 29* and *sections 763* to *765* shall be deemed not to include references to expenditure which is abandonment expenditure; but *subsections (1)* and *(2)* of *section 316* and *sections 317(2)* and *320(5)* shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of *Part 9* and *Chapter 1* of *Part 29*.

(9) *Subsections (9)* to *(11)* and *(15)* of *section 693* shall apply for the purposes of this section as they apply for the purposes of that section.

696.—(1) Where a person disposes, otherwise than by means of a sale at arm's length, of petroleum acquired by the person by virtue of petroleum activities carried on by the person, then, for the purposes of the Tax Acts the disposal of the petroleum and its acquisition by the person to whom the disposal was made shall be treated as having been for a consideration equal to the market value of the petroleum at the time the disposal was made. Valuation of petroleum in certain circumstances. [FA92 s87]

(2) (a) In this subsection, "relevant appropriation", in relation to any petroleum won or otherwise acquired in the course of the carrying on by a person of petroleum activities, means the appropriation of that petroleum to refining or to any use except use for petroleum extraction activities carried on by the person, and "relevantly appropriated" shall be construed accordingly.

(b) Where a person who carries on in the course of a trade petroleum activities and other activities makes a relevant appropriation of any petroleum won or otherwise acquired by the person in the course of the petroleum activities without disposing of the petroleum, then, for the purposes of the Tax Acts the person shall be treated as having at the time of the appropriation—

(i) sold the petroleum in the course of the petroleum trade carried on by the person, and

- (ii) bought the petroleum in the course of a separate trade consisting of the activities other than the petroleum activities,

and as having so sold and bought the petroleum at a price equal to its market value at the time the petroleum was relevantly appropriated.

(3) For the purposes of this section, the market value at any time of any petroleum shall be the price which that petroleum might reasonably be expected to fetch on a sale of that petroleum at that time if the parties to the transaction were independent parties dealing at arm's length.

Treatment of certain disposals.

[FA92 s88]

697.—(1) In this section, “relevant period”, as respects a disposal, means the period beginning 12 months before and ending 3 years after the disposal, or such longer period as the Minister for the Marine and Natural Resources may, on the application of the person making the disposal, certify to be in that Minister's opinion reasonable having regard to the proper exploration, delineation or development of any licensed area.

(2) This section shall apply where on or after the 14th day of January, 1985, a person, with the consent of the Minister for the Marine and Natural Resources, makes a disposal of an interest in a licensed area (including the part disposal of such an interest or the exchange of an interest owned by the person in one licensed area for an interest in another licensed area) and the disposal is shown to the satisfaction of that Minister to have been made for the sole purpose of ensuring the proper exploration, delineation or development of any licensed area.

(3) Where this section applies as respects a disposal by a person (neither being nor including an exchange referred to in *subsection (2)*) and the consideration received by the person is in the relevant period wholly and exclusively applied (whether by the person, or on that person's behalf by the person acquiring the asset disposed of) for the purposes of either or both of the following—

- (a) petroleum exploration activities, and
- (b) searching for or winning access to petroleum in a relevant field,

then, for the purposes of the Capital Gains Tax Acts, if the person making the disposal makes a claim in that behalf, the disposal shall not be treated as involving any disposal of an asset but the consideration shall not, as respects any subsequent disposal of any asset acquired or brought into being or enhanced in value by the application of that consideration, be deductible from the consideration for that subsequent disposal in the computation of the chargeable gain accruing on that disposal.

- (4) (a) Where this section applies as respects an exchange referred to in *subsection (2)*, then, for the purposes of the Capital Gains Tax Acts, if the person making such an exchange makes a claim in that behalf, the exchange shall not be treated as involving any disposal or acquisition by that person of an asset, but the asset given by that person and the asset acquired by that person in the exchange shall be treated as the same asset acquired as the asset given by that person was acquired.

(b) Notwithstanding paragraph (a)—

Pr.24 S.697

- (i) where the person receives for the exchange any consideration in addition to the interest in the other licensed area, this subsection shall not apply as respects the claim made by that person unless the additional consideration is applied in the relevant period in the manner referred to in *subsection (3)* but, where that additional consideration is so applied and the person makes a claim that this subsection should apply, it shall so apply as if the asset given by that person in exchange were such portion only of that asset as is equal in value to the interest in the other licensed area taken by that person in the exchange, and *subsection (3)* shall apply as if the remaining portion of the asset so given by that person were disposed of by that person for that additional consideration, and
- (ii) where the person gives for the exchange any consideration in addition to the interest in a licensed area given by that person in the exchange, this subsection shall apply as respects the claim made by that person as if the interest in the other licensed area taken by that person in the exchange were such portion only of that interest as is equal in value to the interest in the licensed area given by that person in the exchange.

PART 25

INDUSTRIAL AND PROVIDENT SOCIETIES, BUILDING SOCIETIES, AND TRUSTEE SAVINGS BANKS

CHAPTER 1

Industrial and provident societies

698.—In this Chapter, except where the context otherwise requires—

Interpretation
(*Chapter 1*).

“loan interest”, in relation to a society, means any interest payable by the society in respect of any mortgage, loan, loan stock or deposit;

[ITA67 s218; FA75 s33(2) and Sch1 PtII]

“share interest”, in relation to a society, means any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the amount of the shareholder’s holding in the share capital of the society;

“society” means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

references to the payment of share interest or loan interest include references to the crediting of such interest.

699.—(1) In computing for the purposes of Case I of Schedule D the profits or gains of a society, there shall be deducted as expenses any sums which—

Deduction as expenses of certain sums, etc.

- (a) represent a discount, rebate, dividend or bonus granted by the society to members of the society or other persons in respect of amounts paid or payable by or to them on

[ITA67 s219(1) and (4)(b) and (c); FA74 s47; CTA76 s30(5)(a)]

account of their transactions with the society, being transactions taken into account in that computation and calculated by reference to those amounts or to the magnitude of those transactions and not by reference to the amount of any share or interest in the capital of the society;

(b) are share interest or loan interest paid by the society, being interest wholly and exclusively laid out or expended for the purposes of the trade.

(2) (a) Where for the year 1962-63 or any previous year of assessment an annual allowance, balancing allowance or balancing charge in respect of capital expenditure on the construction of a building or structure might have been made to or on a society under Part V of the Finance Act, 1959, but for the circumstance that the society was exempt from tax under Schedule D, any writing down allowance, balancing allowance or balancing charge to be made in respect of the expenditure under *Part 9* for any chargeable period shall be computed as if every annual allowance, balancing allowance and balancing charge which might have been so made had been made; but nothing in this paragraph shall affect *section 274(8)*.

(b) Where for the year 1962-63 or any previous year of assessment an annual allowance in respect of capital expenditure on the purchase of patent rights might have been made to or on a society under Part V of the Finance Act, 1959, but for the circumstance that the society was exempt from tax under Schedule D, the amount of the expenditure remaining unallowed (within the meaning of *section 756*) shall, in relation to any balancing allowance or balancing charge under *Chapter 1 of Part 29* to be made to or on the society in respect of the expenditure for any chargeable period, be computed as if every annual allowance which might have been so made had been made.

Special
computational
provisions.

700.—(1) Notwithstanding anything in the Tax Acts, any share or loan interest paid by a society—

[CTA76 s30(2) to
(4); FA78 s19]

(a) shall be paid without deduction of income tax and shall be charged under Case III of Schedule D, and

(b) shall not be treated as a distribution;

but *paragraph (a)* shall not apply to any share interest or loan interest payable to a person whose usual place of abode is not in the State.

(2) In computing the corporation tax payable for any accounting period of a society, *section 243* shall apply subject to the deletion of “yearly” in *subsection (4)(a)* of that section.

(3) On or before the 1st day of May in each year, every society shall deliver to the inspector a return in such form as the Revenue Commissioners may prescribe specifying—

(a) the name and place of residence of every person to whom share interest or loan interest amounting to the sum of £70 or more has been paid by the society in the year of assessment which ended before that date, and

(b) the amount of such share interest or loan interest paid in that year to each of those persons, Pr.25 S.700

and, if such a return is not fully made as respects any year of assessment, the society shall not be entitled to any deduction under *section 97(2)(e), 243 or 699(1)* in respect of any payments of share interest or loan interest which it was required to include in the return, and all such assessments and additional assessments shall be made as may be necessary to give effect to this subsection.

701.—(1) In this section—

“company” has the meaning assigned to it by *section 5(1)*;

“consideration” means consideration in money or money’s worth;

“control”, in relation to a company, shall be construed in accordance with *section 432*;

“society” means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, which is an agricultural society or a fishery society within the meaning of *section 443(16)*.

Transfer of shares held by certain societies to members of society.

[FA93 s 35(1)(a) and (2) to (6); FA97 s146(1) and Sch9 PtI par17(2)]

(2) (a) In this subsection and in *subsection (4)*, “the appropriate number”, in relation to a member’s original shares, means such portion (or as near as may be to such portion) of the total number of the referable shares owned by the member at the time of the transfer as bears to that number the same proportion as the total number of shares in the company which are subject to the transfer bears to the total number of shares in the company owned by the society immediately before the transfer, and the number of the referable shares owned by a member shall be an amount determined by the formula—

$$\frac{A \times B}{C} \times \frac{D}{B}$$

where—

A is the market value of the shares in the company owned by the society immediately before the transfer,

B is the total number of the shares in the society in issue immediately before the transfer,

C is the market value of the total assets (including the shares in the company) of the society immediately before the transfer, and

D is the number of shares in the society owned by the member immediately before the transfer.

(b) Where on or after the 6th day of April, 1993, a society, being a society which at any time on or after that date controls or has had control of a company, transfers to the members of the society shares owned by it in the company (in this section referred to as “the transfer”) and—

(i) the transfer, in so far as it relates to any member, is in respect of and in proportion to, or as nearly as may be in proportion to, that member’s holding of shares (in this section referred to as “the original shares”) in the society immediately before the transfer,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.25 S.701

- (ii) no consideration (apart from the consideration given by the members represented by the cancellation of the original shares referred to in *subparagraph (iii)*) for, or in connection with, the transfer is given to or received from any member (or any person connected with that member) by the society (or any person connected with the society), and
- (iii) on the transfer or as soon as possible after the transfer, the original shares (or the appropriate number of those shares) of each member are cancelled without any consideration (apart from the consideration given to the members represented by the transfer to the members of the shares in the company) for or in connection with such cancellation being given to or received from any member (or any person connected with that member) by the society (or any person connected with the society) and, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, any cancellation of such shares shall involve those issued earlier rather than those issued later,

then, subject to *subsection (5)*, *subsections (3)* and *(4)* shall apply.

(3) For the purposes of the Corporation Tax Acts, the transfer shall be treated as—

- (a) not being a distribution within the meaning of *Part 6*, and
- (b) being for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal by the society of the shares owned by it in the company, neither a gain nor a loss would accrue to the society.

(4) For the purposes of the Capital Gains Tax Acts—

- (a) the cancellation of the original shares (or the appropriate number of those shares) shall not be treated as involving any disposal of those shares, and
- (b) each member shall be treated as if the shares transferred to that member in the course of the transfer were acquired by that member at the same time and for the same consideration at which the original shares (or the appropriate number of those shares) were acquired by that member and, for the purposes of giving effect to this paragraph, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, there shall be made all such apportionments as are in the circumstances just and reasonable.

(5) This section shall not apply unless it is shown that the transfer is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to corporation tax or capital gains tax.

(6) In a case where this section applies, the society concerned shall include in the return required to be made by it under *section 884* a statement of the total number of shares cancelled in accordance with *subsection (2)(b)(iii)*. Pr.25 S.701

CHAPTER 2

Building societies

702.—(1) In this section, “building society” means a building society within the meaning of the Building Societies Acts, 1874 to 1989. Union or amalgamation of, transfer of engagement between, societies.

(2) Where in the course of or as part of a union or amalgamation of 2 or more building societies or a transfer of engagements from one building society to another building society there is a disposal of an asset by one society to another society, both societies shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the society making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the society making the disposal. [CTA76 s31(5) and (8)]

703.—(1) In this section and in *Schedule 16*—

Change of status of society.

“building society” means a building society incorporated or deemed by section 124(2) of the Building Societies Act, 1989, to be incorporated under that Act, and references to “society” shall be construed accordingly; [FA90 s57]

“successor company” means a successor company within the meaning of Part XI of the Building Societies Act, 1989.

(2) *Schedule 16* shall apply where a society converts into a successor company in accordance with Part XI of the Building Societies Act, 1989.

CHAPTER 3

Trustee savings banks

704.—(1) In this Chapter and in *Schedule 17*, “trustee savings bank” has the same meaning as in the Trustee Savings Banks Act, 1989. Amalgamation of trustee savings banks.

[FA90 s59]

(2) Where any assets or liabilities of a trustee savings bank are transferred or deemed to be transferred to another trustee savings bank in accordance with Part IV of the Trustee Savings Banks Act, 1989, those banks shall be treated for the purposes of the Tax Acts and the Capital Gains Tax Acts as if they were the same person.

705.—*Schedule 17* shall apply to the reorganisation in accordance with section 57 of the Trustee Savings Banks Act, 1989, of—

Reorganisation of trustee savings banks into companies.

(a) one or more trustee savings banks into a company, or

[FA90 s60]

(b) a company referred to in subparagraph (i) of subsection (3)(c) of that section into a company referred to in subparagraph (ii) of that subsection.

PART 26

LIFE ASSURANCE COMPANIES

CHAPTER 1

General provisions

Interpretation and general (*Part 26*).

[CTA76 s36A(7) and s50(2) to (4); FA79 s28(5); FA86 s59(d); FA93 s11(f) and (k); FA96 s132(1) and Sch5 PtI par10(2) and (3)]

706.—(1) In this Part, unless the context otherwise requires—

“actuary” has the same meaning as in section 3 of the Insurance Act, 1936;

“annuity business” means the business of granting annuities on human life;

“annuity fund” means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns;

“assurance company” has the same meaning as in section 3 of the Insurance Act, 1936;

“excluded annuity business”, in relation to an assurance company, means annuity business which—

- (a) is not pension business, or the liability of the company in respect of which is not taken into account in determining the foreign life assurance fund (within the meaning of *section 718(1)*) of the company, and
- (b) arises out of a contract for the granting of an annuity on human life, being a contract effected, extended or varied on or after the 6th day of May, 1986, and which fails to satisfy any one or more of the following conditions—
 - (i) that the annuity shall be payable (whether or not its commencement is deferred for any period) until the end of a human life or for a period ascertainable only by reference to the end of a human life (whether or not continuing after the end of a human life),
 - (ii) that the amount of the annuity shall be reduced only on the death of a person who is an annuitant under the contract or by reference to a bona fide index of prices or investment values, and
 - (iii) that the policy document evidencing the contract shall expressly and irrevocably prohibit the company from agreeing to commutation in whole or in part of any annuity arising under the contract;

“general annuity business” means any annuity business which is not—

- (a) excluded annuity business, or
- (b) pension business,

and “pension business” shall be construed in accordance with *subsections (2) and (3)*;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“life business” includes “life assurance business” and “industrial assurance business”, which have the same meanings respectively as in section 3 of the Insurance Act, 1936, and where a company carries on both businesses may mean either; Pr.26 S.706

“life assurance fund” and “industrial assurance fund” have the same meanings respectively as in the Insurance Acts, 1909 to 1969, and “life assurance fund”, in relation to industrial assurance business, means the industrial assurance fund;

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

“overseas life assurance company” means an assurance company having its head office outside the State but carrying on life assurance business through a branch or agency in the State;

“pension fund” and “general annuity fund” shall be construed in accordance with *subsection (2)*;

“periodical return”, in relation to an assurance company, means a return deposited with the Minister for Enterprise, Trade and Employment under the Assurance Companies Act, 1909, and the Insurance Act, 1936;

“policy” and “premium” have the same meanings respectively as in section 3 of the Insurance Act, 1936;

“special investment business”, “special investment fund” and “special investment policy” have the meanings respectively assigned to them by *section 723*;

“valuation period” means the period in respect of which an actuarial report is made under section 5 of the Assurance Companies Act, 1909, as extended by section 55 of the Insurance Act, 1936.

(2) Any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

- (a) referring to pension business any premiums within *subsection (3)*, together with the incomings, outgoings and liabilities referable to those premiums, and the policies and contracts under which they are or have been paid, and
- (b) allocating to general annuity business all other annuity business except excluded annuity business,

and references to “pension fund” and “general annuity fund” shall be construed accordingly, whether or not such funds are kept separately from the assurance company’s life assurance fund.

(3) The premiums to be referred to pension business shall be those payable under contracts which are (at the time when the premium is payable) within one or other of the following descriptions—

- (a) any contract with an individual who is, or but for an insufficiency of profits or gains would be, chargeable to income tax in respect of relevant earnings (within the meaning of *section 783*) from a trade, profession, office or employment carried on or held by him or her, being a contract approved by the Revenue Commissioners under *section 784* or *785* or any contract under which there is

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.26 S.706

payable an annuity in relation to which *section 786(3)* applies;

- (b) any contract (including a contract of assurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme (within the meaning of *Chapter 1* of *Part 30*), being a contract so framed that the liabilities undertaken by the assurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;
- (c) any contract with the trustees or other persons having the management of a scheme approved under *section 784* or *785* or under both of those sections, being a contract which—
 - (i) was entered into for the purposes only of that scheme, and
 - (ii) in the case of a contract entered into or varied on or after the 6th day of April, 1958, is so framed that the liabilities undertaken by the assurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

and, in this subsection and in *subsection (2)*, “premium” includes any consideration for an annuity.

- (4) (a) In this subsection, “deduction” means any deduction, relief or set-off which may be treated for the purposes of corporation tax as reducing profits of more than one description.
- (b) For the purposes of the Corporation Tax Acts, any deduction from the profits of an assurance company, being profits of more than one class of life assurance business referred to in *section 707(2)*, shall be treated as reducing the amount of the profits of each such class of business by an amount which bears the same proportion to the amount of the deduction as the amount of the profits of that class of business, before any deduction, bears to the amount of the profits of the company brought into charge to corporation tax.

Management expenses.

[CTA76 s33(1) to (2); FA86 s59(a); FA92 s44(a); FA93 s11(a) and (b)]

707.—(1) Subject to *sections 709* and *710*, *section 83* shall apply for computing the profits of a company carrying on life business, whether mutual or proprietary (and not charged to corporation tax in respect of it under Case I of Schedule D), whether or not the company is resident in the State, as that section applies in relation to an investment company, except that—

- (a) there shall be deducted from the amount treated as expenses of management for any accounting period—
 - (i) any repayment or refund receivable in the period of the whole or part of a sum disbursed by the company for that period or any earlier period as expenses of management, including commissions (in whatever manner described),

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(ii) reinsurance commissions earned by the company in Pr.26 S.707 the period, and

(iii) the amount of any fines or fees receivable in the period or profits arising from reversions in the period,

and in calculating profits arising from reversions the company may set off against those profits any losses arising from reversions in any previous accounting period during which any enactment granting this relief was in operation in so far as they have not already been so set off, and

(b) no deduction shall be made under *section 83(2)(b)*.

(2) (a) Where the life assurance business of an assurance company includes more than one of the following classes of business—

(i) pension business,

(ii) general annuity business,

(iii) special investment business, and

(iv) life assurance business (excluding such pension business, general annuity business and special investment business),

then, for the purposes of the Corporation Tax Acts, the business of each such class shall be treated as though it were a separate business, and *subsection (1)* shall apply separately to each such class of business as if it were the only business of the company.

(b) Any amount of an excess referred to in *section 83(3)* which is carried forward from an accounting period ending before the 27th day of May, 1986, may for the purposes of *section 83(2)* be deducted in computing the profits of the company for a later accounting period in respect of such of the classes of business referred to in *paragraph (a)* as the company may elect; but any amount so deducted in computing the profits from one of those classes of business shall not be deducted in computing the profits of the company from another of those classes of business.

(3) Relief under *subsection (1)* shall not be given for any amount of stamp duty (except any part of such amount as is referable to pension business) charged under subsection (8)(c) of section 92 of the Finance Act, 1982, on any statement delivered by a company in accordance with subsection (8)(b) of that section in respect of any quarter commencing after the 27th day of May, 1986.

(4) Relief under *subsection (1)* shall not be given to any such company in so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the corporation tax borne by the company on the income and gains of its life business for any accounting period to less than would have been paid if the company had been charged to tax at the rate specified in *section 21(1)* in respect of that business under Case I of Schedule D and, where relief has been withheld in respect of any accounting period by virtue of this subsection, the excess to be carried forward by virtue of *section 83(3)* shall be increased accordingly.

- (5) (a) For the purposes of *subsection (4)*—
- (i) any tax credit to which the company is entitled in respect of a distribution received by it shall be treated as an equivalent amount of corporation tax borne or paid in respect of that distribution,
 - (ii) any payment in respect of that credit under *section 83(5), 136(3), 157, 158 or 712(2)* shall be treated as reducing the tax so treated as borne or paid,
 - (iii) relief for the management expenses, if any, attributable to the life business, other than special investment business, of a company shall be withheld before any relief for management expenses attributable to the special investment business of the company is withheld, and
 - (iv) *sections 709(2), 710 and 714* shall, and *section 396(5)(b)* shall not, apply for the purposes of computing the profits of the life assurance business or the industrial assurance business, as the case may be, which would have been charged to tax under Case I of Schedule D.
- (b) The reference in *section 551(2)* to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of *subsection (4)*.

Acquisition expenses.

[CTA76 s33A(1) to (5) and (7) to (8); FA92 s44(c); FA93 s23; FA96 s46; FA97 s156(3)]

708.—(1) For the purposes of this section and subject to *subsections (2) to (4)*, the acquisition expenses for any period of an assurance company carrying on life assurance business shall be such of the following expenses of management, including commissions (in whatever manner described) and excluding any payment of rent in respect of which a deduction is to be made twice by virtue of *section 324, 333 or 345* in the computation of profits or gains, as are for that period attributable to the company's life assurance business (excluding pension business and general annuity business)—

- (a) expenses of management which are disbursed solely for the purpose of the acquisition of business, and
- (b) so much of any other expenses of management which are disbursed partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

reduced by—

- (i) any repayment or refund receivable in the period of the whole or part of management expenses within *paragraph (a) or (b)* and disbursed by the company for that period or any earlier period, and
- (ii) reinsurance commission earned by the company in that period which is referable to life assurance business (excluding pension business and general annuity business).

(2) *Subsection (1)* shall not apply to acquisition expenses in respect of policies of life assurance issued before the 1st day of April,

1992, but without prejudice to the application of that subsection to any commission (in whatever manner described) attributable to a variation on or after that date in a policy of life assurance issued before that date, and for this purpose the exercise of any rights conferred by a policy shall be regarded as a variation of the policy. Pr.26 S.708

(3) In *subsection (1)*, “the acquisition of business” includes the securing on or after the 1st day of April, 1992, of the payment of increased or additional premiums in respect of a policy of assurance which has already been issued before, on or after that date.

(4) For the purposes of *subsection (1)* and in relation to any period, the expenses of management attributable to a company’s life assurance business (excluding pension business and general annuity business) shall be expenses—

(a) which are disbursed for that period (disregarding any treated as so disbursed by *section 83(3)*), and

(b) which, disregarding *subsection (5)*, are deductible as expenses of management of such life assurance business in accordance with *section 707*.

(5) Notwithstanding anything in *section 707*, only one-seventh of the acquisition expenses for any accounting period (in this section referred to as “the base period”) shall be treated as deductible under that section for the base period, and in *subsections (6) and (7)* any reference to the full amount of the acquisition expenses for the base period is a reference to the amount of those expenses which would be deductible for that period apart from this subsection.

(6) Where by virtue of *subsection (5)* only a fraction of the full amount of the acquisition expenses for the base period is deductible under *section 707* for that period, then, subject to *subsection (7)*, a further one-seventh of the full amount shall be so deductible for each succeeding accounting period after the base period until the whole of the full amount has become so deductible, except that for any accounting period of less than a year the fraction of one-seventh shall be proportionately reduced.

(7) For any accounting period for which the fraction of the full amount of the acquisition expenses for the base period which would otherwise be deductible in accordance with *subsection (6)* exceeds the balance of those expenses which has not become deductible for earlier accounting periods, only that balance shall be deductible.

709.—(1) Where an assurance company carries on life business in conjunction with insurance business of any other class, the life business shall for the purposes of corporation tax be treated as a separate business from any other class of business carried on by the company. Companies carrying on life business. [CTA76 s34]

(2) In ascertaining for the purposes of *section 396* or *397* whether and to what extent a company has incurred a loss on its life business, any profits derived from the investments of its life assurance fund (including franked investment income of a company resident in the State) shall be treated as part of the profits of that business.

Pt.26
Profits of life
business.

[CTA76 s35; FA91
s30; FA94 s60;
FA97 s67]

710.—(1) Where the profits of an assurance company in respect of its life business are for the purposes of the Corporation Tax Acts computed in accordance with the provisions applicable to Case I of Schedule D, the following provisions shall apply:

- (a) such part of those profits as belongs or is allocated to, or is expended on behalf of, policyholders or annuitants shall be excluded in making the computation;
 - (b) such part of those profits as is reserved for policyholders or annuitants shall also be excluded in making the computation but, if any profits so excluded as being so reserved cease at any time to be so reserved and are not allocated to, or expended on behalf of, policyholders or annuitants, those profits shall be treated as profits of the company for the accounting period in which they ceased to be so reserved.
- (2) (a) Subject to *paragraph (b)*, where a company's trading operations consist solely of a foreign life assurance business (within the meaning of *section 451(1)*) the following provisions shall apply:
- (i) subject to this subsection, the company shall be chargeable to corporation tax in respect of the profits of that business under Case I of Schedule D;
 - (ii) notwithstanding *subsection (1)(b)*, where apart from this subparagraph any part of those profits would be excluded in computing the income chargeable under Case I of Schedule D solely by virtue of that part being reserved for policyholders or annuitants, that part shall not be excluded in computing the income so chargeable;
 - (iii) the charge to corporation tax under Schedule D of income from investments (in this subsection referred to as “shareholders’ investments”) which are not investments of any fund representing the amount of the liability of the company in respect of its business with policyholders and annuitants shall not be under Case I of that Schedule;
 - (iv) notwithstanding *section 707*, *section 83* shall apply for computing the profits of the company as respects expenses of management, including commissions, to the extent that those expenses—
 - (I) are disbursed for the purposes of managing shareholders’ investments, and
 - (II) would not apart from this subparagraph be deductible in computing the profits, or any description of profits, of the company for the purposes of corporation tax.
- (b) In applying the definition of “foreign life assurance business” in *section 451(1)* for the purposes of *paragraph (a)*, *section 446* shall apply as if there were deleted from *subsection (2)* of that 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) In this subsection—

“policy of assurance” means—

- (i) a policy of assurance issued by a company (to which *subsection (2)* applies) to an individual who on the date the policy is issued resides outside the State and who continuously so resides throughout a period of not less than 6 months commencing on that date, or
- (ii) a policy issued or a contract made which is not a retirement benefits policy solely by virtue of the age condition not being complied with;

“relevant amount”—

- (i) in relation to a policy of assurance, means the amount determined by the formula—

$$V - P$$

and

- (ii) in relation to a retirement benefits policy, means the amount determined by the formula—

$$(V - P) \times \frac{75}{100}$$

where—

V is the amount or the aggregate of amounts by which the market value of all the entitlements under the policy of assurance or the retirement benefits policy, as the case may be, increased during any period or periods in which the policyholder was residing in the State, and

P is the amount of premiums or like sums paid in respect of the policy of assurance or the retirement benefits policy, as the case may be, during any period or periods in which the policyholder was residing in the State;

“retirement benefits policy” means a policy issued or a contract made by a company (to which *subsection (2)* applies)—

- (i) to or with, as the case may be, an individual who, on the date the policy is issued or the contract is made, resides outside the State and who continuously so resides throughout a period of not less than 6 months commencing on that date, and
- (ii) on terms which include the condition (in this subsection referred to as “the age condition”) that the main benefit secured by the policy or contract is the payment by the company (otherwise than on the death or disability of the individual) of a sum to the individual on or after the individual attains the age of 60 years and before the individual attains the age of 70 years and that condition is complied with.

(b) Where, in respect of a policy of assurance or a retirement benefits policy, a sum is payable by a company (otherwise than by reason of death or disability of the policyholder) to a policyholder who is resident or ordinarily resident in the State (within the meaning of *Part 34*), then—

- (i) the company shall be deemed for the purposes of the Corporation Tax Acts to have made, in the year of assessment in which the sum is payable, an annual payment of an amount equal to the relevant amount in relation to the policy of assurance or the retirement benefits policy, as the case may be, and *section 239* shall apply for the purposes of the charge, assessment and recovery of such tax,
- (ii) the company shall be entitled to deduct the tax out of the sum otherwise payable,
- (iii) the recipient of the sum payable shall not be entitled to repayment of, or credit for, such tax so deducted, and
- (iv) the sum paid, or any part of the sum paid, shall not be reckoned in computing total income of the recipient of the sum paid for the purposes of the Income Tax Acts.

(4) Where an assurance company carries on both life assurance business and industrial assurance business, the business of each such class shall for the purposes of the Corporation Tax Acts be treated as though it were a separate business, and *section 707* shall apply separately to each such class of business.

(5) (a) Where under *section 25(1)* of the Insurance Act, 1989, an assurance company amalgamates its industrial assurance and life assurance funds, *subsection (4)* shall not apply to that company for any accounting period ending on or after the completion of the amalgamation and before the recommencement, if any, of a separate industrial assurance or life assurance fund.

(b) For the purposes of applying *section 707*, in so far as it is affected by—

- (i) management expenses or charges on income which apart from *section 83(3)* would be treated as respectively incurred for or paid in an accounting period ending before the day on which the amalgamation is completed, or

(ii) any loss incurred in such a period,

to a company which has amalgamated its industrial assurance and life assurance funds, *subsection (4)* shall apply as if the company had not amalgamated its funds.

(6) For the purposes of *subsections (2)* and *(5)*, where an accounting period of an assurance company begins before the day (in this subsection referred to as “the day of amalgamation”) on which the company completes the amalgamation of its industrial assurance and life assurance funds and ends on or after the day of amalgamation, that period shall be divided into one part beginning on the day on which the accounting period begins and ending on the day before

the day of amalgamation and another part beginning on the day of Pr.26 S.710
amalgamation and ending on the day on which the accounting period
ends, and both parts of the accounting period shall be treated as if
they were separate accounting periods.

711.—(1) For the purpose of computing corporation tax on chargeable gains of
chargeable gains accruing to a fund or funds maintained by an assurance company in respect of its life business—

Chargeable gains of
life business.

[CTA76 s35A;
FA93 s11(d); FA96
s47(1)]

(a) (i) *section 556*, and

(ii) *section 607*,

shall not apply, and

(b) *section 581* shall, as respects—

(i) *subsections (1) and (2)* of that section, and

(ii) *subsection (3)* of that section, in so far as a chargeable
gain is not thereby disregarded for the purposes of
that subsection,

apply as if *paragraph 24* of *Schedule 32*, *section 719*,
section 723(7)(a) and *paragraph (a)(ii)* had not been
enacted.

(2) (a) In this subsection—

“the appropriate amount in respect of the interest”
means the appropriate amount in respect of the interest
which would be determined in accordance with *Schedule*
21 if a company were the first buyer and carried on a
trade to which *section 749(1)* applies but, in so determin-
ing the appropriate amount in respect of the interest in
accordance with *Schedule 21*, *paragraph 3(4)* of that
Schedule shall apply as if “in the opinion of the Appeal
Commissioners” were deleted;

“securities” has the same meaning as in *section 815*.

(b) Where in an accounting period a company disposes of any
securities and in the following accounting period interest
becoming payable in respect of the securities is receivable
by the company, the gain or loss accruing on the disposal
shall be computed as if the price paid by the company for
the securities was reduced by the appropriate amount in
respect of the interest; but where for an accounting per-
iod this paragraph applies so as to reduce the price paid
for securities, the amount by which the price paid for the
securities is reduced shall be treated as a loss arising in
the immediately following accounting period from the
disposal of the securities.

(3) Subject to *section 720*, where an assurance company, in the
course of carrying on a class of life assurance business mentioned in
subparagraph (iii) or *(iv)* of *section 707(2)(a)*, disposes of or is
deemed to dispose of assets in an accounting period, the amount, if
any, for each such class of business by which the aggregate of allow-
able losses exceeds the aggregate of chargeable gains on the disposals
or deemed disposals in the course of that class of business in the
accounting period shall be—

Pt.26 S.711

- (a) disregarded for the purposes of *section 31*, and
- (b) treated for the purposes of the Corporation Tax Acts as a sum disbursed by the company in the accounting period as an expense of management, other than an acquisition expense (within the meaning of *section 708*), incurred in the course of carrying on that class of business.

(4) For the purposes of *subsection (3)*, any amount which apart from *paragraph 24* of *Schedule 32* would be treated as a chargeable gain or an allowable loss of an accounting period of a company by virtue of *section 720* shall also be treated as arising on a disposal of assets by the company in the accounting period so that each such amount shall be taken into account in determining the amount, if any, by which the aggregate of allowable losses exceeds the aggregate of chargeable gains on disposals of assets by the company in the course of carrying on life assurance business (excluding pension business, general annuity business and special investment business) in the accounting period.

Distributions received from Irish resident companies.

[CTA76 s33B; FA93 s11(c)]

712.—(1) *Sections 129* and *153(1)* shall not apply as respects a distribution received by an assurance company in connection with that part of its life business the profits of which are charged to corporation tax otherwise than under Case I or IV of *Schedule D*, and the income represented by the distribution shall be equal to the aggregate of the amount of the distribution and the amount of the tax credit in respect of the distribution.

(2) Where an assurance company is entitled to a tax credit in respect of a distribution chargeable to corporation tax by virtue of *subsection (1)*—

- (a) the assurance company may, subject to *section 729(5)*, set the credit against the corporation tax, as reduced by virtue of *sections 713(3)* and *723(6)* or by either of those sections, chargeable on its profits for the accounting period in which the distribution is made and, where the credit exceeds that corporation tax, the excess shall be paid to the assurance company, and
- (b) notwithstanding *sections 4* and *156*, the income represented by the distribution shall not be franked investment income for the purposes of *sections 83* and *157*.

Investment income reserved for policyholders.

[CTA76 s36; FA93 s11(c); FA96 s48(1); FA97 s68]

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

- (a) “unrelieved profits” means the amount of profits on which corporation tax falls finally to be borne;
- (b) the amount of tax which is or would be chargeable on a company shall be taken to be the amount of tax which is or would be so chargeable after allowance of any relief to which the company is or would be entitled otherwise than under this section or under *section 136*, *712(2)* or *730*.

(2) A claim may be made under this section by an assurance company in respect of unrelieved profits from investments referable to life business, other than special investment business, carried on by the company.

(3) Where in a financial year (being the financial year 1997 and subsequent financial years) the rate per cent (in this subsection and in *subsection (4)* referred to as “the specified rate per cent”) of corporation tax specified in *section 21(1)(b)* exceeds the standard rate per cent for either of the years of assessment, part of each of which falls within the financial year, the corporation tax in respect of any of the unrelieved profits of the company for that year shall be reduced on a claim in that behalf being made by the company by so much of that tax as is equal to the amount by which—

- (a) the corporation tax chargeable on the company for that year in respect of the part specified in *subsection (5)* of the unrelieved profits,

exceeds—

- (b) the corporation tax which would be so chargeable in respect of that part of those profits if the specified rate per cent for each part of the financial year which coincides with a part of a year of assessment were equal to the standard rate per cent for the year of assessment.

(4) In computing that part of those profits for the purposes of *subsection (3)(b)*, *section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)* were the specified rate per cent.

- (5) (a) Subject to *paragraph (b)*, the franked investment income from investments held in connection with a company’s life business shall be apportioned between—

- (i) policyholders or annuitants, and
- (ii) shareholders,

by attributing to policyholders or annuitants such fraction of that income as the fraction (in this subsection referred to as “the appropriate fraction”) of the profits of the company’s life business which, on a computation of such profits in accordance with the provisions applicable to Case I of Schedule D (whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods), would be excluded under *section 710(1)*.

- (b) Where the franked investment income referred to in *paragraph (a)* exceeds the profits of the company’s life business as computed in accordance with the provisions applicable to Case I of Schedule D other than *section 710*, the part of the franked investment income attributable to policy holders or annuitants shall be the aggregate of—

- (i) the appropriate fraction of the franked investment income in so far as not exceeding those profits, and
- (ii) the amount of the excess of the franked investment income over those profits.

- (6) (a) Where the aggregate of the unrelieved profits and the shareholders’ part of the franked investment income exceeds the profits of the company in respect of its life business for the relevant accounting periods computed in accordance with the provisions of Case I of Schedule D

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.26 S.713

as extended by *sections 710 and 714* (whether or not the company is charged to tax under that Case), the part referred to in *subsection (3)* shall be the lesser of—

(i) the amount of that excess, and

(ii) the unrelieved profits,

and

(b) where the aggregate referred to in *paragraph (a)* is less than the profits of the company's life business as so computed, *subsection (3)* shall not apply.

(7) This section shall apply subject to *paragraph 24 of schedule 32*.

Life business:
computation of
profits.

[CTA76 s38; FA93
s11(g)]

714.—(1) For the purposes of *sections 707 and 713*, the exclusion by *section 129* from the charge to corporation tax of franked investment income shall not prevent such income of a company resident in the State attributable to the investments of the company's life assurance fund from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D.

(2) The corporation tax which would have been paid by a company referred to in *subsection (1)* if it had been charged to tax in respect of its life business under Case I of Schedule D shall be computed for the purposes of *section 707* as if so much of the trading income of the company in respect of its life business as does not exceed the franked investment income attributable by reference to *section 713(5)* to the shareholders of the company were charged to corporation tax, notwithstanding *section 21*, at a rate per cent determined by the formula—

$$\frac{A}{B} \times 100$$

where—

A is the aggregate amount of the tax credits comprised in the franked investment income received in the accounting period concerned by the company in connection with its life business, and

B is the aggregate amount of that franked investment income.

Annuity business:
separate charge on
profits.

[CTA76 s39; FA86
s59(b); FA96
s131(2) and Sch5
Pt2]

715.—(1) Except in the case of an assurance company charged to tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business, profits arising to an assurance company from pension business or general annuity business shall be treated as annual profits or gains within Schedule D and shall be chargeable to corporation tax under Case IV of that Schedule, and for that purpose—

(a) the business of each such class shall be treated separately, and

(b) subject to *paragraph (a)* and *subsection (2)*, the profits from each such class of business shall be computed in accordance with the provisions applicable to Case I of Schedule D.

(2) In making the computation in accordance with the provisions applicable to Case I of Schedule D— Pr.26 S.715

(a) *subsection (1) of section 710* shall apply with the necessary modifications and in particular shall apply as if there were deleted from that subsection all references to policyholders other than holders of policies referable to pension business,

(b) no deduction shall be allowed in respect of any expense, being an expense of management referred to in *section 707*, and

(c) there may be set off against the profits of pension business or general annuity business any loss, to be computed on the same basis as the profits, which was sustained in the same class of business in any previous accounting period while the company was within the charge to corporation tax in respect of that class of business in so far as that loss not already been so set off.

(3) *Section 399* shall not be taken as applying to a loss sustained by a company on its general annuity business or pension business.

(4) The treatment of an annuity as containing a capital element for the purposes of *section 788* shall not prevent the full amount of the annuity from being deductible in computing profits or from being treated as a charge on income for the purposes of the Corporation Tax Acts.

(5) Notwithstanding any other provision of the Corporation Tax Acts, any annuity paid by a company and referable to its excluded annuity business—

(a) shall not be treated as a charge on income for the purposes of the Corporation Tax Acts, and

(b) shall be deductible in computing for the purposes of Case I of Schedule D the profits of the company in respect of its life assurance business.

716.—(1) In this section, “taxed income” means income charged to corporation tax, otherwise than under *section 715*, and franked investment income.

General annuity business.

[CTA76 s40; FA86 s59(c)]

(2) In the case of a company carrying on general annuity business, the annuities paid by the company, in so far as referable to that business and in so far as they do not exceed the taxed income of the part of the annuity fund so referable, shall be treated as charges on income.

(3) Notwithstanding any other provision of the Corporation Tax Acts, any annuities which under *subsection (2)* are treated as charges on income of a company (in this subsection referred to as “the first-mentioned company”) for an accounting period shall not be allowed as deductions against any profits (whether of the first-mentioned company or of any other company) other than against that part of the total profits (including, where a claim is made under *section 157* for the purposes mentioned in *subsection (2)(a)* of that section, any franked investment income) arising in that accounting period to the first-mentioned company from its general annuity business.

Pr.26 S.716

(4) In computing under *section 715* the profits arising to an assurance company from general annuity business—

- (a) taxed income shall not be taken into account as part of those profits, and
- (b) of the annuities paid by the company and referable to general annuity business—
 - (i) those which under *subsection (2)* are treated as charges on income shall not be deductible, and
 - (ii) those which are not so treated shall, notwithstanding *section 76*, be deductible.

(5) A company not resident in the State which carries on through a branch or agency in the State any general annuity business shall not be entitled to treat any part of the annuities paid by it which are referable to that business as paid out of profits or gains brought into charge to income tax.

Pension business.

[CTA76 s41; FA88 s30(1) and (2)(c); FA91 s38]

717.—(1) Exemption from corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an assurance company's life assurance fund and separate annuity fund, if any, as is referable to pension business.

- (2) (a) In this subsection, “financial futures” and “traded options” mean respectively financial futures and traded options which are for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State.
- (b) For the purposes of *subsection (1)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(3) The exemption from tax conferred by *subsection (1)* shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.

(4) Subject to *subsection (5)*, the exclusion by *section 129* from the charge to corporation tax of franked investment income shall not prevent such income being taken into account as part of the profits in computing under *section 715* income from pension business.

- (5) (a) Where for any accounting period there is apart from this subsection a profit arising to an assurance company from pension business (computed in accordance with *section 715*) and the company so elects as respects all or any part of its franked investment income arising in that period, being an amount of franked investment income not exceeding the amount of the profit arising from pension business, *subsections (1)* and *(4)* shall not apply to the franked investment income to which the election relates.
- (b) An election under *paragraph (a)* shall be made by notice in writing given to the inspector not later than 2 years after the end of the accounting period to which the election relates or within such longer period as the Revenue Commissioners may by notice in writing allow.

(6) In computing under *section 715* the profits from pension business, annuities shall be deductible notwithstanding *section 76(5)*, and a company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to pension business. Pr.26 S.717

718.—(1) In this section, “foreign life assurance fund” means— Foreign life assurance funds.

(a) any fund representing the amount of the liability of an assurance company in respect of its life business with policyholders and annuitants residing outside the State whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the State, and [CTA76 s42(1) to (5) and (8)]

(b) where such a fund is not kept separately from the life assurance fund of the company, such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts, such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company.

(2) Corporation tax under Case III of Schedule D on income arising from securities and possessions in any place outside the State which form part of the investments of the foreign life assurance fund of an assurance company shall 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 without any deduction or abatement.

(3) Where—

(a) any securities issued by the Minister for Finance with a condition in the terms specified in *section 43*, or

(b) any stocks or other securities to which *section 49* applies and which are issued with either or both of the conditions specified in *subsection (2)* of that section,

for the time being form part of the investments of the foreign life assurance fund of an assurance company, the income arising from any of those stocks or securities, if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to corporation tax.

(4) Where the Revenue Commissioners are satisfied that any income arising from the investments of the foreign life assurance fund of an assurance company has been remitted to the State and invested as part of the investments of that fund in any stocks or securities of a type referred to in *subsection (3)*, that income shall not be liable to corporation tax and any such tax paid on that income shall if necessary be repaid to the company on the making of a claim.

(5) Where income from investments of the foreign life assurance fund of an assurance company has been relieved from corporation tax in accordance with this section, a corresponding reduction shall be made—

(a) in the relief granted under *section 707* in respect of expenses of management, and

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pr.26 S.718

(b) in any amount on which the company is chargeable to corporation tax by virtue of *section 715*—

(i) in respect of general annuity business, or

(ii) in respect of pension business,

in so far as the investment income relieved is referable to general annuity business or pension business, as the case may be.

(6) Where this section applies in relation to income arising from investments of any part of an assurance company's life assurance fund, it shall apply in the like manner in relation to chargeable gains accruing from the disposal of any such investments, and losses so accruing shall not be allowable losses.

Deemed disposal and reacquisition of certain assets.

[CTA76 s46A; FA92 s44(d); FA93 s11(j); FA97 s69]

719.—(1) In this section and in *section 720*—

“average”, in relation to 2 amounts, means 50 per cent of the aggregate of those 2 amounts;

“closing”, in relation to an accounting period, means the position at the end of the valuation period which coincides with that accounting period or in which that accounting period falls;

“foreign life assurance fund” has the same meaning as in *section 718*;

“investment reserve”, in relation to an assurance company, means the excess of the value of the assets of the company's life business fund over the liabilities of the life business;

“life business fund” means the fund or funds maintained by an assurance company in respect of its life business other than its special investment business;

“linked assets” means assets of an assurance company identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined;

“linked liabilities” means liabilities in respect of benefits to be determined by reference to the value of linked assets;

“opening”, in relation to an accounting period, means the position at the beginning of the valuation period which coincides with that accounting period or in which that accounting period falls;

“with-profits liabilities” means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus.

(2) Each asset of the life business fund of an assurance company on the day on which an accounting period of the company ends shall, subject to this section, be deemed to have been disposed of and immediately reacquired by the company on that day at the asset's market value on that day.

(3) *Subsection (2)* shall not apply to—

(a) (i) assets to which *section 607* applies, other than, with effect as on and from the 26th day of March, 1997,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which that section does not apply, and

Pr.26 S.719

(ii) assets which are strips within the meaning of *section 55*,

(b) assets linked solely to pension business or special investment business, or

(c) assets of the foreign life assurance fund,

and, in relation to other assets which are not assets linked solely to life assurance business (excluding pension business, general annuity business and special investment business), shall apply only to the relevant chargeable fraction for an accounting period of each class of asset.

(4) In *subsection (3)*, “the relevant chargeable fraction for an accounting period”—

(a) in relation to linked assets, means the fraction of which—

(i) the denominator is the average of such of the opening and closing life business liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked assets other than—

(I) assets linked solely to life assurance business (excluding pension business, general annuity business and special investment business), special investment business or pension business, and

(II) assets of the foreign life assurance fund, and

(ii) the numerator is the average of such of the opening and closing liabilities within *subparagraph (i)* as are liabilities of business the profits of which are not charged to tax under Case I or IV of Schedule D, and

(b) in relation to assets other than linked assets, means the fraction of which—

(i) the denominator is the aggregate of—

(I) the average of the opening and closing life business liabilities, other than liabilities in respect of benefits to be determined by reference to the value of linked assets and liabilities of the foreign life assurance business or special investment business, and

(II) the average of the opening and closing amounts of the investment reserve, and

(ii) the numerator is the aggregate of—

(I) the average of such of the opening and closing liabilities within *subparagraph (i)* as are liabilities of business the profits of which are not

charged to tax under Case I or IV of Schedule D, and

(II) the average of the appropriate parts of the opening and closing amounts of the investment reserve.

(5) (a) In this subsection, “liabilities” does not include the liabilities of the foreign life assurance business or special investment business.

(b) In *subsection (4)*, “appropriate part”, in relation to the investment reserve, means—

(i) where none, or only an insignificant proportion, of the liabilities of the life business are with-profits liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of business, the profits of which are not charged to tax under Case I or IV of Schedule D, which are not linked liabilities bears to the whole amount of the liabilities of the life business which are not linked liabilities, and

(ii) in any other case, the part of that reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of business, the profits of which are not charged to tax under Case I or IV of Schedule D, bears to the whole amount of the with-profits liabilities of the life business.

(6) For the purposes of this section, in applying *section 557* to the computation of gains accruing to an assurance company on the disposal, on the day on which an accounting period of the company ends, of assets which are not linked solely to life assurance business (excluding pension business, general annuity business or special investment business), the company shall be deemed to have acquired all of the assets of its life business fund, other than the assets it acquired in that accounting period, at their respective market values on the day immediately before the day on which that period began.

(7) For the purposes of this section, assets of the foreign life assurance fund or special investment fund and liabilities of the foreign life assurance business or special investment business shall be disregarded in determining the investment reserve.

Gains or losses arising by virtue of *section 719*.

[CTA76 s46B; FA92 s44(d); FA95 s69; FA96 s50]

720.—(1) Subject to *subsections (2) to (4)*, chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of *section 719* to have been made in a company’s accounting period (other than a period in which the company ceased to carry on life business) shall be treated, subject to *paragraphs (b) and (c)*, as not accruing to the company, but instead—

(a) there shall be ascertained the difference (in this section referred to as “the net amount”) between the aggregate of those gains and the aggregate of those losses,

(b) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company in the accounting period, and

(c) a further one-seventh shall be treated as a chargeable gain Pr.26 S.720
or, as the case may be, as an allowable loss accruing in
each succeeding accounting period until the whole
amount has been accounted for.

(2) As respects chargeable gains or allowable losses accruing on
disposals of rights under reinsurance contracts (within the meaning
of *section 594(4)*) deemed by virtue of *section 719* to have been made
in the accounting period or part of an accounting period falling
wholly within the year ending on—

(a) the 31st day of December, 1997, this section shall not apply
to three-sevenths,

(b) the 31st day of December, 1998, this section shall not apply
to two-sevenths, or

(c) the 31st day of December, 1999, this section shall not apply
to one-seventh,

of those chargeable gains and allowable losses.

(3) For any accounting period of less than one year, the fraction of
one-seventh referred to in *subsection (1)(c)* shall be proportionately
reduced and, where this subsection has applied in relation to any
accounting period before the last for which *subsection (1)(c)* applies,
the fraction treated as accruing in that last accounting period shall
be reduced so as to secure that no more than the whole of the net
amount has been accounted for.

(4) Where a company ceases to carry on life business before the
beginning of the last of the accounting periods for which *subsection
(1)(c)* would apply in relation to a net amount, the fraction of that
amount which is treated as accruing in the accounting period in
which the company ceases to carry on life business shall be such as
to secure that the whole of the net amount has been accounted for.

(5) Where in an accounting period a company incurs a loss on
the disposal (in this subsection referred to as the “first-mentioned
disposal”) of an asset the gain or loss in respect of a deemed disposal
of which was included in a net amount to which *subsection (1)(b)*
applied for any preceding accounting period, then, so much of the
allowable loss on the first-mentioned disposal as is equal to the
excess of the amount of the loss over the amount which, if *section
719* had not been enacted, would have been the allowable loss on
the first-mentioned disposal shall be treated for the purposes of this
section as an allowable loss which would otherwise accrue on dis-
posals deemed by virtue of *section 719* to have been made in the
company’s accounting period.

721.—Where any investments or other assets are, in accordance with a policy issued in the course of life business carried on by an assurance company, transferred to the policyholder, the policyholder’s acquisition of the assets and the disposal of the assets to the policyholder shall be deemed to be for a consideration equal to the market value of the assets—

Life policies
carrying rights not
in money.

[CTA76 s48]

(a) for the purposes of the Capital Gains Tax Acts, and

(b) for the purposes of computing income in accordance with
Case I or IV of Schedule D.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.26
Benefits from life
policies issued
before 6th April,
1974.

722.—(1) This section shall apply in relation to policies of life assurance issued before the 6th day of April, 1974, by a company carrying on life business, being policies which—

[CTA76 s49]

- (a) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but
- (b) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.

(2) Where—

- (a) the investments of the company's life assurance fund, in so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and
- (b) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,

then, the company shall be entitled as against the person receiving the benefits to retain out of the benefits a part of the benefits not exceeding in amount or value corporation tax at the full rate in respect of the chargeable gain referred to in *paragraph (b)* computed without regard to any amount retained under this subsection and reduced in accordance with *section 78(1)*.

CHAPTER 2

Special investment policies

Special investment
policies.

723.—(1) In this section—

[CTA76 s36A(1) to
(6) and (8); FA93
s11(f); FA94 s33;
FA96 s49]

“excluded shares” means—

- (a) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990,
- (b) shares in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), or
- (c) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

“inspector”, in relation to any matter, means an inspector of taxes appointed under *section 852*, and includes such other officers as the Revenue Commissioners shall appoint in that behalf;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“mortality cover” means any amount payable under a policy of life assurance in the event of the death of a person specified in the terms of that policy; Pr.26 S.723

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

“qualifying shares” means ordinary shares—

- (a) in a company resident in the State, or
- (b) (i) listed in the official list of the Irish Stock Exchange, or
(ii) dealt in on the smaller companies market, or the unlisted securities market, of the Irish Stock Exchange,

other than excluded shares;

“special investment business” means so much of the life business of an assurance company as is connected with special investment policies;

“special investment fund” means a fund in respect of which the conditions specified in *subsection (2)* are satisfied;

“special investment policy” means a policy of life assurance issued by an assurance company to an individual on or after the 1st day of February, 1993, in respect of which—

- (a) the conditions specified in *subsection (3)* are satisfied, and
- (b) a declaration of the kind specified in *subsection (4)* has been made to the assurance company;

“specified qualifying shares”, in relation to a special investment fund, means qualifying shares in a company the issued share capital of which has a market value of less than £100,000,000 when the shares are acquired for the fund.

(2) The conditions referred to in the definition of “special investment fund” are as follows:

- (a) the fund shall be owned by an assurance company;
- (b) the fund shall be kept separately from its other funds, if any, by the assurance company;
- (c) the fund shall represent only the liabilities of the assurance company in respect of its special investment business, and accordingly there shall not be any arrangements whereby any asset of the fund is connected directly or indirectly with any business of the company other than its special investment business;
- (d) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of the fund shall not be less than—
 - (i) as respects qualifying shares, 40 per cent, and
 - (ii) as respects specified qualifying shares, 6 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(e) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets of the fund shall not be less than—

(i) as respects qualifying shares, 45 per cent, and

(ii) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(f) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets of the fund shall not be less than—

(i) as respects qualifying shares, 50 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(g) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of the fund shall not be less than—

(i) as respects qualifying shares, 55 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time,

and for the purposes of *paragraphs (d) to (g)* the amount of the consideration given for assets of the fund shall be determined in accordance with *sections 547, 580 and 724.*

(3) The conditions referred to in the definition of “special investment policy” are as follows:

(a) the policy of life assurance concerned shall be designated by the assurance company concerned as a special investment policy;

(b) any payments received by the company in respect of the policy shall not, or shall not in the aggregate if there is more than one such payment, exceed £50,000;

(c) the company shall ensure that its liability in respect of the policy does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was received by it in respect of the policy;

(d) the policy shall not be issued to or owned by an individual who is not of full age;

(e) the policy shall be issued to an individual—

(i) who is beneficially entitled to, and

(ii) to whom there shall be paid,
all amounts, other than mortality cover, payable under the policy by the company;

(f) except in the case of a policy issued to and owned jointly only by a couple married to each other, the policy shall not be a joint policy;

(g) unless the policy is issued to and owned jointly only by a couple married to each other, the policy shall be the only such policy owned by the individual;

(h) if the policy is to be issued to and owned jointly only by a couple married to each other, it shall be the only such policy, or one of 2 only such policies, owned only by them;

and for the purposes of *paragraphs (d) to (h)* references to ownership of a policy shall be construed as references to beneficial ownership of the policy.

(4) The declaration referred to in *paragraph (b)* of the definition of “special investment policy” shall be a declaration in writing to an assurance company which—

(a) (i) is made by the individual (in this section referred to as “the declarer”) to whom any amounts, other than mortality cover, are payable by the assurance company in respect of the policy in respect of which the declaration is made, and

(ii) 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 (d) to (h)* of *subsection (3)* are satisfied in relation to the policy in respect of which the declaration is made,

(d) contains the full name and address of the individual beneficially entitled to any amounts, other than mortality cover, payable in respect of the policy in respect of which the declaration is made,

(e) contains an undertaking by the declarer that, if any of the conditions specified in *paragraphs (d) to (h)* of *subsection (3)* cease to be satisfied in respect of the policy in respect of which the declaration is made, the declarer will notify the assurance company accordingly, and

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

(5) (a) An assurance company shall—

(i) keep and retain for not less than the longer of the following periods—

(I) a period of 6 years, and

(II) a period which, in relation to the policy in respect of which the declaration is made, ends not earlier than 3 years after the date on which the company ceases to have any liability in respect of the policy, 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 specified in *subsection (4)* which have been made to the company.

(b) The inspector may examine and take copies of or of extracts from a declaration made available to him or her under *paragraph (a)*.

(6) The corporation tax chargeable on any profits on which corporation tax falls finally to be borne which are attributable to the special investment fund of an assurance company shall be reduced, for the purposes of the Tax Acts other than *section 707(4)*, so that, before it is reduced by any credit, relief or other deduction under the Tax Acts apart from this section, it is 10 per cent of those profits; but, in computing profits for the purposes of this subsection, *section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)* were the rate per cent of corporation tax specified in *section 21(1)(b)*.

(7) For the purposes of computing income arising from, or chargeable gains accruing from the disposal of, assets of the special investment fund of an assurance company—

(a) each asset of the fund on the day on which an accounting period of the company ends shall be deemed to have been disposed of and immediately reacquired at the asset's market value on that day,

(b) without prejudice to the treatment of losses on such shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares (within the meaning of *Part 16*) in a qualifying company (within the meaning of that Part) shall not be chargeable gains,

(c) *section 712* shall not apply to distributions in respect of the shares mentioned in *paragraph (b)*, and

(d) *section 726* shall not apply.

Transfer of assets into or out of special investment fund.

724.—Where an assurance company transfers the whole or part of an asset (any interest in or rights over an asset being regarded for the purposes of this section as part of the asset)—

[CTA76 s36B;
FA93 s11(f)]

(a) which it owned before the transfer, or which was created by the transfer, into, or

(b) which it owns after the transfer, out of,

its special investment fund, the company shall be deemed to have disposed of and immediately reacquired the asset or the part of the asset, as the case may be, at the market value of the asset or the part of the asset, as the case may be, at the time of the transfer.

725.—(1) For the purposes of this section, a policy of life assurance held by an individual, whether married or not, shall not be a special investment policy at any particular time if—

Pr.26
Special investment
policies: breaches of
conditions.

(a) as respects the policy—

[CTA76 s36C;
FA93 s11(f)]

(i) a declaration of the kind specified in *section 723(4)* has not been made, or

(ii) any of the conditions referred to in *section 723(3)* is not satisfied at that time,

or

(b) as respects the individual, he or she has at that time a beneficial interest prohibited by *section 839* in classes of investment mentioned in *paragraphs (a) to (d)* of *subsection (1)* of that section.

(2) Where an assurance company becomes aware at any time that a policy of life assurance which it has treated as a special investment policy is not such a policy—

(a) the assurance company shall ensure that in accordance with *section 723(2)(c)* its special investment fund does not after that time represent its liability in respect of the policy, and

(b) for the purposes of the Tax Acts other than *section 958(4)*, the liability to corporation tax of the company for the accounting period in which it became aware that the policy was not a special investment policy shall be increased by an amount determined by the formula—

$$(A - B) \times \frac{10}{9} \times \frac{S - 10}{100}$$

where—

A is the amount which was the assumed liability, other than the liability, if any, in respect of mortality cover, of the company in respect of the policy immediately before it became aware that the policy was not a special investment policy,

B is—

(i) the amount which was the liability, other than the liability, if any, in respect of mortality cover, of the company in respect of the policy when the policy ceased to be a special investment policy, or

(ii) if the policy was never a special investment policy, the amount of the aggregate of the payments received and not repaid by the company in respect of the policy, and

S is the standard rate per cent for the year of assessment in which that accounting period ends.

Provisions applying to overseas life assurance companies

Investment income.
[CTA76 s43; FA93 s11(h); FA95 s64; FA96 s132(2) and Sch5 PtII]

726.—(1) Any income of an overseas life assurance company from the investments of its life assurance fund (excluding the pension fund, general annuity fund and special investment fund, if any), wherever received, shall, to the extent provided in this section, be deemed to be profits comprised in Schedule D, and shall be charged to corporation tax under Case III of Schedule D.

(2) Distributions received from companies resident in the State shall be taken into account under this section notwithstanding their exclusion from the charge to corporation tax.

(3) Where an overseas life assurance company is entitled to an amount (in this subsection referred to as “the first amount”), being an amount which corresponds to a tax credit, by virtue of having received a distribution from a company not resident in the State, the distribution shall be treated for the purposes of this section as representing income equal to the aggregate of the amount or value of that distribution and the first amount.

(4) A portion only of the income from the investments of the life assurance fund (excluding the pension fund, general annuity fund and special investment fund, if any) shall be charged in accordance with *subsection (1)*, and for any accounting period that portion shall be determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the total income from those investments for that period,

B is the average of the liabilities for that period to policyholders resident in the State and to policyholders resident outside the State whose proposals were made to the company at or through its branch or agency in the State, and

C is the average of the liabilities for that period to all the company’s policyholders,

but any reference in this subsection to liabilities does not include liabilities in respect of special investment, general annuity or pension business.

(5) For the purposes of this section—

(a) the liabilities of an assurance company attributable to any business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return, and

(b) the average of any liabilities for an accounting period shall be taken as 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

(6) (a) For the purposes of this subsection—

(i) “the average of branch liabilities for an accounting period” means the aggregate of the amounts represented by B in *subsection (4)*, B in *section 727(2)* and the average of the liabilities attributable to pension business for the accounting period, and

(ii) “the assets to which this subsection applies” are assets the gains from the disposal of which are chargeable to corporation tax by virtue of *subsections (3) and (6) of section 29* together with assets the gains from the disposal of which would be so chargeable but for *sections 551, 607 and 613*.

(b) Where the average of branch liabilities for an accounting period exceeds the mean value for the accounting period of the assets to which this subsection applies, the amount to be included in profits under *section 78(1)* shall be an amount determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the amount which apart from this subsection would be so included in profits,

B is the average of branch liabilities for the accounting period, and

C is the mean value for the accounting period of the assets to which this subsection applies.

(7) *Section 70(1)* as applied to corporation tax shall not apply to income to which *subsection (1)* applies.

727.—(1) Nothing in the Corporation Tax Acts shall prevent the distributions of companies resident in the State from being taken into account as part of the profits in computing under *section 715* the profits arising from pension business and general annuity business to an overseas life assurance company. General annuity and pension business. [CTA76 s44]

(2) Any charge to tax under *section 715* for any accounting period on profits arising to an overseas life assurance company from general annuity business shall extend only to a portion of the profits arising from that business, and that portion shall be determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the total amount of those profits,

B is the average of the liabilities attributable to that business for the relevant accounting period in respect of contracts with persons resident in the State or contracts with persons resident outside the State whose proposals were made to the company at or through its branch or agency in the State, and

PT.26 S.727

C is the average of the liabilities attributable to that business for that accounting period in respect of all contracts.

(3) For the purposes of this section—

- (a) the liabilities of an assurance company attributable to general annuity business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return, and
- (b) the average of any liabilities for an accounting period shall be taken as 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

Expenses of management.

[CTA76 s33(3); FA92 s44(b)]

728.—The relief under *section 707* available to an overseas life assurance company in respect of its expenses of management shall be limited to expenses attributable to the life assurance business carried on by the company at or through its branch or agency in the State.

Income tax, foreign tax and tax credit.

[CTA76 s45; FA88 s31(2) and Sch2 Pt1 par2(2); FA97 s37 and Sch2 pars1 and 2]

729.—(1) *Section 77(6)* shall not affect the liability to tax of an overseas life assurance company in respect of the investment income of its life assurance fund under *section 726* or in respect of the profits of its annuity business under *sections 715, 717 and 727*.

(2) For the purposes of *section 25(3)* as it applies to life business, the amount of the income tax referred to in that section which shall be available for set-off under that section in an accounting period shall be limited in accordance with *subsections (3) and (4)*.

(3) Where the company is chargeable to corporation tax for an accounting period in accordance with *section 726* in respect of the income from the investments of its life assurance fund, the amount of income tax available for set-off against any corporation tax assessed for that period on that income shall not exceed an amount equal to income tax at the standard rate on the portion of income from investments which is chargeable to corporation tax by virtue of *subsection (4)* of that section.

(4) Where the company is chargeable to corporation tax for an accounting period in accordance with *section 727* on a proportion of the total amount of the profits arising from its general annuity business, the amount of income tax available for set-off against any corporation tax assessed for that period on those profits shall not exceed an amount equal to income tax at the standard rate on the like proportion of the income from investments included in computing those profits.

(5) Where an overseas life assurance company receives a distribution in respect of which it is entitled to a tax credit, the company may claim to have that credit set off against any corporation tax assessed on the company under *section 726* or *727* for the accounting period in which the distribution is received, but the amount of the tax credit, or aggregate of tax credits if more than one distribution has been received, which may be so set off shall not exceed an amount determined by the formula—

$$\frac{S \times (A - B)}{100}$$

where—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

S is the standard credit rate per cent for the year of assessment in which the distribution is made, Pr.26 S.729

A is the portion of the income from investments which is chargeable to corporation tax by virtue of *section 726(4)* or, as the case may be, the portion determined in accordance with *subsection (4)* of the income from investments included in computing the total amount of the profits of the company arising from its general annuity business, and

B is the aggregate of the payments, the income tax on which, having regard to *subsection (3)* or *(4)*, as the case may be, the company is entitled to set off against corporation tax by virtue of a claim under *section 25(3)*.

(6) *Section 828(4)* shall not affect the liability to tax under *section 726* of an overseas life assurance company in respect of gains from the disposal of investments held in connection with its life business.

(7) For the purposes of *subsection (5)*, where an accounting period begins before the 6th day of April, 1997, and ends on or after that date, it shall be divided into one part beginning on the day which the accounting period begins and ending on the 5th day of April, 1997, and another part beginning on the 6th day of April, 1997, and ending on the day on which the accounting period ends and both parts shall be treated as separate accounting periods.

730.—Where an overseas life assurance company—

(a) receives a distribution from a company resident in the State, and

(b) is not entitled to, or disclaims, by notice in writing to the appropriate inspector (within the meaning of *section 950(1)*), relief in respect of the distribution under—

(i) the Convention set out in *Schedule 25* as applied for corporation tax, or

(ii) arrangements made under *section 826* as applied for corporation tax,

Tax credit in respect of distributions.

[CTA76 s46; FA93 s11(i)]

then, the overseas life assurance company shall be deemed to be entitled to such a tax credit in respect of the distribution as it would be entitled to if it were a company resident in the State, and accordingly the income represented by the distribution shall be the aggregate of the distribution and the tax credit.

PART 27

UNIT TRUSTS AND OFFSHORE FUNDS

CHAPTER 1

Unit trusts

731.—(1) In this section, “capital distribution” means any distribution from a unit trust, including a distribution in the course of terminating the unit trust, in money or money’s worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

Chargeable gains accruing to unit trusts.

[CGTA75 s31; FA77 s34; FA79 s37(1); FA93 s19; FA94 s64]

(2) For the purposes of the Capital Gains Tax Acts and without prejudice to *section 567* and *sections 574* to *578*, chargeable gains accruing to a unit trust in any year of assessment shall be assessed and charged on the trustees of the unit trust.

(3) The trustees of a unit trust shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the State unless the general administration of the unit trust is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State.

(4) Where a person receives or becomes entitled to receive in respect of units in a unit trust any capital distribution from the unit trust, such person shall be treated as having in consideration of that capital distribution disposed of an interest in the units.

(5) (a) Where throughout a year of assessment all the issued units in a unit trust are assets such that if those units were disposed of by the unit holder any gain accruing would be wholly exempt from capital gains tax (otherwise than by reason of residence or by virtue of *section 739(3)*), gains accruing to the unit trust in that year shall not be chargeable gains.

(b) For the purposes of any assessment to capital gains tax, *paragraph (a)* shall not apply as respects a unit trust to which *subsection (6)* applies.

(6) Gains accruing on the disposal of units in a unit trust shall not be chargeable gains for the purposes of the Capital Gains Tax Acts where—

(a) the trustees of the unit trust have at all times (but not taking into account any time before the 6th day of April, 1974) been resident and ordinarily resident in the State, and

(b) the unit trust is a scheme which is established for the purpose or has the effect, solely or mainly, of providing facilities for the participation by the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever and which is administered by the holder of a licence under the Insurance Act, 1936, and for participation in which, in respect of units first issued after the 14th day of June, 1973, a policy of assurance on human life is required to be effected (but so that the units do not become the property of the owner of the policy either as benefits or otherwise).

(7) (a) Subject to *paragraph (b)*, where there is a disposal in any year of assessment of units in a unit trust—

(i) not being an undertaking for collective investment (within the meaning of *section 738*) which began carrying on business on or after the 25th day of May, 1993,

(ii) all the assets of which were throughout the year of assessment 1993-94 assets, whether mentioned in section 19 of the Capital Gains Tax Act, 1975, or in any other provision of the Capital Gains Tax Acts, to which that section applied, and

(iii) the person disposing of the units acquired the units before the 6th day of April, 1994,

then, the chargeable gain on the disposal shall be computed as if the units had been sold and immediately reacquired by that person on the 5th day of April, 1994, at their market value at that date. Pr.27 S.731

(b) *Paragraph (a)* shall not apply in relation to the disposal of units—

(i) if as a consequence of the application of that paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if that paragraph did not apply, or

(ii) if as a consequence of the application of that paragraph a loss would so accrue and either a smaller loss or a gain would accrue if that paragraph did not apply,

and accordingly in a case to which *subparagraph (i)* or *(ii)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to this subsection (other than this paragraph) but, in a case where this paragraph would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the units were acquired by the person disposing of them for a consideration such that neither a gain nor a loss accrued to that person on making the disposal.

732.—(1) In this section—

“securities” includes securities within *section 607* and stocks, shares, bonds and obligations of any government, municipal corporation, company or other body corporate;

“quoted securities” means securities which, at any time at which they are to be taken into account for the purposes of this section, or at any time in the period of 6 years immediately before such time, have or have had quoted market values on a stock exchange in the State or elsewhere.

Special arrangements for qualifying unit trusts.

[CGTA75 s32;
FA77 s35;
CGT(A)A78 s16
and Sch1 par9;
FA97 s146(2) and
Sch9 PtII]

(2) This section shall apply—

(a) to a unit trust (in this section referred to as a “qualifying unit trust”)—

(i) which is a registered unit trust scheme (within the meaning of section 3 of the Unit Trusts Act, 1972),

(ii) the trustees of which are resident and ordinarily resident in the State,

(iii) the prices of units in which are published regularly by the managers,

(iv) all the units in which are of equal value and carry the same rights, and

(v) which, at all times since it was registered in the register established under the Unit Trusts Act, 1972, but

subject to *subsection (7)*, satisfied the conditions specified in *subsection (6)*, and

(b) to disposals of assets which are units in a qualifying unit trust (in this section referred to as “qualifying units”).

(3) Chargeable gains accruing to a qualifying unit trust in any year of assessment shall be chargeable to capital gains tax at one-half of the rate specified in *section 28(3)*.

(4) Chargeable gains which derive from the disposal of qualifying units and accrue to a person chargeable to capital gains tax shall be chargeable to tax at one-half of the rate at which those gains would be chargeable under the Capital Gains Tax Acts apart from this subsection.

(5) For any accounting period of a company, being an accounting period for which the company is chargeable to corporation tax in respect of chargeable gains—

(a) where the total amount of chargeable gains accruing to the company for the accounting period derives from the disposal of qualifying units, the amount which apart from this section would be included in respect of chargeable gains in the company’s total profits for the accounting period under *section 78(1)* shall be reduced by 50 per cent,

(b) where the total amount of chargeable gains accruing to the company for the accounting period includes—

(i) an amount in respect of such chargeable gains on the disposal of qualifying units, and

(ii) an amount in respect of such chargeable gains on the disposal of assets other than qualifying units,

the amount which apart from this section would be included in respect of chargeable gains in the company’s total profits for the accounting period under *section 78(1)* shall be reduced by such amount as bears to the amount to be so included the same proportion as one-half of the amount referred to in *subparagraph (i)* bears to the total of the amounts referred to in *subparagraphs (i)* and *(ii)*.

(6) The conditions referred to in *subsection (2)(a)(v)* are that—

(a) not less than 80 per cent of the units were held by persons who acquired them pursuant to an offer made to the general public,

(b) the number of unit holders was not less than 50 and no one unit holder was the beneficial owner of more than 5 per cent of the units in issue at any time, and for the purposes of this paragraph a person and any persons with whom such person is connected shall be treated as one unit holder,

(c) the value of quoted securities held by the trustees on behalf of the unit trust was not less than 80 per cent by value of the assets so held by the trustees, and

- (d) the securities held by the trustees on behalf of the unit trust in any one company did not exceed 15 per cent by value of the total securities so held by the trustees. Pr.27 S.732

(7) The Revenue Commissioners may treat a unit trust as a qualifying unit trust for the purposes of this section notwithstanding that one or more of the conditions specified in *subsection (6)* was or were not complied with in relation to the unit trust—

- (a) for the period ending on the 5th day of April, 1978, in the case where the unit trust became registered in the register established under the Unit Trusts Act, 1972, before the 6th day of April, 1976, and

- (b) for the period ending on a date not more than 2 years after the date on which the unit trust became registered in that register, in the case where the unit trust became so registered on or after the 6th day of April, 1976.

733.—(1) In this section, references to a reorganisation of units in a trust scheme include— Reorganisation of units in unit trust scheme.

- (a) any case where persons are, whether for payment or not, allotted units in the scheme in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of units in the scheme or of any class of units in the scheme, and [CGTA75 s51(1) and Sch2 par2A; FA90 s87]

- (b) any case where there is more than one class of units and the rights attached to units of any class are altered.

(2) (a) Subject to *paragraph (b)*, *section 584* shall apply with any necessary modification in relation to a reorganisation or reduction of units in any unit trust scheme registered under the Unit Trusts Act, 1972, or authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), as if (except as respects *subsection (7)* of that section)—

- (i) that scheme were a company, and

- (ii) the units in that scheme were shares in the company.

(b) Where but for this paragraph this section would apply to any reorganisation or reduction of units in a unit trust scheme in a year of assessment so that units which are deemed not to be chargeable assets for that year for the purposes of the Capital Gains Tax Acts would be treated as “original shares” or a “new holding” within the meaning of *section 584*, that section shall not apply to that reorganisation or reduction of units in the unit trust scheme.

(3) The references in *subsection (2)* to *section 584* do not include references to that section as applied by *section 585* or *586*.

PT.27
Taxation of
collective
investment
undertakings.

[FA89 s18(1) to (9),
(11), (11A) and
(12); FA91 s19 (1)
and (2); FA93
s20(a); FA94 s25(1);
S.I. No. 227 of 1994;
FA95 s38; FA96
s35(1); FA97 s32]

734.—(1) (a) In this section and in *Schedule 18*—

“accounting period”, in relation to a collective investment undertaking, means the chargeable period or its basis period (within the meaning of *section 321(2)*) on the income or profits of which the undertaking is chargeable to income tax or corporation tax, as the case may be, for any chargeable period (within the meaning of that section), or would be so chargeable but for an insufficiency of income or profits, and—

- (i) where 2 basis periods overlap, the period common to both shall be deemed to fall in the first basis period only,
- (ii) where there is an interval between the end of the basis period for one chargeable period and the basis period for the next chargeable period, the interval shall be deemed to be part of the second basis period, and
- (iii) the reference in *paragraph (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;

“the Acts” means the Tax Acts and the Capital Gains Tax Acts;

“the airport” has the same meaning as in the Customs-Free Airport Act, 1947;

“appropriate tax”, in relation to the amount of any relevant payment made by a collective investment undertaking or in relation to any amount of undistributed relevant income of such an undertaking, as the case may be, means a sum representing tax on the amount of the payment or the amount of the undistributed relevant income, as appropriate, at a rate equal to the standard rate of income tax in force at the time of the payment or at the end of the accounting period to which the undistributed relevant income relates, as the case may be, after making a deduction from that sum of an amount equal to, or to the aggregate of—

- (i) in the case of a relevant payment—
 - (I) in so far as it is made wholly or partly out of relevant income which at a previous date had been or formed part of the undistributed relevant income of the undertaking, the amount of any appropriate tax deducted—
 - (A) from the relevant income, or
 - (B) where the payment, or that part of the payment which is made out of

relevant income, is less than the relevant income, from such part of the relevant income as is represented by the payment, or that part of the payment, as the case may be, and

Pr.27 S.734

(II) any other amount or amounts of tax deducted—

(A) from the relevant profits out of which the relevant payment is made, or

(B) where the payment is less than the profits, from such part of the profits as is represented by the payment,

under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

or

(ii) in the case of an amount of undistributed relevant income, any amount or amounts of tax deducted from the income under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

but the amount of the deduction shall not exceed the amount of the sum;

“the Area” has the same meaning as it has for the purposes of *section 446*;

“chargeable gain” has the same meaning as in the Capital Gains Tax Acts;

“collective investor”, in relation to an authorised investment company (within the meaning of Part XIII of the Companies Act, 1990), means an investor, being a life assurance company, pension fund or other investor—

(i) who invests in securities or any other property whatever with moneys contributed by 50 or more persons—

(I) none of whom has at any time directly or indirectly contributed more than 5 per cent of such moneys, and

(II) each of a majority of whom has contributed moneys to the investor with the intention of being entitled, otherwise than on the death of any person or by reference to a risk of any kind to any person or property, to receive from the investor—

(A) a payment which, or

(B) payments the aggregate of which,

exceeds those moneys by a part of the profits or income arising to the investor,

and

- (ii) who invests in the authorised investment company primarily for the benefit of those persons;

“collective investment undertaking” means, subject to *paragraph (b)*—

- (i) a unit trust scheme which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and which has not had its authorisation under that Act revoked,

- (ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations,

- (iii) a limited partnership which—

(I) has as its principal business, as expressed in the partnership agreement establishing the limited partnership, the investment of its funds in property, and

(II) has been authorised to carry on that business, under any enactment which provides for such authorisation, by the Central Bank of Ireland,

and where, in addition to being a collective investment undertaking, it is also a specified collective investment undertaking, and

- (iv) any authorised investment company (within the meaning of Part XIII of the Companies Act, 1990)—

(I) which has not had its authorisation under that Part of that Act revoked, and

(II) (A) which has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated, or

(B) (aa) which is not a qualified company,

(bb) which in addition to being a collective investment undertaking

is also a specified collective investment undertaking, and Pr.27 S.734

- (cc) where all the holders of units who must be resident outside the State, for the company to be a specified collective investment undertaking, are collective investors;

“distribution” has the same meaning as in the Corporation Tax Acts;

“qualified company” has, in relation to any business of a collective investment undertaking carried on in—

- (i) the airport, the same meaning as it has for the purposes of *section 445*, or
- (ii) the Area, the same meaning as it has for the purposes of *section 446*;

“qualifying management company”, in relation to a collective investment undertaking, means a qualified company which in the course of relevant trading operations carried on by the qualified company manages the whole or any part of the investments and other activities of the business of the undertaking;

“relevant gains”, in relation to a collective investment undertaking, means gains accruing to the undertaking, being gains which would constitute chargeable gains in the hands of a person resident in the State;

“relevant income”, in relation to a collective investment undertaking, means any amounts of income, profits or gains which arise to or are receivable by the collective investment undertaking, being amounts of income, profits or gains—

- (i) which are or are to be paid to unit holders as relevant payments,
- (ii) out of which relevant payments are or are to be made to unit holders, or
- (iii) which are or are to be accumulated for the benefit of, or invested in transferable securities for the benefit of, unit holders,

and which if they arose to an individual resident in the State would in the hands of the individual constitute income for the purposes of income tax;

“relevant payment” means a payment made to a unit holder by a collective investment undertaking by reason of rights conferred on the unit holder as a result of holding a unit or units in the collective investment undertaking, other than a payment

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

made in respect of the cancellation, redemption or repurchase of a unit;

“relevant profits”, in relation to a collective investment undertaking, means the relevant income and relevant gains of the undertaking;

“relevant Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

“relevant trading operations” has, in relation to any business of a collective investment undertaking carried on by a qualified company in—

- (i) the airport, the same meaning as it has for the purposes of *section 445*, or
- (ii) the Area, the same meaning as it has for the purposes of *section 446*;

“return” means a return under *paragraph 1(2)* of *Schedule 18*;

“specified collective investment undertaking” means, subject to *paragraph (c)*, a collective investment undertaking—

- (i) most of the business of which, to the extent that it is carried on in the State—
 - (I) (A) is carried on in the Area by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking, or
 - (B) is not so carried on in the Area but—
 - (aa) is so carried on in the State,
 - (bb) would be so carried on in the Area but for circumstances outside the control of the person or persons carrying on the business, and
 - (cc) is so carried on in the Area when those circumstances cease to exist,

or

- (II) is carried on in the airport by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking,

and

- (ii) in which, except to the extent that such units are held by the undertaking itself, the qualifying management company of the undertaking, a company referred to in *section 710(2)*, a specified company or another specified collective investment undertaking, all the holders of units in the undertaking are persons resident outside the State,

Pr.27 S.734

and includes any company limited by shares or guarantee which—

- (iii) is wholly owned by such a collective investment undertaking or its trustees, if any, for the benefit of the holders of units in that undertaking,
- (iv) is so owned solely for the purpose of limiting the liability of that undertaking or its trustees, as the case may be, in respect of futures contracts, options contracts or other financial instruments with similar risk characteristics, by enabling it or its trustees, as the case may be, to invest or deal in such investments through the company, and
- (v) would, if references to an undertaking in *paragraph (i)* were to be construed as including references to a company limited by shares or guarantee, satisfy the condition set out in *paragraph (i)*;

“specified company” means a company—

- (i) which is—
- (I) a qualified company carrying on relevant trading operations (within the meaning of *section 446*), or
 - (II) a qualified company carrying on relevant trading operations (within the meaning of *section 445*) so long as those relevant trading operations 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 rather than in the airport,

and

- (ii) not more than 25 per cent of the share capital of which is owned directly or indirectly by persons resident in the State;

“tax” means income tax, corporation tax or capital gains tax, as may be appropriate;

“transferable securities” has the same meaning as in the relevant Regulations;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.27 S.734

“undistributed relevant income”, in relation to a collective investment undertaking, means any relevant income arising to or receivable by the undertaking in an accounting period of the undertaking and which at the end of the accounting period has not been paid to the unit holders and from which appropriate tax has not previously been deducted;

“unit” includes any investment, such as a subscription for shares or a contribution of capital, in a collective investment undertaking, being an investment which entitles the investor—

(i) to a share of the investments or relevant profits of, or

(ii) to receive a distribution from,

the collective investment undertaking;

“unit holder”, in relation to a collective investment undertaking, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking.

(b) References in this section to a collective investment undertaking, apart from such references in the definition of “specified collective investment undertaking”, shall include references to a company limited by shares or guarantee which is a specified collective investment undertaking.

(c) For the purposes of the definition of “specified collective investment undertaking”, a reference to a qualifying management company shall be construed as if—

(i) in *section 445(2)* there were deleted “, 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

(ii) in *section 446(2)* there were deleted “, 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”.

(2) For the purposes of this section—

(a) where any payment is made out of relevant profits or out of any part of such profits from which any tax including appropriate tax has been deducted and the payment is less than the relevant profits or that part of such profits, the amount of the tax so deducted which is referable to the part of the profits represented by the payment shall be the amount which bears to the total amount of the tax deducted from the relevant profits or the part of such profits, the same proportion as the amount of the payment bears to the amount of the relevant profits or the part of such profits, as the case may be, and

(b) any reference in this section to the amount of a relevant payment shall be construed as a reference to the amount which would be the amount of the relevant payment if the appropriate tax were not to be deducted from the relevant payment or from any undistributed relevant income out of which the relevant payment or any part of such payment is made.

(3) Notwithstanding anything in the Acts but subject to *subsection (5)*, a collective investment undertaking shall not be chargeable to tax in respect of relevant profits, but the relevant profits shall be chargeable to tax in the hands of any unit holder, including the undertaking, to whom a relevant payment of or out of the relevant profits is made if and to the extent that the unit holder would be chargeable to tax in the State on such relevant profits, or on such part of the relevant profits as is represented by the payment, on the basis that and in all respects as if, subject to *subsections (4) and (6)*, the relevant profits or that part of the relevant profits had arisen or accrued to the unit holder without passing through the hands of the undertaking.

(4) Where in accordance with *subsection (3)* a unit holder is to be charged to tax on a relevant payment made by a collective investment undertaking which is not a specified collective investment undertaking—

(a) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant income, the unit holder shall be charged to tax on that amount under Case IV of Schedule D as if it were an amount of income arising to the unit holder at the time the payment is made, and

(b) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant gains, it shall be treated as a capital distribution within the meaning of *section 731* and, if it is not already the case, the Capital Gains Tax Acts shall apply in all respects as if the amount of the relevant payment were a capital distribution made by a unit trust and the unit or units in respect of which it is paid were a unit or units in a unit trust.

(5) (a) Where a collective investment undertaking which is not a specified collective investment undertaking—

(i) makes a relevant payment of or out of relevant profits to a unit holder resident in the State, or

(ii) has at the end of an accounting period of the undertaking any undistributed relevant income,

it shall deduct out of the amount of the relevant payment or the amount of the undistributed relevant income, as the case may be, the appropriate tax.

(b) Where appropriate tax is deducted in accordance with *paragraph (a)*—

(i) the unit holder to whom the relevant payment is made or the unit holder or unit holders entitled to the relevant income, as the case may be, shall allow the deduction, and

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.27 S.734

- (ii) the collective investment undertaking shall, on the making of the relevant payment to the unit holder or on the making of any relevant payment out of the undistributed relevant income to any unit holder, as the case may be, be acquitted and discharged of so much money as is represented—
 - (I) by the deduction, or
 - (II) where the relevant payment is less than the amount of the undistributed relevant income, by so much of the deduction as is referable to the relevant payment,as if the amount of money had actually been paid to the unit holder.
- (c) *Schedule 18* shall apply for the purposes of supplementing this subsection.
- (6) (a) Where a unit holder receives a relevant payment from a collective investment undertaking which is not a specified collective investment undertaking and appropriate tax has been deducted from the payment, or from the relevant profits or part of those profits out of which the payment is made, then, the unit holder shall—
 - (i) if the unit holder is not resident in the State for tax purposes at the time the payment is made, be entitled, on due claim and on proof of the facts, to repayment of the appropriate tax, or so much of it as is referable to the relevant payment, as the case may be, or
 - (ii) in any other case, be entitled—
 - (I) to have the unit holder's liability to tax under any assessment made in respect of the relevant payment or any part of the relevant payment reduced by a sum equal to so much, if any, of the appropriate tax as is referable to the amount of the relevant payment contained in the assessment, and
 - (II) where the appropriate tax so referable exceeds the unit holder's liability to tax in respect of the relevant payment, or in respect of that part of the relevant payment contained in the assessment, to repayment of the excess.
- (b) For the purposes of *paragraph (a)(ii)*, the inspector or on appeal the Appeal Commissioners shall make such apportionment of the appropriate tax deducted from a relevant payment, or from the relevant profits out of which the relevant payment or any part of the relevant payment is made, as is just and reasonable to determine the amount of the appropriate tax, if any, referable to any part of the relevant payment contained in an assessment.

(7) *Section 732* shall not apply as on and from—

(a) the 24th day of May, 1989, to—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) a qualifying unit trust (within the meaning of *section 732*), and

(ii) the disposal of qualifying units (within the meaning of that section) in such a qualifying unit trust,

where the qualifying unit trust is also a specified collective investment undertaking, and

(b) (i) the 6th day of April, 1990, or

(ii) where this section applies by virtue of *subsection (12)(b)* on an earlier day to a qualifying unit trust which is a collective investment undertaking, such earlier day in respect of the qualifying unit trust,

to such a qualifying unit trust or to the disposal of such qualifying units in the qualifying unit trust, where the qualifying unit trust is a collective investment undertaking without also being a specified collective investment undertaking.

(8) *Section 805* shall not apply to a collective investment undertaking if but for this subsection it would otherwise apply.

(9) As respects any collective investment undertaking which is a company (within the meaning of the Corporation Tax Acts)—

(a) a relevant payment made out of the relevant profits of the undertaking or a payment made in respect of the cancellation, redemption or repurchase of a unit in the undertaking shall not be treated as a distribution for any of the purposes of the Tax Acts, and

(b) if but for this subsection *section 440* would otherwise apply, it shall not apply to the collective investment undertaking.

(10) Notwithstanding *section 1034*, a person not resident in the State shall not by virtue of that section be assessable and chargeable in the name of an agent in respect of a relevant payment made out of the relevant profits of a collective investment undertaking.

(11) For the purposes of the Tax Acts, a unit holder other than a qualifying management company shall not be treated as carrying on a trade in the State through a branch or agency or otherwise where that unit holder would not be so treated if the unit holder did not hold any units in a specified collective investment undertaking.

(12) This section shall apply as on and from—

(a) in the case of a specified collective investment undertaking, the 24th day of May, 1989, and

(b) in the case of any other collective investment undertaking, the 6th day of April, 1990, or such earlier day, not being earlier than the 6th day of April, 1989, as the Revenue Commissioners may agree to in writing with any such other collective investment undertaking in respect of that undertaking.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.27
Certain unit trusts
not to be collective
investment
undertakings.

[FA90 s35(1)
and(2)]

735.—(1) This section shall apply to any unit trust scheme (within the meaning of the Unit Trusts Act, 1972) where there is or was at any time in respect of any or all units issued after the 14th day of June, 1973, a requirement for participation in that unit trust scheme that a policy of assurance on human life be effected (but without those units becoming the property of the owner of the policy either as benefits or otherwise).

(2) Notwithstanding *section 734*, a unit trust scheme to which this section applies shall be deemed not to be a collective investment undertaking for the purposes of that section and *Schedule 18*.

Option for non-
application of
section 735.

[FA92 s36]

736.—(1) Where the trustees of a unit trust scheme (within the meaning the Unit Trusts Act, 1990), which apart from *section 735* would be a collective investment undertaking for the purposes of *section 734* and *Schedule 18*, have not later than the 1st day of November, 1992—

(a) paid the capital gains tax which would have been chargeable on them if—

- (i) on the 31st day of March, 1992, they had disposed of all the assets of the unit trust scheme, and
- (ii) the resulting chargeable gains were chargeable to tax at one-half of the rate at which they would have been chargeable under the Capital Gains Tax Acts apart from this subparagraph,

and

(b) given notice in writing to the Revenue Commissioners that they have paid that tax in accordance with *paragraph (a)*,

then, notwithstanding *section 735*, the unit trust scheme (in this section referred to as “the relevant unit trust”) shall be deemed to be and to have been a collective investment undertaking for the purposes of *section 734* and *Schedule 18* with effect from the 1st day of April, 1992.

(2) (a) Where units in a relevant unit trust were held by a person on the 31st day of March, 1992, they shall be treated, for the purposes of computing chargeable gains accruing to the person on or after the 1st day of April, 1992, as having been acquired by the person on the 31st day of March, 1992.

(b) *Section 731(6)* shall not apply to disposals on or after the 1st day of April, 1992, of units in a relevant unit trust.

(3) Where the consideration received for a disposal, or given for an acquisition, of an asset on the 31st day of March, 1992, is to be determined as a result of this section, it shall be deemed to be an amount equal to the market value of the asset on that day, and for this purpose “market value”, in relation to any asset, shall be construed in accordance with *section 548*.

Special investment
schemes.

[FA93 s13; FA94
s34(a); FA96 s36]

737.—(1) (a) In this section—

“inspector”, “ordinary shares”, and “qualifying shares” have the same meanings respectively as in *section 723*;

“authorised unit trust scheme” means a unit trust scheme which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and which has not had its authorisation under that Act revoked; Pr.27 S.737

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

“special investment scheme” means an authorised unit trust scheme in respect of which the conditions specified in *subsection (2)* are satisfied;

“special investment units” means units sold to an individual on or after the 1st day of February, 1993, by the management company or trustee under an authorised unit trust scheme in respect of which—

- (a) the conditions specified in *subsection (3)* are satisfied, and
- (b) a declaration of the kind specified in *subsection (4)* has been made to the management company or trustee;

“specified qualifying shares”, in relation to a special investment scheme, means qualifying shares in a company which, when the shares are acquired for the scheme, has an issued share capital the market value of which is less than £100,000,000;

“units”, in relation to an authorised unit trust scheme, means any units (whether described as units or otherwise) into which are divided the beneficial interests in the assets subject to any trust created under the scheme.

- (b) A reference in this section to the management company or trustee under an authorised unit trust scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created pursuant to the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.

(2) (a) The conditions referred to in the definition of “special investment scheme” are as follows:

- (i) the beneficial interests in the assets subject to any trust created under the authorised unit trust scheme concerned shall be divided into special investment units;
- (ii) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets subject to any trust created under the scheme shall not be less than—

(I) as respects qualifying shares, 40 per cent, and

(II) as respects specified qualifying shares, 6 per cent,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

- (iii) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets subject to any trust created under the scheme shall not be less than—

- (I) as respects qualifying shares, 45 per cent, and

- (II) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

- (iv) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets subject to any trust created under the scheme shall not be less than—

- (I) as respects qualifying shares, 50 per cent, and

- (II) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

- (v) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets subject to any trust created under the scheme shall not be less than—

- (I) as respects qualifying shares, 55 per cent, and

- (II) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust.

- (b) For the purposes of *subparagraphs (ii) to (v) of paragraph (a)*, the amount of the consideration given for assets subject to any trust created under the scheme shall be determined in accordance with *sections 547 and 580*.

- (3) (a) The conditions referred to in the definition of “special investment units” are as follows:

- (i) the special investment units shall be so designated in the trusts created under the authorised unit trust scheme concerned;

- (ii) the aggregate of payments made on or before any day to the management company or trustee under the scheme by or on behalf of an individual in respect of special investment units owned, whether jointly or otherwise, by the individual on that day shall not exceed £50,000;

- (iii) the management company or trustee under the scheme shall ensure that the aggregate of the market value of special investment units owned, whether jointly or otherwise, by any individual does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was made by or on behalf of that individual in respect of those units; Pr.27 S.737
- (iv) special investment units shall not be sold to or owned by an individual who is not of full age;
- (v) special investment units shall only be sold to an individual—
- (I) who shall be beneficially entitled to, and
- (II) to whom there shall be paid,
- all amounts payable in respect of those units by the management company or trustee under the scheme;
- (vi) except in the case of special investment units sold to and owned jointly only by a couple married to each other, units shall not be jointly owned;
- (vii) except in the case of special investment units bought by and owned jointly only by a couple married to each other, an individual who owns such units of an authorised unit trust scheme shall not buy or own such units of another authorised unit trust scheme;
- (viii) where a couple married to each other buy and jointly own special investment units of an authorised unit trust scheme, they shall not buy or own such units in any other such scheme either individually or jointly, other than units which they buy and jointly own in one other such scheme.

(b) For the purposes of *subparagraphs (ii) to (iv) and (vi) to (viii) of paragraph (a)*, references to ownership of special investment units shall be construed as references to beneficial ownership of the units.

(c) For the purposes of *subparagraphs (ii) and (iii) of paragraph (a)*, a disposal of special investment units of an authorised unit trust scheme acquired by an individual at different times shall be assumed to be a disposal of units acquired later, rather than of units acquired earlier, by the individual.

(4) The declaration referred to in the definition of “special investment units” is a declaration in writing to the management company or trustee under an authorised unit trust scheme which—

- (a) (i) is made by the individual (in this section referred to as “the declarer”) to whom any amounts are payable by the management company or trustee in respect of units in respect of which the declaration is made, and
- (ii) 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 specified in *subparagraphs (iv) to (viii) of subsection (3)(a)* are satisfied in relation to the units in respect of which the declaration is made,
 - (d) contains the full name and address of the individual beneficially entitled to any amounts payable in respect of the units in respect of which the declaration is made,
 - (e) contains an undertaking by the declarer that, if any of the conditions referred to in *subparagraphs (iv) to (viii) of subsection (3)(a)* ceases to be satisfied in respect of the units in respect of which the declaration is made, the declarer will notify the management company or trustee accordingly, and
 - (f) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.
- (5) (a) The management company or trustee under an authorised unit trust scheme shall—
- (i) keep and retain for not less than the longer of the following periods—
 - (I) a period of 6 years, and
 - (II) a period which, in relation to the units in respect of which the declaration is made, ends 3 years after the earliest date on which all of those units stand cancelled, redeemed or bought by the management company or trustee, 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 specified in *subsection (4)* which have been made to it.
- (b) The inspector may examine and take copies of or of extracts from a declaration made available to him or her under *paragraph (a)*.
- (6) (a) Notwithstanding *section 734*, a special investment scheme shall not be a collective investment undertaking for the purposes of that section and *Schedule 18*; but a special investment scheme shall continue to be treated as a collective investment undertaking (within the meaning of *section 734*) for the purposes of *section 206(a)* of the Finance Act, 1992.
- (b) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts but subject to *paragraphs (c)* and *(d)*—
- (i) income tax in respect of income arising to a special investment scheme shall be chargeable at the standard rate, and such income shall not be charged to

an additional duty of income tax under *section 805*, Pr.27 S.737
and

(ii) capital gains tax in respect of chargeable gains accruing to a special investment scheme shall be chargeable at the rate specified in *section 28(3)*.

(c) Any income tax or capital gains tax chargeable in accordance with *paragraph (b)* shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under the Tax Acts or the Capital Gains Tax Acts apart from this section, is 10 per cent of income arising or chargeable gains accruing, as the case may be, to the scheme.

(d) Only so much of income arising or gains accruing to the scheme shall be chargeable to income tax or capital gains tax, as the case may be, in accordance with *paragraph (b)* as is or is to be—

(i) paid to, or

(ii) accumulated or invested for the benefit of,

holders of special investment units or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of *subsection (8)* were gains on an actual disposal of the assets concerned.

(7) (a) Notwithstanding *section 136(5)*, a distribution made by a company resident in the State in respect of shares which are subject to any trust created in pursuance of a special investment scheme shall be treated for the purposes of the Tax Acts as income in respect of which the management company or trustee under the scheme is entitled to a tax credit, and no other person shall be treated for the purposes of *section 136* as receiving that distribution.

(b) Where a management company or trustee under a special investment scheme is entitled to a tax credit in respect of a distribution made by a company resident in the State, the credit or part of it shall be set against—

(i) the income tax, as reduced by virtue of *subsection (6)(c)*, chargeable in respect of income arising to, or

(ii) the capital gains tax, as so reduced, chargeable in respect of chargeable gains accruing to,

the special investment scheme for the year of assessment in which the distribution is made and, where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the management company or trustee under the scheme.

(c) Notwithstanding *Chapter 4 of Part 8*, that Chapter shall apply to a deposit (within the meaning of that Chapter) for the time being subject to any trust created pursuant to a special investment scheme as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

(8) (a) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains arising to a special investment scheme—

(i) each asset which on the 5th day of April is subject to any trust created pursuant to the scheme shall be deemed to have been disposed of and immediately reacquired by the management company or trustee under the scheme on that day at the asset's market value on that day,

(ii) *section 556* shall not apply,

(iii) *section 607* shall not apply,

(iv) without prejudice to the treatment of losses on such shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares (within the meaning of *Part 16*) in a qualifying company (within the meaning of that Part) shall not be chargeable gains, and

(v) as respects *section 581*—

(I) *subsections (1) and (2)* of that section, and

(II) *subsection (3)* of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

shall apply as if *subparagraphs (i) and (iii)* had not been enacted.

(b) Where in a year of assessment the management company or trustee under a special investment scheme incurs allowable losses on disposals or deemed disposals of assets subject to any trust created pursuant to the scheme, the amount, if any, by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the year of assessment shall be—

(i) disregarded for the purposes of *section 31*,

(ii) treated as reducing the income chargeable to income tax arising to the scheme in that year of assessment, and

(iii) to the extent that it is not treated as reducing income arising to the scheme in that year of assessment, treated for the purposes of the Capital Gains Tax Acts and this paragraph as an allowable loss incurred in the next year of assessment on a disposal of an asset subject to a trust created pursuant to the scheme.

(c) (i) In this paragraph—

“the appropriate amount in respect of the interest” means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the management company or the trustee was the first buyer and the management company or the trustee carried on a trade to which

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

section 749(1) applies but, in determining the appropriate amount in respect of the interest in accordance with *Schedule 21, paragraph 3(4)* of that Schedule shall apply as if “in the opinion of the Appeal Commissioners” were deleted; Pr.27 S.737

“securities” has the same meaning as in *section 815*.

- (ii) Where in a year of assessment (in this paragraph referred to as “the first year of assessment”) any securities which are assets subject to any trust created pursuant to a special investment scheme are disposed of and in the following year of assessment interest becoming payable in respect of the securities is receivable by the special investment scheme, then, for the purposes of computing the chargeable gains for the first year of assessment, the price paid by the management company or the trustee for the securities shall be treated as reduced by the appropriate amount in respect of the interest.
 - (iii) Where for a year of assessment *subparagraph (ii)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following year of assessment from the disposal of the securities.
- (9) (a) In this subsection, “eligible shares” means eligible shares within the meaning of *Part 16* in a qualifying company within the meaning of that Part.
- (b) Distributions received by the management company or trustee under a special investment scheme in respect of eligible shares which are subject to any trust created in pursuance of the scheme shall not be chargeable to income tax; but, notwithstanding *subsection (7)* or *section 136*, the tax credit in respect of a distribution to which this paragraph applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.
 - (c) Notwithstanding *section 508*, the Revenue Commissioners shall not designate a special investment scheme for the purposes of *Part 16*.
- (10) (a) Any payment made to a holder of special investment units by the management company or trustee under the special investment scheme concerned by reason of rights conferred on the holder as a result of holding such units shall not be reckoned in computing total income for the purposes of the Income Tax Acts.
- (b) *Section 732* shall not apply to a special investment scheme or the disposal of special investment units.
 - (c) No chargeable gain shall accrue on the disposal of, or of an interest in, special investment units.
 - (d) Notwithstanding any other provision of the Income Tax Acts or the Capital Gains Tax Acts, the holder of special investment units of a special investment scheme shall not be entitled to any credit for or payment of any income

tax or capital gains tax paid in respect of income arising to, or capital gains accruing to, the scheme.

Undertakings for collective investment.

[FA93 s17; FA94 s57(a); FA96 s38(1); FA97 s35]

738.—(1) (a) In this section and in *section 739*—

“chargeable period” means an accounting period of an undertaking for collective investment which is a company or, as respects such an undertaking which is not a company, a year of assessment;

“designated assets” means—

- (i) land, or
- (ii) shares in a company resident in the State which are not shares—
 - (I) listed in the official list, or
 - (II) dealt in on the smaller companies market or the unlisted securities market, of the Irish Stock Exchange;

“designated undertaking for collective investment” means an undertaking for collective investment which, on the 25th day of May, 1993, owned designated assets for which that undertaking gave consideration (determined in accordance with *section 547*) the aggregate of which is not less than 80 per cent of the aggregate of the consideration (as so determined) which that undertaking gave for the total assets it owned at that date;

“distribution” has the same meaning as in the Corporation Tax Acts;

“guaranteed undertaking for collective investment” means an undertaking for collective investment all of the issued units of which, on the 25th day of May, 1993, are units in respect of each of which the undertaking will make one payment only, being a payment—

- (i) to be made on a specified date in cancellation of those units, and
- (ii) which is the aggregate of—
 - (I) a fixed amount, and
 - (II) an amount, which may be nil, determined by a stock exchange index or indices;

“relevant Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

“undertaking for collective investment” means, subject to *paragraph (b)*—

- (i) a unit trust scheme, other than—
- (I) a unit trust mentioned in *section 731(5)(a)*, or
 - (II) a special investment scheme (within the meaning of *section 737*),
- which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and has not had its authorisation under that Act revoked,
- (ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations, or
- (iii) any authorised investment company (within the meaning of Part XIII of the Companies Act, 1990) which—
- (I) has not had its authorisation under that Part of that Act revoked, and
 - (II) has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated,

which is neither a specified collective investment undertaking (within the meaning of *section 734(1)*) nor an offshore fund (within the meaning of *section 743*);

“unit” includes a share and any other instrument granting an entitlement—

- (i) to a share of the investments or relevant profits of, or
- (ii) to receive a distribution from,

an undertaking for collective investment;

“unit holder”, in relation to an undertaking for collective investment, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking;

“standard rate” has the same meaning as in *section 3(1)*;

“standard rate per cent” has the same meaning as in *section 4(1)*.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.27 S.738

(b) For the purposes of this section and *section 739*, references to an undertaking for collective investment (other than in this paragraph) shall be construed so as to include a reference to a trustee, management company or other such person who—

(i) is authorised to act on behalf, or for the purposes, of the undertaking, and

(ii) habitually does so,

to the extent that such construction brings into account for the purposes of this section and *section 739* any matter relating to the undertaking, being a matter which would not otherwise be brought into account for those purposes.

(c) For the purposes of this section—

(i) as respects an undertaking for collective investment which is a company, where an accounting period of the company begins before the 6th day of April, 1994, 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 5th day of April, 1994, and the other beginning on the 6th day of April, 1994, and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods of the company, and

(ii) without prejudice to *section 815(2)*, any attribution of income or chargeable gains of such an undertaking to periods treated as separate accounting periods by virtue of *subparagraph (i)* shall be made—

(I) as respects such income, on the basis of the time that income arises to the undertaking, and

(II) as respects such capital gains, on the basis of the time of disposal of the assets concerned,

and *section 4(6)* shall not apply for the purpose of such attribution.

(2) (a) Other than in the case of *subsections (7) to (9)* of *section 734*, that section shall not apply, and the following provisions of this section shall apply, to an undertaking for collective investment as respects the chargeable periods of the undertaking ending on or after—

(i) the 6th day of April, 1994, if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, or

(ii) the 25th day of May, 1993, if the undertaking was not carrying on such a business at that date.

(b) (i) As respects an undertaking for collective investment which is a company, the corporation tax which is chargeable on its profits on which corporation tax falls finally to be borne for a chargeable period shall be reduced for the purposes of the Tax Acts so that, before it is reduced by any credit, relief or other reduction under those Acts (other than under this section), it is the standard rate, for the year of assessment in which the chargeable period falls, of those profits.

(ii) For the purposes of this paragraph, where part of the chargeable period falls in one year of assessment (in this subparagraph referred to as “the first-mentioned year”) and the other part falls in the year of assessment succeeding the first-mentioned year and different standard rates are in force for each of those years, “the standard rate” 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 standard rate per cent in force for the first-mentioned year,

B is the standard rate per cent in force for the year of assessment succeeding the first-mentioned year,

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

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

E is the length of the chargeable period.

(c) In computing profits for the purposes of *paragraph (b)*, *section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)*, were the rate per cent of corporation tax specified in *section 21(1)(b)*.

(d) As respects an undertaking for collective investment which is not a company—

(i) the capital gains tax which is chargeable on the chargeable gains accruing in a year of assessment to the undertaking shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under any provision, other than under this section, of the Tax Acts or the Capital Gains Tax Acts, is the standard rate, for the year of assessment, of the chargeable gains accruing to the undertaking, and

(ii) only so much of income arising or gains accruing to the undertaking shall be chargeable to income tax or capital gains tax, as the case may be, as is or is to be—

(I) paid to, or

(II) accumulated or invested for the benefit of,

unit holders in the undertaking or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of *subsection (4)* were gains on an actual disposal of the assets concerned.

(3) (a) (i) *Section 129* shall not apply as respects a distribution received by an undertaking for collective investment which is a company, and the income represented by the distribution shall be equal to the aggregate of the distribution and the amount of the tax credit in respect of the distribution.

(ii) Where an undertaking for collective investment which is a company is entitled to a tax credit in respect of a distribution which is chargeable to corporation tax by virtue of *subparagraph (i)*—

(I) it may set the credit against the corporation tax, as reduced by virtue of *subsection (2)(b)*, chargeable on its profits for the chargeable period in which the distribution is made and where the credit exceeds that corporation tax the excess shall be paid to it, and

(II) notwithstanding *sections 4* and *156*, the income represented by the distribution shall not be franked investment income for the purposes of *sections 83* and *157*.

(b) Where a company resident in the State makes a distribution to an undertaking for collective investment which is not a company, the tax credit, if any, attaching to the distribution shall be set against—

(i) the income tax chargeable in respect of income arising to, or

(ii) the capital gains tax, as reduced by *subsection (2)(d)(i)*, chargeable in respect of chargeable gains accruing to,

the undertaking for the year of assessment in which the distribution is made, and—

(I) where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the undertaking, and

(II) a payment shall not be made in respect of the credit under *section 136(4)*.

(c) Notwithstanding *Chapter 4* of *Part 8*, that Chapter shall apply to a deposit (within the meaning of that Chapter) which is for the time being beneficially owned by an undertaking for collective investment which is not a company as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

(4) (a) (i) Every asset of an undertaking for collective investment on the day on which a chargeable period of the undertaking ends shall, subject to *subparagraph (ii)* and *paragraphs (b) to (e)*, be deemed to have been disposed of and immediately reacquired by the undertaking at the asset's market value on that day.

(ii) *Subparagraph (i)* shall not apply to—

(I) assets to which *section 607* applies other than where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which that section does not apply, and

(II) assets which are strips within the meaning of *section 55*.

(b) Subject to *paragraphs (c) and (d)*, chargeable gains or allowable losses, which would otherwise accrue to an undertaking for collective investment on disposals deemed by virtue of *paragraph (a)* to have been made in a chargeable period (other than a period in which the collective investment business of the undertaking concerned ceases) of the undertaking, shall be treated, subject to *subparagraphs (ii) and (iii)*, as not accruing to it, and instead—

(i) there shall be ascertained the difference (in this subsection referred to as “the net amount”) between the aggregate of those gains and the aggregate of those losses,

(ii) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the undertaking on disposals of assets deemed to be made in the chargeable period, and

(iii) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing on disposals of assets deemed to be made in each succeeding chargeable period until the whole amount has been accounted for.

(c) For any chargeable period of less than one year, the fraction of one-seventh referred to in *paragraph (b)(iii)* shall be proportionately reduced and, where this paragraph has applied in relation to any chargeable period before the last such period for which *paragraph (b)(iii)* applies, the fraction treated as accruing in that last chargeable period shall be reduced so as to secure that no more than the whole of the net amount has been accounted for.

(d) Where the collective investment business of the undertaking concerned ceases before the beginning of the last of the chargeable periods for which *paragraph (b)(iii)* would apply in relation to a net amount, the fraction of that amount that is treated as accruing in the chargeable period in which the business ceases shall be such as to secure that the whole of the net amount has been accounted for.

- (e) Where in a chargeable period an undertaking for collective investment incurs a loss on the disposal (in this paragraph referred to as “the first-mentioned disposal”) of an asset the gain or loss in respect of a deemed disposal of which was included in a net amount to which *paragraph (b)(ii)* applied for any preceding chargeable period, so much of the allowable loss on the first-mentioned disposal as is equal to the excess of the amount of the loss over the amount which but for *paragraph (a)* would have been the allowable loss on the first-mentioned disposal shall be treated for the purposes of *paragraph (b)* as an allowable loss which would otherwise accrue to the undertaking for collective investment on disposals deemed by virtue of *paragraph (a)* to have been made in the chargeable period.

(5) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains accruing to an undertaking for collective investment—

- (a) (i) *section 556*, and
(ii) *section 607*,
shall not apply,
(b) *section 581* shall as respects—
(i) *subsections (1) and (2)* of that section, and
(ii) *subsection (3)* of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,
apply as if *subsection (4), paragraph (a)(ii) and paragraph (c)* had not been enacted, and
(c) if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, it shall be deemed to have acquired each of the assets it holds on the 5th day of April, 1994, apart from assets to which *section 607* applies, at the asset’s market value on that date.

(6) Subject to *subsection (4)(b)*, where an undertaking for collective investment incurs allowable losses on disposals or deemed disposals of assets in a chargeable period, the amount (if any) by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the chargeable period shall—

- (a) be disregarded for the purposes of *section 31*,
(b) be treated as reducing the income chargeable to income tax or corporation tax arising to the undertaking in that chargeable period, and
(c) to the extent that it is not treated as reducing income arising to the undertaking in that chargeable period, be treated for the purposes of the Capital Gains Tax Acts and this subsection as an allowable loss incurred on a disposal of an asset deemed to be made in the next chargeable period.

(7) (a) In this subsection—

“the appropriate amount in respect of the interest” Pr.27 S.738 means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the undertaking for collective investment was the first buyer and it carried on a trade to which *section 749(1)* applies but, in determining the appropriate amount in respect of the interest in accordance with *Schedule 21, paragraph 3(4)* of that Schedule shall apply as if “in the opinion of the Appeal Commissioners” were deleted;

“securities” has the same meaning as in *section 815*.

- (b) Where in a chargeable period an undertaking for collective investment disposes of any securities and in the following chargeable period or its basis period interest becoming payable in respect of the securities is receivable by the undertaking for collective investment, then, the gain or loss accruing on the disposal shall be computed as if the price paid by the undertaking for collective investment for the securities was reduced by the appropriate amount in respect of the interest.
- (c) Where for a chargeable period *paragraph (b)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following chargeable period from the disposal of the securities.

(8) Notwithstanding any provision of the Tax Acts or the Capital Gains Tax Acts other than *section 739*, unit holders in an undertaking for collective investment shall not be entitled to any credit for or repayment of any income tax, capital gains tax or corporation tax paid in respect of income arising to, capital gains accruing to or profits of the undertaking.

(9) (a) Notwithstanding *subsection (2)* but subject to *paragraph (b), subsections (1) to (8)* and *section 739* shall be construed as respects designated undertakings for collective investment and guaranteed undertakings for collective investment as if every reference in those subsections and in that section—

- (i) to the 5th day of April, 1994, were a reference to the 5th day of April, 1998, and
- (ii) to the 6th day of April, 1994, were a reference to the 6th day of April, 1998,

and, as respects such an undertaking, those subsections and *section 739* shall not apply except as so construed.

- (b) Where—
 - (i) the aggregate of the consideration (determined in accordance with *section 547*) given for the designated assets owned at any time after the 25th day of May, 1993, and before the 5th day of April, 1997, by a designated undertaking for collective investment is less than 80 per cent of the aggregate of the consideration (as so determined) given for the total assets owned by the undertaking at that time, or

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.27 S.738

- (ii) at any time before the 5th day of April, 1997, a guaranteed undertaking for collective investment makes any payment to unit holders in the undertaking which is not a payment in cancellation of those units,

paragraph (a) shall be construed as respects that undertaking as if each reference in that paragraph—

- (I) to the 5th day of April, 1998, were a reference to the 5th day of April, and
- (II) to the 6th day of April, 1998, were a reference to the 6th day of April,

subsequent to the time referred to in *subparagraph (i)* or *(ii)*, as the case may be.

Taxation of unit holders in undertakings for collective investment.

739.—(1) Subject to this section, as respects a payment made on or after the 6th day of April, 1994, in money or money's worth to a unit holder by reason of rights conferred on the holder as a result of holding units in an undertaking for collective investment—

[FA93 s18; FA94 s57(b)]

- (a) where the holder is not a company, the payment shall not be reckoned in computing the total income of the holder for the purposes of the Income Tax Acts, and
- (b) where apart from this paragraph the payment would be taken into account for the purposes of computing income chargeable to corporation tax, such payment shall be treated as if it were the net amount of an annual payment chargeable to tax under Case IV of Schedule D from the gross amount of which income tax has been deducted at the standard rate.

(2) (a) This subsection shall apply to a payment which—

- (i) is made on or after the 6th day of April, 1994, in money or money's worth, by reason of rights conferred on a unit holder as a result of holding units in an undertaking for collective investment, and
- (ii) apart from *subsection (1)* would be charged to corporation tax under Case I of Schedule D.

(b) *Subsection (1)* shall not apply to a payment to which this subsection applies.

(c) For the purposes of the Tax Acts other than *paragraphs (d)* and *(e)*—

- (i) the income for a chargeable period attributable to a payment to which this subsection applies shall be increased by an amount determined by reference to *paragraph (d)*, and
- (ii) the amount so determined shall be deemed to be an amount of income tax which shall—

(I) be set off against corporation tax assessable on the unit holder for the chargeable period, or

(II) in so far as it cannot be set off in accordance with *Pr.27 S.739 clause (I)*, be repaid to the unit holder.

- (d) The amount referred to in *paragraph (c)*, by which the income attributable to a payment to which this subsection applies is to be increased, shall be determined by the formula—

$$I \times \frac{A}{100 - A}$$

where—

I is the income attributable to a payment to which this subsection applies, and

A is the standard rate per cent for the year of assessment in which the payment is made.

- (e) For the purposes of this subsection, in computing income attributable to a payment—

(i) an amount shall be deducted from the payment if the payment arises on a sale or other transfer of ownership, or on a cancellation, redemption or repurchase by the undertaking for collective investment, of units or an interest in units, and an amount shall not be deducted otherwise,

(ii) subject to *subparagraphs (iii) to (v)*, the amount of the consideration in money or money's worth given by or on behalf of the unit holder for the acquisition of units or an interest in units for which the payment is made, and not any other amount, shall be deducted from the payment,

(iii) where units are acquired by the unit holder before the 6th day of April, 1994, in an undertaking for collective investment carrying on business on the 25th day of May, 1993, the consideration for the acquisition of the units shall be deemed to be the amount of their market value (within the meaning of *section 548*) on the 6th day of April, 1994, if that amount is greater than the consideration given, or deemed by virtue of *subparagraph (iv)* to be given, by the unit holder for their acquisition,

(iv) where units are acquired by a unit holder for a consideration which is less than the market value (within the meaning of *section 548*) of the units on the day the unit holder acquired them, the consideration given by the unit holder for those units shall be deemed to be that market value, and

(v) the amount of consideration given for units shall be determined in accordance with *section 580*.

- (3) (a) Subject to *paragraph (b)* and *subsections (5) and (6)*, as respects a disposal on or after the 6th day of April, 1994, of units in an undertaking for collective investment by a person other than a company—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.27 S.739

- (i) no chargeable gain shall accrue on the disposal if the person disposing of the units acquired them on or after that date, and
- (ii) if the person disposing of the units acquired them before that date, the chargeable gains on the disposal shall be computed as if—
 - (I) the consideration for the disposal were the market value of the units on the 5th day of April, 1994, and
 - (II) for the purposes of selecting the appropriate multiplier (within the meaning of *section 556*) and of applying *paragraph 25* of *Schedule 32* the disposal were made in the year 1993-94,

and for the purposes of this subsection and *subsection (4)* references to units shall be construed as including a reference to an interest in units, and accordingly this subsection and *subsection (4)* shall apply with any necessary modifications.

- (b) *Clause (I)* of *paragraph (a)(ii)* shall not apply in relation to the disposal of units if as a consequence of the application of that clause—
 - (i) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or loss would so accrue if that clause did not apply, or
 - (ii) a loss would so accrue and either a smaller loss or a gain would accrue if that clause did not apply,

and accordingly, in a case to which *subparagraph (i)* or *(ii)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to *clause (I)* of *paragraph (a)(ii)* but, in a case where this paragraph would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the units were acquired by the person disposing of them for a consideration such that neither a gain nor a loss accrued to that person on making the disposal.

- (4) (a) Subject to *paragraph (b)* and *subsections (5)* and *(6)*, as respects a disposal by a company on or after the 6th day of April, 1994, of units in an undertaking for collective investment, for the purposes of the Corporation Tax Acts—
 - (i) any chargeable gain accruing on the disposal shall, notwithstanding *section 21(3)*, be treated as if it were the net amount of a gain from the gross amount of which capital gains tax has been deducted at the standard rate of income tax,
 - (ii) the amount to be taken into account in respect of the chargeable gain in computing in accordance with *section 78* the company's chargeable gains for the accounting period in which the company disposes of the units shall be the gross amount of the chargeable gain, and

(iii) the capital gains tax treated as deducted from the gross amount of the chargeable gain shall—

(I) be set off against the corporation tax assessable on the company for the accounting period, or

(II) in so far as it cannot be set off in accordance with *clause (I)*, be repaid to the company.

(b) As respects a disposal by a company of units which it acquired before the 6th day of April, 1994, in an undertaking for collective investment carrying on business on the 25th day of May, 1993, *paragraph (a)* shall apply only to so much of the chargeable gain accruing to the company on that disposal of units as does not exceed the chargeable gain which would have accrued on that disposal had the company sold and immediately reacquired those units on the 5th day of April, 1994, at their market value on that day.

(c) This subsection shall be disregarded for the purposes of *section 546(2)*.

(5) (a) Where a person (in this subsection referred to as “the disponent”) disposing of units in an undertaking for collective investment acquired them—

(i) on or after the 6th day of April, 1994, and

(ii) in such circumstances that by virtue of any enactment other than *section 556(4)* the disponent and the person from whom the disponent acquired them (in this subsection referred to as “the previous owner”) were to be treated for the purposes of the Capital Gains Tax Acts as if the disponent’s acquisition were for a consideration of such an amount as would secure that, on the disposal under which the disponent acquired them, neither a gain nor a loss accrued to the previous owner,

then, the previous owner’s acquisition of the interest shall be treated as the disponent’s acquisition of the interest.

(b) Where the previous owner acquired the units disposed of on or after the 6th day of April, 1994, and in circumstances similar to those referred to in *paragraph (a)*, the acquisition of the units by the previous owner’s predecessor shall be treated for the purposes of this section as the previous owner’s acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before the 6th day of April, 1994, or, as the case may be, until an acquisition on a disposal on or after that date.

(6) Where an undertaking for collective investment was not carrying on a collective investment business on the 25th day of May, 1993, this section shall apply as respects payments by, or disposals of units in, that undertaking as if—

(a) “on or after the 6th day of April, 1994,” were deleted from *subsections (1), (2), (3) and (4)*, and

(b) *paragraphs (a)(ii) and (b)* were deleted from *subsection (3)*.

CHAPTER 2

Offshore funds

Interpretation
(Chapter 2 and
Schedules 19 and
20).

[FA90 s62]

740.—In this Chapter and in *Schedules 19 and 20*—

“account period” shall be construed in accordance with *subsections (8) to (10) of section 744*;

“disposal” shall be construed in accordance with *section 741(2)*;

“distributing fund” shall be construed in accordance with *subsections (2) and (3) of section 744*;

“the equalisation account” has the meaning assigned to it by *section 742(1)*;

“Irish equivalent profits” has the meaning assigned to it by *paragraph 5 of Schedule 19*;

“material interest” shall be construed in accordance with *section 743(2)*;

“non-qualifying fund” has the meaning assigned to it by *section 744(1)*;

“offshore fund” has the meaning assigned to it by *section 743(1)*;

“offshore income gain” shall be construed in accordance with *paragraphs 5 and 6(1) of Schedule 20*.

Disposals of
material interests in
non-qualifying
offshore funds.

[FA90 s63]

741.—(1) This Chapter shall apply to a disposal by any person of an asset if at the time of the disposal—

- (a) the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund, or
- (b) the asset constitutes an interest in a company resident in the State or in a unit trust scheme, the trustees of which are at that time resident in the State and at a material time on or after the 1st day of January, 1991, the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund,

and, for the purpose of determining whether the asset disposed of is within *paragraph (b), subsection (3) of section 584* shall apply as it applies for the purposes of the Capital Gains Tax Acts.

(2) Subject to *subsections (3) to (7) and section 742*, there shall be a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the Capital Gains Tax Acts.

(3) Notwithstanding anything in *paragraph (b) of section 573(2)*, where a person dies and the assets of which he or she was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter (other than *section 742*) that interest shall, immediately before the acquisition referred to in *paragraph (a) of section 573(2)*, be deemed to be disposed of by the deceased for such a consideration as is mentioned in that paragraph; but nothing in this subsection shall affect the determination in accordance with *subsection (1) of the*

question whether that deemed disposal is one to which this Chapter Pr.27 S.741 applies.

(4) Subject to *subsection (3)*, *section 573* shall apply for the purposes of this Chapter as it applies for the purposes of the Capital Gains Tax Acts, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with *subsection (1)* of that section.

(5) Notwithstanding anything in *section 586* or *587*, in any case where—

(a) a company (in this subsection referred to as “the acquiring company”) issues shares or debentures in exchange for shares in or debentures of another company (in this subsection referred to as “the acquired company”) and the acquired company is or was at a material time a non-qualifying offshore fund and the acquiring company is not such a fund, or

(b) persons are to be treated in consequence of an arrangement as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund,

then, *section 586(1)* shall not apply for the purposes of this Chapter.

(6) In any case where (apart from *subsection (5)*) *section 586(1)* would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

(7) (a) In this subsection, “relevant consideration” means consideration which, assuming the application to the disposal of the Capital Gains Tax Acts, would be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of the person making the disposal whose acquisition cost represents directly or indirectly the whole or any part of the acquisition cost of the person making the disposal.

(b) For the purposes of this section, a material time in relation to the disposal of an asset shall be any time on or after—

(i) the 6th day of April, 1990, where the asset was acquired on or before that date, or

(ii) where the asset was not so acquired, the earliest date on which any relevant consideration was given for the acquisition of the asset.

742.—(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if and at a time when arrangements are in existence which have the result that where—

Offshore funds operating equalisation arrangements.

- (a) a person acquires by means of initial purchase a material interest in the fund at some time during a period relevant to the arrangements, and
- (b) the fund makes a distribution for a period which begins before the date of the acquisition of that interest,

the amount of that distribution paid to the person (assuming the person is still retaining that interest) will include a payment of capital debited to an account (in this Chapter and in *Schedules 19* and *20* referred to as “the equalisation account”) maintained under the arrangements and determined by reference to the income which had accrued to the fund at the date of the person’s acquisition.

(2) For the purposes of this section, a person shall acquire an interest in an offshore fund by means of initial purchase if the person’s acquisition is by—

- (a) subscription for or allotment of new shares, units or other interests issued or created by the fund, or
- (b) direct purchase from the persons concerned with the management of the fund and their sale to that person is made in their capacity as managers of the fund.

(3) Without prejudice to *section 741(1)*, this Chapter shall apply, subject to *subsections (4) to (6)*, to a disposal by any person of an asset if—

- (a) at the time of the disposal the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements,
- (b) the fund is not and has not at any material time (within the meaning of *section 741(7)*) been a non-qualifying offshore fund, and
- (c) the proceeds of the disposal are not to be taken into account as a trading receipt.

(4) This Chapter shall not by virtue of *subsection (3)* apply to a disposal if—

- (a) the disposal takes place during the period mentioned in *subsection (1)(a)*, and
- (b) throughout so much of that period as precedes the disposal the income of the offshore fund concerned has been of the nature referred to in *paragraph 3(1) of Schedule 19*.

(5) An event which apart from *section 584(3)* would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether by virtue of *subsection (3)* there is a disposal to which this Chapter applies.

(6) The reference in *subsection (5)* to *section 584(3)* shall be deemed to include a reference to that section as applied by *section 586* or *733* but not as applied by *section 585*.

743.—(1) In this Chapter, references to a material interest in an offshore fund shall be construed as references to such an interest in any of the following—

- (a) a company resident outside the State,

(b) a unit trust scheme the trustees of which are not resident in the State, and Pr.27 S.743

(c) any arrangements not within *paragraph (a)* or *(b)* which take effect by virtue of the law of a territory outside the State and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of the State),

and any reference in this Chapter to an offshore fund shall be construed as a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

(2) Subject to *subsections (3) to (9)*, a person's interest in a company, unit trust scheme or arrangements shall be a material interest if at the time when the person acquired the interest it could be reasonably expected that at some time during the period of 7 years beginning at the time of the acquisition the person would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).

(3) For the purposes of *subsection (2)*, a person shall be deemed to be able to realise the value of an interest if the person can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.

(4) For the purposes of *subsections (2) and (3)*—

(a) a person shall be deemed to be able to realise a particular amount if the person is able to obtain that amount either in money or in the form of assets to the value of that amount, and

(b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in *subsection (3)*, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.

(5) An interest in a company, scheme or arrangements shall be deemed not to be a material interest if it is either—

(a) an interest in respect of any loan capital or debt issued or incurred for money which in the ordinary course of business of banking is loaned by a person carrying on that business, or

(b) a right arising under a policy of insurance.

(6) Shares in a company within *subsection (1)(a)* (in this section referred to as “the overseas company”) shall not constitute a material interest if—

(a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and

development of a trade carried on by the company or a company associated with it,

- (b) the shares confer at least 10 per cent of the total voting rights in the overseas company and a right in the event of a winding up to at least 10 per cent of the assets of that company remaining after the discharge of all liabilities having priority over the shares,
- (c) not more than 10 persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding up, and
- (d) at the time of its acquisition of the shares the company had such a reasonable expectation as is referred to in *subsection (2)* by reason only of the existence of either or both—
 - (i) an arrangement under which, at some time within the period of 7 years beginning at the time of acquisition, that company may require the other participators to purchase its shares, and
 - (ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is or is reasonably expected to be shorter than the period referred to in *subsection (2)*,

and in this paragraph “participators” means the persons holding shares which are within *paragraph (c)*.

(7) For the purposes of *subsection (6)(a)*, a company shall be associated with another company if one company has control (within the meaning of *section 432*) of the other company or both companies are under the control (within the meaning of that section) of the same person or persons.

(8) An interest in a company within *subsection (1)(a)* shall be deemed not to be a material interest at any time when the following conditions are satisfied—

- (a) that the holder of the interest has the right to have the company wound up, and
- (b) that in the event of a winding up the holder is, by virtue of the interest and any other interest which the holder then holds in the same capacity, entitled to more than 50 per cent of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.

(9) The market value of any asset for the purposes of this Chapter shall be determined in the like manner as it would be determined for the purposes of the Capital Gains Tax Acts except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, *section 548(5)* shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

744.—(1) For the purposes of this Chapter, an offshore fund shall be a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Revenue Commissioners as a distributing fund.

Pr.27
Non-qualifying
offshore funds.
[FA90 s66]

(2) An offshore fund shall not be certified as a distributing fund in respect of an account period unless with respect to that period the fund pursues a full distribution policy within the meaning of *Part 1 of Schedule 19*.

(3) Subject to *Part 2 of Schedule 19*, an offshore fund shall not be certified as a distributing fund in respect of any account period if at any time during that period—

- (a) more than 5 per cent by value of the assets of the fund consists of interests in other offshore funds,
- (b) subject to *subsections (4) and (5)*, more than 10 per cent by value of the assets of the fund consists of interests in a single company,
- (c) the assets of the fund include more than 10 per cent of the issued share capital of any company or of any class of that share capital, or
- (d) subject to *subsection (6)*, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits within the meaning of *subsection (7)*.

(4) For the purposes of *subsection (3)(b)*, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or in money's worth; but for this purpose there shall be disregarded any occasion—

- (a) on which the interest acquired constituted the new holding for the purposes of *section 584*, including that section as applied by *section 585* or *586*, and
- (b) on which no consideration fell to be given for the interest acquired, other than the interest which constituted the original shares for the purposes of *section 584*, including that section as so applied.

(5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of *subsection (3)(b)* if—

- (a) the company carries on a banking business in the State or elsewhere which provides current or deposit account facilities in any currency for members of the public and bodies corporate, and
- (b) the interest consists of a current or deposit account provided in the normal course of the company's banking business.

(6) There shall be disregarded for the purposes of *subsection (3)(d)* any interests in an offshore fund which—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.27 S.744

- (a) are held solely by persons employed or engaged in or about the management of the assets of the fund,
- (b) carry no right or expectation to participate directly or indirectly in any of the profits of the fund, and
- (c) on a winding up or on redemption carry no right to receive anything other than the return of the price paid for the interests.

(7) Where in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interests shall not (for the purposes of *subsection (3)(d)*) all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would (with respect to that period) pursue a full distribution policy within the meaning of *Part 1 of Schedule 19*.

(8) For the purposes of this Chapter and *Schedule 19*, an account period of an offshore fund shall begin—

- (a) on the 6th day of April, 1990, or, if it is later, whenever the fund begins to carry on its activities, and
- (b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.

(9) For the purposes of this Chapter and *Schedule 19*, an account period of an offshore fund shall end on the first occurrence of any of the following—

- (a) the expiration of 12 months from the beginning of the period;
- (b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period;
- (c) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter and *Schedule 19*—

- (a) an account period of an offshore fund which is a company within *section 743(1)(a)* shall end if and at the time when the company ceases to be resident outside the State, and
- (b) an account period of an offshore fund which is a unit trust scheme within *section 743(1)(b)* shall end if and at the time when the trustees of the scheme become resident in the State.

(11) *Parts 3 and 4 of Schedule 19* shall apply with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund.

Charge to income tax or corporation tax of offshore income gain.

745.—(1) Where a disposal to which this Chapter applies gives rise, in accordance with *Schedule 20*, to an offshore income gain, then, subject to this section, the amount of that gain shall be treated for the purposes of the Tax Acts as—

- (a) income arising at the time of the disposal to the person making the disposal, and

[FA90 s67]

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) constituting profits or gains chargeable to tax under Case Pr.27 S.745 IV of Schedule D for the chargeable period (within the meaning of *section 321(2)*) in which the disposal is made.

(2) Subject to *subsection (3)*, *sections 25(2)(b)*, *29* and *30* shall apply in relation to income tax or corporation tax in respect of offshore income gains as they apply in relation to capital gains tax or corporation tax in respect of chargeable gains.

(3) In the application of *sections 29* and *30* in accordance with *subsection (2)*, *section 29(3)(c)* shall apply with the deletion of “situated in the State”.

(4) In the case of individuals resident or ordinarily resident but not domiciled in the State, *subsections (4)* and *(5)* of *section 29* shall apply in relation to income tax chargeable by virtue of *subsection (1)* on an offshore income gain as they apply in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the State.

(5) (a) In this subsection, “charity” has the same meaning as in *section 208*, and “market value” shall be construed in accordance with *section 548*.

(b) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but, if the property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with *Schedule 20*) accruing being treated as an offshore income gain not accruing to a charity.

(6) In any case where—

(a) a disposal to which this Chapter applies is a disposal of settled property within the meaning of the Capital Gains Tax Acts, and

(b) for the purposes of the Capital Gains Tax Acts, the general administration of the trusts is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State,

then, *subsection (1)* shall not apply in relation to any offshore income gain to which the disposal gives rise.

746.—(1) Subject to *subsection (2)*, *section 579* shall apply in relation to its application to offshore income gains as if—

Offshore income gains accruing to persons resident or domiciled abroad.

(a) for any reference to a chargeable gain there were substituted a reference to an offshore income gain,

[FA90 s68]

(b) in *subsection (2)* of that section—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.27 S.746

- (i) for “the Capital Gains Tax Acts” there were substituted “the Tax Acts”, and
- (ii) for “capital gains tax under *section 31*” there were substituted “income tax by virtue of *section 745*”,
and
- (c) in *subsection (5)* of that section—
 - (i) for “any capital gains tax payable” there were substituted “any income tax or corporation tax payable”,
and
 - (ii) for “for the purposes of income tax” there were substituted “for the purposes of income tax, corporation tax”.
- (2) Where in any year of assessment—
 - (a) under *section 579(3)*, as it applies apart from *subsection (1)*, a chargeable gain is to be attributed to a beneficiary, and
 - (b) under *section 579(3)*, as applied by *subsection (1)*, an offshore income gain is also to be attributed to the beneficiary,

section 579 shall apply as if it required offshore income gains to be attributed before chargeable gains.

(3) *Section 590* shall apply in relation to its application to offshore income gains as if—

- (a) for any reference to a chargeable gain there were substituted a reference to an offshore income gain,
- (b) for the reference in *subsection (6)* of that section to capital gains tax there were substituted a reference to income tax or corporation tax, and
- (c) *paragraphs (b) and (c) of subsection (4)*, and *subsection (7)*, of that section were deleted.

(4) *Section 917* shall apply in relation to offshore income gains as if—

- (a) for “chargeable gains” there were substituted “offshore income gains”, and
- (b) for “capital gains tax under *section 579* or *590*” there were substituted “income tax or corporation tax under *section 579* or *590*, as applied by *section 746*”.

(5) Subject to *subsection (6)*, for the purpose of determining whether an individual ordinarily resident in the State has a liability for income tax in respect of an offshore income gain arising on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled out of the State—

- (a) *sections 806* and *807* shall apply as if the offshore income gain arising to the person resident or domiciled out of the State constituted income becoming payable to such person, and

(b) accordingly any reference in *sections 806* and *807* to income of, or payable or arising to, such person shall include a reference to the offshore income gain arising to such person by reason of the disposal to which this Chapter applies. Pr.27 S.746

(6) To the extent that an offshore income gain is treated by virtue of *subsection (1)* or *(3)* as having accrued to any person resident or ordinarily resident in the State, that gain shall not be deemed to be the income of any individual for the purposes of *sections 806* and *807* or *Part 31*.

747.—(1) This section shall apply where a disposal (being a disposal to which this Chapter applies) gives rise to an offshore income gain and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the Capital Gains Tax Acts, that disposal is referred to in this section as “the disposal for the purposes of the Capital Gains Tax Acts”. Deduction of offshore income gain in determining capital gain. [FA90 s69(1) to (7)]

(2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of *Part 1* of *Schedule 20*), *subsections (3)* and *(4)* shall apply in relation to the disposal for the purposes of the Capital Gains Tax Acts in substitution for *section 551(2)*.

(3) Subject to *subsections (4)* to *(7)*, in the computation in accordance with the Capital Gains Tax Acts of any gain accruing on the disposal for the purposes of those Acts, a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.

(4) Where the disposal for the purposes of the Capital Gains Tax Acts is of such a nature that by virtue of *section 557* an apportionment is to be made of certain expenditure, no deduction shall be made by virtue of *subsection (3)* in determining for the purposes of the apportionment in *section 557(2)* the amount or value of the consideration for the disposal.

(5) Where the disposal for the purposes of the Capital Gains Tax Acts forms part of a transfer to which *section 600* applies, then, for the purposes of *subsection (5)(b)* of that section, the value of the whole of the consideration received by the transferor in exchange for the business shall be taken to be what it would be if the value of the consideration (other than shares so received by the transferor) were reduced by a sum equal to the offshore income gain.

(6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of *section 741(6)* or *742(5)*, the Capital Gains Tax Acts shall apply as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding (within the meaning of *section 584(1)*).

(7) In any case where—

(a) a disposal to which this Chapter applies by virtue of *subsection (3)* of *section 742* is made otherwise than to the offshore fund concerned or to the persons referred to in *subsection (2)(b)* of that section,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.27 S.747

- (b) subsequently a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with such person, and
- (c) the disposal gives rise (in accordance with *Part 2 of Schedule 20*) to an offshore income gain,

then, for the purposes of the Tax Acts, the amount of the first distribution within *paragraph (b)* shall be taken to be reduced or, as the case may be, extinguished by deducting from such amount an amount equal to the offshore income gain referred to in *paragraph (c)* and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any subsequent distribution within *paragraph (b)* until the balance is exhausted.

PART 28

PURCHASE AND SALE OF SECURITIES

CHAPTER 1

Purchase and sale of securities

Interpretation and application
(Chapter 1).

748.—(1) In this Chapter and in *Schedule 21*—

“distribution” has the same meaning as in the Corporation Tax Acts;

[ITA67 s367;
F(MP)A68 s3(2)
and Sch PtI; CTA76
s140(1) and Sch2
PtI par17]

“interest” includes a distribution and any dividend which is not such a distribution and, in applying references to interest in relation to such a distribution, “gross interest” or “gross amount” means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it and “net interest” means the distribution exclusive of any such tax credit;

“person” includes any body of persons, and references to a person entitled to any exemption from income tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

“securities” includes stocks and shares;

securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(2) Subject to this section, this Chapter shall apply in the case of a purchase by a person (in this Chapter referred to as “the first buyer”) of any securities and their subsequent sale by the first buyer, where the result of the transaction is that interest becoming payable in respect of the securities (in this Chapter referred to as “the interest”) is receivable by the first buyer.

(3) This Chapter shall not apply in the case where—

- (a) the time elapsing between the purchase by the first buyer and the first buyer’s taking steps to dispose of the securities exceeds 6 months, or

(b) that time exceeds one month and in the opinion of the Revenue Commissioners the purchase and sale were each effected at the current market price and the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

(4) An appeal shall lie to the Appeal Commissioners with respect to any opinion of the Revenue Commissioners under *subsection (3)(b)* in the like manner as an appeal would lie against an assessment to income tax, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

(5) The reference in *subsection (3)* to the first buyer taking steps to dispose of the securities shall be construed—

(a) if the first buyer sold the securities in the exercise of an option the first buyer had acquired, as a reference to the first buyer's acquisition of the option, and

(b) in any other case, as a reference to the first buyer selling the securities.

(6) (a) For the purposes of this Chapter but subject to *paragraph (b)*, a sale of securities similar to, and of the like nominal amount as, securities previously bought (in this subsection referred to as "the original securities") shall be equivalent to a sale of the original securities and *subsection (5)* shall apply accordingly, and, where the first buyer bought parcels of similar securities at different times, a subsequent sale of any of the securities shall, in so far as may be, be related to the last of the parcels to be bought, and then to the last but one, and so on.

(b) A person shall be under no greater liability to tax by virtue of this subsection than would have been the case if instead of selling the similar securities the person had sold the original securities.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged after the change as if anything done to or by that person's predecessor had been done to or by that person.

749.—(1) Subject to this section, where the first buyer is engaged in carrying on a trade which consists of or comprises dealings in securities, then, in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade, the price paid by the first buyer for the securities shall be reduced by the appropriate amount in respect of the interest determined in accordance with *Schedule 21*.

Dealers in securities.

[ITA67 s368]

(2) Where in the opinion of the Revenue Commissioners the first buyer is bona fide carrying on the business of a discount house in the State, or where the first buyer is a member of a stock exchange

Pt.28 S.749

in the State who is recognised by the committee of that stock exchange as carrying on the business of a dealer, *subsection (1)* shall not apply in relation to securities bought in the ordinary course of such business.

(3) *Subsection (1)* shall not apply if the interest is to any extent required to be taken into account under *section 752* as if it were a trading receipt which had not borne tax or would to any extent be so required to be taken into account but for *paragraph 2* of *Schedule 22*.

Persons entitled to exemption.

[ITA67 s369(1);
CTA76 s140(1) and
Sch 2 Pt1 par18]

750.—Where the first buyer is entitled under any enactment to an exemption from tax which apart from this section would extend to the interest, then, subject to this section, the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest determined in accordance with *Schedule 21*; but, if the first buyer is so entitled and any annual payment is payable by the first buyer out of the interest, the annual payment shall be deemed as to the whole of that payment—

(a) to be paid out of profits or gains not brought into charge to tax, and *section 238* shall apply accordingly, and

(b) for the purposes of corporation tax, not to be a payment which is a charge on income.

Traders other than dealers in securities.

[ITA67 s370;
CTA76 Sch2 Pt1
par19]

751.—(1) Where the first buyer carries on a trade not within *section 749*, then, in ascertaining—

(a) for the purposes of income tax, whether any, and if so what, repayment of tax is to be made to the first buyer under *section 381* by reference to any loss sustained in the trade for the year of assessment the first buyer's income for which includes the interest, there shall be disregarded—

(i) the appropriate amount in respect of the interest determined in accordance with *Schedule 21*, and

(ii) any tax paid on that amount;

(b) for the purposes of corporation tax, the income or profits against which the loss may be set off under *section 157* or *396*, there shall be disregarded the appropriate amount in respect of the interest determined in accordance with *Schedule 21*.

(2) Where the first buyer is a body corporate and carries on a trade not within *section 749* or a business consisting mainly in the making of investments, then, if any annual payment payable by the body corporate is to any extent payable out of the interest, that annual payment shall be deemed to that extent—

(a) for the purposes of income tax, not to be payable out of profits or gains brought into charge to tax, and *section 238* shall apply accordingly, and

(b) for the purposes of corporation tax, not to be a payment which is a charge on income.

Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits

752.—(1) For the purposes of this Chapter and *Schedule 22*—

- (a) references to a dividend shall, except where the context otherwise requires, be construed as including references to a distribution, and to an amount which under any enactment is to be treated as a distribution, made on or after the 6th day of April, 1976,
- (b) in relation to such a distribution, including an amount to be so treated as a distribution, references to a dividend being paid or becoming payable or being received or becoming receivable on shares shall be construed as references to a distribution or an amount to be so treated as a distribution being made or received in respect of shares or securities, and
- (c) in applying references to a dividend in relation to a distribution, “gross amount” or “gross dividend” means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and “net amount” or “net dividend” means the distribution exclusive of any such tax credit,

Purchases of shares by financial concerns and persons exempted from tax.

[ITA67 s371; F(MP)A68 s3(2) and Sch PtI; CTA76 s140(1), s164, Sch2 Pt1 par20 and Sch3 PtI]

and in this subsection “distribution” has the same meaning as in the Corporation Tax Acts.

(2) (a) In this section and in *Schedule 22*—

“company” includes any body corporate, but does not include a company not resident in the State;

“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 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;

“person” includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

“share” includes stock other than debenture or loan stock;

“shares of a class to which this section applies” means shares of any class forming part of a company’s share capital, other than a class of fully-paid preference shares carrying only a right to dividends at a rate per cent of the nominal value of the shares which is fixed and which in the opinion of the Appeal Commissioners does not substantially exceed the yield generally obtainable on preference shares the prices of which are quoted on stock exchanges in the State.

(b) For the purposes of this section and *Schedule 22*—

- (i) shares shall be regarded as of different classes if the rights and obligations respectively attached to them are distinguishable as regards the payment of dividends or the amount paid up or in any other respect;
- (ii) any reference to shares acquired in right of other shares includes a reference to shares acquired in pursuance of an offer or invitation which was restricted to holders of those other shares;
- (iii) 2 trades shall be regarded as under the same control if they are carried on by persons one of whom is a body of persons over whom the other has control or both of whom are bodies of persons under the control of a third person, and several trades shall be regarded as under the same control if each is under the same control as all of the others, and in this subparagraph “body of persons” includes a partnership.

(3) Where a person engaged in carrying on a trade which consists of or comprises dealings in shares or other investments becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

- (a) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable,
- (b) in a case where the trade is under the same control as another trade which consists of or comprises dealings in shares or other investments, any shares the dividend on which is payable to the person engaged in carrying on that other trade and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and
- (c) any shares to be taken into account under *subsection (5)*,

amount to 10 per cent or more of the issued shares of that class, the net amount of the dividend received on the shares in the holding shall, to the extent to which it was paid out of profits accumulated before the shares were acquired, be taken into account in computing for the purposes of the Tax Acts the profits or gains or losses of the trade as if it were a trading receipt which had not borne tax.

(4) Where a person entitled under the Tax Acts to an exemption from tax which extends to dividends on shares becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of the profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

- (a) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and
- (b) any shares to be taken into account under *subsection (5)*,

amount to 10 per cent or more of the issued shares of that class, the exemption shall, to an extent proportionate to the extent to which the dividend is paid out of profits accumulated before the date on which the shares were acquired, not apply to the dividend; but, if any annual payment is payable by that person out of the dividend, that annual payment shall be deemed as to the whole of that payment—

- (i) to be paid out of profits or gains not brought into charge to tax and *section 238* shall apply accordingly, and
- (ii) for the purposes of corporation tax, not to be a payment which is a charge on income.

(5) Where 2 or more persons, being persons engaged in carrying on trades of the kind mentioned in *subsection (3)* or entitled to an exemption of the kind mentioned in *subsection (4)*, have each acquired shares in a company and the transactions in pursuance of which the acquisition was made were either transactions entered into by those persons acting in concert or transactions together comprised in any arrangements made by any person, then, in the application of either of those subsections in relation to a dividend payable to one of those persons on shares which include shares so acquired (or shares acquired in right of those shares), there shall be taken into account under *subsection (3)(c)* or, as the case may be, *subsection (4)(b)* any shares the dividend on which is payable to any other of those persons, being shares so acquired by that other person (or shares acquired in right of those shares).

(6) Where any shares have been sold or otherwise disposed of by a person who held shares of that kind acquired at different times, it shall be assumed for the purposes of this section that shares which have been held for a longer time have been disposed of before shares which have been held for a shorter time.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any shares form part of the trading stock belonging to the trade, those shares shall be regarded for the purposes of this section as having been acquired at that time by the person then engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged

Pt.28 S.752

after the change as if anything done to or by that person's predecessor had been done to or by that person.

(8) *Schedule 22* shall apply for the purpose of ascertaining whether a dividend is to be regarded as paid to any extent out of profits accumulated before a particular date.

Restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits.

[ITA67 s372; CTA76 s140(1) and Sch2 Pt1 par21(1)]

753.—Where a person or a body of persons carries on a trade, other than such a trade mentioned in *section 752(3)*, and the person's or the body of persons' income for any year of assessment or, as the case may be, accounting period includes a dividend the net amount of which would, if the trade were such a trade mentioned in *section 752(3)*, be required to any extent to be taken into account as a trading receipt which has not borne tax, then, in ascertaining—

- (a) for the purposes of income tax, whether any or what repayment of tax is to be made to that person or body of persons under *section 381* by reference to any loss sustained in the trade for that year of assessment, there shall be disregarded—
 - (i) the gross amount corresponding to so much of that net amount as would have been required to be taken into account as a trading receipt which has not borne tax, and
 - (ii) any tax credit in respect of the amount required to be disregarded under *subparagraph (i)*;
- (b) for the purposes of corporation tax, the income or profits against which the loss may be set off under *section 157* or *396*, there shall be disregarded the gross amount corresponding to so much of that net amount as would have been required to be taken into account as a trading receipt which has not borne tax.

PART 29

PATENTS, SCIENTIFIC AND CERTAIN OTHER RESEARCH, KNOW-HOW AND CERTAIN TRAINING

CHAPTER 1

Patents

Interpretation (*Chapter 1*).

[ITA67 s284; CTA76 s21(1) and Sch1 par35; FA97 s146(1) and Sch9 PtI par1(19)]

754.—(1) In this Chapter—

“the commencement of the patent”, in relation to a patent, means the date from which the patent rights become effective;

“income from patents” means—

- (a) any royalty or other sum paid in respect of the user of a patent, and
- (b) any amount on which tax is payable for any chargeable period by virtue of this Chapter;

“Irish patent” means a patent granted under the laws of the State;

“patent rights” means the right to do or to authorise the doing of anything which but for that right would be an infringement of a patent; Pr.29 S.754

“the writing-down period” has the meaning assigned to it by *section 755(2)*.

(2) In this Chapter, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent; but, if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Chapter as thereby selling the whole of the rights.

(3) Where, under section 77 of the Patents Act, 1992, or any corresponding provisions of the law of any country outside the State, an invention which is the subject of a patent is made, used, exercised or vended by or for the service of the State or the government of the country concerned, this Chapter 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 thereof shall be treated accordingly.

755.—(1) Where a person incurs capital expenditure on the purchase of patent rights, there shall, subject to and in accordance with this Chapter, be made to that person writing-down allowances in respect of that expenditure during the writing-down period; but no writing-down allowance shall be made to a person in respect of any expenditure unless—

Annual allowances for capital expenditure on purchase of patent rights.

[ITA67 s285; CTA76 s21(1) and Sch1 par36]

- (a) the allowance is to be made to the person in taxing the person’s trade, or
 - (b) any income receivable by the person in respect of the rights would be liable to tax.
- (2) (a) Subject to *paragraphs (b) to (d)*, the writing-down period shall be the 17 years beginning with the chargeable period related to the expenditure.
- (b) Where the patent rights are purchased for a specified period, *paragraph (a)* shall apply with the substitution for the reference to 17 years of a reference to 17 years or the number of years comprised within that period, whichever is the less.
 - (c) Where the patent rights purchased begin one complete year or more after the commencement of the patent and *paragraph (b)* does not apply, *paragraph (a)* shall apply with the substitution for the reference to 17 years of a reference to 17 years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent or, if 17 complete years have so elapsed, of a reference to one year.
 - (d) For the purposes of this subsection, any expenditure incurred for the purposes of a trade by a person about to carry on the trade shall be treated as if that expenditure had been incurred by that person on the first day on

PT.29 S.755

which that person carries on the trade unless before that first day that person has sold all the patent rights on the purchase of which the expenditure was incurred.

Effect of lapse of patent rights.

[ITA67 s286; CTA76 s21(1) and Sch1 par37]

756.—(1) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, any of the following events occurs—

- (a) the rights come to an end without being subsequently revived;
- (b) the person sells all those rights or so much of those rights as the person still owns;
- (c) the person sells part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed;

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

(2) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, either of the following events occurs—

- (a) the rights come to an end without being subsequently revived;
- (b) the person sells all those rights or so much of those rights as the person still owns, and the net proceeds of the sale (in so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed;

there shall, subject to and in accordance with this Chapter, be made to that person for the chargeable period related to the event an allowance (in this Chapter referred to as a “balancing allowance”) equal to—

- (i) if the event is the rights coming to an end, the amount of the capital expenditure remaining unallowed, and
- (ii) if the event is a sale, the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with this Chapter, be made on that person for the chargeable period related to the sale a charge (in this Chapter referred to as a “balancing charge”) on an amount equal to—

- (a) the excess, or
- (b) where the amount of the capital expenditure remaining unallowed is nil, the net proceeds of the sale.

(4) Where a person who has incurred capital expenditure on the purchase of patent rights sells a part of those rights and *subsection*

(3) does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount determined by—

Pr.29 S.756

- (a) subtracting the net proceeds of the sale (in so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and
- (b) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,

and so on for any subsequent sales.

(5) References in this section to the amount of any capital expenditure remaining unallowed shall in relation to any event be construed as references to the amount of that expenditure less any writing-down allowances made in respect of that expenditure for chargeable periods before the chargeable period related to that event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, in so far as those proceeds consist of capital sums.

(6) Notwithstanding *subsections (1) to (5)*—

- (a) no balancing allowance shall be made in respect of any expenditure unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and
- (b) the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total writing-down allowances actually made in respect of that expenditure less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

757.—(1) (a) Subject to *paragraphs (b) and (c)*, where a person resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, that person shall, subject to this Chapter, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by that person and for successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of 6 years (or such less fraction as has not already been charged).

Charges on capital sums received for sale of patent rights.

[ITA67 s288; CTA76 s21(1) and Sch1 par38]

- (b) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was received elects that the whole of that sum shall be charged to tax for the chargeable period in which the sum is received, it shall be charged to tax accordingly.
- (c) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was

received applies to have the fraction referred to in *paragraph (a)* determined as being other than the same fraction as the chargeable period is of 6 years, then, if it appears to the Revenue Commissioners that hardship is likely to arise having regard to all the circumstances of the case unless a direction is given under this paragraph, they may direct that the fraction shall be the same fraction of the sum as the chargeable period is of a number of years other than 6 years, and that the charge shall be spread accordingly.

- (2) (a) Where a person not resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is an Irish patent, then, subject to this Chapter—
- (i) the person shall be chargeable to tax in respect of that sum under Case IV of Schedule D, and
 - (ii) *section 238* shall apply to that sum as if it were an annual payment payable otherwise than out of profits or gains brought into charge to tax.
- (b) Where, not later than 12 months after the end of the year of assessment in which the sum referred to in *paragraph (a)* is paid, the person to whom it is paid, by notice in writing to the Revenue Commissioners, elects that the sum shall be treated for the purpose of income tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in that person's income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election; but—
- (i) the election shall not affect the amount of tax to be deducted and accounted for under *section 238*,
 - (ii) where any sum is deducted under *section 238*, any adjustments necessary to give effect to the election shall be made by means of repayment of tax, and
 - (iii) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of or of any part of that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately to be paid for that year is less than the amount of tax paid for that year.
- (3) (a) In *subsection (2)*, “tax” shall mean income tax, unless the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.
- (b) Where *paragraph (a)* of *subsection (2)* applies to charge a company to corporation tax in respect of a sum paid to it, *paragraph (b)* of that subsection shall not apply; but—
- (i) the company may, by notice in writing given to the Revenue Commissioners not later than 12 months

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than 6 years from the beginning of the accounting period in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax by virtue of *subsection (2)(a)*), and

Pr.29 S.757

- (ii) there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.

(4) Where the patent rights sold by a person, or the rights out of which the patent rights sold by a person were granted, were acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, *subsections (1) to (3)* shall apply as if any capital sum received by the person on the sale of the rights were reduced by the amount of that sum; but—

- (a) where between the purchase and the sale the person has sold part of the patent rights acquired by the person and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction to be made under this subsection in respect of the subsequent sale shall itself be reduced by the amount of that sum, and

- (b) nothing in this subsection shall affect the amount of tax to be deducted and accounted for under *section 238* by virtue of *subsection (2)* and, where any sum is deducted under *section 238*, any adjustment necessary to give effect to this subsection shall be made by means of repayment of tax.

(5) This section shall apply in relation to any sale of part of any patent rights as it applies in relation to sales of patent rights.

758.—(1) Notwithstanding *section 81*, in computing 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 grant of a patent or an extension of the term of a patent.

Relief for expenses.

[ITA67 s290(1) to (3); CTA76 s21(1) and Sch1 par39]

(2) Where—

- (a) a person, otherwise than for the purposes of a trade carried on by the person, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent or the obtaining of an extension of a term of a patent, and

- (b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains of the trade,

there shall be made to the person for the chargeable period in which those fees or expenses were paid or incurred an allowance equal to the amount of those fees or expenses.

(3) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other

Pt.29 S.758

person, actually devised the invention as is properly ascribable to the devising of that invention (not being expenses in respect of which, or of assets representing which, an allowance is to be made under any other provision of the Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

Spreading of revenue payments over several years.

[ITA67 s195B(3) and (6) and s291; CTA76 s21(1) and Sch1 par40; FA93 s10(1)]

759.—(1) In this section, any reference to the tax payable by a person includes, in cases where the income of an individual's spouse is deemed to be the income of the individual, references to the income tax payable by the individual's spouse.

(2) Where a royalty or other sum to which *section 237* or *238* applies is paid in respect of the user of a patent and that user extended over a period of 6 complete years or more, the person receiving the payment may require that the tax payable by that person by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of tax which would have been payable by that person if that royalty or sum had been paid in 6 equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(3) *Subsection (2)* shall apply in relation to a royalty or other sum where the period of the user is 2 complete years or more but less than 6 complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to 6 equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(4) Nothing in this section shall apply to any sum to which *section 238* applies by virtue of *section 757*.

Capital sums: effect of death, winding up and partnership changes.

[ITA67 s195B(3) and (6) and s293; CTA76 s21(1) and Sch1 par42; FA93 s10(1)]

760.—(1) In this section, any references to tax paid or borne or payable or to be paid or borne by a person include, in cases where the income of an individual's spouse is deemed to be income of the individual, references to the income tax paid or borne, or payable or to be paid or borne, by the individual's spouse.

(2) Where a person on whom, by reason of the receipt of a capital sum, a charge is to be, or would otherwise be, made under *section 757* dies or, being a body corporate, commences to be wound up—

(a) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences, and

(b) the amount to be charged for the chargeable period in which the death occurs or the winding up commences shall be increased by the total amounts which but for the death or winding up would have been charged for subsequent chargeable periods.

(3) (a) In the case of a death, the personal representatives may, by notice in writing served on the inspector not later than 21 days after notice has been served on them of the charge to be made by virtue of this section, require that the tax payable out of the estate of the deceased by reason of the increase provided for by this section shall be reduced so as not to exceed the amount determined in accordance with *paragraph (b)*.

(b) The amount referred to in *paragraph (a)* shall be the total amount of tax which would have been payable by the deceased or out of his or her estate by reason of the operation of *section 757* in relation to the capital sum if, instead of the amount to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years. Pr.29 S.760

(4) (a) In this subsection, “the relevant period” has the same meaning as in *Part 43*.

(b) Where, under *Chapter 4 of Part 9* as modified by *Part 43*, charges under *section 757* are to be made on 2 or more persons as being the persons for the time being carrying on a trade, and the relevant period comes to an end, *subsection (2)* shall apply in relation to the ending of the relevant period as it applies where a body corporate commences to be wound up.

(c) Where *paragraph (b)* applies—

(i) the additional sums which under *subsection (2)* are to be charged for the year in which the relevant period ends shall be aggregated and apportioned among the members of the partnership immediately before the ending of the relevant period according to their respective interests in the partnership profits at that time and each partner (or, if that partner is dead, his or her personal representatives) charged for his or her proportion, and

(ii) each partner (or, if that partner is dead, his or her personal representatives) shall have the same right to require a reduction of the total tax payable by him or her or out of his or her estate by reason of the increase provided for by this section as would have been exercisable by the personal representatives under *subsection (3)* in the case of a death, and that subsection shall apply accordingly but as if the reference to the amount of tax which would have been payable by the deceased or out of his or her estate in the event mentioned in that subsection were a reference to the amount of tax which would in that event have been paid or borne by the partner in question or out of his or her estate.

761.—(1) An allowance or charge under this Chapter shall be made to or on a person in taxing the person’s trade if— Manner of making allowances and charges.

(a) the person is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and [ITA67 s292; CTA76 s21(1) and Sch1 par41]

(b) at any time in the chargeable period or its basis period the patent rights in question, or other rights out of which they

Pt.29 S.761

were granted, were or were to be used for the purposes of that trade;

but nothing in this subsection shall affect the preceding provisions of this Chapter allowing a deduction as expenses in computing the profits or gains of a trade or requiring a charge to be made under Case IV of Schedule D.

(2) Except where provided for in *subsection (1)*, an allowance under this Chapter shall be made by means of discharge or repayment of tax and shall be available against income from patents, and a charge under this Chapter shall be made under Case IV of Schedule D.

Application of
Chapter 4 of Part 9.

[ITA67
s299(4)(b)(iii) and
s303(1); CTA76
s21(1) and Sch1
par46 and par49]

762.—(1) Subject to *subsection (2)*, *Chapter 4 of Part 9* shall apply as if this Chapter were contained in that Part, and any reference in the Tax Acts to any capital allowance to be given by means of discharge or repayment of tax and to be available or available primarily against a specified class of income shall include a reference to any capital allowance given in accordance with *section 761(2)*.

(2) In *Chapter 4 of Part 9*, as applied by virtue of *subsection (1)* to patent rights—

- (a) the reference in *section 312(5)(a)(i)* to the sum mentioned in *paragraph (b)* shall in the case of patent rights be construed as a reference to the amount of the capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with *section 756*, and
- (b) the reference in *section 316(1)* to 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* shall not include a sum in the case of which such a deduction is to be or may be so made by virtue of *section 757*.

CHAPTER 2

Scientific and certain other research

Interpretation
(*sections 764 and 765*).

[ITA67 s244(1), (8)
and (9); CTA76
s21(1) and Sch1
par9; FA92 s39]

763.—(1) In this section—

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

“exploring for specified minerals” means searching in the State for deposits of specified minerals or testing such deposits or winning access to such deposits, and includes the systematic searching for areas containing specified minerals and searching by drilling or other means for specified minerals within those areas, but does not include operations in the course of developing or working a mine;

“licence” means—

- (a) an exploration licence,
- (b) a petroleum prospecting licence,
- (c) a petroleum lease, or
- (d) a reserved area licence, duly granted before the 11th day of June, 1968, in respect of an area in the State, or on or

after the 11th day of June, 1968, in respect of either or both a designated area and an area in the State, and which was or may be so granted subject to such licensing terms as were presented to each House of the Oireachtas, and includes any such licence the terms of which have been duly amended or varied from time to time;

Pr.29 S.763

“licensed area” means an area in respect of which a licence is in force;

“mine” means an underground excavation for the purpose of getting specified minerals;

“petroleum” includes—

- (a) any mineral oil or relative hydrocarbon and natural gas and other liquid or gaseous hydrocarbons and their derivatives or constituent substances existing in its natural condition in strata (including, without limitation, distillate, condensate, casinghead gasoline and such other substances as are ordinarily produced from oil and gas wells), and
- (b) any other mineral substance contained in oil or natural gas brought to the surface with them in the normal process of extraction, but does not include coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation,

won or capable of being won under the authority of a licence;

“petroleum exploration activities” means activities of a person carried on by the person or on behalf of the person in searching for deposits in a licensed area, in testing or appraising such deposits or in winning access to such deposits for the purposes of such searching, testing and appraising, where such activities are carried on under a licence (other than a petroleum lease) authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it;

“petroleum extraction activities” means activities of a person carried on by the person or on behalf of the person under a petroleum lease authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it in—

- (a) winning petroleum from a relevant field, including searching in that field for, and winning access to, such petroleum,
- (b) transporting as far as dry land petroleum so won from a place not on dry land, or
- (c) effecting the initial treatment and storage of petroleum so won from the relevant field;

“relevant field” means an area in respect of which a licence, being a petroleum lease, is in force;

“specified minerals” means the following minerals occurring in non-bedded deposits of such minerals, that is, barytes, felspar, serpentinous marble, quartz rock, soapstone, ores of copper, ores of gold, ores of iron, ores of lead, ores of manganese, ores of molybdenum, ores of silver, ores of sulphur and ores of zinc.

(2) In *sections 764 and 765*—

“asset” includes part of an asset;

“expenditure on scientific research” does not include any expenditure incurred in the acquisition of rights in or arising out of scientific research;

“scientific research” means, subject to *subsections (3) and (4)*, any activities in the fields of natural or applied science for the extension of knowledge.

(3) For the purposes of the definition of “scientific research”, that definition shall, subject to *subsection (4)*, be construed as including and be deemed always to have included a provision excluding from that definition the following activities—

- (a) exploring for specified minerals,
- (b) petroleum exploration activities, and
- (c) petroleum extraction activities.

(4) As respects activities carried on before the 29th day of January, 1992, *subsection (3)* shall not apply for the purpose of computing any charge to income tax or corporation tax on a person who has before the 3rd day of December, 1991, made a claim in respect of expenditure incurred in exploring for specified minerals or in respect of petroleum exploration activities or in respect of petroleum extraction activities.

(5) For the purposes of *sections 764 and 765*, expenditure shall not be regarded as incurred by a person in so far as it is or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any person other than the first-mentioned person.

(6) The same expenditure shall not be taken into account for any of the purposes of *section 764 or 765* in relation to more than one trade.

Deduction for revenue expenditure on scientific research.

[ITA67 s244(2) and (2A); CTA76 s21(1) and Sch1 par9]

764.—(1) Where a person carrying on a trade either—

- (a) incurs non-capital expenditure on scientific research relating to the trade, or
 - (b) pays any sum to—
 - (i) a body carrying on scientific research and approved for the purposes of this section by the Minister for Finance, or
 - (ii) an Irish university,
- in order that such body or university may undertake scientific research,

then, the expenditure so incurred or the sum so paid shall be deducted as an expense in computing the profits or gains of the trade.

(2) Where a person carrying on a trade—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) incurs non-capital expenditure on scientific research or pays any sum to a body or university referred to in *subsection (1)(b)* in order that the body or university may undertake scientific research, and
- (b) the expenditure so incurred or the sum so paid is not deductible as an expense under *subsection (1)* because the scientific research is not related to any trade being carried on by the person,

then, the expenditure so incurred or the sum so paid shall be deducted as an expense in computing the profits or gains of the person's trade.

765.—(1) Where a person—

- (a) incurs capital expenditure on scientific research,
- (b) (i) is then carrying on a trade to which such expenditure relates, or
(ii) subsequently sets up and commences a trade which is related to such research,
- (c) applies to the inspector for an allowance under this subsection in respect of such expenditure, and
- (d) so applies—
- (i) in the case where the expenditure was incurred while carrying on the trade, within 24 months after the end of the chargeable period in which it was incurred, or
- (ii) in the case where the expenditure was incurred before the setting up and commencement of the trade, within 24 months after the end of the chargeable period in which the trade was set up and commenced,

Allowances for capital expenditure on scientific research.

[ITA67 s244(3), (4), (5), (6) and (7); CTA76 s21(1) and Sch1 par9; FA80 s17(3); FA96 s132(2) and Sch5 PtII]

then, subject to this section, there shall be made in taxing the trade for the chargeable period mentioned in whichever of *subparagraphs (i)* and *(ii)* of *paragraph (d)* is applicable an allowance equal to the amount of the expenditure.

(2) Where a person carrying on a trade incurs capital expenditure on scientific research in respect of which an allowance may not be made under *subsection (1)* because the scientific research is not related to any trade being carried on by that person, there shall be made in taxing that person's trade for the chargeable period in which the expenditure was incurred an allowance equal to the amount of the expenditure.

(3) Where an asset representing capital expenditure on scientific research ceases at any time from any cause whatever to be used for such research, relating to the trade carried on by the person who incurred the expenditure, then—

- (a) an amount equal to the allowance made under this section in respect of that expenditure, or, if the value of the asset immediately before the cessation is less than that allowance, equal to that value, shall be treated as a trading receipt of the trade accruing immediately before the cessation, and

PT.29 S.765

(b) in the application of *section 284* to an allowance made in respect of the asset for any chargeable period after that in which the cessation takes place, the actual cost of the asset shall be treated as being reduced by the amount of the allowance effectively made.

(4) Where an allowance under this section is made to a person for any chargeable period in respect of expenditure represented wholly or partly by assets, no allowance in respect of those assets shall be made to that person under *section 85* or *284* for that chargeable period.

(5) *Section 304(4)* shall apply in relation to an allowance under *subsection (1)* or *(2)* as it applies in relation to allowances to be made under *Part 9*.

Deduction for certain expenditure on research and development.

[FA95 s59(1) to (4); FA96 s57(1)]

766.—(1) (a) In this section—

“appropriate inspector” has the same meaning as in *section 950*;

“base period” means the period of 12 months ending immediately before the commencement of the first relevant period;

“expenditure on research and development” means non-capital expenditure incurred by a company, being—

(i) an amount equal to 115 per cent of the aggregate of the amounts of—

(I) such part of the emoluments paid by the company to employees of the company engaged in the carrying out of research and development activities related to the company’s trade as is laid out for the purposes of those activities, and

(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,

but where expenditure referred to in *clauses (I)* and *(II)* is incurred by a company (in this definition referred to as “the first-mentioned company”) which is a member of a group on behalf of another company which is a member of the group, the other company shall be treated for the purposes of the Corporation Tax Acts as having incurred the expenditure and the first-mentioned company shall be treated for those purposes as not having incurred the expenditure, and

(ii) 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;

“group base expenditure on research and development” means the aggregate of the amounts of expenditure on research and development incurred in the base period by qualified companies which throughout that period are members of the group;

“group expenditure on research and development”, in relation to a relevant period, means the aggregate of the amounts of expenditure on research and development—

- (i) incurred, or treated as incurred, in the relevant period by qualified companies which throughout the relevant period are members of the group, and
- (ii) certified as having been incurred by those companies in certificates given to the companies by persons who are auditors of the companies appointed under section 160 of the Companies Act, 1963, or under the law of any territory where any such company is duly incorporated and which corresponds to that section;

“qualified company”, in relation to a relevant period, means a company which—

- (i) throughout the relevant period carries on a trade which consists wholly or mainly of the manufacture of goods in the State, but trading operations of a company shall not be treated for the purposes of this section as the manufacture of goods in the State by virtue of any section of the Tax Acts other than *section 443*,
- (ii) holds a certificate given to it by Forbairt which certifies that in the opinion of Forbairt the research and development activities which are proposed to be carried on by or on behalf of the company have the potential to achieve the purposes set out in *paragraph (iii)* of the definition of “research and development activities”,
- (iii) notifies the appropriate inspector before the commencement of the research and development activities of its intention to carry out such activities or to have such activities carried out on its behalf,
- (iv) maintains a record of expenditure incurred in the carrying on by it or on its behalf of research and development activities in accordance with a system approved by Forbairt of recording such expenditure, and
- (v) does not, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, raise any amount through the issue of eligible shares within the meaning of *section 488*;

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.29 S.766

“qualifying expenditure on research and development attributable to a qualified company”, in relation to a relevant period, means so much of the amount of qualifying group expenditure on research and development in the relevant period as bears to that amount the same proportion as the amount of expenditure on research and development incurred by the company in the relevant period bears to the group expenditure on research and development in the relevant period;

“qualifying group expenditure on research and development”, in relation to a relevant period, means an amount determined by the formula—

$$E - (D + \text{£}25,000)$$

where—

E is the amount of group expenditure on research and development in the relevant period, and

D is—

(i) where the relevant period commences before the 1st day of June, 1996, the greater of—

(I) the amount of group base expenditure on research and development, and

(II) the amount of group expenditure on research and development in any relevant period preceding that relevant period,

and

(ii) where the relevant period commences on or after the 1st day of June, 1996, the amount of group base expenditure on research and development,

but—

(A) the qualifying group expenditure on research and development in relation to a relevant period shall not in any case exceed £150,000, and

(B) the aggregate of the amounts of qualifying group expenditure on research and development in all relevant periods shall not exceed the aggregate of the amounts specified in certificates given by Forbairt to companies which are members of the group;

“relevant period” means—

(i) in the case of a company which is a member of a group the end of the accounting periods of the members of which coincide, the period of 12 months throughout which one or more members

of the group carried on a trade and ending at the end of the first accounting period of the company which commences on or after the 1st day of June, 1995, Pr.29 S.766

- (ii) in the case of a company which is a member of a group the end of the accounting periods of which do not coincide, the period specified in a notice in writing made jointly by companies which are members of the group and given to the appropriate inspector within a period of 9 months after the end of the period so specified, being a period of 12 months throughout which one or more members of the group carries on a trade and ending at the end of the first accounting period of a company which is a member of the group which accounting period commences on or after the 1st day of June, 1995, and
- (iii) in any other case, the period of 12 months commencing on the 1st day of June, 1995,

and each subsequent period of 12 months, commencing immediately after the end of the preceding relevant period, which falls wholly in the period of 3 years commencing at the beginning of the first relevant period, but a period shall not be a relevant period if it commences on or after the 1st day of June, 1999;

“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,

and other activities 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 *paragraph (iii)*, but activities that are carried on by means of—

- (A) market research, market testing, market development, sales promotion or consumer surveys,
- (B) quality control,
- (C) the making of cosmetic modifications or stylistic changes to products, processes or production methods,

- (D) management studies or efficiency surveys, or
 - (E) research in social sciences, arts or humanities,
- shall not be research and development activities.

(b) For the purposes of this section—

- (i) 2 companies shall be deemed to be members of a group if one company is an associated company (within the meaning of *section 432*) of the other company;
- (ii) a company and all its associated companies shall form 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 expenditure on research and development, group base expenditure and qualifying group expenditure on research and development shall be construed as if they were respectively references to expenditure on research and development, base expenditure and qualifying expenditure on research and development;
- (iii) 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 is expended in the State;
- (iv) as respects any relevant period commencing before the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred by a company which is a member of a group if any expenditure on research and development incurred in a relevant period or in the base period by a company which is a member of the group has been or is to be met directly or indirectly by the State or any person other than a company which is a member of the group;
- (v) as respects any relevant period commencing on or after the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred in a relevant period by a company which is a member of a group if—
 - (I) in the relevant period the aggregate of amounts received by companies which are members of the group, being amounts paid directly or indirectly to the companies by the State or a person, other than a company which is a member of the group, to enable the company to meet the cost of such expenditure, exceeds £50,000, or
 - (II) it is expenditure—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(A) approved by Forbairt under any Pr.29 S.766 scheme administered by it, and

(B) which has been or is to be met to any extent directly or indirectly by the State or any person other than a company which is a member of the group.

(2) (a) In this subsection—

“income from the sale of goods” has the same meaning as in *section 454*;

“a loss from the sale of goods” has the same meaning as in *section 455*.

(b) On making a claim in that behalf, a qualified company shall be entitled, in computing the trading income for an accounting period of a trade carried on by it, to deduct an amount equal to treble the qualifying expenditure on research and development attributable to the qualified company as is referable to the accounting period and, subject to *paragraph (c)*, the company shall be entitled to such a deduction in addition to any deduction to which the qualified company may otherwise be entitled in respect of expenditure incurred on research and development.

(c) Where the amount referred to in *paragraph (b)* exceeds an amount which apart from this subsection would be the income from the sale of goods of the trade so referred to for the accounting period, then, the excess—

(i) shall not be deductible by virtue of *paragraph (b)*, and

(ii) shall be treated as a loss incurred in that trade, which is a loss from the sale of goods, for the purposes of relief under—

(I) *section 455* or *456*, or

(II) to the extent that such relief does not exceed the income from the sale of goods in the course of that trade in the accounting period for which that relief is given, *section 396(1)*.

(3) For the purposes of *subsection (2)*—

(a) where a relevant period coincides with an accounting period of a qualified company, the amount of qualifying expenditure on research and development attributable to the qualified company which relates to the accounting period of the company shall be the amount of that qualifying expenditure attributable to the qualified company, and

(b) where the relevant period does not coincide with an accounting period of the company—

(i) the qualifying expenditure on research and development attributable to the qualified company shall be apportioned to the accounting periods which fall wholly or partly in the relevant period, and

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.29 S.766

- (ii) the amount so apportioned to an accounting period shall be treated as the amount of qualifying expenditure on research and development attributable to the qualified company which relates to that accounting period of the company.

(4) Where a company makes a claim under this section, the company shall be treated for the purpose of *Part 16* as not being a qualifying company in respect of any amount raised, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, by the issue of eligible shares within the meaning of *section 488*.

Payment to universities and other approved bodies for research in, or teaching of, approved subjects.

[FA73 s21; FA85 s15]

767.—(1) In this section—

“approved body” means—

- (a) the College of Industrial Relations, Ranelagh, Dublin, or
- (b) any of the following colleges established under the Vocational Education Act, 1930—
 - (i) colleges forming part of the Dublin Institute of Technology,
 - (ii) the Limerick College of Art, Commerce and Technology, or
 - (iii) regional technical colleges;

“approved subject” means—

- (a) industrial relations,
- (b) marketing, or
- (c) any other subject which is approved for the purposes of this section by the Minister for Finance.

(2) Where a person carrying on a trade or profession—

- (a) pays any sum to—
 - (i) an Irish university, or
 - (ii) an approved body,for the purpose of enabling the university or the approved body to undertake research in, or engage in the teaching of, an approved subject, and

(b) the sum so paid is not income to which *section 792* applies,

the sum so paid shall, if not otherwise so deductible, be deducted as an expense in computing the profits or gains of the person’s trade or profession.

CHAPTER 3

Know-how and certain training

Allowance for know-how.

[FA68 s2]

768.—(1) In this section—

“control” has the same meaning as in *section 312*;

“know-how” means industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in

the carrying out of any agricultural, forestry, fishing, mining or other extractive operations; Pr.29 S.768

references to a body of persons include references to a partnership.

(2) (a) For the purposes of this subsection, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.

(b) Where a person incurs expenditure on know-how for use in a trade carried on by the person or, having incurred expenditure on know-how, sets up and commences a trade in which it is used, there shall, subject to this section, be allowed to be deducted as expenses, in computing for the purposes of Case I of Schedule D the profits or gains of the trade, such part of the expenditure as would but for this section not be allowed to be so deducted.

(3) Where a person acquires a trade or part of a trade and, together with the trade or the part of the trade, know-how used in the trade or part of the trade, no amount shall be allowed to be deducted under this section in respect of expenditure incurred on the acquisition of the know-how.

(4) *Subsection (2)* shall not apply on any sale of know-how where 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.

769.—(1) Where, before the day of the setting up or commencement of a trade consisting of the production for sale of manufactured goods, a person who is about to carry on the trade incurs or has incurred expenditure on the recruitment and training, with a view to their employment in the trade, of persons all or a majority of whom are Irish citizens, there shall be made to such person allowances in respect of that expenditure during a writing-down period of 3 years beginning on that day, and such allowances shall be made in taxing the trade.

Relief for training of local staff before commencement of trading.

[ITA67 s305; CTA76 s21(1) and Sch1 par51; FA93 s34(1)(c)]

(2) For the purposes of this section—

(a) expenditure shall not include any expenditure incurred by a person in respect of which no deduction would have been allowable to the person, in computing the profits or gains of the trade under the provisions of the Tax Acts applicable to Case I of Schedule D, if it had been incurred on or after the day of the setting up or commencement of the trade;

(b) expenditure shall not be regarded as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person;

(c) the date on which any expenditure is incurred shall be taken to be the date on which the sum in question becomes payable.

(3) *Section 304(4)* shall apply in relation to an allowance under *subsection (1)* as it applies in relation to an allowance to be made under *Part 9*.

(4) For the purposes of the Income Tax Acts, any claim by a person for an allowance under this section shall be included in the annual statement required to be delivered under those Acts of the profits or gains of the person's trade and 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 recruitment and training, with a view to their employment in the trade, of persons all or a majority of whom are Irish citizens and giving such particulars as show that the allowance is to be made.

PART 30

OCCUPATIONAL PENSION SCHEMES, RETIREMENT ANNUITIES,
PURCHASED LIFE ANNUITIES AND CERTAIN PENSIONS

CHAPTER 1

Occupational pension schemes

Interpretation and supplemental
(*Chapter 1*).

770.—(1) In this Chapter, except where the context otherwise requires—

[FA72 s13(1), (2)
and (4); FA74 s86
and Sch2 PtII]

“administrator”, in relation to a retirement benefits scheme, means the person or persons having the management of the scheme, and references to the administrator of a scheme shall be deemed to include the person mentioned in *section 772(2)(c)*;

“approved scheme” means a retirement benefits scheme for the time being approved by the Revenue Commissioners for the purposes of this Chapter;

“company” includes any body corporate or unincorporated body of persons other than a partnership;

“director”, in relation to a company, includes—

- (a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,
- (b) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,
- (c) in the case of a company the affairs of which are managed by the members themselves, a member of that company,

and includes a person who is to be or has been a director;

“employee”—

- (a) in relation to a company, includes an officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and
- (b) in relation to any employer, includes a person who is to be or has been an employee,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

and “employer” and other cognate expressions shall be construed accordingly; Pr.30 S.770

“exempt approved scheme” has the meaning assigned to it by *section 774*;

“final remuneration” means the average annual remuneration of the last 3 years’ service;

“pension” includes annuity;

“relevant benefits” means any pension, lump sum, gratuity or other like benefit—

(a) given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death, or

(b) to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question,

but does not include any benefit which is to be afforded solely by reason of the death or disability of a person resulting from an accident arising out of or in the course of his or her office or employment and for no other reason;

“service” means service as an employee of the employer in question and other expressions, including “retirement”, shall be construed accordingly;

“statutory scheme” means a retirement benefits scheme established by or under any enactment.

(2) Any reference in this Chapter to the provision of relevant benefits, or of a pension, for employees of an employer includes a reference to the provision of those benefits or that pension by means of a contract between the administrator or the employer and a third person.

(3) *Schedule 23* shall apply for the purposes of supplementing this Chapter and shall be construed as one with this Chapter.

771.—(1) In this Chapter, “retirement benefits scheme” means, subject to this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any scheme under the Social Welfare (Consolidation) Act, 1993, providing such benefits. Meaning of “retirement benefits scheme”. [FA72 s14]

(2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements or other arrangements providing for relevant benefits, notwithstanding that it relates or they relate only to—

(a) a small number of employees or to a single employee, or

(b) the payment of a pension starting immediately on the making of the arrangements.

(3) The Revenue Commissioners may if they think fit treat a retirement benefits scheme relating to employees of 2 or more different classes or descriptions as being for the purposes of this Chapter

Pt.30 S.771

2 or more separate retirement benefits schemes relating respectively to such one or more of those classes or descriptions of those employees as the Revenue Commissioners think fit.

(4) For the purposes of this Chapter—

- (a) employees may be regarded as belonging to different classes or descriptions if they are employed by different employers, and
- (b) a particular class or description of employee may consist of a single employee or any number of employees.

Conditions for approval of schemes and discretionary approval.

[FA72 s15(1) to (7); FA74 s64(1); FA92 s6(a); FA96 s131(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par5(1)]

772.—(1) Subject to this section, the Revenue Commissioners shall approve any retirement benefits scheme for the purposes of this Chapter if it satisfies all of the prescribed conditions, namely—

- (a) the conditions set out in *subsection (2)*, and
 - (b) the conditions as respects benefits set out in *subsection (3)*.
- (2) The conditions referred to in *subsection (1)(a)* are—
- (a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the widow or widower, children or dependants or personal representatives of, the employee;
 - (b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is or has a right to be a member of the scheme has been given written particulars of all essential features of the scheme which concern the employee;
 - (c) that there is a person resident in the State who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter;
 - (d) that the employer is a contributor to the scheme;
 - (e) that the scheme is established in connection with some trade or undertaking carried on in the State by a person resident in the State;
 - (f) that no amount can be paid, whether during the subsistence of the scheme or later, by means of repayment of an employee's contributions under the scheme.

(3) The conditions as respects benefits referred to in *subsection (1)(b)* are—

- (a) that any benefit for an employee is a pension on retirement at a specified age not earlier than 60 years and not later than 70 years, or on earlier retirement through incapacity, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40 years;
- (b) that any pension for any widow or widower of an employee who dies before retirement shall be a pension payable on the employee's death of an amount that does not exceed

two-thirds of any pension or pensions which, consonant with the condition in *paragraph (a)*, could have been provided for the employee on retirement on attaining the specified age, if the employee had continued to serve until the employee attained that age at an annual rate of remuneration equal to the employee's final remuneration;

- (c) that any lump sums provided for any widow or widower, children, dependants or personal representatives of an employee who dies before retirement shall not exceed in the aggregate 4 times the employee's final remuneration;
 - (d) that any benefit for any widow or widower of an employee payable on the employee's death after retirement is a pension such that the amount payable to the widow or widower does not exceed two-thirds of any pension or pensions payable to the employee;
 - (e) that any pensions for the children or dependants of an employee who dies before retirement or on the employee's death after retirement shall not exceed in the aggregate one-half of the pension specified in *paragraph (b)* or *(d)*, as the case may be;
 - (f) that no pension is capable in whole or in part of surrender, commutation or assignment, except in so far as the scheme allows an employee on retirement to obtain by commutation of the employee's pension a lump sum or sums not exceeding in all three-eighths of the employee's final remuneration for each year of service up to a maximum of 40 years;
 - (g) that no other benefits are payable under the scheme.
- (4) (a) The Revenue Commissioners may if they think fit having regard to the facts of a particular case and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter, notwithstanding that it does not satisfy one or more of the prescribed conditions.
- (b) The Revenue Commissioners may in particular approve by virtue of this subsection a scheme which—
- (i) exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years' service,
 - (ii) allows benefits to be payable on retirement within 10 years of the specified age or on earlier incapacity,
 - (iii) provides for the return in certain contingencies of employees' contributions and payment of interest (if any) on the contributions, or
 - (iv) relates to a trade or undertaking carried on only partly in the State and by a person not resident in the State.
- (5) Where in the opinion of the Revenue Commissioners the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time,

Pt.30 S.772

by notice in writing to the administrator, withdraw their approval on such grounds, and from such date, as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, no approval given as regards the scheme before the alteration shall apply after the date of the alteration unless the alteration has been approved by the Revenue Commissioners.

(7) For the purpose of determining whether a retirement benefits scheme, in so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and, if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them but otherwise those conditions shall be taken to be satisfied in the case of none of them.

General Medical Services: scheme of superannuation.

[FA91 s12]

773.—(1) The Revenue Commissioners may, if they think fit and subject to any undertakings and conditions that they think proper to attach to superapproval, approve for the purposes of this Chapter a scheme of superannuation provided for under an agreement for the provision of services under section 58 of the Health Act, 1970 (in this section referred to as a “relevant scheme”) as if it were a retirement benefits scheme within the meaning of this Chapter and notwithstanding that it does not satisfy one or more of the conditions set out in *subsections (2) and (3) of section 772.*

(2) As respects a relevant scheme approved under this section, this Chapter and *Schedule 23* shall apply subject to any necessary modifications and in particular as if in this Chapter and in that Schedule—

- (a) “employee” included a registered medical practitioner providing services under an agreement for the provision of services under section 58 of the Health Act, 1970 (in this section referred to as an “agreement”),
- (b) “service” included services by a registered medical practitioner under an agreement and an “office or employment” included the provision of such services, and
- (c) a reference to Schedule E were a reference to Case II of Schedule D except in *section 779.*

(3) *Chapter 2* of this Part shall apply as if a member of a relevant scheme were the holder of a pensionable office or employment and such member’s income assessable to tax under Case II of Schedule D arising from an agreement were remuneration from such an office or employment.

Certain approved schemes: exemptions and reliefs.

[FA72 s16(1) to (5) and (7); CTA76 s164 and Sch3 PtI; FA88 s30(1) and (2)(a); FA91 s38; FA97 s41(1)(a) and (3)]

774.—(1) This section shall apply as respects—

- (a) any approved scheme shown to the satisfaction of the Revenue Commissioners to be established under irrevocable trusts, or
- (b) any other approved scheme as respects which the Revenue Commissioners, having regard to any special circumstances, direct that this section shall apply,

and any scheme which is for the time being within *paragraph (a)* or *(b)* is in this Chapter referred to as an “exempt approved scheme”. Pr.30 S.774

(2) This section shall apply only as respects income arising or contributions paid at a time when a scheme is an exempt approved scheme.

(3) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits of a scheme if, or to such extent as the Revenue Commissioners are satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(4) (a) In this subsection, “financial futures” and “traded options” mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State.

(b) For the purposes of *subsection (3)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Revenue Commissioners are satisfied that, the underwriting commissions are applied for the purposes of the scheme, and in respect of which the trustees of the scheme would but for this subsection be chargeable to tax under Case IV of Schedule D.

(6) (a) For the purposes of this section and *section 775*—

(i) a reference to a “chargeable period” shall be construed as a reference to a “chargeable period or its basis period” (within the meaning of *section 321*), and

(ii) in relation to an employer whose chargeable period is a year of assessment, “basis period” means the period on the profits or gains of which income tax for that year of assessment is to be finally computed for the purposes of Case I or II of Schedule D in respect of the trade, profession or vocation of the employer.

(b) Any sum paid by an employer by means of contribution under the scheme shall for the purposes of Case I or II of Schedule D and of *sections 83* and *707(4)* be allowed to be deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the scheme.

(c) The amount of an employer’s contributions which may be deducted under *paragraph (b)* shall not exceed the amount contributed by that employer under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to income tax or corporation tax, as the case may be.

(d) A sum not paid by means of an ordinary annual contribution shall for the purposes of *paragraph (b)* be treated, as the Revenue Commissioners may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Revenue Commissioners think proper.

(e) In the case of any employer for a chargeable period, being—

(i) where the chargeable period is an accounting period of a company, an accounting period ending on or before the 21st day of April, 1997, and

(ii) where the chargeable period is a year of assessment, any year of assessment the employer's basis period for which ends on or before that date,

this subsection shall apply subject to *paragraph 26* of *Schedule 32*.

(7) (a) Any ordinary annual contribution paid under the scheme by an employee shall, in assessing income tax under Schedule E, be allowed to be deducted as an expense incurred in the year in which the contribution is paid.

(b) Any contribution, which is not an ordinary annual contribution, paid or borne by an employee under the scheme may, as the Revenue Commissioners think proper—

(i) be treated, as respects the year in which it is paid, as an ordinary annual contribution paid in that year, or

(ii) be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.

(c) The aggregate amount of any contributions (whether ordinary annual contributions or contributions treated as ordinary annual contributions) allowed to be deducted in any year shall not exceed 15 per cent of the remuneration for that year of the office or employment in respect of which the contributions are paid.

Certain approved schemes: provisions supplementary to *section 774(6)*.

[FA72 s16A; FA97 s41(1)(b)]

775.—(1) Where—

(a) after the 21st day of April, 1997, there is an actual payment by an employer of a contribution under an exempt approved scheme,

(b) apart from this section that payment would be allowed to be deducted as an expense, or expense of management, of the employer in relation to any chargeable period, and

(c) the total of previously allowed deductions exceeds the relevant maximum,

then, the amount allowed to be so deducted in respect of the payment mentioned in *paragraph (a)* and of any other actual payments of contributions under the scheme which, having been made after the 21st day of April, 1997, are within *paragraph (b)* in relation to

the same chargeable period shall be reduced by whichever is the lesser of the excess and the amount which reduces the deduction to nil. Pr.30 S.775

(2) In relation to any such actual payment by an employer of a contribution under an exempt approved scheme as would be allowed to be deducted as mentioned in *subsection (1)* in relation to any chargeable period—

- (a) the reference in that subsection to the total of previously allowed deductions is a reference to the aggregate of every amount in respect of the making, or any provision for the making, of that or any other contribution under the scheme, which has been allowed to be deducted as an expense, or expense of management, of that person in relation to all previous chargeable periods, and
- (b) the reference to the relevant maximum is a reference to the amount which would have been that aggregate if the restriction on deductions for sums other than actual payments imposed by virtue of *section 774(6)* had been applied in relation to every previous chargeable period,

and for the purposes of this subsection an amount the deduction of the whole or any part of which is to be taken into account as allowed in relation to more than one chargeable period shall be treated as if the amount allowed were a different amount in the case of each of those periods.

(3) For the purposes of this section, any payment which is treated under *paragraph (d)* of *section 774(6)* as spread over a period of years shall be treated as actually paid at the time when it is treated as paid in accordance with that paragraph.

776.—(1) This section shall apply to any statutory scheme established under a public statute. Certain statutory schemes: exemptions and reliefs.

- (2) (a) Any ordinary annual contribution paid under a scheme to which this section applies by any officer or employee shall, in assessing income tax under Schedule E, be allowed to be deducted as an expense incurred in the year in which the contribution is paid. [FA72 s17(1) and (2)]
- (b) Any contribution, which is not an ordinary annual contribution, paid or borne by an officer or employee under a scheme to which this section applies may, as the Revenue Commissioners think proper—
 - (i) be treated, as respects the year in which it is paid, as an ordinary annual contribution paid in that year, or
 - (ii) be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.
- (c) The aggregate amount of any contributions (whether ordinary annual contributions or contributions treated as ordinary annual contributions) allowed to be deducted in any year shall not exceed 15 per cent of the remuneration for that year of the office or employment in respect of which the contributions are paid.

Pt.30
Charge to income
tax in respect of
certain relevant
benefits provided
for employees.

[FA72 s18(1)(a),
(2), (3), (4) and (5);
FA97 s146(1) and
Sch9 PtI par5(2)]

777.—(1) Subject to this Chapter, where pursuant to a retirement benefits scheme the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency), the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for the purposes of the Income Tax Acts to be income of that employee for that year of assessment and assessable to income tax under Schedule E.

(2) Subject to this Chapter, where—

- (a) the circumstances in which any relevant benefits under a retirement benefits scheme are to accrue are not such as will render the benefits assessable to income tax as emoluments of the employee in respect of whom the benefits are paid, and
- (b) the provision of those benefits is not, or is not fully, secured by the payment of sums by the employer with a view to the provision of those benefits,

then (whether or not the accrual of the benefits is dependent on any contingency), an amount equal to the cost, estimated in accordance with *subsection (3)*, of securing the provision by a third person of the benefits or, as the case may be, of the benefits in so far as not already secured by the payment of sums mentioned in *subsection (1)* shall be deemed for the purposes of the Income Tax Acts to be income of the employee for the year or years of assessment specified in *subsection (3)* and assessable to income tax under Schedule E.

(3) The cost referred to in *subsection (2)* shall be estimated either—

- (a) as an annual sum payable in each year of assessment in which the scheme in question is in force or the employee is serving, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual of the benefits, or
- (b) as a single sum payable in the year of assessment in which falls the date when the employee acquired the right to the relevant benefits or the date when the employee acquired the right to any increase in the relevant benefits,

as may be more appropriate in the circumstances of the case.

(4) Where the employer pays any sum mentioned in *subsection (1)* in relation to more than one employee, the sum so paid shall for the purpose of that subsection be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(5) Any reference in this section to the provision for an employee of relevant benefits shall include a reference to the provision of benefits payable to the employee's spouse, widow or widower, children, dependants or personal representatives.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

778.—(1) Neither *subsection (1)* nor *subsection (2)* of *section 777* shall apply where the retirement benefits scheme in question is—

Pr.30
Exceptions to
charge to tax under
section 777.

[FA72 s19]

- (a) an approved scheme,
- (b) a statutory scheme, or
- (c) a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

(2) Neither *subsection (1)* nor *subsection (2)* of *section 777* shall apply for any year of assessment where apart from those subsections the employee is under the Income Tax Acts either not assessable to income tax in respect of the emoluments of his or her employment or is so assessable in respect of those emoluments on the basis of the amount received in the State.

(3) Where, in respect of the provision for an employee of any relevant benefits, a sum has been deemed to be income of the employee by virtue of *subsection (1)* or *(2)* of *section 777*, and subsequently the employee proves to the satisfaction of the Revenue Commissioners—

- (a) that no payment in respect of or in substitution for the benefits has been made, and
- (b) that some event has occurred by reason of which no such payment will be made,

and the employee makes application for relief under this subsection within 6 years from the time when that event occurred, the Revenue Commissioners shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate, and, if the employee satisfies the Revenue Commissioners in relation to some particular part of the benefits but not the whole of the benefits, the Revenue Commissioners may give such relief as may seem to them just and reasonable.

779.—(1) Subject to *subsection (2)*, pensions paid under any scheme which is approved or is being considered for approval under this Chapter shall be charged to income tax under Schedule E, and *Chapter 4* of *Part 42* shall apply accordingly.

Charge to income
tax of pensions
under Schedule E.

[FA72 s20]

(2) In respect of any scheme which is approved or is being considered for approval under this Chapter, the Revenue Commissioners may direct that until such date as they may specify pensions under the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under *section 237* or *238* accordingly.

780.—(1) In this section and in *section 781*, “employee”, in relation to a statutory scheme, includes an officer.

Charge to income
tax on repayment of
employees’
contributions.

(2) Subject to this section, tax shall be charged under this section on any repayment to an employee during his or her lifetime of any contribution (including interest on contributions, if any) if the payment is made under—

[FA72 s21(1) to
(5)(a) and (6) and
(7); FA73 s18;
FA92 s6(b)]

- (a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a statutory scheme established under a public statute.

(3) This section shall not apply where the employee's employment was carried on outside the State.

(4) *Subsection (2)(a)* shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme unless it again becomes an exempt approved scheme.

(5) Where any payment is chargeable to tax under this section, the administrator of the scheme shall be charged to income tax under Case IV of Schedule D and, subject to *subsection (7)*, the rate of the tax shall be 25 per cent; but, in the case of any repayment under a statutory scheme established under a public statute, the administrator of the scheme shall be entitled to deduct the tax chargeable in respect of that repayment from the amount of that repayment.

(6) The tax shall be charged on the amount paid or, if the administrator is entitled under the rules of the relevant scheme or otherwise to deduct the tax before payment, on the amount before deduction of tax, and the amount so charged to tax shall not be treated as income for any other purpose of the Income Tax Acts.

(7) (a) The Minister for Finance may by order from time to time increase or decrease the rate of tax under *subsection (5)*.

(b) Every order under *paragraph (a)* 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.

Charge to income tax: commutation of entire pension.

[FA72 s22(1) to (4); FA92 s6(c)]

781.—(1) Where—

(a) a scheme which is or has at any time been an approved scheme, or

(b) a statutory scheme established under a public statute,

contains a rule allowing in special circumstances a payment in commutation of an employee's entire pension, and any pension is commuted, whether wholly or not, under the rule, tax shall be charged on the amount by which the sum receivable exceeds—

(i) the largest sum which would have been receivable in commutation of any part of the pension if the scheme had contained a rule providing that the aggregate value of the relevant benefits payable to an employee on or after retirement, excluding any pension which was not commutable, should not exceed three-eighths of the employee's final remuneration for each year of service up to a maximum of 40 years, or

(ii) the largest sum which would have been receivable in commutation of any part of the pension under any rule of the scheme authorising the commutation of part (but not the whole) of the pension, or which would have been so receivable but for those circumstances,

whichever gives the lesser amount chargeable to tax.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(2) This section shall not apply where the employee's employment was carried on outside the State. Pr.30 S.781

(3) Where any amount is chargeable to tax under this section, the administrator of the scheme shall be charged to income tax under Case IV of Schedule D on that amount and, subject to *subsection (6)* of *section 780* which shall apply as it applies to tax chargeable under that section, the rate of tax shall be 10 per cent.

(4) In applying *paragraph (i)* or *(ii)* of *subsection (1)*—

(a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Revenue Commissioners in applying *section 772*, and

(b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules of the scheme at the date of the cesser.

782.—(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme, then— Charge to tax: repayments to employer. [FA72 s23]

(a) if the scheme relates to a trade or profession carried on by the employer, the payment shall be treated for the purposes of the Tax Acts as a receipt of that trade or profession receivable when the payment is due or on the last day on which the trade or profession is carried on by the employer, whichever is the earlier;

(b) if the scheme does not relate to such a trade or profession, the employer shall be charged to tax on the amount of the payment under Case IV of Schedule D, but only in proportion to the extent that the payment represents contributions by the employer under the scheme which were allowable as deductions for tax purposes.

(2) This section shall not apply to a payment which was due before the scheme became an exempt approved scheme.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

CHAPTER 2

Retirement annuities

783.—(1) (a) In this section—

“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,

Interpretation and general (*Chapter 2*).

[ITA67 s195B(3) and (6), s235(6) to (9) and s238(3) and (4); FA69 s65(1) and Sch5 PtI; FA72 Sch1 PtIII par4; FA93 s10(1); FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par 5(3)]

(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;

“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 or has been an employee;

“investment company” means a company the income of which consists mainly of investment income;

“investment income”, in relation to a company, means income which, if the company were an individual, would not be earned income;

“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”, 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;

“sponsored superannuation scheme” means a scheme or arrangement relating to service in particular offices or employments and having for its object or one of its objects the making of provision in respect of persons serving in those offices or employments against—

- (i) future retirement or partial retirement,
- (ii) future termination of service through death or disability, or
- (iii) similar matters,

being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement).

(b) For the purposes of the definitions of “proprietary director” and “proprietary employee”, ordinary share capital which is owned or controlled as is specified in those definitions by a person, being a spouse or an infant child of a director or employee,

or by the 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.

(c) For the purposes of the definition of “sponsored superannuation scheme”, a person shall be treated as bearing by reason of his or her service the cost of any payment made or agreed to be made in respect of his or her service if that payment or the agreement to make it is treated under the Income Tax Acts as increasing the person’s income or would be so treated if he or she were chargeable to tax under Schedule E in respect of his or her emoluments from that service.

(2) (a) For the purposes of this Chapter, an office or employment shall be a pensionable office or employment only if service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death before the age of 70 years or some lower age or disability before the age of 70 years or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the State or the holder is chargeable to tax in respect of the office or employment.

(b) For the purposes of *paragraph (a)*, service in an office or employment shall not be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he or she does not) participate in the scheme by exercising or refraining from exercising an option open to him or her by virtue of that service.

(3) For the purposes of this Chapter but subject to *subsection (4)*, “relevant earnings”, in relation to an individual, means any income of the individual chargeable to tax for the year of assessment in question, being either—

(a) income arising in respect of remuneration from an office or employment of profit held by the individual, other than a pensionable office or employment,

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

(c) income which is chargeable under Schedule D and is 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;

but does not include any remuneration from an investment company of which the individual is a proprietary director or a proprietary employee.

(4) For the purposes of this Chapter, the relevant earnings of an individual shall not be treated as the relevant earnings of his or her

spouse, notwithstanding that the individual's income chargeable to tax is treated as his or her spouse's income.

(5) The Revenue Commissioners may make regulations prescribing the procedure to be adopted in giving effect to this Chapter in so far as such procedure is not otherwise provided for and, without prejudice to the generality of the foregoing, may by such regulations—

- (a) prescribe the manner and form in which claims for relief from or repayment of tax are to be made,
- (b) prescribe the time limit for the making of any such claim,
- (c) require the trustees or other persons having the management of an approved trust scheme to deliver from time to time such information and particulars as the Revenue Commissioners may reasonably require for the purposes of this Chapter, and
- (d) apply for purposes of this Chapter or of the regulations any provision of the Income Tax Acts (with or without modifications).

(6) Where any person, for the purpose of obtaining for that person or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.

Retirement annuities: relief for premiums.

[ITA67 s235(1) to (5) and (10); FA74 s65]

784.—(1) Where an individual—

- (a) is (or but for an insufficiency of profits or gains would be) chargeable to tax in respect of relevant earnings from any trade, profession, office or employment carried on or held by him or her, and
- (b) pays a premium or other consideration under an annuity contract for the time being approved by the Revenue Commissioners as being a contract by which the main benefit secured is a life annuity for the individual in his or her old age or under a contract for the time being approved under *section 785* (in this Chapter referred to as a “qualifying premium”),

relief from income tax may be given in respect of the qualifying premium under *section 787*.

- (2) (a) Subject to *subsection (3)*, the Revenue Commissioners shall not approve a contract unless it appears to them to satisfy the following conditions—
 - (i) that it is made by the individual with a person lawfully carrying on in the State the business of granting annuities on human life,
 - (ii) that it includes provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment, and
 - (iii) that it does not—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(I) provide for the payment by that person during the life of the individual of any sum except sums payable by means of annuity to the individual, Pr.30 S.784

(II) provide for the annuity payable to the individual to commence before the individual attains the age of 60 years or after he or she attains the age of 70 years,

(III) provide for the payment by that person of any other sums except sums payable by means of annuity to the individual's widow or widower and any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower, are payable to the individual's personal representatives by means of return of premiums, reasonable interest on premiums or bonuses out of profits,

(IV) provide for the annuity, if any, payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual, or

(V) provide for the payment of any annuity otherwise than for the life of the annuitant.

(b) Notwithstanding *paragraph (a)*, the contract may provide for the payment to the individual, at the time the annuity commences to be payable, of a lump sum by means of commutation of part of the annuity not exceeding 25 per cent of the value of the annuity if the individual elects, at or before the time when the annuity first becomes payable to him or her, to be paid the lump sum.

(3) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve a contract otherwise satisfying the conditions referred to in *subsection (2)*, notwithstanding that the contract provides for one or more of the following matters—

(a) the payment after the individual's death of an annuity to a dependant, not being the widow or widower of the individual;

(b) the payment to the individual of an annuity commencing before he or she attains the age of 60 years, where the annuity is payable on the individual becoming permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted;

(c) where the individual's occupation is one in which persons customarily retire before attaining the age of 60 years, the annuity to commence before the individual attains that age (but not before he or she attains the age of 50 years);

(d) where the individual's occupation is one in which persons customarily retire after attaining the age of 70 years, the annuity to commence after the individual attains that age (but not after he or she attains the age of 80 years);

- (e) the annuity payable to any person to continue for a term certain (not exceeding 10 years) notwithstanding his or her death within that term, or the annuity payable to any person to terminate, or be suspended, on marriage (or remarriage) or in other circumstances;
- (f) in the case of an annuity which is to continue for a term certain, the annuity to be assignable by will and, in the event of any person dying entitled to the annuity, the annuity to be assignable by his or her personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy or to an appropriation of the annuity to a legacy or to a share or interest in the estate.

(4) *Subsections (1) to (3)* shall apply in relation to a contribution under a trust scheme or part of a trust scheme approved by the Revenue Commissioners as they apply in relation to a premium under an annuity contract so approved, with the modification that for the condition in *subsection (2)(a)(i)* there shall be substituted a condition that the scheme (or the part of the scheme)—

- (a) is established under the law of and administered in the State,
- (b) is established for the benefit of individuals engaged in or connected with a particular occupation (or one or other of a group of occupations) and for the purpose of providing retirement annuities for those individuals with or without subsidiary benefits for their families or dependants, and
- (c) is so established under irrevocable trusts by a body of persons comprising or representing the majority of the individuals so engaged in the State,

and with the necessary modifications of other references to the contract or the person with whom it is made, and exemption from income tax shall be allowed in respect of income derived from investments or deposits of any fund maintained for the purpose referred to in *paragraph (b)* under a scheme or part of a scheme for the time being approved under this subsection.

(5) The Revenue Commissioners may at any time, by notice in writing given to the persons by and to whom premiums are payable under any contract for the time being approved under this section or to the trustees or other persons having the management of any trust scheme so approved, withdraw that approval on such grounds and from such date (including a date before the date of the notice) as may be specified in the notice and, where any approval is so withdrawn, there shall be made such assessments as may be appropriate for the purpose of withdrawing any reliefs given under this Chapter consequent on the approval.

(6) Nothing in sections 4 and 6 of the Policies of Assurance Act, 1867, shall be taken to apply to any contract approved under this section.

785.—(1) The Revenue Commissioners may approve for the purposes of this Chapter a contract made by an individual with a person (in *subsection (2)* referred to as “the insurer”) lawfully carrying on in the State the business of granting annuities on human life if—

- (a) the main benefit secured by the contract is the provision of an annuity for the wife or husband of the individual or for any one or more dependants of the individual, or

Approval of contracts for dependants or for life assurance.

[ITA67 s235A(1) to (6); FA74 s66]

- (b) the sole benefit secured by the contract is the provision of a lump sum on the death of the individual before he or she attains the age of 70 years (or any greater age approved under *section 784(3)(d)*), being a lump sum payable to the individual's personal representatives. Pr.30 S.785

(2) The Revenue Commissioners shall not approve a contract made by an individual with the insurer under *subsection (1)(a)* unless it appears to them to satisfy the following conditions—

- (a) that any annuity payable to the wife or husband or dependant of the individual commences on the death of the individual;
- (b) that any annuity payable under the contract to the individual commences at a time after the individual attains the age of 60 years and, unless the individual's annuity is one to commence on the death of a person to whom an annuity would be payable under the contract if that person survived the individual, cannot commence after the time when the individual attains the age of 70 years (or any greater age approved under *section 784(3)(d)*);
- (c) that the contract does not provide for the payment by the insurer of any sum, other than any annuity payable to the individual's wife or husband or dependant or to the individual except, in the event of no annuity becoming payable under the contract, any sums payable to the individual's personal representatives by means of return of premiums, reasonable interest on premiums or bonuses out of profits;
- (d) that the contract does not provide for the payment of any annuity otherwise than for the life of the annuitant;
- (e) that the contract provides that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(3) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve a contract under *subsection (1)(a)*, notwithstanding that in one or more respects it does not appear to them to satisfy the conditions specified in *subsection (2)*.

(4) *Subsections (2) and (3) of section 784* shall not apply to the approval of a contract under this section.

(5) The Revenue Commissioners may approve a trust scheme or part of a trust scheme otherwise satisfying the conditions specified in *paragraphs (a) to (c) of section 784(4)*, notwithstanding that its main purpose is to provide annuities for the wives, husbands and dependants of the individuals, or lump sums payable to the individuals' personal representatives on death, and—

- (a) *subsections (1) to (4)* shall apply with any necessary modifications in relation to such approval,

Pt.30 S.785

(b) this Chapter shall apply to the scheme or part of the scheme when so approved as it applies to a contract approved under this section, and

(c) the exemption from income tax provided in *section 784(4)* shall apply to the scheme or part of the scheme when so approved.

(6) Except where otherwise provided in this Chapter, any reference in the Income Tax Acts to a contract, scheme or part of a scheme approved under *section 784* shall include a reference to a contract, scheme or part of a scheme approved under this section.

Approval of certain other contracts.

[FA79 s28(1) to (3)]

786.—(1) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve an annuity contract under *section 784*, notwithstanding that the contract provides that the individual by whom it is made may require a sum representing the value of his or her accrued rights under the contract—

(a) to be paid by the person with whom it is made to such other person as the individual may specify, and

(b) to be applied by such other person in payment of the premium or other consideration under an annuity contract made between the individual and that other person and approved by the Revenue Commissioners under that section,

if the first-mentioned contract is otherwise to be approved by the Revenue Commissioners under that section.

(2) References in *subsection (1)* to the individual by whom a contract is made include references to any widow, widower or dependant having accrued rights under the contract.

(3) Where, in accordance with a provision of the kind referred to in *subsection (1)* of an annuity contract approved under *section 784* or a corresponding provision of a contract approved under *section 785(1)(a)*, a sum representing the value of accrued rights under one contract (in this subsection referred to as “the original contract”) is paid by means of premium or other consideration under another contract (in this subsection referred to as “the substituted contract”), any annuity payable under the substituted contract shall be treated as earned income of the annuitant to the same extent that an annuity under the original contract would have been so treated.

Nature and amount of relief for qualifying premiums.

[ITA67 s236(1) to (2B), (3) to (9) and (11), s238(1) and (2); F(MP)A68 s3(2) and Sch PtI; FA74 s67(1) and (2); FA75 s33(2) and Sch1 PtII; FA78 s4; FA90 s27(1); FA96 s13(a)]

787.—(1) For the purposes of relief under this section, an individual’s relevant earnings shall be those earnings before giving effect to any deduction to be made from those earnings in respect of a loss or in respect of a capital allowance (within the meaning of *section 2*), and references to income in this section (other than references to total income) shall be construed similarly.

(2) For the purposes of this section, “net relevant earnings”, in relation to an individual and subject to *subsections (3) to (5)*, means the amount of the individual’s relevant earnings for the year of assessment in question less the amount of any deductions to be made from the relevant earnings in computing the individual’s total income for that year, being either—

(a) deductions in respect of payments made by the individual, Pr.30 S.787
or

(b) deductions in respect of losses or of such allowances mentioned in *subsection (1)*, being losses or allowances arising from activities, profits or gains of which would be included in computing relevant earnings of the individual or of the individual's spouse for the year of assessment.

(3) Where in any year of assessment for which an individual claims and is allowed relief under this section there is to be made in computing the total income of the individual or of the individual's spouse a deduction in respect of any such loss or allowance of the individual referred to in *subsection (2)(b)*, and the deduction or part of it is to be so made from income other than relevant earnings, then, the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment and shall be deducted as far as may be from those of the following year, whether or not the individual claims or is entitled to claim relief under this section for that year, and in so far as it cannot be so deducted, then from those of the next year, and so on.

(4) Where an individual's income for any year of assessment consists partly of relevant earnings and partly of other income, then, as far as may be, any deductions to be made in computing the individual's total income, and which may be treated in whole or in part either as made from relevant earnings or as made from other income, shall be treated for the purposes of this section as being made from those relevant earnings in so far as they are deductions in respect of any such loss referred to in *subsection (2)(b)* and otherwise as being made from that other income.

(5) An individual's net relevant earnings for any year of assessment shall be computed without regard to any relief to be given for that year under this section either to the individual or to the individual's spouse.

(6) Where relief is to be given under this section in respect of any qualifying premium paid by an individual, the amount of that premium shall, subject to this section, be deducted from or set off against the individual's relevant earnings for the year of assessment in which the premium is paid.

(7) Where in relation to a year of assessment a qualifying premium is paid after the end of the year of assessment but on or before the 31st day of January in the year following the year of assessment, the premium may, if the individual so elects on or before that date, be treated for the purposes of this section as paid in the earlier year (and not in the year in which it is paid); but where—

(a) the amount of that premium, together with any qualifying premiums paid by the individual in the year to which the assessment relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of the reduction which may be made under this section in the individual's relevant earnings for that year, or

(b) the amount of that premium itself exceeds the increase in that maximum amount which is due to taking into account the income on which the assessment is made,

the election shall have no effect as respects the excess.

(8) Subject to this section, the amount which may be deducted or set off in any year of assessment (whether in respect of one or more qualifying premiums and whether or not including premiums in respect of a contract approved under *section 785*) shall not be more than—

(a) in the case of an individual who at any time during the year of assessment was of the age 55 years or over, 20 per cent, and

(b) in any other case, 15 per cent,

of the individual's net relevant earnings for that year, and the amount to be deducted shall to the greatest extent possible include qualifying premiums in respect of contracts approved under *section 785*.

(9) Subject to this section, the amount which may be deducted or set off in any year of assessment in respect of qualifying premiums paid under a contract approved under *section 785* (whether in respect of one or more such premiums) shall not be more than 5 per cent of the individual's net relevant earnings for that year.

(10) Where in any year of assessment a reduction or a greater reduction would be made under this section in the relevant earnings of an individual but for either or both of the following reasons—

(a) an insufficiency of net relevant earnings, or

(b) the operation of *subsection (9)* (as respects a qualifying premium paid under a contract approved under *section 785*),

the amount of the reduction which would be made but for those reasons, less the amount of any reduction which is made in that year, shall be carried forward to the next year of assessment, and shall be treated for the purposes of relief under this section as the amount of a qualifying premium paid in that next year of assessment.

(11) If and in so far as an amount once carried forward under *subsection (10)* (and treated as the amount of a qualifying premium paid in the next year of assessment) is not deducted from or set off against the individual's net relevant earnings for that year of assessment, it shall be carried forward again to the following year of assessment (and treated as the amount of a qualifying premium paid in that year of assessment), and so on for succeeding years.

(12)(a) In this subsection, "individual's contract" means an approved annuity contract, other than one approved under *section 785*.

(b) *Paragraphs (c) and (d)* shall apply for determining whether and the extent to which an amount carried forward under *subsection (10)* is to be treated as paid under an individual's contract on the one hand or a contract approved under *section 785* on the other.

(c) Any part of the amount carried forward which is referable to a qualifying premium paid under a contract approved under *section 785* shall, when carried forward on the first or any subsequent occasion, be treated for the purposes of this Chapter as the amount of a qualifying premium paid under a contract so approved.

(d) The balance, if any, of the amount shall when similarly carried forward be treated as a qualifying premium paid under an individual's contract. Pr.30 S.787

(13) Where relief under this section for any year of assessment is claimed and allowed (whether or not relief is then to be given for that year), and afterwards there is made any additional assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.

(14) Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of that payment under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

(15) Relief shall not be given under this section in respect of a qualifying premium except on a claim made to and allowed 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.

(16) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (15)* 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.

CHAPTER 3

Purchased life annuities

788.—(1) In this section—

“life annuity” means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances;

“purchased life annuity” means a life annuity granted for a consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

Capital element in certain purchased annuities.

[ITA67 s239; CTA76 s140(1) and Sch2 PtI par9; FA79 s28(4); FA96 s132(1) and Sch5 PtI par1(10) and (11); FA97 s146(1) and Sch9 PtI par1(15)]

(2) This section shall not apply to—

(a) any annuity which apart from this section would be treated for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum,

(b) any annuity purchased under or for the purposes of any sponsored superannuation scheme within the meaning of *section 783(1)*, or any scheme approved under *section 784*, or in pursuance of any obligation imposed or offer or

invitation made under or in connection with any such scheme, or any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment,

- (c) any annuity payable under a substituted contract within the meaning of *section 786(3)*,
- (d) any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief from tax under *section 787*, or
- (e) any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital).

(3) A purchased life annuity (not being of a description excepted by *subsection (2)*) shall, for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of the Income Tax Acts in any circumstances in which a lump sum payment would be taken into account.

(4) In the case of any purchased life annuity to which this section applies—

- (a) the capital element shall be determined by reference to the amount or value of the payments made or other consideration given for the grant of the annuity,
- (b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity,
- (c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with *subsection (5)*, and
- (d) where *paragraph (c)* does not apply, that proportion shall be such as may be just, having regard to that paragraph and to the contingencies affecting the annuity.

(5) For the purposes of *subsection (4)*—

- (a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity),
- (b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or

value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under *paragraph (a)* accordingly, and

Pr.30 S.788

- (c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

(6) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element, if any, and has not been notified of any alteration of that decision, the notice shall be evidence until the contrary is proved as to those matters for the purpose of determining the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of the payment.

(7) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of the capital element, the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.

(8) Any person, other than a company which is within the charge to corporation tax, carrying on a business of granting annuities on human life shall be entitled to repayment of any income tax borne by that person by deduction or otherwise for any year of assessment up to the amount of income tax which, if this section had not been enacted, that person would have been entitled to deduct and retain on making payments due in that year of assessment on account of life annuities and which in accordance with this section that person has not deducted.

(9) This section shall apply to life annuities whenever purchased or commencing, and the reference to *section 787* in *subsection (2)(d)* shall be construed accordingly.

789.—(1) Any question as to whether an annuity is a purchased life annuity to which *section 788* applies, or what is the capital element in such an annuity, shall be determined by the inspector, but any person aggrieved by any decision of the inspector on any such question may appeal within the prescribed time to the Appeal Commissioners.

Supplementary provisions (*Chapter 3*).

[ITA67 s240; F(MP)A68 s3(2) and Sch Pt1]

(2) Except where otherwise provided in this Chapter, the procedure to be adopted in giving effect to this Chapter shall be such as may be prescribed.

(3) The Revenue Commissioners may make regulations for prescribing anything which is to be prescribed under this Chapter, and the regulations may apply, for the purposes of this Chapter or of the regulations, any provision of the Income Tax Acts (with or without modifications), and in particular 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.

(4) Regulations under *subsection (3)* may in particular make provision as to the time limit for making any claim for relief from or repayment of tax under this Chapter and as to all or any of the following matters—

- (a) the information to be given in connection with the determination of any question whether an annuity is a purchased life annuity to which *section 788* applies, or what is the capital element in an annuity, and the persons who may be required to give any such information;
- (b) the manner of giving effect to the decision on any such question, and the making of assessments for the purpose on the person entitled to the annuity (notwithstanding anything in *section 237*);
- (c) the extent to which any decision on any such question is to be binding and the circumstances in which it may be reviewed.

(5) Where any person, for the purpose of obtaining for that person or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.

CHAPTER 4

Miscellaneous

Liability of certain pensions, etc. to tax.

[ITA67 s225; FA97 s146(1) and Sch9 PtI par1(14)]

790.—Where an individual has ceased to hold an office or employment and a pension, annuity or other annual payment is paid to the individual or to the individual's widow or widower, or to the individual's child or any of the individual's relatives or dependants by the person or the heirs, executors, administrators or successors of the person under whom the individual held such office or by whom the individual was so employed, such pension, annuity or other annual payment shall, notwithstanding that it is paid voluntarily or is capable of being discontinued, be deemed to be income for the purpose of assessment of income tax and shall be assessed and charged under Schedule D or E, as the case may require.

PART 31

TAXATION OF SETTLORS, ETC., IN RESPECT OF SETTLED OR TRANSFERRED INCOME

CHAPTER 1

Revocable dispositions for short periods and certain dispositions in favour of children

Income under revocable dispositions.

[ITA67 s438 and s442]

791.—(1) In this Chapter and in *paragraph 27* of *Schedule 32*, except where the context otherwise requires, “disposition” includes any trust, covenant, agreement or arrangement.

(2) Any income of which any person (in this subsection referred to as “the first-mentioned person”) is able or has been able, without the consent of any other person by means of the exercise of any power of appointment, power of revocation or otherwise however by

virtue or in consequence of a disposition made directly or indirectly by the first-mentioned person, to obtain for the first-mentioned person the beneficial enjoyment shall be deemed for the purposes of the Income Tax Acts to be the income of the person who is or was able to obtain such beneficial enjoyment, and not to be the income of any other person. Pr.31 S.791

(3) Where any power referred to in *subsection (2)* may be exercised by a person with the consent of the wife or husband of the person, the power shall for the purposes of *subsection (2)* be deemed to be exercisable without the consent of another person, except where the husband and wife are living apart either by agreement or under an order of a court of competent jurisdiction.

(4) Where any power referred to in *subsection (2)* is exercisable by the wife or husband of the person who made the disposition, the power shall for the purposes of *subsection (2)* be deemed to be exercisable by the person who made the disposition.

792.—(1) (a) In this subsection, “relevant individual” means an individual who is—

Income under dispositions for short periods.

(i) permanently incapacitated by reason of mental or physical infirmity, or [ITA67 s439; FA95 s13(1)(a) and (2)]

(ii) aged 65 years or over.

(b) Any income which, by virtue of or in consequence of any disposition made directly or indirectly by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person, but excluding any income which—

(i) arises from capital of which the disponent by the disposition has divested absolutely himself or herself in favour of or for the benefit of the other person,

(ii) being payable to any university or college, being a university or college in the State, for the purpose of enabling that university or college to carry on research, is so payable for a period which is or may be 3 years or longer,

(iii) being payable to any body of persons to which *section 209* applies, is so payable for a period which is or may be 3 years or longer,

(iv) being payable to a relevant individual for the individual’s own use, is so payable for a period which exceeds or may exceed 6 years, or

(v) being applicable for the benefit of a named relevant individual, is so applicable for a period which exceeds or may exceed 6 years,

shall be deemed for the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made and not to be the income of any other person.

(2) (a) This subsection shall apply to a disposition or dispositions of a kind or kinds referred to in *subparagraphs (ii) to (v)* of *subsection (1)(b)* made directly or indirectly by a person being an individual (in this subsection referred to as “the disponer”) except in so far as, by virtue or in consequence of such disposition or dispositions, income is payable or applicable in a year of assessment, in the manner referred to in *subparagraph (iv) or (v)* of that subsection, to or for the benefit of an individual referred to in *subsection (1)(a)(i)*.

(b) Notwithstanding *subsection (1)*, in relation to the disponer, any income which—

(i) is payable or applicable in a year of assessment by virtue or in consequence of a disposition or dispositions to which this subsection applies, and

(ii) is in excess of 5 per cent of the total income of the disponer for the year of assessment,

shall be deemed for the purposes of the Income Tax Acts to be the income of the disponer, if living, and not to be the income of any other person.

(c) Where *paragraph (b)* applies in relation to the disponer, for the purpose of determining for income tax purposes the amount of income which remains the income of persons other than the disponer for a year of assessment by virtue or in consequence of a disposition or dispositions to which this subsection applies, the aggregate of the income so remaining shall be apportioned amongst those other persons in proportion to their entitlements under such disposition or dispositions for that year.

(3) (a) In this subsection, “fund” means a fund—

(i) held on irrevocable trusts under the law of the State,

(ii) administered in the State, and

(iii) having for its sole purpose the granting of financial or other aid to universities, colleges or schools in the State in order to assist such universities, colleges or schools to teach any one or more of the natural sciences.

(b) The reference in *subsection (1)(b)* to any university or college, being a university or college in the State, for the purpose of enabling that university or college to carry on research shall include references to income payable—

(i) to any university, college or school, being a university, college or school in the State, for the purpose of assisting such university, college or school to teach any one or more of the natural sciences, or

(ii) to a fund within the meaning of this subsection.

(4) As respects the year of assessment 1997-98, this section shall apply subject to *paragraph 27* of *Schedule 32* in respect of a disposition to which that paragraph applies by a person in so far as, by virtue or in consequence of such a disposition, income is payable in

that year of assessment to or for the benefit of an individual to whom that paragraph applies. Pr.31 S.792

793.—(1) Where by virtue of *section 792* any income tax becomes chargeable on and is paid by the person by whom the disposition was made, that person shall be entitled—

Recovery of tax from trustee and payment to trustee of excess tax recoupment.

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid, and

[ITA67 s441; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 Pt1 par1(28)]

(b) for that purpose to require the Revenue Commissioners to furnish to that person a certificate specifying the amount of the income in respect of which that person has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be evidence until the contrary is proved of the matters of fact stated in that certificate.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which that person would but for *section 792* have been entitled, an amount equal to the excess shall be paid by that person to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition or, where there are 2 or more such persons, shall be apportioned among those persons as the case may require.

(3) Where any question arises as to the amount of any payment or as to any apportionment to be made under *subsection (2)*, that question shall be decided by the Appeal Commissioners whose decision on that question shall be final.

(4) Any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of that person's income.

CHAPTER 2

Settlements on children generally

794.—(1) In this Chapter—

Interpretation and application (*Chapter 2*).

“income” (except where in *sections 795(1)*, *796(2)(b)* and *subsections (4)* and *(5)* of *section 797* it is immediately preceded by “as” or “that person’s” and except also in *section 798*) includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the State by a person resident or ordinarily resident in the State;

[ITA67 s443(2), (3) and (5), s445 and s447; FA95 s12(1)(a)(ii) and (c)(i) and (ii)]

“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.

(2) This Chapter shall apply to every settlement wherever and whenever made or entered into.

(3) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the State, and references in this Chapter to income shall be construed accordingly.

(4) This Chapter shall not apply to any income which, by virtue or in consequence of a settlement and during the life of the settlor, is in any year of assessment paid to or for the benefit of a minor, not being a child of the settlor, if such minor is permanently incapacitated by reason of mental or physical infirmity.

(5) For the purposes of this Chapter, the following provisions shall apply in relation to the construction of “irrevocable instrument”:

- (a) an instrument shall not be an irrevocable instrument if the trusts of the instrument provide for all or any one or more of the following matters—
 - (i) the payment or application to or for the settlor for the settlor’s own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of a person (in this paragraph referred to as a “beneficiary”) to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,
 - (ii) the payment or application during the life of the settlor to or for the husband or wife of the settlor for his own or her own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of any beneficiary,
 - (iii) the termination of the trusts of the instrument by the act or on the default of any person, and
 - (iv) the payment by the settlor of a penalty in the event of the settlor failing to comply with the instrument;
- (b) an instrument shall not be prevented from being an irrevocable instrument by reason only that the trusts of the instrument include any one or more of the following provisions—
 - (i) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, on the bankruptcy of a person (in this paragraph referred to as a “beneficiary”) to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,
 - (ii) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, in the event of any beneficiary making an assignment of or charge on such capital or income or accumulations of income, and
 - (iii) a provision for the termination of the trusts of the instrument in such circumstances or manner that such termination would not, during the life of any beneficiary, benefit any person other than that beneficiary or that beneficiary’s husband, wife or issue;

(c) “irrevocable instrument” includes instruments whenever made. Pr.31 S.794

795.—(1) Where, by virtue or in consequence of a settlement and during the life of the settlor, any income is in any year of assessment paid to or for the benefit of a person, such income shall, if at the time of payment such person is a minor, be treated for the purposes of the Income Tax Acts as income of the settlor for that year and not as income of any other person.

Income settled on children.

[ITA67 s443(1); FA95 s12(1)(a)(i) and (c)]

(2) For the purposes of this Chapter, but subject to *section 796*—

(a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it or assets representing it will or may become payable or applicable to or for the benefit of a person in the future (whether on the fulfilment of a condition, or on the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that person, and

(b) any income dealt with in the manner referred to in *paragraph (a)* which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular person or persons shall be deemed to be paid in equal shares to or for the benefit of each of the persons to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.

796.—(1) In this section, “property” does not include any annual or other periodical payment secured by the covenant of the settlor, or by a charge made by the settlor on the whole or any part of the settlor’s property or the whole or any part of the settlor’s future income, or by both such covenant and such charge.

Irrevocable instruments.

[ITA67 s444 and s447; FA71 s16(2) and (3); FA95 s12(1)(b)]

(2) Where by virtue of an irrevocable instrument property is vested in or held by trustees on such trusts that in any year of assessment *section 795* would but for this section apply to the income of such property, the following provisions shall apply:

(a) *section 795* shall not apply—

(i) in respect of any part of such income which is in that year of assessment accumulated for the benefit of a person, or

(ii) in respect of income arising in that year of assessment from accumulations of income referred to in *subparagraph (i)*;

(b) whenever in any year of assessment any sum whatever is paid under the trusts of such irrevocable instrument out of—

(i) such property,

(ii) the accumulations of the income of such property,

(iii) the income of such property, or

(iv) the income of those accumulations,

to or for the benefit of a person who at the time of payment is a minor, such sum shall, subject to the limitation in *paragraph (c)*, be deemed for the purposes of this Chapter to be paid as income;

(c) *paragraph (b)* shall not apply to so much of such sum as is equal to the amount by which the aggregate of such sum and all other sums (if any) paid after the 5th day of April, 1937, under the trusts of such irrevocable instrument to or for the benefit of that person or any other person (being a person who at the time of payment was a minor) exceeds the aggregate amount of the income arising after the 5th day of April, 1937, from such property together with the income arising after that date from those accumulations;

(d) for the purposes of *paragraph (c)*, the reference in that paragraph to another sum paid to or for the benefit of a person who at the time of payment was a minor shall be construed, in relation to a payment to which this paragraph applies of any such sum, as a reference to a sum so paid to or for the benefit of a person who at the beginning of the year of assessment in which such other sum was paid was a minor;

(e) *paragraph (d)* shall apply to any payment of any such sum—

(i) made before the 6th day of April, 1971, or

(ii) in the case of a payment to or for the benefit of a child born after the 6th day of April, 1971, and so made by virtue or in consequence of a settlement made before the 28th day of April, 1971, made in the year 1971-72;

(f) for the purposes of *paragraphs (c)* and *(d)*, references in those paragraphs to a person being at a particular time a minor shall, where that time is before the 6th day of April, 1986, be construed as references to a person who at that time was under the age of 21 years and was not or had not been married.

Recovery of tax from trustee and payment to trustee of excess tax recoupment.

[ITA67 s446; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; FA97 s146(1) and Sch9 PtI par1(29)]

797.—(1) Where by virtue of this Chapter any income tax becomes chargeable on and is paid by a settlor, such settlor shall be entitled—

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid, and

(b) for that purpose to require the Revenue Commissioners to furnish to such settlor a certificate specifying the amount of the income in respect of which such settlor has so paid tax and the amount of the tax so paid, and every certificate so furnished shall be evidence until the contrary is proved of the matters of fact stated in the certificate.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which that person would but for this Chapter have been entitled, an amount equal to the excess shall be paid by that person to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement and, where there are 2 or more such trustees or other persons, in such proportions as the circumstances may require. Pr.31 S.797

(3) Where any question arises as to the amount of any payment or as to any apportionment to be made under *subsection (2)*, that question shall be decided by the Appeal Commissioners whose decision on that question shall be final.

(4) Any income which by virtue of this Chapter is treated as income of any person shall be deemed to be the highest part of that person's income.

(5) No repayment shall be made under *paragraph 21 of Schedule 32* on account of tax paid in respect of any income which has by virtue of this Chapter been treated as income of a settlor.

798.—(1) Where by any means whatever (including indirect means or means consisting of a series of operations and whenever adopted) a trade, which at any time before the adoption of such means was carried on by any person solely or in partnership, becomes a trade carried on by one or more than one child of such person or by means of a partnership in which such person and one or more than one child of such person are partners, the following provisions shall apply: Transfer of interest in trade to children. [ITA67 s448(1), (3) and (4)]

- (a) such means shall for the purposes of this Chapter be deemed to constitute a settlement as respects which such person shall be deemed to be the settlor;
- (b) the profits or gains arising from the trade after the adoption of such means, in so far as they arise to one or, as the case may be, more than one child of such person shall for the purposes of this Chapter be deemed to be the same income as would have arisen to such person had such means not been adopted;
- (c) "income" where it first occurs in *section 795* shall be deemed to include those profits or gains in so far as they arise to one or more than one child of such person.

(2) The amount of the income of a person from the profits or gains of a trade deemed by virtue of *subsection (1)* to be income of another person shall, if the first-mentioned person is engaged actively in the carrying on of the trade, be the full amount of that income reduced by a sum (in *subsection (3)* referred to as "the appropriate sum") equal to the amount which would have been allowed in computing those profits or gains in respect of the first-mentioned person if that person, instead of being a person engaged in the carrying on of the trade, had been a person employed by a person or persons carrying on the trade.

(3) The appropriate sum shall be deemed to be profits or gains arising to the first-mentioned person referred to in *subsection (2)* from the exercise of an office or employment within the meaning of Schedule E.

PART 32

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION AND
SURCHARGE ON CERTAIN INCOME OF TRUSTEES

CHAPTER 1

Estates of deceased persons in course of administration

Interpretation
(Chapter 1).

[ITA67 s450;
CTA76 s140 and
Sch2 PtI par23;
FA97 s146(1) and
Sch9 PtI par1(30)]

799.—(1) (a) In this Chapter—

“administration period” has the meaning assigned to it by *section 800(1)*;

“charges on residue”, in relation to the estate of a deceased person, means the following liabilities properly payable out of the estate and interest payable in respect of those liabilities—

- (i) funeral, testamentary, and administration expenses and debts,
- (ii) general legacies, demonstrative legacies and annuities, and
- (iii) any other liabilities of the deceased person’s personal representatives as such,

but, in the case of any such liabilities which, as between persons interested under a specific disposition or in a legacy referred to in *paragraph (ii)* or in an annuity and persons interested in the residue of the estate, fall exclusively or primarily on the property that is the subject of the specific disposition or on the legacy or annuity, includes only such part (if any) of those liabilities as fall ultimately on the residue;

“foreign estate”, as regards any year of assessment, means an estate other than an Irish estate;

“Irish estate”, as regards any year of assessment, means an estate the income of which comprises only income which either has borne Irish income tax by deduction or in respect of which the personal representatives are directly assessable to Irish income tax, other than an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from Irish income tax by reference to the fact that they are not resident or not ordinarily resident in the State;

“personal representative”, in relation to the estate of a deceased person, means his or her personal representative within the meaning of *section 3(1)* of the *Succession Act, 1965*, and includes any person who takes possession of or intermeddles with the property of the deceased and also includes any person having, in relation to the deceased, under the law of another country any functions corresponding to the functions for administration purposes under the law of the State of a personal representative within the

meaning of that section, and references to personal representatives as such shall be construed as references to personal representatives in their capacity as having such functions; Pr.32 S.799

“specific disposition” means a specific devise or bequest made by a testator, and includes any disposition having, whether by virtue of any enactment or otherwise, under the law of the State or of another country an effect similar to that of a specific devise or bequest under the law of the State.

(b) For the purposes of this Chapter—

(i) references to the aggregate income of the estate of a deceased person for any year of assessment shall be construed, subject to *section 439(2)*, as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(I) any such income chargeable to Irish income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year, and

(II) any such income which would have been so chargeable if it had arisen in the State to a person resident and ordinarily resident in the State, such income being computed at the full amount of that income actually arising during that year, less such deductions as would have been allowable if it had been charged to Irish income tax, but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased;

(ii) references to sums paid include references to assets transferred or appropriated by a personal representative to himself or herself and to debts set off or released;

(iii) references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself or herself is subsisting on the completion of the administration and to debts as to which an obligation to release is set off, or a right of a personal representative so to do in his or her own favour, is then subsisting;

(iv) references to amount in relation to assets referred to in *subparagraphs (ii) and (iii)* shall be construed as references to the value of those assets at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts, as references to the amount of such debts.

(2) For the purposes of this Chapter—

- (a) a person shall be deemed to have an absolute interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, if and so long as the capital of the residue or of that part of the residue, as the case may be, would if the residue had been ascertained be properly payable to the person or to another in the person's right for the person's benefit, or is properly so payable, whether directly by the personal representatives, or indirectly through a trustee or other person;
- (b) a person shall be deemed to have a limited interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, during any period (other than a period during which the person has an absolute interest in the residue or in that part of the residue, as the case may be) where the income of the residue or of that part of the residue, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to the person, or to another person in the person's right, for the person's benefit, whether directly by the personal representatives, or indirectly through a trustee or other person;
- (c) real estate included (either by a specific or a general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of the testator's estate and not to be the subject of a specific disposition.

(3) Where different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Chapter shall apply in relation to each such part with the substitution—

- (a) for references to the estate or references to that part of the estate, and
- (b) for references to the personal representatives of the deceased as such or references to those personal representatives in their capacity as having the functions referred to in the definition of "personal representative" in relation to that part of the estate.

Limited interest in residue.

[ITA67 s451;
F(MP)A68 s3(5)
and Sch Pt IV;
FA74 s11 and Sch1
PtII]

800.—(1) This section shall apply in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of the estate of the deceased person (in this Chapter referred to as "the administration period") or during a part of that period, has a limited interest in the residue of that estate or in a part of the residue of that estate.

(2) When any sum has been paid during the administration period in respect of that limited interest, the amount of that sum shall, subject to *subsection* (3), be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which that interest was subsisting.

(3) On the completion of the administration of the estate—

- (a) the aggregate amount of all sums paid before or payable on the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part of that period during which that person had that interest, as the case may be, and to have been paid to that person as it accrued due,
- (b) the amount deemed to have been paid to that person by virtue of *paragraph (a)* in any year of assessment shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for that year, and
- (c) where the amount deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to that person as income for that year by virtue of *subsection (2)*, such adjustments shall be made as are provided in *section 804*.
- (4) Any amount deemed to have been paid to that person as income for any year by virtue of this section shall—
- (a) in the case of an Irish estate, be deemed to be income of such an amount as would after deduction of income tax at the standard rate of tax for that year be equal to the amount deemed to have been so paid and to be income that has borne income tax at that standard rate of tax;
- (b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to income tax under Case III of Schedule D as if it were income arising from securities in a place outside the State.
- (5) Where—
- (a) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to that person as income in respect of an interest in a foreign estate, and
- (b) any part of the aggregate income of that estate for that year has borne Irish income tax by deduction or otherwise,

the income in respect of which that person has been so charged to tax shall on proof of the facts be reduced by an amount bearing the same proportion thereto as the part of that aggregate income which has borne Irish income tax bears to the whole of that aggregate income.

(6) Where relief has been given in accordance with *subsection (5)*, such part of the amount in respect of which the person has been charged to income tax as corresponds to the proportion referred to in that subsection shall for the purpose of computing the person's total income be deemed to represent income of such an amount as would after deduction of income tax at the standard rate of tax be equal to that part of the amount charged.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.32
Absolute interest in
residue.

[ITA67 s452;
CTA76 s140(1) and
Sch2 PtI par24]

801.—(1) This section shall apply in relation to a person who during the administration period or a part of that period has an absolute interest in the residue of the estate of a deceased person or in a part of the residue of that estate.

(2) There shall be ascertained in accordance with *section 802* the amount of the residuary income of the estate for each whole year of assessment, and for each part of a year of assessment, during which—

- (a) the administration period was current, and
- (b) that person had that interest,

and the amount so ascertained in respect of any year or part of a year, or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Chapter referred to as the “residuary income” of that person for that year of assessment.

(3) When any sum has or any sums have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to *subsection (4)*, be deemed for the purposes of the Income Tax Acts to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, that person would have been treated for those purposes as having received income if—

- (a) that person had had a right to receive in each year of assessment—
 - (i) in the case of an Irish estate, that person’s residuary income for that year less income tax for that year at the standard rate of tax, or
 - (ii) in the case of a foreign estate, that person’s residuary income for that year,

and

- (b) that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

(4) In the case of an Irish estate, any amount deemed to have been paid to that person as income for any year by virtue of *subsection (3)* shall be deemed to be income of such an amount as would after deduction of income tax at the standard rate of tax for that year be equal to the amount deemed to have been so paid, and to be income which has borne income tax at the standard rate of tax.

(5) On the completion of the administration of the estate—

- (a) the amount of the residuary income of that person for any year of assessment shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for that year and, in the case of an Irish estate, shall be deemed to have borne tax by reference to the standard rate of tax, and
- (b) where the amount deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to that person as income for that year by virtue of *subsection*

(3) or (4), such adjustments shall be made as are provided in section 804. Pr.32 S.801

(6) In the case of a foreign estate, any amount deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount, and shall be chargeable to income tax under Case III of Schedule D as if it were income arising from securities in a place outside the State.

(7) Where—

(a) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to that person as income in respect of an interest in a foreign estate, and

(b) any part of the aggregate income of that estate for that year has borne Irish income tax by deduction or otherwise,

the income in respect of which that person has been so charged to tax shall on proof of the facts be reduced by an amount bearing the same proportion thereto as the part of that aggregate income which has borne Irish income tax bears to the whole of that aggregate income.

(8) Where relief has been given in accordance with *subsection (7)*, such part of the amount in respect of which the person has been charged to income tax as corresponds to the proportion referred to in that subsection shall for the purpose of computing the person's total income be deemed to represent income of such an amount as would after deduction of income tax at the standard rate of tax be equal to that part of the amount charged.

(9) For the purposes of any charge to corporation tax to which this section is applied, the residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

802.—(1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—

Supplementary provisions as to absolute interest in residue.

(a) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate, and

[ITA67 s453]

(b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.

(2) (a) In this subsection, “benefits received”, in relation to an absolute interest, means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest—

(i) as regards a sum paid before the completion of the administration in the case of an Irish estate, such an amount as would, after deduction of income tax at the standard rate of tax for the year of assessment in which that sum was paid, be equal to that sum or, in the case of a foreign estate, the amount of that sum, and

(ii) as regards a sum payable on the completion of the administration in the case of an Irish estate, such an amount as would, after deduction of income tax at the standard rate of tax for the year of assessment in which the administration is completed, be equal to that sum or, in the case of a foreign estate, the amount of that sum.

(b) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, that person’s residuary income for each year shall be reduced for the purpose of *section 801* by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of that person’s residuary income.

(3) In the application of *subsection (2)* to a residue or a part of a residue in which a person, other than the person having an absolute interest at the completion of the administration, had an absolute interest at any time during the administration period, the aggregates mentioned in that subsection shall be computed in relation to those interests taken together, and the residuary income of that other person shall also be subject to reduction under that subsection.

Special provisions
as to certain
interests.

[ITA67 s454]

803.—(1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute interest or a limited interest in the residue of that estate or in part of the residue of that estate, the personal representatives shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Chapter shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.

(2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part of the residue of that estate, sums paid during that period in respect of the residue or of that part of the residue, as the case may be, shall be treated for the purpose of this Chapter as having been paid in respect of the interest of the person who first had an absolute interest in that residue or that part of that residue up to the amount of—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) in the case of an Irish estate, the aggregate for all years of that person's residuary income less income tax at the standard rate of tax, or
- (b) in the case of a foreign estate, the aggregate for all years of that person's residuary income,

and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest in that residue or that part of that residue, as the case may be, and so on.

(3) Where on the exercise of a discretion any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part of the administration period) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another person in that person's right, for that person's benefit, whether directly by the personal representatives or indirectly through a trustee or other person—

- (a) the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which it was paid, and
- (b) *subsections (4) to (6) of section 800* shall apply in relation to an amount deemed to have been paid as income by virtue of *paragraph (a)*.

804.—(1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Chapter to have been paid to any person as income for any year of assessment and—

Adjustments and information.
[ITA67 s455]

- (a) that amount is greater than the amount previously deemed to have been paid to that person as income for that year by virtue of this Chapter, or
- (b) no amount has previously been so deemed to have been paid to that person as income for that year,

an assessment or additional assessment may be made on that person for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which that person may be entitled shall be allowed accordingly.

(2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Chapter to have been paid to any person as income for any year of assessment and that amount is less than the amount that has previously been so deemed to have been paid to that person, then—

- (a) if an assessment has already been made on that person for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Chapter which take effect on the completion of the administration, and any tax overpaid shall be repaid, and
- (b) if—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.32 S.804

- (i) any relief has been allowed to that person by reference to the amount previously deemed by virtue of this Chapter to have been paid to that person as income for that year, and
- (ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to that person as income for that year,

the relief so given in excess may, if not otherwise made good, be charged under Case IV of Schedule D and recovered from that person accordingly.

(3) Notwithstanding anything in the Income Tax Acts, the time within which—

- (a) an assessment or additional assessment may be made for the purposes of this Chapter,
- (b) an assessment may be adjusted for those purposes, or
- (c) a claim for relief may be made by virtue of this Chapter,

shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.

(4) The Revenue Commissioners may by notice in writing require any person, being or having been a personal representative of a deceased person, or having or having had an absolute interest or a limited interest in the residue of the estate of a deceased person or in a part of the residue of that estate, to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.

CHAPTER 2

Surcharge on certain income of trustees

Surcharge on certain income of trustees.

[FA76 s13; FA90 s8]

805.—(1) (a) In this section—

“personal representative” has the same meaning as in *section 799(1)*;

“trustees” does not include personal representatives, but where personal representatives, on or before the completion of the administration of the estate of a deceased person, pay to trustees any sum representing income which, if the personal representatives were trustees, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the standard rate.

(b) This subsection shall be construed together with *Chapter 1* of this Part.

(2) This section shall apply to income arising to trustees in any year of assessment in so far as it—

- (a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person, whether or not the trustees have power to accumulate the income,
 - (b) is neither, before being distributed, the income of any person other than the trustees nor treated for any purpose of the Income Tax Acts as the income of a settlor,
 - (c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of *section 770*,
 - (d) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income, or would be so chargeable but for any express provisions of the trust, and
 - (e) is not distributed to one or more persons within that year of assessment or within 18 months after the end of that year of assessment in such circumstances that the income distributed is to be treated for the purposes of the Income Tax Acts as the income of the person or persons to whom it is distributed.
- (3) (a) Income to which this section applies shall, in addition to being chargeable to income tax at the standard rate for the year of assessment for which it is so chargeable, be charged to an additional duty of income tax (in this section referred to as a “surcharge”) at the rate of 20 per cent.
- (b) A surcharge to be made on trustees under this section in respect of income arising in a year of assessment (in this subsection referred to as “the first year of assessment”) shall—
- (i) be charged on the trustees for the year of assessment in which a period of 18 months beginning immediately after the end of the first year of assessment ends, and
 - (ii) be treated as income tax chargeable for the year of assessment for which it is so charged.
- (c) Subject to *subsection (4)*, the Income Tax Acts shall apply in relation to a surcharge made under this section as they apply to income tax charged otherwise than by virtue of this section.
- (4) Where income in respect of which a surcharge is made is distributed, no relief from or repayment in respect of the surcharge shall be allowed or made to the person to whom the income is distributed.
- (5) A notice given to trustees under any provision specified in *column 1 or 2 of Schedule 29* may require that a return of the income arising to them shall include particulars of the manner in which the income has been applied, including particulars as to the exercise by them of any discretion and of the persons in whose favour that discretion has been so exercised.

PART 33

ANTI-AVOIDANCE

CHAPTER 1

Transfer of assets abroad

Charge to income tax on transfer of assets abroad.

[FA74 s57 preamble and (1) to (7) and (8)(a), (b), (c), (e) and (f)]

806.—(1) In this section—

“assets” includes property or rights of any kind;

“associated operation”, in relation to any transfer, means an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets;

“benefit” includes a payment of any kind;

“company” means any body corporate or unincorporated association;

“transfer”, in relation to rights, includes the creation of those rights.

(2) For the purposes of this section—

- (a) any body corporate incorporated outside the State shall be treated as if it were resident out of the State whether it is so resident or not,
- (b) a reference to an individual shall be deemed to include the husband or wife of the individual, and
- (c) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(3) This section shall apply for the purpose of preventing the avoidance by individuals ordinarily resident in the State of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the State.

(4) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has power to enjoy (within the meaning of this section), whether forthwith or in the future, any income of a person resident or domiciled out of the State which, if it were income of that individual received by that individual in the State, would be chargeable to tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be income of that individual for the purposes of the Income Tax Acts.

(5) (a) In this subsection, “capital sum” means—

- (i) any sum paid or payable by means of loan or repayment of a loan, and

(ii) any other sum paid or payable otherwise than as income, being a sum not paid or payable for full consideration in money or money's worth. Pr.33 S.806

(b) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the State shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be the income of that individual for the purposes of the Income Tax Acts.

(6) An individual shall for the purposes of this section be deemed to have power to enjoy income of a person resident or domiciled out of the State where—

(a) the income is in fact so dealt with by any person as to be calculated, at some point of time and whether in the form of income or not, to enure for the benefit of the individual,

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by the individual or for the individual's benefit,

(c) the individual receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income,

(d) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself or herself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or may in the event of the exercise of any power vested in any other person become entitled to the beneficial enjoyment of the income, or

(e) the individual is able, in any manner whatever and whether directly or indirectly, to control the application of the income.

(7) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual (whether or not the individual has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(8) *Subsections (4) and (5)* shall not apply where the individual shows in writing or otherwise to the satisfaction of the Revenue Commissioners—

PT.33 S.806

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them was effected, or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(9) In any case where a person is aggrieved by a decision taken by the Revenue Commissioners in exercise of their functions under *subsection (8)*, the person shall be entitled to appeal to the Appeal Commissioners against the decision of the Revenue Commissioners and the Appeal Commissioners shall hear and determine the appeal as if it were an appeal against an assessment to 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.

Deductions and reliefs in relation to income chargeable to income tax under *section 806*.

[FA74 s58]

807.—(1) Income tax chargeable by virtue of *section 806* shall be charged under Case IV of Schedule D.

(2) In computing the liability to income tax of an individual chargeable by virtue of *section 806*, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be income of the individual by virtue of that section had actually been received by the individual.

(3) Where an individual has been charged to income tax on any income deemed to be income of the individual by virtue of *section 806* and that income is subsequently received by the individual, it shall be deemed not to form part of the individual's income again for the purposes of the Income Tax Acts.

(4) In any case where an individual has for the purposes of *section 806* power to enjoy income of a person abroad by reason of receiving any such benefit referred to in *subsection (6)(c)* of that section, the individual shall be chargeable to income tax by virtue of that section under Case IV of Schedule D for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit, except in so far as it is shown that the benefit derives directly or indirectly from income on which the individual has already been charged to income tax for that or a previous year of assessment.

Power to obtain information.

[FA74 s59(1) to (5); FA77 s3; FA97 s146(1) and Sch9 PtI par8(2)]

808.—(1) In this section, “settlement” and “settlor” have the same meanings respectively as in *section 10*.

(2) The Revenue Commissioners or such officer as the Revenue Commissioners may appoint may by notice in writing require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of *sections 806, 807 and 809*.

(3) The particulars which a person shall furnish under this section, if required by such a notice to do so, shall include particulars as to—

(a) transactions with respect to which the person is or was acting on behalf of others;

(b) transactions which in the opinion of the Revenue Commissioners, or of such officer as the Revenue Commissioners may appoint, it is proper that they should

investigate for the purposes of *sections 806, 807 and 809*, Pr.33 S.808 notwithstanding that in the opinion of the person to whom the notice is given no liability to tax arises under those sections;

- (c) whether the person to whom the notice is given has taken or is taking any (and if so what) part in any (and if so what) transactions of a description specified in the notice.

(4) Notwithstanding anything in *subsection (3)*, a solicitor shall not be deemed for the purposes of *paragraph (c)* of that subsection to have taken part in a transaction by reason only that the solicitor has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by the solicitor on behalf of a client, be compellable under this section, except with the consent of the client, to do more than state that the solicitor is or was acting on behalf of a client, and specify the name and address of the client and also—

- (a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the State to or by any body corporate mentioned in *subsection (5)*, or in connection with any associated operation in relation to any such transfer, to specify the names and addresses of the transferor and the transferee or of the persons concerned in the associated operation, as the case may be;
- (b) in the case of anything done by the solicitor in connection with the formation or management of any body corporate mentioned in *subsection (5)*, to specify the name and address of the body corporate;
- (c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled out of the State, to specify the names and addresses of the settlor and of that person.

(5) The bodies corporate referred to in *subsection (4)* are bodies corporate resident or incorporated outside the State which are, or if resident in the State would be, close companies within the meaning of *sections 430 and 431*.

(6) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any body corporate mentioned in *subsection (4)(b)* or in connection with the creation, or with the execution of the trusts, of any settlement mentioned in *subsection (4)(c)*.

809.—Where any income of any person is by virtue of the Income Tax Acts, and in particular, but without prejudice to the generality of the foregoing, by virtue of *section 806*, to be deemed to be income of any other person, that income shall not be exempt from tax either— Saver. [FA74 s60]

- (a) as being derived from any stock or other security to which *section 43, 47, 49 or 50* applies, or

PT.33 S.809

(b) by virtue of *section 35* or *63*,

by reason of the first-mentioned person not being resident, or not being ordinarily resident, or being neither domiciled nor ordinarily resident, in the State.

Application of
Income Tax Acts.

[FA74 s61]

810.—The provisions of the Income Tax Acts relating to the charge, assessment, collection and recovery of tax, to appeals against assessments and to cases to be stated for the opinion of the High Court shall apply to income tax chargeable by virtue of *section 806* subject to any necessary modifications.

CHAPTER 2

Miscellaneous

Transactions to
avoid liability to
tax.

[FA89 s86]

811.—(1) (a) In this section—

“the Acts” means—

- (i) the Tax Acts,
 - (ii) the Capital Gains Tax Acts,
 - (iii) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
 - (iv) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
 - (v) Part VI of the Finance Act, 1983, and the enactments amending or extending that Part, and
 - (vi) the statutes relating to stamp duty,
- and any instruments made thereunder;

“business” means any trade, profession or vocation;

“notice of opinion” means a notice given by the Revenue Commissioners under *subsection (6)*;

“tax” means any tax, duty, levy or charge which in accordance with the Acts is placed under the care and management of the Revenue Commissioners and any interest, penalty or other amount payable pursuant to the Acts;

“tax advantage” means—

- (i) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or
- (ii) a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person,

including any potential or prospective amount so refundable or payable, Pr.33 S.811

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

“tax avoidance transaction” has the meaning assigned to it by *subsection (2)*;

“tax consequences”, in relation to a tax avoidance transaction, means such adjustments and acts as may be made and done by the Revenue Commissioners pursuant to *subsection (5)* in order to withdraw or deny the tax advantage resulting from the tax avoidance transaction;

“transaction” means—

- (i) any transaction, action, course of action, course of conduct, scheme, plan or proposal,
- (ii) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and
- (iii) any series of or combination of the circumstances referred to in *paragraphs (i)* and *(ii)*,

whether entered into or arranged by one person or by 2 or more persons—

- (I) whether acting in concert or not,
- (II) whether or not entered into or arranged wholly or partly outside the State, or
- (III) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions.

(b) In *subsections (2)* and *(3)*, for the purposes of the hearing or rehearing under *subsection (8)* of an appeal made under *subsection (7)* or for the purposes of the determination of a question of law arising on the statement of a case for the opinion of the High Court, the references to the Revenue Commissioners shall, subject to any necessary modifications, be construed as references to the Appeal Commissioners or to a judge of the Circuit Court or, to the extent necessary, to a judge of the High Court, as appropriate.

(2) For the purposes of this section and subject to *subsection (3)*, a transaction shall be a “tax avoidance transaction” if having regard to any one or more of the following—

- (a) the results of the transaction,

- (b) its use as a means of achieving those results, and
- (c) any other means by which the results or any part of the results could have been achieved,

the Revenue Commissioners form the opinion that—

- (i) the transaction gives rise to, or but for this section would give rise to, a tax advantage, and
- (ii) the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage,

and references in this section to the Revenue Commissioners forming an opinion that a transaction is a tax avoidance transaction shall be construed as references to the Revenue Commissioners forming an opinion with regard to the transaction in accordance with this subsection.

- (3) (a) Without prejudice to the generality of *subsection (2)*, in forming an opinion in accordance with that subsection and *subsection (4)* as to whether or not a transaction is a tax avoidance transaction, the Revenue Commissioners shall not regard the transaction as being a tax avoidance transaction if they are satisfied that—

- (i) notwithstanding that the purpose or purposes of the transaction could have been achieved by some other transaction which would have given rise to a greater amount of tax being payable by the person, the transaction—

- (I) was undertaken or arranged by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities of a business carried on by the person, and

- (II) was not undertaken or arranged primarily to give rise to a tax advantage,

or

- (ii) the transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of the Acts and that the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.

- (b) In forming an opinion referred to in *paragraph (a)* in relation to any transaction, the Revenue Commissioners shall have regard to—

- (i) the form of that transaction,
- (ii) the substance of that transaction,
- (iii) the substance of any other transaction or transactions which that transaction may reasonably be regarded as being directly or indirectly related to or connected with, and

- (iv) the final outcome and result of that transaction and any combination of those other transactions which are so related or connected. Pr.33 S.811

(4) Subject to this section, the Revenue Commissioners as respects any transaction may at any time—

- (a) form the opinion that the transaction is a tax avoidance transaction,
- (b) calculate the tax advantage which they consider arises, or which but for this section would arise, from the transaction,
- (c) determine the tax consequences which they consider would arise in respect of the transaction if their opinion were to become final and conclusive in accordance with *subsection (5)(e)*, and
- (d) calculate the amount of any relief from double taxation which they would propose to give to any person in accordance with *subsection (5)(c)*.

(5) (a) Where the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive, they may, notwithstanding any other provision of the Acts, make all such adjustments and do all such acts as are just and reasonable (in so far as those adjustments and acts have been specified or described in a notice of opinion given under *subsection (6)* and subject to the manner in which any appeal made under *subsection (7)* against any matter specified or described in the notice of opinion has been finally determined, including any adjustments and acts not so specified or described in the notice of opinion but which form part of a final determination of any such appeal) in order that the tax advantage resulting from a tax avoidance transaction shall be withdrawn from or denied to any person concerned.

(b) Subject to but without prejudice to the generality of *paragraph (a)*, the Revenue Commissioners may—

- (i) allow or disallow in whole or in part any deduction or other amount which is relevant in computing tax payable, or any part of such deduction or other amount,
- (ii) allocate or deny to any person any deduction, loss, abatement, relief, allowance, exemption, income or other amount, or any part thereof, or
- (iii) recharacterize for tax purposes the nature of any payment or other amount.

(c) Where the Revenue Commissioners make any adjustment or do any act for the purposes of *paragraph (a)*, they shall afford relief from any double taxation which they consider would but for this paragraph arise by virtue of any adjustment made or act done by them pursuant to *paragraphs (a)* and *(b)*.

(d) Notwithstanding any other provision of the Acts, where—

- (i) pursuant to *subsection (4)(c)*, the Revenue Commissioners determine the tax consequences which they consider would arise in respect of a transaction if their opinion that the transaction is a tax avoidance transaction were to become final and conclusive, and
- (ii) pursuant to that determination, they specify or describe in a notice of opinion any adjustment or act which they consider would be, or be part of, those tax consequences,

then, in so far as any right of appeal lay under *subsection (7)* against any such adjustment or act so specified or described, no right or further right of appeal shall lie under the Acts against that adjustment or act when it is made or done in accordance with this subsection, or against any adjustment or act so made or done that is not so specified or described in the notice of opinion but which forms part of the final determination of any appeal made under *subsection (7)* against any matter specified or described in the notice of opinion.

- (e) For the purposes of this subsection, an opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction shall be final and conclusive—
 - (i) if within the time limited no appeal is made under *subsection (7)* against any matter or matters specified or described in a notice or notices of opinion given pursuant to that opinion, or
 - (ii) as and when all appeals made under *subsection (7)* against any such matter or matters have been finally determined and none of the appeals has been so determined by an order directing that the opinion of the Revenue Commissioners to the effect that the transaction is a tax avoidance transaction is void.
- (6) (a) Where pursuant to *subsections (2) and (4)* the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction, they shall immediately on forming such an opinion give notice in writing of the opinion to any person from whom a tax advantage would be withdrawn or to whom a tax advantage would be denied or to whom relief from double taxation would be given if the opinion became final and conclusive, and the notice shall specify or describe—
 - (i) the transaction which in the opinion of the Revenue Commissioners is a tax avoidance transaction,
 - (ii) the tax advantage or part of the tax advantage, calculated by the Revenue Commissioners which would be withdrawn from or denied to the person to whom the notice is given,
 - (iii) the tax consequences of the transaction determined by the Revenue Commissioners in so far as they would refer to the person, and
 - (iv) the amount of any relief from double taxation calculated by the Revenue Commissioners which they

would propose to give to the person in accordance with *subsection (5)(c)*. Pr.33 S.811

- (b) *Section 869* shall, with any necessary modifications, apply for the purposes of a notice given under this subsection or *subsection (10)* as if it were a notice given under the Income Tax Acts.

(7) Any person aggrieved by an opinion formed or, in so far as it refers to the person, a calculation or determination made by the Revenue Commissioners pursuant to *subsection (4)* may, by notice in writing given to the Revenue Commissioners within 30 days of the date of the notice of opinion, appeal to the Appeal Commissioners on the grounds and, notwithstanding any other provision of the Acts, only on the grounds that, having regard to all of the circumstances, including any fact or matter which was not known to the Revenue Commissioners when they formed their opinion or made their calculation or determination, and to this section—

- (a) the transaction specified or described in the notice of opinion is not a tax avoidance transaction,
- (b) the amount of the tax advantage or the part of the tax advantage, specified or described in the notice of opinion which would be withdrawn from or denied to the person is incorrect,
- (c) the tax consequences specified or described in the notice of opinion, or such part of those consequences as shall be specified or described by the appellant in the notice of appeal, would not be just and reasonable in order to withdraw or to deny the tax advantage or part of the tax advantage specified or described in the notice of opinion, or
- (d) the amount of relief from double taxation which the Revenue Commissioners propose to give to the person is insufficient or incorrect.

(8) The Appeal Commissioners shall hear and determine an appeal made to them under *subsection (7)* as if it were an appeal against an assessment to income tax and, subject to *subsection (9)*, 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; but on the hearing or rehearing of the appeal—

- (a) it shall not be lawful to enquire into any grounds of appeal other than those specified in *subsection (7)*, and
 - (b) at the request of the appellants, 2 or more appeals made by 2 or more persons pursuant to the same opinion, calculation or determination formed or made by the Revenue Commissioners pursuant to *subsection (4)* may be heard or reheard together.
- (9) (a) On the hearing of an appeal made under *subsection (7)*, the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under this section, and—
- (i) in relation to an appeal made on the grounds referred to in *subsection (7)(a)*, the Appeal Commissioners

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.33 S.811

shall determine the appeal, in so far as it is made on those grounds, by ordering, if they or a majority of them—

- (I) consider that the transaction specified or described in the notice of opinion or any part of that transaction is a tax avoidance transaction, that the opinion or the opinion in so far as it relates to that part is to stand,
 - (II) consider that, subject to such amendment or addition thereto as the Appeal Commissioners or the majority of them deem necessary and as they shall specify or describe, the transaction, or any part of it, specified or described in the notice of opinion, is a tax avoidance transaction, that the transaction or that part of it be so amended or added to and that, subject to the amendment or addition, the opinion or the opinion in so far as it relates to that part is to stand, or
 - (III) do not so consider as referred to in *clause (I)* or *(II)*, that the opinion is void,
- (ii) in relation to an appeal made on the grounds referred to in *subsection (7)(b)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the tax advantage or the part of the tax advantage specified or described in the notice of opinion be increased or reduced by such amount as they shall direct or that it shall stand,
 - (iii) in relation to an appeal made on the grounds referred to in *subsection (7)(c)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the tax consequences specified or described in the notice of opinion shall be altered or added to in such manner as they shall direct or that they shall stand, or
 - (iv) in relation to an appeal made on the grounds referred to in *subsection (7)(d)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the relief from double taxation specified or described in the notice of opinion shall be increased or reduced by such amount as they shall direct or that it shall stand.
- (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.

(10) The Revenue Commissioners may at any time amend, add to or withdraw any matter specified or described in a notice of opinion by giving notice (in this subsection referred to as “the notice of amendment”) in writing of the amendment, addition or withdrawal to each and every person affected thereby, in so far as the person is so affected, and *subsections (1) to (9)* shall apply in all respects as if the notice of amendment were a notice of opinion and any matter

specified or described in the notice of amendment were specified or described in a notice of opinion; but no such amendment, addition or withdrawal may be made so as to set aside or alter any matter which has become final and conclusive on the determination of an appeal made with regard to that matter under *subsection (7)*.

(11) Where pursuant to *subsections (2) and (4)* the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction and pursuant to that opinion notices are to be given under *subsection (6)* to 2 or more persons, any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply with respect to the giving of those notices or to the performance of any acts or the discharge of any functions authorised by this section to be performed or discharged by them or to the performance of any act or the discharge of any functions, including any act or function in relation to an appeal made under *subsection (7)*, which is directly or indirectly related to the acts or functions so authorised.

(12) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions, including the forming of an opinion, authorised by this section to be performed or discharged by the Revenue Commissioners, and references in this section to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so nominated.

(13) This section shall apply as respects any transaction where the whole or any part of the transaction is undertaken or arranged on or after the 25th day of January, 1989, and as respects any transaction undertaken or arranged wholly before that date in so far as it gives rise to, or would but for this section give rise to—

- (a) a reduction, avoidance or deferral of any charge or assessment to tax, or part thereof, where the charge or assessment arises by virtue of any other transaction carried out wholly on or after a date, or
- (b) a refund or a payment of an amount, or of an increase in an amount, of tax, or part thereof, refundable or otherwise payable to a person where that amount or increase in the amount would otherwise become first so refundable or otherwise payable to the person on a date,

which could not fall earlier than the 25th day of January, 1989.

812.—(1) In this section—

“interest” includes dividends, annuities and shares of annuities;

“securities” include stocks and shares of all descriptions.

Taxation of income deemed to arise from transfers of right to receive interest from securities.

[ITA67 s449; CTA76 s140(1) and Sch2 PtI par22]

(2) Where in any year of assessment or accounting period an owner (in this section referred to as “the owner”) of any securities sells or transfers the right to receive any particular interest payable (whether before or after such sale or transfer) in respect of those securities without selling or transferring those securities, then, and in every such case, the following provisions shall apply:

- (a) for the purposes of the Tax Acts that interest (whether it would or would not be chargeable to tax if this section had not been enacted)—
- (i) shall be deemed to be the income of the owner or, where the owner is not the beneficial owner of the securities and some other person (in this section referred to as “the beneficiary”) is beneficially entitled to the income arising from the securities, the income of the beneficiary,
 - (ii) shall be deemed to be income of the owner or the beneficiary, as the case may be, for that year of assessment or accounting period, as the case may be,
 - (iii) shall not be deemed to be income of any other person, and
 - (iv) shall, where the proceeds of the sale or transfer are chargeable to tax under Schedule C or under *Chapter 2 of Part 4*, be deemed to be equal in amount to the amount of those proceeds;
- (b) where the right to receive that particular interest is subsequently sold, transferred or otherwise realised, the proceeds of such subsequent sale, transfer or other realisation shall not be deemed for any of the purposes of the Tax Acts to be income of the person by or on whose behalf such subsequent sale, transfer or other realisation is made or effected;
- (c) where the securities are of such character that the interest payable in respect of the securities may be paid without deduction of tax, then, unless the owner or beneficiary, as the case may be, shows that the proceeds of any sale or other realisation of the right to receive the interest, which is deemed to be income of the owner or of the beneficiary, as the case may be, by virtue of this section, have been charged to tax under Schedule C or under *Chapter 2 of Part 4*, the owner or beneficiary, as the case may be, shall be chargeable to tax under Case IV of Schedule D in respect of that interest, but shall be entitled to credit for any tax which that interest is shown to have borne;
- (d) where in any case to which *paragraph (c)* applies the computation of the tax in respect of the interest which is made chargeable under Case IV of Schedule D by that paragraph would, if that interest had been chargeable under Case III of Schedule D, have been made by reference to the amount received in the State, the tax chargeable pursuant to *paragraph (c)* shall be computed on the full amount of the sums received in the State in the year of assessment or in any subsequent year of assessment in which the owner remains the owner of the securities;
- (e) nothing in this subsection shall affect any provision of the Tax Acts authorising or requiring the deduction of tax from any interest which is deemed by virtue of this subsection to be income of the owner or of the beneficiary or from the proceeds of any subsequent sale, transfer or other realisation mentioned in this subsection of the right to receive that particular interest.

(3) In relation to corporation tax—

(a) *subsection (2)(c)* shall apply (subject to the provisions of the Corporation Tax Acts relating to distributions) to any interest, whether or not the securities are of such character that the interest may be paid without deduction of tax, and as if “, but shall be entitled to credit for any tax which that interest is shown to have borne” were deleted, and

(b) *subsection (2)(d)* shall not apply.

(4) The Revenue Commissioners may by notice in writing require any person to furnish them, within such time (not being less than 28 days from the service of the notice) as shall be specified in the notice, with such particulars in relation to all securities of which such person was the owner at any time during the period specified in the notice as the Revenue Commissioners may consider to be necessary for the purposes of this section or for the purpose of discovering whether—

(a) tax has been borne in respect of the interest payable in respect of those securities, or

(b) the proceeds of any sale, transfer or other realisation of the right to receive the interest in respect of those securities has been charged to tax under Schedule C or under *Chapter 2 of Part 4*.

813.—(1) This section shall apply as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is loaned or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

Taxation of transactions associated with loans or credit.

[FA74 s41(1) to (6); CTA76 s140(1) and Sch2 PtI par45 and s164 and Sch3 PtII]

(2) *Subsection (1)* shall apply whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

(3) Where the transaction provides for the payment of any annuity or other annual payment, not being interest but being a payment chargeable to tax under Schedule D, the payment shall be treated for the purposes of the Tax Acts as if it were a payment of annual interest.

(4) Where the transaction is one by which an owner of any securities or other property carrying a right to income (in this subsection referred to as “the owner”) agrees to sell or transfer the property, and by the same or any collateral agreement—

(a) the purchaser or transferee (in this subsection referred to as “the buyer”) or a person connected with the buyer agrees to sell or transfer at a later date the same or any other property to the owner or a person connected with the owner, or

(b) the owner or a person connected with the owner acquires an option, which the owner or the person connected with the owner subsequently exercises, to buy or acquire the

same or any other property from the buyer or a person connected with the buyer,

then, without prejudice to the liability of any other person, the owner shall be chargeable to tax under Case IV of Schedule D on an amount equal to any income which arises from the first-mentioned property at any time before the repayment of the loan or the termination of the credit.

(5) Where under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property), then, without prejudice to the liability of any other person, the first-mentioned person shall be chargeable to tax under Case IV of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.

(6) Where credit is given for the purchase price of any property and the rights attaching to the property are such that during the subsistence of the debt the purchaser's rights to income from the property are suspended or restricted, the purchaser shall be treated for the purposes of *subsection (5)* as having surrendered a right to income of an amount equivalent to the income which the purchaser has in effect foregone by obtaining the credit.

(7) The amount of any income payable subject to deduction of tax at the standard rate shall be taken for the purposes of *subsection (5)* as the amount before deduction of that tax.

Taxation of income deemed to arise from transactions in certificates of deposit and assignable deposits.

[FA74 s55; CTA76 s140(1) and Sch2 PtI par47; FA77 s42 and Sch1 PtIV par5]

814.—(1) In this section—

“assignable deposit” means a deposit of money in any currency, which has been deposited with any person, whether it is to be repaid with or without interest and which at the direction of the depositor may be assigned with or without interest to another person;

“certificate of deposit” means a document relating to money in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable.

(2) This section shall apply to any right—

- (a) to receive from any person an amount of money, with or without interest, which is stated in a certificate of deposit issued to the person who has deposited the money or to any other person, or
- (b) to receive from any person an amount of money, with or without interest, being a right arising from an assignable deposit which may be assigned or transferred to another person by the person who has deposited the money or by any person who has acquired the right to do so.

(3) Where after the 3rd day of April, 1974, a person acquires a right to which this section applies, any gain arising to the person from the disposal of that right or, except in so far as it is a right to receive interest, from its exercise shall, if not to be taken into account as a trading receipt, be deemed for the purposes of the Tax Acts to

be annual profits or gains chargeable to tax under Case IV of Schedule D and shall be charged to tax accordingly. Pr.33 S.814

(4) Where on or before the 3rd day of April, 1974, a person acquired a right to which this section applies and disposes or disposed of, or exercises or exercised, the right after that date, so much of any gain arising to the person from that disposal, or, except in so far as it is a right to receive interest, from that exercise, as bears to the total amount of the gain the same proportion as the number of days from the 3rd day of April, 1974, to the date of the disposal or exercise bears to the total number of days from the date of the acquisition to the date of the disposal or exercise, shall, if not to be taken into account as a trading receipt, be deemed for the purposes of the Tax Acts to be annual profits or gains chargeable to tax under Case IV of Schedule D and shall be charged to tax accordingly.

(5) Where a person sustains a loss in a transaction which if profits had arisen from it would be chargeable to tax by virtue of *subsection (3) or (4)*, then, if the person is chargeable to tax under Schedule C or D 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 person may claim to set off the amount of the loss under *section 383 or 399*, as the case may be.

(6) For the purposes of this section, profits or gains shall not be treated as falling to be taken into account as a trading receipt by reason only that they are included in the computation required by *section 707*.

815.—(1) In this section—

“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 person who issued them, to the proceeds of the redemption;

“securities” includes—

- (a) assets which are not chargeable assets for the purposes of capital gains tax by virtue of *section 607*, and
- (b) stocks, bonds and obligations of any government, municipal corporation, company or other body corporate, whether creating or evidencing a charge on assets or not,

but does not include shares (within the meaning of the Companies Act, 1963) of a company (within the meaning of that Act) or similar body.

(2) (a) Subject to *paragraphs (b) to (d)* and *subsection (3)*, where the owner of a security (in this subsection referred to as “the owner”) sells or transfers, or causes or authorises to be sold or transferred, the security and where any interest payable in respect of the security is receivable otherwise than by the owner, then, for the purposes of this section—

- (i) interest payable in respect of the security shall be deemed for the purposes of the Tax Acts to have accrued on a day to day basis from the date on which the owner acquired the security, and

Taxation of income deemed to arise on certain sales of securities.

[FA84 s29(1) to (3)(a) and (4) to (5); FA91 s27; FA93 s21; FA94 s26]

(ii) the owner shall be chargeable under Case IV of Schedule D on interest so deemed to have accrued from that date up to the date of the contract for sale or transfer of the security or the date of payment of the consideration in respect of the sale or transfer, whichever is the later.

(b) Where during the owner's period of ownership of the security the owner has received interest in respect of the security in respect of which the owner is chargeable to tax under any other provision of the Tax Acts, the amount of interest on which the owner is chargeable under this section shall be reduced by the amount in respect of which the owner is so chargeable under that other provision.

(c) Where under the terms of the sale or transfer of the security or an associated agreement, arrangement, understanding, promise or undertaking, whether express or implied, the owner—

(i) agrees to buy back or reacquire the security, or

(ii) acquires an option which the owner subsequently exercises to buy back or reacquire the security,

the charge to tax imposed under this section shall be based on the interest deemed to have accrued up to the next date after that sale or transfer on which interest is payable in respect of the security.

(d) Where the owner subsequently resells or retransfers, or causes or authorises to be resold or retransferred, the security, any further charge to tax under this section in respect of that subsequent resale or retransfer shall be based on interest deemed to have accrued from a date not earlier than that next payment date.

(3) This section shall not apply—

(a) where the security has been held by the same owner for a continuous period of at least 2 years immediately before the date of such contract for sale or transfer or the date of such payment of consideration, whichever is the later, as is referred to in *subsection (2)(a)*, the personal representatives of a deceased person whose estate is in the course of administration and the deceased person being regarded for the purposes of this paragraph as being the same owner,

(b) where the owner is a person carrying on a trade which consists wholly or partly of dealing in securities, the profits of which are chargeable to income tax or corporation tax under Case I of Schedule D for the year of assessment or, as the case may be, the accounting period in respect of which the consideration for the sale is taken into account in computing for the purposes of assessment to income tax or corporation tax for that year or accounting period the profits of the trade,

(c) where—

(i) the owner is an undertaking for collective investment Pr.33 S.815
(within the meaning of *section 738*), and

(ii) any gain or loss accruing to the owner on the sale or transfer is a chargeable gain or an allowable loss, as the case may be,

(d) where the sale or transfer is a sale or transfer by a wife to her husband at a time when she is treated as living with him for income tax purposes as provided in *section 1015*, or a sale or transfer by a husband to a wife at such time, the husband and the wife being regarded for the purposes of *paragraph (a)*, in the case of such a transaction or in the case of a sale or transfer by the husband or the wife to any other person after such a transaction or transactions, as being the same owner, or

(e) where the security is a security the interest on which is treated as a distribution for the purposes of the Corporation Tax Acts.

(4) The reference in *subsection (2)(c)* to buying back or reacquiring the security shall be deemed to include references to buying or acquiring a similar security, and securities shall be so deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) (a) For the purposes of identifying securities acquired by an owner with securities included in a sale or transfer by the owner, in so far as the securities are of the same class, securities acquired at a later date shall be deemed to be so included before securities acquired at an earlier date.

(b) Securities shall be regarded as being of the same class where they entitle their owners to the same rights against the same person as to capital and interest and the same remedies for the enforcement of those rights.

(6) (a) Without prejudice to any other provision of the Tax Acts requiring the disclosure of information, an inspector may by notice in writing require any person to whom *paragraph (b)* applies to furnish within the time specified in the notice such particulars as the inspector considers necessary for the purposes of this section and for the purpose of determining whether a charge to tax arises under this section.

(b) This paragraph shall apply to—

(i) a person who issues a security,

(ii) any agent of such a person, and

(iii) an owner of a security.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.33
Taxation of shares
issued in place of
cash dividends.

816.—(1) In this section—

“company” means any body corporate;

[FA74 s56(1), (2),
(3)(b) and (c) and
(4); FA93 s36]

“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 dealt in on the smaller companies market, the unlisted securities market or the exploration securities market of the Irish Stock Exchange or on any similar or corresponding market of any other stock exchange;

“share” means share in the share capital of a company and, other than in the definition of “quoted company”, includes stock and any other interest in the company.

(2) Where any person as a consequence of the exercise (whether before, on or after the declaration of a distribution of profits by a company which is not a quoted company) of an option to receive in respect of shares in the company either a sum in cash or additional share capital of the company receives such additional share capital, that person shall be deemed for the purposes of the Tax Acts to have received from the company, instead of such share capital, income equal to the sum that person would have received if that person had received the distribution in cash.

(3) Any income deemed under *subsection (2)* to have been received from a company by a person shall—

(a) if the company is resident outside the State, be treated as income from securities and possessions outside the State and be assessed and charged to tax under Case III of Schedule D;

(b) if the company is resident in the State, be treated as profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule and be assessed and charged to tax under Case IV of Schedule D.

(4) For the purposes of this section, an option to receive either a dividend in cash or additional share capital shall be conferred on a person not only where that person is required to choose one or the other, but also where that person is offered the one subject to a right, however expressed, to choose the other instead, and a person’s abandonment of, or failure to exercise, such a right shall be treated for those purposes as an exercise of the option.

Schemes to avoid
liability to tax
under Schedule F.

817.—(1) (a) In this section—

[FA89 s88(1) to (7)]

“appeal” means an appeal made in accordance with *section 933*;

“close company” has the same meaning as it has, by virtue of *sections 430* and *431*, for the purposes of the Corporation Tax Acts;

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

“new consideration” has the same meaning as in Pr.33 S.817 section 135;

“shares” includes loan stock, debentures and any interest or rights in or over, or any option in relation to, shares, loan stock or debentures, and references to “shareholder” shall be construed accordingly.

- (b) (i) For the purposes of this section, there shall be a disposal of shares by a shareholder where the shareholder disposes of shares or is treated under the Capital Gains Tax Acts as disposing of shares, and references to a disposal of shares shall include references to a part disposal of shares within the meaning of those Acts.
- (ii) Where under any arrangement between a close company (in this subparagraph referred to as “the first-mentioned company”) and its, or some of its, shareholders (being any arrangement similar to an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation) another close company issues shares to those shareholders in respect of or in proportion to (or as nearly as may be in proportion to) their holdings of shares in the first-mentioned company, but the shares in the first-mentioned company are either retained by the shareholders or are cancelled, then, those shareholders shall for the purposes of this section be treated as making a disposal or a part disposal, as the case may be, of the shares in the first-mentioned company in exchange for those shares held by them in consequence of such arrangement.
- (c) For the purposes of this section, the interest of a shareholder in a trade or business shall not be significantly reduced following a disposal of shares, or the carrying out of a scheme or arrangement of which the disposal of shares is a part, only if at any time after the disposal the percentage of—
- (i) the ordinary share capital of the close company carrying on the trade or business at such time which is beneficially owned by the shareholder at such time,
- (ii) any profits, which are available for distribution to equity holders, of the close company carrying on the trade or business at such time to which the shareholder is beneficially entitled at such time, or
- (iii) any assets, available for distribution to equity holders on a winding up, of the close company carrying on the trade or business at such time to which the shareholder would be beneficially entitled at such time on a winding up of the close company,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.33 S.817

is not significantly less than the percentage of that ordinary share capital or those profits or assets, as the case may be, of the close company carrying on the trade or business at any time before the disposal—

(I) which the shareholder beneficially owned, or

(II) to which the shareholder was beneficially entitled,

at such time before the disposal, and *sections 413 to 415* and *section 418* shall apply, but without regard to *section 411(1)(c)* in so far as it relates to those sections, with any necessary modifications, to the determination for the purposes of this paragraph of the percentage of share capital or other amount which a shareholder beneficially owns or is beneficially entitled to, as they apply to the determination for the purposes of *Chapter 5 of Part 12* of the percentage of any such amount which a company so owns or is so entitled to.

(d) The value of any amount received in money's worth shall for the purposes of this section be the market value of the money's worth at the time of its receipt.

(2) This section shall apply for the purposes of counteracting any scheme or arrangement undertaken or arranged by a close company, or to which the close company is a party, being a scheme or arrangement the purpose of which, or one of the purposes of which, is to secure that any shareholder in the close company avoids or reduces a charge or assessment to income tax under Schedule F by converting into a capital receipt of the shareholder any amount which would otherwise be available for distribution by the close company to the shareholder by means of a dividend.

(3) Subject to *subsection (7)*, this section shall apply to a disposal of shares in a close company by a shareholder if, following the disposal or the carrying out of a scheme or arrangement of which the disposal is a part, the interest of the shareholder in any trade or business (in this section referred to as “the specified business”) which was carried on by the close company at the time of the disposal, whether or not the specified business continues to be carried on by the close company after the disposal, is not significantly reduced.

(4) Subject to *subsection (5)* and notwithstanding *section 130(1)* or any provision of the Capital Gains Tax Acts, the amount of—

(a) the proceeds in either or both money and money's worth received by a shareholder in respect of a disposal of shares in a close company to which this section applies, or

(b) if it is less than those proceeds, the excess of those proceeds over any consideration, being consideration which—

(i) is new consideration received by the close company for the issue of those shares, and

(ii) has not previously been taken into account for the purposes of this subsection,

shall be treated for the purposes of the Tax Acts as a distribution Pr.33 S.817
(within the meaning of the Corporation Tax Acts) made at the time
of the disposal by the close company to the shareholder.

(5) (a) In this subsection, “capital receipt” means, as appropriate
in the circumstances, any amount of either or both money
and money’s worth (other than shares issued by a close
company carrying on the specified business) which—

(i) is received by a shareholder in respect of a disposal
of shares or by reason of any act done pursuant to a
scheme or arrangement of which the disposal is a
part, and

(ii) apart from this section is not chargeable to income
tax in the hands of the shareholder.

(b) The amount which at any time may be treated under *sub-
section (4)* as a distribution made by a close company to
a shareholder in respect of any disposal of shares in the
close company shall not exceed the amount of the capital
receipt, or the aggregate of the amounts of the capital
receipts, which at such time has or have been received by
the shareholder—

(i) in respect of the disposal, or

(ii) by reason of any act done pursuant to a scheme or
arrangement of which the disposal is a part.

(c) A capital receipt received by a shareholder at any time on
or after the disposal shall in respect of such time result in
so much of the amount mentioned in *subsection (4)* being
treated as a distribution (which is made by the close com-
pany to the shareholder at the time of the disposal) as
does not exceed the amount of the capital receipt, or the
aggregate of the amounts of such capital receipts, which
at such time on or after the disposal has or have been
received by the shareholder.

(d) Where as a result of a shareholder having received a capi-
tal receipt a close company is treated as having made a
distribution to the shareholder under *subsection (4)*, any
provision of the Income Tax Acts in respect of interest
on unpaid tax shall apply for the purposes of tax due in
respect of that distribution as if the tax were due and
payable only from the day on which the shareholder
received the capital receipt.

(6) Notwithstanding *section 136(1)*, where a shareholder in a close
company is treated under this section as having received a distri-
bution from the close company, the shareholder shall only be entitled
to a tax credit in respect of the distribution to the extent that the
close company has paid advance corporation tax in respect of the
distribution in accordance with *Chapter 8 of Part 6*; but, where a
close company would but for the application of *section 162* have paid
an amount or an additional amount of advance corporation tax in
respect of a distribution, the close company shall be treated as having
paid such an amount or additional amount of advance corporation
tax in respect of the distribution for the purposes of this subsection.

Pt.33 S.817

(7) This section shall not apply as respects a disposal of shares in a close company by a shareholder where it is shown to the satisfaction of the inspector or, on the hearing or the rehearing of an appeal, to the satisfaction of the Appeal Commissioners or a judge of the Circuit Court, as the case may be, that the disposal was made for bona fide commercial reasons and not as part of a scheme or arrangement the purpose or one of the purposes of which was the avoidance of tax.

PART 34

PROVISIONS RELATING TO THE RESIDENCE OF INDIVIDUALS

Interpretation (*Part 34*).

[FA94 s149]

818.—In this Part other than in *section 825*—

“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts, and
- (c) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

and any instruments made thereunder;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this Part;

“present in the State”, in relation to an individual, means the personal presence of the individual in the State;

“tax” means any tax payable in accordance with any provision of the Acts.

Residence.

[FA94 s150]

819.—(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State—

- (a) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or
- (b) at any one time or several times—
 - (i) in the year of assessment, and
 - (ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days on which the individual was present in the State in the preceding year of assessment) in the aggregate amounting to 280 days or more.

(2) Notwithstanding *subsection (1)(b)*, where for a year of assessment an individual is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) the individual shall not be resident in the State for the year Pr.34 S.819
of assessment, and

(b) no account shall be taken of the period for the purposes of
the aggregate mentioned in *subsection (1)(b)*.

(3) (a) Notwithstanding *subsections (1) and (2)*, an individual—

(i) who is not resident in the State for a year of assess-
ment, and

(ii) to whom *paragraph (b)* applies,

may at any time elect to be treated as resident in the
State for that year and, where an individual so elects, the
individual shall for the purposes of the Acts be deemed
to be resident in the State for that year.

(b) This paragraph shall apply to an individual who satisfies
an authorised officer that the individual is in the State—

(i) with the intention, and

(ii) in such circumstances,

that the individual will be resident in the State for the
following year of assessment.

(4) For the purposes of this section, an individual shall be deemed
to be present in the State for a day if the individual is present in the
State at the end of the day.

820.—(1) For the purposes of the Acts, an individual shall be ordi- Ordinary residence.
narily resident in the State for a year of assessment if the individual [FA94 s151]
has been resident in the State for each of the 3 years of assessment
preceding that year.

(2) An individual ordinarily resident in the State shall not for the
purposes of the Acts cease to be ordinarily resident in the State for
a year of assessment unless the individual has not been resident in
the State in each of the 3 years of assessment preceding that year.

821.—(1) Where an individual is not resident but is ordinarily resi- Application of
dent in the State, *sections 17 and 18(1) and Chapter 1 of Part 3* shall *sections 17 and*
apply as if the individual were resident in the State; but this section *18(1) and Chapter 1*
shall not apply in respect of— of *Part 3*.

(a) the income of an individual derived from one or more of
the following— [FA94 s152; FA95
s169(1)]

(i) a trade or profession, no part of which is carried on
in the State, and

(ii) an office or employment, all the duties of which are
performed outside the State, and

(b) other income of an individual which in any year of assess-
ment does not exceed £3,000.

(2) In determining for the purposes of *subsection (1)* whether the
duties of an office or employment are performed outside the State,

Pt.34 S.821

any duties performed in the State, the performance of which is merely incidental to the performance of the duties of the office or employment outside the State, shall be treated as having been performed outside the State.

Split year residence.

[FA94 s153]

822.—(1) For the purposes of a charge to tax on any income, profits or gains from an employment, where during a year of assessment (in this section referred to as “the relevant year”)—

(a) (i) an individual who has not been resident in the State for the preceding year of assessment satisfies an authorised officer that the individual is in the State—

(I) with the intention, and

(II) in such circumstances,

that the individual will be resident in the State for the following year of assessment, or

(ii) an individual who is resident in the State satisfies an authorised officer that the individual is leaving the State, other than for a temporary purpose—

(I) with the intention, and

(II) in such circumstances,

that the individual will not be resident in the State for the following year of assessment,

and

(b) the individual would but for this section be resident in the State for the relevant year,

subsection (2) shall apply in relation to the individual.

(2) (a) An individual to whom *paragraphs (a)(i) and (b) of subsection (1)* apply shall be deemed to be resident in the State for the relevant year only from the date of his or her arrival in the State.

(b) An individual to whom *paragraphs (a)(ii) and (b) of subsection (1)* apply shall be deemed to be resident in the State for the relevant year only up to and including the date of his or her leaving the State.

(3) Where by virtue of this section an individual is resident in the State for part of a year of assessment, the Acts shall apply as if—

(a) income arising during that part of the year or, in a case to which *section 71(3)* applies, amounts received in the State during that part of the year were income arising or amounts received for a year of assessment in which the individual is resident in the State, and

(b) income arising or, as the case may be, amounts received in the remaining part of the year were income arising or amounts received in a year of assessment in which the individual is not resident in the State.

823.—(1) In this section—

Pr.34
Deduction for
income earned
outside the State.

“qualifying day”, in relation to an office or employment of an individual, means a day which is—

[FA94 s154; FA95
s170(1)]

(a) one of at least 14 consecutive days on which the individual is absent from the State for the purposes of the performance of the duties of the office or employment or of those duties and the duties of other offices or employments of the individual outside the State and which (taken as a whole) are substantially devoted to the performance of such duties, and

(b) one on which the individual concerned is absent from the State at the end of the day,

but no day shall be counted more than once as a qualifying day;

“relevant period”, in relation to a year of assessment, means a continuous period of 12 months—

(a) part only of which is comprised in the year of assessment, and

(b) no part of which is comprised in another relevant period;

“the specified amount” means an amount determined by the formula—

$$\frac{D \times E}{365}$$

where—

D is the number of qualifying days in the year of assessment concerned, and

E is all the income, profits or gains from an office, employment or pension whether chargeable under Schedule D or E (including income from offices or employments the duties of which are performed in the State) of an individual in that year.

(2) (a) Subject to *paragraph (b)*, this section shall apply to—

(i) an office of director of a company which is within the charge to corporation tax, or would be within the charge to corporation tax if it were resident in the State, and which carries on a trade or profession,

(ii) an employment other than—

(I) an employment the emoluments of which are paid out of the revenue of the State, or

(II) an employment with any board, authority or other similar body established by or under statute.

(b) This section shall not apply in any case where the income from an office or employment—

(i) is chargeable to tax in accordance with *section 71(3)*,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.34 S.823

- (ii) is subject to *section 73*, or would be so subject if the employment were deemed to be property situated where the employment is exercised, or
- (iii) is income to which *section 822* applies.

(3) Where for any year of assessment an individual resident in the State makes a claim in that behalf to and satisfies an authorised officer that—

- (a) the duties of an office or employment to which this section applies of the individual are performed wholly or partly outside the State, and
- (b) either—
 - (i) the number of days in that year which are qualifying days in relation to the office or employment (together with any days which are qualifying days in relation to any other such office or employment of the individual), or
 - (ii) the number of such days referred to in *subparagraph (i)* in a relevant period in relation to that year,amounts to at least 90 days,

there shall be deducted from the income, profits or gains from the office or employment to be assessed under Schedule D or E, as may be appropriate, an amount equal to the specified amount.

(4) Notwithstanding anything in the Acts, the income, profits or gains from an office or employment shall for the purposes of this section be deemed not to include any amounts paid in respect of expenses incurred wholly, exclusively and necessarily in the performance of the duties of the office or employment.

Appeals.
[FA94 s156]

824.—(1) An individual aggrieved by a decision of an authorised officer on any question arising under the provisions of this Chapter which require an individual to satisfy an authorised officer on such a question may, by notice in writing to that effect given to the authorised officer within 2 months from the date on which notice of the decision is given to the individual, make an application to have the question heard and determined by the Appeal Commissioners.

(2) Where an application is made under *subsection (1)*, the Appeal Commissioners shall hear and determine the question concerned in the like manner as an appeal made to them against an assessment, and the provisions of the 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.

Residence
treatment of donors
of gifts to the State.
[FA77 s53]

825.—(1) In this section—
“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts, and

(c) the Capital Acquisitions Tax Act, 1976;

Pr.34 S.825

“donor” means an individual who makes a gift to the State;

“gift” means a gift of property to the State which, on acceptance of the gift by the Government pursuant to the State Property Act, 1954, becomes vested pursuant to that Act in a State authority within the meaning of that Act;

“Irish tax” means any tax imposed by the Acts;

“property” includes interests and rights of any description;

“relevant date”, in relation to an individual (being a donor or the spouse of a donor), means the date (not being earlier than the 1st day of September, 1974) on which the individual leaves the State for the purpose of residence (other than occasional residence) outside the State;

“tax in that country” means any tax imposed in that country which is identical with or substantially similar to Irish tax;

“visits” means—

- (a) in relation to a donor, visits by the donor to the State after the relevant date for the purpose of advising on the management of the property which is the subject of the gift, being visits that are in the aggregate less than 182 days in any year of assessment in which they are made, and
- (b) in relation to the spouse of a donor, visits by that spouse when accompanying the donor on visits of the kind referred to in *paragraph (a)*.

(2) Where for any year of assessment a person (being a donor or the spouse of a donor) is resident in a country outside the State for the purposes of tax in that country and is chargeable to that tax without any limitation as to chargeability, then, notwithstanding anything to the contrary in the Tax Acts—

- (a) as respects the year of assessment in which the relevant date occurs, that person shall not as from the relevant date be regarded as ordinarily resident in the State for the purposes of Irish tax, and
- (b) as respects any subsequent year of assessment, in determining whether that person is resident or ordinarily resident in the State for the purposes of Irish tax, visits shall be disregarded.

PART 35

DOUBLE TAXATION RELIEF

CHAPTER 1

Principal reliefs

826.—(1) Where the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of—

- (a) income tax;
- (b) corporation tax in respect of income and chargeable gains;
- (c) any taxes of a similar character imposed by the laws of the State or by the laws of that territory;

Agreements for relief from double taxation.

[ITA67 s361; FA74 s86 and Sch2 PtI; CTA76 s22(2), s23(1) and s166(1) and Sch4 PtI; FA83 s47(4)]

and that it is expedient that those arrangements should have the force of law, then, subject to this section and *sections 168* and *833* to *835*, the arrangements shall, notwithstanding any enactment other than *section 168*, have the force of law.

(2) *Schedule 24* shall apply where arrangements which have the force of law by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the State.

(3) Any arrangements to which the force of law is given under this section may include provision for relief from tax for periods before the passing of this Act or before the making of the arrangements and provisions as to income or chargeable gains which is or are not subject to double taxation, and *subsections (1)* and *(2)* shall apply accordingly.

(4) For the purposes of *subsection (1)*, arrangements made with the head of a foreign state shall be regarded as made with the government of that state.

(5) Any order made under this section may be revoked by a subsequent order, and any such revoking order may contain such transitional provisions as appear to the Government to be necessary or expedient.

(6) Where an order is proposed to be made under this section, 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) Where any arrangements have the force of law by virtue of this section, the obligation as to secrecy imposed by any enactment shall not prevent the Revenue Commissioners or any authorised officer of the Revenue Commissioners from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.

(8) The necessary apportionments as respects corporation tax shall be made where arrangements having the force of law by virtue of this section apply to the unexpired portion of an accounting period current at a date specified by the arrangements, and any such apportionment shall be made in proportion to the number of months or fractions of months in the part of the relevant accounting period before that date and in the remaining part of the relevant accounting period respectively.

(9) The Revenue Commissioners may from time to time make regulations generally for carrying out the provisions of this section or any arrangements having the force of law under this section and may in particular, but without prejudice to the generality of the foregoing, by those regulations provide—

- (a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled to such relief, and
- (b) for authorising, in cases where tax deductible from any periodical payment has, in order to comply with any such arrangements, not been deducted and it is discovered that the arrangements do not apply to that payment, the

recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments. Pr.35 S.826

827.—Subject to any express amendments made by the Corporation Tax Acts and except in so far as arrangements made on or after the 31st day of March, 1976, provide otherwise, any arrangements made under section 361 of the Income Tax Act, 1967, or any earlier enactment corresponding to that section, in relation to corporation profits tax shall apply in relation to corporation tax and income and chargeable gains chargeable to corporation tax as they are expressed to apply in relation to corporation profits tax and profits chargeable to corporation profits tax, and not as they apply in relation to income tax; but this section shall not affect the operation, as they apply to corporation tax, of *section 826(7)* and *paragraph 12 of Schedule 24*. Application to corporation tax of arrangements made in relation to corporation profits tax under old law. [CTA76 s22(1) and s23(1)]

828.—(1) For the purposes of giving relief from double taxation in relation to capital gains tax charged under the law of any country outside the State, in *section 826* and *Schedule 24* as they apply for the purposes of income tax, for references to income there shall be substituted references to chargeable gains, for references to the Income Tax Acts there shall be substituted references to the Capital Gains Tax Acts and for references to income tax there shall be substituted references to capital gains tax meaning, as the context may require, tax charged under the law of the State or tax charged under the law of a country outside the State. Capital gains tax: double taxation relief. [CGTA75 s38, s51(1) and Sch1 Pt1 par3(6); FA97 s146(1) and Sch9 Pt1 par 9(3)]

(2) In so far as capital gains tax charged under the law of a country outside the State may by virtue of this section be taken into account under *section 826* and *Schedule 24* as applied by this section, that tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those provisions as they apply apart from this section.

(3) *Section 826(7)* shall apply in relation to capital gains tax as it applies in relation to income tax.

(4) Subject to *subsections (1) to (3)* and the other provisions of the Capital Gains Tax Acts relating to double taxation, the tax chargeable under the law of any country outside the State on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation under *Chapter 2 of Part 19* of the gain accruing on the disposal.

829.—(1) This section shall apply to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the State. Treatment for double taxation relief purposes of foreign tax incentive reliefs.

(2) For the purposes of *section 826* and *Schedule 24*, any amount of tax under the law of a territory outside the State which would have been payable but for a relief to which this section applies given under that law (being a relief with respect to which provision is made in arrangements for double taxation relief which are the subject of an order under *section 826(1)*) shall be treated as having been payable, and references in *section 826* and in *Schedule 24* to double taxation, tax payable or chargeable or tax not chargeable directly or by deduction shall be construed accordingly. [FA70 s57(2) to (4); CTA76 s166(1) and Sch4 Pt1]

(3) The Revenue Commissioners may make regulations generally for carrying out the provisions of this section or any arrangements

having the force of law under *section 826* and may in particular, but without prejudice to the generality of the foregoing, provide in the regulations—

- (a) for the purposes of this section or of the regulations, for the application (with or without modifications) of any provision of the Tax Acts or any regulations made under those Acts, 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, and
- (b) that the whole or any part of a dividend paid out of profits or gains which consist of or include profits or gains in relation to which double taxation relief is given by virtue of this section is not to be regarded as income or profits for any purpose of the Tax Acts.

CHAPTER 2

Miscellaneous

Relief to certain companies liable to foreign tax.

[CTA76 s163]

830.—(1) In this section—

“accounting period” includes a part of an accounting period;

“external tax” means a tax chargeable and payable under the law of the territory in which the paying company is resident, being a territory to which this section applies, and which corresponds to Irish corporation tax or income tax or both of those taxes, but a tax payable under the law of a province, state or other part of a country, or which is levied by or on behalf of a municipality or other local body, shall for the purposes of this subsection be deemed not to correspond to those taxes.

(2) This section shall apply to every territory other than—

- (a) Northern Ireland and Great Britain,
- (b) the United States of America, and
- (c) a territory with the Government of which arrangements are for the time being in force by virtue of *section 826*.

(3) Where a company (in this section referred to as “the investing company”) has paid by deduction or otherwise, or is liable to pay, by reference to any part of its income arising in a territory to which this section applies, tax for any accounting period and it is shown to the satisfaction of the Revenue Commissioners that—

- (a) that part of the investing company’s income consists of a dividend or interest paid to it by a company resident in the territory (in this section referred to as “the paying company”) not less than 50 per cent of the voting power in which is controlled directly or indirectly by the investing company,
- (b) that dividend or interest arose from the investment in the paying company by the investing company, whether by means of loan or otherwise, of a sum or sums representing—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) profits the Irish tax referable to which was reduced to nil under— Pr.35 S.830

(I) Part III of the Finance (Miscellaneous Provisions) Act, 1956,

(II) Chapter IV of Part XXV of the Income Tax Act, 1967, or

(III) Part IV of the Corporation Tax Act, 1976,

(ii) such proportion of profits the Irish tax referable to which was reduced otherwise than to nil under those provisions as is equal to the proportion by which that Irish tax has been so reduced, or

(iii) profits arising from exempted trading operations which by virtue of—

(I) Parts I and II of the Finance (Miscellaneous Provisions) Act, 1958,

(II) Chapter I of Part XXV of the Income Tax Act, 1967, or

(III) Part V of the Corporation Tax Act, 1976,

were not, in relation to the company by which such operations were carried on, taken into account for any purpose of—

(A) the Income Tax Acts,

(B) Part V of the Finance Act, 1920, and the enactments amending or extending that Part, or

(C) the Corporation Tax Acts,

and

(c) the investing company has paid external tax in the territory in respect of that part of its income,

then, the Revenue Commissioners may grant to the investing company in respect of that accounting period such relief as is just with a view to affording relief in respect of the double taxation of that part of the investing company's income, but not exceeding the lesser of—

(aa) 50 per cent of the total of the corporation tax which but for this section would be payable by the investing company in respect of that part of its income, and

(bb) the amount of the external tax paid or payable in the territory in respect of that part of its income after deduction of any relief to which the company may be entitled in that territory.

- (4) (a) External tax paid by the paying company in respect of its profits shall be taken into account in considering whether any, and if so what, relief ought to be allowed in respect of a dividend paid by the paying company to the investing company, and for the purposes of this section (other than this subsection) such tax or the appropriate part of such tax shall be regarded as external tax paid by the investing company.
- (b) *Paragraph 8 of Schedule 24* shall apply for the purpose of ascertaining the amount of the external tax paid by the paying company which is to be taken into account in relation to any dividend paid by the paying company to the investing company as it applies to the computation of foreign tax to be taken into account for the purposes of that paragraph.
- (5) (a) Nothing in this section shall authorise the granting of relief under this section to any company in respect of any accounting period to such an extent as would reduce the aggregate amount (computed after deduction of any relief to which the company may be entitled in the territory) of the corporation tax and external tax payable by such company in respect of any part of its income of the kind described in *subsection (3)(a)* arising in a territory to which this section applies below the amount of corporation tax which would be payable by the company in respect of that part of its income if that part of its income had arisen in the State and had been liable in the hands of the investing company to corporation tax.
- (b) In computing for the purposes of *paragraph (a)* the amount of corporation tax which would be so payable by the company in respect of that part of its income if that part had arisen in the State—
- (i) no deduction for external tax shall be made from that part of its income, and
- (ii) where pursuant to *subsection (4)* external tax paid by the paying company is regarded as external tax paid by the investing company, that part of the investing company's income shall be treated as increased by the amount of the external tax which is so regarded.
- (6) Relief under this section shall be given as a credit against corporation tax chargeable by reference to the part of the investing company's income referred to in *subsection (3)(a)*.
- (7) (a) Any claim for relief under this section shall be made in writing to the inspector not later than 6 years from the end of the accounting period to which it relates.
- (b) An appeal to the Appeal Commissioners shall lie on any question arising under this section 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.

831.—(1) (a) In this section—

“arrangements” means arrangements having the force of law by virtue of *section 826*;

“bilateral agreement” means any arrangements, protocol or other agreement between the Government and the government of another Member State;

“company” means a company of a Member State;

“company of a Member State” has the meaning assigned to it by Article 2 of the Directive;

“the Directive” means Council Directive No. 90/435/EEC of 23 July 1990¹ on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;

“distribution” means income from shares or from other rights, not being debt claims, to participate in a company’s profits, and includes any amount assimilated to income from shares under the taxation laws of the State of which the company making the distribution is resident;

“foreign tax” means any tax which—

- (i) is payable under the laws of a Member State other than the State, and
- (ii) (I) is specified in paragraph (c) of Article 2 of the Directive, or
(II) is substituted for and is substantially similar to a tax so specified;

“Member State” means a Member State of the European Communities;

“parent company” means a company resident in the State which owns at least 25 per cent of the share capital of a company not so resident, but where a bilateral agreement contains a provision to the effect—

- (i) that a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the share capital of the company not resident in the State is owned by the first-mentioned company, or
- (ii) that—
 - (I) the requirement (being the requirement for the purposes of this definition) that a company resident in the State own at least 25 per cent of the share capital of

Pt.35
Implementation of
Council Directive
No. 90/435/EEC
concerning the
common system of
taxation applicable
in the case of
parent companies
and subsidiaries of
different Member
States.

[FA91 s36]

¹O.J. No. L225 of 20.8.1990, p.6.

the company not so resident shall be treated as a requirement that the company so resident holds at least 25 per cent of the voting rights in the company not so resident, or

- (II) that requirement shall be so treated and a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the voting rights in the company not resident in the State is held by the first-mentioned company,

then, in its application to a company to which the provision in the bilateral agreement applies, this definition shall apply subject to that provision and shall be construed accordingly.

- (b) For the purposes of this section, a company shall be a subsidiary of another company which owns shares or holds voting rights in it where the other company's ownership of those shares or holding of those rights is sufficient for that other company to be a parent company.

- (c) A word or expression used in this section and in the Directive has, unless the contrary intention appears, the same meaning in this section as in the Directive.

(2) Subject to *subsections (3) and (4)*, where a parent company receives a distribution chargeable in the State to corporation tax, other than a distribution in a winding up, from its subsidiary—

- (a) credit shall be allowed for—

- (i) any withholding tax charged on the distribution by the Federal Republic of Germany, the Hellenic Republic or the Portuguese Republic, pursuant to the derogations provided for in Article 5 of the Directive, and
- (ii) any foreign tax, not chargeable directly or by deduction in respect of the distribution, which is borne by the company making the distribution, and is properly attributable to the proportion of its profits which is represented by the distribution, in so far as that foreign tax exceeds so much of any tax credit in respect of the distribution as is payable to the parent company by the Member State in which the company making the distribution is resident,

against corporation tax in respect of the distribution to the extent that credit for such withholding tax and foreign tax would not otherwise be so allowed, and

- (b) notwithstanding *Chapter 2 of Part 4*, the distribution shall not be a dividend to which that Chapter applies.

(3) Where by virtue of *subsection (2)(a)* a company is to be allowed credit for tax payable under the laws of a Member State

other than the State, *Schedule 24* shall apply for the purposes of that subsection as if— Pr.35 S.831

(a) the provisions of that subsection were arrangements providing that tax so payable shall be allowed as a credit against tax payable in the State, and

(b) references in *Schedule 24* to a dividend were references to a distribution within the meaning of this section.

(4) *Subsection (2)* shall apply without prejudice to any provision of a bilateral agreement.

832.—(1) In this section—

“the Convention” means the Convention between the Government of Ireland and the Government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and the Protocol amending the Convention, both of which are set out in the Schedule to the Double Taxation Relief (Taxes on Income and Capital Gains) (United Kingdom) Order, 1976 (S.I. No. 319 of 1976);

Provisions in relation to Convention for reciprocal avoidance of double taxation in the State and the United Kingdom of income and capital gains.

[FA77 s39(1) and (3) to (5); FA96 s132(2) and Sch5 PtII]

“dividend” means a dividend within the meaning of Article 11(4) of the Convention.

(2) Subject to *sections 70* and *71* as modified by *section 73*, where a person is chargeable to income tax or corporation tax under Case III of Schedule D on income which is a dividend in respect of which the person is entitled to a tax credit under Article 11(2)(b) of the Convention, the income so chargeable shall include the amount of the tax credit.

(3) For the purpose of giving effect to the Convention, the Tax Acts shall, for any year for which the Convention is in force, apply subject to the modifications in *section 73*.

(4) (a) In applying *section 707* in the case of a society registered under the enactments for the time being in force in the United Kingdom corresponding to the Friendly Societies Acts, 1896 to 1977, only expenses of management attributable to the life business referable to contracts of assurance made on or after the 6th day of April, 1976, shall be taken into account.

(b) In applying *subsection (4)* of *section 726* in the case of a society referred to in *paragraph (a)*, there shall be excluded from the liabilities of which B in that subsection is the average any liabilities to policy holders arising from contracts made before the 6th day of April, 1976.

(c) This subsection shall be construed as one with *Part 26*.

833.—(1) *Schedule 24* shall apply for the purposes of giving effect to the Convention set out in *Schedule 25* concluded on the 13th day of September, 1949, between the Government of Ireland and the Government of the United States of America.

Convention with United States of America.

[ITA67 s358(2) and (3).]

(2) The Revenue Commissioners may from time to time make regulations in relation to the granting of the reliefs specified in the Convention and may in particular by those regulations provide—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.35 S.833

- (a) for securing that no such reliefs from taxation imposed by the laws of the United States of America as are provided for in the Convention shall enure to the benefit of persons not entitled to such reliefs, and
- (b) for authorising, in cases where tax deductible from any periodical payment has, in order to comply with the terms of the Convention, not been deducted and it is discovered that the Convention does not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Relief in respect of ships documented under laws of United States of America.

[ITA67 s359]

834.—Exemption shall be granted from tax in respect of so much of the income of a citizen of the United States of America not resident in the State or of a corporation organised in the United States of America as is derived from the operation of a ship or ships documented under the laws of the United States of America.

Saver for arrangements made under section 362 of Income Tax Act, 1967.

[FA87 s23(2)]

835.—Notwithstanding the repeal of section 362 of the Income Tax Act, 1967, by section 23(1) of the Finance Act, 1987, where before the 9th day of July, 1987, an order was made under section 362 of the Income Tax Act, 1967, the arrangement to which the order relates shall continue to have the force of law.

PART 36

MISCELLANEOUS SPECIAL PROVISIONS

Allowances for expenses of members of Oireachtas.

[Section 4 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992]

836.—(1) An allowance payable under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

(2) *Sections 114 and 115* shall not apply in relation to expenses in full settlement of which an allowance is payable under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and no claim shall lie under those sections in respect of those expenses; but where a Minister of the Government, the Attorney General or a Minister of State, being—

- (a) a member of Dáil Éireann for a constituency outside the county borough and the administrative county of Dublin, or
- (b) a member of Seanad Éireann whose main residence is situated outside that county borough and administrative county,

is, arising out of the performance of his or her duties as an office holder or as a member of the Oireachtas, obliged to maintain a second residence in addition to his or her main residence, he or she shall be granted a deduction under *section 114* in respect of expenses incurred by him or her in maintaining that second residence.

837.—In assessing the income tax chargeable under any Schedule on a member of the clergy or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his or her profession—

Pr.36
Members of the clergy and ministers of religion.

[ITA67 s544(1);
FA69 s65(1) and
Sch5 PtI]

- (a) any sums of money paid or expenses incurred by him or her wholly, exclusively and necessarily in the performance of his or her duty as a member of the clergy or minister of any religious denomination;
- (b) such part of the rent (not exceeding one-eighth), as the inspector by whom the assessment is made may allow, paid by him or her in respect of a dwelling house any part of which is used mainly and substantially for the purposes of his or her duty as a member of the clergy or minister of any religious denomination.

838.—(1) (a) In this section—

Special portfolio investment accounts.

“designated broker” means a person—

[FA93 s14 (other than proviso to sub(4)(c) and sub(6)(b)); FA94 s12(2) and s34(b); FA95 s11(2); FA96 s37(1); FA97 s31, s146(1) and Sch9 PtI par17(1)]

- (i) which is a dealing member firm of the Irish Stock Exchange or a member firm (which carries on a trade in the State through a branch or agency) of a stock exchange of any other Member State of the European Communities, and
- (ii) which has sent to the Revenue Commissioners a notification of its name and address and of its intention to accept specified deposits;

“gains” means chargeable gains within the meaning of the Capital Gains Tax Acts, including gains which but for *section 607* would be chargeable gains;

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

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

“qualifying shares” means ordinary shares in a company which are—

- (i) listed in the official list of the Irish Stock Exchange, or
- (ii) quoted on the market known as the Developing Companies Market, or the market known as the Exploration Securities Market, of the Irish Stock Exchange,

other than—

- (I) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990,
- (II) shares in an undertaking for collective investment in transferable securities within the

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), or

- (III) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

“relevant income or gains” means the aggregate of the income and gains, including losses, arising from relevant investments, but only so much of income arising to or gains accruing to the special portfolio investment account shall be relevant income or gains as is or is to be—

- (i) paid to, or
- (ii) accumulated or invested for the benefit of,

the individual in whose name the special portfolio investment account is held, or would be so paid, accumulated or invested if any gains accruing to the account in accordance with *subsection (4)(e)* were gains on an actual disposal of the assets concerned;

“relevant investment” means an investment in—

- (i) qualifying shares and specified qualifying shares, or
- (ii) qualifying shares, specified qualifying shares and securities,

as the case may be, acquired by a designated broker by the expenditure of money contributed by means of a specified deposit, and held by a designated broker in a special portfolio investment account;

“securities” means securities—

- (i) issued under the authority of the Minister for Finance, or
- (ii) issued by the Electricity Supply Board, Radio Telefís Éireann, ICC Bank plc, Bord Telecom Éireann, Irish Telecommunications Investments plc, Córas Iompair Éireann, ACC Bank plc, Bord na Móna, Aerlínte Éireann cuideachta phoiblí theoranta, Aer Lingus plc or Aer Rianta cuideachta phoiblí theoranta,

which are listed in the official list of the Irish Stock Exchange;

“special portfolio investment account” means an account opened on or after the 1st day of February, 1993, in which a relevant investment is held and in respect of which the conditions referred to in *paragraph (c)* are complied with;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“specified deposit” means a sum of money paid by an individual to a designated broker for the purpose of acquiring assets which will form part of a relevant investment; Pr.36 S.838

“specified qualifying shares”, in relation to a special portfolio investment account, means qualifying shares in a company which when the shares are acquired for the account has an issued share capital the market value of which is less than £100,000,000.

(b) For the purposes of this section, *Chapter 4 of Part 8* shall be construed as if—

(i) references to “deposit”, “interest”, “relevant deposit”, “relevant deposit taker”, “relevant interest” and “special savings account” were respectively references to “specified deposit”, “income or gains”, “relevant investment”, “designated broker”, “relevant income or gains” and “special portfolio investment account” within the meaning of this section, and

(ii) *subsections (4) and (5) of section 258 and section 259* had not been enacted.

(c) Notwithstanding *subsection (3), section 264* shall apply to a special portfolio investment account as if—

(i) *paragraphs (d) to (i) of subsection (1)* of that section had not been enacted, and

(ii) the conditions in *subsection (2)* of this section had been included in *subsection (1)* of that section.

(2) The conditions referred to in *subsection (1)(c)(ii)* are:

(a) each special portfolio investment account and all assets held in such an account shall be kept separately from all other investment accounts, if any, operated by a designated broker;

(b) the amount of a specified deposit or, if there is more than one, the aggregate of such amounts in respect of assets held at the same time as part of a special portfolio investment account shall not exceed—

(i) in the case of a special portfolio investment account in respect of which—

(I) the first specified deposit was made on or before the 5th day of April, 2000, and

(II) an amount (in this paragraph referred to as “the particular amount”) equal to the whole or a part of the specified deposit or specified deposits has been used to acquire shares in a company quoted on the market known as the Developing Companies Market of the Irish Stock Exchange

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

and those shares are at that time held as assets of the special portfolio investment account,

£50,000 increased by the lesser of—

(A) the particular amount, and

(B) £10,000,

and

- (ii) in the case of any other special portfolio investment account, £50,000;
- (c) the designated broker shall ensure that the aggregate of the market value of a relevant investment does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first specified deposit was made by an individual in respect of that relevant investment;
- (d) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of a special portfolio investment account shall not be less than—
 - (i) as respects qualifying shares, 40 per cent, and
 - (ii) as respects specified qualifying shares, 6 per cent,
 of the aggregate of the consideration given for the assets of the account at that time;
- (e) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets of a special portfolio investment account shall not be less than—
 - (i) as respects qualifying shares, 45 per cent, and
 - (ii) as respects specified qualifying shares, 9 per cent,
 of the aggregate of the consideration given for the assets of the account at that time;
- (f) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets of a special portfolio investment account shall not be less than—
 - (i) as respects qualifying shares, 50 per cent, and
 - (ii) as respects specified qualifying shares, 10 per cent,
 of the aggregate of the consideration given for the assets of the account at that time;
- (g) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of a special portfolio investment account shall not be less than—
 - (i) as respects qualifying shares, 55 per cent, and

(ii) as respects specified qualifying shares, 10 per cent, Pr.36 S.838

of the aggregate of the consideration given for the assets of the account at that time;

and for the purposes of—

(I) *paragraphs (b) and (c)*, a disposal of shares or securities, being shares or securities, as the case may be, of the same class acquired for a special portfolio investment account at different times, shall be assumed to be a disposal of shares or securities, as the case may be, acquired later, rather than of shares or securities, as the case may be, acquired earlier for the special portfolio investment account, and

(II) *paragraphs (d) to (g)*, the amount of the consideration given for shares shall be determined in accordance with *sections 547 and 580*.

(3) *Chapter 4 of Part 8 (other than section 259)* shall, subject to this section and with any other necessary modifications, apply to special portfolio investment accounts as it applies to special savings accounts; but that Chapter shall so apply as if, in relation to relevant interest payable in respect of a relevant deposit or relevant deposits held in a special savings account, the rate of appropriate tax were 10 per cent.

(4) (a) *Paragraphs (b) to (h)* shall apply notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts.

(b) Where for any year of assessment a loss arises from the computation of relevant income or gains, that loss shall be included in the computation of the relevant income or gains of the special portfolio investment account for the next year of assessment, and, in so far as relief for the loss cannot be so given, it shall be set against such relevant income or gains in the next year of assessment and, where appropriate, in each subsequent year of assessment in so far as it cannot be so relieved, and no further relief shall be allowed under any provision of the Tax Acts or the Capital Gains Tax Acts in respect of that loss.

(c) *Sections 556, 601, 607 and 1028(4)* shall not apply in relation to any gains referable to a relevant investment.

(d) (i) In this paragraph—

“the appropriate amount in respect of the interest” means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the designated broker were the first buyer and the designated broker carried on a trade to which *section 749(1)* applies; but, in so determining the appropriate amount in respect of the interest in accordance with *Schedule 21, paragraph 3(4)* of that Schedule shall apply as if “in the opinion of the Appeal Commissioners” were deleted;

“securities” has the same meaning as in *section 815*.

(ii) Subject to *subparagraph (iii)*, where—

(I) in a year of assessment (in this subparagraph referred to as “the first year of assessment”) securities which are assets of a special portfolio investment account are disposed of, and

(II) in the following year of assessment interest becoming payable in respect of the securities is receivable by the special portfolio investment account,

then, for the purposes of computing the relevant income or gains for the first year of assessment, the price paid by the designated broker for the securities shall be treated as reduced by the appropriate amount in respect of the interest.

(iii) Where for a year of assessment *subparagraph (ii)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following year of assessment from the disposal of the securities.

(e) For the purpose of computing relevant income or gains of a special portfolio investment account for a year of assessment, each asset of a special portfolio investment account on the 5th day of April in that year of assessment shall be deemed to have been disposed of and immediately reacquired by the designated broker on that day at the asset’s market value on that day.

(f) *Subject to subsection (5)*, where in a year of assessment the relevant income or gains of a special portfolio investment account includes a distribution from a company resident in the State—

(i) the aggregate of the amount or value of that distribution and the amount of the tax credit in respect of that distribution shall be taken into account in computing the relevant income or gains for that year of assessment, and

(ii) the designated broker may set the tax credit against appropriate tax payable in respect of that special portfolio investment account for the year of assessment in which the distribution is made and, where the tax credit exceeds that appropriate tax, may claim to have the excess paid to the designated broker in that person’s capacity as the designated broker for that special portfolio investment account.

(g) A tax credit in respect of a distribution to which *paragraph (f)* applies shall not be available for any purpose other than that specified in that paragraph.

(h) Capital gains tax shall not be chargeable on the disposal of assets held as part of a relevant investment; but this paragraph shall not prevent any such disposals from being taken into account in computing the amount of relevant income or gains on which appropriate tax is payable.

(5) (a) In this subsection—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“eligible shares” has the same meaning as in *section 488*; Pr.36 S.838

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

- (b) Without prejudice to the treatment of losses on eligible shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares in a qualifying company shall not for the purposes of computing appropriate tax in accordance with *subsection (6)* be treated as gains.
 - (c) Distributions included in the relevant income or gains of a special portfolio investment account in respect of eligible shares in qualifying companies shall not be taken into account in computing appropriate tax in accordance with *subsection (6)*; but, notwithstanding *subsection (4)(f)* or *section 136*, the tax credit in respect of a distribution to which this subsection applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.
- (6) (a) For the purposes of *sections 257* and *258*, a designated broker shall, in relation to each special portfolio investment account—
- (i) be deemed to have made a payment on the 5th day of April in each year of assessment of the amount of relevant income or gains for that year of assessment, and
 - (ii) be liable to make a payment of appropriate tax in relation to such payment.
- (b) The designated broker may deduct an amount on account of any such payment of appropriate tax and the individual beneficially entitled to the assets in the special portfolio investment account shall allow such deduction from any income or from the proceeds of the sale of any assets which the designated broker holds as part of the special portfolio investment account; but, where there are no such funds or insufficient funds available out of which the designated broker may satisfy the appropriate tax, the amount of such tax shall be an amount due to the designated broker from the person beneficially entitled to the relevant investment.
- (c) For the purposes of this section, *section 258* shall apply as if in *subsection (2)* of that section “on or before the 1st day of November following that year of assessment” were substituted for “within 15 days from the end of the year of assessment”.
- (7) *Part 16* shall not apply in relation to any shares which form part of a relevant investment.

839.—(1) Subject to *subsection (2)*, an individual shall not at the same time have a beneficial interest in investments of more than one of the following classes of investment—

Limits to special investments.

[FA93 s16; FA94 s34(c) to (g)]

- (a) special savings accounts within the meaning of *section 256(1)* (such an account being referred to subsequently in this section as a “special savings account”);

- (b) special investment policies within the meaning of *section 723(1)*;
 - (c) special investment units within the meaning of *section 737*;
 - (d) special portfolio investment accounts within the meaning of *section 838*.
- (2) (a) An individual, whether married or not, who does not have a joint interest in an investment of a class mentioned in *subsection (1)* may have a beneficial interest, that is not a joint interest, in 2 such investments, being a special savings account and an investment of a class mentioned in *paragraph (b), (c) or (d)* of that subsection, during a period throughout which—
- (i) as respects the special savings account, the condition specified in *section 264(1)(i)* would be satisfied if “£25,000” were substituted for “£50,000” in that condition, or
 - (ii) as respects the other investment, the condition specified in *section 723(3)(b), 737(3)(a)(ii) or 838(2)(b)* relevant to that investment would be satisfied if “£25,000” were substituted for “£50,000” in those conditions.
- (b) A couple married to each other, neither of whom has an interest, that is not a joint interest, in an investment of a class mentioned in *subsection (1)*, may have a joint beneficial interest—
- (i) in 2 or 3 such investments, so long as those investments include a special savings account and an investment of a class mentioned in *paragraph (b), (c) or (d)* of that subsection, or
 - (ii) in 4 such investments, being 2 special savings accounts and 2 other investments of a class (which need not be the same class for the 2 investments) mentioned in *paragraph (b), (c) or (d)* of that subsection, during a period throughout which—
 - (I) as respects the special savings accounts, the condition specified in *section 264(1)(i)* would be satisfied if “£25,000” were substituted for “£50,000” in that condition, or
 - (II) as respects the other investments, the condition specified in *section 723(3)(b), 737(3)(a)(ii) or 838(2)(b)* relevant to each of those investments would be satisfied if “£25,000” were substituted for “£50,000” in those conditions.
- (3) So long as an individual, whether married or not, does not have a beneficial interest in an investment of a class mentioned in *subsection (1)* other than—
- (a) a beneficial interest, whether or not a joint interest, in one investment, or
 - (b) a joint beneficial interest in 2 investments,

of a class (which need not be the same class where there are 2 Pr.36 S.839 investments) mentioned in *paragraph (b), (c) or (d) of subsection (1)*, then, *sections 723, 737 and 838* shall apply to that one investment or those 2 investments, as the case may be, as if every reference to £50,000 in those sections were a reference to £75,000.

(4) Where an individual may hold a beneficial interest, whether jointly or otherwise, in an investment of a class mentioned in *subsection (1)* only for as long as a condition specified in the Tax Acts in respect of the investment would be satisfied if a reference to £25,000 were substituted for a reference to £50,000 in the condition so specified, then, any provision of those Acts which apart from this subsection would have the effect at any time of restricting that investment to an investment the value of which does not exceed £50,000 shall apply to that investment as if the reference to £50,000 in the provision were a reference to £25,000.

(5) Any declaration referred to in—

- (a) *paragraph (b) of the definition of “special savings account” in section 256(1)*,
- (b) *paragraph (b) of the definition of “special investment policy” in section 723(1)*, or
- (c) *paragraph (b) of the definition of “special investment units” in section 737(1)*,

shall contain—

- (i) such information in relation to the beneficial interest, which at the time the declaration is made the individual making the declaration holds, whether jointly or otherwise, in investments of a class mentioned in *subsection (1)*, and
- (ii) such undertakings, to the person to whom the declaration is made, to supply at any later time information in relation to such interests of that individual at that later time,

as the Revenue Commissioners may reasonably require for the purposes of this section.

840.—(1) In this section—

Business
entertainment.

“business entertainment” means entertainment (including the provision of accommodation, food and drink or any other form of hospitality in any circumstances whatever) provided directly or indirectly by—

[FA 82 s20(1) to (6)
and (8)]

- (a) any person (in this definition referred to as “the first-mentioned person”),
- (b) any person who is a member of the first-mentioned person’s staff, or
- (c) any person providing or performing any service for the first-mentioned person, the entertainment being entertainment that is provided in the course of, or is incidental to, the provision or performance of the service,

in connection with a trade carried on by the first-mentioned person, but does not include anything provided by that person for bona fide

members of that person's staff unless its provision for them is incidental to its provision also for others;

a reference to expenses incurred in, or to the use of an asset for, providing entertainment includes a reference to expenses incurred in, or to the use of an asset for, providing anything incidental thereto;

a reference to a trade includes a reference to a business, profession or employment;

a reference to the members of a person's staff is a reference to persons employed by the person, directors of a company or persons engaged in the management of the company being for this purpose deemed to be persons employed by the company.

(2) In respect of any expenses incurred in providing business entertainment, no sum shall be—

- (a) deducted in computing the amount of profits or gains chargeable to tax under Schedule D,
- (b) included in computing any expenses of management in respect of which a deduction may be claimed under *section 83* or *707*, or
- (c) allowed under *section 114*.

(3) (a) In this subsection, "the specified provisions" means the provisions of *Part 9* relating to machinery or plant.

- (b) Where any asset is used or is provided for use wholly or partly for the purpose of providing business entertainment, no allowance under any of the specified provisions shall be made for any year of assessment or for any accounting period of a company in respect of the use of the asset or the expenditure incurred in the provision of the asset to the extent that it is used or is to be used for that business entertainment.

(4) The expenses to which *subsection (2)* applies include in the case of any person any sum paid by that person to, on behalf of or placed by that person at the disposal of a member of that person's staff for the purpose of defraying expenses incurred or to be incurred by the member of the staff in providing business entertainment.

(5) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment.

- (6) (a) Where by reason of the provision or performance of a service an amount is paid or payable to a person referred to in *paragraph (c)* of the definition of "business entertainment", so much of the amount as is equal to the cost of any business entertainment that is provided in the course of, or is incidental to the provision or performance of, the service shall be deemed to be incurred in providing business entertainment.
- (b) The cost of any business entertainment shall be determined by the inspector according to the best of his or her knowledge and judgment.
- (c) A determination made under *paragraph (b)* may be amended by the Appeal Commissioners or by the Circuit

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Court on the hearing or the rehearing of an appeal against any deduction (including a case where no deduction is granted) granted on the basis of the determination.

Pr.36 S.840

841.—(1) In this section—

“the Board” means the Voluntary Health Insurance Board;

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

(2) *Section 396* shall not apply to a loss incurred by the Board in an accounting period ending before the 1st day of March, 1997.

(3) Notwithstanding any other provision of the Tax Acts, bonds and shares held by the Board on the 28th day of February, 1997, in the course of the business of carrying out schemes of voluntary health insurance shall be deemed to have been disposed of and immediately reacquired by the Board on that date at the assets’ market value on that date.

Voluntary Health Insurance Board: restriction of certain losses and deemed disposal of certain assets.

[FA97 s61(1), (3) and (4)]

842.—(1) In this section, “relevant port company” has the same meaning as in *paragraph 1* of *Schedule 26*.

(2) *Schedule 26* shall apply where assets are vested in, or transferred to, a relevant port company pursuant to the Harbours Act, 1996.

(3) This section and *Schedule 26* shall apply from the 1st day of March, 1997.

Replacement of harbour authorities by port companies.

[FA97 s48]

843.—(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 for Education and Science under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, applies;

“qualifying expenditure” means capital expenditure incurred on—

(a) the construction of a qualifying premises, or

(b) the provision of machinery or plant,

which, following receipt of the advice of An tÚdarás, is approved for that purpose by the Minister for Education and Science with the consent of the Minister for Finance;

“qualifying premises” means a building or structure which—

(a) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(b) (i) is in use for the purposes of third level education provided by an approved institution,

(ii) is let to an approved institution on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure which was negotiated on an arm’s length basis,

Capital allowances for buildings used for third level educational purposes.

[FA97 s25]

but does not include any part of a building or structure in use as or as part of a dwelling-house;

“An tÚdarás” means the Body established by section 2 of the Higher Education Authority Act, 1971.

(2) Subject to *subsections (3) to (7)*, the provisions of the Tax Acts (other than *section 317(2)*) 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 in relation to qualifying expenditure on a qualifying premises—

(a) as if the 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 *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(b) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(3) In relation to qualifying expenditure on a qualifying premises *section 272* shall apply as if—

(a) in *subsection (3)(a)(ii)* of that section the reference to 4 per cent were a reference to 15 per cent, and

(b) in *subsection (4)(a)(ii)* of that section the reference to 25 years were a reference to 7 years.

(4) No allowance shall be made under *subsection (2)* unless, before the commencement of construction of a qualifying premises, the Minister for Finance certifies that—

(a) an approved institution has procured or otherwise secured a sum of money, none of which has been met directly or indirectly by the State, which sum is not less than 50 per cent of the qualifying expenditure to be incurred on the qualifying premises, and

(b) such sum is to be used solely by the approved institution for the following purposes—

(i) paying interest on money borrowed for the purpose of funding the construction of the qualifying premises,

(ii) paying any rent on the qualifying premises during such times as the qualifying premises is the subject of a letting on such terms as are referred to in *paragraph (b)(ii)* of the definition of “qualifying premises”, and

(iii) purchasing the qualifying premises following the termination of the letting referred to in *subparagraph (ii)*.

(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 more than 7 years after the qualifying premises was first used.

(6) This section shall come into operation on the 1st day of July, 1997. Pr.36 S.843

(7) The Minister for Finance may not give a certificate under *subsection (4)* at any time later than the 1st day of July, 2000.

844.—(1) Subject to *subsection (2)*, where a company carries on any business of mutual trading or mutual insurance or other mutual business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall apply to distributions made by the company, notwithstanding that they are made to persons participating in the mutual activities of that business and derive from those activities, but shall so apply only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

Companies carrying on mutual business or not carrying on a business.

[CTA76 s29]

(2) In the case of a company carrying on any mutual life assurance business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall not apply to distributions made to persons participating in the mutual activities of that business and derived from those activities; but, if the business includes annuity business, the annuities payable in the course of that business shall not be treated as charges on the income of the company to any greater extent than if that business were not mutual but were being carried on by the company with a view to the realisation of profits for the company.

(3) Subject to *subsections (1) and (2)*, the fact that a distribution made by a company carrying on any such business is derived from the mutual activities of that business and the recipient is a person participating in those activities shall not affect the character which the payment or other receipt has for the purposes of corporation tax or income tax in the hands of the recipient.

(4) Where a company does not carry on and never has carried on a trade or a business of holding investments, and is not established for purposes which include the carrying on of a trade or of such a business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall apply to distributions made by the company only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

845.—(1) In this section, “insurance business” includes assurance business within the meaning of section 3 of the Insurance Act, 1936.

Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc.

(2) In this section and in *section 846*, “tax-free securities” means securities to which *section 43, 49 or 50* applies and which were issued with a condition regulating the treatment of the interest on the securities for tax purposes such that the interest on the securities is excluded in computing income or profits.

[CTA76 s51(1), (2), (3)(a), (4), (5) and (6)]

(3) (a) In this subsection, “securities” includes stocks and shares.

(b) Where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is carried on in the State by a person not resident in the State, then—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.36 S.845

- (i) in computing for the purposes of the Tax Acts the profits arising from, or loss sustained in, the business, and
- (ii) in the case of an insurance business, also in computing the profits or loss from pension business and general annuity business under *section 715*,

section 76 shall not prevent the inclusion of interest, dividends and other payments to which *section 35* or *63* extends notwithstanding the exemption from tax conferred by those sections respectively.

(4) Where—

- (a) any business referred to in *subsection (3)(b)* is carried on in the State by a person not ordinarily resident in the State, and
- (b) in making any computation referred to in that subsection with respect to that business, interest on tax-free securities is excluded by virtue of a condition of the issue of such securities,

any expenses attributable to the acquisition or holding of, or to any transaction in, the securities (but not including in those expenses any interest on borrowed money), and any profits or losses so attributable, shall also be excluded in making that computation.

(5) In the case of an overseas life assurance company (within the meaning of *section 706*), in computing for the purposes of *section 726* the income from the investments of the life assurance fund of the company, any interest, dividends and other payments to which *section 35* or *63* extends shall be included notwithstanding the exemption from tax conferred by those sections respectively.

Tax-free securities:
exclusion of interest
on borrowed
money.

846.—(1) This section shall apply where *section 845(4)* applies to a business for any accounting period.

[CTA76 s52(1) to
(4) and (6)]

(2) Up to the amount determined under this section (in this section referred to as “the amount ineligible for relief”), interest becoming due for payment on money borrowed for the purposes of the business—

- (a) shall be excluded in any computation under the Tax Acts of the profits or loss arising from the business, and
- (b) shall be excluded from the definition of “charges on income” in *section 243*.

(3) In determining the amount ineligible for relief, account shall be taken of all money borrowed for the purposes of the business outstanding in the accounting period up to the total cost of the tax-free securities held for the purposes of the business in that period; but account shall not be taken of any borrowed money carrying interest which apart from *subsection (2)* would not be included in the computation under *paragraph (a)* of that subsection and would not be treated as a charge on income for the purposes of the Corporation Tax Acts.

(4) The amount ineligible for relief shall be equal to a year’s interest on the amount of money borrowed which is to be taken into

account under *subsection (3)* at a rate equal to the average rate of interest in the accounting period on money borrowed for the purposes of the business, except that in the case of an accounting period of less than 12 months interest shall be taken for that shorter period instead of for a year. Pr.36 S.846

(5) For the purposes of this section, the cost of a holding of tax-free securities which has fluctuated in the accounting period shall be the average cost of acquisition of the initial holding, and of any subsequent acquisitions in the accounting period, applied to the average amount of the holding in the accounting period, and this subsection shall be applied separately to securities of different classes.

847.—(1) (a) In this section—

“investment plan” means a plan of a company resident in the State—

Tax relief for certain branch profits.

[FA95 s29]

- (i) which involves the investment by the company or by a company associated with it of substantial permanent capital in the State for the purposes of the creation before a date specified in the plan of substantial new employment in the State in trading operations carried on or to be carried on in the State by the company or the company associated with it, and
- (ii) which has been submitted before the commencement of its implementation to the Minister by the company for the purpose of enabling it to obtain relief under this section;

“the Minister” means the Minister for Finance;

“qualified company” means a company to which the Minister, following consultation with the Minister for Enterprise and Employment, has given a certificate, which certificate has not been revoked, under *subsection (2)*;

“qualified foreign trading activities” means trading activities carried on by a qualified company through a branch or agency outside the State in a territory specified in the certificate given under *subsection (2)* to the company by the Minister following consultation with the Minister for Enterprise, Trade and Employment.

(b) For the purposes of this section—

- (i) a company shall be associated with another company where one of the companies is a 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company; but, 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 the 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) *sections 412 to 418* shall apply for the purposes of this paragraph as they would apply for the purposes of *Chapter 5 of Part 12* if *section 411(1)(c)* were deleted,
- (iii) where a trade carried on by a qualified company consists partly of qualified foreign trading activities and partly of other trading activities, the company shall be treated as if it were carrying on distinct trades consisting of such qualified foreign trading activities and of such other trading activities,
- (iv) there shall be attributed to each trade carried on, or treated under *subparagraph (iii)* as carried on, such profits or gains or losses as might have been expected to be made if each trade had been carried on under the same or similar conditions by a person independent of, and dealing at arm's length with, the person carrying on the other trade, and
- (v) there shall be made all necessary apportionments as are just and reasonable for the purposes of computing—
- (I) profits or gains or losses arising from, and
 - (II) the amount of any charges on income, expenses of management or other amount which can be deducted from or set off against or treated as reducing profits of more than one description as is incurred for the purposes of,
- a trade carried on, or treated under *subparagraph (iii)* as carried on, by a qualified company.
- (2) Where a plan has been duly submitted by a company resident in the State and the Minister, following consultation with the Minister for Enterprise, Trade and Employment, is satisfied that—
- (a) the plan is an investment plan,
 - (b) the company, or a company associated with it, will, before a date specified in the plan and approved by the Minister, make the substantial permanent capital investment in the State under the investment plan for the purposes of the creation of the substantial new employment in the State,

(c) the creation of substantial new employment in the State under the investment plan will be achieved, and

(d) the maintenance of the employment so created in trading operations in the State will be dependent on the carrying on by the company of qualified foreign trading activities,

then, the Minister may give a certificate certifying that the company is a qualified company with effect from a date specified in the certificate.

(3) (a) The Minister shall draw up guidelines for determining whether for the purposes of *subsection (2)* a company and companies associated with it will create substantial new employment and will make a substantial permanent capital investment in the State.

(b) Without prejudice to the generality of *paragraph (a)*, guidelines under that paragraph may—

(i) include a requirement for specified levels of—

(I) employment in the State, and

(II) permanent capital investment in the State,

and

(ii) specify such criteria for the purposes of this subsection as the Minister considers appropriate.

(4) A certificate issued under *subsection (2)* may be given subject to such conditions as the Minister, following consultation with the Minister for Enterprise, Trade and Employment, considers proper and specifies in the certificate.

(5) Where in the case of a company in relation to which a certificate under *subsection (2)* has been given the Minister, following consultation with the Minister for Enterprise, Trade and Employment, forms the opinion that such certificate ought to be revoked because any condition subject to which the certificate was given has not been complied with, 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) Notwithstanding any other provision of the Corporation Tax Acts—

(a) profits or gains or losses arising from the carrying on of qualified foreign trading activities shall be disregarded for the purposes of those Acts, and

(b) no amount of any charges on income, expenses of management or other amount which apart from this paragraph may be deducted from or set off against or treated as reducing profits of more than one description, shall be so deducted, set off or treated, as is incurred for the purposes of a trade carried on, or treated under *subsection (1)(b)(iii)* as carried on, by a qualified company which consists of qualified foreign trading activities.

(7) A gain shall not be a chargeable gain for the purposes of the Capital Gains Tax Acts if it accrues to a qualified company on the

Pt.36 S.847

disposal of an asset, other than an asset specified in *paragraphs (a) to (d) of section 980(2)*, used wholly and exclusively for the purposes of a trade carried on, or treated under *subsection (1)(b)(iii)* as carried on, by a qualified company which consists of qualified foreign trading activities.

(8) An inspector may by notice in writing require a qualified company to furnish him or her with such information or particulars as may be necessary for the purposes of giving relief under this section.

Designated charities: repayment of tax in respect of donations.

[FA95 s8(1)(a) and (c) and (2) to (7)]

848.—(1) (a) In this section—

“appropriate certificate”, in relation to a donation to a designated charity, means a certificate which is in such form as the Revenue Commissioners may prescribe and which contains—

(i) statements to the effect that—

(I) the donation satisfies the requirements of *subsection (6)*, and

(II) the donor has paid or will pay to the Revenue Commissioners income tax of an amount equal to income tax at the standard rate for the relevant year of assessment on the grossed up amount of the donation, but not being—

(A) income tax which the donor is entitled to charge against any other person or to deduct, retain or satisfy out of any payment which the donor is liable to make to any other person, or

(B) appropriate tax within the meaning of *Chapter 4 of Part 8*,

and

(ii) the identifying number, known as the Revenue and Social Insurance (RSI) Number, of the donor;

“designated charity” means any body or institution in the State which, following application by it to the Minister in such form and containing such information as the Minister may require, is designated for the purposes of this section by the Minister with the consent of the Minister for Finance;

“the Minister” means the Minister for Foreign Affairs;

“qualifying donation” shall be construed in accordance with *subsection (5)*;

“relevant year of assessment”, in relation to a qualifying donation, means the year of assessment in which the qualifying donation is made.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) For the purposes of this section, references, in relation to a donation, to the grossed up amount are to the amount which after deducting income tax at the standard rate for the relevant year of assessment leaves the amount of the donation. Pr.36 S.848

(2) A body or institution shall not be designated by the Minister for the purposes of this section unless it shows to the satisfaction of the Minister that—

(a) it is a body of persons or trust established for charitable purposes only,

(b) it has been granted exemption from tax for the purposes of *section 207* for a period of not less than 3 years before the date of the making of the application,

(c) the person concerned in the management or control of the body or institution ensures that in respect of each financial year of the body or institution there is prepared and furnished to the Minister—

(i) audited accounts comprising—

(I) an income and expenditure account or a profit and loss account, as appropriate, for its most recent financial year, and

(II) a balance sheet as at the last day of that financial year,

and

(ii) a report as to the activities of the body or institution, having regard to its charitable purposes, and

(d) it has as its sole object, relief and development in a country or countries where the country or countries concerned is or are for the time being on the List of Aid Recipients (Part 1: Aid to Developing Countries and Territories) produced by the Development Aid Committee of the Organisation for Economic Co-operation and Development.

(3) The Minister shall—

(a) maintain a list of the bodies and institutions designated for the purposes of this section, and

(b) from time to time as the Minister sees fit cause such list to be published in *Iris Oifigiúil*.

(4) Where the Minister is satisfied that a body or institution ceases to comply with *subsection (2)*, the Minister shall, with the consent of the Minister for Finance—

(a) withdraw the designation previously granted and such withdrawal shall apply from the beginning of the year of assessment in which notice in accordance with *paragraph (b)* is given, and

- (b) cause notice of such withdrawal to be published in *Iris Oifigiúil* within one month of such withdrawal.

(5) For the purposes of this section, a donation to a designated charity shall be a qualifying donation if—

- (a) it is made by an individual (in this section referred to as “the donor”),
- (b) it satisfies the requirements of *subsection (6)*, and
- (c) the donor—
 - (i) has given an appropriate certificate in relation to the donation to the designated charity, and
 - (ii) has paid the tax referred to in such appropriate certificate and is not entitled to claim a repayment of that tax or any part of that tax.

(6) A donation shall satisfy the requirements of this subsection if—

- (a) it takes the form of the payment of a sum or sums of money,
- (b) it is not subject to a condition as to repayment,
- (c) neither the donor nor any person connected with the donor receives a benefit in consequence of making it,
- (d) it is not conditional on or associated with, or part of an arrangement involving, the acquisition of property by the designated charity, otherwise than by means of gift, from the donor or a person connected with the donor,
- (e) the sum or the aggregate of the sums paid in the relevant year of assessment to the designated charity is not less than £200,
- (f) the sum or the aggregate of the sums paid does not, when aggregated with any other qualifying donation or qualifying donations made by the donor in the relevant year of assessment, exceed £750, and
- (g) the donor is resident in the State for the relevant year of assessment.

(7) Where a donation is a qualifying donation, the Tax Acts shall apply in relation to the designated charity as if—

- (a) the grossed up amount of the donation were an annual payment which was the income of the designated charity received by it under deduction of tax at the standard rate for the relevant year of assessment, and
- (b) the provisions of those Acts which apply in relation to a claim to repayment of tax applied in relation to any claim to repayment of such tax by a designated charity;

but, if the total amount of the tax referred to in *paragraph (i)(II)* of the definition of “appropriate certificate” is not paid, the amount of

any repayment which would otherwise be made to a designated charity in accordance with this section shall not exceed the amount of tax actually paid by the donor. Pr.36 S.848

MANAGEMENT PROVISIONS

PART 37

ADMINISTRATION

849.—(1) In this section, “tax” means income tax, corporation tax and capital gains tax. Taxes under care and management of Revenue Commissioners.

(2) All duties of tax shall be under the care and management of the Revenue Commissioners. [ITA67 s155; CGTA75 s51(1) and Sch4 pars 1(1) and (2); CTA76 s6(5); FA96 s132(1) and Sch5 PtI par10(1)]

(3) The Revenue Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for tax in the like and in as full and ample a manner as they are authorised to do in relation to any other duties under their care and management and, unless the Minister for Finance otherwise directs, shall appoint such officers and other persons for collecting, receiving, managing and accounting for any duties of tax as are not required to be appointed by some other authority.

(4) All such appointments shall continue in force, notwithstanding the death, or the ceasing to hold office, of any Revenue Commissioner, and the holders shall have power to execute the duties of their respective offices and to enforce in the execution of those offices all laws and regulations relating to tax in every part of the State.

(5) The Revenue Commissioners may suspend, reduce, discharge or restore, as they see fit, any such officer or person.

(6) Any act or thing required or permitted by this or any other statute to be done by the Revenue Commissioners in relation to tax may be done by any one Revenue Commissioner.

850.—(1) The Minister for Finance shall appoint persons to be Appeal Commissioners for the purposes of the Income Tax Acts (in the Tax Acts and the Capital Gains Tax Acts referred to as “Appeal Commissioners”) and the persons so appointed shall, by virtue of their appointment and without other qualification, have authority to execute such powers and to perform such duties as are assigned to them by the Income Tax Acts. Appeal Commissioners. [ITA67 s156; F(MP)A68 s1(1), s3(2) and Sch PtI]

(2) Appeal Commissioners shall be allowed such sums in respect of salary and incidental expenses as the Minister for Finance directs.

(3) The Minister for Finance shall cause an account of all appointments of Appeal Commissioners and their salaries to be laid before each House of the Oireachtas within 20 days of their appointment or, in the case of a House not then sitting, within 20 days after the next sitting of that House.

(4) Anything required to be done under the Income Tax Acts by the Appeal Commissioners or any other Commissioners may, except where otherwise expressly provided by those Acts, be done by any 2 or more Commissioners.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.37
Collector-General.

851.—(1) There shall be a Collector-General, who shall be appointed by the Revenue Commissioners from among their officers and who shall hold such office at their will and pleasure.

[ITA67 s162; FA74 s86 and Sch2 PtI; CGTA75 s51(1) and Sch4 par1(3); CTA76 s145(1); FA87 s52; FA97 s157]

(2) The Collector-General shall collect and levy the tax from time to time charged in all assessments to income tax, corporation tax and capital gains tax of which particulars have been transmitted to him or her under *section 928*.

(3) (a) The Revenue Commissioners may nominate persons to exercise on behalf of the Collector-General any or all of the powers and functions conferred on the Collector-General by the Tax Acts and the Capital Gains Tax Acts.

(b) Those powers and functions, as well as being exercisable by the Collector-General, shall also be exercisable on his or her behalf by persons nominated under this subsection.

(c) A person shall not be nominated under this subsection unless he or she is an officer or employee of the Revenue Commissioners.

(4) If and so long as the office of Collector-General is vacant or the holder of that office is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in that behalf by the Revenue Commissioners from among their officers shall act as the Collector-General, and any reference in this or any other Act to the Collector-General shall be construed as including, where appropriate, a reference to a person nominated under this subsection.

(5) The Revenue Commissioners may revoke a nomination under this section.

Inspectors of taxes.

[ITA67 s161; FA86 s116]

852.—(1) The Revenue Commissioners may appoint inspectors of taxes, and all such inspectors and all other officers or persons employed in the execution of the Income Tax Acts shall observe and follow the orders, instructions and directions of the Revenue Commissioners.

(2) The Revenue Commissioners may revoke an appointment made under this section.

(3) Inspectors of taxes appointed by the Minister for Finance before the 27th day of May, 1986, shall be deemed to have been appointed by the Revenue Commissioners.

Governor and directors of Bank of Ireland.

[ITA67 s157; FA69 s12; FA76 s81(1) and Sch5 PtI]

853.—For the purpose of assessing and charging income tax in the cases mentioned in this section, the Governor and directors of the Bank of Ireland—

(a) shall be Commissioners,

(b) shall have all the necessary powers for that purpose, and

(c) shall make assessments under and subject to the Income Tax Acts in respect of—

(i) interest, annuities, dividends and shares of annuities, and the profits attached to the same, payable to the

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Bank of Ireland out of the public revenue of the State, Pr.37 S.853

- (ii) interest, annuities, dividends and shares of annuities entrusted to the Bank of Ireland for payment,
- (iii) all other interest, annuities and dividends, and
- (iv) all other profits chargeable with tax arising within any office or department under the management or control of the Bank of Ireland.

854.—Where the Minister for Finance determines that, by reason of special circumstances existing in any particular public office, it is not expedient that the powers and duties of assessing and charging income tax in relation to that office or any one or more of such powers and duties should be exercised and performed in relation to that office by the inspector or other officer appointed in that behalf, the Revenue Commissioners shall appoint such officers or persons as may be approved of by the Minister for Finance to exercise such powers and duties in relation to that office.

Appointment of persons for purposes of assessment of certain public offices.
[ITA67 s158]

855.—The respective Commissioners for executing the Income Tax Acts in relation to offices and employments of profit and pensions and stipends shall, as soon as practicable after their appointment, meet and make and subscribe the declaration contained in *Part 2* of *Schedule 27* and may respectively elect a clerk and assessors and, if the tax cannot be deducted at the department or office of the Commissioners or at the office for which they act, they may, from among the officers in their respective departments, appoint separate assessors and collectors for each such department.

Declaration to be made by Commissioners.
[ITA67 s159]

856.—(1) Every Commissioner acting in the execution of the Income Tax Acts shall be chargeable with tax in the same manner as any other person, but shall take no part in the proceedings, and shall not be present, when any assessment, statement or schedule is under consideration, or any controversy or appeal is being determined, with reference to any case in which he or she is interested, either in his or her own right or in the right of any other person as his or her agent, except during the hearing of an appeal for the purpose of being examined orally by the Commissioners, and he or she shall withdraw during the consideration and determination of the controversy or appeal.

Disqualification of Commissioners in cases of personal interest.
[ITA67 s160;
CTA76 s146(2)]

(2) A Commissioner who, in any case referred to in *subsection (1)*, takes any part in the determination of any such controversy or appeal, or fails to withdraw, shall incur a penalty of £50.

(3) For the purposes of corporation tax, where an Appeal Commissioner is interested in his or her own right or in the right of any other person in any matter under appeal, he or she shall not take part in, or be present at, the hearing or determination of the appeal.

857.—(1) Every person appointed to one of the offices named in *Part 1* of *Schedule 27* shall, before he or she commences to act in the execution of the Income Tax Acts in so far as those Acts relate to tax under *Schedule D*, make and subscribe the declaration contained in that Part in respect of his or her office.

Declarations on taking office.
[ITA67 s163;
F(MP)A68 s3(4)
and Sch PtIII;
CTA76 s147(5)]

(2) The declaration may be made before a Peace Commissioner.

(3) A person who acts in the execution of his or her office in relation to tax under Schedule D (otherwise than in respect of any such declaration made before him or her) before he or she has made the prescribed declaration shall forfeit the sum of £100.

(4) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of corporation tax shall be subject to the same obligations as to secrecy with respect to corporation tax as those persons are subject to with respect to income tax, and any declaration made by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to corporation tax.

858.—(1) In this section, except where the context otherwise requires—

“the Acts” means—

- (a) (i) the Customs Acts,
- (ii) the statutes relating to the duties of excise and to the management of those duties,
- (iii) the Tax Acts,
- (iv) the Capital Gains Tax Acts,
- (v) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (vi) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
- (vii) the statutes relating to stamp duty and to the management of that duty,

and any instruments made thereunder or under any other enactment and relating to tax, and

- (b) the European Communities (Intrastat) Regulations, 1993 (S.I. No. 136 of 1993);

“authorised officer” means an officer of the Revenue Commissioners who is authorised, nominated or appointed under any provision of the Acts to exercise or perform any functions under any of the specified provisions, and “authorised” and “authorisation” shall be construed accordingly;

“functions” includes powers and duties;

“identity card”, in relation to an authorised officer, means a card which is issued to the officer by the Revenue Commissioners and which contains—

- (a) a statement to the effect that the officer—
 - (i) is an officer of the Revenue Commissioners, and
 - (ii) is an authorised officer for the purposes of the specified provisions,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Pr.37 S.858

- (b) a photograph and signature of the officer,
- (c) a hologram showing the logo of the Office of the Revenue Commissioners,
- (d) the facsimile signature of a Revenue Commissioner, and
- (e) particulars of the specified provisions under which the officer is authorised;

“specified provisions”, in relation to an authorised officer, means either or both the provisions of the Acts under which the authorised officer—

- (a) is authorised and which are specified on his or her identity card, and
- (b) exercises or performs functions under the Customs Acts or any statutes relating to the duties of excise and to the management of those duties;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) Where, in the exercise or performance of any functions under any of the specified provisions in relation to him or her, an authorised officer is requested to produce or show his or her authorisation for the purposes of that provision, the production by the authorised officer of his or her identity card—

- (a) shall be taken as evidence of authorisation under that provision, and
- (b) shall satisfy any obligation under that provision which requires the authorised officer to produce such authorisation on request.

(3) This section shall come into operation on such day as the Minister for Finance may appoint by order.

859.—(1) In this section—

“authorised officer” means an officer of the Revenue Commissioners nominated by them to be a member of the staff of the body;

“the body” has the meaning assigned to it by *section 58*;

“proceedings” includes any hearing before the Appeal Commissioners (within the meaning of the Revenue Acts);

“the Revenue Acts” means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,

Anonymity of authorised officers in relation to certain matters.

[FA83 s19A;
DCITPA96 s12;
CABA96 s23]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.37 S.859

- (e) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and the management of that duty,
- (h) Chapter IV of Part II of the Finance Act, 1992, and
- (i) Part VI of the Finance Act, 1983,

and any instruments made thereunder or under any other enactment and relating to tax;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) Notwithstanding any requirement made by or under any enactment or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of an authorised officer shall not be revealed.

(3) In particular and without prejudice to the generality of *subsection (2)*:

- (a) where, for the purposes of exercising or performing his or her powers or duties under the Revenue Acts in pursuance of the functions of the body, an authorised officer may apart from this section be required to produce or show any written authority or warrant of appointment under those Acts or otherwise to identify himself or herself, the authorised officer shall—
 - (i) not be required to produce or show any such authority or warrant of appointment or to so identify himself or herself, for the purposes of exercising or performing his or her powers or duties under those Acts, and
 - (ii) be accompanied by a member of the Garda Síochána who shall, on request by a person affected, identify himself or herself as a member of the Garda Síochána and shall state that he or she is accompanied by an authorised officer;
- (b) where, in pursuance of the functions of the body, an authorised officer exercises or performs in writing any of his or her powers or duties under the Revenue Acts or any provision of any other enactment, whenever passed, which relates to Revenue, such exercise or performance of his or her powers or duties shall be done in the name of the body and not in the name of the individual authorised officer involved, notwithstanding any provision to the contrary in any of those enactments;
- (c) in any proceedings arising out of the exercise or performance, in pursuance of the functions of the body, of powers or duties by an authorised officer, any documents relating to such proceedings shall not reveal the identity of any authorised officer, notwithstanding any requirements to

the contrary in any provision, and in any proceedings the identity of such officer other than as an authorised officer shall not be revealed other than to the judge or the Appeal Commissioner, as the case may be, hearing the case;

Pr.37 S.859

- (d) where, in pursuance of the functions of the body, an authorised officer is required, in any proceedings, to give evidence and the judge or the Appeal Commissioner, as the case may be, is satisfied that there are reasonable grounds in the public interest to direct that evidence to be given by such authorised officer should be given in the hearing and not in the sight of any person, he or she may so direct.

860.—(1) A Peace Commissioner may administer an oath to be taken before a Commissioner by any officer or person in any matter relating to the execution of the Tax Acts.

Administration of oaths.

[ITA67 s164; F(MP)A68 s3(1) and (3) and Sch PtI; CTA76 s147(1) and (2)]

(2) An Appeal Commissioner may administer an oath to be taken before the Appeal Commissioners under the Tax Acts by any officer or person in any matter relating to the execution of the Tax Acts.

861.—(1) Every assessment, charge, bond, warrant, notice of assessment or of demand, or other document required to be used in assessing, charging, collecting and levying income tax, corporation tax or capital gains tax shall be in accordance with the forms prescribed from time to time in that behalf by the Revenue Commissioners, and a document in the form prescribed and supplied or approved by them shall be valid and effectual.

Documents to be in accordance with form prescribed by Revenue Commissioners.

[ITA67 s165; CGTA75 s51(1) and Sch4 par2; CTA76 s143(12)(b) and (c) and s147(1) and (2)]

(2) (a) In this subsection, “return” includes any statement, declaration or list.

(b) Any return under the Corporation Tax Acts shall be in such form as the Revenue Commissioners prescribe.

862.—Anything required under the Tax Acts to be done by the Minister for Finance may be signified under the hand of the Secretary General, a Deputy Secretary or an Assistant Secretary of the Department of Finance.

Exercise of powers, etc. of Minister for Finance under Tax Acts.

[ITA67 s166(2); CTA76 s147(1) and (2)]

863.—(1) Subject to *subsection (2)*, where any assessment to income tax or capital gains tax for any year, or any assessment to corporation tax for any accounting period or any return or other document relating to income tax, corporation tax or capital gains tax has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Revenue Commissioners, the Collector-General, inspectors and other officers respectively having powers in relation to income tax, corporation tax or capital gains tax may, notwithstanding anything to the contrary in any enactment, do all such acts and things as they might have done, and all acts and things done under or in accordance with this section shall be as valid and effectual for all purposes as they would have been if the assessment had not been made, or the return or other document had not been made or furnished, or required to be made or furnished.

Loss, destruction or damage of assessments and other documents.

[ITA67 s188(1); CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

(2) Where any person who is charged with income tax, corporation tax or capital gains tax in consequence or by virtue of any act or

Pt.37 S.863

thing done under or in accordance with this section proves to the satisfaction of the Revenue Commissioners that that person has already paid any income tax or capital gains tax for the same year, or corporation tax for the same accounting period, in respect of the subject matter and on the account in respect of and on which that person is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payments so made either by abatement from the charge or by repayment, as the case may require.

Making of claims, etc.

864.—(1) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts—

[ITA67 s432(1) (part of); CGTA75 s51(1) and Sch4 par2; CTA76 s4 and s146(1); FA84 s6(a)]

- (a) all claims of exemption or for any allowance or deduction under those Acts,
- (b) all claims for repayment of income tax, corporation tax or capital gains tax under those Acts, and
- (c) (i) all claims to relief under those Acts where the relief is measured in the provision under which it is given, and
- (ii) all matters and questions relating to any relief so measured,

in relation to which a right of appeal from a decision is, otherwise than by *section 949*, not specifically provided,

shall be stated in such manner and form as the Revenue Commissioners may prescribe, and shall be made to and determined by the Revenue Commissioners or such officer of the Revenue Commissioners (including an inspector) as they may authorise in that behalf.

(2) Effect shall be given—

- (a) to *section 21(2)* and to that section as modified by *sections 24(2)* and *25(3)*, and
- (b) in so far as the exemptions from income tax conferred by the Corporation Tax Acts call for repayment of tax, to those exemptions,

by means of a claim.

Limit of time for repayment claims.

[ITA67 s498; F(MP)A68 s4(5)(a); CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

865.—Except where otherwise expressly provided by any provision of the Tax Acts or the Capital Gains Tax Act, no claim for repayment of income tax, corporation tax or capital gains tax under those Acts shall be allowed unless it is made within 10 years after the end of the year of assessment or, as the case may be, accounting period to which it relates.

Rules as to delivery of statements.

[ITA67 s533; FA69 s65(1) and Sch5 PtI]

866.—Any person who, on that person's own behalf or on behalf of another person or body of persons, delivers a statement of the amount of the profits on which any income tax is chargeable shall observe the rules and directions contained in *Schedule 28* in so far as those rules and directions are respectively applicable.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

867.—It shall be lawful for the Revenue Commissioners from time to time to make such amendments of the forms of declarations, lists and statements contained in *Schedules 27 and 28* as appear to them to be necessary to give effect to the Income Tax Acts.

Pr.37
Amendment of
statutory forms.
[ITA67 s189]

868.—(1) Warrants issued under the authority of the Tax Acts shall be executed by the respective persons to whom they are directed.

Execution of
warrants.
[ITA67 s536;
F(MP)A68 s3(4)
and Sch PtIII, s3(5)
and Sch PtIV;
CTA76 s147(1) and
(2)]

(2) Members of the Garda Síochána shall aid in the execution of the Tax Acts.

869.—(1) (a) In this subsection, except where in *paragraph (d)* the context otherwise requires, “company” means any body corporate.

Delivery, service
and evidence of
notices and forms.

(b) Any notice, form or other document which under the Tax Acts or the Capital Gains Tax Acts is to be given, served, sent or delivered to or on a person by the Revenue Commissioners or by an inspector or other officer of the Revenue Commissioners may be either delivered to the person or left—

[ITA67 s542(2) and
(4) to (7);
F(MP)A68 s3(2)
and Sch PtI;
CGTA75 s51(1) and
Sch4 par2; FA75
s25; CTA76 s147(1)
and (2)]

(i) in a case where the person is a company, at the company’s registered office or place of business, or

(ii) in any other case, at the person’s usual or last known place of abode or place of business or, if the person is an individual, at his or her place of employment.

(c) Any notice, form or other document referred to in *paragraph (b)* may be served by post addressed—

(i) in a case where the person is a company, to the company at either of the places specified in *paragraph (b)(i)*, or

(ii) in any other case, to the person at any of the places specified in *paragraph (b)(ii)*.

(d) Without prejudice to *paragraphs (b)* and *(c)*, section 379 of the Companies Act, 1963, shall apply in relation to the service on a company of any notice, form or other document referred to in this subsection as it applies in relation to the service of documents under that section on a company within the meaning of that Act.

(2) Any notice which under the Tax Acts or the Capital Gains Tax Acts is authorised or required to be given by the Revenue Commissioners may be signed and given by any officer of the Revenue Commissioners authorised by them for the purpose of giving notices of the class to which the notice belongs and, where so signed and given, shall be as valid and effectual as if signed under the hands of the Revenue Commissioners and given by them.

(3) Prima facie evidence of any notice given under the Tax Acts or the Capital Gains Tax Acts by the Revenue Commissioners or an inspector or other officer of the Revenue Commissioners may be

Pt.37 S.869

given in any proceedings by the production of a document purporting to be a copy of the notice, and it shall not be necessary to prove the official positions or position of the persons or person by whom the notice purports to be given or, where it is signed, the signatures or signature or that the persons or person signing and giving it were or was authorised to do so.

(4) Notices to be given or delivered to, or served on, the Appeal Commissioners shall be valid and effectual if given or delivered to or served on their Clerk.

(5) This section shall apply notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts.

Effect of want of form, error, etc. on assessments, charges, warrants and other proceedings.

[ITA67 s537; F(MP)A68 s3(2) and Sch PtI; CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

870.—(1) An assessment, charge, warrant or other proceeding which purports to be made in accordance with the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of those Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts but subject to *subsection (3)*, an assessment or a charge made on an assessment shall not be impeached or affected—

(a) by reason of a mistake in the assessment or the charge made on the assessment as to—

- (i) the name or surname of a person liable,
- (ii) the description of any profits or property, or
- (iii) the amount of the tax charged;

(b) by reason of any variance between the notice and the certificate of charge or assessment.

(3) In cases of charge, the notice of charge shall be duly served on the person intended to be charged, and the notice and certificate shall respectively contain, in substance and effect, the particulars on which the charge is made, and every such charge shall be heard and determined on its merits by the Appeal Commissioners.

Power to combine certain returns and assessments.

[CGTA75 s51(1) and Sch4 par16]

871.—Any return, assessment or other document relating to chargeable gains or capital gains tax may be combined with one relating to income or income tax.

Use of information relating to other taxes and duties.

[FA28 s34(2); FA96 s130]

872.—(1) Any information acquired, whether before or after the passing of this Act, in connection with any tax or duty under the care and management of the Revenue Commissioners may be used by them for any purpose connected with any other tax or duty under their care and management.

(2) The Revenue Commissioners or any of their officers may, for any purpose in connection with the assessment and collection of income tax, corporation tax or capital gains tax, make use of or produce in evidence any returns, correspondence, schedules,

accounts, statements or other documents or information to which the Revenue Commissioners or any of their officers have or has had or may have lawful access for the purposes of the Acts relating to any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

Pr.37 S.872

873.—In any proceedings under or arising out of the Tax Acts before any court or person empowered to take evidence, prima facie proof of the fact that any person was a Commissioner or officer may be given by proving that, at the time when any matter in controversy in any such proceedings arose, that person was reputed to be or had acted as a Commissioner or officer.

Proof that person is a Commissioner or officer.
[ITA67 s541; CTA76 s147(1) and(2)]

874.—(1) A Commissioner, sheriff, county registrar, clerk, inspector, assessor or Collector-General who acts, or is employed, in the execution of the Tax Acts or the Capital Gains Tax Acts shall not be liable to any penalty in respect of such execution other than as provided by those Acts.

Limitation of penalties on officers employed in execution of Tax Acts and Capital Gains Tax Acts.

(2) Where any civil or criminal proceeding against any officer or person employed in relation to any duty of income tax, corporation tax or capital gains tax on account of the seizure or detention of any goods is brought to trial, and a verdict or judgment is given against the defendant, then, if the court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages besides the goods seized, or the value of those goods, or to any costs, and the defendant shall not be liable to any punishment.

[ITA67 s519; CTA76 s147(1) and (2); CGTA75 s51(1) and Sch4 par3(2)]

875.—No appraisalment or valuation given or made in pursuance and for the purposes of the Tax Acts or the Capital Gains Tax Acts shall be liable to any stamp duty.

Exemption of appraisements and valuations from stamp duty.

[ITA67 s538; CGTA75 s51(2) and Sch4 par2; CTA76 s147(1) and (2)]

PART 38

RETURNS OF INCOME AND GAINS, OTHER OBLIGATIONS AND RETURNS, AND REVENUE POWERS

CHAPTER 1

Income tax: returns of income

876.—Every person who is chargeable to income tax for any year of assessment and who in relation to that year has not been given a notice under *section 877* or *879* and has not made a return of such person's total income shall, not later than one year after the end of the year of assessment, give notice to the inspector of taxes that such person is so chargeable.

Notice of liability to income tax.
[F(MP)A68 s5(1)]

877.—(1) Every person chargeable under the Income Tax Acts, when required to do so by a notice given to such person by an inspector, shall, within the time limited by such notice, prepare and deliver to the inspector a statement in writing as required by the Income Tax Acts, signed by such person, containing the amount of the profits or gains arising to such person, from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts.

Returns by persons chargeable.
[ITA67 s169; F(MP)A68 s6(2) and (3); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par4; FA76 s11(5)]

(2) Where a person's income of which particulars are required to be included in a statement under this section comprises a distribution chargeable under Schedule F, there shall be shown separately in the statement the amount or value of the distribution and the amount of any tax credit under *section 136* to which the person is entitled in respect of that distribution.

(3) There shall be added to the statement referred to in *subsection (1)* a declaration that the amounts contained in that statement are estimated in respect of all the sources of income mentioned in the Income Tax Acts, describing those sources, after deducting only such sums as are allowed.

(4) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect of that interest of money or other annual payment.

(5) (a) Every person to whom a notice has been given by an inspector requiring such person to deliver a statement of any profits, gains or income in respect of which such person is chargeable under Schedule D or E shall deliver a statement in the form required by the notice, whether or not such person is so chargeable.

(b) The penalty imposed on any person proceeded against for not complying with this subsection who proves that such person was not chargeable to income tax shall not exceed £5 for any one offence.

Persons acting for incapacitated persons and non-residents.

[ITA67 s170;
F(MP)A68 s6(4)]

878.—(1) Every person (in this subsection referred to as “the first-mentioned person”) acting in any character on behalf of any incapacitated person or person not resident in the State who, by reason of such incapacity or non-residence in the State, may not be personally charged under the Income Tax Acts shall, whenever required to do so by a notice given to the first-mentioned person by an inspector, within the time permitted by such notice and in any district in which the first-mentioned person may be chargeable on the first-mentioned person's own account, deliver a statement described in *section 877* of the profits or gains in respect of which income tax is to be charged on the first-mentioned person on account of that other person, together with the prescribed declaration.

(2) Where 2 or more such persons are liable to be charged for the same person—

(a) one statement only shall be required to be delivered which may be made by them jointly or by any one or more of them, and

(b) notice in writing may be given by any such persons to the inspector for each district in which they are called on for a statement stating in which district or districts they are respectively chargeable on their own account, and in which of those districts they desire to be charged on behalf of the person for whom they act, and they shall, if any one such person is liable to be charged on such person's own account in that district, be charged in that district accordingly by one assessment.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

879.—(1) In this section, “prescribed” means prescribed by the Revenue Commissioners and, in prescribing forms for the purposes of this section, the Revenue Commissioners shall have regard to the desirability of securing in so far as may be possible that no individual shall be required to make more than one return annually of the sources of the individual’s income and the amounts derived from those sources.

Pr.38
Returns of income.
[ITA67 s172(1), (2), (4) and (6); FA74 s86 and Sch2 PtI; FA90 s23(2)]

(2) Every individual, when required to do so by a notice given to him or her in relation to any year of assessment by an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return in the prescribed form of—

- (a) all the sources of his or her income for the year of assessment in relation to which the notice is given;
- (b) the amount of income from each source for the year of assessment computed in accordance with *subsection (3)*;
- (c) such further particulars for the purposes of income tax for the year of assessment as may be required by the notice or indicated by the prescribed form.

(3) The amount of income from any source to be included in a return under this section shall be computed in accordance with the Income Tax Acts; but, where under *section 65* the profits or gains of a year ending on a date within the year of assessment are to be taken to be the profits or gains of that year of assessment, the computation shall be made by reference to that year ending on a date within that year of assessment.

(4) Where a person delivers to any inspector a return in a prescribed form, the person shall be deemed to have been required by a notice under this section to prepare and deliver that return.

880.—(1) In this section—

“precedent partner” has the same meaning as in *Part 43*;

“prescribed” means prescribed by the Revenue Commissioners.

Partnership returns.
[ITA67 s69(3) and s70(1) to (3A) and (5); FA74 s86 and Sch2 PtI; FA79 s30; FA90 s23(1)]

(2) The precedent partner of any partnership, when required to do so by a notice given to that partner in relation to any year of assessment by an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return in the prescribed form of—

- (a) all the sources of income of the partnership for the year of assessment in relation to which the notice is given;
- (b) the amount of income from each source for the year of assessment computed in accordance with *subsection (3)*;
- (c) such further particulars for the purposes of income tax for the year of assessment as may be required by the notice or indicated by the prescribed form.

(3) The amount of income from any source to be included in a return under this section shall be computed in accordance with the Income Tax Acts; but where, in the case of a trade or profession, an account has been made up to a date within the year of assessment or more accounts than one have been made up to dates within that

Pt.38 S.880

year, the computation shall be made by reference to the period, or to all the periods where there is more than one period, for which accounts have been so made up.

(4) Where a person delivers to any inspector a return in a prescribed form, the person shall be deemed to have been required by a notice under this section to prepare and deliver that return.

(5) The precedent partner of any partnership, when required to do so by a notice given to that partner by an inspector, shall within the time limited by such notice prepare and deliver to the inspector a statement in writing signed by that partner stating the amount of the profits or gains arising to the partnership from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts.

(6) There shall be added to the statement referred to in *subsection (5)* a declaration that the amounts contained in that statement are estimated in respect of all the sources of income mentioned in the Income Tax Acts, describing those sources, after deducting only such sums as are allowed.

Returns by married persons.

[ITA67 s195B(3) and (6); FA76 s11(1) to (3); FA80 s19 and Sch1 PtIII par6; FA93 s10(1)]

881.—(1) Where an individual is required by a notice given under *section 877* to deliver a statement in writing of the total income in respect of which the individual is chargeable to income tax and that income is or includes income of his or her spouse, the individual may, within 21 days from the date of the receipt of the notice, notify the inspector by whom the notice was given that the income in respect of which the individual is chargeable to income tax is or includes income of his or her spouse.

(2) Where an inspector receives a notification under *subsection (1)* or is of the opinion that the spouse of the individual concerned is in receipt of income, the inspector may by notice given to the individual's spouse require him or her to prepare and deliver to the inspector, within the time limited by the notice and in the form required by the notice, a statement in writing signed by him or her, setting out the amount of income arising to him or her from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts, whether or not the individual's spouse or the individual concerned is the person chargeable to income tax in respect of that income.

(3) The delivery of a statement under *subsection (2)* shall not affect *Chapter 1 of Part 44*.

CHAPTER 2

Corporation tax: returns of profits

Particulars to be supplied by new companies.

[CTA76 s141(1), (1A), (1B) and (3) and s154; FA95 s58]

882.—(1) In this section, “secretary” includes persons mentioned in *section 1044(2)* and, in the case of a company not resident in the State, the agent, manager, factor or other representative of the company.

(2) Every company which commences to carry on a trade, profession or business shall, within 30 days from the date of such commencement, deliver to the Revenue Commissioners a statement in writing containing the following particulars—

- (a) the name of the company,
- (b) the address of its registered office in the State or, in the case of a company not resident in the State, the address of its principal place of business in the State,
- (c) the name of the secretary or, in the case of a company not resident in the State, the name and address of the agent, manager, factor or other representative of the company,
- (d) the date of commencement of the trade, profession or business or, in the case of a company not resident in the State, the date of commencement of its trade or profession in the State,
- (e) the nature of the trade, profession or business, and
- (f) the date to which the first accounts relating to such trade, profession or business will be made up;

but this subsection shall not apply to a company which is neither resident nor incorporated in the State unless it commences to carry on a trade, profession or business in the State.

(3) Subject to *subsection (4)*, every company which is incorporated in the State and is neither resident in the State nor carrying on a trade, profession or business in the State shall, in every case within 30 days of—

- (a) the date on which it commences to carry on a trade, profession or business, wherever carried on,
- (b) any time at which there is a material change in information previously delivered by the company under this subsection, and
- (c) the giving of a notice to the company by an inspector requiring a statement under this subsection,

deliver to the Revenue Commissioners a statement in writing containing particulars of—

- (i) the name of the company,
- (ii) the address of its registered office in the State and the address of its principal place of business,
- (iii) the nature of the trade, profession or business,
- (iv) the name and address of the secretary of the company,
- (v) (I) where the company is controlled by a company the shares in which are listed in the official list of a recognised stock exchange and have been the subject of dealings on such an exchange in the period of 12 months ending at the time at which the statement is delivered, the name of that company and the address of its registered office, and
- (II) in any other case, the name and address of any individual or individuals who have control of the company,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.882

(vi) the territory in which the central management and control of the company is normally carried out, and

(vii) such other information as the Revenue Commissioners consider necessary for the purposes of determining the territory in which the company is resident for the purposes of tax.

(4) *Subsection (3)* shall not apply to a company (in this subsection referred to as “the first-mentioned company”) if, at the time at which a statement under that subsection would apart from this subsection have to be delivered, there is a company which is a 90 per cent subsidiary of the first-mentioned company carrying on a trade or profession in the State.

(5) For the purposes of this section—

(a) *sections 412 to 418* shall apply for the purposes of this paragraph as they would apply for the purposes of *Chapter 5 of Part 12* if *section 411(1)(c)* were deleted, and

(b) control shall be construed in accordance with *section 432*.

Notice of liability to corporation tax.

[CTA76 s142(1)]

883.—Every company which is chargeable to corporation tax for any accounting period and which has not made a return of its profits for that accounting period shall, not later than one year after the end of that accounting period, give notice to the inspector that it is so chargeable.

Returns of profits.

[CTA76 s143(1) to (6), (7)(a), (b) and (d) and (12)(c); FA81 s16; FA83 s36; FA90 s54; FA92 s247]

884.—(1) In this section, “return” includes any statement, declaration or list.

(2) A company may be required by a notice served on it 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—

(a) the profits of the company computed in accordance with the Corporation Tax Acts—

(i) specifying the income taken into account in computing those profits, with the amount from each source,

(ii) giving particulars of all disposals giving rise to chargeable gains or allowable losses under the Capital Gains Tax Acts and the Corporation Tax Acts and particulars of those chargeable gains or allowable losses, and

(iii) giving particulars of all charges on income to be deducted against those profits for the purpose of the assessment to corporation tax, other than those included in *paragraph (d)*,

(b) the distributions received by the company from companies resident in the State and the tax credits to which the company is entitled in respect of those distributions,

(c) all amounts of tax credits recoverable from the company under *sections 157(5) and 158(4)*,

(d) payments made from which income tax is deductible and to which *subsections (3) to (5) of section 238* apply, and Pr.38 S.884

(e) all amounts which under *section 438* are deemed to be annual payments.

(3) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the disposal of an asset giving rise to a chargeable gain or an allowable loss under the Capital Gains Tax Acts and the Corporation Tax Acts shall for the purposes of this section constitute such a disposal.

(4) A notice under this section may require a return of profits arising in any period during which the company was within the charge to corporation tax, together with particulars of distributions received in that period from companies resident in the State and of tax credits to which the company is entitled in respect of those distributions.

(5) Every return under this section shall include a declaration to the effect that the return is correct and complete.

(6) A return under this section which includes profits which are payments on which the company has borne income tax by deduction shall specify the amount of income tax so borne.

(7) A notice under this section may require the inclusion in the return of particulars of management expenses, capital allowances and balancing charges which have been taken into account in determining the profits included in the return.

(8) *Subsections (3), (4) and (5)(b) of section 913* shall apply in relation to a notice under this section as they apply in relation to a notice under any provision of the Income Tax Acts applied in relation to capital gains tax by *section 913*.

(9) (a) In this subsection, “authorised officer” means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this subsection.

(b) Where a company which has been duly required to deliver a return under this section fails to deliver the return, or where the inspector is not satisfied with the return delivered by any such company, an authorised officer may serve on that company a notice or notices in writing requiring the company to do any of the following—

(i) to deliver to the inspector or to the authorised officer copies of such accounts (including balance sheets) of the company as may be specified or described in the notice, within such period as may be specified in the notice, including, where the accounts have been audited, a copy of the auditor’s certificate;

(ii) to make available for inspection by an inspector or by an authorised officer within such time as may be specified in the notice all such books, accounts and documents in the possession or power of the company as may be specified or described in the notice, being books, accounts and documents which contain information as to profits, assets or liabilities of the company.

Pt.38 S.884

- (c) The inspector or authorised officer may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this subsection.

CHAPTER 3

Other obligations and returns

Obligation to show tax reference number on receipts.

[FA83 s22(1) and (2)]

885.—(1) In this section—

“business” means—

- (a) a profession, or
- (b) a trade consisting solely of the supply (within the meaning of the Value-Added Tax Acts, 1972 to 1997) of a service and includes, in the case of a trade part of which consists of the supply of a service, that part, and also includes, in the case of a trade the whole or part of which consists of the supply of a service which incorporates the supply of goods in the course of the supply of that service, that trade or that part, as the case may be;

“specified person”, in relation to a business, means—

- (a) where the business is carried on by an individual, that individual, and
- (b) where the business is carried on by a partnership, the precedent partner;

“tax reference number”, in relation to a specified person, means each of the following—

- (a) the Revenue and Social Insurance (RSI) Number stated on any certificate of tax-free allowances issued to that person by an inspector, not being a certificate issued to an employer in respect of an employee of that employer,
- (b) the reference number stated on any return of income form or notice of assessment issued to that person by an inspector, and
- (c) the registration number of that person for the purposes of value-added tax.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, the specified person in relation to a business shall ensure that the specified person’s tax reference number or, if the specified person has more than one tax reference number, one of those tax reference numbers or, if the specified person has no tax reference number, the specified person’s full names and address is or are stated on any document (being an invoice, credit note, debit note, receipt, account, statement of account, voucher or estimate relating to an amount of £5 or more) issued in the course of that business.

Obligation to keep certain records.

[FA68 s6(1) to (5); CTA76 s147(1) and (2); FA92 s231]

886.—(1) In this section—

“linking documents” means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

“records” includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to—

- (a) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,
- (b) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,
- (c) the assets and liabilities of the trade, profession or other activity referred to in *paragraph (a)* or *(b)*, and
- (d) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.

(2) (a) Every person who—

- (i) on that person’s own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,
- (ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or
- (iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person’s behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

- (b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.
- (c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person’s behalf, linking documents.
- (d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of *section 1007*) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept—

- (a) in written form in an official language of the State, or
- (b) subject to *section 887(2)*, by means of any electronic, photographic or other process.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.886

(4) (a) Subject to *paragraph (b)*, linking documents and records kept in accordance with *subsections (2) and (3)* shall be retained by the person required to keep the records—

- (i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or
- (ii) in the case of a person who fails to comply with *section 951(1)* requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations.

(b) *Paragraph (a)* shall not—

- (i) require the retention of linking documents and records in respect of which the inspector notifies in writing the person who is required to retain them that retention is not required, or
- (ii) apply to the books and papers of a company which have been disposed of in accordance with *section 305(1)* of the Companies Act, 1963.

(5) Any person who fails to comply with *subsection (2), (3) or (4)* in respect of any records or linking documents in relation to a return for any year of assessment or accounting period shall be liable to a penalty of £1,200; but a penalty shall not be imposed under this subsection if it is proved that no person is chargeable to tax in respect of the profits or gains for that year of assessment or accounting period, as the case may be.

Use of electronic data processing.

[FA86 s113(1), (2) and (3); FA93 s99]

887.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) the Value-Added Tax Act, 1972,
- (d) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and
- (e) Part VI of the Finance Act, 1983,

and any instruments made thereunder;

“records” means documents which a person is obliged by the Acts to keep, to issue or to produce for inspection, and any other written or printed material.

(2) For the purposes of the Acts and subject to the agreement of the Revenue Commissioners, records may be stored, maintained, transmitted, reproduced or communicated, as the case may be, by

any electronic, photographic or other process approved of by the Revenue Commissioners, and in circumstances where the use of such process has been agreed by the Revenue Commissioners and subject to such conditions as they may impose. Pr.38 S.887

(3) Where in accordance with *subsection (2)* records are preserved by electronic, photographic or other process, a statement contained in a document produced by any such process shall, subject to the rules of court, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.

888.—(1) In this section, “lease”, “lessee”, “lessor”, “premises” and “rent” have the same meanings respectively as in *Chapter 8 of Part 4*. Returns, etc. by lessors, lessees and agents.

(2) For the purpose of obtaining particulars of profits or gains chargeable to tax under Case IV or V of Schedule D by virtue of *Chapter 8 of Part 4*, the inspector may by notice in writing require— [ITA67, 80(1) and s94; FA69 s33(1) and Sch4 PtI; FA92 s227(a); FA95 s14(1)]

- (a) any lessor or former lessor of premises to give, within the time limited by the notice, such information as may be specified in the notice as to the provisions of the lease, the terms subject to which the lease was granted and the payments made to or by that lessor or former lessor, as the case may be, in relation to the premises;
- (b) any lessee, occupier or former lessee or occupier of premises (including any person having or having had the use of premises) to give such information as may be specified in the notice as to the terms applying to the lease, occupation or use of the premises and, where any of those terms are established by any written instrument, to produce the instrument to the inspector for inspection;
- (c) any lessee or former lessee of premises to give such information as may be specified in the notice as to any consideration given for the grant to that lessee or former lessee, as the case may be, of the lease;
- (d) any person who as an agent manages premises or is in receipt of rent or other payments arising from premises to prepare and deliver to the inspector a return containing—
 - (i) the full address of all such premises,
 - (ii) the name and address of every person to whom such premises belong,
 - (iii) a statement of all rents and other such payments arising from such premises, and
 - (iv) such other particulars relating to all such premises as may be specified in the notice;
- (e) any Minister of the Government who, or any health board, local authority (within the meaning of section 2(2) of the Local Government Act, 1941) or other board or authority, or other similar body, established by or under statute which, makes any payment either in the nature of or for the purpose of rent or rent subsidy in relation to any

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.888

premises to prepare and deliver to the inspector a return containing—

- (i) the full address of all such premises,
- (ii) the name and address of every person to whom such premises belong,
- (iii) a statement of all such payments arising in respect of such premises, and
- (iv) such other particulars relating to all such premises as may be specified in the notice.

Returns of fees, commissions, etc. paid by certain persons.

[ITA67 s173(1) to (7) and (9) to (10); FA82 s60; FA92 s227(b) and s248]

889.—(1) In this section—

“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;

references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with rendering of services;

references to payments made include references to the giving of any valuable consideration, and the requirement imposed by *subsection (5)* to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

(2) Every person carrying on a trade or business shall, if required to do so by notice from an inspector, make and deliver to the inspector a return of all payments of any kind specified in the notice made during the period so specified, being—

- (a) payments made in the course of the trade or business, or of such part of the trade or business as may be specified in the notice, for services rendered in connection with the trade or business by persons ordinarily resident in the State and not employed in the trade or business,
- (b) payments for services rendered in connection with the formation, acquisition, development or disposal of the trade or business, or any part of it, by persons ordinarily resident in the State and not employed in the trade or business, or
- (c) periodical or lump sum payments made to persons ordinarily resident in the State in respect of any copyright.

(3) Every body of persons (which for the purposes of this section shall be deemed to include a Minister of the Government and any body established by or under statute) carrying on any activity which does not constitute a trade or business shall, if required to do so by a notice from an inspector, make and deliver to the inspector a return of all payments of a kind specified in the notice made during the period specified in the notice, being—

- (a) payments made in the course of carrying on the activity, or such part of the activity as may be specified in the notice, for services rendered in connection with the activity by

persons ordinarily resident in the State and not employed by that body of persons, or Pr.38 S.889

(b) periodical or lump sum payments made to persons ordinarily resident in the State in respect of any copyright.

(4) A return required under *subsection (2) or (3)* shall, if the trade or business or other activity is carried on by an unincorporated body of persons, be made and delivered by the person who is, or performs the duties of, secretary of the body, and the notice shall be framed accordingly.

(5) A return under this section shall give the name and tax reference number of the person to whom each payment was made, the amount of the payment and such other particulars as may be specified in the notice, including particulars as to—

(a) the services or rights in respect of which the payment was made,

(b) the period over which any services were rendered, and

(c) any business name and any business or home address of the person to whom payment was made.

(6) A return under this section shall include payments made by the person or body of persons in the course of the trade, business or activity on behalf of any other person.

(7) No person shall be required under this section to include in a return—

(a) particulars of any payment from which income tax is deductible,

(b) particulars of payments made to any one person where the total of the payments to that person which would otherwise have to be included in the return does not exceed £500, or

(c) particulars of any payment made in a year of assessment ending more than 3 years before the service of the notice requiring the person to make the return.

(8) A person who fails to deliver, within the period limited in any notice served on the person under this section, a true and correct return which the person is required by the notice to deliver shall be liable to a penalty of £1,200.

(9) Penalties under this section 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.

(10) In proceedings for the recovery of a penalty under this section, a certificate by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return, and any such certificate, purporting to be signed by an officer of the Revenue Commissioners, may be tendered in evidence without proof and shall be

Pt.38 S.889

deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

Returns by persons in receipt of income belonging to others.

[ITA67 s176; F(MP)A68 s6(5); FA92 s227(c)]

890.—(1) Every person (in this section referred to as “the first-mentioned person”) who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in the Income Tax Acts, of or belonging to any other person who is chargeable in respect of such money, value, profits or gains, or who would be so chargeable if that other person were resident in the State and not an incapacitated person, shall, whenever required to do so by a notice given to the first-mentioned person by an inspector, prepare and deliver, within the period mentioned in such notice, a return in the prescribed form, signed by the first-mentioned person, containing—

- (a) a statement of all such money, value, profits or gains;
- (b) the name and address of every person to whom all such money, value, profits or gains belong;
- (c) a declaration whether every such person is of full age, a married woman, resident in the State or an incapacitated person.

(2) Where the first-mentioned person is acting jointly with any other person, the first-mentioned person shall, in the like manner, deliver a list of the names and addresses of all persons joined with the first-mentioned person at the time of delivery of the return mentioned in *subsection (1)*.

(3) No person shall be required under this section to include in a return particulars of receipts (to which *subsection (1)* applies) of or belonging to any one person where the total of the receipts relating to that person which would otherwise have to be included in the return does not exceed £500.

Returns of interest paid or credited without deduction of tax.

[ITA67 s175; FA83 s17(2); FA95 s168; Postal and Telecommunications Services Act, 1983 s8(1) and Sch4 PtI]

891.—(1) Subject to *subsection (2)*, every person carrying on a trade or business who, in the ordinary course of the operations of the trade or business, receives or retains money in such circumstances that interest becomes payable on that money which is paid or credited without deduction of income tax, and in particular every person carrying on the trade or business of banking, shall, if required to do so by notice from an inspector, make and deliver to the inspector, within the time specified in the notice, a return of all interest so paid or credited by that person during a year specified in the notice in the course of that person’s trade or business or any such part of that person’s trade or business as may be so specified, giving the names and addresses of the persons to whom the interest was paid or credited and stating in each case the amount of the interest.

- (2) (a) No interest paid or credited to any person shall be required to be included in any return under *subsection (1)* where the total amount of the interest paid or credited to that person which would otherwise have had to be included in the return does not exceed £50.
- (b) The year specified in a notice under *subsection (1)* shall not be a year ending more than 3 years before the date of the service of the notice.

(3) Without prejudice to the generality of so much of *subsection (1)* as enables different notices to be served under that subsection in relation to different parts of a trade or business, separate notices may be served under that subsection as respects the transactions carried on at any branch or branches respectively specified in the notices, and any such separate notice shall, if served on the manager or other person in charge of the branch or branches in question, be deemed to have been duly served on the person carrying on the trade or business and, where such a separate notice is so served as respects the transactions carried on at any branch or branches, any notice subsequently served under *subsection (1)* on the person carrying on the trade or business shall not be deemed to extend to any transaction to which that separate notice extends.

(4) (a) This section shall, with any necessary modifications, apply in relation to the Post Office Savings Bank as if it were a trade or business carried on by An Post.

(b) This subsection shall apply notwithstanding section 4 of the Post Office Savings Bank Act, 1861; but, subject to *paragraph (a)*, that section shall remain in full force and effect.

(5) *Subsections (1) to (4)* shall apply only to money received or retained in the State.

(6) (a) Subject to *paragraphs (b) and (c)*, where a person to whom any interest is paid or credited in respect of any money received or retained in the State by notice in writing served on the person paying or crediting the interest—

(i) declares that the person who was beneficially entitled to that interest when it was paid or credited was not then resident in the State, and

(ii) requests that the interest shall not be included in any return under this section,

the person paying or crediting the interest shall not be required to include the interest in any such return.

(b) Where the person on whom a notice under *paragraph (a)* is served is not satisfied that the person who served the notice was resident outside the State when the interest was paid or credited—

(i) there shall be given to the person on whom the notice is served an affidavit, made by the person who served the notice, stating that person's name and address and the country in which that person was resident when the interest was paid or credited, and

(ii) if the person who served the notice was not beneficially entitled to that interest when it was paid or credited, the affidavit shall state, in addition to the particulars specified in *subparagraph (i)*, the name and address of the person who was so entitled and the country in which that person was resident when the interest was paid or credited.

(c) Where the person on whom a notice under *paragraph (a)* is served is satisfied that the person who served the notice (in this paragraph referred to as "the server") was not

resident in the State when the interest was paid or credited and, if the server declares in the notice, or in a subsequent notice served on the person on whom the first-mentioned notice was served, that the server was not beneficially entitled to the interest when it was paid or credited, the server shall, if the person so entitled (in this paragraph referred to as “the beneficial owner”) is resident in the State, state in one of those notices or in a subsequent notice served on the person on whom the first-mentioned notice was served the name and address of the beneficial owner.

(7) A person to whom *subsection (1)* applies—

- (a) shall keep and retain any notice served on that person in accordance with *subsection (6)*, and any affidavit that accompanied the notice, for a period of 6 years from the date of the service of the notice,
- (b) shall, if requested in writing by the Revenue Commissioners to do so, inform the Revenue Commissioners within the time specified in the request whether a notice has been served on that person in accordance with *subsection (6)* by such person as is named, and whose address is stated, in the request, and
- (c) shall, if requested in writing by the Revenue Commissioners to do so, furnish to the Revenue Commissioners within the time specified in the request such notice served on that person in accordance with *subsection (6)* as is specified in the request and the affidavit that accompanied that notice.

Returns by nominee holders of securities.

[FA83 s21(1) and (2)]

892.—(1) In this section, “securities” includes—

- (a) shares, stocks, bonds, debentures and debenture stock of a company (within the meaning of *section 4(1)*) and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor (within the meaning of *section 433(6)*) of a company,
- (b) 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 which is 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 the repayment of capital is guaranteed by the Minister for Finance under that Act, and
- (c) securities of the government of any country or territory outside the State.

(2) Where for any purpose of the Tax Acts any person (in this subsection referred to as “the holder”) in whose name any securities are registered is so required by notice in writing given by an inspector, the holder shall, within the time specified in the notice, state whether or not the holder is the beneficial owner of the securities and, if not the beneficial owner of the securities or any of them, shall furnish in respect of each person on whose behalf the securities are registered in the holder’s name—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) the name and address of such person, Pr.38 S.892
- (b) the nominal value of the securities so registered on behalf of such person and, in so far as the securities consist of shares in a company, the number and class of such shares, and
- (c) the date on which each security was so registered in the holder's name on behalf of such person.

893.—(1) In this section—

“distribution” has the same meaning as it has for the purposes of the Corporation Tax Acts;

Returns by certain intermediaries in relation to UCITS.

[FA89 s19(1) to (3); FA92 s229]

“intermediary” means any person who provides relevant facilities in relation to a relevant UCITS;

“relevant Directives” means Council Directive 85/611/EEC of 20 December 1985¹ on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and any Directive amending that Directive;

“relevant facilities”, in relation to a relevant UCITS, means—

- (a) the marketing in the State of the units of the relevant UCITS,
- (b) the acting in the State as an intermediary in the purchase of the units of the relevant UCITS by or on behalf of persons resident in the State or in the sale to such persons of such units, and
- (c) the provision in the State on behalf of the relevant UCITS of facilities for the making of payments to holders of its units, the repurchase or redemption of its units or the making available of the information which the relevant UCITS is duly obliged to provide for the purposes of the relevant Directives;

“relevant UCITS” means an undertaking which—

- (a) is situated in a member state of the European Communities other than the State,
- (b) is a UCITS for the purposes of the relevant Directives, and
- (c) markets its units in the State;

“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;

“UCITS” means an undertaking for collective investment in transferable securities to which the relevant Directives relate;

“units” includes shares and any other instruments granting an entitlement to—

¹O.J. No. L375 of 31.12.1985.

- (a) share in the investments or income of, or
- (b) receive a distribution from,

a relevant UCITS.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, an intermediary shall, if required to do so by notice from an inspector, prepare and deliver to the inspector within such time, not being less than 30 days, as shall be specified in the notice a return of—

- (a) the names and addresses and tax reference numbers of all persons resident in the State in respect of whom the intermediary has in the course of providing relevant facilities in relation to a relevant UCITS during such period as shall be specified in the notice—

- (i) acted as an intermediary in the purchase by or on behalf of any of those persons of units in the relevant UCITS or in the sale to such persons of such units,
- (ii) provided facilities for the making of payments by the relevant UCITS to any of those persons who hold units of the relevant UCITS, and
- (iii) provided facilities for the repurchase or redemption of units of the relevant UCITS held by any of those persons,

and

- (b) where appropriate, in respect of each such person—

- (i) the name and address of each relevant UCITS—

- (I) the units of which have been so purchased by or on behalf of or sold to that person in that period,

- (II) on whose behalf facilities have been provided for the making of payments by the relevant UCITS to that person in that period, and

- (III) on whose behalf facilities have been provided for the repurchase or redemption by the relevant UCITS in that period of units in the relevant UCITS held by that person,

and

- (ii) (I) the value or total value of the units so purchased by or on behalf of or sold to that person,

- (II) the amount of the payments so made by the relevant UCITS to that person, and

- (III) the value or total value of the units held by that person which were so repurchased or redeemed by the relevant UCITS.

(3) Where a person resident in the State avails of relevant facilities provided by an intermediary in relation to relevant UCITS,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

that person shall furnish to the intermediary details which the intermediary is required to include in a return to the inspector in accordance with *subsection (2)*, or would be required to include in such a return if a notice under the subsection were served on the intermediary, and the intermediary shall take all reasonable care (including, where necessary, the requesting of documentary evidence) to confirm that the details furnished are true and correct.

Pr.38 S.893

894.—(1) In this section—

“appropriate inspector”, in relation to a person to whom this section applies, means—

Returns of certain information by third parties.

[FA92 s226; FA95 s14(2)(i)]

- (a) the inspector who has last given notice in writing to that person that he or she is the inspector to whom that person is required to deliver the return specified in *subsection (3)*,
- (b) where there is no such inspector as is referred to in *paragraph (a)*, the inspector to whom it is customary for that person to deliver a return or statement of income or profits, or
- (c) where there is no such inspector as is referred to in *paragraphs (a) and (b)*, the inspector of returns specified in *section 950*;

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

“relevant person” has the meaning assigned to it by *subsection (2)*;

“specified provisions” means *paragraphs (d) and (e) of section 888(2) and sections 889 to 893*,

“specified return date for the chargeable period”, in relation to a chargeable period, means—

- (a) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year, and
 - (b) where the chargeable period is an accounting period of a company, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period.
- (2) (a) Subject to *paragraphs (b) to (e)*, “relevant person” means any person who—
- (i) has information of a kind,
 - (ii) makes a payment of a kind,
 - (iii) pays or credits interest of a kind, or
 - (iv) is in receipt of money or value or of profits or gains of a kind,
- referred to in a specified provision.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.894

- (b) Subject to *paragraph (e)*, any person who would be excluded from making a return under a specified provision for a chargeable period shall not be a relevant person.
- (c) A person with information of the kind referred to in *section 892* shall, subject to *paragraph (e)*, be a relevant person only where the person is not the beneficial owner of the securities referred to in that section.
- (d) A person with information of the kind referred to in *section 893* shall, subject to *paragraph (e)*, be a relevant person only where the person is an intermediary for the purposes of that section.
- (e) A person who is not a relevant person by virtue of any of the provisions of *paragraphs (b) to (d)* shall not be excluded from being a relevant person by virtue of any other provision of this subsection.

(3) Every relevant person shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return of all such matters and particulars as would be required to be contained in a return delivered pursuant to a notice given to the relevant person by the appropriate inspector under any of the specified provisions for the chargeable period.

(4) An inspector may exclude any person from the application of this section by giving that person a notice in writing that that person is excluded from the application of this section, and the notice shall have effect for such chargeable period or periods, or until such chargeable period or the happening of such event, as shall be specified in the notice.

(5) Where it appears appropriate to an inspector, the inspector may notify any relevant person that a return to be made under this section may be confined to a particular type or category of information, payment or receipt and, where the relevant person has been so notified, a return made on that basis shall satisfy this section.

(6) This section shall not affect the giving of a notice under any of the specified provisions and shall not remove from any person any obligation or requirement imposed on a person by such a notice, and the giving of a notice under any of the specified provisions to a person shall not remove from that person any obligation to prepare and deliver a return under this section.

(7) *Sections 1052 and 1054* shall apply to a failure by a relevant person to deliver a return required by *subsection (3)*, and to each and every such failure, as they apply to a failure to deliver a return referred to in *section 1052*.

Returns in relation to foreign accounts.

895.—(1) In this section—

[FA92 s230(1) to (6)]

“appropriate inspector”, in relation to an intermediary or, as may be appropriate, a resident, means—

- (a) the inspector who has last given notice in writing to the intermediary or, as the case may be, the resident that he or she is the inspector to whom the intermediary or, as

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the case may be, the resident is required to deliver a Pr.38 S.895
return or statement of income or profits,

(b) where there is no such inspector as is referred to in *paragraph (a)*, the inspector to whom it is customary for the intermediary or, as the case may be, the resident to deliver such return or statement, or

(c) where there is no such inspector as is referred to in *paragraphs (a) and (b)*, the inspector of returns specified in *section 950*;

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

“deposit” means a sum of money paid to a person 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 account” means an account in which a deposit is held at a location outside the State;

“intermediary” means any person carrying on in the State a trade or business in the ordinary course of the operations of which that person provides a relevant service;

“relevant person” means a person who in the normal course of that person’s trade or business receives or holds deposits;

“relevant service” means the acting in the State as an intermediary in or in connection with the opening of foreign accounts with relevant persons by or on behalf of residents;

“resident” means a person resident in the State;

“specified return date for the chargeable period”, in relation to a chargeable period, means—

(a) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year, and

(b) where the chargeable period is an accounting period of a company, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period;

“tax reference number”, in relation to a resident, has the meaning assigned to it by *section 885* in relation to a specified person within the meaning of that section.

(2) Every intermediary shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return specifying in respect of every resident in respect of whom that intermediary has acted in the chargeable period as an intermediary in the opening of a foreign account—

(a) the full name and permanent address of the resident,

(b) the resident’s tax reference number,

- (c) the full name and address of the relevant person with whom the foreign account was opened,
- (d) the date on which the foreign account was opened, and
- (e) the amount of the deposit made in opening the foreign account.

(3) Where a resident requests an intermediary to provide the resident with a relevant service, the resident shall furnish to the intermediary the details which the intermediary is required to include in the return to the appropriate inspector in accordance with *subsection (2)* and the intermediary shall take all reasonable care (including, where necessary, the requesting of documentary evidence) to confirm that the details furnished are true and correct.

(4) (a) Where an intermediary fails—

- (i) for any chargeable period to make a return required to be made by the intermediary in accordance with *subsection (2)*,
- (ii) to include in such a return for a chargeable period details of any resident to whom the intermediary provided a relevant service in the chargeable period, or
- (iii) to take reasonable care to confirm the details of the kind referred to in *subsection (2)* furnished to the intermediary by a resident to whom the intermediary has provided a relevant service in a chargeable period,

the intermediary shall, in respect of each such failure, be liable to a penalty of £2,000.

(b) Where a resident fails—

- (i) to furnish details of the kind referred to in *subsection (2)* to an intermediary who has provided the resident with a relevant service, or
- (ii) knowingly or wilfully furnishes that intermediary with incorrect details of that kind,

the resident shall be liable to a penalty of £2,000.

(5) Penalties under *subsection (4)* 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.

(6) Where in any chargeable period a resident opens, either directly or indirectly, a foreign account, or causes to be opened a foreign account in relation to which the resident is the beneficial owner of the deposit held in that account, the resident shall, notwithstanding anything to the contrary in *section 950* or *1084*, be deemed for that chargeable period to be a chargeable person for the purposes of *sections 951* and *1084*, and the return of income (within the meaning of *section 1084*) to be delivered by the resident for that chargeable period shall include the following particulars in relation to the account—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) the name and address of the relevant person with whom the account was opened, Pr.38 S.895
- (b) the date on which the account was opened,
- (c) the amount of the deposit made in opening the account, and
- (d) the name and address of the intermediary, if any, who provided a relevant service in relation to the opening of the account.

896.—(1) In this section—

“material interest” shall be construed in accordance with *section 743(2)*;

Returns in relation to material interest in offshore funds.

[FA92 s230A; FA95 s41]

“offshore fund” has the meaning assigned to it by *section 743(1)*, but a relevant UCITS within the meaning of *section 893(1)* shall not be an offshore fund.

(2) As respects a material interest in an offshore fund, *section 895* shall apply with any necessary modifications where it would not otherwise apply—

- (a) to every person carrying on in the State a trade or business in the ordinary course of the operations of which such person acts as an intermediary in or in connection with the acquisition of such an interest, in the same manner as it applies to every intermediary within the meaning of that section, and
- (b) to a person resident or ordinarily resident in the State who acquires such an interest in the same manner as it applies to a person resident in the State opening an account in which a deposit which such person beneficially owns is held at a location outside the State,

as if in that section—

- (i) references to a deposit were references to any payment made by a person resident or ordinarily resident in the State in acquiring a material interest in an offshore fund,
- (ii) references to a foreign account were references to such an interest,
- (iii) references, however expressed, to the opening of a foreign account were references to the acquisition of such an interest, and
- (iv) references to a relevant person were references to an offshore fund.

897.—(1) (a) In this section, the references to payments made to persons in respect of their employment and to the remuneration of persons in their employment shall be deemed to include references to—

Returns of employees' emoluments, etc.

[ITA67 s120(1) and (2), s123 and s178; F(MP)A68 s3(2) and Sch PtI; FA82 s4(7) and s8(6); FA97 s11(4)]

- (i) any payments made to employed persons in respect of expenses,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.897

- (ii) any payments made on behalf of employed persons and not repaid, and
 - (iii) any payments made to the employees in a trade or business for services rendered in connection with the trade or business, whether the services were rendered in the course of their employment or not.
- (b) The reference in *paragraph (a)(i)* to payments made to employed persons in respect of expenses includes a reference to sums put at the disposal of an employed person and paid away by the employed person.

(2) Every employer, when required to do so by notice from an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return containing—

- (a) the names and places of residence of all persons employed by that employer,
- (b) particulars of any car (within the meaning of *section 121*) made available to those persons by reason of that employment,
- (c) particulars of any preferential loan (within the meaning of *section 122*) made, released or written off by that employer in whole or in part and particulars of any interest released, written off or refunded by that employer in whole or in part and which was payable or paid on such loan,
- (d) particulars of any relevant scholarships (within the meaning of *section 193*) in relation to those persons, not being a payment made before the 6th day of April, 1998, in respect of a scholarship (within the meaning of that section) awarded before the 26th day of March, 1997, and
- (e) particulars of the payments made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the year does not exceed £1,500.

(3) Where the employer is a body of persons, the secretary of the body or other officer (by whatever name called) performing the duties of secretary shall be deemed to be the employer for the purposes of this section, and any director (within the meaning of *section 116*) of a body corporate (including a company), or person engaged in the management of that body corporate, shall be deemed to be a person employed.

(4) Where an employer is a body corporate (including a company), that body corporate, as well as the secretary or other officer performing the duties of secretary of the body corporate, shall be liable to a penalty for failure to deliver a return under this section.

(5) An employer shall not be liable to any penalty for omitting from any return under *subsection (2)* the name or place of residence of any person employed by the employer and not employed in any other employment, where it appears to the Revenue Commissioners that such person is entitled to total exemption from tax.

(6) Where for the purposes of a return under this section an employer apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters—

Pr.38 S.897

- (a) the return shall contain a statement that the sum included in the return is the result of such an apportionment,
- (b) the employer, if required to do so by notice from the inspector, shall prepare and deliver to the inspector within the time limited by the notice a return containing full particulars as to the amount apportioned and the manner in which and the grounds on which the apportionment has been made, and
- (c) where the inspector is dissatisfied with any such apportionment of expenses, the inspector may for the purposes of assessment apportion the expenses, but the employer may, on giving notice in writing to the inspector within 21 days after being notified of any such apportionment made by the inspector, appeal against that apportionment 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.

898.—(1) In this section, “rating 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.

Returns of copies of rates and production of certain valuations.

[FA74 s73(1) to (4); CTA76 s147(1) and (2)]

(2) For the purpose of assessing tax chargeable under Schedule D, the secretary, clerk, or person acting as such, to a rating authority shall, when required by notice from an inspector, transmit to the inspector within such time as may be specified in the notice true copies of the last county rate or municipal rate made by the authority for its rating area or any part of that area.

(3) The Revenue Commissioners shall pay to any such person the expenses of making all such copies, not exceeding the rate of £1 for every 100 ratings.

(4) Every person shall, at the request of any inspector or other officer acting in the execution of the Tax Acts, produce as soon as may be to such inspector or officer, as appropriate, any survey, valuation or record on which the rates for any rating area or part of any such area are assessed, made or collected, or any rate or assessment made under any Act relating to the county rate or municipal rate, which is in that person’s custody or possession, and shall permit the inspector or other officer to inspect the same and to take copies of or extracts from any such survey, valuation or record, without any payment.

Revenue powers

Inspector's right to make enquiries.

[FA92 s228; FA95 s14(2)(ii)]

899.—(1) In this section, “specified provisions” means *paragraphs (d) and (e) of section 888(2), sections 889 and 890, and sections 892 to 894.*

(2) An inspector may make such enquiries or take such action within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of any return, list, statement or particulars prepared and delivered under a specified provision.

(3) *Subsection (2)* shall not apply in respect of a return made under *section 894* of such matters and particulars as would be required to be contained in a return delivered pursuant to a notice given to a relevant person by the appropriate inspector under *section 891* for the chargeable period.

Power to require production of accounts and books.

[ITA67 s70(3B) and s174; FA76 s3; FA79 s30]

900.—(1) In this section, “authorised officer” means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section.

(2) Subject to *subsection (3)*, where any person who has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession fails to deliver the statement, or where the inspector is not satisfied with the statement delivered by that person, an authorised officer may serve on that person a notice in writing or notices in writing requiring that person to do any of the following—

(a) to deliver to an inspector or to the authorised officer copies of such accounts (including balance sheets) relating to the trade or profession as may be specified or described in the notice within such period as may be specified in the notice, including where the accounts have been audited a copy of the auditor’s certificate;

(b) to make available, within such time as may be specified in the notice, for inspection by an inspector or by an authorised officer, all such books, accounts and documents in that person’s possession or power as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade or profession.

(3) (a) In this subsection, “precedent partner” has the same meaning as in *Part 43*.

(b) In the case of a partnership carrying on a trade or profession, where a precedent partner who has been duly required by an inspector to deliver a statement of the profits or gains arising to the partnership from any trade or profession fails to deliver the statement, or where the inspector is not satisfied with the statement delivered by the precedent partner, an authorised officer may serve on the precedent partner a notice in writing or notices in writing requiring the precedent partner to do any of the following—

- (i) to deliver to an inspector or to the authorised officer Pr.38 S.900 copies of such accounts (including balance sheets) relating to the trade or profession as may be specified or described in the notice within such period as may be specified in the notice, including where the accounts have been audited a copy of the auditor's certificate;
- (ii) to make available, within such time as may be specified in the notice, for inspection by an inspector or by the authorised officer, all such books, accounts and documents in the precedent partner's possession or power or in the possession or power of the partnership as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade or profession.

(4) The inspector or authorised officer may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this section.

901.—(1) Any person who has custody or possession of any books or papers relating to income tax or corporation tax shall, within one month next after notice in writing from the Revenue Commissioners requiring that person to do so, deliver such books or papers to the person named in the notice and, if the first-mentioned person fails to do so, that person shall incur a penalty of £50 for every such offence. Power to require delivery of books and papers relating to tax. [ITA67 s539; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

(2) The receipt of the person named in the notice shall be a sufficient discharge to the person delivering the books or papers.

902.—(1) (a) In this section—

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section; Power to obtain from certain persons particulars of transactions with and documents concerning tax liability of taxpayer.

“business” means any trade, profession or business (other than banking business within the meaning of the Central Bank Act, 1971); [FA79 s31; FA92 s238]

“documents” means those records required to be kept or retained under *section 886*;

“tax” means income tax or corporation tax.

- (b) The persons who may be treated as the taxpayer under this section include a company which has ceased to exist and an individual who has died and, in relation to such an individual, the reference in *subsection (2)* to the spouse shall be construed as a reference to the widow or widower (the circumstance that she or he may have remarried being immaterial for the purposes of that subsection).
- (c) The persons who in relation to a taxpayer are subject to this section shall be any person who is carrying on a business or was doing so at a material time, and any company whether carrying on a business or not.

(2) (a) For the purposes of this subsection, every director of a company shall be taken as being concerned with the management of any business carried on by the company, and a material time shall be any time which in the authorised officer's opinion is or may have been material in the ascertainment of any past or present tax liability of the taxpayer.

(b) Where a person (in this section referred to as "the taxpayer")—

(i) delivers to an inspector a return or statement of the income, profits or gains arising to the taxpayer from—

(I) any business (past or present) carried on by the taxpayer or his or her spouse, or

(II) any business (past or present) with whose management either of them was concerned at a material time,

and the inspector is not satisfied with the return or statement, or

(ii) fails to deliver such a return or statement which the taxpayer is required to deliver under any provision of the Tax Acts,

the inspector may serve on the taxpayer a notice in writing stating—

(A) that the inspector is not satisfied with the return or statement delivered to him or her or, as the case may be, that such return or statement has not been delivered to the inspector, and

(B) that the inspector has requested an authorised officer to serve notice under this section on persons who in relation to the taxpayer are subject to this section.

(3) Where a notice under *subsection (2)* has been served on the taxpayer, an authorised officer may, for the purpose of enquiring into the tax liability of the taxpayer, by notice in writing served on any person who in relation to the taxpayer is subject to this section, require that person, within the period stated in the notice or such further period as the authorised officer may allow—

(a) to furnish the authorised officer with particulars of any business transactions which that person had with the taxpayer during a stated period, and

(b) to deliver to the authorised officer or, if the person to whom the notice is given so elects, to make available for inspection by an authorised officer such documents specified or described in the notice as are in that person's possession or power and as, in the first-mentioned officer's opinion, contain or may contain information relevant to any tax liability to which the taxpayer is, may be or may have been subject, or to the amount of any such tax liability.

(4) Nothing in this section shall be construed as requiring a person who is carrying on a profession and on whom a notice under *subsection (3)* has been served to furnish any particulars relating to a client to an authorised officer, or to deliver to, or make available for inspection by, an authorised officer any documents relating to a client, other than such particulars or documents—

Pr.38 S.902

(a) as pertain to the payment of fees or to other financial transactions, or

(b) as are otherwise material to the tax liability of the client,

and in particular such person shall not be required to disclose any information or professional advice of a confidential nature given to a client.

(5) Where a person fails to comply with a requirement duly made on the person under *subsection (3)* within the period stated in the notice containing the requirement or within such further period as may be allowed by the authorised officer concerned, the person shall be liable to a penalty of £1,000.

(6) Where documents are to be delivered to an authorised officer pursuant to a requirement duly made under *subsection (3)*, copies of such documents may be delivered instead of the originals; but—

(a) the copies shall be photographic or otherwise by means of facsimile, and

(b) if so required by the authorised officer, the originals shall be made available for inspection by an authorised officer, failure to comply with this provision being treated as failure to comply with the requirement.

(7) An authorised officer may examine any documents furnished or made available for inspection under this section and may take copies of or extracts from them or retain them for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(8) When exercising any powers conferred by this section, an authorised officer shall if so requested by any person affected produce to that person a certificate of the Revenue Commissioners authorising him or her to exercise the powers conferred by this section.

903.—(1) In this section—

Power of inspection: PAYE.

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section; [ITA67 s127A; FA92 s233]

“emoluments”, “employer” and “tax deduction card” have the same meanings respectively as in *Chapter 4 of Part 42*;

“records” means any personnel records relating to the payment of emoluments or the provision of benefits in kind or perquisites, payroll files, wages sheets, certificates of tax-free allowances, tax deduction cards, certificates issued in accordance with regulation 22 of the Income Tax (Employment) Regulations, 1960 (S.I. No. 28 of 1960), including any data (within the meaning of *section 912*) stored by any means approved under *section 887* or by any other means or

any other information or documents which the authorised officer may reasonably require.

(2) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

- (a) an employer is or has been carrying on any activity as an employer,
- (b) any person is or was either paying emoluments or providing benefits in kind or perquisites,
- (c) any person is or was in receipt of emoluments, benefits in kind or perquisites, or
- (d) records are or may be kept,

and the authorised officer—

- (i) may require any employer or any other person who is on those premises or in that place, other than a person who is there to purchase goods or to receive a service, to produce any records which the authorised officer requires for the purposes of his or her enquiry,
- (ii) may, if the authorised officer has reason to believe that any of the records he or she has required to be produced to him or her under *paragraph (i)* have not been so produced, search on those premises or in that place for those records, and
- (iii) may examine, make copies of, take extracts from, remove and retain any records for further examination or for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(3) An authorised officer may require any person, other than a person purchasing goods or receiving a service from an employer, to give the authorised officer all reasonable assistance, including providing information and explanations and furnishing documents required by the authorised officer.

(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request produce his or her authorisation for the purposes of this section.

(5) A person who does not comply with the requirements of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(6) The records referred to in this section shall be retained by the employer for a period of 6 years after the end of the year to which they refer or for such shorter period as the Revenue Commissioners may authorise in writing to the employer.

904.—(1) In this section—

Pr.38
Power of
inspection: tax
deduction from
payments to certain
subcontractors.

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

[FA70 s17A; FA92
s235]

“principal”, “relevant contract”, “relevant operations” and “subcontractor” have the same meanings respectively as in *Chapter 2 of Part 18*;

“records” means those records required to be kept—

(a) under *section 531* and regulations made under that section,
and

(b) under *section 886*.

(2) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

(a) any relevant operations are or have been carried on,

(b) any person is making or has made payments to a subcontractor in connection with the performance by the subcontractor of a relevant contract in relation to which that person is the principal,

(c) any person is or has been in receipt of such payments, or

(d) records are or may be kept,

and the authorised officer may—

(i) require any principal or subcontractor, or any employee of, or any other person providing bookkeeping, clerical or other administrative services to, any principal or subcontractor, who is on that premises or in that place to produce any records which the authorised officer requires for the purpose of his or her enquiry,

(ii) if the authorised officer has reason to believe that any of the records he or she has required to be produced to him or her under this subsection have not been so produced, search on those premises or in that place for those records, and

(iii) examine, make copies of, take extracts from, remove and retain any records for a reasonable period for their further examination or for the purpose of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(3) An authorised officer may require any principal or subcontractor, or any employee of, or any other person providing bookkeeping, clerical or other administrative services to, any principal or subcontractor, to give the authorised officer all reasonable assistance, including providing information and explanations and furnishing documents required by the authorised officer.

Pt.38 S.904

(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request produce his or her authorisation for the purposes of this section.

(5) A person who does not comply with the requirements of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(6) The records referred to in this section shall be retained for a period of 6 years after the end of the year to which they refer or for such shorter period as the Revenue Commissioners may authorise in writing.

Inspection of documents and records.

[FA76 s34; FA92 s232]

905.—(1) In this section—

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

“property” means any asset relating to a tax liability;

“records” means any document or any other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, which a person is obliged by any provision relating to tax to keep, retain, issue or produce for inspection or which may be inspected under any provision relating to tax;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners;

“tax liability” means any existing liability to tax or further liability to tax which may be established by an authorised officer following the exercise or performance of his or her powers or duties under this section.

(2) (a) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

(i) any trade, profession or other activity, the profits or gains of which are chargeable to tax, is or has been carried on,

(ii) anything is or has been done in connection with any trade, profession or other activity the profits or gains of which are chargeable to tax,

(iii) any records relating to—

(I) any trade, profession, other source of profits or gains or chargeable gains,

(II) any tax liability, or

(III) any repayments of tax in regard to any person, are or may be kept, or

(iv) any property is or has been located,

and the authorised officer may—

- (A) require any person who is on those premises or in that place, other than a person who is there to purchase goods or to receive a service, to produce any records or property,
 - (B) if the authorised officer has reason to believe that any of the records or property which he or she has required to be produced to him or her under this subsection have not been produced, search on those premises or in that place for those records or property,
 - (C) examine any records or property and take copies of or extracts from any records,
 - (D) remove any records and retain them for a reasonable time for the purposes of their further examination or for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings, and
 - (E) examine property listed in any records.
- (b) An authorised officer may in the exercise or performance of his or her powers or duties under this section require any person whom he or she has reason to believe—
- (i) is or was carrying on any trade, profession or other activity the profits or gains of which are chargeable to tax,
 - (ii) is or was liable to any tax, or
 - (iii) has information relating to any tax liability,
- to give the authorised officer all reasonable assistance, including providing information and explanations or furnishing documents and making available for inspection property as required by the authorised officer in relation to any tax liability or any repayment of tax in regard to any person.
- (c) Nothing in this subsection shall be construed as requiring any person carrying on a profession, or any person employed by any person carrying on a profession, to produce to an authorised officer any documents relating to a client, other than such documents—
- (i) as pertain to the payment of fees to the person carrying on the profession or to other financial transactions of the person carrying on the profession,
 - (ii) as are otherwise material to the tax liability of the person carrying on the profession, or
 - (iii) as are already required to be provided following a request issued under section 16 of the Stamp Act, 1891,

PT.38 S.905

and in particular that person shall not be required to disclose any information or professional advice of a confidential nature given to a client.

- (d) This subsection shall not apply to any premises or place where a banking business (within the meaning of the Central Bank Act, 1971) is carried on or to any person or an employee of any person carrying on such a business.
- (e) An authorised officer shall not, without the consent of the occupier, enter any premises, or that portion of any premises, which is occupied wholly and exclusively as a private residence, except on production by such officer of a warrant issued by a Judge of the District Court expressly authorising the authorised officer to so enter.
- (f) A Judge of the District Court may issue a warrant under *paragraph (e)* if satisfied by information on oath that it is proper to do so for the purposes of this section.

(3) A person who does not comply with any requirement of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request show his or her authorisation for the purposes of this section.

Authorised officers and Garda Síochána.

[FA92 s236]

906.—Where an authorised officer (within the meaning of *section 903, 904 or 905*, as the case may be) in accordance with *section 903, 904 or 905* enters any premises or place, the authorised officer may be accompanied by a member or members of the Garda Síochána, and any such member may arrest without warrant any person who obstructs or interferes with the authorised officer in the exercise or performance of his or her powers or duties under any of those sections.

Application to Appeal Commissioners seeking determination that authorised officer justified in requiring information to be furnished by financial institutions.

[WCTIPA93 s13]

907.—(1) In this section—

“authorised officer” means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

“books” means—

- (a) bankers' books within the meaning of the Bankers' Books Evidence Acts, 1879 and 1959, and
- (b) records and documents of persons referred to in section 7(4) of the Central Bank Act, 1971;

“financial institution” means—

- (a) a person who holds or has held a licence under section 9 of the Central Bank Act, 1971, and
- (b) a person referred to in section 7(4) of that Act;

“person” (other than in the definition of “financial institution”) means an individual who is ordinarily resident in the State.

(2) Notwithstanding any other provision of the Tax Acts, where— Pr.38 S.907

- (a) a person who for the purposes of tax has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession or to deliver to the inspector a return of income fails to deliver that statement or that return to the inspector, or
- (b) the inspector is not satisfied with such a statement or return so delivered,

an authorised officer may—

- (i) if the authorised officer has reasonable grounds to believe that that person maintains or maintained an account or accounts (being an account or accounts from which the person may withdraw moneys), the existence of which has not been disclosed to the Revenue Commissioners, with a financial institution or that there is likely to be information in the books of that institution indicating that that statement of profits or gains or that return of income is false to a material extent, and
- (ii) on application by the authorised officer to the Appeal Commissioners, they determine that in all the circumstances the authorised officer is justified in requiring the financial institution to furnish him or her—
 - (I) with particulars of all accounts maintained by that person, either solely or jointly with any other person or persons, in that institution during a period not exceeding 10 years immediately preceding the date of the application, and
 - (II) with such information as may be specified by the authorised officer with the consent of the Appeal Commissioners relating to the financial transactions of that person, being information recorded in the books of that institution which would be material in determining the correctness of the statement of profits or gains or the return of income delivered by that person or, in the event of failure to deliver such statement or return, would be material in determining the liability of that person to tax,

require that financial institution to furnish such particulars or information.

(3) An application by an authorised officer under *subsection (2)* shall with any necessary modifications be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax, and a copy of the application shall, as soon as is practicable, be furnished by the authorised officer to the financial institution concerned and the person concerned, and that financial institution and that person shall be entitled—

- (a) to be present during all the time of the hearing of the application,
- (b) to produce lawful evidence, and
- (c) to be represented by—

- (i) a barrister,
 - (ii) a solicitor,
 - (iii) an accountant (being any person who has been admitted and is a member of an incorporated society of accountants),
 - (iv) a person who has been admitted and is a member of the body incorporated under the Companies Act, 1963, on the 31st day of December, 1975, as “The Institute of Taxation in Ireland”, or
 - (v) such other person as the Appeal Commissioners permit,
- to plead on their behalf before the Appeal Commissioners.

(4) *Section 941* shall apply with any necessary modifications to a determination by the Appeal Commissioners under *subsection (2)* as it applies to the determination by those Commissioners of an appeal against an assessment to income tax.

(5) Where the Appeal Commissioners have made a determination in accordance with *subsection (2)*, the authorised officer shall, as soon as practicable but not later than 14 days from the time at which such determination was made, give a notice in writing to the financial institution concerned and the person concerned stating that—

- (a) such a determination has been made, and
- (b) the financial institution should, within a period of 30 days from the time at which the financial institution received such notice, furnish the particulars or information as may be specified in the notice.

(6) A financial institution which fails to comply with a request issued to it by an authorised officer in accordance with *subsection (2)* shall be liable to a penalty of £15,000 and, if the failure continues after the expiry of the period specified in *subsection (5)(b)*, a further penalty of £2,000 for each day on which the failure so continues.

Application to High Court seeking order requiring information to be furnished by financial institutions.

908.—(1) In this section—

“authorised officer” means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

[FA83 s18; DCITPA96 s10]

“books”, “financial institution” and “person” have the same meanings respectively as in *section 907*;

“judge” means a judge of the High Court.

(2) Where—

- (a) a person who for the purposes of tax has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession or to deliver to the inspector a return of income fails to deliver that statement or that return to the inspector, or

(b) the inspector is not satisfied with such a statement or return so delivered, Pr.38 S.908

an authorised officer may, if he or she is of opinion that that person maintains or maintained an account or accounts, the existence of which has not been disclosed to the Revenue Commissioners, with a financial institution or that there is likely to be information in the books of that institution indicating that that statement of profits or gains or that return of income is false to a material extent, apply to a judge for an order requiring that financial institution to furnish the authorised officer—

(i) with full particulars of all accounts maintained by that person, either solely or jointly with any other person or persons, in that institution during a period not exceeding 10 years immediately preceding the date of the application, and

(ii) with such information as may be specified in the order relating to the financial transactions of that person, being information recorded in the books of that institution which would be material in determining the correctness of the statement of profits or gains or the return of income delivered by that person or, in the event of failure to deliver such statement or return, would be material in determining the liability of that person to tax.

(3) Where the judge to whom an application is made under *subsection (2)* is satisfied that there are reasonable grounds for making the application, that judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the financial institution to furnish the authorised officer with such particulars and information as may be specified in the order.

(4) Where a judge makes an order under this section, he or she may also, on the application of the authorised officer concerned, make a further order prohibiting, for such period as the judge may consider proper and specify in the order, any transfer of, or any dealing with, without the consent of the judge, any assets or moneys of the person to whom the order relates that are in the custody of the financial institution at the time the order is made.

(5) (a) Where—

(i) a copy of any affidavit and exhibits grounding an application under *subsection (2)* or *(4)* and any order made under *subsection (3)* or *(4)* are to be made available to any of the persons referred to in *subsection (2)* or any of those persons' solicitor, or to the financial institution, as the case may be, and

(ii) the judge is satisfied on the hearing of the application that there are reasonable grounds in the public interest that such copy of an affidavit, exhibits or order, as the case may be, should not include the name or address of the authorised officer,

such copy, copies or order shall not include the name or address of that authorised officer.

(b) Where, on any application to the judge to vary or discharge an order made under this section, it is desired to cross-examine the deponent of any affidavit filed by or

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.38 S.908

on behalf of the authorised officer and the judge is satisfied that there are reasonable grounds in the public interest to so order, the judge shall order either or both of the following—

- (i) that the name and address of the authorised officer shall not be disclosed in court, and
- (ii) that such cross-examination shall only take place in the sight and hearing of the judge and in the hearing only of all other persons present at such cross-examination.

(6) Every hearing of an application for an order under this section and of any appeal in connection with that application shall be held in camera.

Power to require return of property.

[FA83 s20; FA92 s239]

909.—(1) (a) In this section—

“asset” includes any interest in an asset;

“limited interest” means—

- (i) an interest (other than a leasehold interest) for the duration of a life or lives or for a period certain, or
- (ii) any other interest which is not an absolute interest;

“prescribed” means prescribed by the Revenue Commissioners;

“property” includes interests and rights of any description and, without prejudice to the generality of the foregoing, includes—

- (i) in the case of a limited interest, the property in which the limited interest subsists or on which it is charged or secured or on which there exists a right to have it charged or secured,
- (ii) an interest in expectancy,
- (iii) an interest or share in a partnership, joint tenancy or estate of a deceased person,
- (iv) stock or shares in a company which is in the course of liquidation,
- (v) an annuity, and
- (vi) property comprised in a settlement which the person concerned is empowered to revoke;

“settlement” has the same meaning as in *section 794*;

“specified date”, in relation to a notice under *subsection (2)*, means the date specified in the notice;

“tax” means income tax and capital gains tax.

(b) For the purposes of this section, the cost of acquisition to a person of an asset shall include— Pr.38 S.909

- (i) the amount or value of the consideration, in money or money's worth, given by the person or on the person's behalf for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure incurred by the person in providing the asset, and
- (ii) the amount of any expenditure incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the specified date, and any expenditure incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset.

(2) Where for the purposes of tax a person is required under any provision of the Tax Acts or the Capital Gains Tax Acts to deliver a tax return to an inspector of taxes or to the inspector of returns (within the meaning of *section 951(11)*), as the case may be, the inspector may require—

- (a) that person, by notice in writing given to that person, and
- (b) where that person and his or her spouse are, for the year of assessment to which the tax return relates, treated as living together for the purpose of *section 1015*, that person's spouse, by notice in writing given to the spouse,

to deliver to the inspector within the time specified in the notice or within such further period as the inspector may allow a statement of affairs in the prescribed form as at the date specified in the notice, and that person or that person's spouse shall, if required by further notice or notices in writing by the inspector, deliver to the inspector within such time, not being less than 30 days, as may be specified in such further notice or notices, a statement verifying such statement of affairs together with such evidence, statement or documents required by the inspector in respect of any asset or liability shown on the statement of affairs, or in respect of any asset or liability which the inspector has reason to believe has been omitted from the statement of affairs.

(3) (a) In this section, "statement of affairs", in relation to a notice under *subsection (2)*, means—

- (i) where the person to whom notice is given is an individual who is a chargeable person and the tax return concerned relates to income or capital gains in respect of which that individual is chargeable to tax otherwise than in a representative capacity or as a trustee, a statement of all the assets wherever situated to which that individual is beneficially entitled on the specified date and all the liabilities for which that individual is liable on the specified date,
- (ii) where the person to whom notice is given is the spouse of an individual referred to in *subparagraph (i)*, a statement of all the assets wherever situated

to which that spouse is beneficially entitled on the specified date and all the liabilities for which that spouse is liable on the specified date,

- (iii) where the person to whom notice is given is a chargeable person in a representative capacity and the tax return concerned relates to income or capital gains of a person (in this paragraph referred to as “the second-mentioned person”) in respect of which that chargeable person is so chargeable, a statement of all the assets wherever situated to which the second-mentioned person is beneficially entitled and which give rise to income or capital gains in respect of which that chargeable person is chargeable to tax in a representative capacity and all the liabilities for which the second-mentioned person is liable, or which are assets or liabilities in relation to which that chargeable person performs functions or duties in such a capacity on the specified date, or
 - (iv) where the person to whom notice is given is a chargeable person as a trustee of a trust and the tax return concerned relates to income or capital gains of a trust, a statement of all the assets and liabilities comprised in the trust on the specified date.
- (b) Any assets to which a minor child of an individual referred to in *subparagraph (i) or (ii) of paragraph (a)* is beneficially entitled shall be included in that individual’s statement of affairs under this section where—
- (i) such assets at any time before their acquisition by the minor child were disposed of by that individual whether to the minor child or not, or
 - (ii) the consideration for the acquisition of such assets by the minor child was provided directly or indirectly by that individual.
- (4) (a) A statement of affairs delivered under this section shall contain in relation to each asset included in the statement—
- (i) a full description,
 - (ii) its location on the specified date,
 - (iii) the cost of acquisition to the person beneficially entitled to that asset,
 - (iv) the date of acquisition, and
 - (v) if it was acquired otherwise than by means of a bargain at arm’s length, the name and address of the person from whom it was acquired and the consideration, if any, given to that person in respect of its acquisition.
- (b) A statement of affairs delivered under this section shall, in the case of an asset which is an interest other than an absolute interest, contain particulars of the title under which the beneficial entitlement arises.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (c) A statement of affairs delivered under this section shall be signed by the person by whom it is delivered and shall include a declaration by that person that it is to the best of that person's knowledge, information and belief correct and complete. Pr.38 S.909
- (d) The Revenue Commissioners may require the declaration mentioned in *paragraph (c)* to be made on oath.

910.—(1) For the purposes of the assessment, charge, collection and recovery of any tax or duty placed under their care and management, the Revenue Commissioners may, by notice in writing, request any Minister of the Government to provide them with such information in the possession of that Minister in relation to payments for any purposes made by that Minister, whether on that Minister's own behalf or on behalf of any other person, to such persons or classes of persons as the Revenue Commissioners may specify in the notice and a Minister so requested shall provide such information as may be specified. Power to obtain information from Minister of the Government. [FA95 s175]

(2) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

911.—(1) For the purposes of the Capital Gains Tax Acts, an inspector or other officer mentioned in *section 931(1)* shall be authorised to inspect any property for the purpose of ascertaining its market value and the person having the custody or possession of that property shall permit the inspector or other officer so authorised, on producing if so required evidence of his or her authority, to inspect it at such reasonable times as the Revenue Commissioners may consider necessary. Valuation of assets: power to inspect. [CGTA75 s51(1) and Sch4 par14]

(2) *Section 1057* shall apply to an inspector or other officer referred to in *subsection (1)* and to a person acting in the aid of such an inspector or officer as it applies in relation to the persons referred to in *paragraphs (a) and (b) of subsection (1)* of that section.

912.—(1) In this section—

“the Acts” means—

Computer documents and records.

[FA92 s237]

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and
- (g) Part VI of the Finance Act, 1983,

and any instruments made thereunder;

“data” means information in a form in which it can be processed;

“data equipment” means any electronic, photographic, magnetic, optical or other equipment for processing data;

“processing” means performing automatically logical or arithmetical operations on data, or the storing, maintenance, transmission, reproduction or communication of data;

“records” means documents which a person is obliged by any provision of the Acts to keep, issue or produce for inspection, and any other written or printed material;

“software” means any sequence of instructions used in conjunction with data equipment for the purpose of processing data or controlling the operation of the data equipment.

(2) Any provision under the Acts which—

(a) requires a person to keep, retain, issue or produce any records or cause any records to be kept, retained, issued or produced, or

(b) permits an officer of the Revenue Commissioners—

(i) to inspect any records,

(ii) to enter premises and search for any records, or

(iii) to take extracts from or copies of or remove any records,

shall, where the records are processed by data equipment, apply to the data equipment together with any associated software, data, apparatus or material as it applies to the records.

(3) An officer of the Revenue Commissioners may in the exercise or performance of his or her powers or duties require—

(a) the person by or on whose behalf the data equipment is or has been used, or

(b) any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material,

to afford him or her all reasonable assistance in relation to the exercise or performance of those powers or duties.

CHAPTER 5

Capital gains tax: returns, information, etc.

Application of income tax provisions relating to returns, etc.

[CGTA75 s51(1) and Sch4 par3(1), (2) (part of) and (3) to (5), par10(1) and par19; FA92 s246]

913.—(1) The provisions of the Income Tax Acts relating to the making or delivery of any return, statement, declaration, list or other document, the furnishing of any particulars, the production of any document, the making of anything available for inspection, the delivery of any account or the making of any representation, shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax.

(2) In particular and without prejudice to *subsection (1)*, sections 876 to 880, sections 888 and 900 and *paragraph 1 of Schedule 1* shall,

subject to any necessary modifications, apply in relation to capital Pr.38 S.913
gains tax.

(3) A notice under any provision of the Income Tax Acts as applied by this section may require particulars of any assets acquired by the person on whom the notice was served (or, if the notice relates to income or chargeable gains of some other person for whom the person who receives the notice is required to make a return under *section 878*, as so applied by this section, of any assets acquired by that other person) in the period specified in the notice, being a period beginning not earlier than the 6th day of April, 1974, but excluding—

(a) any assets exempted by *section 607* or *613*, or

(b) any assets acquired as trading stock.

(4) The particulars required under this section may include particulars of the person from whom the asset was acquired and of the consideration for the acquisition.

(5) (a) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the disposal of an asset shall for the purposes of this section constitute such a disposal.

(b) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the acquisition of an asset shall for the purposes of this section constitute such an acquisition.

(6) *Section 888* as applied by this section shall apply to property or leases of property other than premises as it applies to premises or leases of premises.

(7) A return of income of a partnership under *section 880* shall include—

(a) with respect to any disposal of partnership assets during a period to which any part of the return relates, the like particulars as if the partnership were liable to tax on any chargeable gain accruing on the disposal, and

(b) with respect to any acquisition of partnership assets, the particulars required by *subsection (3)*.

(8) A return under *section 879* as applied by this section in relation to chargeable gains accruing to a married woman in a year of assessment, or part of a year of assessment, during which she is a married woman and living with her husband may be required either from her or, if her husband is liable under *section 1028(1)*, from him.

Pt.38
Returns by issuing
houses,
stockbrokers,
auctioneers, etc.

[CGTA75 s51(1)
and Sch4 par4;
FA94 s63; FA95
s70]

914.—(1) For the purpose of obtaining particulars of chargeable gains, an inspector may by notice in writing require a return under any provision of this section.

(2) (a) In this subsection, “shares” includes units in a unit trust.

(b) An issuing house or other person carrying on a business of effecting public issues of shares or securities in any company, or placings of shares or securities in any company, either on behalf of the company or on behalf of holders of blocks of shares or securities which have not previously been the subject of a public issue or placing, may be required to make a return of all such public issues or placings effected by that person in the course of the business in the period specified in the notice requiring the return, giving particulars of the persons to or with whom the shares or securities are issued, allotted or placed, and the number or amount of the shares or securities so obtained by them respectively.

(3) A person not carrying on such a business may be required to make a return as regards any such issue or placing effected by that person and specified in the notice, giving particulars of the persons to or with whom the shares or securities are issued, allotted or placed and the number or amount of the shares or securities so obtained by them respectively.

(4) A member of a stock exchange in the State may be required to make a return giving particulars of any transactions effected by that member in the course of that member’s business in the period specified in the notice requiring the return and giving particulars of—

- (a) the parties to the transactions,
- (b) the number or amount of the shares or securities dealt with in the respective transactions, and
- (c) the amount or value of the consideration.

(5) A person (other than a member of a stock exchange in the State) who acts as an agent in the State in transactions in shares or securities may be required to make a return giving particulars of—

- (a) any such transactions effected by that person in the period specified in the notice,
- (b) the parties to the transactions,
- (c) the number or amount of the shares or securities dealt with in the respective transactions, and
- (d) the amount or value of the consideration.

(6) An auctioneer and any person carrying on a trade of dealing in any description of tangible movable property, or of acting as an agent or intermediary in dealings in any description of tangible movable property, may be required to make a return giving particulars of any transactions effected by or through that auctioneer or that person, as the case may be, in which any asset which is tangible movable property is disposed of for a consideration the amount or value of which, in the hands of the recipient, exceeds—

- (a) as respects transactions effected on or after the 6th day of April, 1994, but before the 6th day of April, 1995, £5,000, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) as respects transactions effected on or after the 6th day of April, 1995, £15,000. Pr.38 S.914

(7) No person shall be required under this section to include in a return particulars of any transaction effected more than 3 years before the service of the notice requiring that person to make the return.

915.—(1) In this section, references to shares include references to securities and loan capital. Returns by nominee shareholders.

(2) Where, for the purpose of obtaining particulars of chargeable gains, any person in whose name any shares of a company are registered is so required by notice in writing by the Revenue Commissioners or by an inspector, that person shall state whether or not that person is the beneficial owner of those shares and, if that person is not the beneficial owner of those shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in that person's name. [CGTA75 s51(1) and Sch4 par5]

916.—The Revenue Commissioners may by notice in writing require any person, being a party to a settlement, to furnish them within such time as they may direct (not being less than 28 days) with such particulars relating to the settlement as they think necessary for the purposes of the Capital Gains Tax Acts. Returns by party to a settlement. [CGTA75 s51(1) and Sch4 par6]

917.—A person who—

- (a) holds shares or securities in a company not resident or ordinarily resident in the State, or
 - (b) is beneficially interested or acts as agent for or on behalf of a person who is beneficially interested in settled property under a settlement the trustees of which are not resident or ordinarily resident in the State,
- Returns relating to non-resident companies and trusts. [CGTA75 s51(1) and Sch4 par7]

may be required by a notice by the Revenue Commissioners to give such particulars as the Revenue Commissioners may consider are required to determine whether the company or trust is within *section 579* or *590*, and whether any chargeable gains have accrued to that company, or to the trustees of that settlement, in respect of which the person to whom the notice is given is liable to capital gains tax under *section 579* or *590*.

PART 39

ASSESSMENTS

CHAPTER 1

Income tax and corporation tax

918.—(1) Assessments under Schedules D, E and F, except—

- (a) such assessments as the Revenue Commissioners are empowered to make under *Chapter 2 of Part 4*,
- (b) assessments to which *section 853* applies, and
- (c) such assessments as officers or persons appointed by the Revenue Commissioners are empowered to make under *section 854*,

Making of assessments under Schedules C, D, E and F. [ITA67 s88(1) and s181; F(MP)A68 s2, s3(3) and Sch PtII; CTA76 s140(1) and Sch2 PtI par5]

Pt.39 S.918

shall be made by the inspectors or such other officers as the Revenue Commissioners shall appoint in that behalf.

(2) The inspector shall give due notice to each person assessed of every such assessment made by him or her, the amount of the assessment and the time allowed for giving notice of appeal against the assessment.

(3) Anything required to be done by the Revenue Commissioners in relation to the making of assessments under Schedule C or D may be done by such officer of the Revenue Commissioners as they may authorise in that behalf.

(4) Where for any year of assessment profits or gains chargeable to tax under Case IV of Schedule D by virtue of *section 98, 99 or 100* arise to any person from 2 or more sources, the several amounts of profits or gains so chargeable may be assessed in one assessment.

Assessments to corporation tax.

919.—(1) Assessments to corporation tax shall be made by an inspector.

[CTA76 s7 and s144; DCITPA96 s6; CABA96 s24(2)]

(2) (a) Where a company on whose profits the tax is to be assessed is resident in the State, the tax shall be assessed on the company.

(b) Where a company on whose profits the tax is to be assessed is not resident in the State, the tax shall be assessed on the company in the name of any agent, manager, factor or other representative of the company.

(3) The inspector shall give notice to the company assessed or, in the case of a company not resident in the State, to the agent, manager, factor or other representative of the company assessed of every assessment made by the inspector.

(4) (a) In this section, “information” includes information received from a member of the Garda Síochána.

(b) Where—

(i) a company makes default in the delivery of a statement in respect of corporation tax, or

(ii) the inspector is not satisfied with a statement which has been delivered, or has received information as to its insufficiency,

the inspector shall make an assessment on the company concerned in such sum as according to the best of the inspector’s judgment ought to be charged on that company.

(5) (a) In this subsection, “neglect” means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the enactments relating to corporation tax; but a company shall be deemed not to have failed to do anything required to be done within a limited time if the company did it within such further time, if any, as the Revenue Commissioners or officer concerned may have allowed and, where a company had a reasonable excuse for not doing anything

required to be done, the company shall be deemed not to have failed to do it if the company did it without unreasonable delay after the excuse had ceased. Pr.39 S.919

- (b) Where an inspector discovers that—
- (i) any profits which ought to have been assessed to corporation tax have not been assessed,
 - (ii) an assessment to corporation tax is or has become insufficient, or
 - (iii) any relief which has been given is or has become excessive,
- the inspector shall make an assessment in the amount or the further amount which ought in the inspector's opinion to be charged.
- (c) Subject to *paragraph (d)* and any other provision allowing a longer period in any class of case, no assessment to corporation tax shall be made more than 10 years after the end of the accounting period to which it relates.
- (d) In a case in which any form of fraud or neglect has been committed by or on behalf of any company in connection with or in relation to corporation tax, an assessment may be made on that company at any time for any accounting period for which by reason of the fraud or neglect corporation tax would otherwise be lost to the Exchequer.
- (e) An objection to the making of any assessment on the ground that the time limited for the making of the assessment has expired shall be made only on appeal against the assessment.

(6) An assessment on a company's profits for an accounting period which falls after the commencement of the winding up of the company shall not be invalid because made before the end of the accounting period.

920.—(1) Notwithstanding anything in the Income Tax Acts, the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf may at any time grant, in relation to any assessment in respect of income tax chargeable for any year of assessment, any allowance, deduction or relief authorised by the Income Tax Acts. Granting of allowances and reliefs. [ITA67 s182]

(2) Whenever such inspector or other officer so grants any such allowance, deduction or relief in relation to an assessment, such assessment shall be deemed to be amended accordingly.

921.—(1) In this section, "personal reliefs" means relief under any of the provisions specified in the Table to *section 458*. Aggregation of assessments.

(2) Where 2 or more assessments to income tax are to be made on a person under Schedule D, E or F or under 2 or more of those Schedules, the tax in the assessments may be stated in one sum, and the notice of assessment may be stated correspondingly. [ITA67 s183(1) to (5)(a) and (7); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par6; FA80 s19 and Sch1 PtIII par1; FA97 s146(1) and Sch9 PtI par1(11)]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.39 S.921

(3) A notice of appeal in a case in which *subsection (2)* applies shall, to be valid, indicate each assessment appealed against.

(4) Pending the determination of an appeal against any one or more assessments referred to in *subsection (2)*, an amount of tax (being a portion of the one sum referred to in that subsection) shall be payable on the due date or dates and shall be the amount which results when the appropriate personal reliefs are deducted from the assessments not under appeal or allowed from the tax charged in those assessments, as may be appropriate.

(5) The tax stated in one sum under *subsection (2)* or the amount payable under *subsection (4)* shall for the purposes of *sections 1080* and *1081* be deemed to be tax charged by an assessment to income tax.

(6) Where for any of the purposes of the Income Tax Acts other than *subsection (4)* it becomes necessary to determine what amount of the tax charged is applicable to any one of 2 or more assessments referred to in *subsection (2)*, a certificate from the inspector indicating the manner in which the deductions, allowances or reliefs were allocated and stating the separate amounts of tax, if any, and the instalments of tax applicable to any one or more assessments or to each assessment shall be sufficient evidence of the charge to tax in and by each such assessment.

Assessment in absence of return.

922.—(1) In this section, “information” includes information received from a member of the Garda Síochána.

[ITA67 s184; FA69 s33(1) and Sch4 PtI; CTA76 s140(1) and Sch2 PtI par7; DCITPA96 s5; CABA96 s24(1)]

(2) Where the inspector does not receive a statement from a person liable to be charged to income tax, the inspector shall to the best of his or her information and judgment, but subject to *section 997*, make an assessment on that person of the amount at which that person ought to be charged under Schedule E.

(3) Where—

(a) a person makes default in the delivery of a statement in respect of any income tax under Schedule D or F, or

(b) the inspector is not satisfied with a statement which has been delivered, or has received any information as to its insufficiency,

the inspector shall make an assessment on the person concerned in such sum as according to the best of the inspector’s judgment ought to be charged on that person.

Function of certain assessors.

923.—(1) (a) A person appointed under *section 855* to be an assessor and a person (in this section also referred to as an “assessor”) appointed under *section 854* shall on request be furnished free of charge by any officer in the relevant department or office or by any agent by whom the same are payable with true accounts of any salaries, fees, wages, perquisites, profits, pensions or stipends chargeable under Schedule E.

[ITA67 s185]

(b) Every such assessor shall have access to all documents in his or her department or office which concern any such payments.

- (c) Every such assessor may, if he or she is dissatisfied Pr.39 S.923 with any account referred to in *paragraph (a)* or in any case in which it may be necessary, require from any person to be charged an account of any salary, fees, wages, perquisites, profits, pensions or stipend, within the like period as is limited for the delivery of statements of profits or gains under the Income Tax Acts, and under the like penalty as is provided in the case of failure to deliver such statements.

(2) The assessors shall assess the persons who hold offices, or are entitled to pensions or stipends, in accordance with the annual amount thereof from the documents, accounts and papers in their respective departments.

(3) Every assessment shall set out—

- (a) the full and just annual emoluments of every office and employment of profit, and the full annual amount of every pension or stipend,
- (b) the names of the persons entitled to those emoluments, pensions or stipends, and
- (c) the tax payable in each case.

(4) An assessor who fails to comply with this section shall be liable to a penalty not exceeding £100 and not less than £20.

924.—(1) (a) Where the inspector discovers that—

Additional assessments.

- (i) any properties or profits chargeable to income tax have been omitted from the first assessments, [ITA67 s186; F(MP)A68 s4(1); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par8; FA96 s132(2) and Sch5 PtII]
- (ii) a person chargeable—
 - (I) has not delivered any statement,
 - (II) has not delivered a full and proper statement,
 - (III) has not been assessed to income tax, or
 - (IV) has been undercharged in the first assessments, or
- (iii) a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement or relief not authorised by the Income Tax Acts,

then, where the tax is chargeable under Schedule D, E or F, the inspector shall make an additional first assessment.

- (b) Any additional first assessment made by the inspector in accordance with *paragraph (a)* shall be subject to appeal and other proceedings as in the case of a first assessment.

- (2) (a) In this subsection, “neglect” means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the Income Tax Acts; but a person shall be deemed not to have failed to do anything required to be done within a limited time if such person did it within such further time, if any, as the Revenue Commissioners or officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, such person shall be deemed not to have failed to do it if such person did it without unreasonable delay after the excuse had ceased.
- (b) Subject to *paragraph (c)* and any other provision allowing a longer period in any class of case, an assessment or an additional first assessment may be made at any time not later than 10 years after the end of the year to which the assessment relates.
- (c) In a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to income tax, an assessment or an additional first assessment may be made at any time for any year for which by reason of the fraud or neglect income tax would otherwise be lost to the Exchequer.
- (d) (i) In a case in which emoluments to which this subparagraph applies are received in a year of assessment subsequent to that for which they are assessable, *paragraph (b)* shall apply in the case of assessments or additional first assessments in respect of the emoluments subject to the substitution of a reference to the end of the year of assessment in which the emoluments were received for the reference to the end of the year to which the assessment relates.
- (ii) The emoluments to which *subparagraph (i)* applies are emoluments within the meaning of *section 112(2)*, including any payments chargeable to tax by virtue of *section 123* and any sums which by virtue of *Chapter 3 of Part 5* are to be treated as perquisites of a person’s office or employment, being emoluments, payments or sums other than those taken into account in an assessment to income tax for the year of assessment in which they are received, and for the purposes of this paragraph—
- (I) any such payment shall, notwithstanding anything in *section 123(4)*, be treated as having been received at the time it was actually received, and
- (II) any such sums which are not actually paid to that person shall be treated as having been received at the time when the relevant expenses were incurred or are treated for the purposes of *Chapter 3 of Part 5* as having been incurred.
- (e) An objection to the making of any assessment or additional first assessment on the ground that the time limited for the making of that assessment has expired shall only be made on appeal against the assessment.

(3) Any assessments not made at the time when the first assessments are made shall as soon as they are made be added to the first assessments by means of separate forms of assessment. Pr.39 S.924

925.—(1) Where at any time, either during the year of assessment or in respect of that year, a person becomes entitled to any additional salary, fees or emoluments over and above the amount for which an assessment to income tax has been made on that person, or for which at the commencement of that year that person was liable to be charged to income tax, an additional assessment shall, as often as the case may require, be made on that person in respect of any such additional salary, fees or emoluments, so that he or she may be charged in respect of the full amount of his or her salary, fees or emoluments for that year. Special rules relating to assessments under Schedule E. [ITA67 Sch2 rule1(1) and (2)]

(2) Where any person proves to the satisfaction of the inspector that the amount for which an assessment to income tax has been made in respect of that person's salary, fees or emoluments for any year of assessment exceeds the amount of the salary, fees or emoluments for that year, the assessment shall be adjusted and any amount overpaid by means of tax shall be repaid.

926.—(1) Where—

Estimation of certain amounts.

- (a) the total income of any individual from all sources, whether chargeable with income tax by deduction or otherwise, includes income from any source or sources which is to be computed on the basis of the actual amounts receivable in the year of assessment or where any deductions allowable on account of any annual sums paid out of the property or profits of an individual are to be allowed as deductions in respect of the year in which they are payable, and [ITA67 s528; FA74 s11 and Sch1 PtII]
- (b) an assessment to income tax is being made before the end of the year of assessment to which such assessment to tax relates,

the inspector in making the assessment shall, in computing the total amount of income assessable to income tax, estimate the amount of income from each such source or the amount of any such allowable deductions and, in making any such estimate, the inspector shall have due regard to any corresponding amount of income or allowable deductions in the year preceding the year of assessment and shall, in computing the income tax payable, estimate the amount of tax to be credited under *sections 59 and 997.*

(2) Where—

- (a) an estimate has been made under *subsection (1)*,
- (b) notice of an appeal against the assessment to income tax has not been given, and
- (c) the person assessed gives to the inspector within a period of one year from the end of the year of assessment particulars of the correct amount of the income or deductions in respect of which the estimate was made,

the inspector shall adjust the assessment by reference to the difference between the correct amount of income assessable to income tax

Pt.39 S.926

and the amount of the assessment, and any amount of income tax overpaid shall be repaid.

Rectification of excessive set-off, etc. of tax credit.

[CTA76 s161]

927.—(1) Where an inspector discovers that any set-off or payment of tax credit 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 or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.

(2) This Part, *Part 40* and *Part 42* shall apply to any assessment under this section for recovering a payment of tax credit as if it were an assessment to income tax for the year of assessment, or, in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed and as if that payment represented a loss of tax to the Exchequer, and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

Transmission to Collector-General of particulars of sums to be collected.

[ITA67 s187(1); FA74 s86 and Sch2 PtI; CTA76 s147(1) and(2); FA86 s113(5); FA96 s132(2) and Sch5 PtII]

928.—(1) After assessments to income tax and corporation tax have been made, the inspectors shall transmit particulars of the sums to be collected to the Collector-General for collection.

(2) The entering by an inspector or other authorised officer of details of an assessment to income tax or corporation tax and of the tax charged in such an assessment in an electronic, photographic or other record from which the Collector-General may extract such details by electronic, photographic or other process shall constitute transmission of such details by the inspector or other authorised officer to the Collector-General.

(3) *Subsection (2)* shall apply for the purposes of value-added tax as it applies for the purposes of income tax or corporation tax with the substitution of “value-added tax” for “income tax or corporation tax”.

CHAPTER 2

Provision against double assessment and relief for error or mistake

Double assessment.

[ITA67 s190; F(MP)A68 s3(2) and Sch PtI; CTA76 s147(1) and (2)]

929.—(1) A person who, either on the person’s own account or on behalf of another person, has been assessed to income tax or corporation tax, and is by any error or mistake again assessed for the same year of assessment or the same accounting period, as the case may be, for the same cause and on the same account, may apply for relief to the Appeal Commissioners who, on proof to their satisfaction of the double assessment, shall cause the assessment, or so much of the assessment as constitutes a double assessment, to be vacated.

(2) Where it appears to the satisfaction of the Revenue Commissioners that a person has been assessed more than once for the same cause and for the same year of assessment or the same accounting period, as the case may be, they shall direct the whole, or such part, of any assessment as appears to be an overcharge to be vacated, and thereupon the whole, or such part, of the assessment shall be vacated accordingly.

(3) Where it is proved to the satisfaction of the Revenue Commissioners that any such double assessment has been made and that payment has been made on both assessments, they shall order the amount of the overpayment to be repaid to the applicant. Pr.39 S.929

930.—(1) Where any person who has paid tax charged under an assessment to— Error or mistake.

(a) income tax made for any year of assessment, or

(b) corporation tax made for any accounting period,

[ITA67 s191(1) to (5); F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; CTA76 s143(12)(a); FA95 s15(a) and (b)]

alleges that the assessment was excessive by reason of some error or mistake in the return or statement made by that person for the purposes of the assessment, that person may, at any time not later than 6 years after the end of the year of assessment or the accounting period, as the case may be, within which the assessment was made, make an application in writing to the Revenue Commissioners for relief.

(2) On receiving any such application, the Revenue Commissioners shall inquire into the matter and shall, subject to this section, give by means of repayment such relief in respect of the error or mistake as is just and reasonable; but no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time when the return or statement was made.

(3) In determining any application under this section, the Revenue Commissioners shall have regard to all the relevant circumstances of the case and in particular shall consider whether the granting of relief would result in the exclusion from the charge to income tax or corporation tax, as the case may be, of any part of the profits or income of the applicant, and for this purpose the Revenue Commissioners may take into consideration the liability of the applicant and assessments made on the applicant in respect of other years of assessment or accounting periods, as the case may be.

(4) Any person aggrieved by the determination of the Revenue Commissioners on an application made by that person under this section may, on giving notice in writing to the Revenue Commissioners within 21 days after the notification to that person of their determination, appeal to the Appeal Commissioners.

(5) The Appeal Commissioners shall thereupon hear and determine the appeal in accordance with the principles to be followed by the Revenue Commissioners in determining applications under this section and, subject to those principles, in the like manner as in the case of an appeal 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; but neither the appellant nor the Revenue Commissioners shall be entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income.

CHAPTER 3

Capital gains tax

Making of assessments and application of income tax assessment provisions.

[CGTA75 s51(1) and Sch4 pars 1(2) and 2]

931.—(1) Assessments under the Capital Gains Tax Acts shall be made by inspectors or such other officers as the Revenue Commissioners shall appoint in that behalf.

(2) The provisions of the Income Tax Acts relating to the assessment of income tax shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax chargeable under Schedule D.

(3) In particular and without prejudice to the generality of *subsection (2)*, *subsections (2) and (3) of section 918* and *sections 920, 922, 924 and 928 to 930* shall, subject to any necessary modifications, apply to capital gains tax.

PART 40

APPEALS

CHAPTER 1

Appeals against income tax and corporation tax assessments

Prohibition on alteration of assessment except on appeal.

[ITA67 s415; CTA76 s146(1); FA83 s37]

932.—Except where expressly authorised by the Tax Acts, an assessment to income tax or corporation tax shall not be altered before the time for hearing and determining appeals and then only in cases of assessments appealed against and in accordance with such determination, and if any person makes, causes, or allows to be made in any assessment any unauthorised alteration, that person shall incur a penalty of £50.

Appeals against assessment.

[ITA67 s416(1) to (7)(f), (8) and (9); F(MP)A68 s3(1), s3(2) and Sch Pt1; CTA76 s146(1); FA80 s54(1); FA83 s9(a)(i) and s37; FA95 s173(1)(a)]

933.—(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as “other officer”) shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

(b) Where on an application under *paragraph (a)* the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.

(c) A person who has had an application under *paragraph (a)* refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.

(d) On receipt of an application under *paragraph (c)*, Pt.40 S.933 the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under *paragraph (b)* and, on receipt of the copy of the notice, they shall as soon as possible—

(i) refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal,

(ii) allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or

(iii) notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.

(2) (a) The Appeal Commissioners shall from time to time appoint times and places for the hearing of appeals against assessments and the Clerk to the Appeal Commissioners shall give notice of such times and places to the inspector or other officer.

(b) The inspector or other officer shall give notice in writing to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal; but—

(i) notice under this paragraph shall not be given in a case in which *subsection (3)(b)* applies either consequent on an agreement referred to in that subsection or consequent on a notice referred to in *subsection (3)(d)*, and

(ii) in a case where it appears to the inspector or other officer that an appeal may be settled by agreement under *subsection (3)*, he or she may refrain from giving notice under this paragraph or may by notice in writing and with the agreement of the appellant withdraw a notice already given.

(c) Where, on application in writing in that behalf to the Appeal Commissioners, a person who has given notice of appeal to the inspector or other officer in accordance with *subsection (1)(a)* satisfies the Appeal Commissioners that the information furnished to the inspector or other officer is such that the appeal is likely to be determined on the first occasion on which it comes before them for hearing, the Appeal Commissioners may direct the inspector or other officer to give the notice in writing first mentioned in *paragraph (b)* and the inspector or other officer shall comply forthwith with such direction, and accordingly *subparagraph (ii)* of that paragraph shall not apply to that notice of appeal.

(3) (a) This subsection shall apply to any assessment in respect of which notice of appeal has been given, not being an

assessment the appeal against which has been determined by the Appeal Commissioners or which has become final and conclusive under *subsection (6)*.

- (b) Where, in relation to an assessment to which this subsection applies, the inspector or other officer and the appellant come to an agreement, whether in writing or otherwise, that the assessment is to stand, is to be amended in a particular manner or is to be discharged or cancelled, the inspector or other officer shall give effect to the agreement and thereupon, if the agreement is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.
- (c) An agreement which is not in writing shall be deemed not to be an agreement for the purposes of *paragraph (b)* unless—
 - (i) the fact that an agreement was come to, and the terms agreed on, are confirmed by notice in writing given by the inspector or other officer to the appellant or by the appellant to the inspector or other officer, and
 - (ii) 21 days have elapsed since the giving of that notice without the person to whom it was given giving notice in writing to the person by whom it was given that the first-mentioned person desires to repudiate or withdraw from the agreement.
- (d) Where an appellant desires not to proceed with the appeal against an assessment to which this subsection applies and gives notice in writing to that effect to the inspector or other officer, *paragraph (b)* shall apply as if the appellant and the inspector or other officer had, on the appellant's notice being received, come to an agreement in writing that the assessment should stand.
- (e) References in this subsection to an agreement being come to with an appellant and the giving of notice to or by an appellant include references to an agreement being come to with, and the giving of notice to or by, a person acting on behalf of the appellant in relation to the appeal.

(4) All appeals against assessments to income tax or corporation tax shall be heard and determined by the Appeal Commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that that person's appeal shall be reheard under *section 942* or unless under the Tax Acts a case is required to be stated for the opinion of the High Court.

(5) An appeal against an assessment may be heard and determined by one Appeal Commissioner, and the powers conferred on the Appeal Commissioners by this Part may be exercised by one Appeal Commissioner.

- (6) (a) In default of notice of appeal by a person to whom notice of assessment has been given, the assessment made on that person shall be final and conclusive.

(b) Where a person who has given notice of appeal against an assessment does not attend before the Appeal Commissioners at the time and place appointed for the hearing of that person's appeal, the assessment made on that person shall, subject to *subsection (8)*, have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(c) Where on the hearing of an appeal against an assessment—

(i) no application is or has been made to the Appeal Commissioners before or during the hearing of the appeal by or on behalf of the appellant for an adjournment of the proceedings on the appeal or such an application is or has been made and is or was refused, and

(ii) (I) a return of the appellant's income for the relevant year of assessment or, as the case may be, a return under *section 884* has not been made by the appellant, or

(II) such a return has been made but—

(A) all the statements of profits and gains, schedules and other evidence relating to such return have not been furnished by or on behalf of the appellant,

(B) information requested from the appellant by the Appeal Commissioners in the hearing of the appeal has not been supplied by the appellant,

(C) the terms of a precept issued by the Appeal Commissioners under *section 935* have not been complied with by the appellant, or

(D) any questions as to an assessment or assessments put by the Appeal Commissioners under *section 938* have not been answered to their satisfaction,

the Appeal Commissioners shall make an order dismissing the appeal against the assessment and thereupon the assessment shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(d) An application for an adjournment of the proceedings on an appeal against an assessment, being an application made before or during the hearing of the appeal, shall not be refused before the expiration of 9 months from the earlier of—

(i) the end of the year of assessment or, as the case may be, accounting period to which the assessment appealed against relates, and

(ii) the date on which the notice of assessment was given to the appellant.

(e) *Paragraph (c)* shall not apply if on the hearing of the appeal the Appeal Commissioners are satisfied that sufficient information has been furnished by or on behalf of the appellant to enable them to determine the appeal at that hearing.

(7) (a) A notice of appeal not given within the time limited by *subsection (1)* shall be regarded as having been so given where, on an application in writing having been made to the inspector or other officer in that behalf within 12 months after the date of the notice of assessment, the inspector or other officer, being satisfied that owing to absence, sickness or other reasonable cause the applicant was prevented from giving notice of appeal within the time limited and that the application was made thereafter without unreasonable delay, notifies the applicant in writing that the application under this paragraph has been allowed.

(b) Where on an application under *paragraph (a)* the inspector or other officer is not so satisfied, he or she shall by notice in writing inform the applicant that the application under this paragraph has been refused.

(c) Within 15 days after the date of a notice under *paragraph (b)* the applicant may by notice in writing require the inspector or other officer to refer the application to the Appeal Commissioners and, in relation to any application so referred, *paragraphs (a)* and *(b)* shall apply as if for every reference in those paragraphs to the inspector or other officer there were substituted a reference to the Appeal Commissioners.

(d) Notwithstanding *paragraph (a)*, an application made after the expiration of the time specified in that paragraph which but for that expiration would have been allowed under *paragraph (a)* may be allowed under that paragraph if at the time of the application—

(i) there has been made to the inspector or other officer a return of income or, as the case may be, a return under *section 884*, statements of profits and gains and such other information as in the opinion of the inspector or other officer would enable the appeal to be settled by agreement under *subsection (3)*, and

(ii) the income tax or corporation tax charged by the assessment in respect of which the application is made has been paid together with any interest on that tax chargeable under *section 1080*.

(e) Where on an application referred to in *paragraph (d)* the inspector or other officer is not satisfied that the information furnished would be sufficient to enable the appeal to be settled by agreement under *subsection (3)* or if the tax and interest mentioned in *paragraph (d)(ii)* have not been paid, the inspector or other officer shall by notice in writing inform the applicant that the application has been refused.

(f) Within 15 days after the date of a notice under *paragraph (e)* the applicant may by notice in writing require the inspector or other officer to refer the application to the

Appeal Commissioners and, in relation to an application Pr.40 S.933
so referred, if—

- (i) the application is one which but for the expiration of the period specified in *paragraph (a)* would have been allowed under *paragraph (c)* if the application had been referred to the Appeal Commissioners under that paragraph,
- (ii) at the time the application is referred to the Appeal Commissioners the income tax or corporation tax charged by the assessment in respect of which the application is made, together with any interest on that tax chargeable under *section 1080*, has been paid, and
- (iii) the information furnished to the inspector or other officer is such that in the opinion of the Appeal Commissioners the appeal is likely to be determined on the first occasion on which it comes before them for hearing,

the Appeal Commissioners may allow the application.

(8) In a case in which a person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed for the hearing of that person's appeal, *subsection (6)(b)* shall not apply if—

- (a) at that time and place another person attends on behalf of the appellant and the Appeal Commissioners consent to hear that other person,
 - (b) on an application in that behalf having been made to them in writing or otherwise at or before that time, the Appeal Commissioners postpone the hearing, or
 - (c) on an application in writing having been made to them after that time the Appeal Commissioners, being satisfied that, owing to absence, sickness or other reasonable cause, the appellant was prevented from appearing before them at that time and place and that the application was made without unreasonable delay, direct that the appeal be treated as one the time for the hearing of which has not yet been appointed.
- (9) (a) Where action for the recovery of income tax or corporation tax charged by an assessment has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962*, neither *subsection (7)* nor *subsection (8)* shall apply in relation to that assessment until that action has been completed.
- (b) Where, in a case within *paragraph (a)*, an application under *subsection (7)(a)* is allowed or, on an application under *subsection (8)(c)*, the Appeal Commissioners direct as provided in that subsection, the applicant shall in no case be entitled to repayment of any sum paid or borne by the applicant in respect of costs of any such court proceedings or, as the case may be, of any fees or expenses charged by the county registrar or sheriff executing a certificate under *section 962*.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt. 40
Procedure on
appeals.

[ITA67 s421; FA68
s16; CTA76 s146(1);
FA80 s54(2); FA83
s9(a)(ii) and s37;
FA90 s28; FA95
s173(1)(b)]

934.—(1) The inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as “other officer”) may attend every hearing of an appeal, and shall be entitled—

- (a) to be present during all the hearing and at the determination of the appeal,
 - (b) to produce any lawful evidence in support of the assessment, and
 - (c) to give reasons in support of the assessment.
- (2) (a) On any appeal, the Appeal Commissioners shall permit any barrister or solicitor to plead before them on behalf of the appellant or the inspector or other officer either orally or in writing and shall hear—
- (i) any accountant, being any person who has been admitted a member of an incorporated society of accountants, or
 - (ii) any person who has been admitted a member of the body incorporated under the Companies Act, 1963, on the 31st day of December, 1975, as “The Institute of Taxation in Ireland”.
- (b) Notwithstanding *paragraph (a)*, the Appeal Commissioners may permit any other person representing the appellant to plead before them where they are satisfied that such permission should be given.

(3) Where on an appeal it appears to the Appeal Commissioners by whom the appeal is heard, or to a majority of such Appeal Commissioners, by examination of the appellant on oath or affirmation or by other lawful evidence that the appellant is overcharged by any assessment, the Appeal Commissioners shall abate or reduce the assessment accordingly, but otherwise the Appeal Commissioners shall determine the appeal by ordering that the assessment shall stand.

(4) Where on any appeal it appears to the Appeal Commissioners that the person assessed ought to be charged in an amount exceeding the amount contained in the assessment, they shall charge that person with the excess.

(5) Unless the circumstances of the case otherwise require, where on an appeal against an assessment which assesses an amount which is chargeable to income tax or corporation tax it appears to the Appeal Commissioners—

- (a) that the appellant is overcharged by the assessment, they may in determining the appeal reduce only the amount which is chargeable to income tax or corporation tax,
- (b) that the appellant is correctly charged by the assessment, they may in determining the appeal order that the amount which is chargeable to income tax or corporation tax shall stand, and
- (c) that the appellant ought to be charged in an amount exceeding the amount contained in the assessment, they

may charge the excess by increasing only the amount which is chargeable to income tax or corporation tax. Pr.40 S.934

(6) Where an appeal is determined by the Appeal Commissioners, the inspector or other officer shall give effect to the Appeal Commissioners' determination and thereupon, if the determination is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(7) Every determination of an appeal by the Appeal Commissioners shall be recorded by them in the prescribed form at the time the determination is made and the Appeal Commissioners shall within 10 days after the determination transmit that form to the inspector or other officer.

935.—(1) Where notice of appeal has been given against an assessment, the Appeal Commissioners may, whenever it appears to them to be necessary for the purposes of the Tax Acts, issue a precept to the appellant ordering the appellant to deliver to them, within the time limited by the precept, a schedule containing such particulars for their information as they may demand under the authority of the Tax Acts in relation to—

Power to issue precepts.
[ITA67 s422; F(MP)A68 s3(1), s3(2) and Sch PtI; CTA76 s146(1); FA83 s37; FA95 s173(1)(b)]

- (a) the property of the appellant,
- (b) the trade, profession or employment carried on or exercised by the appellant,
- (c) the amount of the appellant's profits or gains, distinguishing the particular amounts derived from each separate source, or
- (d) any deductions made in determining the appellant's profits or gains.

(2) The Appeal Commissioners may issue further precepts whenever they consider it necessary for the purposes of the Tax Acts, until complete particulars have been furnished to their satisfaction.

(3) A precept may be issued by one Appeal Commissioner.

(4) A person to whom a precept is issued shall deliver the schedule required within the time limited by the precept.

(5) Any inspector or such other officer as the Revenue Commissioners shall authorise in that behalf may at all reasonable times inspect and take copies of or extracts from any such schedule.

936.—(1) The inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as "other officer") may, within a reasonable time to be allowed by the Appeal Commissioners after examination by the inspector or other officer of any schedule referred to in *section 935*, object to that schedule or any part of that schedule, and in that case shall state in writing the cause of his or her objection according to the best of his or her knowledge or information.

Objection by inspector or other officer to schedules.
[ITA67 s423; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA95 s173(1)(b)]

(2) In every such case the inspector or other officer shall give notice in writing of his or her objection to the person chargeable in

Pt.40 S.936

order that that person may, if that person thinks fit, appeal against the objection.

(3) A notice under *subsection (2)* shall be under cover and sealed, and addressed to the person chargeable.

(4) No assessment shall be confirmed or altered until any appeal against the objection has been heard and determined.

Confirmation and amendment of assessments.

[ITA67 s424; F(MP)A68 s3(2) and Sch PtI; CTA76 s 146(1); FA95 s173(1)(b)]

937.—Where—

(a) the Appeal Commissioners see cause to disallow an objection to a schedule by the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf, or

(b) on the hearing of an appeal, the Appeal Commissioners are satisfied with the assessment, or if, after the delivery of a schedule, they are satisfied with the schedule and have received no information as to its insufficiency,

they shall confirm or alter the assessment in accordance with the schedule, as the case may require.

Questions as to assessments or schedules.

[ITA67 s425; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1)]

938.—(1) Whenever the Appeal Commissioners are dissatisfied with a schedule or require further information relating to a schedule, they may at any time and from time to time by precept put any questions in writing concerning the schedule, or any matter which is contained or ought to be contained in the schedule, or concerning any deductions made in arriving at the profits or gains, and the particulars thereof, and may require true and particular answers in writing signed by the person chargeable to be given within 7 days after the service of the precept.

(2) The person chargeable shall within the time limited either answer any such questions in writing signed by that person, or shall present himself or herself to be examined orally before the Appeal Commissioners, and may object to and refuse to answer any question; but the substance of any answer given by that person orally shall be taken down in writing in that person's presence and be read over to that person and, after that person has had liberty to amend any such answer, he or she may be required to verify the answer on oath to be administered to him or her by any one of the Appeal Commissioners, and the oath shall be subscribed by the person by whom it is made.

(3) Where any clerk, agent or servant of the person chargeable presents himself or herself on behalf of that person to be examined orally before the Appeal Commissioners, the same provisions shall apply to his or her examination as in the case of the person chargeable who presents himself or herself to be examined orally.

Summoning and examination of witnesses.

[ITA67 s426; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA82 s60(2)(c); FA92 s248]

939.—(1) (a) The Appeal Commissioners may summon any person whom they think able to give evidence as respects an assessment made on another person to appear before them to be examined, and may examine such person on oath.

(b) The clerk, agent, servant or other person confidentially employed in the affairs of a person chargeable

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

shall be examined in the same manner, and subject to the same restrictions, as in the case of a person chargeable who presents himself or herself to be examined orally. Pr.40 S.939

(2) The oath shall be that the evidence to be given, touching the matter in question, by the person sworn shall be the truth, the whole truth and nothing but the truth, and the oath shall be subscribed by the person by whom it is made.

(3) A person who after being duly summoned—

- (a) neglects or refuses to appear before the Appeal Commissioners at the time and place appointed for that purpose,
- (b) appears but refuses to be sworn or to subscribe the oath, or
- (c) refuses to answer any lawful question touching the matters under consideration,

shall be liable to a penalty of £750; but the penalty imposed in respect of any offence under *paragraph (b) or (c)* shall not apply to any clerk, agent, servant or other person referred to in *subsection (1)(b)*.

940.—Where—

- (a) a person has neglected or refused to deliver a schedule in accordance with a precept of the Appeal Commissioners,
- (b) any clerk, agent or servant of, or any person confidentially employed by, a person chargeable, having been summoned, has neglected or refused to appear before the Appeal Commissioners to be examined,
- (c) the person chargeable or that person's clerk, agent or servant or any person confidentially employed by the person chargeable has declined to answer any question put to him or her by the Appeal Commissioners,
- (d) an objection has been made to a schedule and the objection has not been appealed against, or
- (e) the Appeal Commissioners decide to allow any objection made by the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf,

Determination of liability in cases of default.

[ITA67 s427; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA95 s173(1)(b)]

the Appeal Commissioners shall ascertain and settle according to the best of their judgment the sum in which the person chargeable ought to be charged.

941.—(1) Immediately after the determination of an appeal by the Appeal Commissioners, the appellant or the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as “other officer”), if dissatisfied with the determination as being erroneous in point of law, may declare his or her dissatisfaction to the Appeal Commissioners who heard the appeal.

Statement of case for High Court.

[ITA67 s428; F(MP)A68 s3(2) and Sch PtI; FA71 s19(2); CTA76 s146(1); FA83 s9(a)(iii) and s37; FA95 s173(1)(c)]

(2) The appellant or inspector or other officer, as the case may be, having declared his or her dissatisfaction, may within 21 days

PT.40 S.941

after the determination by notice in writing addressed to the Clerk to the Appeal Commissioners require the Appeal Commissioners to state and sign a case for the opinion of the High Court on the determination.

(3) The party requiring the case shall pay to the Clerk to the Appeal Commissioners a fee of £20 for and in respect of the case before that party is entitled to have the case stated.

(4) The case shall set forth the facts and the determination of the Appeal Commissioners, and the party requiring it shall transmit the case when stated and signed to the High Court within 7 days after receiving it.

(5) At or before the time when the party requiring the case transmits it to the High Court, that party shall send notice in writing of the fact that the case has been stated on that party's application, together with a copy of the case, to the other party.

(6) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.

(7) The High Court may cause the case to be sent back for amendment and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) An appeal shall lie from the decision of the High Court to the Supreme Court.

(9) Notwithstanding that a case has been required to be stated or is pending, income tax or, as the case may be, corporation tax shall be paid in accordance with the determination of the Appeal Commissioners; but if the amount of the assessment is altered by the order or judgment of the Supreme Court or the High Court, then—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the Court may allow, or
- (b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.

Appeals to Circuit Court.

[ITA67 s416(10) and s429; F(MP)A68 s3(1), s3(2) and Sch PtI; FA71 s19(1); FA74 s69; CTA76 s146(1); FA83 s9(a)(iv) and (b)(i) and s37; FA95 s173(1)(d); FA97 s146(1) and Sch9 PtI par1(27)]

942.—(1) Any person aggrieved by the determination of the Appeal Commissioners in any appeal against an assessment made on that person may, on giving notice in writing to the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as “other officer”) within 10 days after such determination, require that the appeal shall be reheard by the judge of the Circuit Court (in this section referred to as “the judge”) in whose circuit is situate, in the case of—

- (a) a person who is not resident in the State,
- (b) the estate of a deceased person,

(c) an incapacitated person, or

(d) a trust,

the place where the assessment was made and, in any other case, the place to which the notice of assessment was addressed, and the Appeal Commissioners shall transmit to the judge any statement or schedule in their possession which was delivered to them for the purposes of the appeal.

(2) At or before the time of the rehearing of the appeal by the judge, the inspector or other officer shall transmit to the judge the prescribed form in which the Appeal Commissioners' determination of the appeal is recorded.

(3) The judge shall with all convenient speed rehear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all consequent matters, as the Appeal Commissioners might have and exercise, and the judge's determination shall, subject to *section 943*, be final and conclusive.

(4) *Section 934(2)* shall, with any necessary modifications, apply in relation to a rehearing of an appeal by a judge of the Circuit Court as it applies in relation to the hearing of an appeal by the Appeal Commissioners.

(5) The judge shall make a declaration in the form of the declaration required to be made by an Appeal Commissioner as set out in *Part 1 of Schedule 27*.

(6) (a) Notwithstanding that a person has under *subsection (1)* required an appeal to the Appeal Commissioners against the assessment to be reheard by a judge of the Circuit Court, income tax or, as the case may be, corporation tax shall be paid in accordance with the determination of the Appeal Commissioners.

(b) Notwithstanding *paragraph (a)*, where the amount of tax is altered by the determination of the judge or by giving effect to an agreement under *subsection (8)*, then, if too much tax has been paid, the amount or amounts overpaid shall be repaid and (except where the interest amounts to less than £10) in so far as the amount to be repaid represents tax paid in accordance with this subsection it shall be repaid with interest at the rate of 0.6 per cent, or such other rate (if any) prescribed by the Minister for Finance by regulations, for each month or part of a month from the date or dates of payment of the amount or amounts giving rise to the overpayment to the date on which the repayment is made.

(7) Income tax shall not be deductible on payment of interest referred to in *subsection (6)(b)* and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) Where following an application for the rehearing of an appeal by a judge of the Circuit Court in accordance with *subsection (1)* there is an agreement within the meaning of *paragraphs (b), (c) and (e) of section 933(3)* between the inspector or other officer and the appellant in relation to the assessment, the inspector shall give effect to the agreement and, if the agreement is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

Pr.40 S.942

(9) Every rehearing of an appeal by the Circuit Court under this section shall be held in camera.

(10) 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.

Extension of *section 941.*

[ITA67 s430; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA83 s9(a)(v) and s37]

943.—(1) *Section 941* shall, subject to this section, apply to a determination given by a judge pursuant to *section 942* in the like manner as it applies to a determination by the Appeal Commissioners, and any case stated by a judge pursuant to *section 941* shall set out the facts, the determination of the Appeal Commissioners and the determination of the judge.

(2) The notice in writing required under *section 941(2)* to be addressed to the Clerk to the Appeal Commissioners shall, in every case in which a judge is under the authority of this section required by any person to state and sign a case for the opinion of the High Court on the determination, be addressed by such person to the county registrar.

(3) The fee required under *section 941(3)* to be paid to the Clerk to the Appeal Commissioners shall in any case referred to in *subsection (2)* be paid to the county registrar.

Communication of decision of Appeal Commissioners.

[ITA67 s431; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA83 s37]

944.—(1) Where the Appeal Commissioners have entertained an appeal against an assessment for any year of assessment or any accounting period and, after hearing argument on the appeal, have postponed giving their determination either for the purpose of considering the argument or for the purpose of affording to the appellant an opportunity of submitting in writing further evidence or argument, the Appeal Commissioners may, unless they consider a further hearing to be necessary, cause their determination to be sent by post to the parties to the appeal.

(2) Where the determination of an appeal by the Appeal Commissioners is sent to the parties by post under this section, a declaration of dissatisfaction under *section 941(1)* or a notice requiring a rehearing under *section 942(1)* may be made or given in writing within 12 days after the day on which the determination is so sent to the person making the declaration or giving the notice.

CHAPTER 2

Appeals against capital gains tax assessments

Appeals against assessments.

[CGTA75 s51(1) and Sch4 par8; CGT(A)A78 s17 and Sch2; FA83 s55]

945.—(1) A person aggrieved by any assessment under the Capital Gains Tax Acts made on the person by the inspector or other officer mentioned in *section 931(1)* shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer, and in default of notice of appeal by a person to whom notice of assessment has been given the assessment made on such person shall be final and conclusive.

(2) The provisions of the Income Tax Acts relating to—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) the appointment of times and places for the hearing of appeals, Pr.40 S.945
- (b) the giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal,
- (c) the determination of an appeal by agreement between the appellant or the appellant's agent and an inspector of taxes or other officer mentioned in *section 931(1)*,
- (d) the determination of an appeal by the appellant giving notice of the appellant's intention not to proceed with the appeal,
- (e) the hearing, determination or dismissal of an appeal by the Appeal Commissioners, including the hearing, determination or dismissal of an appeal by one Appeal Commissioner,
- (f) the assessment having the same force and effect as if it were an assessment in respect of which no notice of appeal had been given where the person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed,
- (g) the extension of the time for giving notice of appeal and the readmission of appeals by the Appeal Commissioners and the provisions which apply where action by means of court proceedings has been taken,
- (h) the rehearing of an appeal by a judge of the Circuit Court and the statement of a case for the opinion of the High Court on a point of law,
- (i) the payment of tax in accordance with the determination of the Appeal Commissioners notwithstanding that an appeal is required to be reheard by a judge of the Circuit Court or that a case for the opinion of the High Court on a point of law has been required to be stated or is pending, and
- (j) the procedures for appeal,

shall, with any necessary modifications, apply to an appeal under any provision of the Capital Gains Tax Acts providing for an appeal to the Appeal Commissioners as if the appeal were an appeal against an assessment to income tax.

946.—(1) The Revenue Commissioners may make regulations— Regulations with respect to appeals.

- (a) for the conduct of appeals against assessments and decisions on claims under the Capital Gains Tax Acts; [CGTA75 s51(1) and Sch4 par9]
- (b) entitling persons, in addition to those who would be so entitled apart from the regulations, to appear on such appeals;
- (c) regulating the time within which such appeals or claims may be brought or made;

- (d) where the market value of an asset on a particular date or an apportionment or any other matter may affect the liability to capital gains tax of 2 or more persons, enabling any such person to have the matter determined by the tribunal having jurisdiction to determine that matter if arising on an appeal against an assessment, and prescribing a procedure by which the matter is not determined differently on different occasions;
- (e) authorising an inspector or other officer of the Revenue Commissioners, notwithstanding the obligation as to secrecy imposed by the Income Tax Acts or any other Act, to disclose—
- (i) to a person entitled to appear on such an appeal, the market value of an asset as determined by an assessment or decision on a claim, or
 - (ii) to a person whose liability to tax may be affected by the determination of the market value of an asset on a particular date or an apportionment or any other matter, any decision on the matter made by an inspector or other officer of the Revenue Commissioners.

(2) Regulations under this section may contain such supplemental and incidental provisions as appear to the Revenue Commissioners to be necessary.

(3) 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.

CHAPTER 3

Miscellaneous

Appeals against determination under sections 98 to 100.

[FA75 s21(1) to (7); CTA76 s147(1) and (2)]

947.—(1) Where it appears to the inspector that the determination of any amount on which a person may be chargeable to income tax or corporation tax by virtue of *section 98, 99 or 100* may affect the liability to income tax or corporation tax of other persons, the inspector shall give notice in writing to those persons as well as to the first-mentioned person of the determination the inspector proposes to make and of the rights conferred on them by this section.

(2) Any person to whom such a notice is given may within 21 days after the date on which it is given object to the proposed determination by notice in writing given to the inspector, and *section 933(7)* shall apply, with any necessary modifications, in relation to any such notice as it applies in relation to a notice of appeal under *section 933*.

(3) (a) Subject to *paragraph (b)*, where notices have been given under *subsection (1)* and no notice of objection is duly given under *subsection (2)*, the inspector shall make the determination as proposed in his or her notices and the determination shall not be called in question in any proceedings.

(b) This subsection shall not operate to prevent any person to whom notice has not been given under *subsection (1)* from appealing against any such determination of the inspector which may affect that person's liability to income tax or corporation tax, as the case may be. Pr.40 S.947

(4) Where a notice of objection is duly given, the amount mentioned in *subsection (1)* shall be determined in the like manner as an appeal and shall be so determined by the Appeal Commissioners.

(5) All persons to whom notices have been given under *subsection (1)* may take part in any proceedings under *subsection (4)* and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings, and their successors in title shall also be so bound.

(6) A notice under *subsection (1)* may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.

(7) An inspector may by notice in writing require any person to give, within 21 days after the date of the notice or within such longer period as the inspector may allow, such information as appears to the inspector to be required for deciding whether to give a notice under *subsection (1)* to any person.

948.—(1) Any person charged to income tax under Schedule E may appeal to the Appeal Commissioners against the amount of tax deducted from that person's emoluments for any year. Appeals against amount of income tax deducted under Schedule E.

(2) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (1)* 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. [ITA67 s113; F(MP)A68 s3(2) and Sch PtI]

949.—(1) Any person aggrieved by any determination by the Revenue Commissioners, or such officer of the Revenue Commissioners (including an inspector) as they may have authorised in that behalf, on any claim, matter or question referred to in *section 864* may, subject to *section 957* and on giving notice in writing to the Revenue Commissioners or the officer within 30 days after notification to the person aggrieved of the determination, appeal to the Appeal Commissioners. Appeals against determinations of certain claims, etc. [ITA67 s432(1) (part only) and (2) to (4); F(MP)A68 s3(2) and Sch PtI; CGTA75 s51(1) and Sch4 par2; CTA76 s146(1) and s164 and Sch3 PtI; FA83 s37]

(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 *section 933* with respect to such appeals, together with the provisions of the 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.

(3) Where—

(a) a right of appeal to the Appeal Commissioners is given by any provision of the Tax Acts or the Capital Gains Tax Acts other than *section 1037*, and

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.40 S.949

- (b) such provision, while applying the provisions of the Tax Acts relating to appeals against assessments, does not apply the provisions of those Acts relating to the rehearing of appeals,

such provision shall be deemed to apply those provisions relating to the rehearing of appeals.

(4) In a case in which—

- (a) a notice of appeal is not given within the time limited by *subsection (1)*, or
- (b) a person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed for the hearing of the person's appeal,

subsections (5) and (7) to (9) of section 933 shall apply with any necessary modifications.

PART 41

SELF ASSESSMENT

Interpretation (*Part 41*).

950.—(1) In this Part, except where the context otherwise requires—

[FA88 s9(1) to (3);
FA90 s23(3)(a);
FA91 s45(a)(i) to
(v) and (vii) to
(viii); FA92 s244]

“appeal” means an appeal under *section 933* or, as respects capital gains tax, an appeal under *section 945*;

“appropriate inspector”, in relation to a chargeable person, means—

- (a) the inspector who has last given notice in writing to the chargeable person that he or she is the inspector to whom the chargeable person is required to deliver a return or statement of income or profits or chargeable gains,
- (b) in the absence of an inspector referred to in *paragraph (a)*, the inspector to whom it is customary for the chargeable person to deliver such return or statement, or
- (c) in the absence of an inspector referred to in *paragraphs (a) and (b)*, the inspector of returns;

“assessment” means an assessment to tax made under the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts, as the case may be;

“chargeable gain” has the same meaning as in *section 545(3)*;

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

“chargeable person” means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person—

- (a) whose total income for the chargeable period consists solely of emoluments to which *Chapter 4 of Part 42* applies, and for this purpose a person whose total income for the chargeable period, other than emoluments to which that

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Chapter applies, is deducted in determining the amount of his or her tax-free allowances for the chargeable period by virtue of regulation 10(1)(b) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be deemed for that chargeable period to be a person whose total income consists solely of emoluments to which that Chapter applies, Pr.41 S.950

- (b) who for the chargeable period has been exempted by an inspector from the requirements of *section 951* by reason of a notice given under *subsection (6)* of that section, or
- (c) who is chargeable to tax for the chargeable period by reason only of *section 237, 238 or 239*,

but *paragraph (a)* shall not apply to a person who is a director or, in the case of a person to whom *section 1017* applies, whose spouse is a director (within the meaning of *section 116*) of a body corporate other than a body corporate which during a period of 3 years ending on the 5th day of April in the chargeable period—

- (i) 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,
- (ii) did not carry on a trade, business or other activity including the making of investments, and
- (iii) did not pay charges on income within the meaning of *section 243*;

“determination of the appeal” means a determination by the Appeal Commissioners under *section 933(4)*, and includes an agreement referred to in *section 933(3)* and an assessment becoming final and conclusive by virtue of *section 933(6)*;

“due date for the payment of an amount of preliminary tax” has the meaning assigned to it by *section 958(2)*;

“inspector”, in relation to any matter, includes such other officer as the Revenue Commissioners shall appoint in that behalf;

“inspector of returns” means the inspector nominated by the Revenue Commissioners under *section 951(11)* to be the inspector of returns;

“precedent partner” has the same meaning as in *Part 43*;

“prescribed form” means a form prescribed by the Revenue Commissioners or a form used under the authority of the Revenue Commissioners, and includes a form which involves the delivery of a return by any electronic, photographic or other process approved of by the Revenue Commissioners;

“preliminary tax” means the amount of tax which a chargeable person is required to pay in accordance with *section 952*;

“specified provisions” means *sections 877 to 881 and 884, paragraphs (a) and (d) of section 888(1), and section 1023*;

“specified return date for the chargeable period”, in relation to a chargeable period, means—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.41 S.950

- (a) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year,
- (b) where the chargeable period is an accounting period of a company and subject to *paragraph (c)*, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period, and
- (c) where the chargeable period is an accounting period of a company which ends on or before the date of commencement of the winding up of the company and the specified return date in respect of that accounting period would but for this paragraph fall on a date after the date of commencement of the winding up but not within a period of 3 months after that date, the date which falls 3 months after the date of commencement of the winding up;

“tax” means income tax, corporation tax or capital gains tax, as the case may be.

(2) Except in so far as otherwise expressly provided, this Part shall apply notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts.

- (3) (a) Where any obligation or requirement is imposed on a person in any capacity under this Part and a corresponding obligation or requirement is imposed on that person in another capacity, the discharge of any one of those obligations or requirements shall not release the person from the other obligation or requirement.
- (b) A person shall not in any capacity have an obligation or requirement imposed on that person under this Part by reason only that such obligation or requirement is imposed on that person in any other capacity.
- (c) Where but for any of the subsequent provisions of this Part any such obligation or requirement would have been imposed on a person in more than one capacity, a release from such obligation or requirement under any of those provisions by reason of any fact or circumstance applying in relation to that person’s liability to tax in any one capacity shall not release that person from such obligation or requirement as is imposed on that person in a capacity other than that in which that fact or circumstance applies.

Obligation to make a return.

[FA88 s10; FA90 s23(3)(b); FA91 s46]

951.—(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return in the prescribed form of—

- (a) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment—
 - (i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under *section 877*, if the period specified in such notice were the year of assessment which is the chargeable period, and

(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in *subparagraph (i)*, all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under *section 879*, or

Pr.41 S.951

(b) in the case of a chargeable person who is chargeable to corporation tax for a chargeable period which is an accounting period, all such matters and particulars in relation to the chargeable period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person by the appropriate inspector under *section 884*,

and such further particulars as may be required by the prescribed form.

(2) The precedent partner of any partnership shall be deemed to be a chargeable person for the purposes of this section and shall as respects any chargeable period deliver to the appropriate inspector on or before the specified return date for that chargeable period the return which that partner would be required to deliver for that period under *section 880*, if the inspector had given notice under that section before that specified date.

(3) (a) Where under *subsection (1)* or *(2)* a person delivers a return to an inspector, the person shall be deemed to have been required by a notice under *section 877* to deliver a statement containing the matters and particulars contained in the return or to have been required by a notice under *section 879, 880* or *884* to deliver the return, as the case may be.

(b) Any provision of the Tax Acts relating to the taking of any action on the failure of a person to deliver a statement or return pursuant to a notice given under any of the sections referred to in *paragraph (a)* shall apply to a chargeable person in a case where such a notice has not been given as if the chargeable person had been given a notice on the specified return date for the chargeable period under such one or more of those sections as is appropriate to the provision in question.

(4) A chargeable person shall prepare and deliver to the appropriate inspector a return for a chargeable period as required by this section notwithstanding that the chargeable person has not received a notice from an inspector to prepare and deliver a statement or return for that period under any of the sections referred to in *subsection (3)(a)*.

(5) (a) A return required by this section may be prepared and delivered by the chargeable person or by another person acting under the chargeable person's authority in that regard.

(b) Where a return is prepared and delivered by such other person, the Tax Acts shall apply as if it had been prepared and delivered by the chargeable person.

- (c) A return purporting to be prepared and delivered by or on behalf of any chargeable person shall for the purposes of the Tax Acts be deemed to have been prepared and delivered by that person or by that person's authority, as the case may be, unless the contrary is proved.

(6) An inspector may exclude a person from the application of this section by giving the person a notice in writing stating that the person is excluded from the application of this section, and the notice shall have effect for such chargeable period or periods or until such chargeable period or until the happening of such event as shall be specified in the notice; but—

- (a) where before the 25th day of May, 1988, a person has been given notice by the inspector that the person need not prepare and deliver a return for or until a specified chargeable period or until the happening of any event, the person shall be deemed to have been given notice to that effect under this subsection;
- (b) where a person who has been given a notice under this subsection is chargeable to capital gains tax for any chargeable period, this subsection shall not operate so as to remove the person's obligation under *subsection (1)* to make a return of the person's chargeable gains for that chargeable period.

(7) (a) This section shall not affect the giving of a notice by an inspector under any of the specified provisions and shall not remove from any person any obligation or requirement imposed on the person by such a notice.

- (b) The giving of a notice under any of the specified provisions to a person shall not remove from that person any obligation to prepare and deliver a return under this section.

(8) In a case to which *section 1023(5)* applies, a return containing for both the husband and the wife the matters and particulars required by *subsection (1)* shall, if delivered by one spouse, satisfy the obligation of the other spouse under this section.

(9) Nothing in the specified provisions or in a notice given under any of those provisions shall operate so as to require a chargeable person to deliver a return for a chargeable period on a date earlier than the specified return date for the chargeable period.

(10) A certificate signed by an inspector which certifies that he or she has examined the relevant records and that it appears from those records—

- (a) that as respects a chargeable period a named person is a chargeable person, and
- (b) that on or before the specified return date for the chargeable period a return in the prescribed form was not received from that chargeable person,

shall be evidence until the contrary is proved that the person so named is a chargeable person as respects that chargeable period and that that person did not on or before the specified return date deliver that return, and a certificate certifying as provided by this subsection and purporting to be signed by an inspector may be tendered in

evidence without proof and shall be deemed until the contrary is proved to have been signed by that inspector. Pr.41 S.951

(11) (a) The Revenue Commissioners may nominate an inspector to be the inspector of returns for the purposes of this Part.

(b) The inspector of returns shall take delivery of returns under this section which he or she has directed to be delivered to him or her and of returns from persons in relation to whom he or she is the appropriate inspector in the circumstances specified in *paragraph (c)* of the definition of “appropriate inspector” in *section 950(1)*.

(c) The name of an inspector nominated under *paragraph (a)* and the address to which returns being delivered to him or her shall be directed shall be published annually in *Iris Oifigiúil*.

(12) *Sections 1052 and 1054* shall apply to a failure by a chargeable person to deliver a return in accordance with *subsections (1) and (2)* as they apply to a failure to deliver a return referred to in *section 1052*.

952.—(1) Every person who is a chargeable person as respects any chargeable period shall be liable to pay to the Collector-General in accordance with this section and *section 958* the amount of that person’s preliminary tax appropriate to that chargeable period. [FA 88 s11]

(2) The amount of a chargeable person’s preliminary tax appropriate to a chargeable period shall be the amount of tax which in the opinion of the chargeable person is likely to become payable by that person for the chargeable period by reason of an assessment or assessments for the chargeable period made or to be made by the inspector or which would be made by the inspector if the inspector did not elect under *section 954(4)* not to make an assessment.

(3) Preliminary tax shall be payable notwithstanding that the inspector has not given notice in respect of that tax under *section 953*.

(4) Where on or before the due date for the payment of an amount of preliminary tax appropriate to a chargeable period the chargeable person by whom the tax is payable has received notice of an assessment for the period, the chargeable person shall not be liable to pay preliminary tax for that chargeable period.

(5) Any amount of preliminary tax appropriate to a chargeable period which is paid by and not repaid to a chargeable person in any capacity shall, to the extent of the amount of that payment or the extent of the amount of that payment less any amount that has been repaid, be treated as a payment on foot of the tax payable by the chargeable person for the chargeable period, being tax which is specified in an assessment or assessments made or to be made for that period on the chargeable person in that capacity.

953.—(1) Where— Notices of preliminary tax.

(a) a chargeable person defaults in the making of a payment of preliminary tax for a chargeable period, or [FA88 s12; FA91 s47; FA97 s146(1) and Sch9 PtI par15]

- (b) at any time before the due date for the payment of an amount of preliminary tax for a chargeable period the inspector considers it appropriate to do so,

the inspector may give notice in writing to the chargeable person of the amount of the preliminary tax which in the opinion of the inspector ought to be paid by the chargeable person for that chargeable period; but a notice shall not be given under this subsection to a chargeable person for a chargeable period at any time after the chargeable person has delivered a return for that chargeable period.

(2) Subject to this section, an amount of preliminary tax specified in a notice under *subsection (1)* shall be due and payable to the Collector-General by the chargeable person on the due date for the payment of an amount of preliminary tax for the chargeable period to which the notice relates.

(3) Subject to *subsection (4)*, where on or before the specified return date for a chargeable period the chargeable person—

- (a) makes a payment of preliminary tax for the chargeable period under *section 952*, or
- (b) gives notice in writing to the Collector-General that the chargeable person considers that the chargeable person will not have a liability to pay tax for the chargeable period by reason of any assessment or assessments made or to be made by the inspector,

then, the amount of preliminary tax for the chargeable period specified in a notice given to the chargeable person under *subsection (1)*, or the excess (if any) of that amount over the preliminary tax paid by the chargeable person for the chargeable period, shall not be payable.

(4) Where—

- (a) the chargeable person defaults in delivering a return for a chargeable period to which a notice of preliminary tax under *subsection (1)* relates, and
- (b) the amount of preliminary tax specified in the notice as increased under *section 1084* is greater than the amount (if any) of the preliminary tax paid by the chargeable person under *section 952* as increased under *section 1084*,

then—

- (i) with effect from the specified return date for the chargeable period, *subsection (3)* shall not apply to that chargeable person for the chargeable period, and
- (ii) the amount of preliminary tax specified in the notice, as increased under *section 1084* but reduced by any preliminary tax paid by the chargeable person in the capacity to which the notice relates for the chargeable period, shall become due and payable in all respects as if *subsection (3)* had not been enacted.
- (5) (a) Notwithstanding *subsections (1) to (4)* but subject to *paragraph (b)*, an amount of preliminary tax, or any excess of that amount over the amount (if any) of the preliminary

tax paid by the chargeable person for the chargeable period to which the notice relates, specified in a notice given under *subsection (1)* shall cease to be due and payable as on and from the date on which the inspector makes an assessment on the chargeable person for that chargeable period.

(b) Where action for the recovery of an amount of preliminary tax specified in a notice given under *subsection (1)* has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962*, this subsection shall not apply to that amount of preliminary tax.

(6) (a) Subject to *subsections (1) to (5)*, the amount of preliminary tax specified in a notice given under *subsection (1)* shall be collected and paid in all respects as if it were tax charged by an assessment in respect of which no appeal was pending.

(b) *Section 870* shall apply to preliminary tax specified in a notice as it applies to tax specified in an assessment.

(c) *Sections 928(2) and 967* shall apply in all respects to an amount of preliminary tax specified in a notice under *subsection (1)* as if it were an amount of tax specified in an assessment.

(7) Where the amount of preliminary tax paid by a chargeable person for any chargeable period exceeds that person's tax liability for that period, the excess shall be repaid and the amount repaid shall carry interest at the rate of 0.6 per cent, or such other rate (if any) prescribed by the Minister for Finance by regulations, for each month or part of a month for the period from the date or dates of the payment of the amount or amounts giving rise to the overpayment, as the case may require, to the date on which the repayment is made; but—

(a) interest shall not be payable under this subsection—

(i) if it amounts to less than £10, or

(ii) to the extent that the excess arises from relief provided for by *section 438(4)*,

and

(b) income tax shall not be deductible on payment of interest under this subsection and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) Where for a chargeable period a notice of preliminary tax has been given to a person by the inspector and the inspector is satisfied that—

(a) the person, being a chargeable person, has discharged all that person's tax liability for the chargeable period,

(b) the person is not a chargeable person as respects that chargeable period, or

(c) it is appropriate to do so,

the inspector may reduce the amount of preliminary tax specified in the notice given to the person to such amount (including nil) as the inspector deems appropriate having regard to the circumstances of the case.

(9) Where a provision of this section has the effect of providing that any preliminary tax specified in a notice under *subsection (1)* ceases to become payable, the provision shall not have the effect of removing from any chargeable person an obligation imposed on that person by *section 952* to pay an amount of preliminary tax.

(10) *Section 929* shall, with any necessary modifications, apply to notices of preliminary tax under this section as it applies to assessments.

(11) Apart from *subsection (7)*, this section shall not apply to capital gains tax.

(12) 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.

Making of assessments.

[FA88 s13; FA91 s48]

954.—(1) An assessment shall not be made on a chargeable person for a chargeable period at any time before the specified return date for the chargeable period unless at that time the chargeable person has delivered a return for the chargeable period, and an assessment shall not be made at a time when the making of the assessment is precluded under *section 955(2)*.

(2) Subject to *subsection (3)*, an assessment made on a chargeable person for a chargeable period shall be made by the inspector by reference to the particulars contained in the chargeable person's return.

(3) Where—

- (a) a chargeable person makes default in the delivery of a return for a chargeable period, or
- (b) the inspector is not satisfied with the return which has been delivered, or has received any information as to its insufficiency,

nothing in this section shall prevent the inspector from making an assessment in accordance with *section 919(4)* or *922*, as appropriate.

- (4) (a) Where as respects a chargeable period the inspector is satisfied that a chargeable person has paid all amounts of tax which, if the inspector were to make an assessment on the chargeable person for the chargeable period, would be payable by the chargeable person for the chargeable period, the inspector may elect not to make an assessment on the chargeable person for the chargeable period and, where the inspector so elects, he or she shall give notice of the election to the chargeable person, and the amounts paid by the chargeable person shall be deemed to have been payable in all respects as if the inspector had made the assessment.

(b) Subject to *section 955(2)*, nothing in this subsection shall prevent an inspector from making an assessment on the chargeable person for the chargeable period at any time after the giving of the notice of election under this section. Pr.41 S.954

(5) Where an inspector makes an assessment—

- (a) under either of the provisions referred to in *subsection (3)* in default of the delivery of a return, or
- (b) in circumstances where the chargeable person has calculated the amount of tax which will be payable by that person on foot of an assessment and the inspector does not at the time of the making of the assessment disagree with the tax as so calculated,

it shall not be necessary to set out in the notice of assessment any particulars other than particulars as to the amount of tax to be paid by the chargeable person.

(6) Notwithstanding *subsections (1) to (5)* but subject to *section 955(2)*, where a chargeable person has delivered a return for a chargeable period, the chargeable person may by notice in writing given to the inspector require the inspector to make an assessment for the chargeable period and the inspector shall make the assessment forthwith.

(7) Nothing in this section shall prevent an inspector from making an assessment in accordance with—

- (a) *section 977(3)* or *subsection (2) or (3) of section 978*, as appropriate, and, notwithstanding *sections 952 and 958*, tax specified in such an assessment shall be due and payable in accordance with *section 979*,
- (b) *subsection (4) or (5)*, as appropriate, of *section 980* and, notwithstanding *sections 952 and 958*, tax specified in such an assessment shall be due and payable in accordance with *section 980(10)*, or
- (c) *section 1042* and, notwithstanding *sections 952 and 958*, tax specified in such an assessment shall be due and payable in accordance with *section 1042*.

955.—(1) Subject to *subsection (2)* and to *section 1048*, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

Amendment of and time limit for assessments.

[FA88 s9(1) (part of) and s14; FA91 s45(a)(vi) and s49]

- (2) (a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 6 years commencing at the end

of the chargeable period in which the return is delivered and no additional tax shall be payable by the chargeable person and no tax shall be repaid to the chargeable person after the end of the period of 6 years by reason of any matter contained in the return.

- (b) Nothing in this subsection shall prevent the amendment of an assessment—
- (i) where a relevant return does not contain a full and true disclosure of the facts referred to in *paragraph (a)*,
 - (ii) to give effect to a determination on any appeal against an assessment,
 - (iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,
 - (iv) to correct an error in calculation, or
 - (v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of *section 804(3)*.

(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of *subsection (2)* may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine—

- (a) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or
 - (b) that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.
- (4) (a) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.
- (b) This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the

evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question. Pr.41 S.955

(5) (a) In this subsection, “relevant chargeable period” means—

(i) where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii) where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii) where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(b) Sections 919(5)(b) and 924 shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(c) For the purposes of *paragraph (b)*, where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person.

956.—(1) (a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—

Inspector’s right to make enquiries and amend assessments.

[FA88 s15; FA91 s50]

(i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.

(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in *paragraph (a)(i)* shall not preclude the inspector—

(i) from making such enquiries or taking such actions within his or her powers as he or she

considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to *section 955(2)*, from amending or further amending an assessment in such manner as he or she considers appropriate.

(c) Any enquiries and actions referred to in *paragraph (b)* shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 6 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2) (a) A chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in *subsection (1)(c)* in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of *subsection (1)(c)* may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.

(b) Any action required to be taken by the chargeable person and any further action proposed to be taken by the inspector pursuant to the inspector's enquiry or action shall be suspended pending the determination of the appeal.

(c) Where on the hearing of the appeal the Appeal Commissioners—

(i) determine that the inspector was precluded from making the enquiry or taking the action by reason of *subsection (1)(c)*, the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or

(ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action.

957.—(1) No appeal may be made against—

(a) a notice of preliminary tax under *section 953*,

(b) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of

and without departing from the statement or statements or the particular or particulars with regard to income, profits or gains or, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

- (c) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where that amount had been agreed between the inspector and the chargeable person, or any person authorised by the chargeable person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

(2) (a) Where—

- (i) a chargeable person makes default in the delivery of a return, or
- (ii) the inspector is not satisfied with the return which has been delivered by a chargeable person, or has received any information as to its insufficiency,

and the inspector makes an assessment in accordance with *section 919(4)* or *922*, no appeal shall lie against that assessment until such time as—

- (I) in a case to which *subparagraph (i)* applies, the chargeable person delivers the return, and
- (II) in a case to which either *subparagraph (i)* or *(ii)* applies, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person,

and the time for bringing an appeal against the assessment shall be treated as commencing at the earliest date on which both the return has been delivered and that amount of tax has been paid, and references in this subsection to an assessment shall be construed as including references to any amendment of the assessment which is made before that earliest date.

- (b) References in this subsection to an amount of tax shall be construed as including any amount of interest which would be due and payable under *section 1080* on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(3) Subject to *subsections (1)* and *(2)*, where an assessment is amended under *section 955* (not being an amendment made by reason of the determination of an appeal), the chargeable person may appeal against the assessment as so amended in all respects as

PT.41 S.958

if it were an assessment made on the date of the amendment and the notice of the assessment as so amended were a notice of the assessment, except that the chargeable person shall have no further right of appeal, in relation to matters other than additions to, deletions from, or alterations in the assessment, made by reason of the amendment, than the chargeable person would have had if the assessment had not been amended.

(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal—

- (a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and
- (b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.

(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with *subsection (4)*, the notice shall, in so far as it relates to that amount or matter, be invalid and the appeal concerned shall, in so far as it relates to that amount or matter, be deemed not to have been brought.

(6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice.

Date for payment of tax.

958.—(1) In this section—

[FA88 s18; FA90 s24(d)(iii), (iv) and (v); FA91 s52(a); FA92 s32; FA93 s40; FA94 s13; FA95 s31]

“pre-preceding chargeable period”, in relation to a chargeable period, means the chargeable period next before the preceding chargeable period;

“specified due date” in relation to a year of assessment, means the 30th day of April in the year of assessment next after the year of assessment following that year of assessment.

(2) Preliminary tax appropriate to a chargeable period shall be due and payable—

- (a) where the chargeable period is a year of assessment for income tax and subject to *subsection (10)*, on or before the 1st day of November in the year of assessment,
- (b) where the chargeable period is a year of assessment for capital gains tax, on or before the 1st day of November following the year of assessment, or
- (c) where the chargeable period is an accounting period of a company—
 - (i) within the period of 6 months from the end of the accounting period, or
 - (ii) where apart from this subparagraph the last day of the period within which the preliminary tax would be due and payable would be a day after the 28th

day of the month in which that period of 6 months ends, not later than the 28th day of that month, Pr.41 S.958

and accordingly references in this Part to the due date for the payment of an amount of preliminary tax shall be construed as references to the 1st day of November in the year of assessment, the 1st day of November following the year of assessment, the last day of that period of 6 months or the 28th day of the month in which that period of 6 months ends, as the case may be.

(3) Subject to *subsection (4)*, tax specified in an assessment made on a chargeable person for a chargeable period shall be due and payable—

(a) where the assessment is made before the due date for the payment of an amount of preliminary tax for the chargeable period, on or before that date, or

(b) where the assessment is made on or after that date—

(i) if the chargeable period is a year of assessment for income tax, on or before the specified due date for the year of assessment,

(ii) if the chargeable period is a year of assessment for capital gains tax, on or before the specified return date for the chargeable period or, if later, not later than one month from the date on which the assessment is made, and

(iii) if the chargeable period is an accounting period of a company, not later than one month from the date on which the assessment is made.

(4) Where but for this subsection tax specified in an assessment made on a chargeable person for a chargeable period would be due and payable in accordance with *subsection (3)(b)* and—

(a) the chargeable person has defaulted in the payment of preliminary tax for the chargeable period,

(b) the preliminary tax paid by the chargeable person for the chargeable period is less than, or less than the least of, as the case may be—

(i) 90 per cent of the tax payable by the chargeable person for the chargeable period,

(ii) in the case of an assessment to income tax made on a chargeable person for the chargeable period (being a year of assessment), the income tax payable for the preceding chargeable period, or

(iii) in the case of an assessment to income tax for the chargeable period (being a year of assessment) made on a chargeable person to whom *subsection (10)* applies, other than a chargeable person in relation to whom the amount of income tax payable or, taken in accordance with *subsection (5)(a)* to be payable, for the pre-preceding chargeable period was nil, 105 per cent of the income tax payable for the pre-preceding chargeable period,

or

- (c) the preliminary tax payable by the chargeable person for the chargeable period was not paid by the date on which it was due and payable,

the tax specified in the assessment shall be deemed to have been due and payable on the due date for the payment of an amount of preliminary tax for the chargeable period.

(5) For the purposes of *subparagraphs (ii) and (iii) of subsection (4)(b)*—

- (a) subject to *subsection (7)*, where the chargeable person was not a chargeable person for the preceding chargeable period or for the pre-preceding chargeable period, the income tax payable for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, shall be taken to be nil, and

- (b) where, after the due date for the payment of an amount of preliminary tax for a chargeable period which is a year of assessment, an amount of additional income tax for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period becomes payable, that additional income tax shall not be taken into account only if it became due and payable one month following the amendment to the assessment or the determination of the appeal, as the case may be, by virtue of *subsection (8)(b) or (9)(b)*.

(6) For the purpose of *subparagraphs (ii) and (iii) of subsection (4)(b)*, where the chargeable person is chargeable to income tax for a chargeable period—

- (a) the tax payable for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period shall be determined without regard to any relief to which the chargeable person is or may become entitled for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, under *Part 16*, and

- (b) the tax payable for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period shall be determined without regard to any relief to which the chargeable person is or may become entitled for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, under *section 481*.

(7) Where for a chargeable period, being a year of assessment for income tax, a chargeable person is assessed to tax in accordance with *section 1017*, and that person was not so assessed for the preceding chargeable period or for the pre-preceding chargeable period or for both of those periods either—

- (a) because the person's spouse was so assessed for either or both of those periods, or

- (b) because the person and the person's spouse were assessed Pt.41 S.958
to tax in accordance with *section 1016* or *1023* for either
or both of those periods,

subparagraphs (ii) and (iii) of subsection (4)(b) and subsection (5)(a) shall apply as if the person and the person's spouse had elected in accordance with *section 1018* or *1019*, as the case may be, for the person to be assessed to tax in accordance with *section 1017* for any of those periods for which the person or the person's spouse were entitled to so elect or would have been so entitled if *section 1019* had applied.

- (8) (a) Subject to *paragraph (b) and subsection (9)*, any additional tax due by reason of the amendment of an assessment for a chargeable period shall be deemed to be due and payable on the same day as the tax charged by the assessment before its amendment was due and payable.

(b) Where—

- (i) the assessment was made after the chargeable person had delivered a return containing a full and true disclosure of all material facts necessary for the making of the assessment, or
- (ii) the assessment had previously been amended following the delivery of the return containing such disclosure,

any additional tax due by reason of the amendment of the assessment shall be deemed to have been due and payable not later than one month from the date of the amendment.

- (9) (a) The amount by which the tax, found to be payable for a chargeable period on the determination of an appeal against an assessment made on a chargeable person for the chargeable period, is in excess of the amount of the tax for the chargeable period referred to in *section 957(2)(a)(II)* which the chargeable person had paid before the making of the appeal shall be deemed to be due and payable on the same date as the tax charged by the assessment is due and payable.

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

- (i) the tax which the chargeable person had paid before the making of the appeal is not less than 90 per cent of the tax found to be payable on the determination of the appeal, and
- (ii) the tax charged by the assessment was due and payable in accordance with *subsection (3)*,

the excess referred to in that paragraph shall be deemed to be due and payable not later than one month from the date of the determination of the appeal.

- (10) (a) This subsection shall apply to a chargeable person who authorises the Collector-General to collect preliminary tax by the debiting of the bank account of that person in accordance with *paragraph (b)* and complies with such conditions as the Collector-General may reasonably

PT.41 S.958

impose to ensure that an amount of preliminary tax payable by a chargeable person for a chargeable period will be paid by the chargeable person in accordance with this subsection on or before the 9th day of December in the year of assessment to which the preliminary tax relates by virtue of *subsection (2)(a)*.

- (b) Preliminary tax appropriate to a chargeable period where the chargeable period is a year of assessment for income tax shall be due and payable in the case of a chargeable person to whom this subsection applies in equal monthly instalments throughout the calendar year or a part of that year in which the due date for the payment of that preliminary tax in accordance with *subsection (2)(a)* falls, and the Collector-General shall debit the bank account of that chargeable person with such instalments on the 9th day of each month in that year or part of that year, as the case may be.
- (c) Notwithstanding *paragraph (b)*, the Collector-General may at any time agree to alter the amount of preliminary tax to be debited to the bank account of the chargeable person in accordance with this subsection.
- (d) For the purposes of this section, a chargeable person who pays an amount of preliminary tax appropriate to a chargeable period in accordance with this subsection shall be deemed to have paid that amount of preliminary tax on the due date for the payment of an amount of preliminary tax for the chargeable period.

Miscellaneous (*Part 41*).

[FA88 s20(5), s21(1), (3) to (5) and (7) to (8); FA91 s53; FA92 s33(1)]

959.—(1) *Section 1048* shall apply to an amendment of an assessment under *section 955* as it applies to an additional first assessment under *section 924*.

(2) Where the inspector or any other officer of the Revenue Commissioners acting with the knowledge of the inspector causes to issue, manually or by any electronic, photographic or other process, a notice of preliminary tax bearing the name of the inspector or a notice of assessment or a notice of an amendment of an assessment bearing the name of the inspector, that notice of preliminary tax shall for the purposes of the Tax Acts and the Capital Gains Tax Acts be deemed to have been given by the inspector to the best of his or her opinion, and that assessment or amended assessment to which the notice of assessment or notice of amended assessment relates, as the case may be, shall for those purposes be deemed to have been made by the inspector to the best of his or her judgment.

(3) An assessment which is otherwise final and conclusive shall not for any purpose of the Tax Acts and the Capital Gains Tax Acts be regarded as not final and conclusive or as ceasing to be final and conclusive by reason only of the fact that the inspector has amended or may amend the assessment pursuant to *section 955* and, where in the case of a chargeable person the inspector elects under *section 954(4)* not to make an assessment for any chargeable period, the Tax Acts and the Capital Gains Tax Acts shall apply as if an assessment for that chargeable period made on the chargeable person had become final and conclusive on the date on which the notice of election is given.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(4) The giving by a chargeable person of a notice pursuant to *section 876* shall not remove from the person an obligation to deliver a return under *section 951*. Pr.41 S.959

(5) The provisions of this Part as respects due dates for payment of tax shall apply subject to *sections 579(4)(b)* and *981*.

(6) References in this Part to any provision of the Income Tax Acts shall, where appropriate for capital gains tax and unless the contrary intention appears, be construed as a reference to those provisions as applied in relation to capital gains tax by *sections 913, 931, 976, 1051, 1077* or *1083*, as appropriate.

(7) *Section 926* shall not apply to a chargeable person as respects any chargeable period.

PART 42

COLLECTION AND RECOVERY

CHAPTER 1

Income tax

960.—Income tax contained in an assessment (other than an assessment made under *Part 41*) for any year of assessment shall be payable on or before the 1st day of November in that year, except that income tax included in any such assessment for any year of assessment which is made on or after the 1st day of November in that year shall be deemed to be due and payable not later than one month from the date on which the assessment is made. Date for payment of income tax other than under self assessment. [ITA67 s477(1); FA90 s24(a)]

961.—(1) When income tax becomes due and payable, the Collector-General shall make demand of the respective sums given to him or her in charge to collect from the persons charged with those sums, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require. Issue of demand notes and receipts. [ITA67 s478; FA96 s132(2) and Sch5 PtII]

(2) On payment of income tax, the Collector-General shall without charge give a receipt under his or her hand on the prescribed form.

962.—(1) Whenever any person makes default in paying any sum which may be levied on that person in respect of income tax, the Collector-General may issue a certificate to the county registrar or sheriff of the county in which the defaulter resides or has a place of business certifying the amount of the sum so in default and the person on whom the sum is leviable. Recovery by sheriff or county registrar. [ITA67 s485(1), (2) and (5); FA69 s65(1) and Sch5 PtI; FA82 s10]

(2) Immediately on receipt of the certificate the county registrar or sheriff shall proceed to levy the sum certified in the certificate to be in default by seizing all or any of the goods, animals and other chattels within his or her bailiwick belonging to the defaulter, and for such purposes the county registrar or sheriff shall (in addition to the rights, powers and duties conferred on him or her by this section) have all such rights, powers and duties as are for the time being vested in him or her by law in relation to the execution of a writ of

feri facias in so far as those rights, powers and duties are not inconsistent with the additional rights, powers and duties conferred on him or her by this section.

(3) A county registrar or sheriff executing a certificate under this section shall be entitled—

- (a) if the sum certified in the certificate to be in default exceeds £15,000, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales appointed by the Minister for Justice, Equality and Law Reform under section 14(1)(a) of the Enforcement of Court Orders Act, 1926, and for the time being in force, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order within the meaning of the Enforcement of Court Orders Act, 1926, (in this section referred to as an “execution order”) of the High Court,
- (b) if the sum certified in the certificate to be in default exceeds £2,500 but does not exceed £15,000, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales referred to in *paragraph (a)*, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order of the Circuit Court, and
- (c) if the sum certified in the certificate to be in default does not exceed £2,500, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales referred to in *paragraph (a)*, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order of the District Court.

Power of Collector-General and authorised officer to sue in Circuit Court or District Court.

[ITA67 s486(1), (2) and (4); FA94 s162(1)]

963.—(1) Where the amount due in respect of income tax does not exceed the amount which is the monetary limitation on the jurisdiction of the Circuit Court provided for in an action founded on quasi-contract at reference number 1 of the Third Schedule to the Courts (Supplemental Provisions) Act, 1961, the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer’s own name in the Circuit Court for the amount so due as a debt due to the Minister for Finance.

(2) Where the amount so due does not exceed the amount which is the monetary limitation on the jurisdiction of the District Court provided for in an action founded on contract by clause (i) of paragraph A of section 77 of the Courts of Justice Act, 1924 (as amended by the Courts Act, 1991), the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer’s own name in the District Court for the amount so due as a debt due to the Minister for Finance.

(3) The cost of any such proceedings brought by the Collector-General or other officer under this section shall be subject to the law and practice applicable to the costs of a like proceeding for the recovery of an ordinary civil debt of like amount in the same Court.

964.—(1) Where the Collector-General duly appointed to collect any income tax has instituted proceedings under *section 963*, or continues under this section any proceedings brought under *subsection (1)* or *(2)* of that section, for the recovery of such tax and, while such proceedings are pending, such Collector-General ceases for any reason to be the Collector-General so appointed to collect such tax, the right of such Collector-General to continue such proceedings shall forthwith terminate and the Collector-General duly appointed to collect such tax in succession to the Collector-General so ceasing shall if the Collector-General so appointed so desires be entitled to become and be a party to such proceedings in the place of the Collector-General so ceasing and be entitled to continue such proceedings accordingly.

Pt.42
Continuance of
pending
proceedings.
[ITA67 s187(3) and
s487]

(2) Where the Collector-General duly appointed to collect any income tax in succession to another Collector-General institutes or continues proceedings under *section 963* for the recovery of the tax or any balance of the tax, the other Collector-General shall for the purposes of the proceedings be deemed until the contrary is proved to have ceased to be the Collector-General appointed to collect the tax.

965.—(1) In any proceedings in the Circuit Court or the District Court for or in relation to the recovery of income tax an affidavit duly made by an officer of the Revenue Commissioners deposing to any of the following matters—

Evidence in
proceedings in
Circuit Court or
District Court for
recovery of income
tax.

- (a) that the assessment of tax was duly made,
- (b) that the assessment has become final and conclusive,
- (c) that the tax or any specified part of the tax is due and outstanding,
- (d) that demand for the payment of the tax has been duly made,

[ITA67 s489; FA74
s70, s86 and Sch2
PtI]

shall be evidence until the contrary is proved of the matters so deposed to.

(2) Where the averments in the affidavit are not disputed by the defendant or respondent, it shall not be necessary for the officer by whom the affidavit was made to attend or give oral evidence at the hearing of the proceedings nor shall it be necessary to produce or put in evidence at the hearing any register, file, book of assessment or other record relating to the tax.

(3) Where any averment contained in the affidavit is disputed by the defendant or respondent, the judge shall, on such terms as to costs as he or she thinks just, give a reasonable opportunity by adjournment of the hearing or otherwise for the officer by whom the affidavit was made to attend and give oral evidence in the proceedings and for any register, file, book of assessment or other record relating to the tax to be produced and put in evidence in the proceedings.

966.—(1) Without prejudice to any other means by which payment of sums due in respect of income tax may be enforced, an officer of the Revenue Commissioners authorised by them for the purposes of this subsection may sue in his or her own name in the High Court for the recovery of any sum due in respect of that tax,

High Court
proceedings.
[ITA67 s488; FA74
s11 and Sch1 PtII;
FA79 s12; FA80
s57(1)]

as a debt due to the Minister for Finance for the benefit of the Central Fund, from the person charged with that tax or from that person's executors or administrators or from any person from whom the sum in question is collectable, whether the person so charged was so charged before or after the passing of this Act, and the proceedings may be commenced by summary summons.

(2) Where an officer who has commenced proceedings pursuant to this section, or who has continued the proceedings by virtue of this subsection, dies or otherwise ceases for any reason to be an officer authorised for the purposes of *subsection (1)*—

- (a) the right of such officer to continue the proceedings shall cease and the right to continue the proceedings shall vest in such other officer so authorised as may be nominated by the Revenue Commissioners,
- (b) where such other officer is nominated, he or she shall be entitled accordingly to be substituted as a party to the proceedings in the place of the first-mentioned officer, and
- (c) where an officer is so substituted, he or she shall give notice in writing of the substitution to the defendant.

(3) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying the following facts, that a person is an officer of the Revenue Commissioners and that he or she has been authorised by them for the purpose of *subsection (1)*, shall be evidence until the contrary is proved of those facts.

(4) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying the following facts—

- (a) that the plaintiff has ceased to be an officer of the Revenue Commissioners authorised by them for the purposes of *subsection (1)*,
- (b) that another person is an officer of the Revenue Commissioners,
- (c) that such other person has been authorised by them for the purposes of *subsection (1)*, and
- (d) that such other person has been nominated by them, in relation to the proceedings, for the purposes of *subsection (2)*,

shall be evidence until the contrary is proved of those facts.

(5) In proceedings pursuant to this section—

- (a) a certificate signed by an inspector certifying the fact that before the institution of the proceedings a stated sum for income tax became due and payable by the defendant—
 - (i) under an assessment which had become final and conclusive, or
 - (ii) under *section 942(6)*,
- and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) a certificate signed by the Collector-General certifying the following facts—

Pr.42 S.966

- (i) that he or she is the Collector-General duly authorised to collect the stated sum referred to in *paragraph (a)*,
- (ii) that before the institution of the proceedings payment of that stated sum was duly demanded from the defendant, and
- (iii) that that stated sum or a stated part of that sum remains due and payable by the defendant,

shall be evidence until the contrary is proved of those facts.

(6) In proceedings pursuant to this section, a certificate certifying the fact or facts referred to in *subsection (3) or (4) or paragraph (a) or (b) of subsection (5)* and purporting to be signed as specified in that subsection or paragraph may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by a person holding at the time of the signature the office or position indicated in the certificate as the office or position of the person signing.

(7) All or any of the sums due from any one person in respect of income tax may be included in the same summons.

(8) Subject to this section, the rules of the High Court for the time being applicable to civil proceedings commenced by summary summons shall apply to proceedings pursuant to this section.

967.—In any proceedings in the District Court, the Circuit Court or the High Court for or in relation to the recovery of any income tax, a certificate signed by the Collector-General or other authorised officer certifying that before the institution of proceedings a stated sum of income tax transmitted in accordance with *section 928(2)* became due and payable by the defendant—

Evidence of electronic transmission of particulars of income tax to be collected in proceedings for recovery of tax.

(a) (i) under an assessment which had become final and conclusive, or

[FA86 s113(6)]

(ii) under *section 942(6)*,

and

(b) demand for the payment of the tax has been duly made,

shall be prima facie evidence until the contrary has been proved of those facts, and a certificate so certifying and purporting to be signed by the Collector-General or other authorised officer may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by the Collector-General or other authorised officer.

968.—(1) In this section, “judgment” includes any order or decree.

Judgments for recovery of income tax.

(2) Where in any proceedings for the recovery of income tax judgment is given against the person against whom the proceedings

[ITA67 s492; FA74 s86 and Sch2 PtI; FA97 s146(1) and Sch9 PtI par1(34)]

Pt.42 S.968

are brought and the judgment provides for the arrest and imprisonment of that person, and a sum is accepted on account or in part payment of the amount for which the judgment was given—

- (a) such acceptance shall not prevent or prejudice the recovery under the judgment of the balance remaining unpaid of that amount,
- (b) the judgment shall be capable of being executed and enforced in respect of the balance as fully in all respects and by the like means as if the balance were the amount for which the judgment was given,
- (c) the law relating to the execution and enforcement of the judgment shall apply in respect of the balance accordingly, and
- (d) a certificate by a Secretary or an Assistant Secretary of the Revenue Commissioners stating the amount of the balance shall, for the purposes of the enforcement and execution of the judgment, be evidence until the contrary is proved of the amount of the balance.

Duration of imprisonment for non-payment of income tax.

[ITA67 s493; FA74 s86 and Sch2 PtI]

969.—Where any person is committed to prison by a court of competent jurisdiction for non-payment of a sum of money due to the Minister for Finance for the benefit of the Central Fund in respect of income tax, the Revenue Commissioners are hereby authorised and required at the expiration of 6 months from the date of the committal of such person to prison to order his or her discharge from prison whether the sum for the non-payment of which he or she was so committed has or has not been paid.

Recovery of income tax charged on profits not distrainable.

[ITA67 s494(1)]

970.—Where income tax is charged on the profits of royalties, markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of those profits shall be answerable for the income tax so charged, and may retain and deduct that tax out of any such profits.

Priority of income tax debts over other debts.

[ITA67 s482(1) and (2)]

971.—(1) No goods or chattels whatever, belonging to any person at the time any income tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made or to whom the assignment was made pays or causes to be paid to the Collector-General before the sale or removal of the goods or chattels all arrears of income tax due at the time of seizure, or payable for the year in which the seizure is made.

(2) Where income tax is claimed for more than one year, the person at whose instance the seizure has been made may, on paying to the Collector-General the income tax which is due for one whole year, proceed in that person's seizure in the like manner as if no income tax had been claimed.

972.—(1) Where any employed person has omitted to make payment of any income tax under Schedule D, E or F due and payable by that person for any year, the Revenue Commissioners may give notice to that person's employer at any time after a period of 3 months has elapsed since such income tax became due and payable requiring the employer to deduct the amount of income tax so in arrear from any remuneration payable by the employer to the employed person.

Pr.42
Duty of employer
as to income tax
payable by
employees.

[ITA67 s484(1) to
(4) and (6) and (7);
F(MP)A68 s3(3)
and Sch PtII; FA96
s132(2) and Sch5
PtII; FA97 s146(1)
and Sch9 PtI
par1(33)]

(2) On receipt of the notice, the employer shall deduct such sums, not exceeding in the aggregate the total amount of income tax so in arrear, at such times and in such manner as the Revenue Commissioners may direct and shall forthwith pay over the amounts so deducted to the Collector-General.

(3) Where any employer refuses or neglects to pay over to the Collector-General any sums within the time specified in the notice, the employer shall be liable to pay any such sum as if it had been duly assessed on the employer, and proceedings for the recovery of that sum may be taken in any manner prescribed by the Income Tax Acts, and failure on the part of the employer to deduct any such sum from the employed person shall not be any bar to the recovery of the sum by proceedings.

(4) Where the employer is a body of persons, *subsections (3) and (4) of section 897* and *subsections (2) and (3) of section 1044* shall apply in relation to anything required to be done under this section.

(5) An employer who pays over to the Collector-General any such sum of income tax as is required by the notice shall be acquitted and discharged of so much money as is represented by the payment as if that sum of money had actually been paid as remuneration to the employed person.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

CHAPTER 2

Corporation tax

973.—(1) The Collector-General shall collect and levy the tax from time to time charged on all assessments to corporation tax of which particulars have been transmitted to him or her under *section 928(1)*.

Collection of
corporation tax.

[CTA76 s145(1)
and (2)]

(2) All such powers as are exercisable with respect to the collecting and levying of sums of income tax under Schedule D of which particulars are transmitted under *section 928(1)* shall extend with respect to sums of corporation tax of which particulars are transmitted under that section.

974.—The priority attaching to assessed taxes under sections 98 and 285 of the Companies Act, 1963, shall apply to corporation tax.

Priority for
corporation tax.

[CTA76 s145(5)]

Pt.42
Application of
sections 964(2),
980(8) and 981 for
purposes of
corporation tax.

975.—(1) *Subsection (2) of section 964* shall apply in relation to corporation tax as it applies in relation to income tax, and accordingly the reference in that subsection to income tax shall apply as if it was or included a reference to corporation tax.

[CTA76 s140(2),
s147(1) and (2) and
Sch2 PtII par6 and
par12]

(2) *Section 980(8)* shall apply for corporation tax as for capital gains tax, and references to capital gains tax in that section shall apply accordingly as if they were or included references to corporation tax.

(3) *Section 981* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

CHAPTER 3

Capital gains tax

Collection of capital
gains tax.

[CGTA75 s51(1)
and Sch4 Pars1(3),
2(1) and 2(2)]

976.—(1) The Collector-General for the time being appointed under *section 851* shall collect and levy capital gains tax from time to time charged in all assessments made under the Capital Gains Tax Acts of which particulars have been transmitted to him or her under *section 928(1)* as applied to capital gains tax by *section 931*, and the provisions of *section 851* relating to the nomination by the Revenue Commissioners of persons to act as the Collector-General or to exercise the powers of the Collector-General shall apply to capital gains tax as they apply to income tax.

(2) The provisions of the Income Tax Acts relating to the collection and recovery of income tax shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax chargeable under Schedule D.

(3) In particular and without prejudice to the generality of *subsection (2), Chapter 1* of this Part (other than *sections 960* and *972*) shall, subject to any necessary modifications, apply to capital gains tax.

Recovery of capital
gains tax from
shareholder.

[CGTA75 s51(1)
and Sch4 par17]

977.—(1) In this section, “capital distribution” has the same meaning as in *section 583*.

(2) This section shall apply where a person (in this section referred to as “the beneficiary”) connected with a company resident in the State receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrues to the company, or

(b) the distribution constitutes such a disposal of assets.

(3) Where—

(a) the capital gains tax assessed on the company for the year of assessment in which the chargeable gain referred to in *subsection (2)* accrues includes any amount in respect of that chargeable gain, and

(b) any of the capital gains tax assessed on the company for that year is not paid within 6 months from the date when it becomes payable by the company,

the beneficiary may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that capital gains tax—

Pr.42 S.977

- (i) not exceeding the amount or value of the capital distribution which the beneficiary has received or became entitled to receive, and
- (ii) not exceeding a proportion equal to the beneficiary's share of the capital distribution made by the company of capital gains tax on the amount of that gain at the rate in force when the gain accrued.

(4) A beneficiary paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.

(5) This section is without prejudice to any liability of the beneficiary receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to that beneficiary by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

978.—(1) In this section—

“old asset” and “new asset” have the same meanings respectively as in *section 597*;

Gifts: recovery of capital gains tax from donee.

[CGTA75 s51(1) and Sch4 par18]

references to a donor include, in the case of an individual who has died, references to his or her personal representatives;

references to a gift include references to any transaction otherwise than by means of a bargain made at arm's length in so far as money or money's worth passes under the transaction without full consideration in money or money's worth, and “donor” and “donee” shall be construed accordingly.

(2) Where—

- (a) a chargeable gain accrues in any year of assessment to any person on the disposal of an asset by means of a gift, and
- (b) any amount of capital gains tax assessed on that person for that year of assessment is not paid within 12 months from the date when the tax becomes payable,

the donee may by an assessment made not later than 2 years from the date when the tax became payable be assessed and charged (in the name of the donor) to capital gains tax on an amount—

- (i) not exceeding the amount of the chargeable gain so accruing, and
- (ii) not exceeding such an amount of chargeable gains as would, if charged at the rate provided in *section 28(3)*, result in liability to an amount of capital gains tax equal to that amount of capital gains tax which was not paid by the donor.

(3) Where the gift consists of a new asset, the donee may, in addition to being assessed and charged under *subsection (2)* in respect of the new asset, be assessed and charged as if the chargeable gain on the disposal of the old asset were a chargeable gain on the disposal of the new asset the capital gains tax in respect of which was

not paid within 12 months from the date when the tax had become payable.

(4) (a) Where a person on whom capital gains tax is assessed and charged in respect of the disposal of an asset transfers directly or indirectly by means of a gift to a donee—

- (i) the whole of the proceeds of the disposal, or
- (ii) in a case where the asset is a new asset acquired by the use of the proceeds of the disposal of an old asset, the whole of the proceeds of the disposal of the new asset,

subsections (2) and (3) shall apply to the amount of capital gains tax so assessed and charged.

(b) Where a person on whom capital gains tax is assessed and charged in respect of the disposal of an asset transfers directly or indirectly by means of a gift to a donee—

- (i) part of the proceeds of the disposal, or
- (ii) in a case where the asset is a new asset acquired by the use of the proceeds of the disposal of an old asset, part of the proceeds of the disposal of the new asset,

subsections (2) and (3) shall apply to such part of the amount of capital gains tax so assessed and charged as bears to the whole of such tax the same proportion that that part of the proceeds bears to the whole of those proceeds.

(5) The donee of a gift paying any amount of tax in pursuance of this section shall, subject to any terms or conditions of the gift, be entitled to recover a sum of that amount from the donor of the gift as a simple contract debt in any court of competent jurisdiction.

(6) This section shall apply in relation to a gift made to 2 or more donees with any necessary modifications and subject to the condition that each such donee shall be liable to be assessed and charged in respect only of such part of the amount of capital gains tax payable by the donees by virtue of this section as bears to the whole of such tax the same proportion as the part of the gift made to that donee bears to the whole of the gift.

Time for payment of capital gains tax assessed under *sections 977(3) or 978(2) and (3).*

[CGTA75 s5(2); FA88 s13(7)(c); FA91 s48]

Deduction from consideration on disposal of certain assets.

[CGTA75 s51(1) and Sch4 par11(1) to (10A); FA89 s29; FA95 s76; FA96 s59]

979.—Capital gains tax assessed on any person under *section 977(3) or subsections (2) and (3) of section 978* in respect of gains accruing in any year shall be payable by that person at or before the expiration of 3 months following that year, or at the expiration of a period of 2 months beginning with the date of the making of the assessment, whichever is the later.

980.—(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.

(2) This section shall apply to assets that are—

- (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) exploration or exploitation rights in a designated area,
- (d) shares in a company deriving their value or the greater part of their value directly or indirectly from assets specified in *paragraph (a), (b) or (c)*, other than shares quoted on a stock exchange,
- (e) shares, other than shares quoted on a stock exchange, to which *section 584* applies, whether by virtue of that section or any other section, so that, as respects a person disposing of those shares, they are treated as the same shares as shares specified in *paragraph (d)*, acquired as the shares so specified were acquired, and
- (f) goodwill of a trade carried on in the State.

(3) This section shall not apply where the amount or value of the consideration in money or money's worth on a disposal does not exceed the sum of £100,000; but if an asset owned at one time by one person, being an asset to which this section would but for this subsection apply, is disposed of by that person in parts—

- (a) to the same person, or
- (b) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the several disposals shall for the purposes of this subsection, but not for any other purpose, be treated as a single disposal.

(4) (a) Subject to *paragraph (b)*, on payment of the consideration for acquiring an asset to which this section applies—

- (i) the person by or through whom any such payment is made shall deduct from that payment a sum representing an amount of capital gains tax equal to 15 per cent of that payment,
- (ii) the person to whom the payment is made shall allow such deduction on receipt of the residue of the payment, and
- (iii) the person making the deduction shall, on proof of payment to the Revenue Commissioners of the amount so deducted, be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid to the person making the disposal.

(b) Where the person disposing of the asset produces to the person acquiring the asset a certificate issued under *subsection (8)* in relation to the disposal, no deduction referred to in *paragraph (a)* shall be made.

(5) Where any payment referred to in *subsection (4)(a)* is made by or on behalf of any person, that person shall forthwith deliver to the Revenue Commissioners an account of the payment and of the amount deducted from the payment, and the inspector shall, notwithstanding any other provision of the Capital Gains Tax Acts, assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount of the payment at the rate of 15 per cent.

(6) Where, in relation to any payment referred to in *subsection (4)(a)*, any person has made default in delivering an account required by this section, or where the inspector is not satisfied with the account, the inspector may estimate the amount of the payment to the best of his or her judgment and, notwithstanding *section 31*, may assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount so estimated at the rate of 15 per cent.

(7) Where the amount of capital gains tax assessed and charged under *subsection (5)* or *(6)* is paid, appropriate relief shall, on a claim being made in that behalf, be given to the person chargeable in respect of the gain on the disposal, whether by discharge or repayment or otherwise.

(8) A person chargeable to capital gains tax on the disposal of an asset to which this section applies may apply to the inspector for a certificate that tax should not be deducted from the consideration for the disposal of the asset and that the person acquiring the asset should not be required to give notice to the Revenue Commissioners in accordance with *subsection (9)(a)*, and, if the inspector is satisfied that the person making the application is the person making the disposal and that—

- (a) that person is resident in the State,
- (b) no amount of capital gains tax is payable in respect of the disposal, or
- (c) the capital gains tax chargeable for the year of assessment for which that person is chargeable in respect of the disposal of the asset and the tax chargeable on any gain accruing in any earlier year of assessment (not being a year ending earlier than the 6th day of April, 1974) on a previous disposal of the asset has been paid,

the inspector shall issue the certificate to the person making the application and shall issue a copy of the certificate to the person acquiring the asset.

- (9) (a) Where—
- (i) after the 2nd day of June, 1995, a person acquires an asset to which this section applies and *section 978* does not apply,
 - (ii) the consideration for acquiring the asset is of such a kind that the deduction mentioned in *subsection (4)* cannot be made out of the consideration, and
 - (iii) the person disposing of the asset does not, at or before the time at which the acquisition is made, produce to the person acquiring the asset a certificate under *subsection (8)* in relation to the disposal,

the person acquiring the asset shall within 7 days of the time at which the acquisition is made— Pr.42 S.980

(I) notify the Revenue Commissioners of the acquisition in a notice in writing containing particulars of—

(A) the asset acquired,

(B) the consideration for acquiring the asset,

(C) the market value of that consideration estimated to the best of that person's knowledge and belief, and

(D) the name and address of the person making the disposal,

and

(II) pay to the Collector-General an amount of capital gains tax equal to 15 per cent of the market value of the consideration so estimated.

(b) Capital gains tax which by virtue of *paragraph (a)(II)* is payable by a person acquiring an asset shall—

(i) be payable by that person in addition to any capital gains tax which by virtue of any other provision of the Capital Gains Tax Acts is payable by that person,

(ii) be due within 7 days of the time at which that person acquires the asset, and

(iii) be payable by that person without the making of an assessment;

but tax which has become so due may be assessed on the person acquiring the asset (whether or not it has been paid when the assessment is made) if that tax or any part of that tax is not paid on or before the due date.

(c) Where any person acquiring an asset has in pursuance of *paragraph (a)(II)* paid any amount of capital gains tax by reference to the market value of the consideration for acquiring the asset, that person shall be entitled to recover a sum of that amount from the person disposing of the asset as a simple contract debt in any court of competent jurisdiction; but where a copy of a certificate under *subsection (8)* is issued to the person acquiring the asset, being a copy of a certificate in relation to the disposal by which the person acquired the asset, that person—

(i) shall not be entitled thereafter to so recover that sum, and

(ii) shall be repaid that amount of tax.

(d) This section shall apply in relation to the acquisition of an asset by 2 or more persons with any necessary modifications and subject to the condition that each such person shall be liable to be assessed and charged in respect only of such part of the amount of capital gains tax payable

Pt.42 S.980

by those persons by virtue of *paragraph (b)* as bears to the whole of such tax the same proportion as the part of the asset acquired by that person bears to the whole of the asset.

(10) Notwithstanding *sections 979* and *1042*, where an amount of capital gains tax is assessed and charged pursuant to this section, such amount shall be due and payable on the day after the day on which the assessment is made.

(11) (a) Subject to *paragraph (b)*, where there is a disposal of assets by virtue of a capital sum being derived from those assets, the person paying the capital sum shall, notwithstanding that no asset is acquired by that person, be treated for the purposes of this section as acquiring the assets disposed of for a consideration equal to the capital sum, whether that sum is paid in money or money's worth, and this section shall, subject to any necessary modifications, apply accordingly.

(b) *Paragraph (a)* shall not apply where there is a disposal of an asset by virtue of a capital sum being derived from the asset under a policy of insurance of the risk of any kind of damage to the asset.

Payment by instalments where consideration due after time of disposal.

[CGTA75 s44(1)]

981.—Where the consideration or part of the consideration taken into account in the computation of a chargeable gain is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, then, if the person making the disposal satisfies the Revenue Commissioners that such person would otherwise suffer undue hardship, the capital gains tax on such a chargeable gain accruing on a disposal may, at such person's option, be paid by such instalments as the Revenue Commissioners may allow over a period not exceeding 5 years and ending not later than the time at which the last of the first-mentioned instalments is payable.

Preferential payment.

[CGTA75 s51(1) and Sch4 par15]

982.—The priority attaching to assessed taxes under section 81 of the Bankruptcy Act, 1988, and sections 98 and 285 of the Companies Act, 1963, shall apply to capital gains tax.

CHAPTER 4

Collection and recovery of income tax on certain emoluments (PAYE system)

Interpretation (*Chapter 4*).

[ITA67 s124]

983.—In this Chapter, except where the context otherwise requires—

“emoluments” means anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments;

“employee” means any person in receipt of emoluments;

“employer” means any person paying emoluments;

“income tax month” means a month beginning on the 6th day of any of the months of April to March in any year of assessment;

“tax deduction card” means a tax deduction card in the form prescribed by the Revenue Commissioners or such other document corresponding to a tax deduction card as may be authorised by the Revenue Commissioners in any particular case. Pr.42 S.983

984.—(1) This Chapter shall apply to all emoluments except emoluments which are emoluments in respect of which the employer has been notified by the inspector that they are emoluments which arise from an office or employment and from which, in the opinion of the inspector, having regard to the circumstances of the office or employment or to the amount of the emoluments, the deduction of tax by reference to this Chapter is impracticable. Application.
[ITA67 s125; FA85 s6(1) and (2)]

(2) The inspector may, if a change in the circumstances of the office or employment or in the amount of the emoluments so warrants, cancel a notification given under *subsection (1)* by notice in writing given to the employer, and this Chapter shall then apply to payments of emoluments arising from the office or employment made after the date of such notice.

(3) Any notice issued by or on behalf of the Revenue Commissioners under section 125 of the Income Tax Act, 1967, before the 6th day of April, 1986, shall not have effect in relation to emoluments arising in the year 1997-98 or any subsequent year of assessment.

985.—On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this Chapter, be deducted or repaid by the person making the payment notwithstanding that— Method of collection.
[ITA67 s126; FA72 s46(1) and Sch4 PtI]

- (a) when the payment is made no assessment has been made in respect of the emoluments, or
- (b) the emoluments are in whole or in part emoluments for some year of assessment other than that during which the payment is made.

986.—(1) The Revenue Commissioners shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Chapter applies or of income tax for any previous year of assessment remaining unpaid, and those regulations may, in particular and without prejudice to the generality of the foregoing, include provision— Regulations.
[ITA67 s127(1), (2), (3)(a)(i) and (b) (part of), (4), (5) and (7); FA72 s2(1); FA74 s11 and Sch1 PtII; FA93 s2(2) and Sch1 PtI par2; FA97 s6]

- (a) for requiring any employer making any payment of emoluments to which this Chapter applies, when that employer makes the payment, to make a deduction or repayment of tax calculated by reference to such rate or rates of tax for the year as may be specified and any allowances, deductions and reliefs appropriate in the case of the employee as indicated by the particulars on the tax deduction card supplied in respect of the employee by the Revenue Commissioners;
- (b) for rendering persons who are required to make any such deduction or repayment, in the case of a deduction (whether or not made), accountable for the amount of the tax and liable to pay that amount to the Revenue Commissioners and, in the case of a repayment, entitled

(if a repayment has been made) to be paid it, or given credit for it, by the Revenue Commissioners;

- (c) for the production to and inspection by persons authorised by the Revenue Commissioners of wages sheets and other documents and records for the purpose of satisfying themselves that tax in respect of emoluments to which this Chapter applies has been and is being duly deducted, repaid and accounted for;
- (d) for the collection and recovery, whether by deduction from emoluments paid in any year or otherwise, of tax in respect of emoluments to which this Chapter applies which has not been deducted or otherwise recovered during the year;
- (e) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal;
- (f) for the deduction of tax at the standard rate and at the higher rate in such cases or classes of cases as may be provided for by the regulations;
- (g) for requiring any employer making any payment of emoluments to which this Chapter applies, when making a deduction or repayment of tax in accordance with this Chapter and regulations under this Chapter, to make such deduction or repayment as would require to be made if the amount of emoluments were the emoluments reduced by the amount of any contributions payable by the employee and deductible by the employer from the emoluments being paid and which by virtue of *Chapter 1 of Part 30* are for the purposes of assessment under Schedule E allowed as a deduction from the emoluments;
- (h) for requiring every employer who pays emoluments to which this Chapter applies exceeding the limit specified in *subsection (5)* to notify the Revenue Commissioners within the period specified in the regulations that that employer is such an employer;
- (i) for requiring every employer who pays emoluments to which this Chapter applies exceeding the limits specified in *subsection (5)* to keep and maintain a register of that employer's employees in such manner as may be specified in the regulations and, on being required to do so by the Revenue Commissioners, to deliver the register to the Revenue Commissioners within the period specified in the notice;
- (j) for treating persons who are not employers as employers in such cases or classes of cases as may be provided for by the regulations.

(2) Regulations under this section shall apply notwithstanding anything in the Income Tax Acts, but shall not affect any right of appeal which a person would have apart from the regulations.

- (3) (a) Tax deduction cards shall be prepared with a view to securing that in so far as may be practicable the total tax payable for the year of assessment in respect of any

emoluments is deducted from the emoluments paid during that year. Pr.42 S.986

- (b) In *paragraph (a)*, any reference to the total tax payable for a year shall be construed as a reference to the total tax estimated to be payable for the year in respect of the emoluments, subject to a provisional deduction for allowances and reliefs and subject also, if necessary, to making an addition to that estimated amount (including a nil amount) for amounts remaining unpaid on account of income tax for any previous year of assessment and to making a deduction from that estimated amount for amounts overpaid on account of any such income tax.

(4) Notwithstanding any other provision of this section, when stating on a tax deduction card an amount in respect of allowances, deductions and reliefs the amount may be rounded up to a convenient greater amount and stated accordingly, and, as respects the amount of tax which is not deducted in the year of assessment as a result of such statement, the adjustment appropriate for its recovery shall be made in a subsequent year of assessment.

- (5) (a) The limits referred to in *paragraphs (h)* and *(i)* of *subsection (1)* shall be emoluments at a rate equivalent to a rate of £6 per week, or in the case of an employee with other employment, £1 per week.

- (b) In the case of employees paid monthly or at longer intervals, the references in *paragraph (a)* to a rate of £6 per week and a rate of £1 per week shall be treated as references to a rate of £26 per month and a rate of £4.50 per month respectively.

- (6) (a) In this subsection—

“domestic employee” means an employee who is employed solely on domestic duties (including the minding of children) in the employer’s private dwelling house;

“domestic employment” means employment by reference to which an employee is a domestic employee.

- (b) Notwithstanding *subsection (5)*, as on and from the 6th day of June, 1997, regulations made in accordance with *paragraphs (h)* and *(i)* of *subsection (1)* shall not apply to an employer (being an individual) who pays emoluments to an employee engaged by that employer in a domestic employment where—

- (i) the emoluments from that employment are less than £30 per week, and
- (ii) the employer has only one such employee.

(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.

PT.42
Penalties for breach
of regulations.

[ITA67 s128(1),
(1A), (2) and (4);
FA72 s2(2); FA73
s43; FA76 s1; FA81
s4; FA82 s60; FA92
s234 and s248]

987.—(1) Where any person does not comply with any provision of regulations under this Chapter requiring that person to send any return, statement, notification or certificate or to remit income tax to the Collector-General or fails to make any deduction or repayment in accordance with any regulation made pursuant to *section 986(1)(g)*, that person shall be liable to a penalty of £1,200.

(2) Where the person mentioned in *subsection (1)* is a body of persons, the secretary of the body shall be liable to a separate penalty of £750.

(3) All penalties for failure to comply with any provision of regulations under this Chapter may, without prejudice to any other method of the 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.

(4) In proceedings for recovery of a penalty under this section—

(a) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period—

- (i) a stated return, statement, notification or certificate was not received from the defendant,
- (ii) stated wages sheets or other records or documents were not produced by the defendant,
- (iii) the defendant did not remit stated tax to the Collector-General, or
- (iv) the defendant did not make a stated deduction or repayment of tax,

shall be evidence until the contrary is proved that the defendant did not during that period send that return, statement, notification or certificate or did not produce those wages sheets or other records or documents or did not remit that tax to the Collector-General or did not make that deduction or repayment of tax;

(b) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that a stated return or other document was duly sent to the defendant on a stated day shall be evidence until the contrary is proved that that person received that return or other document in the ordinary course;

(c) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period the defendant was an employer or a person whose name and address were registered in the register kept and maintained under regulation 8(4) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be evidence until the contrary is proved that the defendant was during that period an employer or, as the

case may be, a person whose name and address were so registered; Pr.42 S.987

- (d) a certificate certifying as provided for in *paragraph (a), (b) or (c)* and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

988.—(1) Where the Revenue Commissioners have reason to believe that a person is liable to send them a notification under regulation 8 of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), and has not done so, they may register that person's name and address in the register kept and maintained under paragraph (4) of that regulation (in this section referred to as "the register") and serve a notice on that person stating that that person has been so registered.

Registration of certain persons as employers and requirement to send certain notifications.

[FA74 s72]

(2) Where a notice is served under *subsection (1)* on a person, the following provisions shall apply:

- (a) if the person claims to be not liable to send the notification referred to in *subsection (1)*, the person may, by giving notice in writing to the Revenue Commissioners within the period of 14 days from the service of the notice under *subsection (1)*, require the claim to be referred to the Appeal Commissioners and their decision on the claim shall be final and conclusive;
- (b) if no such claim is, within the time specified in *paragraph (a)*, required to be referred, or if such claim is required to be referred and there is a determination by the Appeal Commissioners against the appellant, the appellant shall be regarded for the purposes of the Regulations referred to in *subsection (1)* as an employer who had sent a notification under paragraph (1) of regulation 8 of those Regulations;
- (c) if a claim is required to be referred and there is a determination by the Appeal Commissioners in favour of the appellant, the Revenue Commissioners shall on that determination delete the appellant's name and address from the register.
- (3) (a) Where a person whose name and address is registered in the register is not liable, under regulation 31 of the Regulations referred to in *subsection (1)*, to remit to the Collector-General any amount of tax for an income tax month, such person shall, within the period of 9 days from the end of that month, make a declaration to that effect in a form prescribed by the Revenue Commissioners and shall send that form to the Collector-General.
- (b) Where a person whose name and address is registered in the register ceases to pay emoluments to which this Chapter applies, such person shall, within the period of 14 days from the date on which such person ceased to pay such emoluments, notify the Revenue Commissioners to that effect.

PT.42 S.988

(4) *Section 987* shall apply to a non-compliance with *subsection (3)* as it applies to a non-compliance with regulations under this Chapter.

Estimation of tax due for income tax months.

989.—(1) In this section and in *sections 990* and *991*, “the regulations” means any regulations under *section 986*.

[FA68 s7(1), (2), (4), (5) and (8); FA85 s9(a)]

(2) Where the Revenue Commissioners have reason to believe that a person was liable under the regulations to remit income tax in relation to any income tax month, and the person has not remitted any income tax in relation to that income tax month, they may—

- (a) estimate the amount of tax which should have been remitted by the person within the period specified in the regulations for the payment of such tax, and
- (b) serve notice on the person of the amount so estimated.

(3) Where a notice is served under *subsection (2)* on a person, the following provisions shall apply:

- (a) the person, if claiming to be not liable to remit any tax for the income tax month to which the notice relates, may by giving notice in writing to the Revenue Commissioners within the period of 14 days from the service of the notice require the claim to be referred for decision to the Appeal Commissioners and their decision shall be final and conclusive;
- (b) on the expiration of that period, if no such claim is required to be so referred or, if such claim is required to be referred, on final determination by the Appeal Commissioners against the claim, the estimated tax specified in the notice shall be recoverable in the like manner and by the like proceedings as if—
 - (i) the person were an employer, and
 - (ii) the amount specified in the notice were the amount of tax which the person was liable under the regulations to deduct from emoluments paid by the person during the income tax month specified in the notice reduced by any amounts which the person was liable under the regulations to repay during the income tax month;
- (c) if at any time after the service of the notice the person furnishes a declaration of the amount which the person is liable under the regulations to remit in respect of the income tax month specified in the notice and pays the tax in accordance with the declaration together with any interest and costs which may have been incurred in connection with the default, the notice shall, subject to *paragraph (d)*, stand discharged and any excess of tax which may have been paid shall be repaid;
- (d) where action for the recovery of tax specified in a notice under *subsection (2)* has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962, paragraph (c)* shall not, unless the Revenue Commissioners otherwise direct, apply in relation to that notice until that action has been completed.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(4) A notice given by the Revenue Commissioners under *subsection (2)* may extend to 2 or more consecutive income tax months. Pt.42 S.989

(5) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

990.—(1) Where the inspector or such other officer as the Revenue Commissioners may nominate to exercise the powers conferred by this section (in this section referred to as “other officer”) has reason to believe that the total amount of tax which an employer was liable under the regulations to remit in respect of the respective income tax months comprised in any year of assessment was greater than the amount of tax (if any) paid by the employer in respect of those months, then, without prejudice to any other action which may be taken, the inspector or other officer—

Estimation of tax due for year.
[FA68 s8(1), (2) and (4); FA85 s9(b)]

(a) may make an estimate in one sum of the total amount of tax which in his or her opinion should have been paid in respect of the income tax months comprised in that year, and

(b) may serve notice on the employer specifying—

(i) the total amount of tax so estimated,

(ii) the total amount of tax (if any) remitted by the employer in relation to the income tax months comprised in that year, and

(iii) the balance of tax remaining unpaid.

(2) Where a notice is served on an employer under *subsection (1)*—

(a) the employer may, if claiming that the total amount of tax or the balance of tax remaining unpaid is excessive, on giving notice in writing to the inspector or other officer within the period of 30 days from the service of the notice, appeal to the Appeal Commissioners;

(b) on the expiration of that period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by agreement or otherwise, the balance of tax remaining unpaid as specified in the notice or the amended tax as determined in relation to the appeal shall become due and be recoverable in the like manner and by the like proceedings as if the balance of tax or the amended tax had been charged on the employer under Schedule E.

(3) A notice given by the inspector or other officer under *subsection (1)* may extend to 2 or more years of assessment.

991.—(1) Where any amount of tax which an employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners is not so paid, simple interest on the amount shall be paid by the employer to the Revenue Commissioners, and such interest shall be calculated from the expiration of the period specified in the regulations for the payment of the

Interest.
[ITA67 s129; FA68 s9; FA73 s1(1); FA74 s71; FA75 s26; FA78 s46]

PT.42 S.991

amount and at the rate of 1.25 per cent for each month or part of a month during which the amount remains unpaid; but, if the amount of the interest as so calculated is less than £5, the amount of interest payable shall be £5.

(2) This section shall apply—

- (a) to tax recoverable by virtue of a notice under *section 989* as if the tax were tax which the person was liable under the regulations to pay for the respective income tax month or months referred to in the notice, and
- (b) to tax recoverable by virtue of a notice under *section 990* as if the tax were tax which the person was liable under the regulations to remit for the last income tax month of the year of assessment to which the notice relates.

Appeals against estimates under *section 989* or *990*.

[FA68 s10]

992.—The provisions of the Income Tax Acts relating to appeals shall apply with any necessary modifications to claims and appeals under *sections 989(3)* and *990(2)* as if those claims or appeals were appeals against assessments to income tax but, in relation to claims under *section 989(3)*, only in so far as those provisions apply to appeals to the Appeal Commissioners.

Recovery of tax.

[ITA67 s131; FA73 s22]

993.—(1) (a) The provisions of any enactment relating to the recovery of income tax charged under Schedule E shall apply to the recovery of any amount of tax which an employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners by reference to any income tax month as if that amount had been charged on the employer under Schedule E.

- (b) In particular and without prejudice to the generality of *paragraph (a)*, this subsection applies *sections 962, 963, 966* and *998*.
- (c) Provisions as applied by this subsection shall so apply subject to any modifications specified by regulations under *section 986*.

(2) Proceedings may be brought for the recovery of the total amount which the employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners by reference to any income tax month without distinguishing the amounts which the employer is liable to pay by reference to each employee and without specifying the employees in question, and for the purposes of the proceedings that total amount shall be one single cause of action or one matter of complaint; but nothing in this subsection shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the employer is so liable to pay by reference to any income tax month and to the employer's several employees.

(3) In proceedings instituted by virtue of this section for the recovery of any amount of tax—

- (a) a certificate signed by an officer of the Revenue Commissioners which certifies that a stated amount of tax is due and payable by the defendant shall be evidence until

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the contrary is proved that that amount is so due and payable, and Pr.42 S.993

(b) a certificate so certifying and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

(4) Any reference in this section to an amount of tax shall include a reference to interest payable in the case in question under *section 991*.

(5) This section shall apply to the recovery of—

(a) any amount of tax estimated under *section 989*, and

(b) any amount of tax estimated under *section 990* or any balance of tax so estimated but remaining unpaid,

as if the amount so estimated or the balance of tax so estimated but remaining unpaid were an amount of tax which any person paying emoluments was liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners.

994.—(1) In this section, “employer’s liability for the period of 12 months” means all sums which an employer was liable under this Chapter and any regulations under this Chapter to deduct from emoluments to which this Chapter applies paid by the employer during the period of 12 months mentioned in *subsection (2)*, reduced by any amounts which the employer was liable under this Chapter and any regulations under this Chapter to repay during the same period, and subject to the addition of interest payable under *section 991*.
Priority in bankruptcy, etc. of certain amounts.
[ITA67 s132]

(2) There shall be included among the debts which under *section 81* of the Bankruptcy Act, 1988, are to be paid in priority to all other debts in the distribution of the property of a bankrupt, arranging debtor or person dying insolvent so much as is unpaid of the employer’s liability for the period of 12 months before the date on which the order of adjudication of the bankrupt was made, the petition of arrangement of the debtor was filed or, as the case may be, the person died insolvent.

995.—For the purposes of *subsection (2)(a)(iii)* of *section 285* of the Companies Act, 1963—
Priority in winding up of certain amounts.

(a) the amount referred to in that subsection shall be deemed to include any amount—
[FA89 s10]

(i) which, apart from regulation 31A of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), would otherwise have been an amount due at the relevant date in respect of sums which an employer is liable under this Chapter and any regulation under this Chapter (other than regulation 31A of those Regulations) to deduct from emoluments, to which this Chapter applies, paid by the employer during the period of 12 months next before the relevant date,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.42 S.995

(ii) reduced by any amount which the employer was liable under this Chapter and any regulation under this Chapter to repay during that period, and

(iii) with the addition of any interest payable under *section 991*,

and

(b) the relevant date shall, notwithstanding subsection (1) of section 285 of the Companies Act, 1963, be deemed to be the date which is the ninth day after the end of the income tax month in which the relevant date (within the meaning of that subsection) occurred.

Treatment for tax purposes of certain unpaid remuneration.

[FA76 s17(1) to (3)(a) and (4)(b)]

996.—(1) In this section—

“accounting period”, in relation to a trade or profession, means a period of 12 months ending on the date up to which the accounts of the trade or profession are usually made up and, where accounts of the trade or profession have not been made up, such period not exceeding 12 months as the Revenue Commissioners may determine;

“date of cessation”, in relation to an office or employment, means the date on which a person ceases to hold the office or employment;

“date of commencement”, in relation to an office or employment, means the date on which a person commences to hold the office or employment;

“period of account”, in relation to a trade or profession, means any period, other than an accounting period, for which the accounts of the trade or profession have been made up;

“period of accrual”, in relation to remuneration in respect of an office or employment in a trade or profession, means the period beginning on the later of—

(a) the first day of an accounting period, or period of account, of the trade or profession, or

(b) the date of commencement of the office or employment,

and ending on the earlier of—

(i) the last day of an accounting period, or period of account, or

(ii) the date of cessation of the office or employment;

“relevant date” means—

(a) in relation to an accounting period, the last day of the period, and

(b) in relation to a period of account—

(i) where the period of account is less than 12 months, the last day of the period, and

- (ii) where the period of account is more than 12 months, each 5th day of April within the period and the last day of the period; Pr.42 S.995

“remuneration” includes all salaries, fees, wages, perquisites or profits whatever from an office or employment.

(2) Where remuneration (in this section referred to as “unpaid remuneration”) which is deductible as an expense in computing the profits or income of a trade or profession for an accounting period or period of account for the purposes of Schedule D is unpaid at a relevant date—

- (a) the unpaid remuneration shall be deemed to be emoluments to which this Chapter applies and shall be deemed to have been paid in accordance with *subsection (3)*, and
- (b) this Chapter and the regulations made under this Chapter shall, with any necessary modifications, apply to the unpaid remuneration as if it had been so paid.

(3) Unpaid remuneration shall be deemed to have accrued from day to day throughout the period of accrual and there shall be deemed to have been paid on each relevant date so much of that remuneration as accrued up to that date or, if it is earlier, the date of cessation of the office or employment in respect of which the unpaid remuneration is payable—

- (a) where there was no preceding relevant date, from the beginning of the period of accrual or, if it is later, the date of commencement of the office or employment in respect of which the unpaid remuneration is payable, and
- (b) where there was a preceding relevant date, from the day following that date or, if it is later, the date of commencement of the office or employment in respect of which the unpaid remuneration is payable.

(4) This section shall not apply to unpaid remuneration paid before—

- (a) the date of expiry of 6 months after the date (in this subsection referred to as “the deemed date”) on which that remuneration is by virtue of *subsection (3)* deemed to have been paid, or
- (b) in the case where the period of account is one of more than 12 months, the date of expiry of 18 months from the first day of that period of account if the date of expiry is later than the deemed date.

997.—(1) No assessment under Schedule E for any year of assessment need be made in respect of emoluments to which this Chapter applies except where—

Supplementary provisions (*Chapter 4*).

- (a) the person assessable, by notice in writing given to the inspector within 5 years from the end of the year of assessment, requires an assessment to be made,
- (b) the emoluments paid in the year of assessment are not the same in amount as the emoluments which are to be treated as the emoluments for that year, or

[ITA67 s133; FA74 s11 and Sch1 PtII; FA93 s2(2) and Sch1 PtI par2]

Pt.42 S.997

- (c) there is reason to suppose that the emoluments would, if assessed, be taken into account in computing the total income of a person who is liable to tax at the higher rate or would be so liable if an assessment were made in respect of the emoluments;

but where any such assessment is made credit shall be given for the amount of any tax deducted or estimated to be deductible from the emoluments.

(2) Where an employer pays to the Revenue Commissioners any amount of tax which, pursuant to this Chapter and any regulations under this Chapter, the employer has deducted from emoluments, the employer shall be acquitted and discharged of the sum represented by the payment as if the employer had actually paid that sum to the employee.

CHAPTER 5

Miscellaneous provisions

Recovery of moneys due.

[ITA67 s491; FA74 s86 and Sch2 Pt1; CTA76 s147(1) and(2); CGTA75 s51(1) and Sch4 par2]

998.—(1) Every sum due in respect of income tax, corporation tax and capital gains tax and every fine, penalty or forfeiture incurred in connection with any of those taxes shall be deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund, and shall be payable to the Revenue Commissioners and may (without prejudice to any other mode of recovery of such sum, fine, penalty or forfeiture) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Attorney General in any court of competent jurisdiction.

(2) Moneys so due or payable to or for the benefit of the Central Fund shall have attached to them all such rights, privileges and priorities as have heretofore attached to such moneys, but this subsection shall not operate to make such moneys payable in priority to other debts.

Taking by Collector-General of proceedings in bankruptcy.

[F(MP)A68 s27; CGTA75 s51(1) and Sch4 par2]

999.—(1) The Collector-General may sue out a debtor's summons and present a petition in bankruptcy in his or her own name in respect of taxes or duties due to the Minister for Finance for the benefit of the Central Fund, being taxes or duties which the Collector-General is empowered to collect and levy.

(2) Subject to this section, the rules of court for the time being applicable and the enactments relating to bankruptcy shall apply to proceedings taken by the Collector-General by virtue of this section.

Priority in bankruptcy, winding up, etc. for sums recovered or deducted under sections 531, 989 or 990.

[FA68 s11; FA76 s14]

1000.—For the purposes of section 285 of the Companies Act, 1963, and of *section 994*, the sums referred to in section 285(2)(a)(iii) of the Companies Act, 1963, and in *section 994(1)* shall be deemed to include—

- (a) amounts of tax deducted under *section 531(1)* and amounts of tax recoverable under regulation 12 of the Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971),
- (b) amounts of tax recoverable under *section 989*, and
- (c) amounts of tax recoverable under *section 990*,

which relate to a period or periods falling in whole or in part within the period of 12 months referred to in section 285(2)(a)(iii) of the Companies Act, 1963, or in *section 994(1)*, as may be appropriate, and in the case of any such amount for a period falling partly within and partly outside whichever of those periods of 12 months is appropriate, it shall be lawful to apportion the total sum or amount according to the respective lengths of the periods falling within the period of 12 months and outside the period of 12 months in order to determine the amount of tax which relates to the period of 12 months.

Pr.42 S.1000

1001.—(1) In this section, “relevant amount” means any amount which the company is liable to remit under—

Liability to tax, etc. of holder of fixed charge on book debts of company.

(a) *Chapter 4* of this Part, and

(b) the Value-Added Tax Act, 1972.

[FA86 s115; FA95 s174]

(2) Subject to this section, where a person holds a fixed charge (being a fixed charge created on or after the 27th day of May, 1986) on the book debts of a company (within the meaning of the Companies Act, 1963), such person shall, if the company fails to pay any relevant amount for which it is liable, become liable to pay such relevant amount on due demand, and on neglect or refusal of payment may be proceeded against in the like manner as any other defaulter.

(3) This section shall not apply—

(a) unless the holder of the fixed charge has been notified in writing by the Revenue Commissioners that a company has failed to pay a relevant amount for which it is liable and that by virtue of this section the holder of the fixed charge—

(i) may become liable for payment of any relevant amount which the company subsequently fails to pay, and

(ii) where *paragraph (c)* does not apply, has become liable for the payment of the relevant amount which the company has failed to pay,

(b) to any amounts received by the holder of the fixed charge from the company before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with *paragraph (a)*, and

(c) where, within the period from the 2nd day of June, 1995, to the 22nd day of June, 1995, or within 21 days of the creation of the fixed charge, whichever is the later, the holder of the fixed charge furnishes to the Revenue Commissioners a copy of the prescribed particulars of the charge delivered or to be delivered to the registrar of companies in accordance with section 99 of the Companies Act, 1963, to any relevant amount which the company was liable to pay before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with *paragraph (a)*.

(4) The amount or aggregate amount which a person shall be liable to pay in relation to a company in accordance with this section shall not exceed the amount or aggregate amount which the person

PT.42 S.1001

has, while the fixed charge on book debts in relation to the company is in existence, received directly or indirectly from that company in payment or in part payment of any debts due by the company to the person.

(5) The Revenue Commissioners may, at any time and by notice in writing given to the holder of the fixed charge, withdraw with effect from a date specified in the notice a notification issued by them in accordance with *subsection (3)*; but such withdrawal shall not—

(a) affect in any way any liability of the holder of the fixed charge under this section which arose before such withdrawal, or

(b) preclude the issue under *subsection (3)* of a subsequent notice to the holder of the fixed charge.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Deduction from payments due to defaulters of amounts due in relation to tax.

[FA88 s73(1)(b) to (16) and (18); FA92 s241(a) to (d)]

1002.—(1) (a) In this section, except where the context otherwise requires—

“the Acts” means—

- (i) the Customs Acts,
- (ii) the statutes relating to the duties of excise and to the management of those duties,
- (iii) the Tax Acts,
- (iv) the Capital Gains Tax Acts,
- (v) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (vi) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and
- (vii) the Stamp Act, 1891, and the enactments amending or extending that Act,

and any instruments made thereunder;

“additional debt”, in relation to a relevant person who has received a notice of attachment in respect of a taxpayer, means any amount which, at any time after the time of the receipt by the relevant person of the notice of attachment but before the end of the relevant period in relation to the notice, would be a debt due by the relevant person to the taxpayer if a notice of attachment were received by the relevant person at that time;

“debt”, in relation to a notice of attachment given to a relevant person in respect of a taxpayer and in relation to that relevant person and taxpayer,

means, subject to *paragraphs (b) to (e)*, the amount or aggregate amount of any money which, at the time the notice of attachment is received by the relevant person, is due by the relevant person (whether on that person's own account or as an agent or trustee) to the taxpayer, irrespective of whether the taxpayer has applied for the payment (to the taxpayer or any other person) or for the withdrawal of all or part of the money;

“deposit” means a sum of money paid to a financial institution 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 financial institution to which it is made;

“emoluments” means anything assessable to income tax under Schedule E;

“financial institution” means a holder of a licence issued under section 9 of the Central Bank Act, 1971, or a person referred to in section 7(4) of that Act, and includes a branch of a financial institution which records deposits in its books as liabilities of the branch;

“further return” means a return made by a relevant person under *subsection (4)*;

“interest on unpaid tax”, in relation to a specified amount specified in a notice of attachment, means interest that has accrued to the date on which the notice of attachment is given under any provision of the Acts providing for the charging of interest in respect of the unpaid tax, including interest on an undercharge of tax which is attributable to fraud or neglect, specified in the notice of attachment;

“notice of attachment” means a notice under *subsection (2)*;

“notice of revocation” means a notice under *subsection (10)*;

“penalty” means a monetary penalty imposed on a taxpayer under a provision of the Acts;

“relevant period”, in relation to a notice of attachment, means, as respects the relevant person to whom the notice of attachment is given, the period commencing at the time at which the notice is received by the relevant person and ending on the earliest of—

- (i) the date on which the relevant person completes the payment to the Revenue Commissioners out of the debt, or the aggregate of the debt and any additional debt, due by the relevant person to the taxpayer named in the notice, of an amount equal to the specified amount in relation to the taxpayer,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

(ii) the date on which the relevant person receives a notice of revocation of the notice of attachment, and

(iii) where the relevant person or the taxpayer named in the notice—

(I) is declared bankrupt, the date the relevant person or the taxpayer is so declared, or

(II) is a company which commences to be wound up, the relevant date within the meaning of section 285 of the Companies Act, 1963, in relation to the winding up;

“relevant person”, in relation to a taxpayer, means a person whom the Revenue Commissioners have reason to believe may have, at the time a notice of attachment is received by such person in respect of a taxpayer, a debt due to the taxpayer;

“return” means a return made by a relevant person under *subsection (2)(a)(iii)*;

“specified amount” has the meaning assigned to it by *subsection (2)(a)(ii)*;

“tax” means any tax, duty, levy or charge which in accordance with any provision of the Acts is placed under the care and management of the Revenue Commissioners;

“taxpayer” means a person who is liable to pay, remit or account for tax to the Revenue Commissioners under the Acts.

(b) Where a relevant person is a financial institution, any amount or aggregate amount of money, including interest on that money, which at the time the notice of attachment is received by the relevant person is a deposit held by the relevant person—

(i) to the credit of the taxpayer for the taxpayer’s sole benefit, or

(ii) to the credit of the taxpayer and any other person or persons for their joint benefit,

shall be regarded as a debt due by the relevant person to the taxpayer at that time.

(c) Any amount of money due by the relevant person to the taxpayer as emoluments under a contract of service shall not be regarded as a debt due to the taxpayer.

(d) Where there is a dispute as to an amount of money which is due by the relevant person to the taxpayer, the amount in dispute shall be disregarded for the purposes of determining the amount of the debt.

(e) In the case referred to in *paragraph (b)*, a deposit held by a relevant person which is a financial institution to the credit of the taxpayer and any other person or persons (in this paragraph referred to as “the other party or parties”) for their joint benefit shall be deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notices specified in *subsection (2)(e)*) to be held to the benefit of the taxpayer and the other party or parties to the deposit equally, and accordingly only the portion of the deposit so deemed shall be regarded as a debt due by the relevant person to the taxpayer at the time the notice of attachment is received by the relevant person and, where such evidence is produced within the specified time, only so much of the deposit as is shown to be held to the benefit of the taxpayer shall be regarded as a debt due by the relevant person to the taxpayer at that time. Pr.42 S.1002

(2) (a) Subject to *subsection (3)*, where a taxpayer has made default whether before or after the passing of this Act in paying, remitting or accounting for any tax, interest on unpaid tax, or penalty to the Revenue Commissioners, the Revenue Commissioners may, if the taxpayer has not made good the default, give to a relevant person in relation to the taxpayer a notice in writing (in this section referred to as “the notice of attachment”) in which is entered—

(i) the taxpayer’s name and address,

(ii) (I) the amount or aggregate amount, or

(II) in a case where more than one notice of attachment is given to a relevant person or relevant persons in respect of a taxpayer, a portion of the amount or aggregate amount,

of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment (the amount, aggregate amount, or portion of the amount or aggregate amount, as the case may be, being referred to in this section as “the specified amount”), and

(iii) a direction to the relevant person—

(I) subject to *paragraphs (b)* and *(c)*, to deliver to the Revenue Commissioners, within the period of 10 days from the time at which the notice of attachment is received by the relevant person, a return in writing specifying whether or not any debt is due by the relevant person to the taxpayer at the time the notice is received by the relevant person and, if any debt is so due, specifying the amount of the debt, and

(II) if the amount of any debt is so specified, to pay to the Revenue Commissioners within the period referred to in *clause (I)* a sum equal to the amount of the debt so specified.

- (b) Where the amount of the debt due by the relevant person to the taxpayer is equal to or greater than the specified amount in relation to the taxpayer, the amount of the debt specified in the return shall be an amount equal to the specified amount.
- (c) Where the relevant person is a financial institution and the debt due by the relevant person to the taxpayer is part of a deposit held to the credit of the taxpayer and any other person or persons to their joint benefit, the return shall be made within a period of 10 days from—
 - (i) the expiry of the period specified in the notices to be given under *paragraph (e)*, or
 - (ii) the production of the evidence referred to in *paragraph (e)(II)*.
- (d) A relevant person to whom a notice of attachment has been given shall comply with the direction in the notice.
- (e) Where a relevant person which is a financial institution is given a notice of attachment and the debt due by the relevant person to the taxpayer is part of a deposit held by the relevant person to the credit of the taxpayer and any other person or persons (in this paragraph referred to as “the other party or parties”) for their joint benefit, the relevant person shall on receipt of the notice of attachment give to the taxpayer and the other party or parties to the deposit a notice in writing in which is entered—
 - (i) the taxpayer’s name and address,
 - (ii) the name and address of the person to whom a notice under this paragraph is given,
 - (iii) the name and address of the relevant person, and
 - (iv) the specified amount,and which states that—
 - (I) a notice of attachment under this section has been received in respect of the taxpayer,
 - (II) under this section a deposit is deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notice under this paragraph) to be held to the benefit of the taxpayer and the other party or parties to the deposit equally, and
 - (III) unless such evidence is produced within the period specified in the notice given under this paragraph—
 - (A) a sum equal to the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) shall be paid to the Revenue Commissioners, where that amount is equal to or less than the specified amount, and

(B) where the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) is greater than the specified amount, a sum equal to the specified amount shall be paid to the Revenue Commissioners. Pr.42 S.1002

(3) An amount in respect of tax, interest on unpaid tax or a penalty, as respects which a taxpayer is in default as specified in *subsection (2)*, shall not be entered in a notice of attachment unless—

- (a) a period of one month has expired from the date on which such default commenced, and
- (b) the Revenue Commissioners have given the taxpayer a notice in writing (whether or not the document containing the notice also contains other information being communicated by the Revenue Commissioners to the taxpayer), not later than 7 days before the date of the receipt by the relevant person or relevant persons concerned of a notice of attachment, stating that if the amount is not paid it may be specified in a notice or notices of attachment and recovered under this section from a relevant person or relevant persons in relation to the taxpayer.

(4) If, when a relevant person receives a notice of attachment, the amount of the debt due by the relevant person to the taxpayer named in the notice is less than the specified amount in relation to the taxpayer or no debt is so due and, at any time after the receipt of the notice and before the end of the relevant period in relation to the notice, an additional debt becomes due by the relevant person to the taxpayer, the relevant person shall within 10 days of that time—

- (a) if the aggregate of the amount of any debt so due and the additional debt so due is equal to or less than the specified amount in relation to the taxpayer—
 - (i) deliver a further return to the Revenue Commissioners specifying the additional debt, and
 - (ii) pay to the Revenue Commissioners the amount of the additional debt,and so on for each subsequent occasion during the relevant period in relation to the notice of attachment on which an additional debt becomes due by the relevant person to the taxpayer until—
 - (I) the aggregate amount of the debt and the additional debt or debts so due equals the specified amount in relation to the taxpayer, or
 - (II) *paragraph (b)* applies in relation to an additional debt, and
- (b) if the aggregate amount of any debt and the additional debt or debts so due to the taxpayer is greater than the specified amount in relation to the taxpayer—
 - (i) deliver a further return to the Revenue Commissioners specifying such portion of the latest

additional debt as when added to the aggregate of the debt and any earlier additional debts is equal to the specified amount in relation to the taxpayer, and

- (ii) pay to the Revenue Commissioners that portion of the additional debt.

(5) Where a relevant person delivers, either fraudulently or negligently, an incorrect return or further return that purports to be a return or further return made in accordance with this section, the relevant person shall be deemed to be guilty of an offence under *section 1078*.

- (6) (a) Where a notice of attachment has been given to a relevant person in respect of a taxpayer, the relevant person shall not, during the relevant period in relation to the notice, make any disbursements out of the debt, or out of any additional debt, due by the relevant person to the taxpayer except to the extent that any such disbursement—

- (i) will not reduce the debt or the aggregate of the debt and any additional debts so due to an amount that is less than the specified amount in relation to the taxpayer, or

- (ii) is made pursuant to an order of a court.

- (b) For the purposes of this section, a disbursement made by a relevant person contrary to *paragraph (a)* shall be deemed not to reduce the amount of the debt or any additional debts due by the relevant person to the taxpayer.

- (7) (a) *Sections 1052 and 1054* shall apply to a failure by a relevant person to deliver a return required by a notice of attachment within the time specified in the notice or to deliver a further return within the time specified in *subsection (4)* as they apply to a failure to deliver a return referred to in *section 1052*.

- (b) A certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined the relevant records and that it appears from those records that during a specified period a specified return was not received from a relevant person shall be evidence until the contrary is proved that the relevant person did not deliver the return during that period.

- (c) A certificate certifying as provided by *paragraph (b)* and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been so signed.

(8) Where a relevant person to whom a notice of attachment in respect of a taxpayer has been given—

- (a) delivers the return required to be delivered by that notice but fails to pay to the Revenue Commissioners within the time specified in the notice the amount specified in the return or any part of that amount, or

- (b) delivers a further return under *subsection (4)* but fails to pay Pr.42 S.1002 to the Revenue Commissioners within the time specified in that subsection the amount specified in the further return or any part of that amount,

the amount specified in the return or further return or the part of that amount, as the case may be, which the relevant person has failed to pay to the Revenue Commissioners may, if the notice of attachment has not been revoked by a notice of revocation, be sued for and recovered by action or other appropriate proceedings at the suit of an officer of the Revenue Commissioners in any court of competent jurisdiction.

(9) Nothing in this section shall be construed as rendering any failure by a relevant person to make a return or further return required by this section, or to pay to the Revenue Commissioners the amount or amounts required by this section to be paid by the relevant person, liable to be treated as a failure to which *section 1078* applies.

(10) (a) A notice of attachment given to a relevant person in respect of a taxpayer may be revoked by the Revenue Commissioners at any time by notice in writing given to the relevant person and shall be revoked forthwith if the taxpayer has paid the specified amount to the Revenue Commissioners.

(b) Where in pursuance of this section a relevant person pays any amount to the Revenue Commissioners out of a debt or an additional debt due by the relevant person to the taxpayer and, at the time of the receipt by the Revenue Commissioners of that amount, the taxpayer has paid to the Revenue Commissioners the amount or aggregate amount of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment, the first-mentioned amount shall be refunded by the Revenue Commissioners forthwith to the taxpayer.

(11) Where a notice of attachment or a notice of revocation is given to a relevant person in relation to a taxpayer, a copy of such notice shall be given by the Revenue Commissioners to the taxpayer forthwith.

(12) (a) Where in pursuance of this section any amount is paid to the Revenue Commissioners by a relevant person, the relevant person shall forthwith give the taxpayer concerned a notice in writing specifying the payment, its amount and the reason for which it was made.

(b) On the receipt by the Revenue Commissioners of an amount paid in pursuance of this section, the Revenue Commissioners shall forthwith notify the taxpayer and the relevant person in writing of such receipt.

(13) Where in pursuance of this section a relevant person pays to the Revenue Commissioners the whole or part of the amount of a debt or an additional debt due by the relevant person to a taxpayer, or any portion of such an amount, the taxpayer shall allow such payment and the relevant person shall be acquitted and discharged of the amount of the payment as if it had been paid to the taxpayer.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.42 S.1002

(14) Where in pursuance of this section a relevant person is prohibited from making any disbursement out of a debt or an additional debt due to a taxpayer, no action shall lie against the relevant person in any court by reason of a failure to make any such disbursement.

(15) Any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply in relation to information contained in a notice of attachment.

(16) A notice of attachment in respect of a taxpayer shall not be given to a relevant person at a time when the relevant person or the taxpayer is an undischarged bankrupt or a company being wound up.

(17) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Payment of tax by means of donation of heritage items.

[FA95 s176; FA96 s139]

1003.—(1) (a) In this section—

“the Acts” means—

- (i) the Tax Acts (other than *Chapter 8 of Part 6, Chapter 2 of Part 18 and Chapter 4 of this Part*),
- (ii) the Capital Gains Tax Acts, and
- (iii) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

and any instruments made thereunder;

“approved body” means—

- (i) the National Archives,
- (ii) the National Gallery of Ireland,
- (iii) the National Library of Ireland,
- (iv) the National Museum of Ireland,
- (v) the Irish Museum of Modern Art, or
- (vi) in relation to the offer of a gift of a particular item or collection of items, any other such body (being a body owned, or funded wholly or mainly, by the State or by any public or local authority) as may be approved, with the consent of the Minister for Finance, by the Minister for Arts, Heritage, Gaeltacht and the Islands for the purposes of this section;

“arrears of tax” means tax due and payable in accordance with any provision of the Acts (including any interest and penalties payable under any provision of the Acts in relation to such tax)—

- (i) in the case of income tax, corporation tax or capital gains tax, in respect of the relevant period, or Pr.42 S.1003
- (ii) in the case of gift tax or inheritance tax, before the commencement of the calendar year in which the relevant gift is made,

which has not been paid at the time a relevant gift is made;

“current liability” means—

- (i) in the case of income tax or capital gains tax, any liability to such tax arising in the year of assessment in which the relevant gift is made,
- (ii) in the case of corporation tax, any liability to such tax arising in the accounting period in which the relevant gift is made,
- (iii) in the case of gift tax or inheritance tax, any liability to such tax which becomes due and payable in the calendar year in which the relevant gift is made;

“designated officer” means—

- (i) the member of the selection committee who represents the appropriate approved body on that committee where the approved body is so represented, or
- (ii) in any other case, a person nominated in that behalf by the Minister for Arts, Heritage, Gaeltacht and the Islands;

“heritage item” has the meaning assigned to it by *subsection (2)(a)*;

“market value” has the meaning assigned to it by *subsection (3)*;

“relevant gift” means a gift of a heritage item to an approved body in respect of which no consideration whatever (other than relief under this section) is received by the person making the gift, either directly or indirectly, from the approved body or otherwise;

“relevant period” means—

- (i) in the case of income tax and capital gains tax, any year of assessment preceding the year in which the relevant gift is made, and
- (ii) in the case of corporation tax, any accounting period preceding the accounting period in which the relevant gift is made;

“selection committee” means a committee consisting of—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

- (i) the Chairperson of the Heritage Council,
- (ii) the Director of the Arts Council,
- (iii) the Director of the National Archives,
- (iv) the Director of the National Gallery of Ireland,
- (v) the Director of the National Library of Ireland,
- (vi) the Director of the National Museum of Ireland, and
- (vii) the Director of the Irish Museum of Modern Art,

and includes any person duly acting in the capacity of any of those persons as a result of the person concerned being unable to fulfil his or her duties for any of the reasons set out in *paragraph (b)(ii)*;

“tax” means income tax, corporation tax, capital gains tax, gift tax or inheritance tax, as the case may be, payable in accordance with any provision of the Acts;

“valuation date” means the date on which an application is made to the selection committee for a determination under *subsection (2)(a)*.

- (b) (i) The selection committee may act notwithstanding one or more vacancies among its members and may regulate its own procedure.
- (ii) If and so long as a member of the selection committee is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in that behalf by the member shall act as the member of the committee in the place of the member.

(2) (a) In this section, “heritage item” means any kind of cultural item, including—

- (i) any archaeological item, archive, book, estate record, manuscript and painting, and
- (ii) any collection of cultural items and any collection of such items in their setting,

which, on application to the selection committee in writing in that behalf by a person who owns the item or collection of items, as the case may be, is determined by the selection committee, after consideration of any evidence in relation to the matter which the person submits to the committee and after such consultation (if any) as may seem to the committee to be necessary with such person or body of persons as in the opinion of the committee may be of assistance to them, to be an item or collection of items which is—

(I) an outstanding example of the type of item involved, Pr.42 S.1003
pre-eminent in its class, whose export from the State
would constitute a diminution of the accumulated
cultural heritage of Ireland, and

(II) suitable for acquisition by an approved body.

(b) On receipt of an application for a determination under
paragraph (a), the selection committee shall request the
Revenue Commissioners in writing to value the item or
collection of items, as the case may be, in accordance with
subsection (3).

(c) The selection committee shall not make a determination
under *paragraph (a)* where the market value of the item
or collection of items, as the case may be, as determined
by the Revenue Commissioners in accordance with *sub-*
section (3), at the valuation date—

(i) is less than £75,000, or

(ii) exceeds an amount (which shall not be less than
£75,000) determined by the formula—

$$£750,000 - M$$

where M is an amount (which may be nil) equal to
the market value at the valuation date of the heritage
item (if any) or the aggregate of the market values
at the respective valuation dates of all the heritage
items (if any), as the case may be, in respect of which
a determination or determinations, as the case may
be, under this subsection has been made by the selec-
tion committee in any one calendar year and not
revoked in that year.

(d) (i) An item or collection of items shall cease to be a heri-
tage item for the purposes of this section if—

(I) the item or collection of items is sold or other-
wise disposed of to a person other than an
approved body,

(II) the owner of the item or collection of items noti-
fies the selection committee in writing that it is
not intended to make a gift of the item or collec-
tion of items to an approved body, or

(III) the gift of the item or collection of items is not
made to an approved body within the calendar
year following the year in which the determi-
nation is made under *paragraph (a)*.

(ii) Where the selection committee becomes aware, at
any time within the calendar year in which a determi-
nation under *paragraph (a)* is made in respect of an
item or collection of items, that *clause (I)* or *(II)* of
subparagraph (i) applies to the item or collection of
items, the selection committee may revoke its deter-
mination with effect from that time.

(3) (a) For the purposes of this section, the market value of any
item or collection of items (in this subsection referred to

as “the property”) shall be estimated to be the price which in the opinion of the Revenue Commissioners the property would fetch if sold in the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property.

(b) The market value of the property shall be ascertained by the Revenue Commissioners in such manner and by such means as they think fit, and they may authorise a person to inspect the property and report to them the value of the property for the purposes of this section, and the person having custody or possession of the property shall permit the person so authorised to inspect the property at such reasonable times as the Revenue Commissioners consider necessary.

(c) Where the Revenue Commissioners require a valuation to be made by a person authorised by them, the cost of such valuation shall be defrayed by the Revenue Commissioners.

(4) Where a relevant gift is made to an approved body—

(a) the designated officer of that body shall give a certificate to the person who made the relevant gift, in such form as the Revenue Commissioners may prescribe, certifying the receipt of that gift and the transfer of the ownership of the heritage item the subject of that gift to the approved body, and

(b) the designated officer shall transmit a duplicate of the certificate to the Revenue Commissioners.

(5) Subject to this section, where a person has made a relevant gift the person shall, on submission to the Revenue Commissioners of the certificate given to the person in accordance with *subsection (4)*, be treated as having made on the date of such submission a payment on account of tax of an amount equal to the market value of the relevant gift on the valuation date.

(6) A payment on account of tax which is treated as having been made in accordance with *subsection (5)* shall be set in so far as possible against any liability to tax of the person who is treated as having made such a payment in the following order—

(a) firstly, against any arrears of tax due for payment by that person and against an arrear of tax for an earlier period in priority to a later period, and for this purpose the date on which an arrear of tax became due for payment shall determine whether it is for an earlier or later period, and

(b) only then, against any current liability of the person which the person nominates for that purpose,

and such set-off shall accordingly discharge a corresponding amount of that liability.

(7) To the extent that a payment on account of tax has not been set off in accordance with *subsection (6)*, the balance remaining shall be set off against any future liability to tax of the person who is treated as having made the payment which that person nominates for that purpose.

(8) Where a person has power to sell any heritage item in order to raise money for the payment of gift tax or inheritance tax, such person shall have power to make a relevant gift of that heritage item in or towards satisfaction of that tax and, except as regards the nature of the consideration and its receipt and application, any such relevant gift shall be subject to the same provisions and shall be treated for all purposes as a sale made in exercise of that power, and any conveyances or transfers made or purporting to be made to give effect to such a relevant gift shall apply accordingly. Pr.42 S.1003

(9) A person shall not be entitled to any refund of tax in respect of any payment on account of tax made in accordance with this section.

(10) Interest shall not be payable in respect of any overpayment of tax for any period which arises directly or indirectly by reason of the set-off against any liability for that period of a payment on account of tax made in accordance with this section.

(11) Where a person makes a relevant gift and in respect of that gift is treated as having made a payment on account of tax, the person concerned shall not be allowed relief under any other provision of the Acts in respect of that gift.

(12) (a) The Revenue Commissioners shall as respects each year compile a list of the titles (if any), descriptions and values of the heritage items (if any) in respect of which relief under this section has been given.

(b) Notwithstanding any obligation as to secrecy imposed on them by the Acts or the Official Secrets Act, 1963, the Revenue Commissioners shall include in their annual report to the Minister for Finance the list (if any) referred to in *paragraph (a)* for the year in respect of which the report is made.

1004.—(1) In this section, “particular income” means income arising outside the State, the amount of which is or is included in the amount (in this section referred to as “the relevant amount”) on which in accordance with the Tax Acts income tax or corporation tax is computed. Unremittable income.

[ITA67 s549;
F(MP)A68 s3(2)
and Sch PtI; FA74
s86 and Sch2 PtI;
CTA76 s147(1) and
(2)]

(2) Subject to *subsections (3) to (5)*, this section shall apply where income tax or corporation tax is charged by an assessment for any period and the tax has not been paid.

(3) In any case in which, on or after the date on which the income tax or corporation tax has become payable, such proof is given to the Revenue Commissioners as satisfies them that particular income cannot, by reason of legislation in the country in which it arises or of executive action of the government of that country, be remitted to the State, the Revenue Commissioners may for the purposes of collection treat the assessment as if the relevant amount did not include the particular income, but such treatment shall terminate on the Revenue Commissioners ceasing to be so satisfied.

(4) The Revenue Commissioners may for the purposes of this section call for such information as they consider necessary.

(5) Any person who is dissatisfied with a decision of the Revenue Commissioners under *subsection (3)* may, by giving notice in writing to the Revenue Commissioners within 21 days after the notification of the decision to that person, apply to have the matter referred to

Pt.42 S.1004

the Appeal Commissioners as if it were an appeal against an assessment, and the provisions of the 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.

Unremittable gains.
[CGTA75 s43]

1005.—(1) In this section, “particular gains” means chargeable gains accruing from the disposal of assets situated outside the State, the amount of which is or is included in the amount (in this section referred to as “the relevant amount”) on which in accordance with the Capital Gains Tax Acts the tax is computed.

(2) Subject to *subsections (3) to (5)*, this section shall apply where capital gains tax has been charged by an assessment for the year in which the particular gains accrued and the tax has not been paid.

(3) In any case in which, on or after the date on which the capital gains tax has become payable, such proof is given to the Revenue Commissioners as satisfies them that particular gains cannot, by reason of legislation in the country in which they have accrued or of executive action of the government of that country, be remitted to the State, the Revenue Commissioners may for the purposes of collection treat the assessment as if the relevant amount did not include the particular gains, but such treatment shall terminate on the Revenue Commissioners ceasing to be so satisfied.

(4) The Revenue Commissioners may for the purposes of this section call for such information as they consider necessary.

(5) Any person who is dissatisfied with a decision of the Revenue Commissioners under *subsection (3)* may, by giving notice in writing to the Revenue Commissioners within 21 days after the notification of the decision to that person, apply to have the matter referred to the Appeal Commissioners 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.

Poundage and certain other fees due to sheriffs or county registrars.

[FA88 s71(1) and (2)(a)]

1006.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (d) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and
- (e) Part VI of the Finance Act, 1983, and the enactments amending or extending that Part,

and any instruments made thereunder;

“certificate” means a certificate issued under *section 962*;

“county registrar” means a person appointed to be a county registrar under *section 35* of the Court Officers Act, 1926;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“defaulter” means a person specified or certified in an execution order or certificate on whom a relevant amount specified or certified in the order or certificate is leviable; Pr.42 S.1006

“execution order” has the same meaning as in the Enforcement of Court Orders Act, 1926;

“fees” means the fees known as poundage fees payable under section 14(1) of the Enforcement of Court Orders Act, 1926, and orders made under that section for services in or about the execution of an execution order directing or authorising the execution of an order of a court by the seizure and sale of a person’s property or, as may be appropriate, the fees corresponding to those fees payable under section 962 for the execution of a certificate;

“interest on unpaid tax” means interest which has accrued under any provision of the Acts providing for the charging of interest in respect of unpaid tax, including interest on an undercharge of tax which is attributable to fraud or neglect;

“relevant amount” means an amount of tax or interest on unpaid tax;

“tax” means any tax, duty, levy or charge which, in accordance with any provision of the Acts, is placed under the care and management of the Revenue Commissioners;

references, as respects an execution order, to a relevant amount include references to any amount of costs specified in the order.

(2) Where—

- (a) an execution order or certificate specifying or certifying a defaulter and relating to a relevant amount is lodged with the appropriate sheriff or county registrar for execution,
- (b) the sheriff or, as the case may be, the county registrar gives notice to the defaulter of the lodgment or of his or her intention to execute the execution order or certificate by seizure of the property of the defaulter to which it relates, or demands payment by the defaulter of the relevant amount, and
- (c) the whole or part of the relevant amount is paid to the sheriff or, as the case may be, the county registrar or to the Collector-General, after the giving of that notice or the making of that demand,

then, for the purpose of the liability of the defaulter for the payment of fees and of the exercise of any rights or powers in relation to the collection of fees for the time being vested by law in sheriffs and county registrars—

- (i) the sheriff or, as the case may be, the county registrar shall be deemed to have entered, in the execution of the execution order or certificate, into possession of the property referred to in *paragraph (b)*, and
- (ii) the payment mentioned in *paragraph (c)* shall be deemed to have been levied, in the execution of the execution order or certificate, by the sheriff or, as the case may be, the county registrar,

and fees shall be payable by the defaulter to such sheriff or, as the case may be, country registrar accordingly in respect of the payment mentioned in *paragraph (c)*.

PART 43

PARTNERSHIPS AND EUROPEAN ECONOMIC INTEREST GROUPINGS
(EEIG)

Interpretation (*Part 43*).

1007.—(1) In this Part—

[ITA67 s69; FA75 s33(2) and Sch1 PtII]

“annual payment” means any payment from which, apart from any insufficiency of profits or gains of the persons making it, income tax is deductible under *section 237*;

“balancing charge” means a balancing charge under *Part 9* or *Chapter 1* of *Part 29*, as the case may be;

“basis period”, in relation to a year of assessment, means 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, 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;

“partnership trade” means a trade carried on by 2 or more persons in partnership;

“precedent partner”, in relation to a partnership, means the partner who, being resident in the State—

- (a) is first named in the partnership agreement,
- (b) if there is no agreement, is named singly or with precedence over the other partners in the usual name of the firm, or
- (c) is the precedent acting partner, if the person named with precedence is not an acting partner,

and any reference to precedent partner shall, in a case in which no partner is resident in the State, be construed as a reference to the agent, manager or factor of the firm resident in the State;

“relevant period”, in relation to a partnership trade, means a continuous period the whole or part of which is after the 5th day of April, 1965—

- (a) beginning at a time when either—
 - (i) the trade was not carried on immediately before that time by 2 or more persons in partnership, or
 - (ii) none of the persons then carrying on the trade in partnership was one of the persons who immediately before that time carried on the trade in partnership, and
- (b) continuing only so long as there has not occurred a time when either—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (i) the trade is not carried on immediately after that time by 2 or more persons in partnership, or
- (ii) none of the persons then carrying on the trade in partnership is one of the persons who immediately after that time carry on the trade in partnership,

subject to the condition that, in the case of any such period which apart from this condition would have begun before the 6th day of April, 1965, “the relevant period” shall be taken as having begun at the time, or at the last of 2 or more times, at which, a change having occurred in the partnership of persons then engaged in carrying on the trade, the persons so engaged immediately after the time were to be treated for the purposes of income tax as having set up or commenced the trade at that time.

(2) In relation to a case in which a partnership trade is from time to time during a relevant period carried on by 2 or more different partnerships of persons, any reference in this Part to the partnership shall, unless the context otherwise requires, be construed as including a reference to any partnership of persons by whom the trade has been carried on since the beginning of the relevant period and any reference to a partner shall be construed correspondingly.

(3) This Part shall, with any necessary modifications, apply in relation to professions as it applies in relation to trades.

1008.—(1) In the case of a partnership trade, the Income Tax Acts shall, subject to this Part, apply in relation to any partner in the partnership as if for any relevant period—

Separate assessment of partners.

[ITA67 s71]

- (a) any profits or gains arising to that partner from the trade and any loss sustained by that partner in the trade were respectively profits or gains of, and loss sustained in, a trade (in this Part referred to as a “several trade”) carried on solely by that partner, being a trade—
- (i) set up or commenced at the beginning of the relevant period, or if that partner commenced to be engaged in carrying on the partnership trade at some time in the relevant period other than the beginning of that period, at the time when that partner so commenced, and
- (ii) when that partner ceases to be engaged in carrying on the partnership trade either during the relevant period or at the end of that period, permanently discontinued at the time when that partner so ceases, and
- (b) that partner had paid the part that partner was liable to bear of any annual payment paid by the partnership.
- (2) (a) For any year or period within the relevant period the amount of the profits or gains arising to any partner from that partner’s several trade, or the amount of loss sustained by that partner in that trade, shall for the purposes of *subsection (1)* be taken to be so much of the full amount of the profits or gains of the partnership trade or, as the case may be, of the full amount of the loss sustained in the partnership trade as would fall to that partner’s share on an apportionment of those profits or

gains or, as the case may be, of that loss made in accordance with the terms of the partnership agreement as to the sharing of profits and losses.

(b) Where the year or period (in this paragraph referred to as “the period of computation”) for which the profits or gains of, or the loss sustained in, the several trade of a partner is to be computed under this subsection is or is part of a year or period for which an account of the partnership trade has been made up, *sections 65 and 107* shall apply in relation to the partner as if an account of that partner’s several trade had been made up for the period of computation.

(3) (a) For the purposes of *subsection (2)* and subject to *paragraph (b)*, the full amount of the profits or gains of the partnership trade for any year or period, or the full amount of the loss sustained in such trade in any year or period, shall, subject to *section 1012*, be determined by the inspector, and any such determination shall be made as it would have been made if the trade—

(i) had been set up or commenced at the beginning of the relevant period,

(ii) where the relevant period has come to an end, had been permanently discontinued at the end of that period, and

(iii) had at all times within the relevant period been carried on by one and the same person and everything done in the carrying on of the trade to or by the persons by whom it was in fact carried on had been done to or by that person.

(b) In a case in which the relevant period began at some time before the 6th day of April, 1965, and the trade was not treated for the purposes of income tax as having been set up or commenced at that time—

(i) the relevant period shall for the purposes of this subsection be deemed to have begun at the time at which the trade was treated for the purposes of income tax as having been set up or commenced, and

(ii) any profits or gains arising to any person from the trade, or any loss sustained by that person in the trade, for any year or period within the relevant period during which that person was engaged in the trade on that person’s own account shall be deemed to be profits or gains arising to that person from, or, as the case may be, a loss sustained by that person in, a partnership trade in which that person was entitled during the year or period in question to the full amount of the profits or gains arising or was liable to bear the full amount of the loss.

(4) Where the shares to which the partners are entitled in the basis period for a year of assessment do not exhaust the profits of the trade carried on by the partnership for that period, an assessment shall be made under Case IV of Schedule D on the precedent partner in respect of the unexhausted portion of the profits and the precedent partner shall, if and when such balance is to be paid to a

person entitled to such balance, be entitled to deduct from such balance any amounts of tax which have been assessed on and paid by him or her and he or she shall be acquitted and discharged of any such amounts. Pr.43 S.1008

(5) This section shall not cause any income which apart from this section is not earned income to become earned income.

1009.—(1) In this section, profits shall not be taken as including chargeable gains. Partnerships involving companies.

(2) Subject to this section, *subsections (1), (2)(a) and (3) of section 1008* shall apply for the purposes of corporation tax as they apply for the purposes of income tax. [CTA76 s32 (apart from proviso to (3)(c))]

(3) Where the whole or part of an accounting period of a company is or is part of a period for which an account of a partnership trade has been made up, any necessary apportionment shall be made in computing the profits from or loss sustained in the company's several trade for the accounting period of the company.

(4) (a) In this subsection, "the relevant amount" means—

- (i) where the year of assessment and the accounting period coincide, the whole amount of the appropriate share of the joint allowance or, as the case may be, the whole amount of the appropriate share of the joint charge, and
- (ii) where part only of the year of assessment is within the accounting period, such portion of the appropriate share of the joint allowance or, as the case may be, such portion of the appropriate share of the joint charge as is apportioned to that part of the year of assessment which falls within the accounting period.

(b) Where a capital allowance equal to an appropriate share of a joint allowance would be made, if *section 21(2)* had not been enacted, in charging to income tax the profits of a company's several trade for any year of assessment, the relevant amount shall for corporation tax purposes be treated as a trading expense of the company's several trade for any accounting period of the company any part of which falls within that year of assessment.

(c) Where a balancing charge equal to an appropriate share of a joint charge would be made, if *section 21(2)* had not been enacted, in charging to income tax the profits of a company's several trade for any year of assessment, the relevant amount shall for corporation tax purposes be treated as a trading receipt of the company's several trade for any accounting period of the company any part of which falls within that year of assessment.

(d) Notwithstanding *section 1010(8)*, any reference in this subsection to a joint allowance for a year of assessment shall not include a reference to any capital allowance which is or could be brought forward from a previous year of assessment.

(5) Where under this section an amount is to be apportioned to—

Pt.43 S.1009

- (a) a part of an accounting period of a company,
- (b) a part of a period for which an account of a partnership trade has been made up, or
- (c) a part of a year of assessment,

the apportionment shall be made by reference to the number of months or fractions of months contained in that part and in the remainder of that accounting period, period or year, as the case may be.

Capital allowances and balancing charges in partnership cases.

[ITA67 s72; FA80 s17(2)]

1010.—(1) The provisions of the Income Tax Acts relating to the making of capital allowances and balancing charges in charging the profits or gains of a trade shall, in relation to the several trade of a partner in a partnership, apply subject to this section.

(2) Where for any year of assessment a claim has been made as provided by *subsection (9)* by the precedent partner for the time being of any partnership, there shall be made to any partner in the partnership in charging the profits or gains of that partner's several trade a capital allowance in respect of any expenditure or property equal to that partner's appropriate share of any capital allowance for that year, excluding any amount carried forward from an earlier year, (in this section referred to as a "joint allowance") which, apart from any insufficiency of profits or gains, might have been made in respect of that expenditure or property in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged by joint assessment on the persons carrying on the trade in the year of assessment as if—

- (a) those persons had at all times been carrying on the trade and everything done to or by their predecessors in, or in relation to, the carrying on of the trade had been done to or by them, and
- (b) the trade had been set up or commenced at the beginning of the relevant period and, where the relevant period has come to an end, had been permanently discontinued at the end of that period.

(3) There shall be made for any year of assessment on any partner in a partnership in charging the profits or gains of that partner's several trade a balancing charge equal to that partner's appropriate share of any balancing charge (in this section referred to as a "joint charge") which would have been made for that year in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged as specified in *subsection (2)*.

(4) Where at the end of the relevant period a person or a partnership of persons succeeds to a partnership trade and any property which immediately before the succession takes place was in use for the purposes of the partnership trade and, without being sold, is immediately after the succession takes place in use for the purposes of the trade carried on by the successor or successors, *section 313(1)* shall apply as it applies where by virtue of *section 69* a trade is to be treated as discontinued.

(5) Where for a partnership trade the relevant period began at some time before the 6th day of April, 1965, and the trade was not

treated for the purposes of income tax as having been set up or commenced at that time, the relevant period shall for the purposes of *subsections (2) and (3)* be deemed to have begun at the time at which the trade was treated for the purposes of income tax as having been set up or commenced. Pr.43 S.1010

- (6) (a) In relation to any partnership trade, the total amount of all joint allowances for any year of assessment and the total amount of all joint charges for that year shall, subject to *section 1012*, be determined by the inspector.
- (b) Where after a determination has been made under *paragraph (a)* the inspector becomes aware of any facts or events by reference to which the determination is in his or her opinion incorrect, the inspector may from time to time and as often as appears to him or her to be necessary make a revised determination, and any such revised determination shall supersede any earlier determination and any such additional assessments or repayments of tax shall be made as may be necessary.
- (7) (a) In this subsection, “trading period” means, where the relevant period begins or ends during the year of assessment for which the joint allowance or joint charge is computed, the part of that year of assessment which falls within the relevant period or, in any other case, that year of assessment.
- (b) Subject to *paragraph (c)*, for any year of assessment the partners’ appropriate shares of a joint allowance or of a joint charge shall be determined by apportioning the full amount of that allowance or charge between the partners on the same basis as a like amount of profits arising in the trading period from the partnership trade, and accruing from day to day over that period, would be apportioned in accordance with the terms of the partnership if any salary, interest on capital or other sum to which any partner was entitled without regard to the amount of the profits arising from the partnership trade had already been provided for.
- (c) Where for any year of assessment all the partners (any deceased partner being represented by his or her legal representatives) allege, by notice in writing signed by them and sent to the inspector within 24 months after the end of the year of assessment, that hardship is caused to one or more partners by the apportionment of a joint allowance or joint charge on the basis set out in *paragraph (b)*, the Revenue Commissioners may, on being satisfied that hardship has been caused, give such relief as in their opinion is just by making a new apportionment of the joint allowance or joint charge, and any such new apportionment shall for the purposes of the Income Tax Acts apply as if it were an apportionment made under *paragraph (b)*, and such additional assessments or repayments of tax shall be made as may be necessary.
- (8) (a) In this subsection, “capital allowance brought forward” means—
- (i) any capital allowance or part of a capital allowance due to be made to the partnership for the year 1964-65 or any earlier year of assessment which might, if

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.43 S.1010

Part VIII of the Finance Act, 1965, had not been enacted, have been carried forward and made as a deduction in charging the profits or gains of the partnership trade for the year 1965-66, and

(ii) any capital allowance or part of a capital allowance due to be made to a partner for the year 1965-66 or a later year of assessment which but for this subsection might have been carried forward and made as a deduction in charging the profits or gains of the several trade of the partner for a year of assessment subsequent to that for which the capital allowance was computed.

(b) For any year of assessment the aggregate amount of all capital allowances brought forward shall for the purposes of making the assessments on the partners be deemed to be a joint allowance for that year, and *subsection (7)* shall apply accordingly.

(9) In relation to a partnership trade—

(a) any claim for a joint allowance for any year of assessment shall be made by the precedent partner as if it were a claim for a capital allowance to be made to that partner and shall be included in the return delivered by that partner under *section 880* in relation to that year of assessment, and

(b) any claim for a joint allowance shall be deemed to be a claim by every partner for a capital allowance to be made to such partner, being a capital allowance equal to such partner's appropriate share of that joint allowance.

Provision as to charges under *section 757*.

[ITA67 s74]

1011.—(1) Where for any year of assessment a charge under *section 757* (in this section referred to as a “joint charge”) would have been made in charging the profits or gains of a partnership trade if the Income Tax Acts had provided that those profits or gains should be charged as specified in *section 1010(2)*, there shall be made on any partner in the partnership in charging the profits or gains of that partner's several trade a charge under *section 757* equal to that partner's appropriate share of the joint charge.

(2) A partner's appropriate share of a joint charge for the purposes of *subsection (1)* shall be determined in the same way as the partner's appropriate share of a joint charge within the meaning of *section 1010* is to be determined by virtue of *subsection (7)* of that section.

Modification of provisions as to appeals.

[ITA67 s73;
F(MP)A68 s3(2)
and Sch PtI]

1012.—(1) The inspector may give notice to the partnership concerned of any determination made by him or her under *section 1008(3)* or *1010(6)* by delivering a statement in writing of that determination to the precedent partner for the time being of the partnership, and the provisions of the Income Tax Acts relating to appeals against assessments to income tax shall, with any necessary modifications, apply in relation to any determination and any notice of a determination as if they were respectively such an assessment and notice of such an assessment.

(2) Where a determination has become final and conclusive or, in the case of a determination under *subsection (6)* of *section 1010* has

become final and conclusive subject to *paragraph (b)* of that subsection, no question as to its correctness shall be raised on the hearing or on the rehearing of an appeal by any partner either against an assessment in respect of the profits or gains of that partner's several trade or against a determination by the inspector on a claim under *section 381*. Pr.43 S.1012

(3) Where on any appeal mentioned in *subsection (2)* any question arises as to an apportionment to be made under *section 1008(2)* or *1010(7)* and it appears that the question is material as respects the liability to income tax (for whatever year of assessment) of 2 or more persons, all those persons shall be notified of the time and place of the hearing and shall be entitled to appear and be heard by the Appeal Commissioners or to make representations to them in writing.

1013.—(1) In this section—

Limited partnerships.

“the aggregate amount”, in relation to a trade, means—

[FA86 s46(1) to (3) and (6), FA92 s23; FA94 s29]

(a) in the case of an individual, the aggregate of amounts given or allowed to the individual at any time under any of the specified provisions—

(i) in respect of a loss sustained by him or her in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in any relevant year of assessment, or

(ii) as an allowance to be made to him or her for any relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

and

(b) in the case of a company, the aggregate of amounts given or allowed to the company (in this section referred to as “the partner company”) or to another company at any time under any of the specified provisions—

(i) in respect of a loss incurred by the partner company in the trade, or of charges paid by it or another company by reason of its participation in the trade, in any relevant accounting period, or

(ii) as an allowance to be made to the partner company for any relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

“limited partner”, in relation to a trade, means—

(a) a person carrying on the trade as a limited partner in a limited partnership registered under the Limited Partnerships Act, 1907,

(b) a person carrying on the trade as a general partner in a partnership who is not entitled to take part in the management of the trade but is entitled to have the person's

liabilities, or those liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person, or

- (c) a person who carries on the trade jointly with others and, under the law of any territory outside the State, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

“relevant accounting period” means an accounting period of the partner company which ends on or after the specified date and at any time during which it carried on the trade as a limited partner;

“the relevant time” means—

- (a) in the case of an individual, the end of the relevant year of assessment in which the loss is sustained or the interest is paid, or for which the allowance is to be made (except that where the individual ceased to carry on the trade during that year of assessment it is the time when he or she so ceased), and
- (b) in the case of a partner company, the end of the relevant accounting period in which the loss is incurred or the charges are paid, or for which the allowance is to be made (except that where the partner company ceases to carry on the trade during that accounting period it is the time when the partner company so ceased);

“relevant year of assessment” means a year of assessment which ends after the specified date and at any time during which the individual carried on the trade as a limited partner;

“the specified date” means the 22nd day of May, 1985;

“the specified provisions” means—

- (a) in the case of an individual, *sections 245 to 255, 305 and 381*, and
 - (b) in the case of a company, *sections 243, 308(4) and 396(2) and subsections (1), (2) and (6) of section 420.*
- (2) (a) Where, in the case of an individual who is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—
- (i) in respect of a loss sustained by the individual in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in a relevant year of assessment, or
 - (ii) as an allowance to be made to the individual for a relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

such an amount may be given or allowed—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against income consisting of profits or gains arising from the trade, or
- (II) as respects such a contribution made on or after the 24th day of April, 1992, only against income consisting of profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the amount of his or her contribution to the trade at the relevant time.

(b) Where, in the case of a partner company which is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—

- (i) in respect of a loss sustained by the partner company in the trade, or of charges paid by the partner company or another company by reason of its participation in the trade, in a relevant accounting period, or
- (ii) as an allowance to be made to the partner company for a relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade,

such an amount may be given or allowed to the partner company—

- (I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against profits or gains arising from the trade, or to another company, or
- (II) as respects such a contribution made on or after the 24th day of April, 1992, only against profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the partner company's contribution to the trade at the relevant time.

(3) (a) A person's contribution to a trade at any time shall be the aggregate of—

- (i) the amount which the person has contributed to the trade as capital and has not subsequently, either directly or indirectly, drawn out or received back from the partnership or from a person connected with the partnership (other than anything, in relation to expenditure which the person has incurred on behalf of the partnership trade or in providing facilities for the partnership trade, which the person is or may be entitled so to draw out or receive back at any time when the person carries on the trade as a

limited partner or which the person is or may be entitled to require another person to reimburse the person), and

- (ii) the amount of any profits or gains of the trade to which the person is entitled but which the person has not received in money or money's worth.
 - (b) A person shall for the purposes of *paragraph (a)* be treated as having received back an amount contributed by the person to the partnership if—
 - (i) the person received consideration of that amount or value for the sale of the person's interest, or any part of the person's interest, in the partnership,
 - (ii) the partnership or any person connected with the partnership repays that amount of a loan or an advance from the person, or
 - (iii) the person receives that amount or value for assigning any debt due to the person from the partnership or from any person connected with the partnership.
 - (4) (a) This subsection shall apply, in relation to an amount given or allowed under any of the specified provisions, as respects a contribution by a partner to the trade of the partnership made on or after the 11th day of April, 1994.
 - (b) For the purposes of this section, where in connection with the making of a contribution to a partnership trade by a general partner in the partnership—
 - (i) there exists any agreement, arrangement, scheme or understanding under which the partner is required to cease to be a partner in the partnership at any time before the partner is entitled to receive back from the partnership the full amount of the partner's contribution to the trade, or
 - (ii) by virtue of any agreement, arrangement, scheme or understanding—
 - (I) any asset owned by the partner is exempt from execution on goods or from a process or mode of enforcement of a debt of the partner or the partnership, or
 - (II) any other limit or restriction is placed on the creditor's entitlement to recover any such debt from the partner,
- the partner shall be treated as a person who is not entitled to take part in the management of the trade but is entitled to have the person's liabilities, or the person's liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person.
- (c) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 11th day of April, 1994, any amount which would not otherwise have been given

or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that *paragraph (a)* had not been enacted shall be treated as given or allowed as respects such a contribution. Pr.43 S.1013

(5) (a) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 24th day of April, 1992, any amount which would not otherwise have been given or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that *paragraphs (a)(II) and (b)(II) of subsection (2)* had not been enacted shall be treated as given or allowed as respects such a contribution.

(b) Notwithstanding *paragraph (a) and paragraphs (a)(II) and (b)(II) of subsection (2)*, this section shall apply in so far as the trade of a limited partnership consists of the management and letting of holiday cottages within the meaning of *section 268*, where—

(i) a written contract for the construction of the holiday cottages was signed and construction work had commenced before the 24th day of April, 1992, and

(ii) the construction work is completed before the 6th day of April, 1993,

as if references to on or after the 24th day of April, 1992, were references to on or after the 1st day of September, 1992.

1014.—(1) In this section, “grouping” means a European Economic Interest Grouping formed on the terms, in the manner and with the effects laid down in—

Tax treatment of profits, losses and capital gains arising from activities of a European Economic Interest Grouping (EEIG).

(a) Council Regulation (EEC) No 2137/85 of 25 July 1985¹ on the European Economic Interest Grouping (EEIG), and

(b) the European Communities (European Economic Interest Groupings) Regulations, 1989 (S.I. No. 191 of 1989),

[FA90 s29(1), (2), (5) and (6)]

and references to members of a grouping shall be construed accordingly.

(2) Notwithstanding anything in the Tax Acts or in the Capital Gains Tax Acts, a grouping shall be neither—

(a) charged to income tax, corporation tax or capital gains tax, as the case may be, in respect of profits or gains or chargeable gains arising to it, nor

(b) entitled to relief for a loss sustained by it,

and any assessment required to be made on such profits or gains or chargeable gains, and any relief for a loss, shall as appropriate be made on and allowed to the members of a grouping in accordance with this section.

(3) This Part (other than *sections 1009, 1010(8) and 1013*) and *sections 30 and 913(7)* shall apply with any necessary modifications to the activities of a grouping in the same manner as they apply to a trade or profession carried on by 2 or more persons in partnership.

¹O.J. L 119, 31.07.1985 p.1.

(4) In particular but without prejudice to the generality of *subsection (3)*, the provisions mentioned in that subsection shall in their application for the purposes of this section apply as if—

- (a) references to a partnership agreement were references to the contract forming or providing for the formation of a grouping,
- (b) references to a partner were references to a member of a grouping, and
- (c) anything done or required to be done by the precedent acting partner was done or required to be done by the grouping.

PART 44

MARRIED, SEPARATED AND DIVORCED PERSONS

CHAPTER 1

Income tax

Interpretation
(Chapter 1).

[ITA67 s192; FA80
s18]

1015.—(1) In this Chapter, “the inspector”, in relation to a notice, means any inspector who might reasonably be considered by the person giving notice to be likely to be concerned with the subject matter of the notice or who declares himself or herself ready to accept the notice.

(2) A wife shall be treated for income tax purposes as living with her husband unless either—

- (a) they are separated under an order of a court of competent jurisdiction or by deed of separation, or
 - (b) they are in fact separated in such circumstances that the separation is likely to be permanent.
- (3) (a) In this Chapter, references to the income of a wife include references to any sum which apart from this Chapter would be included in computing her total income, and this Chapter shall apply in relation to any such sum notwithstanding that some enactment (including, except in so far as the contrary is expressly provided, an enactment passed after the passing of this Act) requires that that sum should not be treated as income of any person other than her.
- (b) In the Income Tax Acts, a reference to a person who has duly elected to be assessed to tax in accordance with a particular section includes a reference to a person who is deemed to have elected to be assessed to tax in accordance with that section, and any reference to a person who is assessed to tax in accordance with *section 1017* for a year of assessment includes a reference to a case where the person and his or her spouse are assessed to tax for that year in accordance with *section 1023*.

(4) Any notice required to be served under any section in this Chapter may be served by post.

1016.—(1) Subject to *subsection (2)*, in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.

Pr.44
Assessment as
single persons.

[ITA67 s193; FA80
s18]

(2) Where an election under *section 1018* has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment.

1017.—(1) Where in the case of a husband and wife an election under *section 1018* to be assessed to tax in accordance with this section has effect for a year of assessment—

Assessment of
husband in respect
of income of both
spouses.

(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,

[ITA67 s194; FA80
s18]

(b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and

(c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.

1018.—(1) A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with *section 1017* and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

Election for
assessment under
section 1017.

[ITA67 s195; FA80
s18]

(2) Where an election is made under *subsection (1)* in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.

(3) Notwithstanding *subsections (1)* and *(2)*, either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.44 S.1018

(4) (a) A husband and his wife, where the wife is living with the husband and where an election under *subsection (1)* has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with *section 1017* for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with *section 1016*.

(b) Where a husband or his wife has duly given notice under *paragraph (a)*, that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.

Assessment of wife
in respect of income
of both spouses.

[ITA67 s195B;
FA93 s10(1)]

1019.—(1) In this section—

“the basis year”, in relation to a husband and wife, means the year of marriage or, if earlier, the latest year of assessment preceding that year of marriage for which details of the total incomes of both the husband and the wife are available to the inspector at the time they first elect, or are first deemed to have duly elected, to be assessed to tax in accordance with *section 1017*;

“year of marriage”, in relation to a husband and wife, means the year of assessment in which their marriage took place.

(2) *Subsection (3)* shall apply for a year of assessment where, in the case of a husband and wife who are living together—

(a) (i) an election (including an election deemed to have been duly made) by the husband and wife to be assessed to income tax in accordance with *section 1017* has effect in relation to the year of assessment, and

(ii) the husband and the wife by notice in writing jointly given to the inspector before the 6th day of July in the year of assessment elect that the wife should be assessed to income tax in accordance with *section 1017*,

or

(b) (i) the year of marriage is the year 1993-94 or a subsequent year of assessment,

(ii) not having made an election under *section 1018(1)* to be assessed to income tax in accordance with *section 1017*, the husband and wife have been deemed for that year of assessment, in accordance with *section 1018(4)*, to have duly made such an election, but have not made an election in accordance with *paragraph (a)(ii)* for that year, and

(iii) the inspector, to the best of his or her knowledge and belief, considers that the total income of the wife for the basis year exceeded the total income of her husband for that basis year.

(3) Where this subsection applies for a year of assessment, the wife shall be assessed to income tax in accordance with *section 1017* for that year, and accordingly references in *section 1017* or in any other provision of the Income Tax Acts, however expressed—

Pr.44 S.1019

- (a) to a husband being assessed, assessed and charged or chargeable to income tax for a year of assessment in respect of his own total income (if any) and his wife's total income (if any), and
- (b) to income of a wife being deemed for income tax purposes to be that of her husband,

shall, subject to this section and the modifications set out in *subsection (6)* and any other necessary modifications, be construed respectively for that year of assessment as references—

- (i) to a wife being assessed, assessed and charged or chargeable to income tax in respect of her own total income (if any) and her husband's total income (if any), and
- (ii) to the income of a husband being deemed for income tax purposes to be that of his wife.

(4) (a) Where in accordance with *subsection (3)* a wife is by virtue of *subsection (2)(b)* to be assessed and charged to income tax in respect of her total income (if any) and her husband's total income (if any) for a year of assessment—

- (i) in the absence of a notice given in accordance with *subsection (1)* or *(4)(a)* of *section 1018* or an application made under *section 1023*, the wife shall be so assessed and charged for each subsequent year of assessment, and
- (ii) any such charge shall apply and continue to apply notwithstanding that her husband's total income for the basis year may have exceeded her total income for that year.

(b) Where a notice under *section 1018(4)(a)* or an application under *section 1023* is withdrawn and, but for the giving of such a notice or the making of such an application in the first instance, a wife would have been assessed to income tax in respect of her own total income (if any) and the total income (if any) of her husband for the year of assessment in which the notice was given or the application was made, as may be appropriate, then, in the absence of an election made in accordance with *section 1018(1)* (not being such an election deemed to have been duly made in accordance with *section 1018(4)*), the wife shall be so assessed to income tax for the year of assessment in which that notice or application is withdrawn and for each subsequent year of assessment.

(5) Where an election is made in accordance with *subsection (2)(a)(ii)* for a year of assessment, the election shall have effect for that year and each subsequent year of assessment unless it is withdrawn by further notice in writing given jointly by the husband and the wife to the inspector before the 6th day of July in a year of assessment and the election shall not then have effect for the year for which the further notice is given or for any subsequent year of assessment.

Pt.44 S.1019

(6) For the purposes of the other provisions of this section and as the circumstances may require—

- (a) a reference in the Income Tax Acts, however expressed, to an individual or a claimant, being a man, a married man or a husband shall be construed respectively as a reference to a woman, a married woman or a wife, and a reference in those Acts, however expressed, to a woman, a married woman or a wife shall be construed respectively as a reference to a man, a married man or a husband, and
- (b) any provision of the Income Tax Acts shall, in so far as it may relate to the treatment of any husband and wife for the purposes of those Acts, be construed so as to give effect to this section.

Special provisions relating to year of marriage.

[ITA67 s195A(1) to (6); FA83 s6; FA96 s132(1) and Sch5 PtI par1(8)]

1020.—(1) In this section—

“income tax month” means a month beginning on the 6th day of any of the months of April to March in any year of assessment;

“year of marriage”, in relation to a husband and wife, means the year of assessment in which their marriage took place.

(2) *Section 1018* shall not apply in relation to a husband and his wife for the year of marriage.

(3) Where, on making a claim in that behalf, a husband and his wife prove that the amount equal to the aggregate of the income tax paid and payable by the husband on his total income for the year of marriage and the income tax paid and payable by his wife on her total income for the year of marriage is in excess of the income tax which would have been payable by the husband on his total income and the total income of his wife for the year of marriage if—

- (a) he had been charged to income tax for the year of marriage in accordance with *section 1017*, and
- (b) he and his wife had been married to each other throughout the year of marriage,

they shall be entitled, subject to *subsection (4)*, to repayment of income tax of an amount determined by the formula—

$$A \times \frac{B}{12}$$

where—

A is the amount of the aforementioned excess, and

B is the number of income tax months in the period between the date on which the marriage took place and the end of the year of marriage, part of an income tax month being treated for this purpose as an income tax month in a case where the period consists of part of an income tax month or of one or more income tax months and part of an income tax month.

(4) Any repayment of income tax under *subsection (3)* shall be allocated to the husband and to the wife concerned in proportion to the amounts of income tax paid and payable by them, having regard

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

to *subsection (2)*, on their respective total incomes for the year of marriage. Pr.44 S.1020

(5) Any claim for a repayment of income tax under *subsection (3)* shall be made in writing to the inspector after the end of the year of marriage and shall be made by the husband and wife concerned jointly.

(6) (a) *Subsections (1) and (2) of section 459 and section 460* shall apply to a repayment of income tax under this section 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 a repayment of tax under this section.

1021.—(1) This section shall apply for a year of assessment in the case of a husband and wife one of whom is assessed to income tax for the year of assessment in accordance with *section 1017* and to whom *section 1023* does not apply for that year.

Repayment of tax in case of certain husbands and wives.

[ITA67 s195C;
FA93 s10(1)]

(2) Where for a year of assessment this section applies in the case of a husband and wife, any repayment of income tax to be made in respect of the aggregate of the net tax deducted or paid under any provision of the Tax Acts (including a tax credit in respect of a distribution from a company resident in the State) in respect of the total income (if any) of the husband and of the total income (if any) of the wife shall be allocated to the husband and the wife concerned in proportion to the net amounts of tax so deducted or paid in respect of their respective total incomes; but this subsection shall not apply where a repayment, which but for this subsection would not be made to a spouse, is less than £20.

(3) Notwithstanding *subsection (2)*, where the inspector, having regard to all the circumstances of a case, is satisfied that a repayment or a greater part of a repayment of income tax arises by reason of some allowance or relief which, if *sections 1023 and 1024* had applied for the year of assessment, would have been allowed to one spouse only, the inspector may make the repayment to the husband and the wife in such proportions as the inspector considers just and reasonable.

1022.—(1) Where—

Special provisions relating to tax on wife's income.

(a) an assessment to income tax (in this section referred to as "the original assessment") has been made for any year of assessment on a man, or on a man's trustee, guardian or committee, or on a man's executors or administrators,

[ITA67 s196; FA80 s18]

(b) the Revenue Commissioners are of the opinion that, if an application for separate assessment under *section 1023* had been in force with respect to that year of assessment, an assessment in respect of or of part of the same income would have been made on, or on the trustee, guardian or committee of, or on the executors or administrators of, a woman who is the man's wife or was his wife in that year of assessment, and

- (c) the whole or part of the amount payable under the original assessment has remained unpaid at the expiration of 28 days from the time when it became due,

the Revenue Commissioners may give to that woman, or, if she is dead, to her executors or administrators, or, if an assessment referred to in *paragraph (b)* could in the circumstances referred to in that paragraph have been made on her trustee, guardian or committee, to her or to her trustee, guardian or committee, a notice stating—

- (i) particulars of the original assessment and of the amount remaining unpaid under that assessment, and
- (ii) to the best of their judgment, particulars of the assessment which would have been so made,

and requiring the person to whom the notice is given to pay the amount which would have been payable under the last-mentioned assessment if it conformed with those particulars, or the amount remaining unpaid under the original assessment, whichever is the less.

(2) The same consequences as respects—

- (a) the imposition of a liability to pay, and the recovery of, the tax with or without interest,
- (b) priority for the tax in bankruptcy or in the administration of the estate of a deceased person,
- (c) appeals to the Appeal Commissioners, the rehearing of such appeals and the stating of cases for the opinion of the High Court, and
- (d) the ultimate incidence of the liability imposed,

shall follow on the giving of a notice under *subsection (1)* to a woman, or to her trustee, guardian or committee, or to her executors or administrators, as would have followed on the making on her, or on her trustee, guardian or committee, or on her executors or administrators, as the case may be, of an assessment referred to in *subsection (1)(b)*, being an assessment which—

- (i) was made on the day of the giving of the notice,
- (ii) charged the same amount of tax as is required to be paid by the notice,
- (iii) fell to be made and was made by the authority who made the original assessment, and
- (iv) was made by that authority to the best of that authority's judgment,

and the provisions of the Income Tax Acts relating to the matters specified in *paragraphs (a) to (d)* shall, with the necessary modifications, apply accordingly.

(3) Where a notice is given under *subsection (1)*, tax up to the amount required to be paid by the notice shall cease to be recoverable under the original assessment and, where the tax charged by the original assessment carried interest under *section 1080*, such adjustment shall be made of the amount payable under that section in

relation to that assessment and such repayment shall be made of any amounts previously paid under that section in relation to that assessment as are necessary to secure that the total sum, if any, paid or payable under that section in relation to that assessment is the same as it would have been if the amount which ceases to be recoverable had never been charged. Pr.44 S.1022

(4) Where the amount payable under a notice under *subsection (1)* is reduced as the result of an appeal or of a case stated for the opinion of the High Court—

- (a) the Revenue Commissioners shall, if having regard to that result they are satisfied that the original assessment was excessive, cause such relief to be given by means of repayment or otherwise as appears to them to be just; but
- (b) subject to any relief so given, a sum equal to the reduction in the amount payable under the notice shall again become recoverable under the original assessment.

(5) The Revenue Commissioners and the inspector or other proper officer shall have the like powers of obtaining information with a view to the giving of, and otherwise in connection with, a notice under *subsection (1)* as they would have had with a view to the making of, and otherwise in connection with, an assessment referred to in *subsection (1)(b)* if the necessary conditions had been fulfilled for the making of such an assessment.

(6) Where a woman dies who at any time before her death was a wife living with her husband, he or, if he is dead, his executors or administrators may, not later than 2 months from the date of the grant of probate or letters of administration in respect of her estate or, with the consent of her executors or administrators, at any later date, give to her executors or administrators and to the inspector a notice in writing declaring that, to the extent permitted by this section, he disclaims or they disclaim responsibility for unpaid income tax in respect of all income of hers for any year of assessment or part of a year of assessment, being a year of assessment or part of a year of assessment for which any income of hers was deemed to be his income and in respect of which he was assessed to tax under *section 1017*.

(7) A notice given to the inspector pursuant to *subsection (6)* shall be deemed not to be a valid notice unless it specifies the names and addresses of the woman's executors or administrators.

(8) Where a notice under *subsection (6)* has been given to a woman's executors or administrators and to the inspector—

- (a) it shall be the duty of the Revenue Commissioners and the Appeal Commissioners to exercise such powers as they may then or thereafter be entitled to exercise under *subsections (1) to (5)* in connection with any assessment made on or before the date when the giving of that notice is completed, being an assessment in respect of any of the income to which that notice relates, and
- (b) the assessments (if any) to tax which may be made after that date shall, in all respects and in particular as respects the persons assessable and the tax payable, be the assessments which would have been made if—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.44 S.1022

- (i) an application for separate assessment under *section 1023* had been in force in respect of the year of assessment in question, and
- (ii) all assessments previously made had been made accordingly.

Application for separate assessments.

[ITA67 s197; FA80 s18; FA97 s146(1) and Sch9 Pt1 par1(12)]

1023.—(1) In this section and in *section 1024*, “personal reliefs” means relief under any of the provisions specified in the Table to *section 458*, apart from relief under *sections 462* and *463*.

(2) Where an election by a husband and wife to be assessed to income tax in accordance with *section 1017* has effect in relation to a year of assessment and, in relation to that year of assessment, an application is made for the purpose under this section in such manner and form as may be prescribed by the Revenue Commissioners, either by the husband or by the wife, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married and the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of tax shall, except where otherwise provided by those Acts, apply as if they were not married except that—

- (a) the total deductions from total income allowed to the husband and wife by means of personal reliefs shall be the same as if the application had not had effect with respect to that year,
- (b) the total tax payable by the husband and wife for that year shall be the same as the total tax which would have been payable by them if the application had not had effect with respect to that year, and
- (c) *section 1024* shall apply.

(3) An application under this section in respect of a year of assessment may be made—

- (a) in the case of persons marrying during the course of that year, before the 6th day of July in the following year, and
- (b) in any other case, within 6 months before the 6th day of July in that year.

(4) Where an application is made under *subsection (2)*, that subsection shall apply not only for the year of assessment for which the application was made, but also for each subsequent year of assessment; but, in relation to a subsequent year of assessment, the person who made the application may, by notice in writing given to the inspector before the 6th day of July in that year, withdraw that election and, on the giving of that notice, *subsection (2)* shall not apply for the year of assessment in relation to which the notice was given or any subsequent year of assessment.

(5) A return of the total incomes of the husband and of the wife may be made for the purposes of this section either by the husband or by the wife but, if the Revenue Commissioners are not satisfied with any such return, they may require a return to be made by the wife or by the husband, as the case may be.

(6) The Revenue Commissioners may by notice require returns for the purposes of this section to be made at any time.

1024.—(1) This section shall apply where pursuant to an application under *section 1023* a husband and wife are assessed to tax for a year of assessment in accordance with that section.

Pr.44
Method of
apportioning reliefs
and charging tax in
cases of separate
assessments.

(2) (a) Subject to *subsection (3)*, the benefit flowing from the personal reliefs for a year of assessment may be given either by means of reduction of the amount of the tax to be paid or by repayment of any excess of tax which has been paid, or by both of those means, as the case requires, and shall be allocated to the husband and the wife, in so far as it flows from—

[ITA67 s198; FA80
s18; FA81 s5; FA92
s2(2)(a); FA97 s8(9)
and s146(1) and
Sch9 PtI par1(13)]

- (i) relief under *sections 244, 328, 337, 349, 364 and 371*, in the proportions in which they incurred the expenditure giving rise to the relief;
- (ii) relief under *sections 461, 464, 465* (other than *subsection (3)*) and *468*, in the proportions of one-half and one-half;
- (iii) relief in respect of a child under *section 465(3)* and relief in respect of a dependent relative under *section 466*, to the husband or to the wife according as he or she maintains the child or dependent relative;
- (iv) relief under *section 467*, in the proportions in which they bear the cost of employing the person in respect of whom the relief is given;
- (v) relief under *section 469*, in the proportions in which they bore the expenditure giving rise to the relief;
- (vi) relief under *sections 470 and 473*, to the husband or to the wife according as he or she made the payment giving rise to the relief;
- (vii) relief under *section 471*, in the proportions in which they incurred the expenditure giving rise to the relief;
- (viii) relief under *section 472*, to the husband or to the wife according as the emoluments from which the deduction under that section is made are emoluments of the husband or of the wife;
- (ix) relief under *sections 474, 475, 476, 477, 478 and 479*, in the proportions in which they incurred the expenditure giving rise to the relief;
- (x) relief under *section 481*, in the proportions in which they made the relevant investment giving rise to the relief;
- (xi) relief under *Part 16*, in the proportions in which they subscribed for the eligible shares giving rise to the relief;
- (xii) relief under *paragraphs 12 and 20 of Schedule 32*, in the proportions in which they incurred the expenditure giving rise to the relief.

(b) Any reduction of income tax to be made under *section 187(4)(b)* or *188(5)* for a year of assessment shall be allocated to the husband and to the wife in proportion to the amounts of income tax which but for *section 187(4)(b)* or *188(5)* would have been payable by the husband and by the wife for that year.

(c) Subject to *subsection (4)*, *section 15* shall apply for the year of assessment in relation to each of the spouses concerned as if the part of the taxable income specified in *Part 2* of the Table to that section which is to be charged to tax at the standard rate were one-half of the part so specified.

(3) Where the amount of relief allocated to the husband under *subsection (2)(a)* exceeds the income tax chargeable on his income for the year of assessment, the balance shall be applied to reduce the income tax chargeable on the income of the wife for that year, and where the amount of relief allocated to the wife under that paragraph exceeds the income tax chargeable on her income for the year of assessment, the balance shall be applied to reduce the income tax chargeable on the income of the husband for that year.

(4) Where the part of the taxable income of a spouse chargeable to tax in accordance with *subsection (2)(c)* at the standard rate is less than that of the other spouse and is less than the part of taxable income specified in *column (1)* of *Part 2* of the Table to *section 15* (in this subsection referred to as “the appropriate part”) in respect of which the first-mentioned spouse is so chargeable to tax at that rate, the part of taxable income of the other spouse which by virtue of that subsection is to be charged to tax at that rate shall be increased by the amount by which the taxable income of the first-mentioned spouse chargeable to tax at that rate is less than the appropriate part.

Maintenance in case of separated spouses.

[FA83 s3; FA96 s132(1) and Sch5 PtI par13(1)]

1025.—(1) In this section—

“maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

- (a) the dissolution or annulment of a marriage, or
- (b) such separation of the parties to a marriage as is referred to in *section 1015(2)*,

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to a deduction under *section 465*.

- (2) (a) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the benefit of his or her child, or for the benefit of the other party to the marriage, being payments— Pr.44 S.1025

- (i) which are made at a time when the wife is not living with the husband,
- (ii) the making of which is legally enforceable, and
- (iii) which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur—

- (I) the maintenance arrangement is replaced by another maintenance arrangement or is varied, and
- (II) both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(b) For the purposes of this section and of *section 1026* but subject to *paragraph (c)*, a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to *section 1026*, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

- (a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(d) for the purposes of *section 465(7)*, the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that other party on the maintenance of the child.

(5) (a) *Subsections (1) and (2) of section 459 and section 460* shall apply to a deduction under *subsection (3)(c)* 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 a deduction under *subsection (3)(c)*.

Separated and divorced persons: adaptation of provisions relating to married persons.

[FA83 s4; FA97 s5(a)]

1026.—(1) Where a payment to which *section 1025* applies is made in a year of assessment by a party to a marriage (being a marriage which has not been dissolved or annulled) and both parties to the marriage are resident in the State for that year, *section 1018* shall apply in relation to the parties to the marriage for that year of assessment as if—

(a) in *subsection (1)* of that section “, where the wife is living with the husband,” were deleted, and

(b) *subsection (4)* of that section were deleted.

(2) Where by virtue of *subsection (1)* the parties to a marriage elect as provided for in *section 1018(1)*, then, as respects any year of assessment for which the election has effect—

- (a) subject to *subsection (1)* and *paragraphs (b)* and *(c)*, the Income Tax Acts shall apply in the case of the parties to the marriage as they apply in the case of a husband and wife who have elected under *section 1018(1)* and whose election has effect for that year of assessment,
- (b) the total income or incomes of the parties to the marriage shall be computed for the purposes of the Income Tax Acts as if any payments to which *section 1025* applies made in that year of assessment by one party to the marriage for the benefit of the other party to the marriage had not been made, and
- (c) income tax shall be assessed, charged and recovered on the total income or incomes of the parties to the marriage as if an application under *section 1023* had been made by one of the parties and that application had effect for that year of assessment.

(3) Notwithstanding *subsection (1)*, where a payment to which *section 1025* applies is made in a year of assessment by a spouse who is a party to a marriage, that has been dissolved, for the benefit of the other spouse, and—

- (a) the dissolution was under either—
 - (i) section 5 of the Family Law (Divorce) Act, 1996, or
 - (ii) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State,
- (b) both spouses are resident in the State for tax purposes for that year of assessment, and
- (c) neither spouse has entered into another marriage,

then, *subsections (1)* and *(2)* shall, with any necessary modifications, apply in relation to the spouses for that year of assessment as if their marriage had not been dissolved.

1027.—Payment of money pursuant to—

- (a) an order under Part II of the Judicial Separation and Family Law Reform Act, 1989,
- (b) an order under the Family Law Act, 1995 (other than section 12 of that Act), and
- (c) an order under the Family Law (Divorce) Act, 1996 (other than section 17 of that Act),

shall be made without deduction of income tax.

Payments pursuant to certain orders under Judicial Separation and Family Law Reform Act, 1989, Family Law Act, 1995, and Family Law (Divorce) Act, 1996, to be made without deduction of income tax.
[Judicial Separation and Family Law Reform Act, 1989, s26; Family Law (Divorce) Act, 1996, s31; Family Law Act, 1995, s37]

Married persons.

[CGTA75 s13; FA80 s61(b); FA92 s59]

1028.—(1) Subject to this section, the amount of capital gains tax on chargeable gains accruing to a married woman in a year of assessment or part of a year of assessment during which she is a married woman living with her husband shall be assessed and charged on the husband and not otherwise; but this subsection shall not affect the amount of capital gains tax chargeable on the husband apart from this subsection or result in the additional amount of capital gains tax charged on the husband by virtue of this subsection being different from the amount which would otherwise have remained chargeable on the married woman.

(2) (a) Subject to *paragraph (b), subsection (1)* shall not apply in relation to a husband and wife in any year of assessment where, before the 6th day of July in the year following that year of assessment, an application is made by either the husband or wife that *subsection (1)* shall not apply, and such an application duly made shall have effect not only as respects the year of assessment for which it is made but also for any subsequent year of assessment.

(b) Where the applicant gives, for any subsequent year of assessment, a notice withdrawing an application under *paragraph (a)*, that application shall not have effect with respect to the year for which the notice is given or any subsequent year; but such notice of withdrawal shall not be valid unless it is given before the 6th day of July in the year following the year of assessment for which the notice is given.

(3) In the case of a woman who during a year of assessment or part of a year of assessment is a married woman living with her husband, any allowable loss which under *section 31* would be deductible from the chargeable gains accruing in that year of assessment to the one spouse but for an insufficiency of chargeable gains shall for the purposes of that section be deductible from chargeable gains accruing in that year of assessment to the other spouse; but this subsection shall not apply in relation to losses accruing in a year of assessment to either spouse where an application that this subsection shall not apply is made by the husband or the wife before the 6th day of July in the year following that year of assessment.

(4) Where apart from *subsection (1)* the amount on which an individual is chargeable to capital gains tax under *section 31* for a year of assessment (in this subsection referred to as “the first-mentioned amount”) is less than £1,000 and the spouse of the individual (being, at any time during that year of assessment, a married woman living with her husband, or that husband) is apart from *subsection (1)* chargeable to capital gains tax on any amount for that year, *section 601(1)* shall apply in relation to the spouse as if the sum of £1,000 mentioned in that section were increased by an amount equal to the difference between the first-mentioned amount and £1,000.

(5) Where in any year of assessment in which or in part of which the married woman is a married woman living with her husband, the husband disposes of an asset to the wife, or the wife disposes of an asset to the husband, both shall be treated as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal; but this subsection

shall not apply if until the disposal the asset formed part of trading stock of a trade carried on by the spouse making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset. Pr.44 S.1028

(6) *Subsection (5)* shall apply notwithstanding *section 596* or any other provision of the Capital Gains Tax Acts fixing the amount of the consideration deemed to be given on a disposal or acquisition.

(7) Where *subsection (5)* is applied in relation to a disposal of an asset by a husband to his wife, or by his wife to him, then, in relation to a subsequent disposal of the asset (not within that subsection), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

(8) An application or notice of withdrawal under this section shall be in such form and made in such manner as may be prescribed.

1029.—*Section 1022* shall apply with any necessary modifications in relation to capital gains tax as it applies in relation to income tax.

Application of *section 1022* for purposes of capital gains tax.
[CGTA75 s51(1) and Sch4 par10(2)]

1030.—(1) In this section, “spouse” shall be construed in accordance with section 2(2)(c) of the Family Law Act, 1995.

Separated spouses: transfers of assets.

(2) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of—

[FA97 s72(1) to (3)]

- (a) an order made under Part II of the Family Law Act, 1995, on or following the granting of a decree of judicial separation within the meaning of that Act,
- (b) an order made under Part II of the Judicial Separation and Family Law Reform Act, 1989, on or following the granting of a decree of judicial separation where such order is treated, by virtue of section 3 of the Family Law Act, 1995, as if made under the corresponding provision of the Family Law Act, 1995,
- (c) a deed of separation, or
- (d) a relief order (within the meaning of the Family Law Act, 1995) made following the dissolution of a marriage,

either of the spouses concerned disposes of an asset to the other spouse, then, subject to *subsection (3)*, both spouses shall be treated for the purposes of the Capital Gains Tax Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

(3) *Subsection (2)* shall not apply if until the disposal the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(4) Where *subsection (2)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (2)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt. 44
Divorced persons:
transfers of assets.

[Family Law
(Divorce) Act, 1996,
s35; FA97 s71(1) to
(3)]

1031.—(1) In this section, “spouse” shall be construed in accordance with section 2(2)(c) of the Family Law (Divorce) Act, 1996.

(2) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of an order made under Part III of the Family Law (Divorce) Act, 1996, on or following the granting of a decree of divorce, either of the spouses concerned disposes of an asset to the other spouse, then, subject to *subsection (3)*, both spouses shall be treated for the purpose of the Capital Gains Tax Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

(3) *Subsection (2)* shall not apply if until the disposal the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(4) Where *subsection (2)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (2)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse’s acquisition or provision of the asset had been his or her acquisition or provision of the asset.

PART 45

CHARGING AND ASSESSING OF NON-RESIDENTS

CHAPTER 1

Income tax and corporation tax

Restrictions on
certain reliefs.

[ITA67 s153; FA74
s6(2) and Sch 1 Pt I
par1(vii)(d); FA94
s155; FA96 s132(1)
and Sch5 Pt I
par1(7)]

1032.—(1) Except where otherwise provided by this section, an individual not resident in the State shall not be entitled to any of the allowances, deductions, reliefs or reductions under the provisions specified in the Table to *section 458*.

(2) Where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that he or she—

- (a) is a citizen of Ireland,
- (b) is resident outside the State for the sake or on account of his or her health or the health of a member of his or her family resident with him or her or because of some physical infirmity or disease in himself or herself or any such member of his or her family, and that previous to such residence outside the State he or she was resident in the State,
- (c) is a citizen, subject or national of another Member State of the European Communities or of a country of which the citizens, subjects or nationals are for the time being exempted by an order under section 10 of the Aliens Act, 1935, from any provision of, or of an aliens order under, that Act, or
- (d) is a person to whom one of the paragraphs (a) to (e) of the proviso to section 24 of the Finance Act, 1920, applied in respect of the year ending on the 5th day of April, 1935, or any previous year of assessment,

then, *subsection (1)* shall not apply to that individual, but the amount of any allowance, deduction or other benefit mentioned in that subsection shall, in the case of that individual, be reduced to an amount which bears the same proportion to the total amount of that allowance, deduction or other benefit as the portion of his or her income subject to Irish income tax bears to his or her total income from all sources (including income not subject to Irish income tax).

Pr.45 S.1032

(3) Notwithstanding *subsection (2)*, where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that the individual is a resident of another Member State of the European Communities and that the proportion which the portion of the individual's income subject to Irish income tax bears to the individual's total income from all sources (including income not subject to Irish income tax) is 75 per cent or greater, *subsection (1)* or, as the case may be, *subsection (2)* shall not apply to that individual and he or she shall be entitled to the allowance, deduction or other benefit mentioned in *subsection (1)*.

1033.—An individual who, having made a claim in that behalf, is by virtue of *subsection (2)* or *(3)* of *section 1032* entitled to relief in respect of any year of assessment under any of the provisions specified in the Table to *section 458* shall be entitled to a tax credit in respect of any distribution received by him or her in that year to the same extent as if he or she were resident in the State, and *section 153(1)* shall not apply in relation to such an individual.

Entitlement to tax credit in respect of distributions.

[CTA76 s160; FA97 s146(1) and Sch9 PtI par10(8)]

1034.—A person not resident in the State, whether a citizen of Ireland or not, shall be assessable and chargeable to income tax in the name of any trustee, guardian, or committee of such person, or of any factor, agent, receiver, branch or manager, whether such factor, agent, receiver, branch or manager has the receipt of the profits or gains or not, in the like manner and to the like amount as such non-resident person would be assessed and charged if such person were resident in the State and in the actual receipt of such profits or gains; but, in the case of a partnership, the precedent partner (within the meaning of *section 1007*) or, if there is no precedent partner, the factor, agent, receiver, branch or manager shall be deemed to be the agent of a non-resident partner.

Assessment.
[ITA67 s200]

1035.—A non-resident person shall be assessable and chargeable to income tax in respect of any profits or gains arising, whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager.

Profits from agencies, etc.
[ITA67 s201]

1036.—Where a non-resident person, not being a citizen of Ireland or an Irish firm or company, or a branch of a non-resident person, carries on business with a resident person, and it appears to the inspector that, owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged that the business done by the resident person in pursuance of that person's connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, then, the non-resident person shall be assessable and chargeable to

Control over residents.
[ITA67 s202]

Pt.45 S.1036

income tax in the name of the resident person as if the resident person were an agent of the non-resident person.

Charge on percentage of turnover.

[ITA67 s203; F(MP)A68 s3(2) and Sch PtI]

1037.—(1) Where it appears to the inspector or on appeal to the Appeal Commissioners that the true amount of the profits or gains of any non-resident person chargeable with income tax in the name of a resident person cannot in any case be readily ascertained, the non-resident person may, if it is thought fit by the inspector or the Appeal Commissioners, be assessed and charged on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name the non-resident person is so chargeable, and in such a case the provisions of the Income Tax Acts relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the resident person of the business so done by the non-resident person through or with the resident person in the same manner as statements of profits or gains to be charged are to be delivered by persons acting for incapacitated or non-resident persons.

(2) The amount of the percentage under *subsection (1)* shall in each case be determined, having regard to the nature of the business, by the inspector by whom the assessment on the percentage basis is made, subject to appeal to the Appeal Commissioners.

(3) Where either the resident person or the non-resident person is dissatisfied with the percentage determined either in the first instance or by the Appeal Commissioners on appeal, that person may within 4 months of that determination require the inspector or the Appeal Commissioners, as the case may be, to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Minister for Finance, and the decision of the referee or board of referees shall be final and conclusive.

Merchandising profit.

[ITA67 s204; F(MP)A 68 s3(2) and Sch PtI]

1038.—Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced outside the State by the non-resident person, the person in whose name the non-resident person is so chargeable may, if that person thinks fit, apply to—

(a) the inspector, or

(b) in case of an appeal, to the Appeal Commissioners,

to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the profits which might reasonably be expected to have been earned by—

(i) a merchant, or

(ii) where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold,

who had bought from the manufacturer or producer direct and, on proof to the satisfaction of the inspector or, as the case may be, the Appeal Commissioners of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

1039.—(1) Nothing in this Chapter shall render a non-resident person chargeable in the name of—

Pt.45
Restrictions on
chargeability.

(a) a broker or general commission agent, or

[ITA67 s205]

(b) an agent, not being—

(i) an authorised person carrying on the regular agency of the non-resident person, or

(ii) a person chargeable as if that person were an agent in pursuance of this Chapter,

in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(2) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make that person chargeable in pursuance of this Chapter in the name of a resident person shall not of itself make that person chargeable in respect of profits arising from those sales or transactions.

1040.—Without prejudice to the general application of income tax procedure to corporation tax, the provisions of this Chapter relating to the assessment and charge of income tax on persons not resident in the State, in so far as they are applicable to tax chargeable on a company, shall apply with any necessary modifications in relation to corporation tax chargeable on companies not resident in the State.

Application of
sections 1034 to 1039
for purposes of
corporation tax.

[CTA76 s8(4)]

1041.—(1) *Section 1034* shall not apply to—

Rents payable to
non-residents.

(a) tax on profits or gains chargeable to tax under Case V of Schedule D, or

[FA69 s25]

(b) tax on any of the profits or gains chargeable under Case IV of Schedule D which arise under the terms of a lease, but to a person other than the lessor, or which otherwise arise out of any disposition or contract such that if they arose to the person making it they would be chargeable under Case V of Schedule D,

where payment is made (whether in the State or elsewhere) directly to a person whose usual place of abode is outside the State; but *section 238* shall apply in relation to the payment as it applies to other payments, being annual payments charged with tax under Schedule D and not payable out of profits or gains brought into charge to tax.

(2) Where by virtue of *subsection (1)* the tax chargeable for any year of assessment on a person's profits or gains chargeable to tax under either or both of the Cases referred to in that subsection would but for this subsection be greater than the tax which would be chargeable on such profits or gains but for *subsection (1)*, then, on a claim in that behalf being made, relief shall be given from the excess, whether by repayment or otherwise.

CHAPTER 2

Capital gains tax

Charging and assessment of persons not resident or ordinarily resident: modification of general rules.

[CGTA75 s5(3); FA82 s33]

1042.—(1) Notwithstanding *section 28(2), 31 or 979*, any capital gains tax payable in respect of a chargeable gain which on a disposal accrues to a person not resident or ordinarily resident in the State at the time at which the disposal is made may be assessed and charged before the end of the year of assessment in which the chargeable gain accrues, and the tax so assessed and charged shall be payable at or before the expiration of a period of 3 months beginning with the time at which the disposal is made, or at the expiration of a period of 2 months beginning with the date of making the assessment, whichever is the later.

(2) In computing the amount of capital gains tax payable under *subsection (1), section 31* shall apply with any necessary modifications as regards the deduction of any allowable losses which accrued to the person mentioned in *subsection (1)* before the date of making of the assessment mentioned in that subsection.

Application of *sections 1034 and 1035* for purposes of capital gains tax.

[CGTA75 s51(1) Sch4 and par2(2)]

1043.—Without prejudice to the generality of *section 931(2), sections 1034 and 1035* shall apply, subject to any necessary modifications, to capital gains tax.

PART 46

PERSONS CHARGEABLE IN A REPRESENTATIVE CAPACITY

CHAPTER 1

Income tax and corporation tax

Bodies of persons.

[ITA67 s207]

1044.—(1) Subject to *section 21*, every body of persons shall be chargeable to income tax in the like manner as any person is chargeable under the Income Tax Acts.

(2) The treasurer (or other officer acting as such), auditor or receiver for the time being of any body of persons chargeable to income tax shall be answerable for doing all such acts as are required to be done under the Income Tax Acts for the purpose of the assessment of such body and for payment of the tax, and for the purpose of the assessment of the officers and persons in the employment of such body; but, in the case of a company, the person so answerable shall be the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

(3) Every such officer may from time to time retain out of any money coming into his or her hands on behalf of the body so much of that money as is sufficient to pay the tax charged on the body, and shall be indemnified for all such payments made in pursuance of the Income Tax Acts.

Trustees, guardians and committees.

[ITA67 s208]

1045.—The trustee, guardian or committee of any incapacitated person having the direction, control or management of the property or concern of any such person, whether such person resides in the State or not, shall be assessable and chargeable to income tax in the

like manner and to the like amount as that person would be assessed and charged if he or she were not an incapacitated person. Pr.46 S.1045

1046.—(1) The person chargeable in respect of an incapacitated person or in whose name a non-resident person is chargeable shall be answerable for all matters required to be done under the Income Tax Acts for the purpose of assessment and payment of income tax. Liability of trustees, etc.
[ITA67 s209; CTA76 s8(4)]

(2) Any person charged under the Income Tax Acts in respect of any incapacitated or non-resident person may from time to time retain out of money coming into the first-mentioned person's hands on behalf of that incapacitated or non-resident person so much of that money as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of the Income Tax Acts.

(3) Without prejudice to the general application of income tax procedure to corporation tax, *subsections (1) and (2)*, in so far as they are applicable to tax chargeable on a company, shall apply with any necessary modifications in relation to corporation tax chargeable on companies not resident in the State.

1047.—(1) Where a person chargeable to income tax is an infant or dies— Liability of parents, guardians, executors and administrators.

(a) the parent or guardian of the infant shall be liable for the tax in default of payment by the infant, and [ITA67 s210(1) and (2)]

(b) the executor or administrator of the deceased person shall be liable for the tax charged on such deceased person,

and on neglect or refusal of payment any such person so liable may be proceeded against in the like manner as any other defaulter.

(2) A parent or guardian who makes such payment shall be allowed all sums so paid in his or her accounts, and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

1048.—(1) Where a person dies, an assessment or an additional first assessment, as the case may be, may be made for any year of assessment for which an assessment or an additional first assessment could have been made on the person immediately before his or her death, or could be made on the person if he or she were living, in respect of the profits or gains which arose or accrued to such person before his or her death, and the amount of the income tax on such profits or gains shall be a debt due from and payable out of the estate of such person, and the executor or administrator of such person shall be assessable and chargeable in respect of such tax. Assessment of executors and administrators.
[ITA67 s211(1) to (3); F(MP)A68 s4(3)(a) and s6(7); FA78 s11(1)]

(2) No assessment under this section shall be made later than 3 years after the expiration of the year of assessment in which the deceased person died in a case in which the grant of probate or letters of administration was made in that year, and no such assessment shall be made later than 2 years after the expiration of the year of assessment in which such grant was made in any other case; but this subsection shall apply subject to the condition that where the executor or administrator—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.46 S.1048

- (a) after the year of assessment in which the deceased person died, delivers an additional affidavit under section 38 of the Capital Acquisitions Tax Act, 1976, or
- (b) is liable to deliver an additional affidavit under that section, has been so notified by the Revenue Commissioners and did not deliver the additional affidavit in the year of assessment in which the deceased person died,

such assessment may be made at any time before the expiration of 2 years after the end of the year of assessment in which the additional affidavit was or is delivered.

(3) The executor or administrator of any such deceased person shall, when required to do so by a notice given to the executor or administrator by an inspector, prepare and deliver to the inspector a statement in writing signed by such executor or administrator and containing particulars, to the best of such executor's or administrator's judgment and belief, of the profits or gains which arose or accrued to such deceased person before his or her death and in respect of which such executor or administrator is assessable under this section, and the provisions of the Income Tax Acts relating to statements to be delivered by any person shall apply with any necessary modifications to statements to be delivered under this section.

Receivers appointed by court.

[ITA67 s212; CTA76 s147(1) and (2)]

1049.—(1) A receiver appointed by any court in the State which has the direction and control of any property in respect of which income tax or, as the case may be, corporation tax is charged in accordance with the Tax Acts shall be assessable and chargeable with income tax or, as the case may be, corporation tax in the like manner and to the like amount as would be assessed and charged if the property were not under the direction and control of the court.

(2) Every such receiver shall be answerable for doing all matters and things required to be done under the Tax Acts for the purpose of assessment and payment of income tax or, as the case may be, corporation tax.

Protection for trustees, agents and receivers.

[ITA67 s213]

1050.—(1) A trustee who has authorised the receipt of profits arising from trust property by or by the agent of the person entitled to such profits shall not, if—

- (a) that person or agent actually received the profits under that authority, and
- (b) the trustee makes a return as required by *section 890* of the name, address and profits of that person,

be required to do any other act for the purpose of the assessment of that person, unless the Revenue Commissioners require the testimony of the trustee pursuant to the Income Tax Acts.

(2) An agent or receiver of any person resident in the State, other than an incapacitated person, shall not, if that agent or receiver makes a return as required by *section 890* of the name, address and profits of that person, be required to do any other act for the purpose of the assessment of that person, unless the Revenue Commissioners require the testimony of the agent or receiver pursuant to the Income Tax Acts.

Capital gains tax

1051.—*Chapter 1* other than *section 1050* shall, subject to any necessary modifications, apply to capital gains tax.

Application of *Chapter 1* for purposes of capital gains tax.

[CGTA75 s51(1) and Sch4 par2(2)]

PART 47

PENALTIES, REVENUE OFFENCES, INTEREST ON OVERDUE TAX AND OTHER SANCTIONS

CHAPTER 1

Income tax and corporation tax penalties

1052.—(1) Where any person—

Penalties for failure to make certain returns, etc.

(a) has been required, by notice or precept given under or for the purposes of any of the provisions specified in *column 1* or *2* of *Schedule 29*, to deliver any return, statement, declaration, list or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and that person fails to comply with the notice or precept, or

[ITA67 s70(4); s172(5) and s500; FA80 s57(2); FA82 s60; FA92 s248]

(b) fails to do any act, to furnish any particulars or to deliver any account in accordance with any of the provisions specified in *column 3* of that Schedule,

that person shall, subject to *subsection (2)* and to *section 1054*, be liable to a penalty of £750.

(2) Where the notice referred to in *subsection (1)* was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during which the notice was given, the penalty mentioned in *subsection (1)* shall be £1,200.

(3) *Subsections (1)* and *(2)* shall apply subject to *sections 877(5)(b)* and *897(5)*.

(4) In proceedings for the recovery of a penalty incurred under this section or under *section 1053*—

(a) a certificate signed by an officer of the Revenue Commissioners, or, in the case of such proceedings in relation to a return referred to in *section 879* or *880*, by an inspector, which certifies that he or she has examined his or her relevant records and that it appears from those records that a stated notice or precept was duly given to the defendant on a stated day shall be evidence until the contrary is proved that the defendant received that notice or precept in the ordinary course;

(b) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated notice or precept has not been complied with by the defendant shall

be evidence until the contrary is proved that the defendant did not during that period comply with that notice or precept;

- (c) in the case of such proceedings in relation to a return referred to in *section 879* or *880*, a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return;
- (d) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period the defendant has failed to do a stated act, furnish stated particulars or deliver a stated account in accordance with any of the provisions specified in *column 3* of *Schedule 29* shall be evidence until the contrary is proved that the defendant did so fail;
- (e) a certificate certifying as provided for in *paragraph (a), (b), (c)* or *(d)* and purporting to be signed by an officer of the Revenue Commissioners or, as the case may be, by an inspector may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by such officer or, as the case may be, such inspector.

Penalty for fraudulently or negligently making incorrect returns, etc.

[ITA67 s501 and s502; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI]

1053.—(1) Where any person fraudulently or negligently—

- (a) delivers any incorrect return or statement of a kind mentioned in any of the provisions specified in *column 1* of *Schedule 29*,
- (b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief, or
- (c) submits to the Revenue Commissioners, the Appeal Commissioners or an inspector any incorrect accounts in connection with the ascertainment of that person's liability to income tax,

that person shall, subject to *section 1054*, be liable to a penalty of—

- (i) £100, and
- (ii) the amount or, in the case of fraud, twice the amount of the difference specified in *subsection (5)*.

(2) Where any person fraudulently or negligently furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in any of the provisions specified in *column 2* or *3* of *Schedule 29*, that person shall, subject to *section 1054*, be liable to a penalty of £100 or, in the case of fraud, £250.

(3) Where any return, statement, declaration or accounts mentioned in *subsection (1)* was or were made or submitted by a person,

neither fraudulently nor negligently, and it comes to that person's notice (or, if the person has died, to the notice of his or her personal representatives) that it was or they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of this section as having been negligently made or submitted by that person. Pr.47 S.1053

(4) Subject to *section 1060(2)*, proceedings for the recovery of any penalty under *subsection (1)* or *(2)* shall not be out of time because they are commenced after the time allowed by *section 1063*.

(5) The difference referred to in *subsection (1)(ii)* shall be the difference between—

- (a) the amount of income tax payable for the relevant years of assessment by the person concerned (including any amount deducted at source and not repayable), and
- (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by that person had been correct.

(6) The relevant years of assessment for the purposes of *subsection (5)* shall be, in relation to anything delivered, made or submitted in any year of assessment, that year, the next year and any preceding year of assessment, and the references in that subsection to the amount of income tax payable shall not, in relation to anything done in connection with a partnership, include any tax not chargeable in the partnership name.

(7) For the purposes of this section, any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without that person's consent or knowledge.

1054.—(1) In this section, “secretary” includes persons mentioned in *section 1044(2)*. Increased penalties in case of body of persons.

(2) Where the person mentioned in *section 1052* is a body of persons— [ITA67 s503 and definition of “secretary” in ITA67 s509; FA73 s46]

- (a) the body of persons shall be liable to—
 - (i) in a case where the notice was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during which the notice was given, a penalty of £1,000, and
 - (ii) in any other case, a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, a further penalty of £50 for each day on which the failure so continues, and

- (b) the secretary shall be liable to—
 - (i) in a case where the notice was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.47 S.1054

which the notice was given, a separate penalty of £200, and

(ii) in any other case, a separate penalty of £100.

(3) Where the person mentioned in *section 1053* is a body of persons—

(a) in the case of such fraud or negligence as is mentioned in *section 1053(1)*—

(i) the body of persons shall be liable to a penalty of—

(I) £500 or, in the case of fraud, £1,000, and

(II) the amount or, in the case of fraud, twice the amount of the difference specified in *section 1053(5)*, and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200, and

(b) in the case of any such fraud or negligence as is mentioned in *section 1053(2)*—

(i) the body of persons shall be liable to a penalty of £500 or, in the case of fraud, £1,000, and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(4) This section shall apply subject to *sections 877(5)(b)* and *897(5)*, but otherwise shall apply notwithstanding anything in the Income Tax Acts.

Penalty for assisting in making incorrect returns, etc.

[ITA67 s505; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

Penalty for false statement made to obtain allowance.

[ITA67 s516; CTA76 s147(1) and (2); WCTIPA93 s11]

1055.—Any person who assists in or induces the making or delivery for any purposes of income tax or corporation tax of any return, account, statement or declaration which that person knows to be incorrect shall be liable to a penalty of £500.

1056.—(1) In this section, “the specified difference”, in relation to a person, means the difference between—

(a) the amount of income tax or, as the case may be, corporation tax payable in relation to the person’s or, as may be appropriate, another person’s liability to income tax for a year of assessment or to corporation tax for an accounting period, as the case may be, and

(b) the amount which would have been the amount so payable if—

(i) any statement or representation referred to in *subsection (2)(a)* had not been false,

(ii) any account, return, list, declaration or statement referred to in *subsection (2)(b)(i)* had not been false or fraudulent, or

(iii) the full amount of income referred to in *subsection (2)(b)(ii)* had been disclosed.

(2) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if— Pt.47 S.1056

(a) in relation to the person's liability to income tax for a year of assessment or to corporation tax for an accounting period, as the case may be, the person knowingly makes any false statement or false representation—

- (i) in any return, statement or declaration made with reference to tax, or
- (ii) for the purpose of obtaining any allowance, reduction, rebate or repayment of tax, or

(b) in relation to liability to income tax of any other person for a year of assessment or to liability to corporation tax of any other person for an accounting period, as the case may be, the person knowingly and wilfully aids, abets, assists, incites or induces that other person—

- (i) to make or deliver a false or fraudulent account, return, list, declaration or statement with reference to property, profits or gains or to tax, or
- (ii) unlawfully to avoid liability to tax by failing to disclose the full amount of that other person's income from all sources.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction where the amount of the specified difference is—

- (i) less than £1,200, to a fine not exceeding 25 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 12 months or to both;
- (ii) equal to or greater than £1,200, to a fine not exceeding £1,200 or, at the discretion of the court, to a term of imprisonment not exceeding 12 months or to both;

or

(b) on conviction on indictment where the amount of the specified difference is—

- (i) less than £5,000, to a fine not exceeding 25 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 2 years or to both;
- (ii) equal to or greater than £5,000 but less than £10,000, to a fine not exceeding 50 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 3 years or to both;
- (iii) equal to or greater than £10,000 but less than £25,000, to a fine not exceeding the amount of the specified

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.47 S.1056

difference or, at the discretion of the court, to a term of imprisonment not exceeding 4 years or to both;

- (iv) equal to or greater than £25,000 but less than £100,000, to a fine not exceeding twice the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 8 years or to both;
- (v) equal to or greater than £100,000, to a fine not exceeding twice the amount of the specified difference and to a term of imprisonment not exceeding 8 years.

(4) *Subsections (4) and (6) to (8) of section 1078* shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.

(5) This section shall not apply to a declaration given under section 2 or 3 of the Waiver of Certain Tax, Interest and Penalties Act, 1993, by reason only of any false statement or false representation made in relation to subsection (3)(a)(iii) of section 2 of that Act or subsection (6)(b)(III) of section 3 of that Act, as the case may be.

Fine for obstruction of officers in execution of duties.

[ITA67 s515; CTA76 s147(1) and (2)]

1057.—(1) Where any person (in this subsection referred to as “the first-mentioned person”) or any person in the first-mentioned person’s employ, obstructs, molests or hinders—

- (a) an officer or any person employed in relation to any duty of income tax or corporation tax in the execution of his or her duty, or of any of the powers or authorities by law given to the officer or person, or
- (b) any person acting in the aid of an officer or any person so employed,

the first-mentioned person shall for every such offence incur a fine of £100.

(2) Without prejudice to any other mode of recovery, the fine imposed under this section may be proceeded for and recovered in the like manner and, in the case of summary proceedings, with the like power of appeal as any fine or penalty under any Act relating to the excise.

Refusal to allow deduction of tax.

[ITA67 s520; CTA76 s147(1) and (2); FA96 s132(1) and Sch5 PtI par10(5)]

1058.—(1) A person who refuses to allow a deduction of income tax or corporation tax authorised by the Tax Acts to be made out of any payment shall forfeit the sum of £50.

(2) Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction shall be void.

Power to add penalties to assessments.

[ITA67 s513; CTA76 s147(3) and (4)]

1059.—Where an increased rate of income tax or corporation tax is imposed as a penalty, or as part of or in addition to a penalty, the penalty and increased rate of tax may be added to the assessment and collected and levied in the like manner as any tax included in such assessment may be collected and levied.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

1060.—(1) Where the person who has incurred any penalty has died, any proceedings under the Tax Acts which have been or could have been commenced against that person may be continued or commenced against his or her executor or administrator, as the case may be, and any penalty awarded in proceedings so continued or commenced shall be a debt due from and payable out of his or her estate.

Pt.47
Proceedings against
executor or
administrator.
[ITA67 s504; CTA76
s147(3) and (4);
FA78 s11(2)]

(2) Proceedings may not be commenced by virtue of *subsection (1)* against the executor or administrator of a person at a time when by virtue of *subsection (2)* of *section 1048* that executor or administrator is not assessable and chargeable under that section in respect of income tax on profits or gains which arose or accrued to the person before his or her death.

1061.—(1) Without prejudice to any other mode of recovery of a penalty under the preceding provisions of this Part or under *section 305, 783, 789* or *886*, an officer of the Revenue Commissioners authorised by them for the purposes of this subsection may sue in his or her own name by civil proceedings for the recovery of the penalty in the High Court as a liquidated sum, and section 94 of the Courts of Justice Act, 1924, shall apply accordingly.

Recovery of
penalties.
[ITA67 s508; FA68
s6(6); CTA76
s147(3) and (4)]

(2) Where an officer who has commenced proceedings pursuant to this section, or who has continued the proceedings by virtue of this subsection, dies or otherwise ceases for any reason to be an officer authorised for the purposes of *subsection (1)*—

- (a) the right of such officer to continue the proceedings shall cease and the right to continue them shall vest in such other officer so authorised as may be nominated by the Revenue Commissioners,
- (b) where such other officer is nominated under *paragraph (a)*, he or she shall be entitled accordingly to be substituted as a party to the proceedings in the place of the first-mentioned officer, and
- (c) where an officer is so substituted, he or she shall give notice in writing of the substitution to the defendant.

(3) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying that—

- (a) a person is an officer of the Revenue Commissioners, and
- (b) he or she has been authorised by them for the purposes of *subsection (1)*,

shall be evidence of those facts until the contrary is proved.

(4) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying that—

- (a) the plaintiff has ceased to be an officer of the Revenue Commissioners authorised by them for the purposes of *subsection (1)*,
- (b) another person is an officer of the Revenue Commissioners,

Pt.47 S.1061

(c) such other person has been authorised by them for the purposes of *subsection (1)*, and

(d) he or she has been nominated by them in relation to the proceedings for the purposes of *subsection (2)*,

shall be evidence of those facts until the contrary is proved.

(5) In proceedings pursuant to this section, a certificate certifying the facts referred to in *subsection (3)* or *(4)* and purporting to be signed by a Revenue Commissioner may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been so signed.

(6) Subject to this section, the rules of the High Court for the time being applicable to civil proceedings shall apply to proceedings pursuant to this section.

Proceedings where penalty recoverable cannot be definitely ascertained.

[ITA67 s510; CTA76 s147(3) and (4)]

1062.—Notwithstanding that the amount of a penalty recoverable under the Tax Acts cannot be definitely ascertained by reason of the fact that the amount of income tax or, as the case may be, corporation tax by reference to which such penalty is to be calculated has not been finally ascertained, proceedings may be instituted for the recovery of such penalty and, if at the hearing of such proceedings the amount of such tax has not then been finally ascertained, the Court may, if it is of the opinion that such penalty is recoverable, adjourn such proceedings and shall not give any judgment or make any order for the payment of such penalty until the amount of such tax has been finally ascertained.

Time limit for recovery of fines and penalties.

[ITA67 s511; FA74 s86 and Sch2 Pt1; CTA76 s147(3) and (4)]

1063.—Proceedings for the recovery of any fine or penalty incurred under the Tax Acts in relation to or in connection with income tax or corporation tax may, subject to *section 1060*, be begun at any time within 6 years after the date on which such fine or penalty was incurred.

Time for certain summary proceedings.

[ITA67 s517; FA79 s29; CTA76 s148]

1064.—Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act, 1851, summary proceedings under *section 889, 987* or *1056* may be instituted within 10 years from the date of the committing of the offence or incurring of the penalty, as the case may be.

Mitigation and application of fines and penalties.

[ITA67 s512; CTA76 s147(3) and (4); WCTIPA93 s10]

1065.—(1) (a) The Revenue Commissioners may in their discretion mitigate any fine or penalty, or stay or compound any proceedings for the recovery of any fine or penalty, and may also, after judgment, further mitigate the fine or penalty, and may order any person imprisoned for any offence to be discharged before the term of his or her imprisonment has expired.

(b) The Minister for Finance may mitigate any such fine or penalty either before or after judgment.

(2) Notwithstanding *subsection (1)*—

(a) where a fine or penalty is mitigated or further mitigated, as the case may be, after judgment, the amount or amounts so mitigated shall, subject to *paragraph (b)*, not be

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

greater than 50 per cent of the amount of the fine or penalty, and Pr.47 S.1065

(b) in relation to an individual, being an individual referred to in section 2(2) of the Waiver of Certain Tax, Interest and Penalties Act, 1993, or a person referred to in section 3(2) of that Act, who—

(i) fails to give a declaration required by section 2(3)(a) of that Act, or

(ii) gives a declaration referred to in *subparagraph (i)* or a declaration under section 3(6)(b) of that Act which is false or fails to comply with the requirements of subparagraph (iii) or (iv) of section 2(3)(a) of that Act or subparagraph (III) of section 3(6)(b) of that Act to the extent that any of those subparagraphs apply to that person,

no mitigation shall be allowed.

(3) Moneys arising from fines, penalties and forfeitures, and all costs, charges and expenses payable in respect of or in relation to such fines, penalties and forfeitures, shall be accounted for and paid to the Revenue Commissioners or as they direct.

1066.—If any person on any examination on oath, or in any affidavit or deposition authorised by the Tax Acts, wilfully and corruptly gives false evidence, or wilfully and corruptly swears any matter or thing which is false or untrue, that person shall on conviction be subject and liable to such punishment as persons convicted of perjury are subject and liable to.

False evidence:
punishment as for
perjury.

[ITA67 s518; CTA76
s147(1) and (2)]

1067.—(1) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any proceedings mentioned in *subsection (2)* by reason only that it has been drawn to the person's attention that—

Admissibility of
statements and
documents in
criminal and tax
proceedings.

(a) in relation to income tax or, as the case may be, corporation tax, the Revenue Commissioners may accept pecuniary settlements instead of instituting proceedings, and

[ITA67 s521; FA74
s86 and Sch2 PtI;
CTA76 s147(1) and
(2)]

(b) although no undertaking can be given as to whether or not the Revenue Commissioners will accept such a settlement in the case of any particular person, it is the practice of the Revenue Commissioners to be influenced by the fact that a person has made a full confession of any fraud or default to which the person has been a party and has given full facilities for investigation,

and that the person was or may have been induced thereby to make the statements or produce the documents.

(2) The proceedings referred to in *subsection (1)* are—

(a) any criminal proceedings against the person in question for any form of fraud or wilful default in connection with or in relation to income tax or corporation tax, and

(b) any proceedings against the person in question for the recovery of any sum due from that person, whether by

Pt.47 S.1067

means of tax, fine, forfeiture or penalty, in connection with or in relation to income tax or corporation tax.

Failure to act within required time.

[ITA67 s507; CTA76 s147(1) and (2)]

1068.—For the purposes of this Chapter, a person shall be deemed not to have failed to do anything required to be done within a limited time if the person did it within such further time, if any, as the Commissioners or officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, the person shall be deemed not to have failed to do it if the person did it without unreasonable delay after the excuse had ceased.

Evidence of income.

[ITA67 s506 and definition of “assessment” in ITA67 s509; F(MP)A68 s3(2) and Sch PtI; CTA76 s147(1) and (2); FA88 s21(2)]

1069.—(1) In this section, “assessment” includes—

- (a) an additional assessment, and
- (b) an assessment as amended under *section 955*.

(2) For the purposes of this Chapter, any assessment which can no longer be varied by the Appeal Commissioners on appeal or by the order of any court shall be sufficient evidence that the income in respect of which income tax or, as the case may be, corporation tax is charged in the assessment arose or was received as stated in the assessment.

Saving for criminal proceedings.

[ITA67 s514; CTA76 s147(1) and (2)]

1070.—The Tax Acts shall not affect any criminal proceedings for a felony or misdemeanour.

CHAPTER 2

Other corporation tax penalties

Penalties for failure to make certain returns.

[CTA76 s143(7)(c) and (8)]

1071.—(1) Where any company has been required by notice served under *section 884* to deliver a return and the company fails to comply with the notice—

- (a) the company shall be liable to a penalty of £500 except in the case mentioned in *subsection (2)* and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and
- (b) the secretary of the company shall be liable to a separate penalty of £100 except in the case mentioned in *subsection (2)*.

(2) Where any failure mentioned in *subsection (1)* continues after the expiration of one year beginning with the date on which the notice was served, the first of the penalties mentioned in that subsection for which the company is liable shall be £1,000, and the secretary of the company shall be liable to a separate penalty of £200.

(3) The reference in *subsection (1)* to the delivery of a return shall be deemed to include a reference to the doing of any of the things specified in *subparagraphs (i) and (ii) of paragraph (b) of section 884(9)*.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

1072.—(1) Where a company fraudulently or negligently—

- (a) delivers an incorrect return under *section 884*,
- (b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of corporation tax, or
- (c) submits to an inspector, the Revenue Commissioners or the Appeal Commissioners any incorrect accounts in connection with the ascertainment of the company's liability to corporation tax,

Pt.47
Penalties for fraudulently or negligently making incorrect returns, etc.
[CTA76 s143(9), (10) and (11)]

the company shall be liable to a penalty of—

- (i) £500 or, in the case of fraud, £1,000, and
- (ii) the amount or, in the case of fraud, twice the amount of the difference specified in *subsection (2)*, and

the secretary of the company shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(2) The difference referred to in *subsection (1)* shall be the difference between—

- (a) the amount of corporation tax payable by the company for the accounting period or accounting periods comprising the period to which the return, statement, declaration or accounts relate, and
- (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts had been correct.

(3) *Subsection (3)* of *section 1053* shall apply for the purposes of this section as it applies for the purposes of *section 1053*.

1073.—Where a company fails to deliver a statement which it is required to deliver under *section 882*—

- (a) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and
- (b) the secretary of the company shall be liable to a separate penalty of £100.

Penalties for failure to furnish particulars required to be supplied by new companies.
[CTA76 s141(2)]

1074.—Where a company fails to give a notice which it is required to give under *section 883*—

- (a) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and
- (b) the secretary of the company shall be liable to a separate penalty of £100.

Penalties for failure to give notice of liability to corporation tax.
[CTA76 s142(2)]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.47
Penalties for failure
to furnish certain
information and for
incorrect
information.

[CTA76 s149]

1075.—(1) Where any person has been required by notice given under or for the purposes of *section 401* or *427* or *Part 13* to furnish any information or particulars and that person fails to comply with the notice, that person shall be liable, subject to *subsection (3)*, to a penalty of £100 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £10 for each day on which the failure so continues.

(2) Where the person fraudulently or negligently furnishes any incorrect information or particulars of a kind mentioned in *section 239, 401* or *427* or *Part 13*, the person shall be liable, subject to *subsection (4)*, to a penalty of £100 or, in the case of fraud, £250.

(3) Where the person mentioned in *subsection (1)* is a company—

(a) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and

(b) the secretary of the company shall be liable to a separate penalty of £100.

(4) Where the person mentioned in *subsection (2)* is a company—

(a) the company shall be liable to a penalty of £500 or, in the case of fraud, £1,000, and

(b) the secretary of the company shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(5) *Subsection (3)* of *section 1053* shall apply for the purposes of this section as it applies for the purposes of *section 1053*.

Supplementary
provisions (*Chapter*
2).

[CTA76 s154 and
s147(3) and(4) (as it
relates to application
of ITA67 s172(5))]

1076.—(1) In this Chapter, “secretary” includes persons mentioned in *section 1044(2)* and, in the case of a company not resident in the State, the agent, manager, factor or other representative of the company.

(2) In proceedings for the recovery of a penalty incurred under the provisions of the Corporation Tax Acts—

(a) a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that a stated notice was duly given to the defendant on a stated day shall be evidence until the contrary is proved that the defendant received that notice in the ordinary course;

(b) a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return;

(c) a certificate certifying as provided for in *paragraph (a)* or *(b)* and purporting to be signed by an inspector may be tendered in evidence without proof and shall be deemed

until the contrary is proved to have been signed by such inspector. Pt.47 S.1076

CHAPTER 3

Capital gains tax penalties

1077.—(1) Without prejudice to the generality of *section 913(1)*, *Chapter 1* of this Part shall, subject to any necessary modifications, apply in relation to capital gains tax, and *sections 1052, 1053 and 1054*, as applied by this section, shall for the purposes of the Capital Gains Tax Acts be construed as if in *Schedule 29* there were included—

Penalties for failure to make returns, etc. and for fraudulently or negligently making incorrect returns, etc.

[CGTA75 s51(1) and Sch4 par3(2) and (6)]

(a) in *column 1*, references to *sections 914 to 917*,

(b) in *column 2*, a reference to *section 945*, and

(c) in *column 3*, a reference to *section 980*.

(2) Where any person has been required by notice or precept given under the provisions of the Income Tax Acts as applied by *section 913*, or under *section 914, 915, 916, 917 or 980*, to do any act of a kind mentioned in any of the those provisions or sections, and the person fails to comply with the notice or precept, or where any person fraudulently or negligently makes, delivers, furnishes or produces any incorrect return, statement, declaration, list, account, particulars or other document (or knowingly makes any false statement or false representation) under any of those provisions or sections, *Chapter 1* of this Part shall apply to the person for the purposes of capital gains tax as it applies in the case of a like failure or act for the purposes of income tax.

CHAPTER 4

Revenue offences

1078.—(1) In this Part—

Revenue offences.

“the Acts” means—

[FA83 s94; FA86 s40(2); FA89 s18 and Sch1 par3(2); FA92 s243; FA96 s132(1) and (2) and Sch5 PtI par13(2) and PtII]

(a) the Customs Acts,

(b) the statutes relating to the duties of excise and to the management of those duties,

(c) the Tax Acts,

(d) the Capital Gains Tax Acts,

(e) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

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

(g) the statutes relating to stamp duty and to the management of that duty, and

(h) Part VI of the Finance Act, 1983,

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise any of the powers conferred by the Acts;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—

- (a) knowingly or wilfully delivers any incorrect return, statement or accounts or knowingly or wilfully furnishes any incorrect information in connection with any tax,
- (b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return, statement or accounts in connection with any tax,
- (c) claims or obtains relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which, to the person’s knowledge, the person is not entitled,
- (d) knowingly or wilfully issues or produces any incorrect invoice, receipt, instrument or other document in connection with any tax,
- (e)
 - (i) fails to make any deduction required to be made by the person under *section 257(1)*,
 - (ii) fails, having made the deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in *section 258(3)*, or
 - (iii) fails to pay to the Collector-General an amount on account of appropriate tax (within the meaning of *Chapter 4 of Part 8*) within the time specified in that behalf in *section 258(4)*,
- (f)
 - (i) fails to make any deduction required to be made by the person under *section 734(5)*, or
 - (ii) fails, having made the deduction, to pay the sum deducted to the Collector-General within the time specified in *paragraph 1(3) of Schedule 18*,
- (g) knowingly or wilfully fails to comply with any provision of the Acts requiring—
 - (i) the furnishing of a return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax,
 - (ii) the furnishing of any other return, certificate, notification, particulars, or any statement or evidence, for the purposes of any tax,
 - (iii) the keeping or retention of books, records, accounts or other documents for the purposes of any tax, or

(iv) the production of books, records, accounts or other documents, when so requested, for the purposes of any tax, Pr.47 S.1078

(h) knowingly or wilfully, and within the time limits specified for their retention, destroys, defaces or conceals from an authorised officer—

(i) any documents, or

(ii) any other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, which a person is obliged by any provision of the Acts to keep, to issue or to produce for inspection,

(i) fails to remit any income tax payable pursuant to *Chapter 4* of *Part 42*, and the regulations under that Chapter, or value-added tax within the time specified in that behalf in relation to income tax or value-added tax, as the case may be, by the Acts, or

(j) obstructs or interferes with any officer of the Revenue Commissioners, or any other person, in the exercise or performance of powers or duties under the Acts for the purposes of any tax.

(3) A person convicted of an offence under this section shall be liable—

(a) on summary conviction to a fine of £1,000 which may be mitigated to not less than one fourth part of such fine or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by *subsection (3)(a)*, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act, 1967, to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

(5) Where an offence under this section is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

(6) In any proceedings under this section, a return or statement delivered to an inspector or other officer of the Revenue Commissioners under any provision of the Acts and purporting to be

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.47 S.1078

signed by any person shall be deemed until the contrary is proved to have been so delivered and to have been signed by that person.

(7) Notwithstanding any other enactment, proceedings in respect of an offence under this section may be instituted within 10 years from the date of the commission of the offence or incurring of the penalty, as the case may be.

(8) Section 1 of the Probation of Offenders Act, 1907, shall not apply in relation to offences under this section.

(9) Sections 987(4) and 1052(4), subsections (3) and (7) of section 1053, and sections 1068 and 1069 and sections 26(6) and 27(7) of the Value-Added Tax Act, 1972, shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of those sections, including, in the case of such of those sections as are applied by the Capital Gains Tax Acts, the Corporation Tax Acts, or Part VI of the Finance Act, 1983, the purposes of those sections as so applied.

Duties of relevant person in relation to certain revenue offences.

1079.—(1) In this section—

“the Acts” means—

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty,

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

“appropriate officer” means any officer nominated by the Revenue Commissioners to be an appropriate officer for the purposes of this section;

“company” means any body corporate;

“relevant person”, in relation to a company and subject to *subsection (2)*, means a person who—

- (a) (i) is an auditor to the company appointed in accordance with section 160 of the Companies Act, 1963 (as amended by the Companies Act, 1990), or
- (ii) in the case of an industrial and provident society or a friendly society, is a public auditor to the society for

[FA95 s172]

the purposes of the Industrial and Provident Societies Acts, 1893 to 1978, and the Friendly Societies Acts, 1896 to 1977, Pt.47 S.1079

or

- (b) with a view to reward, assists or advises the company in the preparation or delivery of any information, declaration, return, records, accounts or other document which he or she knows will be or is likely to be used for any purpose of tax;

“relevant offence” means an offence committed by a company which consists of the company—

- (a) knowingly or wilfully delivering any incorrect return, statement or accounts or knowingly or wilfully furnishing or causing to be furnished any incorrect information in connection with any tax,
- (b) knowingly or wilfully claiming or obtaining relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which there is no entitlement,
- (c) knowingly or wilfully issuing or producing any incorrect invoice, receipt, instrument or other document in connection with any tax, or
- (d) knowingly or wilfully failing to comply with any provision of the Acts requiring the furnishing of a return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax, but an offence under this paragraph committed by a company shall not be a relevant offence if the company has made a return of income, profits or gains to the Revenue Commissioners in respect of an accounting period falling wholly or partly in the period of 3 years preceding the accounting period in respect of which the offence was committed;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) For the purposes of *paragraph (b)* of the definition of “relevant person”, a person who but for this subsection would be treated as a relevant person in relation to a company shall not be so treated if the person assists or advises the company solely in the person’s capacity as an employee of the company, and a person shall be treated as assisting or advising the company in that capacity where the person’s income from assisting or advising the company consists solely of emoluments to which *Chapter 4 of Part 42* applies.

(3) If, having regard solely to information obtained in the course of examining the accounts of a company, or in the course of assisting or advising a company in the preparation or delivery of any information, declaration, return, records, accounts or other document for the purposes of tax, as the case may be, a person who is a relevant person in relation to the company becomes aware that the company has committed, or is in the course of committing, one or more relevant offences, the person shall, if the offence or offences are material—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.47 S.1079

- (a) communicate particulars of the offence or offences in writing to the company without undue delay and request the company to—
- (i) take such action as is necessary for the purposes of rectifying the matter, or
 - (ii) notify an appropriate officer of the offence or offences,
- not later than 6 months after the time of communication, and
- (b) (i) unless it is established to the person's satisfaction that the necessary action has been taken or notification made, as the case may be, under *paragraph (a)*, cease to act as the auditor to the company or to assist or advise the company in such preparation or delivery as is specified in *paragraph (b)* of the definition of "relevant person", and
- (ii) shall not so act, assist or advise before a time which is the earlier of—
 - (I) 3 years after the time at which the particulars were communicated under *paragraph (a)*, and
 - (II) the time at which it is established to the person's satisfaction that the necessary action has been taken or notification made, as the case may be, under *paragraph (a)*.

(4) Nothing in *paragraph (b)* of *subsection (3)* shall prevent a person from assisting or advising a company in preparing for, or conducting, legal proceedings, either civil or criminal, which are extant or pending at a time which is 6 months after the time of communication under *paragraph (a)* of that subsection.

(5) Where a person, being in relation to a company a relevant person within the meaning of *paragraph (a)* of the definition of "relevant person", ceases under this section to act as auditor to the company, then, the person shall deliver—

- (a) a notice in writing to the company stating that he or she is so resigning, and
- (b) a copy of the notice to an appropriate officer not later than 14 days after he or she has delivered the notice to the company.

(6) A person shall be guilty of an offence under this section if the person—

- (a) fails to comply with *subsection (3)* or *(5)*, or
- (b) knowingly or wilfully makes a communication under *subsection (3)* which is incorrect.

(7) Where a relevant person is convicted of an offence under this section, the person shall be liable—

- (a) on summary conviction, to a fine of £1,000 which may be mitigated to not less than one-fourth part of such fine, or

- (b) on conviction on indictment, to a fine not exceeding £5,000 Pr.47 S.1079 or, at the discretion of the court, to imprisonment for a term not exceeding 2 years or to both the fine and the imprisonment.

(8) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by *subsection (7)(a)*, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act, 1967, to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

(9) Notwithstanding any other enactment, proceedings in respect of this section may be instituted within 6 years from the time at which a person is required under *subsection (3)* to communicate particulars of an offence or offences in writing to a company.

(10) It shall be a good defence in a prosecution for an offence under *subsection (6)(a)* in relation to a failure to comply with *subsection (3)* for an accused (being a person who is a relevant person in relation to a company) to show that he or she was in the ordinary scope of professional engagement assisting or advising the company in preparing for legal proceedings and would not have become aware that one or more relevant offences had been committed by the company if he or she had not been so assisting or advising.

(11) Where a person who is a relevant person takes any action required by *subsection (3)* or (5), no duty to which the person may be subject shall be regarded as having been contravened and no liability or action shall lie against the person in any court for having taken such action.

(12) The Revenue Commissioners may nominate an officer to be an appropriate officer for the purposes of this section, and the name of an officer so nominated and the address to which copies of notices under *subsection (3)* or (5) shall be delivered shall be published in *Iris Oifigiúil*.

(13) This section shall apply as respects a relevant offence committed by a company in respect of tax which is—

- (a) assessable by reference to accounting periods, for any accounting period beginning after the 30th day of June, 1995,
- (b) assessable by reference to years of assessment, for the year 1995-96 and subsequent years of assessment,
- (c) payable by reference to a taxable period, for a taxable period beginning after the 30th day of June, 1995,
- (d) chargeable on gifts or inheritances taken on or after the 30th day of June, 1995,
- (e) chargeable on instruments executed on or after the 30th day of June, 1995, or
- (f) payable in any other case, on or after the 30th day of June, 1995.

Interest on overdue tax

Interest on overdue income tax and corporation tax.

[ITA67 s550(1), (3), (4) and (5); FA71 s17(2); FA74 s86 and Sch2 PtI; CTA76 s145(3); FA78 s46; FA85 s12; FA97 s146(1) and Sch9 PtI par10(7)]

1080.—(1) (a) Subject to this section and *section 1081*, any tax charged by any assessment to income tax or corporation tax 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) Any tax charged by any assessment to income tax shall, notwithstanding any appeal against such assessment, carry interest at the rate of 1.25 per cent for each month or part of a month from the date when, if there were no appeal against the assessment, the tax would become due and payable under *section 960* until payment.

(2) Interest shall not be payable under this section on the tax charged by any assessment unless the total amount of the interest is not less than £1.

(3) The interest payable under this section—

(a) shall be payable without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any of the purposes of the Tax Acts, and

(b) shall be deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and shall be payable to the Revenue Commissioners,

and, subject to *subsection (4)*—

(i) every enactment relating to the recovery of any tax charged by an assessment,

(ii) every rule of court so relating,

(iii) section 81 of the Bankruptcy Act, 1988, and

(iv) sections 98 and 285 of the Companies Act, 1963,

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.

(4) In proceedings instituted by virtue of *subsection (3)*—

(a) a certificate by the Collector-General certifying that a stated amount of interest is due and payable by the person against whom the proceedings were instituted shall be evidence until the contrary is proved that that amount is so due and payable, and

(b) a certificate so certifying and purporting to be signed by the Collector-General may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by the Collector-General.

1081.—(1) Subject, in the case of income tax, to *subsection (2)*— Pt.47
Effect on interest of
reliefs given by
discharge or
repayment.

(a) where relief from income tax or corporation tax charged by any assessment referred to in *section 1080(1)* is given to any person by a discharge of any of that tax, such adjustment shall be made of the amount payable under that section in relation to the assessment, and such repayment shall be made of any amounts previously paid under that section in relation to the assessment, as are necessary to secure that the total sum, if any, paid or payable under that section in relation to the assessment is the same as it would have been if the tax discharged had never been charged, and [ITA67 s551(1) and
(2)(a); CTA76
s147(1) and (2)]

(b) where relief from income tax paid for any year of assessment, or corporation tax paid for any accounting period, is given to any person by repayment, that person shall be entitled to require that the amount repaid shall be treated for the purposes of this subsection to the extent possible as if it were a discharge of the tax charged on that person (whether alone or together with other persons) by any assessment for the same year or, as the case may be, the same accounting period; but the relief shall not be applied to any assessment made after the relief was given and shall not be applied to more than one assessment so as to reduce without extinguishing the amount of tax charged thereby.

(2) No relief, whether by means of discharge or repayment, shall be treated as affecting tax charged by an assessment to income tax unless it is a relief from income tax.

1082.—(1) In this section, “neglect”, in the case of corporation tax, has the same meaning as in *section 919(5)(a)* and, in the case of income tax, has the same meaning as in *section 924(2)(a)*. Interest on overdue
income tax and
corporation tax in
cases of fraud or
neglect.

(2) Where for any year of assessment or accounting period an assessment is made for the purpose of recovering an undercharge to income tax or corporation tax, as the case may be, attributable to the fraud or neglect of any person, the amount of the tax undercharged shall carry interest at the rate of 2 per cent for each month or part of a month from the date or dates on which the tax undercharged for that year or accounting period, as the case may be, would have been payable if it had been included in an assessment made— [FA71 s20(1) to (4)
and (6); FA74 s86
and Sch2 PtI;
CTA76 s145(4);
FA80 s14(2); FA82
s59]

(a) in the case of income tax, before the 1st day of October in that year, and

(b) in the case of corporation tax, on the expiration of 6 months from the end of that accounting period,

to the date of payment of the tax undercharged.

(3) Subject to *subsection (5)*, *section 1080(1)* shall not apply to tax carrying interest under this section.

(4) *Subsections (2) to (4)* of *section 1080* and, in the case of income tax, *section 1081* shall apply to interest chargeable under this section as they apply to interest chargeable under *section 1080*.

(5) Where an assessment of the kind referred to in *subsection (2)* is made—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.47 S.1082

- (a) the inspector concerned shall give notice to the person assessed that the tax charged by the assessment will carry interest under this section,
- (b) the person assessed may appeal against the assessment on the ground that interest should not be charged under this section, and the provisions of the Tax Acts relating to appeals against assessments shall apply with any necessary modifications in relation to the appeal as they apply in relation to those appeals, and
- (c) if on the appeal it is determined that the tax charged by the assessment should not carry interest under this section, *section 1080(1)* shall apply to that tax.

Application of *sections 1080 to 1082* for capital gains tax purposes.

1083.—Without prejudice to *sections 931(2)* and *976(2)*, *sections 1080 to 1082* shall, subject to any necessary modifications, apply to capital gains tax.

[CGTA75 s51(1) and Sch4 par2(2)]

CHAPTER 6

Other sanctions

Surcharge for late returns.

1084.—(1) (a) In this section—

“chargeable person”, in relation to a year of assessment or an accounting period, means a person who is a chargeable person for the purposes of *Part 41*;

“return of income” means a return, statement, declaration or list which a person is required to deliver to the inspector by reason of a notice given by the inspector under any one or more of the specified provisions, and includes a return which a chargeable person is required to deliver under *section 951*;

“specified return date for the chargeable period” has the same meaning as in *section 950*;

“specified provisions” means *sections 877 to 881* and *884*, *paragraphs (a)* and *(d)* of *section 888(2)*, and *section 1023*;

“tax” means income tax, corporation tax or capital gains tax, as may be appropriate.

(b) For the purposes of this section—

(i) where a person fraudulently or negligently delivers an incorrect return of income on or before the specified return date for the chargeable period, the person shall be deemed to have failed to deliver the return of income on or before that date unless the error in the return of income is remedied on or before that date,

(ii) where a person delivers an incorrect return of income on or before the specified return date for the chargeable period but does so neither fraudulently nor negligently and it comes to the person’s notice (or, if he or she has died, to the

notice of his or her personal representatives) Pr.47 S.1084
that it is incorrect, the person shall be deemed to have failed to deliver the return of income on or before the specified return date for the chargeable period unless the error in the return of income is remedied without unreasonable delay,

(iii) where a person delivers a return of income on or before the specified return date for the chargeable period but the inspector, by reason of being dissatisfied with any statement of profits or gains arising to the person from any trade or profession which is contained in the return of income, requires the person, by notice in writing served on the person under *section 900*, to do any thing, the person shall be deemed not to have delivered the return of income on or before the specified return date for the chargeable period unless the person does that thing within the time specified in the notice, and

(iv) references to such of the specified provisions as are applied, subject to any necessary modifications, in relation to capital gains tax by *section 913* shall be construed as including references to those provisions as so applied.

(2) (a) Subject to *paragraph (b)*, where in relation to a year of assessment or accounting period a chargeable person fails to deliver a return of income on or before the specified return date for the chargeable period, any amount of tax for that year of assessment or accounting period which apart from this section is or would be contained in an assessment to tax made or to be made on the chargeable person shall be increased by an amount (in this subsection referred to as “the surcharge”) equal to—

(i) 5 per cent of that amount of tax, subject to a maximum increased amount of £10,000, where the return of income is delivered before the expiry of 2 months from the specified return date for the chargeable period, and

(ii) 10 per cent of that amount of tax, subject to a maximum increased amount of £50,000, where the return of income is not delivered before the expiry of 2 months from the specified return date for the chargeable period,

and, if the tax contained in the assessment is not the amount of tax as so increased, then, the provisions of the Tax Acts and the Capital Gains Tax Acts (apart from this section), including in particular those provisions relating to the collection and recovery of tax and the payment of interest on unpaid tax, shall apply as if the tax contained in the assessment to tax were the amount of tax as so increased.

(b) In determining the amount of the surcharge, the tax contained in the assessment to tax shall be deemed to be reduced by the aggregate of—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.47 S.1084

- (i) any tax deducted by virtue of any of the provisions of the Tax Acts or the Capital Gains Tax Acts from any income, profits or chargeable gains charged in the assessment to tax in so far as that tax has not been repaid or is not repayable to the chargeable person and in so far as the tax so deducted may be set off against the tax contained in the assessment to tax,
- (ii) the amount of any tax credit to which the chargeable person is entitled in respect of any income, profits or chargeable gains charged in the assessment to tax, and
- (iii) any other amounts which are set off in the assessment to tax against the tax contained in that assessment.

(3) In the case of a person—

- (a) who is a director within the meaning of *section 116*, or
- (b) to whom *section 1017* applies and whose spouse is a director within the meaning of *section 116*,

subsection (2)(b)(i) shall not apply in respect of any tax deducted under *Chapter 4 of Part 42* in determining the amount of a surcharge under this section.

(4) (a) Notwithstanding *subsections (1) to (3)*, the specified return date for the chargeable period, being a year of assessment (in *paragraph (b)* referred to as “the first-mentioned year of assessment”) to which *section 66(1)* applies, shall be the date which is the specified return date for the year of assessment following that year.

(b) *Paragraph (a)* shall only apply if throughout the first-mentioned year of assessment the chargeable person or that person’s spouse, not being a spouse in relation to whom *section 1016* applies for that year of assessment, was not carrying on a trade or profession set up and commenced in a previous year of assessment.

(5) This section shall apply in relation to an amount of preliminary tax (within the meaning of *Part 41*) whether paid under *section 952* or specified in a notice under *section 953* as it applies to an amount of tax specified in an assessment.

Corporation tax —
late returns:
restriction of certain
claims for relief.

[FA92 s55(1) and
(2); FA95 s66(1)
and (2)]

1085.—(1) (a) In this section—

“chargeable period” means an accounting period of a company;

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

“return of income” means a return which a company is required to deliver under *section 951*;

“specified return date for the chargeable period” has the same meaning as in *section 950*.

(b) *Subparagraphs (i), (ii) and (iii) of paragraph (b) of subsection (1) of section 1084* shall apply for the

purposes of this section as they apply for the purposes of that section. Pr.47 S.1085

(2) Notwithstanding any other provision of the Tax Acts, where in relation to a chargeable period a company fails to deliver a return of income for the chargeable period on or before the specified return date for the chargeable period, then, subject to *subsections (3) and (4)*, the following provisions shall apply:

- (a) any claim in respect of the chargeable period under *section 308(4), 396(2) or 399(2)* shall be so restricted that the amount by which the company's profits of that or any other chargeable period are to be reduced by virtue of the claim shall be 50 per cent of the amount it would have been if this section had not been enacted,
- (b) the total amount of group relief which the company may claim in respect of the chargeable period shall not exceed 50 per cent of the company's profits of the chargeable period as reduced by any other relief from tax other than group relief,
- (c) the total amount of the loss referred to in *subsection (1) of section 420* for the chargeable period and the total amount of the excess referred to in *subsection (2), (3) or (6)* of that section for that period shall each be treated for the purposes of *Chapter 5 of Part 12* as reduced by 50 per cent,
- (d) any claim in respect of the chargeable period under *section 160(3)* shall be so restricted that the amount of advance corporation tax which is treated as if it were advance corporation tax paid in respect of distributions made by the company in any preceding chargeable period shall be 50 per cent of the amount which would have been so treated if this section had not been enacted, and
- (e) the company may not surrender under *section 166(1)* more than 50 per cent of the excess of the total amount of advance corporation tax it has paid (and which has not been repaid) in respect of a dividend or dividends paid by it in the chargeable period over the amount of such advance corporation tax which under *section 160(2)* is set against its liability to corporation tax for the chargeable period.

(3) Subject to *subsection (4)*, any restriction or reduction imposed by *paragraph (a), (b), (c), (d) or (e) of subsection (2)* in respect of a chargeable period in the case of a company which fails to deliver a return of income on or before the specified return date for the chargeable period shall apply subject to—

- (a) in the case of the restrictions or reductions imposed by *paragraph (a), (b) or (c) of subsection (2)*, a maximum restriction or reduction, as the case may be, of £125,000 in each case for the chargeable period, and
- (b) in the case of the restrictions imposed by *paragraph (d) or (e) of subsection (2)*, a maximum restriction of £50,000 in each case for the chargeable period.

(4) Where in relation to a chargeable period a company, having failed to deliver a return of income on or before the specified return

date for the chargeable period, delivers that return before the expiry of 2 months from the specified return date for the chargeable period, paragraphs (a) to (e) of subsection (2) shall apply—

- (a) as if the references in those paragraphs to “50 per cent” were references to “75 per cent” in the case of paragraphs (a), (b), (d) and (e) and “25 per cent” in the case of paragraph (c), and
- (b) subject to—
 - (i) in the case of the restrictions or reductions imposed by paragraph (a), (b) or (c) of subsection (2), a maximum restriction or reduction, as the case may be, of £25,000 in each case for the chargeable period, and
 - (ii) in the case of the restrictions imposed by paragraph (d) or (e) of subsection (2), a maximum restriction of £10,000 in each case for the chargeable period.

Publication of names of tax defaulters.

[FA83 s23; FA92 s240(b); WCTIPA93 s3(7); FA97 s158]

1086.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts,
- (c) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,
- (d) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,
- (e) the statutes relating to stamp duty and to the management of that duty, and
- (f) Part VI of the Finance Act, 1983,

and any instruments made thereunder;

“tax” means income tax, capital gains tax, corporation tax, value-added tax, gift tax, inheritance tax, residential property tax and stamp duty.

(2) The Revenue Commissioners shall, as respects each relevant period (being the period beginning on the 1st day of January, 1997, and ending on the 30th day of June, 1997, and each subsequent period of 3 months beginning with the period ending on the 30th day of September, 1997), compile a list of the names and addresses and the occupations or descriptions of every person—

- (a) on whom a fine or other penalty was imposed by a court under any of the Acts during that relevant period,
- (b) on whom a fine or other penalty was otherwise imposed by a court during that relevant period in respect of an act or omission by the person in relation to tax, or
- (c) in whose case the Revenue Commissioners, pursuant to an agreement made with the person in that relevant period,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

refrained from initiating proceedings for the recovery of any fine or penalty of the kind mentioned in *paragraphs (a) and (b)* and, in place of initiating such proceedings, accepted or undertook to accept a specified sum of money in settlement of any claim by the Revenue Commissioners in respect of any specified liability of the person under any of the Acts for—

- (i) payment of any tax,
- (ii) payment of interest on that tax, and
- (iii) a fine or other monetary penalty in respect of that tax.

(3) Notwithstanding any obligation as to secrecy imposed on them by the Acts or the Official Secrets Act, 1963—

- (a) the Revenue Commissioners shall, before the expiration of 3 months from the end of each relevant period, cause each such list referred to in *subsection (2)* in relation to that period to be published in *Iris Oifigiúil*, and
- (b) the Revenue Commissioners may at any time cause any such list referred to in *subsection (2)* to be publicised in such manner as they shall consider appropriate.

(4) *Paragraph (c) of subsection (2)* shall not apply in relation to a person in whose case—

- (a) the Revenue Commissioners are satisfied that, before any investigation or inquiry had been commenced by them or by any of their officers into any matter occasioning a liability referred to in that paragraph of the person, the person had voluntarily furnished to them complete information in relation to and full particulars of that matter,
- (b) section 72 of the Finance Act, 1988, or section 3 of the Waiver of Certain Tax, Interest and Penalties Act, 1993, applied, or
- (c) the specified sum referred to in *paragraph (c) of subsection (2)* does not exceed £10,000.

(5) Any list referred to in *subsection (2)* shall specify in respect of each person named in the list such particulars as the Revenue Commissioners think fit—

- (a) of the matter occasioning the fine or penalty of the kind referred to in *subsection (2)* imposed on the person or, as the case may be, the liability of that kind to which the person was subject, and
- (b) of any interest, fine or other monetary penalty, and of any other penalty or sanction, to which that person was liable, or which was imposed on that person by a court, and which was occasioned by the matter referred to in *paragraph (a)*.

PART 48

MISCELLANEOUS AND SUPPLEMENTAL

Charge and deduction of income tax not charged or deducted before passing of annual Act.

[ITA67 s8 and s93(3); FA69 s 29; FA72 s12 and Sch3; CTA76 s140(1) and Sch2 PtI par2]

1087.—(1) Where in any year of assessment any payments have been made, before the passing of an Act increasing the rate of income tax for that year, on account of any interest, dividends or other annual profits or gains from which under the Tax Acts income tax is required to be deducted and tax has not been charged on or deducted from those payments, or has not been charged on or deducted from those payments at the increased rate of tax for that year—

- (a) the amount not so charged or deducted shall be charged under Case IV of Schedule D in respect of those payments as profits or gains not charged by virtue of any other Schedule, and
- (b) the agents entrusted with the payment of the interest, dividends or annual profits or gains shall furnish to the Revenue Commissioners a list containing—
 - (i) the names and addresses of the persons to whom payments have been made, and
 - (ii) the amount of those payments,

on a requisition made by the Revenue Commissioners in that behalf.

(2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment, including a payment to which *section 104* applies (not being a payment of rent, interest or annuity)—

- (a) shall be authorised—
 - (i) to make any deduction on account of income tax for any year of assessment which that person has failed to make before the passing of an Act increasing the rate of tax for that year, or
 - (ii) to make up any deficiency in any such deduction which has been so made,

on the occasion of the next payment of the rent, interest or annuity, or the making of the other annual payment, including a payment to which *section 104* applies (not being a payment of rent, interest or annuity), after the passing of the Act so increasing the rate of tax, in addition to any other deduction which that person may be by law authorised to make, and

- (b) shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act increasing the rate of tax for the year had been in force.

(3) This section shall not apply to a payment which is a distribution within the meaning of *Chapter 2* of *Part 6*.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

1088.—(1) In determining the amount of profits or gains for the purpose of income tax—

Pt.48
Restriction on
deductions in
computing profits.
[ITA67 s535; FA74
s51]

- (a) no deductions shall be made other than those expressly provided for by the Income Tax Acts, and
- (b) no deduction shall be made on account of any annuity or other annual payment (other than interest) to be paid out of such profits or gains in regard that a proportionate part of the income tax is allowed to be deducted on making any such payment.

(2) In determining the amount of profits or gains from any property described in the Income Tax Acts or from any office or employment of profit, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession or employment.

1089.—(1) Interest payable under—

Status of interest on
certain unpaid taxes
and duties.
[FA73 s35; FA75
s27; FA76 s29]

- (a) section 15 of the Stamp Act, 1891, and subsections (2) and (3) of section 69 of the Finance Act, 1973,
- (b) section 21 of the Value-Added Tax Act, 1972, or
- (c) *section 531(9) or 991,*

shall be payable without any deduction of income tax and shall not be allowed in computing any income, profits or losses for any of the purposes of the Income Tax Acts.

(2) Interest payable under section 18 of the Wealth Tax Act, 1975, or section 41 of the Capital Acquisitions Tax Act, 1976, shall not be allowed in computing any income, profits or losses for any of the purposes of the Tax Acts.

1090.—Where an assessment has become final and conclusive for the purposes of income tax for any year of assessment, that assessment shall also be final and conclusive in estimating total income from all sources for the purposes of the Income Tax Acts, and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating such total income from all sources for such purposes unless that allowance or adjustment has been previously made on an application under the special provisions of the Income Tax Acts relating to that allowance or adjustment.

Income tax
assessment to be
conclusive of total
income.
[ITA67 s534]

1091.—(1) In this section, “company” means a company within the meaning of the Companies Act, 1963, and a company created by letters patent or by or in pursuance of any statute.

Annexation of
statements to
interest warrants,
etc.

(2) Every warrant, cheque or other order sent or delivered for the purpose of paying any interest which is not a distribution within the meaning of the Corporation Tax Acts by a company which is entitled to deduct income tax from such interest shall have annexed to it, or be accompanied by, a statement in writing showing—

[ITA67 s458;
CTA76 s140(1) and
Sch2 PtI par25]

- (a) the gross amount which, after deduction of the income tax appropriate to such interest, corresponds to the net amount actually paid,

PT.48 S.1091

(b) the rate and amount of income tax appropriate to such gross amount, and

(c) the net amount actually paid.

(3) A company which fails to comply with *subsection (2)* 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 payment or distribution of interest shall not exceed £100.

Disclosure of certain information to rating authorities, etc.

[FA78 s47; FA80 s89]

1092.—(1) This section shall apply to any charge imposed on public moneys, being a charge for the purposes of relief (in this section referred to as “the relief”) under the Rates on Agricultural Land (Relief) Acts, 1939 to 1980, and any subsequent enactment together with which those Acts may be cited.

(2) Where a charge to which this section applies is to be made, the Revenue Commissioners or any officer authorised by them for that purpose may, in connection with the establishment of title to the relief of a person (in this subsection referred to as “the claimant”), notwithstanding any obligation as to secrecy imposed on them under the Income Tax Acts or under any other enactment, disclose to any person specified in *column (1)* of the Table to this section information of the kind specified in *column (2)* of that Table, being information in respect of the claimant which is required by that person when considering the claimant’s title to the relief.

(3) In the Table to this section, “occupation” has the same meaning as in *section 654*, and “rating authority” has the same meaning as in *section 898*.

TABLE

(1) Persons to whom information to be given	(2) Information to be given
The secretary or clerk, or a person acting as such, to a rating authority or any officer of the Minister for the Environment and Local Government authorised by that Minister for the purpose of this section.	Information relating to the occupation of land by the claimant and the rateable valuation of such land.

Disclosure of information to Ombudsman.

[FA81 s52]

1093.—Any obligation to maintain secrecy or other restriction on the disclosure or production of information (including documents) obtained by or furnished to the Revenue Commissioners, or any person on their behalf, for taxation purposes, shall not apply to the disclosure or production of information (including documents) to the Ombudsman for the purposes of an examination or investigation by the Ombudsman under the Ombudsman Act, 1980, of any action (within the meaning of that Act) taken by or on behalf of the Revenue Commissioners, being such an action taken in the performance of administrative functions in respect of any tax or duty under the care and management of the Revenue Commissioners.

1094.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
- (b) the Capital Gains Tax Acts, and
- (c) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

and any instruments made thereunder;

“beneficial holder of a licence” means the person who conducts the activities under the licence and, in relation to a licence issued under the Auctioneers and House Agents Act, 1947, includes the authorised individual referred to in section 8(4), or the nominated individual referred to in section 9(1), of that Act;

“licence” means a licence or authorisation, as the case may be, of the kind referred to in—

- (a) the proviso (inserted by section 156 of the Finance Act, 1992) to section 49(1) of the Finance (1909-1910) Act, 1910,
- (b) the further proviso (inserted by section 79(1) of the Finance Act, 1993) to section 49(1) of the Finance (1909-1910) Act, 1910,
- (c) the proviso (inserted by section 79(2) of the Finance Act, 1993) to section 7(3) of the Betting Act, 1931,
- (d) the proviso (inserted by section 79(3) of the Finance Act, 1993) to section 19 of the Gaming and Lotteries Act, 1956,
- (e) the proviso (inserted by section 79(4)(a) of the Finance Act, 1993) to subsection (1) of section 8 of the Auctioneers and House Agents Act, 1947,
- (f) the proviso (inserted by section 79(4)(b) of the Finance Act, 1993) to subsection (1) of section 9 of the Auctioneers and House Agents Act, 1947 (an auction permit under that section being deemed for the purposes of this section to be a licence),
- (g) the proviso (inserted by section 79(4)(c) of the Finance Act, 1993) to subsection (1) of section 10 of the Auctioneers and House Agents Act, 1947,
- (h) the proviso (inserted by section 79(5) of the Finance Act, 1993) to paragraph 12(12) of the Imposition of Duties (No. 221) (Excise Duties) Order, 1975 (S.I. No. 307 of 1975),
- (i) the proviso (inserted by section 79(6) of the Finance Act, 1993) to paragraph (b) of subsection (3) of section 45 of the Finance Act, 1989, and
- (j) section 93, 116 or 144 of the Consumer Credit Act, 1995;

Pt.48
Tax clearance
certificates in
relation to certain
licences.

[FA92 s242; FA93
s140; FA97 s160(1)]

“specified date” means the date of commencement of a licence sought to be granted under any of the provisions referred to in *paragraphs (a) to (i)* of the definition of “licence” as specified for the purposes of a tax clearance certificate under *subsection (2)*;

“tax clearance certificate” shall be construed in accordance with *subsection (2)*.

(2) Subject to *subsection (3)*, the Collector-General shall, on an application to him or her by the person who will be the beneficial holder of a licence due to commence on a specified date, issue a certificate (in this section referred to as a “tax clearance certificate”) for the purposes of the grant of a licence if—

- (a) that person and, in respect of the period of that person’s membership, any partnership of which that person is or was a partner,
- (b) in a case where that person is a partnership, each partner,
- (c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

has or have complied with all the obligations imposed on that person or on them by the Acts in relation to—

- (i) the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and
- (ii) the delivery of returns.

(3) Subject to *subsection (4)*, where a person (in this section referred to as “the first-mentioned person”) will be the beneficial holder of a licence due to commence on a specified date and another person (in this section referred to as “the second-mentioned person”) was the beneficial holder of the licence at any time during the year ending on that date, and—

- (a) the second-mentioned person is a company connected (within the meaning of *section 10* as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,
- (b) the second-mentioned person is a company and the first-mentioned person is a partnership in which—
 - (i) a partner is or was able, or
 - (ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of *section 10* as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

- (c) the second-mentioned person is a partnership and the first-mentioned person is a company in which—

- (i) a partner is or was able, or
- (ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of *section 10* as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued by the Collector-General under *subsection (2)* unless, in relation to the activities conducted under the licence, the second-mentioned person has complied with the second-mentioned person's obligations under the Acts as specified in *subsection (2)*.

(4) *Subsection (3)* shall not apply to a transfer of a licence effected before the 24th day of April, 1992, or to such transfer effected after that date where a contract for the sale or lease of the premises to which the licence relates was signed before that date.

(5) An application for a tax clearance certificate under this section shall be made to the Collector-General in a form prescribed by the Revenue Commissioners and shall specify the commencement date of the licence to which the application relates and, where that licence is for a period of less than one year, the licensing period.

(6) Where an application for a tax clearance certificate under this section is refused by the Collector-General, he or she shall as soon as is practicable communicate in writing such refusal and the grounds for such refusal to the person concerned.

(7) (a) Where an application under this section to the Collector-General for a tax clearance certificate is refused, the person aggrieved by the refusal may, by notice in writing given to the Collector-General within 30 days of the refusal, apply to have such person's application heard and determined by the Appeal Commissioners; but no right of appeal shall exist by virtue of this section in relation to any amount of tax or interest due under the Acts.

(b) A notice under *paragraph (a)* shall be valid only if—

- (i) that notice specifies—
 - (I) the matter or matters with which the person is aggrieved, and
 - (II) the grounds in detail of the person's appeal as respects each such matter,
- and
- (ii) any amount under the Acts which is due to be remitted or paid, and which is not in dispute, is duly remitted or paid.

(c) The Appeal Commissioners shall hear and determine an appeal made to them under this subsection as if it were an appeal against an assessment to income tax and, subject to *paragraph (d)*, the provisions of the Income Tax Acts relating to such an appeal (including the provisions

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.48 S.1094

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.

- (d) On the hearing of an appeal made under this subsection, the Appeal Commissioners shall have regard to all matters to which the Collector-General is required to have regard under this section.

Tax clearance certificates in relation to public sector contracts.

1095.—(1) In this section—

“the Acts” means—

- (a) the Tax Acts,
(b) the Capital Gains Tax Acts, and
(c) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

[FA95 s177(1) to (6); FA96 s132(1) and Sch5 PtI par19]

and any instruments made thereunder;

“the scheme” means a scheme of the Department of Finance for the time being in force requiring persons to show, by means of tax clearance certificates, compliance with the obligations imposed by the Acts in relation to the matters specified in *subsection (2)* before the award to them of contracts that are specified in a circular of the Department of Finance entitled “Tax Clearance Procedures — Public Sector Contracts”, numbered F 49/24/84 and issued on the 30th day of July, 1991, or any such circular amending or replacing that circular;

“tax clearance certificate” shall be construed in accordance with *subsection (2)*.

(2) Subject to this section, where a person who is in compliance with the obligations imposed on the person by the Acts in relation to—

- (a) the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts to the Revenue Commissioners, and
(b) the delivery of any returns required to be made under the Acts,

applies to the Collector-General in that behalf for the purposes of the scheme, the Collector-General shall issue to the person a certificate (in this section referred to as a “tax clearance certificate”) stating that the person is in compliance with those obligations.

(3) A tax clearance certificate shall not be issued to a person unless—

- (a) the person and, in respect of the period of the person’s membership, any partnership of which the person is or was a member,
(b) in a case where the person is a partnership, each person who is a member of the partnership, and

- (c) in a case where the person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

Pr.48 S.1095

is in compliance with the obligations imposed on the person and each other person (including any partnership) by the Acts in relation to the matters specified in *paragraphs (a) and (b) of subsection (2)*.

(4) Where a person (in this subsection referred to as “the first-mentioned person”) applies for a tax clearance certificate in accordance with *subsection (2)* and the business activity to which the application relates was previously carried on by, or was previously carried on as part of a business activity carried on by, another person (in this subsection referred to as “the second-mentioned person”) and—

- (a) the second-mentioned person is a company which is connected (within the meaning of *section 10* as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,
- (b) the second-mentioned person is a company and the first-mentioned person is a partnership and—
- (i) a member of the partnership is or was able, or
- (ii) where more than one such member is a shareholder of the company, those members acting together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of *section 10* as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

- (c) the second-mentioned person is a partnership and the first-mentioned person is a company and—
- (i) a member of the partnership is or was able, or
- (ii) where more than one such member is a shareholder of the company, those members acting together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of *section 10* as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued to the first-mentioned person unless, in relation to the business activity to which the application relates, the second-mentioned person is in compliance with the obligations imposed on that person by the Acts in relation to the matters specified in *paragraphs (a) and (b) of subsection (2)*.

(5) *Subsection (4)* shall not apply to a business the transfer of which was effected before the 9th day of May, 1995, or a business the transfer of which is or was effected after that date if a contract for the transfer was made before that date.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PT.48 S.1095

(6) *Subsections (5), (6) and (7) of section 1094* shall, with any necessary modifications, apply to an application for a tax clearance certificate under this section as they apply to an application for a tax clearance certificate under that section.

(7) A tax clearance certificate shall be valid for the period specified in the certificate.

Assessment of
Electricity Supply
Board.

[ITA67 s545(1)]

1096.—For the purpose of determining liability for assessment to and payment of income tax, the Electricity Supply Board is not and never was the State or a branch or department of the Government of the State.

PART 49

COMMENCEMENT, REPEALS, TRANSITIONAL PROVISIONS, ETC.

Commencement.

1097.—(1) Except where otherwise provided by or under this Act, this Act shall be deemed to have come into force—

- (a) in relation to income tax, for the year 1997-98 and subsequent years of assessment,
- (b) in relation to corporation tax, for accounting periods ending on or after the 6th day of April, 1997, and
- (c) in relation to capital gains tax, for the year 1997-98 and subsequent years of assessment.

(2) So much of any provision of this Act as—

- (a) authorises the making, variation or revocation of any order or regulation or other instrument,
- (b) relates to the making of a return, the furnishing of a certificate or statement or the giving of any information, including any such provision which imposes a duty or obligation on—
 - (i) the Revenue Commissioners or on an inspector or other officer of the Revenue Commissioners, or
 - (ii) any other person,

(c) imposes a fine, forfeiture or penalty,

- (d)
 - (i) except where the tax concerned is all income tax for years of assessment before the year 1997-98, confers any power or imposes any duty or obligation the exercise or performance of which operates or may operate in relation to income tax for more than one year of assessment,
 - (ii) except where the tax concerned is all corporation tax for accounting periods ending before the 6th day of April, 1997, confers any power or imposes any duty or obligation the exercise or performance of which operates or may operate in relation to corporation tax for more than one accounting period, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (iii) except where the tax concerned is all capital gains tax Pr.49 S.1097
for years of assessment before the year 1997-98, confers any power or imposes any duty or obligation the exercise or performance of which operates or may operate in relation to capital gains tax for more than one year of assessment,

and

- (e) relates to any tax or duty, other than income tax, corporation tax or capital gains tax,

shall be deemed to have come into force on the 6th day of April, 1997, in substitution for the corresponding provisions of the repealed enactments.

(3) For the purposes of *subsection (2)*, anything done under or in connection with the provisions of the repealed enactments which correspond to the provisions of this Act referred to in that subsection shall be deemed to have been done under or in connection with the provisions of this Act to which those provisions of the repealed enactments correspond; but nothing in this subsection shall affect the operation of *subsections (3) and (4) of section 1102*.

(4) Notwithstanding *subsection (2)*, any provision of the repealed enactments which imposes a fine, forfeiture, penalty or punishment for any act or omission shall, in relation to any act or omission which took place or began before the 6th day of April, 1997, continue to apply in substitution for the provision of this Act to which it corresponds.

(5) If, and in so far as, by virtue of *subsection (2)*, a provision of this Act operates from the 6th day of April, 1997, in substitution for a provision of the repealed enactments, any order or regulation made or having effect as if made, and any thing done or having effect as if done, under the excluded provision before that date shall be treated as from that date as if it were an order or regulation made or a thing done under that provision of this Act.

1098.—(1) The enactments mentioned in *column (2) of Schedule 30* (which in this Act are referred to as “the repealed enactments”) are hereby repealed as on and from the 6th day of April, 1997, to the extent specified in *column (3) of that Schedule*. Repeals.

(2) *Subsection (1)* shall come into force in accordance with *section 1097*, and accordingly, except where otherwise provided by that section, this Act shall not apply—

- (a) to income tax for the year 1996-97 or any previous year of assessment,
- (b) to corporation tax for accounting periods ending before the 6th day of April, 1997, and
- (c) to capital gains tax for the year 1996-97 or any previous year of assessment,

and the repealed enactments shall continue to apply—

- (i) to income tax for any year mentioned in *paragraph (a)*,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Pt.49 S.1098

(ii) to corporation tax for any period mentioned in *paragraph (b)*, and

(iii) to capital gains tax for any year mentioned in *paragraph (c)*,

to the same extent that they would have applied if this Act had not been enacted.

Saving for enactments not repealed.

1099.—This Act (other than *subsections (2) to (4) of section 1102*) shall apply subject to so much of any Act as contains provisions relating to or affecting income tax, corporation tax or capital gains tax as—

(a) is not repealed by this Act, and

(b) would have operated in relation to those taxes respectively if this Act had not been substituted for the repealed enactments.

Consequential amendments to other enactments.

1100.—*Schedule 31*, which provides for amendments to other enactments consequential on the passing of this Act, shall apply for the purposes of this Act.

Transitional provisions.

1101.—*Schedule 32*, which contains transitional provisions, shall apply for the purposes of this Act.

Continuity and construction of certain references to old and new law.

1102.—(1) The Revenue Commissioners shall have all the jurisdictions, powers and duties in relation to tax under this Act which they had before the passing of this Act.

(2) The continuity of the operation of the law relating to income tax, corporation tax and capital gains tax shall not be affected by the substitution of this Act for the repealed enactments.

(3) Any reference, whether express or implied, in any enactment or document (including this Act and any Act amended by this Act)—

(a) to any provision of this Act, or

(b) to things done or to be done under or for the purposes of any provision of this Act,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments applied or had applied, a reference to, or, as the case may be, to things done or to be done under or for the purposes of that corresponding provision.

(4) Any reference, whether express or implied, in any enactment or document (including the repealed enactments and enactments passed and documents made after the passing of this Act)—

(a) to any provision of the repealed enactments, or

(b) to things done or to be done under or for the purposes of any provision of the repealed enactments,

shall, if and in so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act applies, a reference to, or as the case may be, to things done or deemed to be done or to be done under or for the purposes of that corresponding provision. Pr.49 S.1102

(5) Notwithstanding any other provision of this Act, no act, whether of commission or omission, which was committed or occurred before the 6th day of April, 1997, and was not an offence at the time of commission or omission, shall be an offence in the period from the 6th day of April, 1997, to the date of the passing of this Act.

1103.—(1) All officers appointed under the repealed enactments and holding office immediately before the commencement of this Act shall continue in office as if appointed under this Act. Continuance of officers, instruments and documents.

(2) All officers who immediately before the commencement of this Act stood authorised or nominated for the purposes of any provision of the repealed enactments shall be deemed to be authorised or nominated, as the case may be, for the purposes of the corresponding provision of this Act.

(3) All instruments, documents, authorisations and letters or notices of appointment made or issued under the repealed enactments and in force immediately before the commencement of this Act shall continue in force as if made or issued under this Act.

1104.—(1) This Act may be cited as the Taxes Consolidation Act, 1997. Short title and construction.

(2) *Sections 7, 858, 859, 872(1), 905, 906, 910, 912, 1002, 1078, 1079 and 1093* (in so far as relating to Customs) shall be construed together with the Customs Acts and (in so far as relating to duties of excise) shall be construed together with the statutes which relate to the duties of excise and to the management of those duties.

(3) *Sections 7, 811, 858, 859, 872(1), 887, 905, 906, 910 and 912, subsections (2) and (3) of section 928, and sections 1001, 1002, 1006, 1078, 1079, 1086, 1093, 1094 and 1095* (in so far as relating to value-added tax) shall be construed together with the Value-Added Tax Acts, 1972 to 1997.

(4) *Sections 7, 8, 811, 858, 859, 872(1), 875, 905, 906, 910, 1002, 1078, 1079, 1086 and 1093* (in so far as relating to stamp duties) shall be construed together with the Stamp Act, 1891, and the enactments amending or extending that Act.

(5) *Sections 7, 8, 811, 858, 859, 872(1), 887, 905, 906, 910, 912, 1002, 1003, 1006, 1078, 1079, 1086 and 1093* (in so far as relating to capital acquisitions tax) and *Part 34* (in so far as relating to capital acquisitions tax) shall be construed together with the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act.

(6) *Sections 7, 811, 859, 872(1), 887, 905, 906, 910, 912, 1006, 1078, 1086 and 1093* (in so far as they relate to Part VI of the Finance Act, 1983) shall be construed together with that Part and enactments amending or extending that Part.

SCHEDULE 1

Sections 13 and 567(4).

[FA73 Sch3 pars1, 3, 4, 5, 7 and 8; CTA76 s140(1) and Sch2 PtI par36(1) and (3) and s164 and Sch3 PtII]

SUPPLEMENTARY PROVISIONS CONCERNING THE EXTENSION OF CHARGE TO TAX TO PROFITS AND INCOME DERIVED FROM ACTIVITIES CARRIED ON AND EMPLOYMENTS EXERCISED ON THE CONTINENTAL SHELF

Information

1. The holder of a licence granted under the Petroleum and Other Minerals Development Act, 1960, shall, if required to do so by a notice served on such holder by an inspector, give to the inspector within the time limited by the notice (which shall not be less than 30 days) such particulars as may be required by the notice of—

- (a) transactions in connection with activities authorised by the licence as a result of which any person is or might be liable to income tax by virtue of *section 13* or to corporation tax by virtue of that section as applied by *section 23*, and
- (b) emoluments paid or payable in respect of duties performed in an area in which those activities may be carried on under the licence and the persons to whom they were paid or are payable,

and shall take reasonable steps to obtain the information necessary to enable such holder to comply with the notice.

Collection

2. (1) Subject to the following provisions of this Schedule, where any income tax is assessed by virtue of *section 13*, or any corporation tax is assessed by virtue of that section as applied by *section 23*, on a person not resident in the State in respect of—

- (a) profits or gains from activities authorised, or carried on in connection with activities authorised, by a licence granted under the Petroleum and Other Minerals Development Act, 1960, or
- (b) profits or gains arising from exploration or exploitation rights connected with activities so authorised or carried on,

and any of the tax remains unpaid later than 30 days after it has become due and payable, the Revenue Commissioners may serve a notice on the holder of the licence (in this paragraph referred to as “the holder”) specifying particulars of the assessment, the amount of tax remaining unpaid and the date when it became payable, and requiring the holder to pay that amount, together with any interest due on that amount under *section 1080*, within 30 days of the service of the notice.

(2) Any amount of tax which the holder is required to pay by a notice under this paragraph may be recovered from the holder as if it were tax due and duly demanded from the holder, and the holder may recover any such amount paid by the holder from the person on whom the assessment was made as a simple contract debt in any court of competent jurisdiction.

3. *Paragraph 2* shall not apply to any assessment to income tax on emoluments from an office or employment referred to in *section 13(5)*.

4. *Paragraph 2* shall not apply if the profits or gains in respect of which the relevant assessment was made arose to the person on whom it was made in consequence of a contract made by the holder of the licence before the 16th day of May, 1973, unless that person is a person connected with the holder of the licence or the contract was varied on or after that date. SCH.1

5. Where, on an application made by a person who will or might become liable to tax which if remaining unpaid could be recovered under *paragraph 2* from the holder of a licence, the Revenue Commissioners are satisfied that the applicant will comply with any obligations imposed on the applicant by the Tax Acts, they may issue a certificate to the holder of the licence exempting that holder from the application of that paragraph with respect to any tax payable by the applicant and, where such a certificate is issued, that paragraph shall not apply to any such tax which becomes due while the certificate is in force.

6. The Revenue Commissioners may, by notice in writing given to the holder of a certificate issued under *paragraph 5*, cancel the certificate from such date, not earlier than 30 days after the service of the notice, as may be specified in the notice.

SCHEDULE 2

MACHINERY FOR ASSESSMENT, CHARGE AND PAYMENT OF TAX UNDER SCHEDULE C AND, IN CERTAIN CASES, SCHEDULE D

PART 1

Interpretation of Parts 2 to 4

1. *Section 32* shall apply for the interpretation of *Parts 2 to 4* of this Schedule as it applies for the interpretation of *Chapter 1* of *Part 3* of this Act, except that in *Part 4* of this Schedule “dividends” shall include all such interest, annuities or payments as are, within the meaning of *section 60*, dividends to which *Chapter 2* of *Part 4* of this Act applies.

PART 2

Public revenue dividends, etc., payable to the Bank of Ireland, or entrusted for payment to the Bank of Ireland

2. The Bank of Ireland, as respects the dividends and the profits attached to the dividends payable to the Bank out of the public revenue of the State, or payable out of any public revenue and entrusted to the Bank for payment and distribution, shall, when any payment becomes due, deliver to the Commissioners appointed to assess and charge the income tax on such dividends and the profits attached to such dividends in books provided for the purpose true accounts of—

- (a) the amounts of the dividends, and profits attached to the dividends, payable to the Bank,
- (b) all dividends entrusted to the Bank for payment to the persons entitled to such dividends, and
- (c) the amount of income tax chargeable on such dividends and the profits attached to such dividends at the standard rate in force at the time of payment without any other deduction than is allowed by the Income Tax Acts.

Sections 33, 61 and 62.

[ITA67 Sch1 PtsI and III to VI; F(MP)A68 s3(3) and Sch PtII, s3(4) and Sch PtIII and s3(5) and Sch PtIV; FA74 s11 and Sch1 PtII]

3. The accounts referred to in *paragraph 2* shall distinguish the separate account of each person.

4. The Commissioners shall assess the income tax chargeable on the accounts delivered to the best of their judgment and belief, and shall deliver the assessment books signed by them to the Revenue Commissioners.

5. The Revenue Commissioners shall cause to be made out a certificate showing the total amount of income tax, the total amounts of the dividends and profits attached to the dividends charged with income tax, and the description of the persons or bodies of persons to whom such dividends and profits are payable or who have the distribution or are entrusted with the payment of such dividends.

6. The certificate shall be transmitted to the Commissioners whose duty it is to make the assessment.

7. (1) In the case of dividends and profits attached to dividends payable to the Bank of Ireland out of the public revenue of the State, the Bank of Ireland shall set apart the income tax in respect of the amount payable to the Bank.

(2) In the case of dividends and profits attached to dividends entrusted to the Bank of Ireland for payment and distribution—

- (a) the Bank of Ireland shall before making any payment retain the amount of the income tax for the purposes of the Income Tax Acts,
- (b) the retaining of the amount shall be deemed to be a payment of the income tax by the persons entitled to the dividends and shall be allowed by those persons on the receipt of the residue of the dividends, and
- (c) the Bank of Ireland shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

8. Money set apart or retained under *paragraph 7* shall be paid into the general account of the Revenue Commissioners at the Bank of Ireland, and every such payment shall be accompanied by a certificate, under the hands of 2 or more of the Commissioners who made the assessment, of the amount of the assessment under which the payment is made.

9. Where the Bank of Ireland does all such things as are necessary to enable the income tax to be assessed and paid in respect of British Government Stocks and India Stocks inscribed in its books in Dublin, the Bank shall receive as remuneration an allowance, to be calculated by reference to the amount of dividends paid in respect of such Stocks from which income tax is deducted, and to be fixed by the Minister for Finance.

10. Except where otherwise provided in any other enactments in force at the commencement of this Act, no assessment, charge or deduction of income tax under this Part of this Schedule shall be made where any half-yearly payment in respect of any dividends does not exceed £2.50, but such dividends shall be assessed and charged under Case III of Schedule D.

Public revenue dividends payable by public offices and departments

11. Public revenue dividends payable by any public office or Department of State shall be charged under Schedule C by the Revenue Commissioners.

12. The Revenue Commissioners shall exercise the like powers and duties as are possessed by Commissioners empowered to charge dividends payable out of the public revenue in other cases.

13. When any payments of dividends referred to in *paragraph 11* are made, the income tax on those payments shall be computed and certified to the proper officer for payment, who shall retain the tax and pay the tax into the general account of the Revenue Commissioners at the Bank of Ireland.

PART 4

Other public revenue dividends, dividends to which Chapter 2 of Part 4 applies, proceeds of coupons and price paid on purchase of coupons

14. (1) Every person, being—

- (a) a person (other than the Bank of Ireland) entrusted with the payment of any dividends payable to any persons in the State out of any public revenue other than that of the State,
- (b) a person in the State entrusted with the payment of any dividends to which *Chapter 2 of Part 4* applies,
- (c) a banker or other person in the State who obtains payment of any dividends in such circumstances that the dividends are chargeable to income tax under Schedule C or, in the case of dividends to which *Chapter 2 of Part 4* applies, under Schedule D,
- (d) a banker in the State who sells or otherwise realises coupons in such manner that the proceeds of the sale or realisation are chargeable to income tax under Schedule C or, in the case of dividends to which *Chapter 2 of Part 4* applies, under Schedule D, and
- (e) a dealer in coupons in the State who purchases coupons in such manner that the price paid on the purchase is chargeable to income tax under Schedule C or, in the case of dividends to which *Chapter 2 of Part 4* applies, under Schedule D,

shall, within one month after being so required by notice published in *Iris Oifigiúil*, deliver to the Revenue Commissioners an account in writing giving such person's name and residence and a description of those dividends or proceeds or that price paid on purchase, and shall also, on demand by the inspector authorised for that purpose by the Revenue Commissioners, deliver to that inspector true and perfect accounts of the amount of all such dividends, proceeds or price paid on purchase.

(2) The accounts referred to in *subparagraph (1)* shall distinguish the separate accounts of each of the persons entitled to receive such

dividends, proceeds or price paid on purchase, and state the name and address of each such person, and give particulars of the amounts payable and, in the case of amounts payable out of any public revenue other than that of the State, of the public revenue out of which each separate amount is payable.

15. Any person mentioned in *clauses (a) to (e) of paragraph 14(1)* is referred to in this Part as a “chargeable person”.

16. The Revenue Commissioners shall—

- (a) have all necessary powers in relation to the examining, auditing, checking and clearing the books and accounts of dividends, proceeds or price paid on purchase delivered under *paragraph 14*,
- (b) assess and charge the dividends, proceeds or price paid on purchase at the rate of income tax in force at the time of payment, but reduced by the amount of the exemptions (if any) allowed by the Revenue Commissioners, and
- (c) give notice of the amount so assessed and charged to the chargeable person.

17. The chargeable person shall out of the moneys in that person’s hands pay the income tax on the dividends, proceeds or price paid on purchase on behalf of the persons entitled to the dividends, proceeds or price paid on purchase, and shall be acquitted in respect of all such payments, and the Income Tax Acts shall apply as in the case of dividends payable out of the public revenue of the State and entrusted to the Bank of Ireland for payment and distribution.

18. The chargeable person shall pay the income tax into the general account of the Revenue Commissioners at the Bank of Ireland, and in default of payment the income tax shall be recovered from the chargeable person in the like manner as other income tax assessed and charged on that person may be recovered.

19. A chargeable person who does all such things as are necessary to enable the income tax to be assessed and paid shall receive as remuneration an allowance, to be calculated by reference to the amount of the dividends, proceeds or price paid on purchase paid from which tax has been deducted, and to be fixed by the Minister for Finance at a rate not being less than £0.675 for every £1,000 of that amount.

20. Notwithstanding anything to the contrary in the Income Tax Acts, where the Bank of Ireland (in this paragraph referred to as “the Bank”) is entrusted with the payment of any dividends which are payable to any persons in the State out of any public revenue other than that of the State, this Part shall apply to the Bank and, where the Bank does all things required by this Part to be done by a person entrusted with the payment of such dividends, remuneration shall be payable to the Bank in accordance with *paragraph 19*.

21. Nothing in this Part shall impose on any banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf that banker may be acting.

22. Where income tax in respect of the proceeds of the sale or realisation of any coupon or in respect of the price paid on the purchase of any coupon has been accounted for under this Part by any banker or any dealer in coupons and the Revenue Commissioners

are satisfied that the dividends payable on the coupons in relation to which such proceeds or such price arises have been subsequently paid in such manner that income tax has been deducted from such dividends under any of the provisions of this Schedule, the income tax so deducted shall be repaid. SCH.2

PART 5

Relief from obligation to pay tax on certain interest, dividends and other annual payments in the case of persons entrusted with payment

23. When any interest, dividends or other annual payments payable out of any public revenue other than that of the State, or in respect of the stocks, funds, shares or securities of any body of persons not resident in the State, are entrusted to any person in the State for payment to any person in the State, the Revenue Commissioners shall have power to relieve the person so entrusted with payment from the obligation to pay the income tax on such interest, dividends or other annual payments imposed on such person by section 17 and Chapter 1 of Part 3, or Chapter 2 of Part 4 and this Schedule.

24. When granting the relief referred to in paragraph 23 the Revenue Commissioners shall have power to prescribe any conditions which may appear to them to be necessary to ensure the assessment and payment of any income tax assessable and payable in respect of such interest, dividends or other annual payments under the Income Tax Acts.

25. A letter signed by a Secretary or an Assistant Secretary of the Revenue Commissioners stating that the Revenue Commissioners have exercised all or any of the powers conferred by this Part on them or the publication of a notice to that effect in *Iris Oifigiúil* shall be sufficient evidence that they have done so.

26. When, under the powers conferred on the Revenue Commissioners by this Part, the person entrusted with the payment of the interest, dividends or other annual payments is relieved from payment of the income tax on such interest, dividends or other annual payments, that tax shall be assessable and chargeable under the appropriate case of Schedule D on the person entitled to receive such interest, dividends or other annual payments and shall be payable by that person.

27. Where the person entrusted with the payment of the interest, dividends or other annual payments complies with the conditions prescribed by the Revenue Commissioners under paragraph 24, such person shall be entitled to receive as remuneration an allowance, to be calculated by reference to the amount of the dividends, interest or other annual payments in respect of which such conditions have been complied with, and to be fixed by the Minister for Finance at a rate or rates not being in any case less than £0.675 for every £1,000 of that amount.

SCHEDULE 3

RELIEFS IN RESPECT OF INCOME TAX CHARGED ON PAYMENTS ON RETIREMENT, ETC

Section 201.

[ITA67 Sch3; FA80 s10(2); FA90 s12; FA93 s8(b)]

PART 1

Interpretation and preliminary

1. (1) In this Schedule—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.3

“the relevant capital sum in relation to an office or employment” means, subject to *subparagraph (2)*, the aggregate of—

- (a) the amount of any lump sum (not chargeable to income tax) received,
- (b) the amount equal to the value at the relevant date of any lump sum (not chargeable to income tax) receivable, and
- (c) the amount equal to the value at the relevant date of any lump sum (not chargeable to income tax) which, on the exercise of an option or a right to commute, in whole or in part, a pension in favour of a lump sum, may be received in the future,

by the holder in respect of the office or employment in pursuance of any scheme or fund described in *section 778(1)*;

“the standard capital superannuation benefit”, in relation to an office or employment, means a sum determined as follows:

- (a) the average for one year of the holder’s emoluments of the office or employment for the last 3 years of his or her service before the relevant date (or for the whole period of his or her service if less than 3 years) shall be ascertained,
 - (b) one-fifteenth of the amount ascertained in accordance with *clause (a)* shall be multiplied by the whole number of complete years of the service of the holder in the office or employment, and
 - (c) an amount equal to the relevant capital sum in relation to the office or employment shall be deducted from the product determined in accordance with *clause (b)*.
- (2) (a) The relevant capital sum in relation to an office or employment shall include the amount mentioned in *clause (c)* of the definition of “the relevant capital sum in relation to an office or employment” whether or not the option or right referred to in that clause is exercised.
- (b) Where, under the conditions or terms of any scheme or fund described in *section 778(1)*, the holder of the office or employment is entitled to surrender irrevocably the option or right referred to in *clause (c)* of the definition of “the relevant capital sum in relation to an office or employment” and has done so at the relevant date, the relevant capital sum in relation to an office or employment shall not include the amount mentioned in that clause.

2. Any reference in this Schedule to a payment in respect of which income tax is chargeable under *section 123* is a reference to so much of that payment as is chargeable to tax after deduction of the relief applicable to that payment under *section 201(5)*.

3. Any reference in this Schedule to the amount of income tax to which a person is or would be chargeable is a reference to the amount of income tax to which the person is or would be chargeable either by assessment or by deduction.

4. Relief shall be allowed in accordance with this Schedule in respect of income tax chargeable by virtue of *section 123* where a claim is duly made in accordance with *section 201*. SCH.3

5. A claimant shall not be entitled to relief under this Schedule 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.

PART 2

Relief by reduction of sums chargeable

6. In computing the charge to tax in respect of a payment chargeable to income tax under *section 123*, a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds the basic exemption shall be deducted from the payment.

7. Where income tax is chargeable under *section 123* in respect of 2 or more payments to which *paragraph 6* applies, being payments 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, then—

- (a) *paragraph 6* shall apply as if those payments were a single payment of an amount equal to their aggregate amount and, where they are made in respect of different offices or employments, as if the standard capital superannuation benefit were an amount equal to the sum of the standard capital superannuation benefits for those offices or employments, and
- (b) where the payments are treated as income of different years of assessment, the relief to be granted under *paragraph 6* in respect of a payment chargeable for any year of assessment shall be the amount by which the relief computed in accordance with *subparagraph (a)* in respect of that payment and any payments chargeable for previous years of assessment exceeds the relief in respect of those payments chargeable for previous years of assessment,

and, where the standard capital superannuation benefit for an office or employment in respect of which 2 or more of the payments are made is not the same in relation to each of those payments, it shall be treated for the purposes of this paragraph as equal to the higher or highest of those benefits.

8. In computing the charge to tax in respect of a payment chargeable to income tax under *section 123* in the case of a claimant, if the claimant has not previously made a claim under *section 201* and the relevant capital sum (if any) in relation to the office or employment in respect of which the payment is made does not exceed £4,000, *subsection (5) of section 201* and *paragraph 6* shall apply to that payment as if each reference in that subsection and in that paragraph to the basic exemption were a reference to the basic exemption increased by the amount by which £4,000 exceeds that relevant capital sum.

9. In computing the charge to tax in respect of a payment chargeable to income tax under *section 123*, being a payment made in respect of an office or employment in which the service of the holder includes foreign service, a sum which bears to the amount which

SCH.3

would be chargeable to income tax apart from this paragraph the same proportion as the length of the foreign service bears to the length of the service before the relevant date shall be deducted from the payment (in addition to any deduction allowed under *paragraphs 6 to 8* of this Schedule).

PART 3

Relief by reduction of tax

10. In the case of any payment in respect of which income tax is chargeable under *section 123*, relief shall be allowed by means of deduction from the tax chargeable by virtue of that section of an amount equal to the amount determined by the formula—

$$A - \left(P \times \frac{T}{I} \right)$$

where—

A is the amount of income tax which apart from this paragraph would be chargeable in respect of the total income of the holder or past holder of the office or employment for the year of assessment of which the payment is treated as income after deducting from that amount of tax the amount of tax which would be so chargeable if the payment had not been made,

P is the amount of that payment after deducting any relief applicable to that payment under the preceding provisions of this Schedule,

T is the aggregate of the amounts of income tax chargeable in respect of the total income of the holder or past holder of the office or employment for the 5 years of assessment preceding the year of assessment of which the payment is treated as income before taking account of any relief provided by *section 826*, and

I is the aggregate of the taxable incomes of the holder or past holder of the office or employment for the 5 years of assessment preceding the year of assessment of which the payment is treated as income.

11. Where income tax is chargeable under *section 123* in respect of 2 or more payments to or in respect of the same person in respect of the same office or employment and is so chargeable for the same year of assessment, those payments shall be treated for the purposes of *paragraph 10* as a single payment of an amount equal to their aggregate amount.

12. Where income tax is chargeable under *section 123* in respect of 2 or more payments to or in respect of the same person in respect of different offices or employments and is so chargeable for the same year of assessment, *paragraphs 10* and *11* shall apply as if those payments were made in respect of the same office or employment.

Section 227.

SCHEDULE 4

[FA94 Sch; S.I. No. 148 of 1997]

EXEMPTION OF SPECIFIED NON-COMMERCIAL STATE SPONSORED BODIES FROM CERTAIN TAX PROVISIONS

1. Agency for Personal Service Overseas.
2. Beaumont Hospital Board.

3. Blood Transfusion Service Board.
4. Board for Employment of the Blind.
5. An Bord Altranais.
6. An Bord Bia — The Irish Food Board.
7. Bord Fáilte Éireann.
8. An Bord Glas.
9. An Bord Iascaigh Mhara.
10. Bord na Gaeilge.
11. Bord na Leabhar Gaeilge.
12. Bord na Radharcmhastóirí.
13. An Bord Pleanála.
14. Bord Scoláireachtaí Comalairte.
15. An Bord Tráchtála — The Irish Trade Board.
16. An Bord Uchtála.
17. Building Regulations Advisory Body.
18. The Central Fisheries Board.
19. CERT Limited.
20. The Chester Beatty Library.
21. An Chomhairle Ealaíon.
22. An Chomhairle Leabharlanna.
23. Coiste An Asgard.
24. Combat Poverty Agency.
25. Comhairle na Nimheanna.
26. Comhairle na n-Ospidéal.
27. Cork Hospitals Board.
28. Criminal Injuries Compensation Tribunal.
29. Dental Council.
30. Drug Treatment Centre Board.
31. Dublin Dental Hospital Board.
32. Dublin Institute for Advanced Studies.
33. Eastern Regional Fisheries Board.
34. Economic and Social Research Institute.
35. Employment Equality Agency.
36. Environmental Protection Agency — An Ghníomhaireacht um Chaomhnú Comhshaoil.
37. Eolas — The Irish Science and Technology Agency.
38. Federated Dublin Voluntary Hospitals.
39. Fire Services Council.
40. An Foras Áiseanna Saothair.
41. Forbairt.
42. Forfás.
43. The Foyle Fisheries Commission.
44. Garda Síochána Appeal Board.
45. Garda Síochána Complaints Board.
46. General Medical Services (Payments) Board.
47. Health Research Board — An Bord Taighde Sláinte.
48. Higher Education Authority.
49. Hospital Bodies Administrative Bureau.
50. Hospitals Trust Board.
51. The Independent Radio and Television Commission — An Coimisiún um Raidio agus Teilifís Neamhspleách.
52. The Industrial Development Agency (Ireland).
53. The Industrial Development Authority.
54. Institiúid Teangeolaíochta Éireann.
55. Institute of Public Administration.
56. The Irish Film Board.
57. The Irish Medicines Board.
58. The Labour Relations Commission.
59. Law Reform Commission.
60. The Legal Aid Board.
61. Leopardstown Park Hospital Board.
62. Local Government Computer Services Board — An Bord Seirbhísí Ríomhaire Rialtais Aitiúil.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.4

63. Local Government Staff Negotiations Board — An Bord Comhchaibidlí Foirne Rialtais Aitiúil.
64. The Marine Institute.
65. Medical Bureau of Road Safety — An Lia-Bhiúró um Shábháiltacht ar Bhóithre.
66. The Medical Council.
67. The National Authority for Occupational Safety and Health — An tÚdarás Náisiúnta um Shábháilteachta agus Sláinte Ceirde.
68. National Cancer Registry.
69. The National Concert Hall Company Limited — An Ceoláras Náisiúnta.
70. National Council for Educational Awards.
71. National Council for the Elderly.
72. The National Economic and Social Council.
73. The National Economic and Social Forum.
74. National Health Council.
75. National Heritage Council — Comhairle Na hOidhreacha Náisiúnta.
76. National Rehabilitation Board.
77. The National Roads Authority — An tÚdarás um Bóithre Náisiúnta.
78. National Safety Council — Comhairle Sábháiltacht Náisiúnta.
79. National Social Services Board.
80. The Northern Regional Fisheries Board.
81. The North Western Regional Fisheries Board.
82. Office of the Data Protection Commissioner.
83. The Pensions Board.
84. Postgraduate Medical and Dental Board.
85. The Radiological Protection Institute of Ireland.
86. The Refugee Agency.
87. Rent Tribunal.
88. Royal Hospital Kilmainham Company.
89. Saint James's Hospital Board.
90. Saint Luke's and St Anne's Hospital Board.
91. Salmon Research Agency of Ireland Incorporated.
92. Shannon Free Airport Development Company Limited.
93. The Shannon Regional Fisheries Board.
94. The Southern Regional Fisheries Board.
95. The South Western Regional Fisheries Board.
96. Tallaght Hospital Board.
97. Teagasc.
98. Temple Bar Renewal Limited.
99. Údarás na Gaeltachta.

Section 322.

SCHEDULE 5

[FA86 Sch4 Pts I and II]

DESCRIPTION OF CUSTOM HOUSE DOCKS AREA

Interpretation

1. In this Schedule—

“thoroughfare” includes any road, street, lane, place, quay, terrace, row, square, hill, parade, diamond, court, bridge, channel and river;

a reference to a line drawn along any thoroughfare is a reference to a line drawn along the centre of that thoroughfare;

a reference to a projection of any thoroughfare is a reference to a projection of a line drawn along the centre of that thoroughfare;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

a reference to the point where any thoroughfare or projection of any thoroughfare intersects or joins any other thoroughfare or projection of a thoroughfare is a reference to the point where a line drawn along the centre of one thoroughfare or, in the case of a projection of a thoroughfare, along the projection, would be intersected or joined by a line drawn along the centre of the other thoroughfare or, in the case of another projection of a thoroughfare, along the other projection;

a reference to a point where any thoroughfare or projection of a thoroughfare intersects or joins a boundary is a reference to the point where a line drawn along the centre of such thoroughfare or, in the case of a projection of a thoroughfare, along the projection would intersect or join such boundary.

Description of Custom House Docks Area

2. That part of the county borough of Dublin bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where a line drawn along the westerly projection of the northern boundary of Custom House Quay would be intersected by a line drawn along Memorial Road, then continuing in a northerly direction along Memorial Road and Amiens Street to the point where it joins Sheriff Street Lower, then continuing, initially in an easterly direction, along Sheriff Street Lower and Commons Street to the point where it intersects the easterly projection of the northern boundary of Custom House Quay, and then continuing in a westerly direction along that projection and that boundary and the westerly projection of that boundary to the first-mentioned point.

SCHEDULE 6

Section 330.

DESCRIPTION OF TEMPLE BAR AREA

[FA91 Sch2]

Interpretation

1. In this Schedule—

“thoroughfare” includes any bridge, green, hill, river and street;

a reference to a line drawn along any thoroughfare is a reference to a line drawn along the centre of that thoroughfare;

a reference to a projection of any thoroughfare is a reference to a projection of a line drawn along the centre of that thoroughfare;

a reference to the point where any thoroughfare or projection of any thoroughfare intersects or joins any other thoroughfare is a reference to the point where a line drawn along the centre of one thoroughfare or, in the case of a projection of a thoroughfare, along the projection, would be intersected or joined by a line drawn along the centre of the other thoroughfare.

Description of Temple Bar Area

2. That part of the county borough of Dublin bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the River Liffey is intersected by O’Connell Bridge, then continuing, initially in a southerly direction along O’Connell Bridge, Westmoreland Street, College Green, Dame Street, Cork Hill and Lord Edward Street to the point where it joins

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.6

Fishamble Street, then continuing in a northerly direction along Fishamble Street and the northerly projection of that street to the point where it intersects the River Liffey, then continuing in an easterly direction along the River Liffey to the first-mentioned point.

Section 339.

[FA97 Sch10]

SCHEDULE 7

DESCRIPTION OF CERTAIN ENTERPRISE AREAS

PART 1

Interpretation

In this Schedule

“thoroughfare” includes any canal, lane, motorway, railway line and road;

a reference to a line drawn along any thoroughfare is a reference to a line drawn along the centre of that thoroughfare;

a reference to the point where any thoroughfare intersects, joins or traverses any other thoroughfare is a reference to the point where a line drawn along the centre of one thoroughfare would be intersected, joined or traversed by a line drawn along the centre of the other thoroughfare;

a reference to a point where any thoroughfare is intersected by the projection of a boundary is a reference to the point where a line drawn along the centre of such thoroughfare would be intersected by the projection of such boundary.

PART 2

Description of Cherry Orchard/Gallanstown Enterprise Area

That part of the county borough of Dublin and the administrative county of South Dublin bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the Grand Canal is traversed by the M50 motorway, then continuing in an easterly direction along the Grand Canal to the point where it is traversed by the unnamed road to the east of the Dublin Corporation Waterworks installation, then continuing in a north-westerly direction along that unnamed road for a distance of 250 metres, then continuing in a straight undefined line in a north-easterly direction to a point on the South Western Railway Line which is 950 metres east of the point where that railway line is traversed by the M50 motorway, then continuing in a westerly direction along that railway line to the point where it is traversed by the M50 motorway, then continuing in a south-easterly direction along that motorway to the first-mentioned point.

PART 3

Description of Finglas Enterprise Area

That part of the county borough of Dublin and the administrative county of Fingal bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Jamestown Road is intersected by the western projection of the northern boundary of Poppintree Industrial Estate, then continuing in a northerly direction along Jamestown Road to the point where it

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

joins St. Margaret's Road, then continuing in an easterly direction along St. Margaret's Road for a distance of 110 metres, then continuing in a straight undefined line due north to the point where it intersects the M50 motorway, then continuing in an easterly direction along the M50 motorway to the point where it is traversed by the unnamed road immediately to the west of the playing fields on the northern side of St. Margaret's Road, then continuing in a southerly direction along that unnamed road to the point where it joins St. Margaret's Road, then continuing in an easterly direction along St. Margaret's Road for a distance of 115 metres, then continuing in a straight undefined line in a southerly direction to the point where Balbutcher Lane is intersected by the eastern projection of the northern boundary of Poppintree Industrial Estate, then continuing in a westerly direction along the last-mentioned projection and boundary and the western projection of the last-mentioned boundary to the first-mentioned point.

SCH.7

PART 4

Description of Rosslare Harbour Enterprise Area

Ballygerry Area

That part of the administrative county of Wexford bounded by a line commencing at the point (in this description referred to as "the first-mentioned point"), where the N25 road intersects the Ballygerry Road at Kilrane then continuing initially in a northerly direction along Ballygerry Road to the point where it next joins the N25 road, then continuing initially in a southerly direction along the N25 road to the first-mentioned point.

Harbour Area

That part of the town of Rosslare Harbour in the administrative county of Wexford bounded by a line commencing at the point (in this description referred to as "the first-mentioned point") where the high-water mark joins the south-eastern end of the pier wall to the north-west of the premises known locally as the Old Customs Shed, then continuing in a north-westerly direction along that pier to the point where it intersects the eastern end of the new revetment, then continuing in a south-westerly direction along that revetment to the point which is a distance of 150 metres from the western end of that revetment, then continuing in a straight undefined line due south to the point where it intersects the railway track, then continuing in a north-easterly direction along the railway track to the point where it is intersected by the southern projection of the western boundary of the Old Customs Shed property, then continuing in a northerly direction along the last-mentioned projection and boundary to the point where it joins the north-western boundary of the Old Customs Shed property, then continuing in a north-easterly direction in a straight undefined line to the first-mentioned point.

SCHEDULE 8

Section 351.

DESCRIPTION OF QUALIFYING RESORT AREAS

[FA95 Sch3]

PART 1

Description of qualifying resort areas of Clare

Kilkee

1. That part of the District Electoral Division of Kilkee comprised in the Townlands of Kilkee Upper, Kilkee Lower and Dough.

2. That part of the District Electoral Division of Kilfearagh comprised in that part of the Townland of Ballyonan or Doonaghboy bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the boundaries of the Townlands of Ballyonan or Doonaghboy, Kilkee Lower and Dough converge, then continuing in a south-westerly direction along the boundary of the Townlands of Kilkee Lower and Ballyonan or Doonaghboy for a distance of 568 yards to a point where it intersects a field measuring 1.829 acres, then continuing along the north-eastern boundary of that field to a point where it intersects Local Road (County Road 395), then continuing along the centre of that road in a south-westerly direction for a distance of 20 yards to a point where it intersects the northern projection of the north-eastern boundary of a field measuring 3.517 acres, then continuing along the north-eastern boundary of that field and of the adjoining field in a south-easterly direction, then continuing in that direction to the centre of the Kilkee/Loop Head Regional Road (R487), then continuing along the centre of that road in a southerly direction for 160 yards to a point where it intersects the westerly projection of the southern boundary of a field measuring 1.282 acres, then continuing in an easterly direction along the southern boundary of that field and adjoining fields to a point where it intersects with the eastern boundary of the Townland of Ballyonan or Doonaghboy, and then continuing, initially in a northerly direction, along that boundary to the first-mentioned point.

3. That part of the District Electoral Division of Kilfearagh comprised in that part of the Townland of Corbally bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) being the most westerly point of the boundary between the Townlands of Corbally and Dough, then continuing along that boundary in an easterly direction for approximately 510 yards to a point where it intersects the south-eastern corner of a field measuring 2.020 acres, then continuing in a northerly direction along the eastern boundary of that field and of adjoining fields for a distance of 394 yards, then continuing in a generally westerly direction along the northern boundary of a field measuring 3.305 acres, then continuing in that direction to the cliff face of George’s Head, and then continuing, initially in a southerly direction, along the high water mark to the first-mentioned point.

Lahinch

1. That part of the District Electoral Division of Ennistimon comprised in the Townlands of Lahinch and Dough.

2. That part of the District Electoral Division of Liscannor comprised in the Townland of Ballyellery.

3. That part of the District Electoral Division of Moy comprised in the Townland of Crag.

PART 2

Description of qualifying resort areas of Cork

Clonakilty

1. The administrative area of the urban district of Clonakilty.

2. That part of the District Electoral Division of Ardfield comprised in the Townlands of Dunmore, Muckcross, Lonagh, Drombeg and Pallas.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

3. That part of the District Electoral Division of Clonakilty Rural SCH.8 comprised in the Townlands of Clogheen, Inchydoney Island, Gallanes, Tawnies Lower (Rural), Tawnies Upper (Rural), Desert (Rural), Youghalls (Rural) and Miles (Rural).

Youghal

1. The administrative area of the urban district of Youghal.

2. That part of the District Electoral Division of Youghal Rural comprised in the Townlands of Summerfield, Ballyvergan East, Ballyclamasy, Knocknacally, Pipersbog, Glanaradotia, Park Mountain, Muckridge Demense, Foxhole and Youghal Mudlands.

3. That part of the District Electoral Division of Clonpriest comprised in the Townlands of Clonard East and Redbarn.

PART 3

Description of qualifying resort areas of Donegal

Bundoran

1. The administrative area of the urban district of Bundoran.

2. That part of the District Electoral Division of Bundoran Rural comprised in that part of the Townland of Magheracar which is situated west of the most westerly boundary of the administrative area of the urban district of Bundoran.

3. That part of the District Electoral Division of Bundoran Rural comprised in that part of the Townland of Finner bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the eastern boundary of the administrative area of the urban district of Bundoran, on the southern side of the National Primary Road (N15), intersects with the centre of that National Primary Road, then continuing in an easterly direction along the centre of that road for a distance of 500 feet, then continuing in a north-westerly direction along the rear boundary to the east of Finner Avenue Housing Estate until the south-eastern corner of Tullan Strand is reached, then continuing in a westerly direction to the point where it joins the most north-easterly point of the boundary of the administrative area of the urban district of Bundoran, then continuing in a southerly direction along the eastern boundary of the urban district to the point where it intersects the centre of the National Primary Road (N15), and then continuing in an easterly direction along the centre of that road to the first-mentioned point.

PART 4

Description of qualifying resort areas of Galway

Salthill

1. That part of the County Borough of Galway bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Threadneedle Road meets Salthill Road Upper, then continuing in a northerly direction along the centre of Threadneedle Road to its junction with the road from Seapoint Housing Estate, then continuing in an easterly direction along the

southern edge of that estate road and in an easterly projection therefrom to its intersection with a road named Rockbarton West, then continuing in an easterly direction along the centre of Revagh Road to its junction with Rockbarton Road, then continuing in a southerly direction along the centre of Rockbarton Road to its junction with Salthill Road Upper and then continuing in a westerly direction along Salthill Road Upper to the first-mentioned point.

2. That part of the County Borough of Galway bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the Seapoint Promenade Road meets Salthill Road Upper, then continuing in a north-easterly direction along the centre of Salthill Road Upper to its junction with Salthill Road Lower, then continuing in an easterly direction along the centre of Grattan Road to its junction with Seapoint Promenade Road and then continuing in a south-westerly direction along the centre of Seapoint Promenade Road to the first-mentioned point.

3. That part of the County Borough of Galway bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Dalysfort Road meets Salthill Road Upper, then continuing in an easterly direction along the centre of Salthill Road Upper to a point where it meets Monksfield, then continuing in a north-westerly direction along the centre of Monksfield to the rear of Number 212 Salthill Road Upper, then continuing in a westerly direction along the Commercial Zoning Boundary as set out in the Galway County Borough Development Plan, 1991, to a point at the rear of Western House where it adjoins Dalysfort Road and then continuing in a southerly direction to the first-mentioned point.

4. That part of the County Borough of Galway bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Monksfield meets Salthill Road Upper, then continuing in a north-easterly direction along the centre of Salthill Road Upper to its junction with Salthill Road Lower, then continuing in a northerly direction along the centre of Salthill Road Lower to its junction with Devon Park Road, then continuing in a north-westerly direction along the centre of Devon Park Road to the rear of property known as Number 108 Lower Salthill Road, then continuing in a southerly direction along Devon Park along the rear boundaries of Numbers 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146 and 148 Lower Salthill Road to where it meets Lenaboy Park, then continuing along the Commercial Zoning Boundary, as set out in the Galway County Borough Development Plan, 1991, to the rear of Number 160 Upper Salthill Road, then continuing along the rear boundaries of Numbers 160, 162, 164, 166, 168 and 170 Upper Salthill Road, then continuing in a southerly direction to the side boundary of Number 178 Upper Salthill Road, then continuing in a westerly direction along the boundary of Number 178 Upper Salthill Road to its boundary with Lenaboy Gardens, then continuing in a southerly direction along the centre of Lenaboy Gardens to the north-western corner of the Sacre Coeur Hotel, then continuing in a southerly direction along the Commercial Zoning Boundary, as set out in the Galway Borough Development Plan, 1991, to its junction with Monksfield and then continuing in a south-easterly direction to the first-mentioned point.

5. That part of the County Borough of Galway bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where Lower Salthill Road meets Grattan Road, then continuing in an easterly direction along the centre of Grattan

Road to its junction with Salthill Promenade Road, then continuing SCH.8
in a northerly direction along the boundary of the existing private
car-park to the rear boundary of that car-park, then continuing in a
westerly direction along the rear boundary of properties fronting
onto Grattan Road as far as Salthill Road Lower and then continuing
in a southerly direction along the centre of Salthill Road Lower to
the first-mentioned point.

PART 5

Description of qualifying resort areas of Kerry

Ballybunion

1. That part of the District Electoral Division of Killeheny comprised in the Townlands of Ballyeagh, Killeheny, Ballybunion, Dromin and Doon West.

2. That part of the District Electoral Division of Killeheny comprised in that part of the Townland of Gortnaskeha bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the boundaries of the Townlands of Ballyeagh, Gortnaskeha and Ahimma converge, then continuing in an easterly direction along the boundary between the Townlands of Gortnaskeha and Ahimma to a point where it intersects with the centre of the Tralee/Ballybunion Regional Road (R551), then continuing in a north-westerly direction along the centre of that road for 1,192 metres to a point where the road would intersect with a line drawn along the westerly projection of the northern boundary of the existing ESB transformer site, then continuing in a north-easterly direction along the existing field boundary to the centre of the Listowel/Ballybunion Regional Road (R553), then continuing in a northerly direction to the centre of the Local Road (County Road 28), then continuing in a westerly direction along that road for 230 metres, then continuing in a northerly direction to a point where it intersects with the boundary between the Townlands of Dromin and Gortnaskeha, and then continuing in a southerly direction along the western boundary of the Townland of Gortnaskeha to the first-mentioned point.

3. That part of the District Electoral Division of Killeheny comprised in that part of the Townland of Doon East bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) where the Ballybunion/Beale Local Road (County Road 4) intersects the Ballybunion/Asdee Regional Road (R551), then continuing in a north-easterly direction along the centre of that Regional road for 250 metres, then continuing in a southerly direction along the rear boundary of the existing housing development to the boundary of the Townlands of Doon East and Doon West, then continuing in a westerly direction along that boundary to the centre of the Regional Road (R551), and then continuing in a northerly direction along the centre of that road to the first-mentioned point.

PART 6

Description of qualifying resort areas of Louth

Clogherhead

That part of the District Electoral Division of Clogher comprised in the Townland of Clogher and that part of the Townland of Callystown bounded on the west by the Termonfeckin/Annagassan Local Road (County Road 281) and on the north by the Dunleer/Clogherhead Regional Road (R166).

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

PART 7

Description of qualifying resort areas of Mayo

Achill

1. The District Electoral Divisions of Slievemore, Dooega, Achill and Corraun Achill.
2. That part of the District Electoral Division of Newport West comprised in the Townland of Mallanranny.

Westport

1. That part of the District Electoral Division of Westport Urban comprised in the Townlands of Ardmore, Cloonmonad, Cahernamart, Carrownalurgan, Knockranny, Westport Demesne (Urban District), Deerpark East, Carrowbeg and those parts of the Townlands of Carrowbaun and Killaghoor contained within the administrative area of the urban district of Westport.
2. That part of the District Electoral Division of Westport Rural comprised in Roman Island and the Townland of Rossbeg.
3. That part of the District Electoral Division of Kilmeena comprised in that part of the Townland of Westport Demesne (Rural District) bounded by a line commencing at the point (in this description referred to as “the first-mentioned point”) forming the most north-westerly point of the Townland of Westport Demesne (Urban District), then continuing in a westerly direction for 100 yards, then continuing in a northerly direction for 320 yards, then continuing in a south-easterly direction for 630 yards following the field boundary south of Kennedy’s Wood as far as the administrative boundary of the urban district of Westport and then continuing along that boundary initially in a south-westerly direction to the first-mentioned point.

PART 8

Description of qualifying resort areas of Meath

Bettystown, Laytown and Mosney

1. That part of the District Electoral Division of Julianstown comprised in that part of the Townland of Mornington bounded on the north by a line commencing at the high water mark and continuing in a westerly direction along the northern boundary of Laytown/Bettystown Golf Links to a point where it intersects with the boundary of the Townland of Donacarne Great; and those parts of the Townlands of Betaghstown, Sevitsland, Ministown and Ninch which are situated to the east of the Dublin/Belfast railway line.
2. That part of the District Electoral Division of Julianstown comprised in the Townland of Mosney and that part of the Townland of Briarleas situated to the east of Local Road (County Road 438).

PART 9

Description of qualifying resort areas of Sligo

Enniscrone

1. That part of the District Electoral Division of Kilglass comprised in the Townlands of Carrowhubbock North, Carrowhubbock South, Frankford, Kinard and Trotts.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

2. That part of the District Electoral Division of Castleconnor West comprised in the Townlands of Bartragh, Carrowcardin, Muckduff and Scurmore. SCH.8

PART 10

Description of qualifying resort areas of Waterford

Tramore

1. That part of the District Electoral Division of Islandikane comprised in the Townlands of Westtown, Newtown and Coolnagoppoge.

2. That part of the District Electoral Division of Tramore comprised in the Townlands of Ballycarnane, Monloum, Tramore East, Tramore West, Crobally Upper, Crobally Lower, Tramore Intake and including the land bounded on the west by the Townlands of Tramore West, Crobally Upper and Tramore Intake (part b), on the north by the Townlands of Ballinattin and Tramore Intake (part a), on the east by a line running in a south-easterly direction from Tramore Intake (part a) along the centre of the embankment to the Townland of Tramore Burrow and continuing in that direction as far as the high water mark, and on the south by the high water mark.

PART 11

Description of qualifying resort areas of Wexford

Courtown

1. That part of the District Electoral Division of Courtown comprised in the Townlands of Courtown and Ballinatrav Lower.

2. That part of the District Electoral Division of Ardamine comprised in the Townlands of Ballinatrav Upper, Seamount, Middletown, Parknacross and Glen (Richards).

PART 12

Description of qualifying resort areas of Wicklow

Arklow

1. The administrative area of the urban district of Arklow.

2. That part of the District Electoral Division of Arklow Rural comprised in the Townlands of Clogga and Askintinny.

3. That part of the District Electoral Division of Kilbride comprised in the Townlands of Seabank and Johnstown South.

SCHEDULE 9

CHANGE IN OWNERSHIP OF COMPANY: DISALLOWANCE OF TRADING LOSSES

Change in ownership of company

1. For the purposes of sections 401 and 679(4), there shall be a change in the ownership of a company if—

Sections 401 and 679(4).

[FA73 Sch5 PtI pars 1 to 7 and 9; FA97 s146(1) and Sch 9 PtI par5(3)]

- (a) a single person acquires more than 50 per cent of the ordinary share capital of a company,
- (b) 2 or more persons each acquire a holding of 5 per cent or more of the ordinary share capital of the company and those holdings together amount to more than 50 per cent of the ordinary share capital of the company, or
- (c) 2 or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than 50 per cent of the ordinary share capital of the company, but disregarding a holding of less than 5 per cent unless it is an addition to an existing holding and the 2 holdings together amount to 5 per cent or more of the ordinary share capital of the company.

2. In applying *paragraph 1*—

- (a) the circumstances at any 2 points in time with not more than 3 years between them may be compared, and a holder at the later time may be regarded as having acquired whatever such holder did not hold at the earlier time, irrespective of what such holder has acquired or disposed of between such 2 points in time;
- (b) so as to allow for any issue of shares or other reorganisation of capital, the comparison referred to in *subparagraph (a)* may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;
- (c) in deciding for the purposes of *subparagraphs (b) and (c) of paragraph 1* whether any person has acquired a holding of at least 5 per cent or a holding which makes at least 5 per cent when added to an existing holding, acquisitions by, and holdings of, persons who are connected with each other shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;
- (d) any acquisition of shares under the will or on the intestacy of a deceased person and any gift of shares, if it is shown that the gift is unsolicited and made without regard to *section 401* or *679(4)*, shall be disregarded.

3. Where persons, whether members of the company or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company and as a consequence ownership of ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses or capital allowances may ultimately enure, then, in considering whether there has been a change in ownership of the company for the purposes of *section 401* or *679(4)*, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

4. Where *section 401* or *679(4)* has operated to restrict relief by reference to a change in ownership taking place at any time, no transaction or circumstance before that time shall be taken into account in determining whether there is any subsequent change in ownership.

5. (1) For the purposes of *sections 401* and *679(4)*, a change in the ownership of a company shall be disregarded if—

- (a) immediately before the change the company is a 75 per cent subsidiary of another company, and
- (b) that other company continues after the change, despite a change in the direct ownership of the first-mentioned company, to own that first-mentioned company as a 75 per cent subsidiary.

(2) If there is a change in the ownership of a company which has a 75 per cent subsidiary, whether owned directly or indirectly, *section 401* or *679(4)*, as the case may be, shall apply as if there had also been a change in the ownership of that subsidiary unless the change in ownership of the first-mentioned company is to be disregarded under *subparagraph (1)*.

Provisions as to ownership

6. For the purposes of *sections 401* and *679(4)* and this Schedule—

- (a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly,
- (b) a company shall be deemed to be 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 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*, and
- (d) “share” includes “stock”.

Time of change in ownership

7. (1) Where any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change in ownership of a company—

- (a) was made in pursuance of a contract of sale or option or other contract, or
- (b) was made by a person holding such a contract,

the time when the change in ownership took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of the contract was assigned to the holder so that, in the case of a person exercising an option to purchase shares, such person shall be regarded as having purchased the shares when such person acquired the option.

(2) *Subparagraph (1)* shall not apply where the contract was made before the 16th day of May, 1973.

8. Any person in whose name any shares or securities of a company are registered shall, if required by notice in writing by an inspector given for the purposes of *section 401* or *679(4)*, state whether or not that person is the beneficial owner of those shares or securities or any of them and, if that person is not the beneficial owner of those shares or securities or any of them, that person shall furnish the name and address of the person or persons on whose behalf those shares or securities are registered in that person's name.

Section 507.

SCHEDULE 10

[FA84 Sch2; FA87
s12(2); FA91
s15(2)]

RELIEF FOR INVESTMENT IN CORPORATE TRADES: SUBSIDIARIES

Finance for trade of subsidiary

1. The shares issued by the qualifying company may, instead of or as well as being issued for the purpose mentioned in *section 489(1)(b)*, be issued for the purpose of raising money for a qualifying trade being carried on by a subsidiary or which such a subsidiary intends to carry on and, where shares are so issued, *paragraph (b)* of the definition of "relevant period" in *section 488(1)* and *subsections (1)(c), (7), (8) and (11)* of *section 489* shall apply as if references to the company were or, as the case may be, included references to the subsidiary.

Individuals qualifying for relief

2. (1) In *subsections (2), (4) and (6)* of *section 493*, references to a company (except in each subsection the first such reference) include references to a company which is during the relevant period a subsidiary of that company, whether it becomes a subsidiary before, during or after the year of assessment in respect of which the individual concerned claims relief and whether or not it is such a subsidiary while he or she is a partner, director or employee mentioned in *subsection (2)* of *section 493* or while he or she has or is entitled to acquire such capital or voting power or rights as are mentioned in *subsections (4) and (6)* of that section.

(2) Without prejudice to *section 493* as it applies in accordance with *subparagraph (1)*, an individual shall be treated as connected with a company if—

(a) he or she has at any time in the relevant period had control (within the meaning of *section 11*) of another company which has since that time and before the end of the relevant period become a subsidiary of the company, or

(b) he or she directly or indirectly possesses or is entitled to acquire any loan capital of a subsidiary of that company.

(3) *Subsections (5) and (9)* of *section 493* shall apply for the purposes of this paragraph.

Value received

3. (1) In *sections 499(9) and 501(5)*, references to the receipt of value from the company shall include references to the receipt of value from any company which during the relevant period is a subsidiary of the company, whether it becomes a subsidiary before or

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

after the individual concerned receives any value from it, and refer- SCH.10
ences to the company in the other provisions of *section 499* and in
section 501(8) shall be construed accordingly.

(2) In *section 501(1)*, references to the company (except the first such reference) shall include references to a company which during the relevant period is a subsidiary of the company, whether it becomes a subsidiary before or after the repayment, redemption, repurchase or payment referred to in that subsection.

Information

4. *Subsections (4) and (5) of section 505* shall apply in relation to any arrangements mentioned in *section 507(2)(c)* as they apply in relation to any arrangement mentioned in *section 502*.

SCHEDULE 11

Section 510.

PROFIT SHARING SCHEMES

[FA82 Sch3; FA90
s136; FA95 s16;
FA97 s50(c)]

PART 1

Interpretation

1. In this Schedule, “control” shall be construed in accordance with *section 432*.

2. For the purposes of this Schedule, a company shall be a member of a consortium owning another company if it is one of not more than 5 companies which between them beneficially own not less than 75 per cent of the other company’s ordinary share capital and each of which beneficially owns not less than 5 per cent of that capital.

PART 2

Approval of schemes

3. (1) On the application of a body corporate (in this Schedule referred to as “the company concerned”) which has established a profit sharing scheme which complies with *subparagraphs (3) and (4)*, the Revenue Commissioners shall, subject to *section 511*, approve of the scheme—

(a) if they are satisfied in accordance with *paragraph 4*, and

(b) unless it appears to them that there are features of the scheme which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of interests in shares.

(2) Where the company concerned has control of another company or companies, the scheme may be expressed to extend to all or any of the companies of which it has control, and in this Schedule a scheme which is expressed so to extend is referred to as a “group scheme” and, in relation to a group scheme, “participating company” means the company concerned or a company of which for the time being the company concerned has control and to which for the time being the scheme is expressed to extend.

(3) The scheme shall provide for the establishment of a body of persons resident in the State (in this Schedule referred to as “the trustees”)—

- (a) who, out of moneys paid to them by the company concerned or, in the case of a group scheme, by a participating company, are required by the scheme to acquire shares in respect of which the conditions in *Part 3* of this Schedule are fulfilled,
- (b) who are under a duty to appropriate shares acquired by them to individuals who participate in the scheme, not being individuals ineligible by virtue of *Part 4* of this Schedule, and
- (c) whose functions with respect to shares held by them are regulated by a trust which is constituted under the law of the State and the terms of which are embodied in an instrument which complies with *Part 5* of this Schedule.

(4) The scheme shall provide that the total of the initial market values of the shares appropriated to any one participant in a year of assessment will not exceed £10,000.

(5) An application under *subparagraph (1)* shall be made in writing and shall contain such particulars and be supported by such evidence as the Revenue Commissioners may require.

4. (1) The Revenue Commissioners shall be satisfied that at any time every person who—

- (a) (i) as respects a profit sharing scheme approved before the 10th day of May, 1997, is then a full-time employee or director of the company concerned or, in the case of a group scheme, of a participating company, or
- (ii) as respects a profit sharing scheme approved on or after the 10th day of May, 1997, is then an employee or full-time director of the company concerned or, in the case of a group scheme, of a participating company,
- (b) has been such an employee or director at all times during a qualifying period, not exceeding 5 years, ending at that time, and
- (c) is chargeable to income tax in respect of his or her office or employment under Schedule E,

will then be eligible, subject to *Part 4* of this Schedule, to participate in the scheme on similar terms.

(2) For the purposes of *subparagraph (1)*, the fact that the number of shares to be appropriated to the participants in a scheme varies by reference to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that the participants are not eligible to participate in the scheme on similar terms.

5. (1) Where at any time after the Revenue Commissioners have approved of a scheme—

- (a) a participant is in breach of any of his or her obligations under *paragraphs (a), (c) and (d) of section 511(4)*,
- (b) there is, with respect to the operation of the scheme, any contravention of any provision of *Chapter 1 of Part 17*,

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the scheme itself or the terms of the trust referred to in SCH.11
paragraph 3(3)(c),

(c) any shares of a class of which shares have been appropriated to participants receive different treatment in any respect from the other shares of that class, being in particular different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) the 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,

or

(d) the Revenue Commissioners cease to be satisfied in accordance with *paragraph 4*,

then, the Revenue Commissioners may, subject to *subparagraph (3)*, withdraw the approval with effect from that time or from such later time as they may specify.

(2) Where at any time after the Revenue Commissioners have approved of a scheme an alteration is made in the scheme or the terms of the trust referred to in *paragraph 3(3)(c)*, the approval shall not have effect after the date of the alteration unless the Revenue Commissioners have approved of the alteration.

(3) It shall not be a ground for withdrawal of approval of a scheme that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment less favourable than that accorded to shares issued before that date.

6. (1) Where the company concerned is aggrieved by—

(a) the failure of the Revenue Commissioners to approve of a scheme,

(b) the failure of the Revenue Commissioners to approve of an alteration as mentioned in *paragraph 5(2)*, or

(c) the withdrawal of approval,

the company may, by notice in writing given to the Revenue Commissioners within 30 days from the date on which it is notified of their decision, make an application to have its claim for relief heard and determined by the Appeal Commissioners.

(2) Where an application is made under *subparagraph (1)*, 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.

7. The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by them.

PART 3

Conditions as to the shares

8. The shares shall form part of the ordinary share capital of—
- (a) the company concerned,
 - (b) a company which has control of the company concerned, or
 - (c) a company which either is or has control of a company which—
 - (i) is a member of a consortium owning either the company concerned or a company having control of that company, and
 - (ii) beneficially owns not less than 15 per cent of the ordinary share capital of the company so owned.
9. The shares shall be—
- (a) shares of a class quoted on a recognised stock exchange,
 - (b) shares in a company not under the control of another company, or
 - (c) shares in a company under the control of a company (other than a company which is, or if resident in the State would be, a close company within the meaning of *section 430*) whose shares are quoted on a recognised stock exchange.
10. (1) The shares shall be—
- (a) fully paid up,
 - (b) not redeemable, and
 - (c) not subject to any restrictions other than restrictions which attach to all shares of the same class or, as respects a profit sharing scheme approved on or after the 10th day of May, 1997, a restriction authorised by *subparagraph (2)*.
- (2) Subject to *subparagraphs (3) and (4)*, the shares may be subject to a restriction imposed by the company's articles of association—
- (a) requiring all shares held by directors or employees of the company or of any other company of which it has control to be disposed of on ceasing to be so held, and
 - (b) requiring all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not, or have ceased to be, such directors or employees to be disposed of when they are acquired.

(3) A restriction is not authorised by *subparagraph (2)* unless— SCH.11

(a) any disposal required by the restriction will be by means of sale for a consideration in money on terms specified in the articles of association, and

(b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in *subparagraph (2)*) may be required to sell them on terms which are the same as those mentioned in *paragraph (a)*.

(4) Nothing in *subparagraph (2)* authorises a restriction which would require a person, before the release date, to dispose of his or her beneficial interest in shares the ownership of which has not been transferred to him or her.

11. Except where the shares are in a company whose ordinary share capital, at the time of the acquisition of the shares by the trustees, consists of shares of one class only, the majority of the issued shares of the same class shall be held by persons other than—

(a) persons who acquired their shares—

(i) in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the company concerned or any other company, and

(ii) not in pursuance of an offer to the public,

(b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of a right or opportunity mentioned in *subparagraph (a)*, and

(c) in a case where the shares are within *paragraph 9(c)* and are not within *paragraph 9(a)*, companies which have control of the company whose shares are in question or of which that company is an associated company within the meaning of *section 432*.

PART 4

Individuals ineligible to participate

12. An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time unless he or she is at that time or was within the preceding 18 months a director or employee of the company concerned or, if the scheme is a group scheme, of a participating company.

13. An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time in a year of assessment if in that year of assessment shares have been appropriated to him or her under another approved scheme established by the company concerned or by—

(a) a company which controls or is controlled by the company concerned or which is controlled by a company which also controls the company concerned, or

- (b) a company which is a member of a consortium owning the company concerned or which is owned in part by the company concerned as a member of a consortium.

14. (1) An individual shall not be eligible to have shares appropriated to him or her under the scheme at any time if at that time he or she has, or at any time within the preceding 12 months had, a material interest in a close company which is—

(a) the company whose shares are to be appropriated, or

(b) a company which has control of that company or is a member of a consortium which owns that company.

(2) *Subparagraph (1)* shall apply in relation to a company which would be a close company but for *section 430(1)(a)* or *431*.

(3) (a) In this paragraph, “close company” has the meaning assigned to it by *section 430*.

(b) For the purpose of this paragraph—

(i) *subsection (3)* of *section 433* shall apply—

(I) in a case where the scheme in question is a group scheme, with the substitution of a reference to all participating companies for the first reference to the company in *paragraph (c)(ii)* of that subsection, and

(II) with the substitution of a reference to 15 per cent for the reference in that paragraph to 5 per cent, and

(ii) *section 437(2)* shall apply, with the substitution of a reference to 15 per cent for the reference in that section to 5 per cent, for the purpose of determining whether a person has or had a material interest in a company.

PART 5

Provisions as to the trust instrument

15. The trust instrument shall provide that, as soon as practicable after any shares have been appropriated to a participant, the trustees will give him or her notice in writing of the appropriation—

(a) specifying the number and description of those shares, and

(b) stating their initial market value.

16. (1) The trust instrument shall contain a provision prohibiting the trustees from disposing of any shares, except as mentioned in *paragraphs (a), (b) or (c)* of *section 511(6)*, during the period of retention (whether by transfer to the participant or otherwise).

(2) The trust instrument shall contain a provision prohibiting the trustees from disposing of any shares after the end of the period of retention and before the release date except—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) 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, and SCH.11
- (b) by a transaction which would not involve a breach of the participant's obligation under *paragraph (c) or (d) of section 511(4)*.

17. The trust instrument shall contain a provision requiring the trustees—

- (a) subject to any direction referred to in *section 513(3)*, to pay over to the participant any money or money's worth received by them in respect of, or by reference to, any of the participant's shares, other than money consisting of a sum referred to in *section 511(4)(c)* or money's worth consisting of new shares within the meaning of *section 514*, and
- (b) to deal only pursuant to a direction given by or on behalf of the participant (or any person referred to in *paragraph 16(2)(a)*) with any right conferred in respect of any of the participant's shares to be allotted other shares, securities or rights of any description.

18. The trust instrument shall impose an obligation on the trustees—

- (a) to maintain such records as may be necessary to enable the trustees to carry out their obligations under *Chapter 1 of Part 17*, and
- (b) where the participant becomes liable to income tax under Schedule E by reason of the occurrence of any event, to inform the participant of any facts relevant to determining that liability.

SCHEDULE 12

Section 519.

EMPLOYEE SHARE OWNERSHIP TRUSTS

[FA97 Sch 3].

Interpretation

1.(1) For the purposes of this Schedule—

“ordinary share capital” has the same meaning as in *section 2*;

“securities” means shares (including stock) and debentures.

(2) For the purposes of this Schedule, the question whether one company is controlled by another shall be construed in accordance with *section 432*.

(3) For the purposes of this Schedule, a person shall be regarded as an employee or a director of a company within the founding company's group at a particular time if, at the time or within 18 months before the time, that person is or was an employee or director of—

- (a) the founding company, being a company resident in the State,

(b) a company resident in the State and controlled by the founding company, or

(c) a company, being the founding company or a company controlled by the founding company, which carries on a trade in the State through a branch or agency in which that person is employed.

(4) (a) In this subparagraph—

“associate” has the meaning assigned to it by *section 433*;

“control” shall be construed in accordance with *section 432*.

(b) For the purposes of this Schedule, a person shall be treated as having a material interest in a company if the person, either on his or her own or with any one or more of his or her associates, or if any associate of his or her with or without any such other associates, is the beneficial owner of, or 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.

(5) For the purposes of this Schedule, a trust shall be established when the deed under which it is established is executed.

Approval of Qualifying Trusts

2. On the application of a body corporate (in this Schedule referred to as “the founding company”) which has established an employee share ownership trust, the Revenue Commissioners shall approve of the trust as a qualifying employee share ownership trust if they are satisfied that the conditions in *paragraphs 6 to 18* are met in relation to the trust.

3. (1) Where at any time after the Revenue Commissioners have approved of a trust—

(a) there is with respect to the operation of the trust any contravention of the conditions in *paragraphs 6 to 18*, or

(b) any shares of a class of which shares have been acquired by the trustees receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—

(i) the dividend payable,

(ii) repayment,

(iii) the 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,

the Revenue Commissioners may, subject to *subparagraph (3)*, withdraw the approval with effect from that time or from such later time as they may specify.

(2) Where at any time after the Revenue Commissioners have approved of a trust an alteration is made to the terms of the trust,

the approval shall not have effect after the date of the alteration unless the Revenue Commissioners have approved of the alteration. SCH.12

(3) It shall not be a ground for withdrawal of approval of a trust that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

(4) The Revenue Commissioners may by notice in writing require any person to furnish to them, within such time as they may direct which is not less than 30 days, such information as they think necessary to enable them to either or both—

- (a) determine whether to approve of an employee share ownership trust or withdraw an approval already given, and
- (b) determine the liability to tax of any beneficiary under an approved employee share ownership trust.

4. (1) Where the founding company is aggrieved by—

- (a) the failure of the Revenue Commissioners to approve of an employee share ownership trust,
- (b) the failure of the Revenue Commissioners to approve of an alteration as mentioned in *paragraph 3(2)*, or
- (c) the withdrawal of approval,

the company may, by notice in writing given to the Revenue Commissioners within 30 days from the date on which it is notified of their decision, make an application to have its claim for relief heard and determined by the Appeal Commissioners.

(2) Where an application is made under *subparagraph (1)*, 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.

5. The Revenue Commissioners may nominate any of their officers, including an inspector, to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by them.

General

6. (1) The trust shall be established under a deed (in this Schedule and in *section 519* referred to as “the trust deed”).

(2) The trust shall be established by the founding company which at the time the trust is established is not controlled by another company.

Trustees

7. The trust deed shall provide for the establishment of a body of trustees complying with *paragraph 8, 9 or 10*.

8. (1) The trust deed shall—

- (a) appoint the initial trustees;
- (b) contain rules for the retirement and removal of trustees;
- (c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall provide that at any time while the trust subsists (in this subparagraph referred to as “the relevant time”)—

- (a) the number of trustees shall not be less than 3;
- (b) all the trustees shall be resident in the State;
- (c) the trustees shall include one person who is a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners may from time to time allow for the purposes of this paragraph;
- (d) the majority of the trustees shall be persons who are not and have never been directors of any company within the founding company’s group at the relevant time;
- (e) the majority of the trustees shall be representatives of the employees of the companies within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company;
- (f) the trustees to whom *subparagraph (e)* relates shall, before being appointed as trustees, have been selected by a majority of the employees of the companies within the founding company’s group at the time of the selection.

9. (1) The trust deed shall—

- (a) appoint the initial trustees;
- (b) contain rules for the retirement and removal of trustees;
- (c) contain rules for the appointment of replacement and additional trustees.

(2) The trust deed shall be so framed that at any time while the trust subsists the conditions in *subparagraph (3)* are fulfilled as regards the persons who are then trustees, and in that subparagraph “the relevant time” means that time.

(3) The conditions referred to in *subparagraph (2)* are that—

- (a) the number of trustees is not less than 3;
- (b) all the trustees are resident in the State;
- (c) the trustees include at least one person who is a professional trustee and at least 2 persons who are non-professional trustees;
- (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with *subparagraph (6)* or *(7)*;

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(e) all the trustees so selected are persons who are employees of companies within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company. SCH.12

(4) For the purposes of this paragraph, a trustee shall be a professional trustee at a particular time if—

(a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Revenue Commissioners allow for the purposes of this subparagraph,

(b) the trustee is not then an employee or director of any company then within the founding company's group, and

(c) the trustee meets the requirements of *subparagraph (5)*,

and for the purposes of this paragraph a trustee shall be a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.

(5) A trustee shall meet the requirements of this subparagraph if—

(a) he or she was appointed as an initial trustee and, before being appointed as trustee, was selected only by the persons who later became the non-professional initial trustees, or

(b) he or she was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected only by the persons who were the non-professional trustees at the time of the selection.

(6) Trustees shall be selected in accordance with this subparagraph if the process of selection is one under which—

(a) all the persons who are employees of the companies within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, in so far as is reasonably practicable, given the opportunity to stand for selection,

(b) all the employees of the companies within the founding company's group at the time of the selection are, in so far as is reasonably practicable, given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(7) Trustees shall be selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies within the founding company's group at the time of the selection.

10. (1) This paragraph shall apply where the trust deed provides that at any time while the trust subsists there shall be a single trustee.

(2) The trust deed shall—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.12

(a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the State and controlled by the founding company;

(b) appoint the initial trustee;

(c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.

(3) The trust deed shall be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions in *subparagraph (4)* are then fulfilled as regards the persons who are then directors of the company, and in that subparagraph “the relevant time” means that time and “the trust company” means that company.

(4) The conditions referred to in *subparagraph (3)* are that—

(a) the number of directors is not less than 3;

(b) all the directors are resident in the State;

(c) the directors include at least one person who is a professional director and at least 2 persons who are non-professional directors;

(d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with *subparagraph (7)* or *(8)*;

(e) all the directors so selected are persons who are employees of companies within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.

(5) For the purposes of this paragraph, a director shall be a professional director at a particular time if—

(a) the director is then a solicitor or a member of such other professional body as the Revenue Commissioners may at that time allow for the purposes of this subparagraph,

(b) the director is not then an employee of any company then within the founding company’s group,

(c) the director is not then a director of any such company other than the trust company, and

(d) the director meets the requirements of *subparagraph (6)*,

and for the purposes of this paragraph a director shall be a non-professional director at a particular time if the director is not then a professional director for those purposes.

(6) A director shall meet the requirements of this subparagraph if—

(a) he or she was appointed as an initial director and, before being appointed as director, was selected only by the persons who later became the non-professional initial directors, or

(b) he or she was appointed as a replacement or additional director and, before being appointed as director, was selected only by the persons who were the non-professional directors at the time of the selection. SCH.12

(7) Directors shall be selected in accordance with this subparagraph if the process of selection is one under which—

(a) all the persons who are employees of the companies within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are, in so far as is reasonably practicable, given the opportunity to stand for selection,

(b) all the employees of the companies within the founding company's group at the time of the selection are, in so far as is reasonably practicable, given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(8) Directors shall be selected in accordance with this subparagraph if they are selected by persons elected to represent the employees of the companies within the founding company's group at the time of the selection.

Beneficiaries

11. (1) The trust deed shall contain provision as to the beneficiaries under the trust in accordance with this paragraph.

(2) The trust deed shall provide that a person is a beneficiary at a particular time (in this subparagraph referred to as "the relevant time") if—

(a) the person is at the relevant time an employee or director of a company at that time within the founding company's group,

(b) at each given time in a qualifying period the person was such an employee or director of a company within the founding company's group at that given time, and

(c) in the case of a director, at that given time the person worked as a director of the company concerned at the rate of at least 20 hours a week (disregarding such matters as holidays and sickness).

(3) The trust deed may provide that a person is a beneficiary at a particular time (in this subparagraph referred to as "the relevant time") if—

(a) the person has at each given time in a qualifying period been an employee or director of a company within the founding company's group at that given time,

(b) the person has ceased to be an employee or director of the company or the company has ceased to be within that group, and

(c) at the relevant time a period of not more than 18 months has elapsed since the person so ceased or the company so ceased, as the case may be.

(4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—

(a) there is no person who is a beneficiary within the rule which is included in the deed and conforms with *subparagraph (2)* or with any rule which is so included and conforms with *subparagraph (3)*, and

(b) the trust is in consequence being wound up.

(5) For the purposes of *subparagraph (2)*, a qualifying period shall be a period—

(a) whose length is not more than 5 years,

(b) whose length is specified in the trust deed, and

(c) which ends with the relevant time (within the meaning of that subparagraph).

(6) For the purposes of *subparagraph (3)*, a qualifying period shall be a period—

(a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with *subparagraph (2)*, and

(b) which ends when the person or company, as the case may be, ceased as mentioned in *subparagraph (3)(b)*.

(7) The trust deed shall not provide for a person to be a beneficiary unless the person is within the rule which is included in the deed and conforms with *subparagraph (2)* or any rule which is so included and conforms with *subparagraph (3)* or *(4)*.

(8) The trust deed shall provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (in this subparagraph referred to as “the relevant time”) by virtue of a rule which conforms with *subparagraph (2)*, *(3)* or *(4)* if—

(a) at the relevant time the person has a material interest in the founding company, or

(b) at any time in the period of one year preceding the relevant time the person has had a material interest in that company.

(9) For the purposes of this paragraph, “charity” means any body of persons or trust established for charitable purposes only.

Trustees' functions

12. (1) The trust deed shall contain provision as to the functions of the trustees.

(2) The functions of the trustees shall be so expressed that it is apparent that their general functions are—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) to receive sums from the founding company and other sums, SCH.12 by means of loan or otherwise;
- (b) to acquire securities;
- (c) to grant rights to acquire shares to persons who are beneficiaries under the terms of the trust deed;
- (d) to transfer either or both securities and sums to persons who are beneficiaries under the terms of the trust deed;
- (e) to transfer securities to the trustees of profit sharing schemes approved under *Part 2 of Schedule 11*;
- (f) pending transfer, to retain the securities and to manage them, whether by exercising voting rights or otherwise.

Sums

13. (1) The trust deed shall require that any sum received by the trustees —

- (a) shall be expended within the expenditure period,
- (b) may be expended only for one or more of the qualifying purposes, and
- (c) shall, while it is retained by them, be kept as cash, or be kept in an account with a relevant deposit taker (within the meaning of *section 256*).

(2) For the purposes of *subparagraph (1)*, the expenditure period shall be the period of 9 months beginning on the day determined as follows—

- (a) in a case where the sum is received from the founding company, or a company which is controlled by that company at the time the sum is received, the day following the end of the accounting period in which the sum is expended by the company from which it is received;
- (b) in any other case, the day the sum is received.

(3) For the purposes of *subparagraph (1)*, each of the following shall be a qualifying purpose—

- (a) the acquisition of shares in the founding company;
- (b) the repayment of sums borrowed;
- (c) the payment of interest on sums borrowed;
- (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
- (e) the meeting of expenses.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with *subparagraph (1)*) whether a particular sum has been expended, sums received earlier by the trustees shall be treated as expended before sums received by them later.

(5) The trust deed shall provide that, where the trustees pay sums to different beneficiaries at the same time, all the sums shall be paid on similar terms.

(6) For the purposes of *subparagraph (5)*, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service or similar factors shall not be regarded as meaning that the terms are not similar.

Securities

14. (1) Subject to *paragraph 15*, the trust deed shall provide that securities acquired by the trustees shall be shares in the founding company which—

- (a) form part of the ordinary share capital of the company,
- (b) are fully paid up,
- (c) are not redeemable, and
- (d) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by *subparagraph (2)*.

(2) Subject to *subparagraph (3)*, a restriction shall be authorised by this subparagraph if—

- (a) it is imposed by the founding company's articles of association,
- (b) it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and
- (c) it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not, or have ceased to be, such directors or employees to be disposed of when they are acquired.

(3) A restriction shall not be authorised by *subparagraph (2)* unless —

- (a) any disposal required by the restriction will be by means of sale for a consideration in money on terms specified in the articles of association, and
- (b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in *subparagraph (2)*) may be required to sell them on terms which are the same as those mentioned in *clause (a)*.

(4) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.

(5) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.

15. The trust deed may provide that the trustees may acquire SCH.12 securities other than shares in the founding company—

- (a) if they are securities acquired by the trustees as a result of a reorganisation or reduction of share capital, and the original shares the securities represent are shares in the founding company (construing “reorganisation or reduction of share capital” and “original shares” in accordance with *section 584*), or
- (b) if they are securities issued to the trustees in exchange in circumstances mentioned in *section 586*.

16. (1) The trust deed shall provide that—

- (a) where the trustees transfer securities to a beneficiary, they shall do so on qualifying terms;
- (b) the trustees shall transfer securities before the expiry of 20 years beginning on the date on which they acquired them.

(2) For the purposes of *subparagraph (1)*, a transfer of securities shall be made on qualifying terms if—

- (a) all the securities transferred at the same time are transferred on similar terms,
- (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed when the transfer is made, and
- (c) securities are transferred to all such beneficiaries who have accepted.

(3) For the purposes of *subparagraph (2)*, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service or similar factors shall not be regarded as meaning that the terms are not similar.

(4) The trust deed shall provide that, in ascertaining for the purposes of a relevant rule (being a provision which is included in the trust deed and conforms with *subparagraph (1)*) whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.

Other features

17. The trust deed shall not contain features which are not essential or reasonably incidental to the purpose of acquiring sums and securities, transferring sums and securities to employees and directors, and transferring securities to the trustees of profit sharing schemes approved under *Part 2 of Schedule 11*.

18. (1) The trust deed shall provide that for the purposes of the deed the trustees—

- (a) acquire securities when they become entitled to them;
- (b) transfer securities to another person when that other person becomes entitled to them;
- (c) retain securities if they remain entitled to them.

SCH.12

(2) Where the trust deed provides for the matter set out in *paragraph 15*, the trust deed shall provide for the following exceptions to any rule which is included in it and conforms with *subparagraph (1)(a)*, namely—

- (a) if the trustees become entitled to securities as a result of a reorganisation or reduction of share capital, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation or reduction of share capital” and “original shares” in accordance with *section 584*);
- (b) if securities are issued to the trustees in exchange in circumstances mentioned in *section 586*, they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged.

(3) The trust deed shall provide that—

- (a) if the trustees agree to take a transfer of securities, for the purposes of the deed they become entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement;
- (b) if the trustees agree to transfer securities to another person, for the purposes of the deed the other person becomes entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.

Section 521.

SCHEDULE 13

[FA92 Sch2; FA94 s11; FA96 s8]

ACCOUNTABLE PERSONS FOR PURPOSES OF CHAPTER 1 OF PART 18

1. A Minister of the Government.
2. A local authority within the meaning of section 2(2) of the Local Government Act, 1941.
3. A body established under the Local Government Services (Corporate Bodies) Act, 1971.
4. A health board.
5. The General Medical Services (Payments) Board established under the General Medical Services (Payments) Board (Establishment) Order, 1972 (S.I. No. 184 of 1972).
6. The Attorney General.
7. The Comptroller and Auditor General.
8. The Director of Public Prosecutions.
9. The Commissioner of Valuation.
10. The Chief Boundary Surveyor.
11. The Director of Ordnance Survey.
12. The Revenue Commissioners.
13. The Civil Service Commissioners.
14. The Commissioners of Public Works in Ireland.
15. The Clerk of Dáil Éireann.
16. The Legal Aid Board.
17. A vocational education committee or a technical college established under the Vocational Education Act, 1930.
18. Teagasc.
19. A harbour authority.
20. An Foras Áiseanna Saothair.
21. Údarás na Gaeltachta.
22. The Industrial Development Agency (Ireland).
23. An Bord Tráchtála — The Irish Trade Board.
24. Shannon Free Airport Development Company Limited.

25. Bord Fáilte Éireann.
26. An institution of higher education within the meaning of the Higher Education Authority Act, 1971.
27. CERT Limited.
28. The Radiological Protection Institute of Ireland.
29. A voluntary public or joint board hospital to which grants are paid by the Minister for Health and Children in the year 1988-89 or any subsequent year of assessment.
30. An authorised insurer within the meaning of *section 470*.
31. An Bord Glas.
32. An Bord Pleanála.
33. ACC Bank plc.
34. Aer Lingus Group plc.
35. Aer Rianta cuideachta phoiblí teoranta.
36. Arramara Teoranta.
37. Blood Transfusion Service Board.
38. An Bord Bia.
39. Bord na gCon.
40. Bord Gáis Éireann.
41. Bord Iascaigh Mhara.
42. Bord na Móna.
43. Bord Telecom Éireann.
44. Coillte Teoranta.
45. The Combat Poverty Agency.
46. Coras Iompair Éireann.
47. Custom House Docks Development Authority.
48. Electricity Supply Board.
49. Housing Finance Agency plc.
50. ICC Bank plc.
51. Irish National Petroleum Corporation Limited.
52. Irish National Stud Company Limited.
53. National Building Agency Limited.
54. National Concert Hall Company Limited.
55. The Marine Institute.
56. An Post National Lottery Company.
57. Nítrigin Éireann Teoranta.
58. An Post.
59. Radio Telefís Éireann.
60. National Rehabilitation Board.
61. Royal Hospital Kilmainham Company.
62. The Environmental Protection Agency.
63. Forbairt.
64. Forfás.
65. The Irish Aviation Authority.
66. The National Economic and Social Council.
67. The National Economic and Social Forum.
68. The National Roads Authority.
69. Temple Bar Properties Limited.
70. The Irish Film Board.
71. An educational institution established by or under section 3 of the Regional Technical Colleges Act, 1992, as a regional technical college.
72. The Dublin Institute of Technology.
73. Area Development Management Limited.
74. The Commissioner of Irish Lights.
75. Dublin Transportation Office.
76. The Heritage Council.
77. The Higher Education Authority.
78. The Independent Radio and Television Commission.
79. The Irish Horseracing Authority.
80. The Labour Relations Commission.
81. National Safety Council.
82. The Pensions Board.

SCHEDULE 14

CAPITAL GAINS TAX: LEASES

Interpretation

1. In this Schedule, “premium” includes any like sum, whether payable to the intermediate or a superior lessor and, for the purposes of this Schedule, any sum (other than rent) paid on or in connection with the granting of a tenancy 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.

Leases of land as wasting assets: restriction of allowable expenditure

2. (1) A lease of land shall not be a wasting asset until its duration does not exceed 50 years.

(2) Where at the beginning of the period of ownership of a lease of land it is subject to a sub-lease not at a rent representing the full value of the land together with any buildings on the land, and the value of the lease at the end of the duration of the sub-lease, estimated as at the beginning of the period of ownership, exceeds the expenditure allowable under *section 552(1)(a)* in computing the gain accruing on a disposal of the lease, the lease shall not be a wasting asset until the end of the duration of the sub-lease.

(3) In the case of a wasting asset which is a lease of land, the rate at which expenditure is assumed to be written off shall, instead of being a uniform rate as provided by *section 560(3)*, be a rate fixed in accordance with the Table to this paragraph.

(4) Accordingly, for the purposes of the computation under *Chapter 2 of Part 19* of the gain accruing on a disposal of a lease, and where—

- (a) the percentage derived from the Table to this paragraph for the duration of the lease at the beginning of the period of ownership is P (1),
- (b) the percentage so derived for the duration of the lease at the time when any item of expenditure attributable to the lease under *section 552(1)(b)* is first reflected in the nature of the lease is P (2), and
- (c) the percentage so derived for the duration of the lease at the time of the disposal is P (3),

then—

- (i) there shall be excluded from the expenditure attributable to the lease under *section 552(1)(a)* a fraction equal to—

$$\frac{P(1) - P(3)}{P(1)}$$

and

- (ii) there shall be excluded from any item of expenditure attributable to the lease under *section 552(1)(b)* a fraction equal to—

$$\frac{P(2) - P(3)}{P(2)}$$

(5) This paragraph shall apply notwithstanding that the period of ownership of the lease is a period exceeding 50 years, and accordingly no expenditure shall be written off under this paragraph in respect of any period earlier than the time when the lease becomes a wasting asset.

(6) *Section 561* shall apply in relation to this paragraph as it applies in relation to *subsections (3) to (5) of section 560*.

(7) Where the duration of the lease is not an exact number of years, the percentage to be derived from the Table to this paragraph shall be the percentage for the whole number of years plus one-twelfth of the difference between that percentage and the percentage for the next higher number of years for each odd month, counting an odd 14 days or more as one month.

TABLE

<i>Years</i>	<i>Percentage</i>	<i>Years</i>	<i>Percentage</i>
50 (or more)	100.0	25	81.1
49	99.7	24	79.6
48	99.3	23	78.1
47	98.9	22	76.4
46	98.5	21	74.6
45	98.1	20	72.8
44	97.6	19	70.8
43	97.1	18	68.7
42	96.6	17	66.5
41	96.0	16	64.1
40	95.5	15	61.6
39	94.8	14	59.0
38	94.2	13	56.2
37	93.5	12	53.2
36	92.8	11	50.0
35	92.0	10	46.7
34	91.2	9	43.2
33	90.3	8	39.4
32	89.4	7	35.4
31	88.4	6	31.2
30	87.3	5	26.7
29	86.2	4	22.0
28	85.1	3	17.0
27	83.8	2	11.6
26	82.5	1	6.0
		0	0.0

Premiums for leases

3. (1) Subject to this Schedule, where the payment of a premium is required under a lease of land or otherwise under the terms subject

to which a lease of land is granted, there shall be a part disposal of the freehold or other asset out of which the lease is granted.

(2) In applying *section 557* to such a part disposal, the property which remains undisposed of shall include a right to any rent or other payments (other than a premium) payable under the lease, and that right shall be valued as at the time of the part disposal.

Payments during currency of lease treated as premium

4. (1) Where under the terms subject to which a lease of land is granted a sum becomes payable by the lessee in place of the whole or 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 Schedule to have required the payment of a premium to the lessor (in addition to any other premium) of an amount equal to that sum for the period in relation to which the sum is payable.

(2) Where as consideration for the variation or waiver of any of the terms of a lease of land a sum becomes payable by the lessee otherwise than as rent, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the lessor (in addition to any other premium) of an amount equal to that sum for the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.

(3) Where under *subparagraph (1)* or *(2)* a premium is deemed to have been received by the lessor otherwise than as consideration for the surrender of the lease, then—

(a) subject to *clause (b)*, both the lessor and the lessee shall be treated as if that premium were or were part of the consideration for the grant of the lease due at the time when the lease was granted, but

(b) if the lessor is a lessee under a lease the duration of which does not exceed 50 years, this Schedule shall apply as if—

(i) that premium had been given as consideration for the grant of the part of the sub-lease covered by the period in respect of which the premium is deemed to have been paid, and

(ii) that consideration were expenditure incurred by the sub-lessee and attributable to that part of the sub-lease under *section 552(1)(b)*.

(4) Where *subparagraph (3)(a)* applies, the gain accruing to the lessor on the disposal by means of the grant of the lease shall be recomputed and any necessary adjustments of capital gains tax shall be made accordingly, whether by means of assessment for the year in which the premium is deemed to have been received or by means of discharge or repayment of tax.

(5) Where under *subparagraph (1)* a premium is deemed to have been received as consideration for the surrender of a lease, that premium shall be regarded as consideration for a separate transaction consisting of the disposal by the lessor of the lessor's interest in the lease.

(6) *Subparagraph (2)* shall apply in relation to a transaction not at arm's length, and in particular in relation to a transaction entered into gratuitously, as if such sum had become payable by the tenant

otherwise than as rent as might have been required of the tenant if SCH.14
the transaction had been at arm's length.

(7) *Subparagraph (4)* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

Sub-leases out of short leases

5. (1) This paragraph shall apply in relation to a lease which is a wasting asset.

(2) In the computation under *Chapter 2 of Part 19* of the gain accruing on the part disposal of a lease by means of the grant of a sub-lease for a premium (in this paragraph referred to as "the actual premium"), the expenditure attributable to the lease under *paragraphs (a) and (b) of section 552(1)* shall be apportioned in accordance with this paragraph, and *section 557* shall not apply.

(3) Out of each item of the expenditure attributable to the lease under *paragraphs (a) and (b) of section 552(1)* there shall be apportioned to the part disposal—

(a) if the amount of the actual premium is not less than the amount which would be obtainable by means of a premium for the sub-lease if the rent payable under the sub-lease were the same as the rent payable under the lease (in this paragraph referred to as "the full premium"), the amount (in this paragraph referred to as "the allowable amount") which under *paragraph 2(3)* is to be written off over the period which is the duration of the sub-lease, and

(b) if the amount of the actual premium is less than the full premium, such proportion of the allowable amount as is equal to the proportion which the actual premium bears to the full premium.

(4) Where the sub-lease is a sub-lease of only part of the land comprised in the lease, this paragraph shall apply only in relation to a proportion of the expenditure attributable to the lease under *paragraphs (a) and (b) of section 552(1)* which is the same as the proportion which the value of the land comprised in the sub-lease at the time when the sub-lease is granted bears to the value of that land and the other land comprised in the lease at that time, and the remainder of that expenditure shall be apportioned to the other land.

Exclusion of premiums taxed under Case V of Schedule D

6. (1) Where by reference to any premium income tax has become chargeable under *section 98* on any amount, that amount shall be excluded from the consideration taken into account in the computation under *Chapter 2 of Part 19* of a gain accruing on a disposal of the interest in respect of which income tax becomes so chargeable, except where in an apportionment under *section 557* the value of the consideration is taken into account in the aggregate of that value and the market value of the property which remains undisposed of.

(2) Where by reference to any premium in respect of a sub-lease granted out of a lease, being a lease the duration of which does not at the time of granting the lease exceed 50 years, income tax has become chargeable under *section 98* on any amount, that amount shall be deducted from any gain (as computed in accordance with

the provisions of the Capital Gains Tax Acts apart from this subparagraph) accruing on the disposal for which the premium is consideration, but not so as to convert the gain into a loss or to increase any loss.

(3) (a) Subject to *clause (b)*, where income tax has become chargeable under *section 100* on any amount (in this subparagraph referred to as “the relevant amount”), the relevant amount shall be excluded from the consideration taken into account in the computation under *Chapter 2 of Part 19* of a gain accruing on the disposal of the estate or interest in respect of which income tax becomes so chargeable, except where in an apportionment made under *section 557* the value of the consideration is taken into account in the aggregate of that value and the market value of the property which remains undisposed of.

(b) If the part or interest disposed of is the remainder of a lease or a sub-lease out of a lease the duration of which does not exceed 50 years, *clause (a)* shall not apply, but the relevant amount shall be deducted from any gain (as computed in accordance with the provisions of the Capital Gains Tax Acts apart from this subparagraph) accruing on the disposal, but not so as to convert the gain into a loss or to increase any loss.

(4) References in *subparagraphs (1)* and *(2)* to a premium include references to a premium deemed to have been received under *subsection (3)* or *(4)* of *section 98*.

(5) *Section 551* shall not be taken as authorising the exclusion of any amount from the consideration for a disposal of assets taken into account in the computation of the gain under *Chapter 2 of Part 19* by reference to any amount chargeable to tax under *section 75* and *Chapter 8 of Part 4*.

Disallowance of premium treated as rent under superior lease

7. (1) Where under *section 103(2)* a person is to be treated as paying additional rent in consequence of having granted a sub-lease, the amount of any loss accruing to such person on the disposal by means of the grant of the sub-lease shall be reduced by the total amount of the rent which such person is thereby treated as paying over the term of the sub-lease (and without regard to whether relief is thereby effectively given over the term of the sub-lease), but not so as to convert the loss into a gain or to increase any gain.

(2) Nothing in *section 551* shall be taken as applying in relation to any amount on which tax is paid under *section 99*.

(3) Where any adjustment is made under *paragraph (b)* of *section 100(2)*, on a claim under that paragraph, any necessary adjustment shall be made to give effect to the consequences of the claim on the operation of this paragraph or *paragraph 6*.

Expenditure by lessee under terms of lease

8. If under *section 98(2)* income tax is chargeable on any amount as being a premium the payment of which is deemed to be required by the lease, the person so chargeable shall be treated for the purposes of the computation of any gain accruing to that person on the disposal by means of the grant of the lease, and on any subsequent disposal of the asset out of which the lease was granted, as having

incurred at the time the lease was granted expenditure of that amount (in addition to any other expenditure) attributable to the asset under *section 552(1)(b)*. SCH.14

Duration of leases

9. (1) In ascertaining for the purposes of the Capital Gains Tax Acts the duration of a lease of land, the following provisions of this paragraph shall apply.

(2) Where the terms of the lease include provision for the determination of the lease by notice given by the lessor, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice given by the lessor.

(3) 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, the lease shall not be treated as having been granted for a term longer than one ending on that date, and this subparagraph shall apply in particular where the lease provides for the rent to be increased after a given date, or for the lessee's obligations to become in any other respect more onerous after a given date, but includes provision for the determination of the lease on that date by notice given by the lessee, and those provisions render it unlikely that the lease will continue beyond that date.

(4) Where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the lessee, this paragraph shall apply as if the term of the lease extended for as long as it could be extended by the lessee, but subject to any right of the lessor by notice to determine the lease.

(5) The duration of a lease shall be decided in relation to the grant or any disposal of the lease by reference to the facts which were known or ascertainable at the time when the lease was acquired or created.

Leases of property other than land

10. (1) *Paragraphs 3 to 5 and 9* shall, subject to any necessary modifications, apply in relation to leases of property other than land as they apply to leases of land.

(2) In the case of a lease of a wasting asset which is movable property, the lease shall be assumed to terminate not later than the end of the life of the wasting asset.

SCHEDULE 15

LIST OF BODIES FOR PURPOSES OF SECTION 610

PART 1

1. An unregistered friendly society whose income is exempt from income tax under *section 211(1)*.
2. A registered friendly society whose income is exempt from income tax under *section 211(1)*.
3. A registered trade union to the extent that its income is exempt from income tax under *section 213*.

Section 610.

[CGTA75 s23; FA89 s33; FA91 s20(2) and s44; FA94 s32(5); FA95 s44(1) and (3); FA96 s39(1) and (6) and s64]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.15

4. A local authority within the meaning of section 2(2) of the Local Government Act, 1941.
5. A body established under the Local Government Services (Corporate Bodies) Act, 1971.
6. The Central Bank of Ireland.
7. A health board.
8. A vocational education committee established under the Vocational Education Act, 1930.
9. A committee of agriculture established under the Agriculture Act, 1931.
10. Bord Fáilte Éireann.
11. The Dublin Regional Tourism Organisation Limited.
12. Dublin City and County Regional Tourism Organisation Limited.
13. The South-Eastern Regional Tourism Organisation Limited.
14. South-West Regional Tourism Organisation Limited.
15. The Western Regional Tourism Organisation Limited.
16. The North-West Regional Tourism Organisation Limited.
17. Midlands-East Regional Tourism Organisation Limited.
18. Tramore Fáilte Limited.
19. The National Treasury Management Agency.
20. Eolas—The Irish Science and Technology Agency.
21. Forbairt.
22. Forfás.
23. The Industrial Development Agency (Ireland).
24. The Industrial Development Authority.
25. Shannon Free Airport Development Company Limited.
26. Údarás na Gaeltachta.
27. The Irish Horseracing Authority.
28. The company incorporated on the 1st day of December, 1994, as Irish Thoroughbred Marketing Limited.
29. The company incorporated on the 1st day of December, 1994, as Tote Ireland Limited.
30. A body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995.
31. The Dublin Docklands Development Authority.
32. The Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994).

PART 2

1. The Dublin District Milk Board established under the Dublin District Milk Board Order, 1936 (S.R. & O., No. 254 of 1936).
2. The Cork District Milk Board established under the Cork District Milk Board Order, 1937 (S.R. & O., No. 91 of 1937).
3. The company incorporated on the 19th day of November, 1991, as Dairysan Limited.
4. The company incorporated on the 14th day of February, 1994, as Glenlee (Cork) Limited.

Section 703.

[FA90 Sch3]

SCHEDULE 16

BUILDING SOCIETIES: CHANGE OF STATUS

Capital allowances

1. (1) For the purposes of the allowances and charges provided for by *sections 307 and 308*, the trade of the society concerned shall not be treated as permanently discontinued and the trade of the successor company shall not be treated as a new trade set up and commenced by the successor company.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(2) There shall be made to or on the successor company in accordance with *sections 307 and 308* all such allowances and charges as would have been made to or on the society if the society had continued to carry on the trade, and the amount of any such allowance or charge shall be computed as if the successor company had been carrying on the trade since the society began to do so and as if everything done to or by the society had been done to or by the successor company. SCH.16

(3) The conversion of the society into the successor company shall not be treated as giving rise to any such allowance or charge.

Financial assets

2. (1) In this paragraph—

“financial assets” means assets held by the society in accordance with subsections (1) and (3) of section 39 of the Building Societies Act, 1989;

“financial trading stock” means such of the financial assets of the society as would constitute trading stock for the purposes of *section 89*.

(2) For the purposes of *section 89*, the financial trading stock of the society concerned shall be valued at an amount equal to its cost to the society.

(3) Where a society converts itself into the successor company, the vesting in the successor company of any financial assets, the profits or gains on the disposal of which would be chargeable to tax under Case I of Schedule D, shall be treated for the purposes of corporation tax as not constituting a disposal of those assets by the society; but, on the disposal of any of those assets by the successor company, the profits or gains accruing to the successor company shall be calculated (for the purposes of corporation tax) as if those assets had been acquired by the successor company at their cost to the society.

Capital gains: assets vested in the successor company, etc

3. (1) For the purposes of capital gains tax and corporation tax on chargeable gains, the conversion of a society into the successor company shall not constitute—

(a) a disposal by the society of assets owned by it immediately before the conversion, or

(b) the acquisition at that time by the successor company of assets which immediately before the conversion were owned by the society.

(2) The Capital Gains Tax Acts, and the Corporation Tax Acts in so far as those Acts relate to chargeable gains, shall apply where a society has converted itself into the successor company as if the successor company had—

(a) acquired the assets which vested in the successor company on conversion at the same time and for the same consideration at which they were acquired by the society,

(b) been in existence as a company at all times since the society was incorporated,

- (c) done all things done by the society relating to the acquisition and disposal of the assets which vested in the successor company on conversion, and
- (d) done all other things done by the society before the conversion.

Capital gains: shares, and rights to shares, in successor company

4. (1) In this paragraph—

“free shares”, in relation to a member of the society, means any shares issued by the successor company to that member in connection with the conversion but for no new consideration;

“member”, in relation to the society, means a person who is or has been a member of the society, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

“new consideration” means consideration other than—

- (a) consideration provided directly or indirectly out of the assets of the society or the successor company, or
- (b) consideration derived from a member’s shares or other rights in the society or the successor company.

(2) Where in connection with the conversion there are conferred on members of the society concerned any rights—

- (a) to acquire shares in the successor company in priority to other persons,
- (b) to acquire shares in that company for consideration of an amount or value lower than the market value of the shares, or
- (c) to free shares in that company,

any such rights so conferred on a member shall be regarded for the purposes of capital gains tax as an option (within the meaning of *section 540*) granted to and acquired by the member for no consideration and having no value at the time of that grant and acquisition.

(3) Where in connection with the conversion shares in the successor company are issued by that company to a member of the society concerned, those shares shall be regarded for the purposes of capital gains tax—

- (a) as acquired by the member for a consideration of an amount or value equal to the amount or value of any new consideration given by the member for the shares or, if no new consideration is given, as acquired for no consideration, and
- (b) as having at the time of their acquisition by the member a value equal to the amount or value of the new consideration so given or, if no new consideration is given, as having no value;

but this subparagraph is without prejudice to the application where appropriate of *subparagraph (2)*. SCH.16

(4) *Subparagraph (5)* shall apply in any case where—

- (a) in connection with the conversion, shares in the successor company are issued by that company to trustees on terms which provide for the transfer of those shares to members of the society for no new consideration, and
- (b) the circumstances are such that in the hands of the trustees the shares constitute settled property within the meaning of the Capital Gains Tax Acts.

(5) Where this subparagraph applies, then, for the purposes of capital gains tax—

- (a) the shares shall be regarded as acquired by the trustees for no consideration,
- (b) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by that member for no consideration and as having no value at the time of its acquisition, and
- (c) where on the occasion of a member becoming absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on the member becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within *section 567(2)*, for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees and, accordingly, *section 576(1)* shall not apply in relation to that occasion.

(6) References in this paragraph to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include references to the case where the member would become so entitled but for being a minor or otherwise under a legal disability.

SCHEDULE 17

Section 705.

REORGANISATION INTO COMPANIES OF TRUSTEE SAVINGS BANKS

[FA90 Sch4]

Interpretation

1. In this Schedule—

“bank” means either or both a trustee savings bank and a bank within the meaning of section 57(3)(c)(i) of the Trustee Savings Banks Act, 1989, as the context requires;

“successor” means the company to which any property, rights, liabilities and obligations are transferred in the course of a transfer;

“transfer” means the transfer by a trustee savings bank of all or part of its property and rights and all of its liabilities or obligations under an order made by the Minister for Finance under section 57 of the Trustee Savings Banks Act, 1989, authorising the reorganisation of

one or more trustee savings banks into a company or the reorganisation of a company referred to in subsection (3)(c)(i) of that section into a company referred to in subsection (3)(c)(ii) of that section.

Capital allowances

2. (1) This paragraph shall apply for the purposes of—

(a) allowances and charges provided for in *Part 9, section 670, Chapter 1 of Part 29* and *sections 765 and 769*, or any other provision of the Tax Acts relating to the making of allowances or charges under or in accordance with that Part or Chapter or those sections, and

(b) allowances or charges provided for by *sections 307 and 308*.

(2) The transfer shall not be treated as giving rise to any allowance or charge provided for under *subparagraph (1)*.

(3) There shall be made to or on the successor in accordance with *sections 307 and 308* all such allowances and charges as would, if the bank had continued to carry on the trade, have been made to or on the bank, and the amount of any such allowance or charge shall be computed as if the successor had been carrying on the trade since the trustee savings bank began to do so and as if everything done to or by the bank had been done to or by the successor; but the successor shall not be entitled to any amount which would have been made to the trustee savings bank by virtue only of *section 304(4)*.

Trading losses

3. Notwithstanding any other provision of the Tax Acts—

(a) a company referred to in subsection (3)(c)(i) of section 57 of the Trustee Savings Banks Act, 1989, which becomes a company referred to in subsection (3)(c)(ii) of that section shall not be entitled to relief under *section 396(1)* in respect of any loss incurred by the company in a trade in any accounting period or part of an accounting period in which it was a company referred to in subsection (3)(c)(i) of section 57 of the Trustee Savings Banks Act, 1989, and

(b) a company referred to in subsection (3)(c)(ii) of section 57 of that Act shall not be entitled to relief under *section 396(1)* in respect of any loss incurred by a company referred to in subsection (3)(c)(i) of section 57 of that Act.

Financial assets

4. (1) In this paragraph, “financial trading stock” means such of the assets of the bank as would constitute trading stock for the purposes of *section 89*.

(2) For the purposes of *section 89*, the financial trading stock of the bank concerned shall be valued at an amount equal to or treated for the purposes of *subparagraph (3)* as its cost to that bank.

(3) The acquisition in the course of a transfer by the successor of any assets, the profits or gains on the disposal of which by the bank would be chargeable to tax under Case I of Schedule D, shall be treated for the purposes of income tax and corporation tax as not

constituting a disposal of those assets by that bank; but, on the disposal of any of those assets by the successor, the profits or gains accruing to the successor shall be calculated (for the purposes of corporation tax) as if those assets had been acquired by the successor at their cost to the bank. SCH.17

Capital gains

5. (1) This paragraph shall apply for the purposes of the Capital Gains Tax Acts, and of the Corporation Tax Acts in so far as those Acts relate to chargeable gains.

(2) The disposal of an asset by a bank to a company in the course of a transfer shall be deemed to be for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the bank.

(3) Where *subparagraph (2)* has applied in relation to the disposal of an asset by the bank, then, in relation to a subsequent disposal of the asset, the successor shall be treated as if the acquisition or provision of the asset by—

(a) the trustee savings bank, or

(b) if the asset was not acquired or provided by the trustee savings bank, the bank within the meaning of section 57(3)(c)(i) of the Trustee Savings Banks Act, 1989,

were the successor's acquisition or provision of the asset.

(4) Any allowable losses accruing at any time to a bank shall, on a transfer and in so far as they have not been allowed as a deduction from chargeable gains, be treated as allowable losses which accrued at that time to the successor.

(5) For the purposes of *section 597*, the bank and the successor shall be treated as if they were the same person.

(6) Where the liability in respect of any debt owed to a bank is transferred in the course of a transfer to a successor, the successor shall be treated as the original creditor for the purposes of *section 541*.

SCHEDULE 18

ACCOUNTING FOR AND PAYMENT OF TAX DEDUCTED FROM RELEVANT PAYMENTS AND UNDISTRIBUTED RELEVANT INCOME

Time and manner of payment

1. (1) Notwithstanding any other provision of the Acts, this paragraph shall apply for the purpose of regulating the time and manner in which tax deducted in accordance with *section 734(5)* shall be accounted for and paid.

(2) A collective investment undertaking which is not a specified collective investment undertaking shall, within 15 days from the 5th day of April each year, make a return to the Collector-General of all amounts from which it was required by *section 734(5)* to deduct tax in the year ending on that date and of the amount of appropriate tax which it was required to deduct from those amounts.

Section 734(5).

[FA89 Sch1 par1(1) to (7)(d) and (8) and par2; FA97 s146(2) and Sch7 PtII]

(3) The appropriate tax required to be included in a return shall be due and payable at the time by which the return is to be made and shall be paid by the collective investment undertaking to the Collector-General, and the appropriate tax so due shall be payable by the collective investment undertaking without the making of an assessment; but the appropriate tax which has become so due may be assessed on the collective investment undertaking (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) Where it appears to the inspector that there is an amount of appropriate tax which ought to have been and has not been included in a return, or the inspector is dissatisfied with any return, he or she may make an assessment on the collective investment undertaking to the best of his or her judgment, and any amount of appropriate tax due under an assessment made by virtue of this subparagraph 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.

(5) Where any item has been incorrectly included in a return, 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 collective investment undertaking 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.

(6) (a) Any appropriate tax assessed on a collective investment undertaking under this Schedule shall be due within one month after the issue of the notice of assessment (unless that tax is due earlier under *subparagraph (3)*) subject to any appeal against the assessment, but no such appeal shall affect the date when any amount is due under *subparagraph (3)*.

(b) On the determination of an appeal against an assessment under this Schedule any appropriate tax overpaid shall be repaid.

(7) (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, with any necessary modifications, apply to the assessment, collection and recovery of appropriate tax.

(b) Any amount of appropriate tax payable in accordance with this Schedule 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) to (4) of section 1080* shall apply in relation to interest payable under *clause (b)* as they apply in relation to interest payable under *section 1080*.

- (d) In its application to any appropriate tax charged by an assessment made in accordance with this Schedule, *section 1080* shall apply as if *subsection (1)(b)* of that section were deleted. SCH.18

(8) 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.

Statement to be given on making of relevant payment

2. Where a collective investment undertaking other than a specified collective investment undertaking makes a relevant payment from which appropriate tax is deductible in accordance with *section 734(5)*, or would be so deductible but for *paragraphs (i) and (ii)* of the definition of “appropriate tax” in *section 734(1)(a)*, it shall give to the unit holder to whom the relevant payment is made a statement showing—

- (a) the amount of the relevant payment,
- (b) the amount equal to the aggregate of the appropriate tax deducted from the relevant payment and any amount or amounts deducted pursuant to *paragraphs (i) and (ii)* of the definition of “appropriate tax” in *section 734(1)(a)* in determining the appropriate tax or, if by reason of those paragraphs there was no appropriate tax to deduct from the amount of the relevant payment, the aggregate of the amounts referred to in those paragraphs in so far as they refer to the relevant payment,
- (c) the net amount of the relevant payment,
- (d) the date of the relevant payment, and
- (e) such other information in relation to the relevant payment as shall be necessary to enable the correct amount of tax, if any, payable by or repayable to the unit holder in respect of the relevant payment to be determined.

SCHEDULE 19

Section 744.

OFFSHORE FUNDS: DISTRIBUTING FUNDS

[FA90 Sch5]

PART 1

THE DISTRIBUTION TEST

Requirements as to distributions

1. (1) For the purposes of *Chapter 2* of *Part 27*, an offshore fund pursues a full distribution policy with respect to an account period if—

- (a) a distribution is made for the account period or for some other period which in whole or in part falls within that account period,
- (b) subject to *Part 2* of this Schedule, the amount of the distribution which is paid to the holders of material and other interests in the fund—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.19

- (i) represents at least 85 per cent of the income of the fund for the period, and
- (ii) is not less than 85 per cent of the fund's Irish equivalent profits for the period,
- (c) the distribution is made during the account period or not more than 6 months after the expiry of that period, and
- (d) the form of the distribution is such that, if any sum forming part of it were received in the State by a person resident in the State and did not form part of the profits of a trade, profession or vocation, that sum would be chargeable to tax under Case III of Schedule D,

and any reference in this subparagraph to a distribution made for an account period includes a reference to any 2 or more distributions so made or, in the case of *clause (b)*, the aggregate of those distributions.

(2) Subject to *subparagraph (3)*, with respect to any account period for which—

- (a) there is no income of the fund, and
- (b) there are no Irish equivalent profits of the fund,

the fund shall be treated as pursuing a full distribution policy notwithstanding that no distribution is made as mentioned in *subparagraph (1)*.

(3) For the purposes of *Chapter 2 of Part 27*, an offshore fund shall be regarded as not pursuing a full distribution policy with respect to an account period for which the fund does not make up accounts.

(4) For the purposes of this paragraph—

- (a) where a period for which an offshore fund makes up accounts includes the whole or part of 2 or more account periods of the fund, then, subject to *clause (c)*, income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each account period comprised in the period for which the accounts are made up,
- (b) where a distribution is made for a period which includes the whole or part of 2 or more account periods of the fund, then, subject to *subparagraph (5)*, the distribution shall be apportioned between those account periods on a time basis according to the number of days in each account period which are comprised in the period for which the distribution is made,
- (c) where a distribution is made out of specified income but is not made for a specified period, that income shall be attributed to the account period of the fund in which it in fact arose and the distribution shall be treated as made for that account period, and
- (d) where a distribution is made neither for a specified period nor out of specified income, then, subject to *subparagraph (5)*, the distribution shall be treated as made for

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

the last account period of the fund which ended before SCH.19
the distribution was made.

(5) Where but for this subparagraph the amount of a distribution made, or treated by virtue of *subparagraph (4)* as made, for an account period would exceed the income of that period, then, for the purposes of this paragraph—

- (a) if the amount of the distribution was determined by apportionment under *subparagraph (4)(b)*, the excess shall be reapportioned, as may be just and reasonable, to any other account period which, in whole or in part, falls within the period for which the distribution was made or, if there is more than one such period, between those periods, and
- (b) subject to *clause (a)*, the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distributions or the aggregate distributions, as the case may be, would otherwise be less than the income of the period, applying the excess to later account periods before earlier ones until it is exhausted.

(6) In any case where—

- (a) for a period which is or includes an account period an offshore fund is subject to any restriction as regards the making of distributions, being a restriction imposed by the law of any territory, and
- (b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concept of “profits” and “losses” in the sense in which, and to the extent to which, they are relevant for the purposes of the law in question),

then, in determining for the purposes of *subparagraphs (1) to (5)* the amount of the fund’s income for that account period, there shall be allowed as a deduction any amount which apart from this subparagraph would form part of the income of the fund for that account period and which may not be distributed by virtue of the restriction.

Funds operating equalisation arrangements

2. (1) In the case of an offshore fund which throughout any account period operates equalisation arrangements, on any occasion in that period when there is a disposal to which this subparagraph applies, the fund shall be treated for the purposes of this Part of this Schedule as making a distribution of an amount equal to so much of the consideration for the disposal as, in accordance with this paragraph, represents income accrued to the date of the disposal.

(2) *Subparagraph (1)* shall apply to a disposal which—

- (a) is a disposal of a material interest in the offshore fund concerned,
- (b) is a disposal to which *Chapter 2 of Part 27* applies (whether by virtue of *subsection (3) of section 742* or otherwise) or is one to which that Chapter would apply if *subsections (5) and (6) of that section* applied generally and not only

for the purpose of determining whether, by virtue of *subsection (3)* of that section, there is a disposal to which that Chapter applies,

(c) is not a disposal with respect to which the conditions in *subsection (4)* of *section 742* are fulfilled, and

(d) is a disposal to the fund itself or to the persons concerned in the management of the fund (in this paragraph referred to as “the managers of the fund”) in their capacity as such.

(3) On a disposal to which *subparagraph (1)* applies, the part of the consideration which represents income accrued to the date of the disposal shall be, subject to *subparagraph (4)* and *paragraph 4(4)*, the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if on the date of the disposal the material interest disposed of were acquired by another person by means of initial purchase.

(4) Where, after the beginning of the period by reference to which the accrued income referred to in *subparagraph (3)* is calculated, the material interest disposed of by a disposal to which *subparagraph (1)* applies was acquired by means of initial purchase (whether or not by the person making the disposal), then—

(a) the amount which on that acquisition was credited to the equalisation account in respect of accrued income shall be deducted from the amount which in accordance with *subparagraph (3)* would represent income accrued to the date of the disposal, and

(b) if in that period there has been more than one such acquisition of that material interest by means of initial purchase, the deduction to be made under this subparagraph shall be the amount so credited to the equalisation account on the latest such acquisition before the disposal in question.

(5) Where by virtue of this paragraph an offshore fund is treated for the purposes of this Part of this Schedule as making a distribution on the occasion of a disposal, the distribution shall be treated for those purposes as—

(a) complying with *paragraph 1(1)(d)*,

(b) made out of the income of the fund for the account period in which the disposal occurs, and

(c) paid immediately before the disposal to the person who was then the holder of the interest disposed of.

(6) In any case where—

(a) a distribution in respect of an interest in an offshore fund is made to the managers of the fund,

(b) their holding of that interest is in their capacity as such, and

(c) at the time of the distribution the fund is operating equalisation arrangements,

then, the distribution shall not be taken into account for the purposes of *paragraph 1(1)* except to the extent that the distribution is properly referable to that part of the period for which the distribution is made during which that interest has been held by the managers of the fund in their capacity as such. SCH.19

(7) *Subsection (2) of section 742* shall apply for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case III of Schedule D

3. (1) *Subparagraph (2)* shall apply if any sums which form part of the income of an offshore fund within *paragraph (b) or (c) of section 743(1)* are of such a nature that—

(a) the holders of interests in the fund who are either companies resident in the State or individuals domiciled and resident in the State—

(i) are chargeable to tax under Case III of Schedule D in respect of such of those sums as are referable to their interests, or

(ii) if any of that income is derived from assets in the State, would be so chargeable had the assets been outside the State,

and

(b) the holders of interests, who are not such companies or individuals, would be chargeable as mentioned in *subclause (i) or (ii) of clause (a)* if they were resident in the State or, in the case of individuals, if they were domiciled and both resident and ordinarily resident in the State.

(2) To the extent that sums within *subparagraph (1)* do not actually form part of a distribution complying with *clauses (c) and (d) of paragraph 1(1)*, they shall be treated for the purposes of this Part of this Schedule—

(a) as a distribution complying with those clauses and made out of the income of which they form part, and

(b) as paid to the holders of the interests to which they are referable.

Commodity income

4. (1) In this paragraph—

“commodities” means tangible assets (other than currency, securities, debts or other assets of a financial nature) dealt with on a commodity exchange in any part of the world;

“dealing”, in relation to dealing in commodities, includes dealing by means of futures contracts and traded options.

(2) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, 50 per cent of those profits shall be disregarded in determining for the purposes of *paragraphs 1(1)(b) and 5*—

(a) the income of the fund for that period, and

(b) the fund's Irish equivalent profits for that period;

but in any account period in which an offshore fund incurs a loss in dealing in commodities the amount of that loss shall not be varied by virtue of this paragraph.

(3) Where the income of an offshore fund for any account period consists of profits from dealing in commodities and other income, then—

(a) in determining whether the condition in *paragraph 1(1)(b)* is fulfilled with respect to that account period, the expenditure of the fund shall be apportioned in such manner as is just and reasonable between the profits from dealing in commodities and the other income, and

(b) in determining whether and to what extent any expenditure is deductible under *section 83* in computing the fund's Irish equivalent profits for that period, so much of the business of the fund as does not consist of dealing in commodities shall be treated as a business carried on by a separate company.

(4) Where there is a disposal to which *paragraph 2(1)* applies, then, to the extent that any amount which was or would be credited to the equalisation account in respect of accrued income, as mentioned in *subparagraph (3) or (4) of paragraph 2*, represents profits from dealing in commodities, 50 per cent of that accrued income shall be disregarded in determining under those subparagraphs the part of the consideration for the disposal which represents income accrued to the date of the disposal.

Irish equivalent profits

5. (1) In this paragraph, "profits" does not include chargeable gains.

(2) A reference in this Schedule to the Irish equivalent profits of an offshore fund for an account period shall be construed as a reference to the amount which, on the assumptions in *subparagraph (3)*, would be the total profits of the fund for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable.

(3) The assumptions referred to in *subparagraph (2)* are that—

(a) the offshore fund is a company which in the account period is resident in the State,

(b) the account period is an accounting period of that company, and

(c) any dividends or distributions which by virtue of *section 129* should be disregarded in computing income for corporation tax purposes are nevertheless to be taken into account in that computation in the like manner as if they were dividends or distributions of a company resident outside the State.

(4) Without prejudice to any deductions available apart from this subparagraph, the deductions referred to in *subparagraph (2)* include—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) a deduction equal to any amount which by virtue of *paragraph 1(6)* is allowed as a deduction in determining the income of the fund for the account period in question, SCH.19
- (b) a deduction equal to any amount of Irish income tax paid by deduction or otherwise by, and not repaid to, the offshore fund in respect of the income of the account period, and
- (c) a deduction equal to any amount of tax (paid under the law of a territory outside the State) taken into account as a deduction in determining the income of the fund for the account period in question but which, because it is referable to capital rather than income, is not to be taken into account by virtue of *section 71(1)* or *77(6)*;

but *section 2(4)* shall be disregarded for the purposes of *clause (b)*.

(5) For the avoidance of doubt it is hereby declared that, if any sums forming part of the offshore fund's income for any period have been received by the fund without any deduction of or charge to tax by virtue of *section 43, 49, 50* or *63*, the effect of the assumption in *subparagraph (3)(a)* is that those sums are to be taken into account in determining the total profits referred to in *subparagraph (2)*.

PART 2

MODIFICATIONS OF CONDITIONS FOR CERTIFICATION IN CERTAIN CASES

Exclusion of investments in distributing offshore funds

6. (1) In this Part of this Schedule, an offshore fund within *subparagraph (2)(c)* is referred to as a "qualifying fund".

(2) In any case where—

- (a) in an account period of an offshore fund (in this Part of this Schedule referred to as "the primary fund"), the assets of the fund consist of or include interests in another offshore fund,
- (b) those interests (together with other interests which the primary fund may have) are such that, by virtue of *paragraph (a)* of *subsection (3)* of *section 744* or, if the other fund concerned is a company, *paragraph (b)* or *(c)* of that subsection, the primary fund could not apart from this paragraph be certified as a distributing fund in respect of the account period, and
- (c) without regard to this paragraph, that other fund could be certified as a distributing fund in respect of its account period or, as the case may be, each of its account periods which comprises the whole or any part of the account period of the primary fund,

then, in determining whether in *section 744(3)* (other than *paragraph (d)*) anything prevents the primary fund being certified as mentioned in *clause (b)*, the interests of the primary fund in that other fund shall be disregarded except for the purposes of determining the total value of the assets of the primary fund.

(3) In a case within *subparagraph (2)*—

- (a) *section 744(3)* (other than *paragraph (d)*) shall apply in relation to the primary fund with the modification in

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.19

paragraph 7 (in addition to that provided for by *subparagraph (2)*), and

(b) *Part 1* of this Schedule shall apply in relation to the primary fund with the modification in *paragraph 8*.

7. The modification referred to in *paragraph 6(3)(a)* is that in any case where—

(a) at any time in the account period referred to in *paragraph 6(2)*, the assets of the primary fund include an interest in an offshore fund or in any company (whether an offshore fund or not),

(b) that interest is to be taken into account in determining whether in *section 744(3)* (other than *paragraph (d)*) anything prevents the primary fund being certified as a distributing fund in respect of that account period, and

(c) at any time in that account period the assets of the qualifying fund include an interest in the offshore fund or company referred to in *clause (a)*,

then, for the purposes of the application in relation to the primary fund of *section 744(3)* (other than *paragraph (d)*), at any time when the assets of the qualifying fund include the interest referred to in *clause (c)*, the primary fund's share of that interest shall be treated as an additional asset of the primary fund.

8. (1) The modification referred to in *paragraph 6(3)(b)* is that, in determining whether the condition in *paragraph 1(1)(b)(ii)* is fulfilled with respect to the account period of the primary fund referred to in *paragraph 6(2)*, the Irish equivalent profits of the primary fund for that account period shall be treated as increased by the primary fund's share of the excess income (if any) of the qualifying fund which is attributable to that account period.

(2) For the purposes of this paragraph, the excess income of the qualifying fund for any account period of that fund shall be the amount (if any) by which its Irish equivalent profits for that account period exceed the amount of the distributions made for that account period, as determined for the purposes of the application of *paragraph 1(1)* to the qualifying fund.

(3) Where an account period of the qualifying fund coincides with an account period of the primary fund, the excess income (if any) of the qualifying fund for that account period shall be the excess income which is attributable to that account period of the primary fund.

(4) In a case where *subparagraph (3)* does not apply, the excess income of the qualifying fund attributable to an account period of the primary fund shall be the appropriate fraction of the excess income (if any) of the qualifying fund for any of its account periods which comprises the whole or any part of the account period of the primary fund and, if there is more than one such account period of the qualifying fund, the aggregate of the excess income (if any) of each of them.

(5) For the purposes of *subparagraph (4)*, the appropriate fraction shall be determined by reference to the formula—

$$\frac{A}{B}$$

where—

A is the number of days in the account period of the primary fund which are also days in an account period of the qualifying fund, and

B is the number of days in that account period of the qualifying fund or, as the case may be, in each of those account periods of that fund which comprises the whole or any part of the account period of the primary fund.

9. (1) The references in *paragraphs 7 and 8(1)* to the primary fund's share of—

(a) an interest forming part of the assets of the qualifying fund, or

(b) the excess income (within the meaning of *paragraph 8*) of the qualifying fund,

shall be construed as references to the fraction specified in *subparagraph (2)* of that interest or excess income.

(2) In relation to any account period of the primary fund, the fraction referred to in *subparagraph (1)* shall be determined by reference to the formula—

$$\frac{C}{D}$$

where—

C is the average value of the primary fund's holding of interests in the qualifying fund during that account period, and

D is the average value of all the interests of the qualifying fund held by any persons during that account period.

Offshore funds investing in trading companies

10. (1) In this paragraph—

“commodities” has the same meaning as in *paragraph 4(1)*;

“dealing”, in relation to commodities, currency, securities, debts or other assets of a financial nature, includes dealing by means of futures contracts and traded options;

“trading company” means a company whose business consists wholly of the carrying on of a trade or trades and does not to any extent consist of—

(a) dealing in commodities, currency, securities, debts or other assets of a financial nature, or

(b) banking or money-lending.

(2) In any case where the assets of an offshore fund for the time being include an interest in a trading company, *section 744(3)* shall apply subject to the modifications in *subparagraphs (3) and (4)*.

(3) In the application of *section 744(3)(b)* to so much of the assets of an offshore fund as for the time being consists of interests in a single trading company, “20 per cent” shall be substituted for “10 per cent”.

(4) In the application of *section 730(3)(c)* to an offshore fund, for “more than 10 per cent”, in so far as it would otherwise refer to the share capital of a trading company or to any class of such share capital, “50 per cent or more” shall be substituted.

Offshore funds with wholly-owned subsidiaries

11. (1) In relation to an offshore fund which has a wholly-owned subsidiary which is a company, *section 744(3)* or *Part 1* of this Schedule shall apply subject to the modifications in *subparagraph (4)*.

(2) Subject to *subparagraph (3)*, for the purposes of this paragraph, a company shall be a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—

- (a) in the case of an offshore fund within *section 743(1)(a)*, directly and beneficially owned by the fund,
- (b) in the case of an offshore fund within *section 743(1)(b)*, directly owned by the trustees of the fund for the benefit of the fund, and
- (c) in the case of an offshore fund within *section 743(1)(c)*, owned in a manner which as near as may be corresponds either to *clause (a)* or *(b)*.

(3) In the case of a company which has only one class of issued share capital, the reference in *subparagraph (2)* to the whole of the issued share capital shall be construed as a reference to at least 95 per cent of that share capital.

(4) The modifications referred to in *subparagraph (1)* are that for the purposes of *section 744(3)* and *Part 1* of this Schedule—

- (a) the percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in *subparagraph (2)* shall be regarded as the receipts, expenditure, assets and liabilities of the fund, and
- (b) there shall be disregarded the interest of the fund in the subsidiary and any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

Offshore funds with interests in dealing and management companies

12. (1) *Section 744(3)(c)* shall not apply to so much of the assets of an offshore fund as consists of issued share capital of a company which is either—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) a wholly-owned subsidiary of the fund which is within *sub-* SCH.19
paragraph (2), or

(b) a subsidiary management company of the fund (within the meaning of *subparagraph (3)*).

(2) A company which is a wholly-owned subsidiary of an offshore fund shall be one to which *subparagraph (1)(a)* applies if—

(a) the business of the company consists wholly of dealing in material interests in the offshore fund for the purposes of and in connection with the management and administration of the business of the fund, and

(b) the company is not entitled to any distribution in respect of any material interest for the time being held by the company,

and *paragraph 11(2)* shall apply to determine whether a company is for the purposes of this paragraph a wholly-owned subsidiary of an offshore fund.

(3) A company (being a company in which an offshore fund has an interest) shall be a subsidiary management company of the fund for the purposes of *subparagraph (1)(b)* if—

(a) the company carries on no business other than providing services within *subparagraph (4)* either for the fund alone or for the fund and for any other offshore fund which has an interest in the company, and

(b) the company's remuneration for the services it provides to the fund is not greater than it would be if it were determined at arm's length between the fund and a company in which the fund has no interest.

(4) The services referred to in *subparagraph (3)* are—

(a) holding property (being property of any description) occupied or used in connection with the management or administration of the fund, and

(b) providing administrative, management and advisory services to the fund.

(5) In determining in accordance with *subparagraph (3)* whether a company in which an offshore fund has an interest is a subsidiary management company of that fund—

(a) every business carried on by a wholly-owned subsidiary of the company shall be treated as carried on by the company,

(b) no account shall be taken of so much of the company's business as consists of holding its interests in a wholly-owned subsidiary, and

(c) any reference in *subparagraph (3)(b)* to the company shall be taken to include a reference to a wholly-owned subsidiary of the company.

(6) A reference in *subparagraph (5)* to a wholly-owned subsidiary of a company shall be construed as a reference to another company,

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

the whole of the issued share capital of which is for the time being directly and beneficially owned by the first-mentioned company.

Disregarding of certain investments forming less than 5 per cent of a fund

13. (1) In this paragraph, “excess holding” means any holding within *subparagraph (2)*.

(2) In any case where—

(a) in any account period of an offshore fund the assets of the fund include a holding of issued share capital (or any class of issued share capital) of a company, and

(b) that holding is such that by virtue of *section 744(3)(c)* the fund could not (apart from this paragraph) be certified as a distributing fund in respect of that account period,

then, if the condition in *subparagraph (3)* is fulfilled, that holding shall be disregarded for the purposes of *section 744(3)(c)*.

(3) The condition referred to in *subparagraph (2)* is that at no time in the account period in question does that portion of the fund which consists of—

(a) excess holdings, and

(b) interests in other offshore funds which are not qualifying funds,

exceed 5 per cent by value of all the assets of the fund.

Power of Revenue Commissioners to disregard certain breaches of conditions

14. Where in the case of any account period of an offshore fund it appears to the Revenue Commissioners that there has been a failure to comply with any of the conditions in *paragraphs (a), (b) and (c)* of *section 744(3)* (as modified, where appropriate, by the preceding provisions of this Part of this Schedule) but they are satisfied that the failure—

(a) occurred inadvertently, and

(b) was remedied without unreasonable delay,

then, the Revenue Commissioners may disregard the failure for the purposes of determining whether to certify the fund as a distributing fund in respect of that account period.

PART 3

CERTIFICATION PROCEDURE

Application for certification

15. (1) The Revenue Commissioners shall, in such manner as they consider appropriate, certify an offshore fund as a distributing fund in respect of an account period if—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (a) an application in respect of that period is made under this paragraph, SCH.19
- (b) the application is accompanied by the accounts of the fund for, or for a period which includes, the account period to which the application relates,
- (c) such information as the Revenue Commissioners may reasonably require for the purpose of determining whether the fund should be so certified is furnished to the Revenue Commissioners, and
- (d) the Revenue Commissioners are satisfied that nothing in *subsection (2) or (3) of section 744* prevents the fund being so certified.

(2) An application under this paragraph shall be made to the Revenue Commissioners by the fund or by a trustee or officer of the fund on behalf of the fund and may be so made before the expiry of the period of 6 months beginning at the end of the account period to which the application relates.

(3) In any case where on an application under this paragraph the Revenue Commissioners determine that the offshore fund concerned should not be certified as a distributing fund in respect of the account period to which the application relates, they shall give notice of that determination to the fund.

(4) Where at any time it appears to the Revenue Commissioners that—

- (a) the accounts accompanying an application under this paragraph in respect of any account period of an offshore fund are not such, or
- (b) any information furnished to them in connection with such an application is not such,

as to make full and accurate disclosure of all facts and considerations relevant to the application, the Revenue Commissioners shall give notice to the fund accordingly, specifying the period concerned.

(5) Where a notice is given by the Revenue Commissioners under *subparagraph (4)*, they shall be deemed never to have certified the offshore fund in respect of the account period in question.

Appeals

16. (1) An appeal to the Appeal Commissioners—

- (a) against a determination referred to in *paragraph 15(3)*, or
- (b) against a notification under *paragraph 15(4)*,

may be made by the offshore fund or by a trustee or officer of the fund on behalf of the fund, and shall be so made by notice specifying the grounds of appeal and given to the Revenue Commissioners within 30 days of the date of the notice under *subparagraph (3) or (4) of paragraph 15* as the case may be.

(2) The Appeal Commissioners shall hear and determine an appeal under *subparagraph (1)* in accordance with the principles to be followed by the Revenue Commissioners in determining applications under *paragraph 15* and, subject to those principles, in the like manner as in the case of an appeal to the Appeal Commissioners 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.

(3) The jurisdiction of the Appeal Commissioners on an appeal under this paragraph shall include jurisdiction to review any decision of the Revenue Commissioners relevant to a ground of the appeal.

PART 4

SUPPLEMENTARY

Assessment: effect of non-certification

17. No appeal may be brought against an assessment to tax on the ground that an offshore fund should have been certified as a distributing fund in respect of an account period of the fund.

18. (1) Without prejudice to *paragraph 17*, in any case where no application has been made under *paragraph 15* in respect of an account period of an offshore fund, any person liable to pay tax which that person would not be liable to pay if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Revenue Commissioners to take action under this paragraph for the purposes of determining whether the fund should be so certified.

(2) Subject to *subparagraphs (3) and (5)*, where the Revenue Commissioners receive a notice under *subparagraph (1)* they shall by notice, given in such manner as they consider appropriate in the circumstances, invite the offshore fund concerned to make an application under *paragraph 15* in respect of the period in question.

(3) Where *subparagraph (2)* applies, the Revenue Commissioners shall not be required to give notice under that subparagraph before the expiry of the account period to which the notice is to relate nor if an application under *paragraph 15* has already been made; but where notice is given under *subparagraph (2)*, an application under *paragraph 15* shall not be out of time under *paragraph 15(2)* if it is made within 90 days of the date of that notice.

(4) Where an offshore fund to which notice is given under *subparagraph (2)* does not make an application under *paragraph 15* in respect of the account period in question within the time allowed by *subparagraph (3)* or *paragraph 15(2)*, as the case may be, the Revenue Commissioners shall proceed to determine the question of certification in respect of that period as if such an application had been made.

(5) Where the Revenue Commissioners receive more than one notice under *subparagraph (1)* with respect to the same account period of the same offshore fund, their obligations under *subparagraphs (2) and (4)* shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any of them.

(6) Notwithstanding anything in *subparagraph (5)*, for the purpose of a determination under *subparagraph (4)* with respect to an account period of an offshore fund, the Revenue Commissioners shall have regard to accounts and other information furnished by all persons who have given notice under *subparagraph (1)* with respect to that account period, and *paragraph 15* shall apply as if accounts and information so furnished had been furnished in compliance with *subparagraph (1)* of that paragraph. SCH.19

(7) Without prejudice to *subparagraph (5)*, in any case where—

- (a) at a time after the Revenue Commissioners have made a determination under *subparagraph (4)* that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under *subparagraph (1)* with respect to that period, and
- (b) the person giving that notice furnishes the Revenue Commissioners with accounts or information which had not been furnished to them at the time of the earlier determination,

then, the Revenue Commissioners shall reconsider their previous determination in the light of the new accounts or information and, if they consider it appropriate, may determine to certify the fund accordingly.

(8) Where any person has given notice to the Revenue Commissioners under *subparagraph (1)* with respect to an account period of an offshore fund and no application has been made under *paragraph 15* with respect to that period, then—

- (a) the Revenue Commissioners shall notify that person of their determination with respect to certification under *subparagraph (4)*, and
- (b) *paragraph 16* shall not apply in relation to that determination.

Information as to decisions on certification etc.

19. Any obligation on the Revenue Commissioners to maintain secrecy or any other restriction upon the disclosure of information by them shall not preclude them from disclosing to any person appearing to them to have an interest in the matter—

- (a) any determination of the Revenue Commissioners or (on appeal) the Appeal Commissioners as to whether an offshore fund should or should not be certified as a distributing fund in respect of any account period, or
- (b) the content and effect of any notice given by the Revenue Commissioners under *paragraph 15(4)*.

20. The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by the Revenue Commissioners, and references in this Schedule to the Revenue Commissioners shall, with any necessary modifications, be construed as including references to an officer so nominated.

SCHEDULE 20

Section 745.

[FA90 Sch6]

OFFSHORE FUNDS: COMPUTATION OF OFFSHORE INCOME GAINS

PART 1

DISPOSAL OF INTERESTS IN NON-QUALIFYING FUNDS

Interpretation

1. In this Part of this Schedule, “material disposal” means a disposal to which *Chapter 2 of Part 27* applies otherwise than by virtue of *section 742*.

Calculation of unindexed gain

2. (1) Where there is a material disposal, there shall first be determined for the purposes of this Part of this Schedule the amount (if any) which in accordance with this paragraph is the unindexed gain accruing to the person making the disposal.

(2) Subject to *subsections (2) to (6) of section 741* and *paragraph 3*, the unindexed gain accruing on a material disposal shall be the amount which would be the gain on that disposal for the purposes of the Capital Gains Tax Acts if it were computed without regard to—

- (a) any charge to income tax or corporation tax by virtue of *section 745*, and
- (b) any adjustment (in this Part of this Schedule referred to as “the indexation allowance”) made under *section 556(2)* to sums allowable as deductions in the computation of chargeable gains.

3. (1) Where the material disposal forms part of a transfer to which *section 600* applies, the unindexed gain accruing on the disposal shall be computed without regard to any deduction to be made under that section in computing a chargeable gain.

(2) Notwithstanding *sections 538* and *546*, where apart from this subparagraph the effect of any computation under the preceding provisions of this Part of this Schedule would be to produce a loss, the unindexed gain on the material disposal shall be treated as nil, and accordingly for the purposes of this Part of this Schedule no loss shall be treated as accruing on a material disposal.

Gains since the 6th day of April, 1990

4. (1) This paragraph shall apply where—

- (a) the interest in the offshore fund which is disposed of by the person making a material disposal was acquired by that person before the 6th day of April, 1990, or
- (b) that person is treated by virtue of any provision of *subparagraphs (3) and (4)* as having acquired the interest before that date.

(2) Where this paragraph applies, the amount which would have been the gain on the material disposal shall be determined for the purposes of this Part of this Schedule—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(a) on the assumption that on the 6th day of April, 1990, the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time, and

(b) subject to that assumption, on the basis that the gain is computed in the like manner as the unindexed gain on the material disposal is determined under *paragraphs 2 and 3*,

and that amount is in *paragraph 5(2)* referred to as “the gain since the 6th day of April, 1990”.

(3) Where the person making the material disposal acquired the interest disposed of—

(a) on or after the 6th day of April, 1990, and

(b) in such circumstances that by virtue of any enactment other than *section 556(4)* that person and the person (in this subparagraph and *subparagraph (4)* referred to as “the previous owner”) from whom that person acquired the interest disposed of were to be treated for the purposes of the Capital Gains Tax Acts as if that person’s acquisition were for a consideration of such an amount as would secure that, on the disposal under which that person acquired the interest disposed of, neither a gain or a loss accrued to the previous owner,

then, the previous owner’s acquisition of the interest shall be treated as that person’s acquisition of the interest.

(4) Where the previous owner acquired the interest disposed of—

(a) on or after the 6th day of April, 1990, and

(b) in circumstances similar to those referred to in *subparagraph (3)*,

then, the acquisition of the interest by the predecessor of the previous owner shall be treated for the purposes of this paragraph as the previous owner’s acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before the 6th day of April, 1990, or, as the case may be, until an acquisition on a material disposal on or after that date.

The offshore income gain

5. (1) Subject to *subparagraph (2)*, a material disposal shall give rise to an offshore income gain of an amount equal to the unindexed gain on that disposal.

(2) In any case where—

(a) *paragraph 4* applies, and

(b) the gain since the 6th day of April, 1990 (within the meaning of *paragraph 4(2)*) is less than the unindexed gain on the disposal,

the offshore income gain to which the disposal gives rise shall be an amount equal to the income gain since the 6th day of April, 1990 (within the meaning of that paragraph).

PART 2

DISPOSALS INVOLVING AN EQUALISATION ELEMENT

6. (1) Subject to *paragraph 7*, a disposal to which *Chapter 2 of Part 27* applies by virtue of *section 742(3)* shall give rise to an offshore income gain of an amount equal to the equalisation element relevant to the asset disposed of.

(2) Subject to *subparagraphs (4) to (6)*, the equalisation element relevant to the asset disposed of by a disposal within *subparagraph (1)* shall be the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the asset disposed of were acquired by another person by means of initial purchase.

(3) In the following provisions of this Part of this Schedule, a disposal within *subparagraph (1)* is referred to as a “disposal involving an equalisation element”.

(4) Where the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal after the beginning of the period by reference to which the accrued income referred to in *subparagraph (2)* is calculated, the amount which apart from this subparagraph would be the equalisation element relevant to that asset shall be reduced by the following amount, that is—

- (a) if that acquisition took place on or after the 6th day of April, 1990, the amount which on that acquisition was credited to the equalisation account of the offshore fund concerned in respect of accrued income or, as the case may be, would have been so credited if that acquisition had been an acquisition by means of initial purchase, and
- (b) in any other case, the amount which would have been credited to that account in respect of accrued income if that acquisition had been an acquisition by means of initial purchase taking place on the 6th day of April, 1990.

(5) In any case where—

- (a) the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal at or before the beginning of the period by reference to which the accrued income referred to in *subparagraph (2)* is calculated, and
- (b) that period began before the 6th day of April, 1990, and ends after that date,

the amount which apart from this subparagraph would be the equalisation element relevant to that asset shall be reduced by the amount which would have been credited to the equalisation account of the offshore fund concerned in respect of accrued income if the acquisition referred to in *clause (a)* had been an acquisition by means of initial purchase taking place on the 6th day of April, 1990.

(6) Where there is a disposal involving an equalisation element, then, to the extent that any amount which was or would be credited to the equalisation account of the offshore fund in respect of accrued income (as mentioned in *subparagraph (2), (3), (4) or (5)*) represents profits from dealing in commodities (within the meaning of *paragraph 4 of Schedule 19*), 50 per cent of that accrued income shall be

disregarded in determining under those subparagraphs the equalisation element relevant to the asset disposed of by that disposal. SCH.20

7. (1) For the purposes of this Part of this Schedule, the Part 1 gain (if any) on any disposal involving an equalisation element shall be determined in accordance with *paragraph 8*.

(2) Notwithstanding anything in *paragraph 6*—

(a) where there is no Part 1 gain on a disposal involving an equalisation element, that disposal shall not give rise to an offshore income gain, and

(b) where apart from this paragraph the offshore income gain on a disposal involving an equalisation element would exceed the Part 1 gain on that disposal, the offshore income gain to which that disposal gives rise shall be reduced to an amount equal to that Part 1 gain.

8. (1) On a disposal involving an equalisation element, the Part 1 gain shall be the amount (if any) which, by virtue of *Part 1* of this Schedule (as modified by *subparagraphs (2) and (3)*), would be the offshore income gain on that disposal if it were a material disposal within the meaning of that Part.

(2) For the purposes only of the application of *Part 1* of this Schedule to determine the Part 1 gain (if any) on a disposal involving an equalisation element, *subsections (5) and (6) of section 742* shall apply as if in *subsection (5) of that section* “by virtue of *subsection (3)*” were deleted.

(3) Where a disposal involving an equalisation element is one which by virtue of any enactment other than *section 556(4)* is treated for the purposes of the Capital Gains Tax Acts as one on which neither a gain nor a loss accrues to the person making the disposal, then, for the purpose only of determining the Part 1 gain (if any) on the disposal, that enactment shall be deemed not to apply to such a disposal (but without prejudice to the application of that enactment to any earlier disposal).

SCHEDULE 21

Sections 749, 750 and 751.

PURCHASE AND SALE OF SECURITIES: APPROPRIATE AMOUNT IN RESPECT OF THE INTEREST

[ITA67 Sch11;
F(MP)A68 s3(2)
and Sch Pt1]

1. For the purposes of *section 749*, the appropriate amount in respect of the interest shall be the appropriate proportion of the net interest receivable by the first buyer.

2. For the purposes of *sections 750 and 751*, the appropriate amount in respect of the interest shall be the gross amount corresponding to the appropriate proportion of the net interest receivable by the first buyer.

3. (1) For the purposes of *paragraphs 1 and 2*, the appropriate proportion shall be the proportion which—

(a) the period beginning on the first relevant date and ending on the day before the day on which the first buyer bought the securities,

bears to—

- (b) the period beginning on the first relevant date and ending on the day before the second relevant date.

(2) In *subparagraph (1)*—

“the first relevant date” means—

- (a) in a case where the securities have not been quoted in the official list of the Dublin Stock Exchange at a price excluding the value of the interest payment last payable before the interest receivable by the first buyer or, the securities having been so quoted, the date of the quotation was not the earliest date on which they could have been so quoted if an appropriate dealing in the securities had taken place, that earliest date, and
- (b) in any other case, the date on which the securities have been first so quoted;

“the second relevant date” means—

- (a) in a case where the securities have not been quoted in the official list of the Dublin Stock Exchange at a price excluding the value of the interest receivable by the first buyer or, the securities having been so quoted, the date of the quotation was not the earliest date on which they could have been so quoted if an appropriate dealing in the securities had taken place, that earliest date, and
- (b) in any other case, the date on which the securities have been first so quoted.

(3) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, *subparagraph (1)* shall apply with the substitution for the references to the first relevant date of references to the beginning of the period (in this subparagraph referred to as “the relevant period”) for which the interest was payable; but where the capital amount of the securities was not fully paid at the beginning of the relevant period and one or more instalments of capital were paid during the relevant period, then—

- (a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of the relevant period and the amount of that interest attributable to each such instalment,
- (b) treating each of those parts as interest payable for the relevant period or, where the part was calculated by reference to any such instalment, as interest payable for the part of the relevant period beginning with the payment of the instalment, the amount constituting the appropriate proportion of each part shall be calculated in accordance with the preceding provisions of this paragraph, and
- (c) the appropriate proportion of the interest for the purposes of *paragraphs 1* and *2* shall be the proportion of the interest constituted by the sum of those amounts.

(4) In relation to securities not the subject of quotations in the official list of the Dublin Stock Exchange, *subparagraph (1)* shall apply with the substitution for the periods mentioned in that subparagraph of such periods as in the opinion of the Appeal Commissioners correspond with those in the case of the securities in question. SCH.21

4. Where the securities are of a description such that the bargain price is increased, where interest is receivable by the buyer, by reference to gross interest accruing before the bargain date, *paragraphs 1 to 3* shall not apply; but for the purposes of *sections 749 to 751* the appropriate amount in respect of the interest shall be the amount of the increase in the bargain price.

SCHEDULE 22

Sections 749 and 752]

DIVIDENDS REGARDED AS PAID OUT OF PROFITS ACCUMULATED BEFORE GIVEN DATE

[ITA67 Sch12; F(MP)A68 s3(2) and Sch PtI; CTA76 s140(1) and Sch2 PtI par28; FA79 s34]

1. (1) Subject to *paragraph 2*, a dividend shall be regarded for the purposes of *section 752* and of this Schedule as paid wholly out of profits accumulated before a given date (in this Schedule referred to as “the relevant date”) if—

- (a) it is declared for a period falling wholly before the relevant date,
- (b) there are no profits of the company arising in the period beginning on the relevant date and ending on the date on which the dividend is payable, or
- (c) having regard to *paragraph 3*, no part is available for payment of the dividend out of such profits of the company as arose in the period beginning on the relevant date and ending on the date on which the dividend is payable.

(2) Subject to *paragraph 2*, where out of such profits of the company as arose in the period beginning on the relevant date and ending on the date on which the dividend is payable, some part is, having regard to *paragraph 3*, available for payment of the dividend but the total amount distributed in payment of the net dividend on all the shares of the class in question exceeds that part of the profits, the dividend shall be regarded for the purposes of *section 752* and of this Schedule as paid out of profits accumulated before the relevant date to an extent which is the same as the proportion which the excess bears to that total amount.

(3) For the purposes of this Schedule, a dividend which is declared for a period falling partly before and partly after the relevant date shall be regarded as consisting of 2 dividends respectively declared for the 2 parts of the period and of amounts proportionate to each such part.

2. (1) Notwithstanding *paragraph 1*, a dividend shall not be regarded as paid to any extent out of profits accumulated before the relevant date if—

- (a) it became payable within one year from that date, and
- (b) in the opinion of the Appeal Commissioners the annual rate of dividend on the shares in question in that year—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.22

- (i) is not substantially greater than the annual rate of dividend on those shares in the period of 3 years ending on the relevant date, or
- (ii) in a case where the shares in question were acquired in the ordinary course of a business of arranging public issues and placings of shares, represents a yield on the cost to the person receiving the dividend not substantially greater than the yield obtainable by investing in comparable shares the prices of which are quoted on stock exchanges in the State.

(2) For the purposes of *subparagraph (1)(b)*, the Appeal Commissioners shall have regard to—

- (a) all dividends paid on the shares in the respective periods,
- (b) any share issue made in those periods to holders of the shares, and
- (c) in a case under *subparagraph (1)(b)(i)* where the shares were not in existence 3 years before the relevant date, the dividends paid on, and any share issue made to holders of, any shares surrendered in exchange for the first-mentioned shares or in right of which the first-mentioned shares were acquired,

and shall take such averages and make such adjustments as may appear to them to be required for a fair comparison.

3. (1) The part of the profits of the company arising in the period beginning on the relevant date and ending on the date on which a dividend is payable which is available for payment of the dividend shall be determined in accordance with *subparagraphs (2) to (5)*.

(2) There shall be deducted from those profits such amount, whether fixed or proportionate to the amount of the profits, as in the opinion of the Appeal Commissioners ought justly and reasonably to be treated as set aside for payment of dividends on any other class of shares in the company, having regard to the respective rights attaching to the shares and on the assumption that the total amount available for distribution by means of net dividend on all the shares in the company over any period will be proportionately greater or less than the profits of the company arising in the period beginning on the relevant date and ending on the date on which the dividend mentioned in *subparagraph (1)* is payable, according as the first-mentioned period is longer or shorter than the second-mentioned period.

(3) In a case where, in the period beginning on the relevant date and ending on the date on which the dividend is payable, no previous dividend became payable on the shares of the class in question, the whole of the profits of the company arising in the period, less any deduction to be made under *subparagraph (2)*, shall be regarded as available for payment of the dividend.

(4) If any previous dividend became payable on the same shares in the period beginning on the relevant date and ending on the date on which the dividend is payable, there shall be determined in accordance with the preceding paragraphs the extent, if any, to which that previous dividend is to be regarded as paid out of profits accumulated before the relevant date, and the profits of the company arising in that period, less any deduction to be made under *subparagraph (2)*, shall be regarded as primarily available for payment of the

net amount of that previous dividend in so far as it is not regarded as paid out of profits accumulated before the relevant date and only such balance, if any, as remains shall be regarded as available for payment of the later dividend. SCH.22

(5) Where under *subparagraph (2)* the Appeal Commissioners are to determine what should be set aside for payment of dividends on shares of any class, and dividends on shares of that class have been treated under this Schedule as paid to any extent out of profits accumulated before the relevant date, the Appeal Commissioners may take that fact into account and reduce the amount to be so set aside accordingly.

4. (1) For the purposes of this Schedule, the profits of a company arising in a given period (in this paragraph referred to as “the specified period”) shall be determined in accordance with *subparagraphs (2)* and *(3)*.

(2) Those profits shall be the income of the company for the specified period diminished by—

- (a) the income tax actually paid by the company for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period, including any sur-tax borne by the company under section 530 of, and Schedule 16 to, the Income Tax Act, 1967,
- (b) the corporation profits tax payable by the company for any accounting period in the specified period,
- (c) the corporation tax (including corporation tax charged by virtue of *sections 440* and *441*) payable by the company for any accounting period in the specified period, and for this purpose the tax credit comprised in any franked investment income shall be treated as corporation tax payable by the company for the accounting period in which the distribution was received, and
- (d) the capital gains tax payable by the company for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period;

but where relief has been afforded to the company under section 360 of the Income Tax Act, 1967, or under *section 826* or *833*, references in this subparagraph to tax actually borne or to tax payable shall be construed as references to the tax which would have been borne or payable if that relief had not been given.

(3) In ascertaining for the purposes of this paragraph the amount of income tax, corporation profits tax and corporation tax by which the income of the company for the specified period is to be diminished, any tax on the amount to be deducted under *clause (g)* or *(h)* of *paragraph 5(3)* shall be disregarded.

5. (1) For the purposes of this Schedule, the income of the company for a given period (in this paragraph referred to as “the specified period”) shall be determined in accordance with *subparagraphs (2)* and *(3)*.

(2) There shall be computed the aggregate amount of—

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.22

- (a) any profits or gains arising in the specified period from any trade carried on by the company computed in accordance with the provisions applicable to Case I of Schedule D,
- (b) any income (including any franked investment income) arising in the specified period (computed in accordance with the Income Tax Acts or, in the case of franked investment income, in accordance with the Corporation Tax Acts), other than profits or gains arising from any trade referred to in *clause (a)*, and
- (c) any capital profits arising in the specified period (whether or not chargeable to capital gains tax or corporation tax).

(3) There shall be deducted from the aggregate amount determined under *subparagraph (2)* the sum of the following amounts—

- (a) any loss sustained by the company in the specified period in any trade referred to in *subparagraph (2)(a)* (computed in the same manner as profits or gains under the provisions applicable to Case I of Schedule D),
- (b) any group relief given to the company in accordance with *Chapter 5 of Part 12* for any accounting period in the specified period,
- (c) any allowances for any year of assessment (not being a year of assessment after the year 1975-76) in the specified period in respect of any such trade under sections 241, 244(3) and 245, Chapter III of Part XIV, and Parts XV and XVI, of the Income Tax Act, 1967,
- (d) any allowances in respect of any such trade under Chapter III of Part XIV of the Income Tax Act, 1967, which under section 14 of the Corporation Tax Act, 1976, were to be made in taxing the trade for the purposes of corporation tax for any accounting period in the specified period,
- (e) any allowances in respect of any such trade under *Part 9, section 670, Chapter 1 of Part 29* or *subsection (1) or (2) of section 765*, which under *section 307* are to be made in taxing the trade for the purpose of corporation tax for any accounting period in the specified period,
- (f)
 - (i) any payments made by the company in the specified period to which *section 237* or *238* applies, other than payments which are deductible in computing the profits or gains or losses of a trade carried on by the company,
 - (ii) any amount in respect of which repayment was made under section 496 of the Income Tax Act, 1967, for any year of assessment in the specified period, and
 - (iii) any charges on income which under *section 243(2)* are to be allowed as deductions against the total profits for any accounting period in the specified period,
- (g) if the company is not engaged in carrying on a trade mentioned in *section 752(3)* and has received in the period—
 - (i) on or before the 5th day of April, 1976, a dividend which if the company had been engaged in such a

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

trade would have been required by section 371(1) of the Income Tax Act, 1967, to be taken into account to any extent mentioned in that section, such amount as would, after deduction of income tax at the rate authorised by section 456 of that Act, be equal to the amount which would have been so required to be taken into account, SCH.22

(ii) after the 5th day of April, 1976, a distribution within the meaning of *Chapter 2 of Part 6* which if the company had been engaged in such a trade would have been required by *section 752(3)* to be taken into account to any extent mentioned in that section, an amount equal to so much of the distribution as would be so required to be taken into account increased by so much of the tax credit in respect of that distribution as bears to the amount of such tax credit the same proportion as the part of the distribution which would be so required to be taken into account bears to the distribution, and

(h) if the company is not engaged in carrying on a trade mentioned in *section 752(3)*, but were it so engaged any reduction under *section 749* would, or would but for *section 749(3)*, be made as respects the price paid by the company for securities (within the meaning of that section) bought by it in the period—

(i) on or before the 5th day of April, 1976, such amount as would, after deduction of income tax at the rate applicable to the payment, be equal to the amount of the reduction, or

(ii) after the 5th day of April, 1976, such amount as would be equal to an amount of gross interest corresponding to an amount of net interest equal to the amount of the reduction,

so however that where the securities are of the description specified in *paragraph 4 of Schedule 21*, the amount shall be the amount of the reduction,

and the balance shall be the income of the company for the specified period.

6. Any reference in *paragraph 4 or 5* to an amount for a year of assessment in the period in question shall be taken as a reference to the full amount for any year of assessment falling wholly within that period and a proportionate part of the amount (on a time basis) for any year of assessment falling partly within that period, and the references in those paragraphs to an amount for an accounting period in that period shall be construed in a corresponding manner.

SCHEDULE 23

OCCUPATIONAL PENSION SCHEMES

PART 1

GENERAL

Application for approval of a scheme

1. An application for the approval for the purposes of *Chapter 1 of Part 30* (in this Schedule referred to as “*Chapter 1*”) of any retirement benefits scheme shall be made in writing by the administrator

Section 770.

[FA72 Sch1 PtI pars1 to 3(3), 4 and 5 and PtVI pars 1 to 4; FA96 s132(1) and Sch5 PtI par6]

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

of the scheme to the Revenue Commissioners before the end of the first year of assessment for which approval is required, and shall be supported by—

- (a) a copy of the instrument or other document constituting the scheme,
- (b) a copy of the rules of the scheme and, except where the application is being made on the setting up of the scheme, a copy of the accounts of the scheme for the last year for which such accounts have been made up, and
- (c) such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the setting up of the scheme) as the Revenue Commissioners may consider relevant.

Information about payments under approved schemes

2. In the case of every approved scheme, the administrator of the scheme and every employer who pays contributions under the scheme shall, within 30 days from the date of the notice from the inspector requiring them so to do—

- (a) furnish to the inspector a return containing such particulars of contributions paid under the scheme as the notice may require;
- (b) prepare and deliver to the inspector a return containing particulars of all payments under the scheme, being—
 - (i) payments by means of the return of contributions (including interest on contributions, if any),
 - (ii) payments by means of the commutation of, or in place of, pensions or other lump sum payments, and
 - (iii) other payments made to an employer;
- (c) furnish to the inspector a copy of the accounts of the scheme to the last date previous to the notice to which such accounts have been made up, together with such other information and particulars (including copies of any actuarial report or advice given to the administrator or employer in connection with the conduct of the scheme in the period to which the accounts relate) as the inspector considers relevant.

Information about schemes other than approved schemes or statutory schemes

3. (1) This paragraph shall apply as respects a retirement benefits scheme which is neither an approved scheme nor a statutory scheme.

(2) It shall be the duty of every employer—

- (a) if there subsists in relation to any of that employer's employees any such scheme, to deliver particulars of that scheme to the inspector within 3 months beginning on the date on which the scheme first comes into operation in relation to any of that employer's employees, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) when required to do so by notice given by the inspector to furnish within the time limited by the notice such particulars as the inspector may require with regard to—

SCH.23

(i) any retirement benefits scheme relating to the employer, or

(ii) the employees of that employer to whom any such scheme relates.

(3) It shall be the duty of the administrator of any such scheme, when required to do so by notice given by the inspector, to furnish within the time limited by the notice such particulars as the inspector may require with regard to the scheme.

Responsibility of administrator of a scheme

4. (1) Where the administrator of a retirement benefits scheme defaults, cannot be traced or dies, the employer shall be responsible in place of the administrator for the discharge of all duties imposed on the administrator under *Chapter 1* and this Schedule and shall be liable for any tax due from the administrator in the capacity as administrator.

(2) No liability incurred under *Chapter 1* or this Schedule by the administrator of a scheme, or by an employer, shall be affected by the termination of the scheme or by its ceasing to be an approved scheme or an exempt approved scheme, or by the termination of the appointment of the person mentioned in *section 772(2)(c)*.

(3) References in this paragraph to the employer include, where the employer is resident outside the State, references to any factor, agent, receiver, branch or manager of the employer in the State.

Regulations

5. (1) The Revenue Commissioners may make regulations generally for the purpose of carrying *Chapter 1* and this Schedule into effect.

(2) Every regulation made under this paragraph 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.

PART 2

CHARGE TO TAX IN RESPECT OF UNAUTHORISED AND CERTAIN OTHER PAYMENTS

6. This Part shall apply to any payment to or for the benefit of an employee, otherwise than in course of payment of a pension, being a payment made out of funds which are or have been held for the purposes of a scheme which is or has at any time been approved for the purposes of *Chapter 1*.

7. Where the payment—

(a) is not expressly authorised by the rules of the scheme, or

SCH.23

(b) is made at a time when the scheme is not approved for the purposes of *Chapter 1* and would not have been expressly authorised by the rules of the scheme when it was last so approved,

the employee (whether or not he or she is the recipient of the payment) shall be chargeable to tax on the amount of the payment under Schedule E for the year of assessment in which the payment is made.

8. Any payment chargeable to tax under this Part shall not be chargeable to tax under *section 780* or *781*.

9. References in this Part to any payment include references to any transfer of assets or other transfer of money's worth.

Sections 826 and 833.

SCHEDULE 24

RELIEF FROM INCOME TAX AND CORPORATION TAX BY MEANS OF CREDIT IN RESPECT OF FOREIGN TAX

Interpretation

[ITA67 Sch10; F(MP)A68 s3(2) and Sch PtI; F(No.2)A70 s1(c); FA74 s86 and Sch2 PtI; CTA76 s23(2) to (4) and s166 and Sch4 PtsI and II; FA95 s60]

1. (1) In this Schedule, except where the context otherwise requires—

“arrangements” means arrangements for the time being in force by virtue of *section 826* or *section 12* of the Finance Act, 1950;

“the Irish taxes” means income tax and corporation tax;

“foreign tax”, in relation to any territory in relation to which arrangements have the force of law, means any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements.

(2) Any reference in this Schedule to foreign tax shall be construed, in relation to credit to be allowed under any arrangements, as a reference only to tax chargeable under the laws of the territory in relation to which the arrangements are made.

General

2. (1) Subject to this Schedule, where under the arrangements credit is to be allowed against any of the Irish taxes chargeable in respect of any income, the amount of the Irish taxes so chargeable shall be reduced by the amount of the credit.

(2) In the case of any income within the charge to corporation tax, the credit shall be applied in reducing the corporation tax chargeable in respect of that income.

(3) Nothing in this paragraph shall authorise the allowance of credit against any Irish tax against which credit is not allowable under the arrangements.

Requirements as to residence

3. Credit shall not be allowed against income tax for any year of assessment or corporation tax for any accounting period unless the person in respect of whose income the tax is chargeable is resident in the State for that year or accounting period.

4. (1) The amount of the credit to be allowed against corporation tax for foreign tax in respect of any income shall not exceed the corporation tax attributable to that income.

(2) For the purposes of this paragraph, the corporation tax attributable to any income or gain (in this subparagraph referred to as “that income” or “that gain”, as the case may be) of a company shall, subject to *subparagraphs* (3) to (5), be the corporation tax attributable to so much (in this paragraph referred to as “the relevant income” or “the relevant gain”, as the case may be) of the income or chargeable gains of the company computed in accordance with the Tax Acts and the Capital Gains Tax Acts, as is attributable to that income or that gain, as the case may be.

(3) For the purposes of *subparagraph* (2), the relevant income of a company attributable to an amount receivable from the sale of goods (within the meaning of *section 449*) shall be the sum which would for the purposes of that section be taken to be the amount of the income of the company referable to the amount so receivable.

(4) Subject to *subparagraph* (5), the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit for double taxation relief) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues (in this paragraph referred to as “the relevant accounting period”); but, where the corporation tax payable by the company for the relevant accounting period on the relevant income or gain is reduced by virtue of—

- (a) *section 448* by any fraction, the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as reduced by that fraction,
- (b) *section 713(3)* or *738(2)*, the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as the standard rate of income tax by reference to which the corporation tax so payable is reduced, and
- (c) *section 723(6)*, the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as 10 per cent,

for the purposes of computing the corporation tax attributable to that relevant income or gain, as the case may be.

(5) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set off against or treated as reducing profits of more than one description—

- (a) the company shall for the purposes of this paragraph and *sections 449* and *450* allocate every such deduction in such amounts and to such of its profits for that period as it thinks fit, and
- (b) (i) the amount of the relevant income or gain shall be treated for the purposes of *subparagraph* (4),

- (ii) the amount of any income of a company treated for the purposes of *section 449* as referable to an amount receivable from the sale of goods (within the meaning of that section) shall be treated for the purposes of that section, and
- (iii) the amount of the income of a company treated for the purposes of *section 450* as attributable to relevant payments (within the meaning of that section) shall be treated for the purposes of that section,

as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

Limit on total credit — income tax

5. (1) The amount of the credit to be allowed against income tax for foreign tax in respect of any income shall not exceed the sum which would be produced by computing the amount of that income in accordance with the Income Tax Acts, and then charging it to income tax for the year of assessment for which the credit is to be allowed, but at a rate (in this paragraph referred to as “the specified rate”) ascertained by dividing the income tax payable by that person for that year by the amount of the total income of that person for that year.

(2) For the purpose of determining the specified rate, the tax payable by any person for any year shall be computed without any reduction of that tax for any credit allowed or to be allowed under any arrangements having effect by virtue of *section 826* but shall be deemed to be reduced by any tax which the person in question is entitled to charge against any other person, and the total income of any person shall be deemed to be reduced by the amount of any income the income tax on which that person is entitled to charge as against any other person.

(3) Where credit for foreign tax is to be allowed in respect of any income and any relief would but for this subparagraph be allowed in respect of that income under *section 830*, that relief shall not be allowed.

6. Without prejudice to *paragraph 5*, the total credit to be allowed to a person against income tax for any year of assessment shall not exceed the total income tax payable by the person in question for that year of assessment, less any tax which that person is entitled to charge against any other person.

Effect on computation of income of allowance of credit

7. (1) Where credit for foreign tax is to be allowed against any of the Irish taxes in respect of any income, this paragraph shall apply in relation to the computation for the purposes of income tax or corporation tax of the amount of that income.

(2) Where the income tax or corporation tax payable depends on the amount received in the State, that amount shall be treated as increased by the amount of the credit allowable against income tax or corporation tax, as the case may be.

(3) Where *subparagraph (2)* does not apply—

- (a) no deduction shall be made for foreign tax (whether in respect of the same or any other income), and

(b) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividend, the amount of the income shall be treated as increased by the amount of the foreign tax not so chargeable which is to be taken into account in computing the amount of the credit, but

(c) notwithstanding anything in *clauses (a) and (b)*, where any part of the foreign tax in respect of the income (including any foreign tax which under *clause (b)* is to be treated as increasing the amount of the income) cannot be allowed as a credit against any of the Irish taxes, the amount of the income shall be treated as reduced by that part of that foreign tax.

(4) In relation to the computation of the total income of a person for the purpose of determining the rate mentioned in *paragraph 5, subparagraphs (1) to (3)* shall apply subject to the following modifications:

(a) for the reference in *subparagraph (2)* to the amount of the credit allowable against income tax there shall be substituted a reference to the amount of the foreign tax in respect of the income (in the case of a dividend, foreign tax not chargeable directly or by deduction in respect of the dividend being disregarded), and

(b) *clauses (b) and (c) of subparagraph (3)* shall not apply,

and, subject to those modifications, shall apply in relation to all income in the case of which credit is to be allowed for foreign tax under any arrangements.

Special provisions as to dividends

8. (1) For the purposes of this paragraph, the relevant profits shall be—

(a) if the dividend is paid for a specified period, the profits of that period,

(b) if the dividend is not paid for a specified period but is paid out of specified profits, those profits, or

(c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable;

but if, in a case within *clause (a) or (c)*, the total dividend exceeds the profits available for distribution of the period mentioned in *clause (a) or (c)*, as the case may be, the relevant profits shall be the profits of that period together with so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this paragraph) as is equal to the excess, and for this purpose the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

(2) Where, in the case of any dividend, foreign tax not chargeable directly or by deduction in respect of the dividend is under the arrangements to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividend, the foreign tax not so chargeable to be taken into account shall be that borne by the body corporate paying the dividend on the relevant profits in so far as it is properly attributable to the proportion of the relevant profits represented by the dividend.

9. Where—

- (a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividends, and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than 50 per cent of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Miscellaneous

10. Credit shall not be allowed under the arrangements against the Irish taxes chargeable in respect of any income of any person if the person in question elects that credit shall not be allowed in respect of that income.

11. Where under the arrangements relief may be given either in the State or in the territory in relation to which the arrangements are made in respect of any income, and it appears that the assessment to income tax or to corporation tax made in respect of the income is not made in respect of the full amount of that income or is incorrect having regard to the credit, if any, which is to be given under the arrangements, any such additional assessments may be made as are necessary to ensure that the total amount of the income is assessed and the proper credit, if any, is given in respect of that income, and where the income is entrusted to any person in the State for payment, any such additional assessment to income tax may be made on the recipient of the income under Case IV of Schedule D.

12. (1) In this paragraph—

“the relevant year of assessment”, in relation to credit for foreign tax in respect of any income, means the year of assessment for which that income is to be charged to income tax or would be so charged if any income tax were chargeable in respect of that income;

“the relevant accounting period”, in relation to credit for foreign tax in respect of any income, means the accounting period for which that income is to be charged to corporation tax or would be so charged if any corporation tax were chargeable in respect of that income.

(2) Subject to *paragraph 13*, any claim for an allowance by means of credit for foreign tax in respect of any income shall be made in writing to the inspector not later than 6 years from the end of the

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

relevant year of assessment or the relevant accounting period, as the case may be, and, if the inspector objects to any such claim, it shall be heard and determined by the Appeal Commissioners as if it were an appeal to the Appeal Commissioners 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. SCH.24

13. Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the State or in the territory in relation to which the arrangements are made, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 6 years from the time when all such assessments, adjustments and other determinations have been made, as are material in determining whether any, and if so what, credit is to be given.

SCHEDULE 25

Section 833.

[The Convention set out in this Schedule was ratified subject to the exclusion of articles XIV and XVI in accordance with reservations made by the Senate of the United States of America. Instruments of ratification were exchanged at Washington, District of Columbia, on 20th December, 1951.]

[ITA67 Sch8]

Reciprocal Relief of Double Taxation in Respect of Irish Income Tax, Sur-tax and Corporation Profits Tax and United States Federal Income Taxes, Including Sur-Taxes

CONVENTION BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Ireland and the Government of the United States of America,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries:

The Government of Ireland:

Patrick McGilligan, Minister for Finance;
Seán MacBride, Minister for External Affairs;

The Government of the United States of America;

George A. Garrett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Dublin;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

Article I

(1) The taxes which are the subject of the present Convention are:—

(a) In the United States of America:

The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

(b) In Ireland:

The income tax (including surtax) and the corporation profits tax (hereinafter referred to as Irish tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of the signature of the present Convention.

Article II

(1) In the present Convention, unless the context otherwise requires—

(a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term “Ireland” means the Republic of Ireland and the term “Irish” has a corresponding meaning.

(c) The terms “territory of one of the Contracting Parties” and “territory of the other Contracting Party” mean the United States or Ireland as the context requires.

(d) The term “United States corporation” means a corporation, association or other like entity created or organised in or under the laws of the United States.

(e) The term “Irish corporation” means any kind of juridical person created under the laws of Ireland.

(f) The terms “corporation of one Contracting Party” and “corporation of the other Contracting Party” mean a United States corporation or an Irish corporation as the context requires.

(g) The term “resident of Ireland” means any person (other than a citizen of the United States or a United States corporation) who is resident in Ireland for the purposes of Irish tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in Ireland if its business is managed and controlled in Ireland.

(h) The term “resident of the United States” means any individual who is resident in the United States for the purposes of United States tax and not resident in Ireland for the purposes of Irish tax, and any United States corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in Ireland for the purposes of Irish tax.

(i) The term “Irish enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of Ireland.

(j) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United States. SCH.25

(k) The terms “enterprise of one of the Contracting Parties” and “enterprise of the other Contracting Party” mean a United States enterprise or an Irish enterprise, as the context requires.

(l) The term “permanent establishment” when used with respect to an enterprise of one of the Contracting Parties means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a *bona fide* commission agent or broker acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX and XIV, a resident of Ireland shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by Ireland in the case of a resident of the United States.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

Article III

(1) An Irish enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from all sources within the United States.

(2) A United States enterprise shall not be subject to Irish tax in respect of its industrial or commercial profits unless it is engaged in

trade or business in Ireland through a permanent establishment situated therein. If it is so engaged, Irish tax may be imposed upon the entire income of such enterprise from all sources within Ireland.

(3) Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other Contracting Party, be deemed to be income from sources within the territory of such other Contracting Party.

(4) In determining the industrial or commercial profits from sources within the territory of one of the Contracting Parties of an enterprise of the other Contracting Party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former Contracting Party by such enterprise.

Article IV

Where an enterprise of one of the Contracting Parties, by reason of its participation in the management, control or capital of an enterprise of the other Contracting Party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article V

(1) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual resident of Ireland or an Irish corporation derives from operating ships documented or aircraft registered under the laws of Ireland, shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in Ireland or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from Irish tax.

(3) This Article shall not be deemed to affect the arrangement between Ireland and the United States, providing for reciprocal exemption of shipping profits from income tax, effected between the Government of the United States and the Government of Ireland by exchange of Notes dated August 24, 1933, and January 8, 1934.

Article VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of Ireland who is subject to Irish tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 per cent.; provided that such rate of tax shall not exceed five per cent. if such a resident is a corporation controlling, directly or indirectly, at least 95 per cent. of the entire voting power in the corporation paying the dividend, and not

more than 25 per cent. of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five per cent. shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate. SCH.25

(2) Dividends derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

(3) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any calendar year after the calendar year in which the exchange of the instruments of ratification takes place and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to Irish tax on and after the sixth day of April, in the calendar year next following that in which such notice is given.

Article VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in Ireland controlling, directly or indirectly, more than 50 per cent. of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within Ireland by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in Ireland, shall be exempt from Irish tax; but such exemption shall not apply to such interest paid by a corporation resident in Ireland to a United States corporation controlling, directly or indirectly, more than 50 per cent. of the entire voting power in the paying corporation.

Article VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within the United States by a resident of Ireland who is subject to Irish tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, and derived from sources within Ireland by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in Ireland shall be exempt from Irish tax.

(3) For the purposes of this Article the term “royalties” shall be deemed to include rentals in respect of motion picture films.

Article IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of Ireland who is subject to Irish tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 per cent.: provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within Ireland by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in Ireland, shall be exempt from Irish surtax.

Article X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a citizen of Ireland who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from Irish tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of Ireland to an individual (other than a citizen of the United States who is not also a citizen of Ireland) in respect of services rendered to Ireland in the discharge of governmental functions, shall be exempt from United States tax.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

Article XI

(1) An individual who is a resident of Ireland shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (a) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such services are performed for or on behalf of a person resident in Ireland.

(2) An individual who is a resident of the United States shall be exempt from Irish tax upon profits, emoluments or other remuneration in respect of personal (including professional) services performed within Ireland in any year of assessment if (a) he is present within Ireland for a period or periods not exceeding in the aggregate 183 days during that year, and (b) such services are performed for or on behalf of a person resident in the United States.

Article XII

(1) Any pension (other than a pension to which Article X applies),

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

and any life annuity, derived from sources within the United States SCH.25
by an individual who is a resident of Ireland shall be exempt from
United States tax.

(2) Any pension (other than a pension to which Article X applies),
and any life annuity, derived from sources within Ireland by an indi-
vidual who is a resident of the United States shall be exempt from
Irish tax.

(3) The term “life annuity” means a stated sum payable period-
ically at stated times, during life or during a specified or ascertainable
period of time, under an obligation to make the payments in con-
sideration of money paid.

Article XIII

(1) Subject to section 131 of the United States Internal Revenue
Code as in effect on the day on which this Convention shall have
come into effect, Irish tax shall be allowed as a credit against United
States tax. For this purpose, the recipient of a dividend paid by a
corporation which is a resident of Ireland shall be deemed to have
paid the Irish income tax appropriate to such dividend if such recipi-
ent elects to include in his gross income for the purposes of United
States tax the amount of such Irish income tax. For the purposes
only of this Article, income derived from sources in the United
Kingdom by an individual who is resident in Ireland shall be deemed
to be income from sources in Ireland if such income is not subject to
United Kingdom income tax.

(2) Subject to such provisions (which shall not affect the general
principle hereof) as may be enacted in Ireland, United States tax
payable in respect of income from sources within the United States
shall be allowed as a credit against any Irish tax payable in respect
of that income. Where such income is an ordinary dividend paid by
a United States corporation, such credit shall take into account (in
addition to any United States income tax deducted from or imposed
on such dividend) the United States income tax imposed on such
corporation in respect of its profits, and where it is a dividend paid
on participating preference shares and representing both a dividend
at the fixed rate to which the shares are entitled and an additional
participation in profits, such tax on profits shall likewise be taken
into account in so far as the dividend exceeds such fixed rate.

(3) For the purposes of this Article, compensation, profits, emolu-
ments and other remuneration for personal (including professional)
services shall be deemed to be income from sources within the terri-
tory of the Contracting Party where such services are performed.

Article XIV

A resident of Ireland not engaged in trade or business in the
United States shall be exempt from United States tax on gains from
the sale or exchange of capital assets.

Article XV

(1) Dividends and interest paid, on or after the first day of January
in the calendar year in which the exchange of instruments of ratifica-
tion takes place, by an Irish corporation shall be exempt from United
States tax except where the recipient is a citizen of or a resident in
the United States or a United States corporation.

(2) Dividends and interest paid, on or after the sixth day of April of the first year of assessment specified in Article XXII (2) (b) (i) of this Convention, by a United States corporation shall be exempt from Irish tax except where the recipient is a resident of Ireland.

Article XVI

An Irish corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits, income or surplus, if individuals who are residents of Ireland control, directly or indirectly, throughout the latter half of the taxable year, more than 50 per cent. of the entire voting power in such corporation.

Article XVII

(1) The United States income tax liability for any taxable year beginning prior to January 1, 1936, of any individual (other than a citizen of the United States) resident in Ireland, or of any Irish corporation, remaining unpaid on the date of signature of the present Convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue: provided that the amount to be paid in settlement of such liability shall not exceed the amount of the liability which would have been determined if—

- (a) the United States Revenue Act of 1936 (except in the case of an Irish corporation in which more than 50 per cent. of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States), and
- (b) Article XV and XVI of the present Convention,

had been in effect for such year. If the taxpayer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and had no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50 per cent. of the amount of the tax with respect to which such interest and penalties have been computed.

(2) The United States income tax unpaid on the date of signature of the present Convention for any taxable year beginning after the thirty-first day of December, 1935, and prior to the first day of January in the calendar year in which the exchange of instruments of ratification takes place in the case of an individual resident of Ireland or in the case of any Irish corporation shall be determined as if the provisions of Articles XV and XVI of the present Convention had been in effect for such taxable year.

(3) The provisions of paragraphs (1) of this Article shall not apply—

- (a) unless the taxpayer files with the Commissioner of Internal Revenue on or before the thirty-first day of December of the second calendar year following the calendar year in which the exchange of the instruments of ratification takes place a request that such tax liability be so adjusted and furnishes such information as the Commissioner may require; or
- (b) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade the tax.

A professor or teacher from the territory of one of the Contracting Parties who visits the territory of the other Contracting Party for the purpose of teaching, for a period not exceeding two years, at a university, college, school or other educational institution in the territory of such other Contracting Party shall be exempted by such other Contracting Party from tax on his remuneration for such teaching for such period.

Article XIX

A student or business apprentice from the territory of one of the Contracting Parties who is receiving full-time education or training in the territory of the other Contracting Party shall be exempted by such other Contracting Party from tax on payments made to him by persons within the territory of the former Contracting Party for the purposes of his maintenance, education or training.

Article XX

(1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term “taxation authorities” means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative and, in the case of Ireland, the Revenue Commissioners or their authorised representative.

Article XXI

(1) The nationals of one of the Contracting Parties shall not, while resident in the territory of the other Contracting Party, be subjected therein to other or more burdensome taxes than are the nationals of such other Contracting Party resident in its territory.

(2) The term “nationals” as used in this Article means—

(a) In relation to Ireland, all citizens of Ireland; and

(b) In relation to the United States, United States citizens;

and includes all legal persons, partnerships and associations deriving their status as such from, or created or organised under, the laws in force in any territory of the Contracting Parties to which the present Convention applies.

Article XXII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington, District of Columbia, as soon as possible.

(2) Upon exchange of ratifications, the present Convention shall have effect—

- (a) as respects United States tax, for the taxable years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;
- (b) (i) as respects Irish income tax, for the year of assessment beginning on the 6th day of April in the calendar year in which the exchange of instruments of ratification takes place and subsequent years;
- (ii) as respects Irish surtax, for the year of assessment beginning on the 6th day of April immediately preceding the calendar year in which the exchange of instruments of ratification takes place, and subsequent years; and
- (iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the first day of April in the calendar year in which the exchange of instruments of ratification takes place, and for the unexpired portion of any chargeable accounting period current at that date.

Article XXIII

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any calendar year following the calendar year in which the exchange of instruments of ratification takes place, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective—

- (a) as respects United States tax, for the taxable years beginning on or after the first day of January in the calendar year next following that in which such notice is given;
- (b) (i) as respects Irish income tax, for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given;
- (ii) as respects Irish surtax, for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and
- (iii) as respects Irish corporation profits tax, for any chargeable accounting period beginning on or after the first day of April in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

IN WITNESS WHEREOF the above-named Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done at Dublin, in duplicate, this thirteenth day of September, 1949. SCH.25

For the Government of Ireland:

P. McGILLIGAN
SEAN MacBRIDE

For the Government of the United States of America:

GEORGE A. GARRETT.

SCHEDULE 26

Section 842.

REPLACEMENT OF HARBOUR AUTHORITIES BY PORT COMPANIES

[FA97 Sch5]

Interpretation

1. In this Schedule—

“relevant port company” means a company formed pursuant to section 7 or 87 of the Harbours Act, 1996;

“relevant transfer” means—

- (a) the vesting in a relevant port company of assets in accordance with section 96 of the Harbours Act, 1996, and
- (b) the transfer to a relevant port company of rights and liabilities in accordance with section 97 of that Act.

Capital allowances

2. (1) This paragraph shall apply for the purposes of—

- (a) allowances and charges provided for in *Part 9, section 670, Chapter 1 of Part 29 and sections 765 and 769*, or any other provision of the Tax Acts relating to the making of allowances or charges under or in accordance with that Part or Chapter or those sections, and
- (b) allowances or charges provided for by *sections 307 and 308*.

(2) The relevant transfer shall not be treated as giving rise to any allowance or charge under any of the provisions referred to in *subparagraph (1)*.

(3) There shall be made to or on the relevant port company in accordance with *sections 307 and 308* all such allowances and charges in respect of an asset acquired by it in the course of a relevant transfer as would have been made if—

- (a) allowances in relation to the asset made to the person from whom the asset was acquired had been made to the relevant port company, and
- (b) everything done to or by that person in relation to the asset had been done to or by the relevant port company.

Capital gains

3. (1) This paragraph shall apply for the purposes of the Capital

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.26

Gains Tax Acts, and of the Corporation Tax Acts in so far as those Acts relate to chargeable gains.

(2) The disposal of an asset by a person in the course of a relevant transfer shall be deemed to be for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the person.

(3) Where *subparagraph (2)* has applied in relation to a disposal of an asset, then, in relation to any subsequent disposal of the asset by the relevant port company, the relevant port company shall be treated as if the acquisition or provision of the asset by the person from whom it was acquired by the relevant port company was that company's acquisition or provision of the asset.

(4) For the purposes of *section 597*, the relevant port company and the person from whom an asset was acquired in the course of a relevant transfer shall be treated as if they were the same person.

Sections 855, 857, 867 and 942.

SCHEDULE 27

FORMS OF DECLARATIONS TO BE MADE BY CERTAIN PERSONS

[ITA67 Sch17;
F(MP)A68 s3(4)
and Sch Pt III]

PART 1

Form of declaration to be made by Appeal Commissioners acting in respect of tax under Schedule D

“I, A.B., do solemnly declare, that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Acts relating to income tax, and that I will exercise the powers entrusted to me by the said Acts in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Acts without favour, affection, or malice; and that I will not disclose any particular contained in any schedule, statement, return or other document delivered with respect to any tax charged under the provisions relating to Schedule D of the said Acts, or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition, respecting the same, in pursuance of the said Acts, except to such persons only as shall act in the execution of the said Acts, and where it shall be necessary to disclose the same to them for the purposes of the said Acts, or to the Revenue Commissioners, or in order to, or in the course of, a prosecution for perjury committed in such examination, affidavit or deposition.”

Form of declaration to be made by inspectors

“I, A.B., do solemnly declare, that in the execution of the Acts relating to income tax I will examine and revise all statements, returns, schedules and declarations delivered within my district, and, in objecting to the same, I will act according to the best of my information and knowledge; and that I will conduct myself without favour, affection, or malice, and that I will exercise the powers entrusted to me by the said Acts in such manner only as shall appear to me to be necessary for the due execution of the same, or as I shall be directed by the Revenue Commissioners; and that I will not disclose any particular contained in any statement, return, schedule or other document, with respect to any tax charged under the provisions relating to Schedule D of the said Acts, or any evidence or answer given by any person who shall be examined, or shall make affidavit or

deposition, respecting the same, in pursuance of the said Acts, except to such persons only as shall act in the execution of the said Acts, and where it shall be necessary to disclose the same to them for the purposes of the said Acts, or to the Revenue Commissioners, or in order to, or in the course of, a prosecution for perjury committed in such examination, affidavit or deposition.” SCH.27

Form of declaration to be made by persons appointed under section 854 or section 855 as assessors

“I, A.B., do solemnly declare, that in the execution of the Acts relating to income tax, I will in all respects act diligently and honestly, and without favour or affection, to the best of my knowledge and belief, and that I will not disclose any particular contained in any statement, return, schedule or other document delivered to me in the execution of the said Acts with respect to any tax charged under the provisions relating to Schedule D of the said Acts, except to such persons only as shall act in the execution of the said Acts, and where it shall be necessary to disclose the same to them for purposes of the said Acts, or in order to, or in the course of, a prosecution for perjury committed in any matter relating to such statement, return, schedule or other document.”

Form of declaration to be made by the Collector-General and officers for receiving tax

“I, A.B., do solemnly declare, that in the execution of the Acts relating to income tax, I will not disclose any assessment, or the amount of any sum paid or to be paid by any person, under the said Acts, or the books of assessment which shall be delivered to me in the execution of the said Acts, with respect to any tax charged under the provisions relating to Schedule D of the said Acts, except to such persons only as shall act in the execution of the said Acts, and where it shall be necessary to disclose the same to them for the purposes of the said Acts, or to the Revenue Commissioners, or in order to, or in the course of, a prosecution for perjury committed in relation to the said tax.”

Form of declaration to be made by the Clerk to the Appeal Commissioners

“I, A.B., do solemnly declare, that I will diligently and faithfully execute the office of a clerk according to the Acts relating to income tax, to the best of my knowledge and judgment; and that I will not disclose any particular contained in any statement, return, declaration, schedule or other document, with respect to the tax charged under the provisions relating to Schedule D of the said Acts, or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition, respecting the same, except to such persons only as shall act in the execution of the said Acts, and where I shall be directed so to do by the said Acts, or by the commissioners under whom I act, or by the Revenue Commissioners, or in order to, and in the course of, a prosecution for perjury committed in such examination, affidavit or deposition.”

PART 2

Form of declaration to be made by a Commissioner for Offices

“I, A.B., do solemnly declare, that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me as a Commissioner for Offices by the Acts relating to income tax, and that I will judge

and determine upon all matters and things which shall be brought before me under the said Acts without favour, affection or malice.”

Sections 458, 866
and 867.

SCHEDULE 28

STATEMENTS, LISTS AND DECLARATIONS

[ITA67 Sch18 pars
II to IX; FA69
s33(1) and Sch4 PtI;
FA90 s20(1); FA97
s146(2) and Sch9
PtII]

1.—BY OR FOR EVERY PERSON CARRYING ON ANY TRADE OR EXERCISING ANY PROFESSION TO BE CHARGED UNDER SCHEDULE D.

The amount of the profits or gains thereof arising within the year of assessment.

2.—BY EVERY PERSON ENTITLED TO PROFITS OF AN UNCERTAIN VALUE NOT BEFORE STATED, OR ANY INTEREST, ANNUITY, ANNUAL PAYMENT, DISCOUNT OR DIVIDEND, TO BE CHARGED UNDER SCHEDULE D.

The full amount of the profits or gains arising therefrom within the year of assessment.

3.—BY EVERY PERSON ENTITLED TO OR RECEIVING INCOME FROM SECURITIES OR POSSESSIONS OUT OF THE STATE TO BE CHARGED UNDER SCHEDULE D.

(1) The full amount arising within the year of assessment, and the amount of every deduction or allowance claimed in respect thereof, together with the particulars of such deduction and the grounds for claiming such allowance; or

(2) In the case of any such 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, or in the case of income arising from such securities and possessions aforesaid which form part of the investments of the foreign life assurance fund of an assurance company 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.—BY EVERY PERSON ENTITLED TO ANY ANNUAL PROFITS OR GAINS NOT FALLING UNDER ANY OF THE FOREGOING RULES, AND NOT CHARGED BY ANY OF THE OTHER SCHEDULES, TO BE CHARGED UNDER SCHEDULE D.

The full amount thereof received annually, or according to the average directed to be taken by the inspector on a statement of the nature of such profits or gains and the grounds on which the amount has been computed, and the average taken, to the best of the knowledge and belief of such person.

5.—STATEMENT OF PROFITS OF ANY PUBLIC OFFICE, OR EMPLOYMENT OF PROFIT, TO BE CHARGED UNDER SCHEDULE E.

The amount of the salary, fees, wages, perquisites and profits of SCH.28
the year of assessment.

6.—GENERAL DECLARATION BY EACH PERSON
RETURNING A STATEMENT OF PROFITS OR GAINS
TO BE CHARGED UNDER SCHEDULES D OR E

Declaring the truth thereof, and that the same is fully stated on every description of property, or profits or gains, included in the Act relating to the said tax, and appertaining to such person, estimated to the best of such person's judgment and belief, according to the provisions of the Income Tax Acts.

7.—LISTS AND DECLARATIONS FOR FACILITATING
THE EXECUTION OF THE INCOME TAX ACTS IN
RELATION TO THE TAX CHARGEABLE ON
OTHERS.

First. List containing the name and place of residence of every person in any service or employ, and the payments made to every such person in respect of the service or employment.

Second. List to be delivered by every person chargeable on behalf of another person, and by any person whomsoever who, in whatever capacity, is in receipt of any money or value, or of profits or gains, of or belonging to any other person, describing that other person for whom the person acts, and stating that other person's name and address, and the amount of such money, value, profit or gains, and declaring whether that other person is of full age, or a married woman living with her husband, or a married woman whose husband is not accountable for the payment of tax charged on her, or is resident in the State, or is an incapacitated person. The person delivering such list shall also deliver a list containing the names and addresses of any other person or persons acting jointly with such person.

Third. Declaration on whom the tax is chargeable in respect of any such money, value, profits or gains.

Fourth. List containing the proper description of every body of persons, or trust for which any person is answerable under the Income Tax Acts and where any such person is answerable under the Income Tax Acts for the tax to be charged in respect of the property or profits or gains of other persons, that person shall deliver such lists as aforesaid, together with the required statements of such profits or gains.

8.—LISTS, DECLARATIONS, AND STATEMENTS TO BE
DELIVERED IN ORDER TO OBTAIN ANY ALLOW-
ANCE OR DEDUCTION.

First. Declaration of the amount of value of property or profits or gains returned, or for which the claimant has been, or is liable to be, assessed.

Second. Declaration of the amount of rents, interests, annuities, or other annual payments, in respect of which the claimant is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.28

Third. Declaration of the amount of interest, annuities, or other annual payments to be made out of the property or profits or gains assessed on the claimant, distinguishing each source.

Fourth. Statement of the amount of income derived according to the 3 preceding declarations.

Fifth. Statement of any tax which the claimant may be entitled to deduct, retain or charge against any other person.

SCHEDULE 29

Sections 1052, 1053 and 1054.

PROVISIONS REFERRED TO IN SECTIONS 1052, 1053 AND 1054

[ITA67 Sch15; F(MP)A68 s5(2); FA72 s13(4) and Sch1 PtIII par3; FA73 s33(7) and Sch 3 par2 and s39 and Sch5 par10; FA74 s59(6) and s73(5); FA75 s22(2) and Sch2 PtII; FA76 s11(4); FA81 s29(4); FA82 s4(8), s5(2)(b) and s51(8); FA83 s20(5), s21(3), and s22(3); FA84 s24(9) and s29(6); FA85 s19(4); FA86 s9(11)(b) and s40(1); FA88 s10(12) and s73(7)(a); FA89 s18(5)(b), s19(4) and Sch 1 par3(1); FA91 s68(4); FA92 s226(7); WCTIPA93 s12; FA95 s7(9)(b) and s236(7); FA97 s13(2)]

Column 1	Column 2	Column 3
section 121	section 128(11)	section 123(6)
section 473 or Regulations under that section	section 183	section 238(3)
section 477	section 258(2)	section 257(1)
section 531 and Regulations under that section	section 505(3) and (4)	section 505(1) and (2)
section 877	section 510(7)	section 531 and Regulations under that section
section 878	section 645	section 734(5)
section 879(2)	section 804(4)	section 876
section 880	section 808	section 885
section 951(1) and (2)	section 812(4)	section 893(3)
paragraphs (a)(iii)(I) and (c) of subsection (2) and paragraphs (a)(i) and (b)(i) of subsection (4) of section 1002	section 815	section 904
section 1023	section 881	section 972
Waiver of Certain Tax, Interest and Penalties Act, 1993, sections 2(3)(a) and 3(6)(b)	section 888	Schedule 2, paragraph 14
	section 890	Schedule 23, paragraph 3(2)(a)
	section 891	Waiver of Certain Tax, Interest and Penalties Act, 1993, sections 2(3)(a) and 3(6)(b)
	section 892	
	section 893(2)	
	section 894(3)	
	section 897	
	section 898	
	section 900	
	section 909	
	section 935	
	section 947	
	Schedule 1, paragraph 1	
	Schedule 9, paragraph 8	
	Schedule 18, paragraph 1(2)	
	Schedule 23, paragraphs 2, 3(2)(b) and 3(3)	

SCHEDULE 30

REPEALS

Number and year (1)	Short title (2)	Extent of repeal (3)
No. 11 of 1928.	Finance Act, 1928.	Section 34(2).
No. 6 of 1967.	Income Tax Act, 1967.	The whole Act, in so far as it is unrepealed.
No. 7 of 1967.	Income Tax (Amendment) Act, 1967.	The whole Act, in so far as it is unrepealed.
No. 17 of 1967.	Finance Act, 1967.	Part I, in so far as it is unrepealed. Section 25, in so far as it relates to income tax. Section 27(2) and (6). Third Schedule, Part I, in so far as it relates to income tax.
No. 7 of 1968.	Finance (Miscellaneous Provisions) Act, 1968.	Parts I and IV, in so far as they are unrepealed. Sections 25 to 27. Section 29(2). Schedule, Parts I to IV.
No. 33 of 1968.	Finance Act, 1968.	Part I, in so far as it is unrepealed. Sections 37 to 39. Section 48(2) and (5).
No. 37 of 1968.	Finance (No. 2) Act, 1968.	Sections 8 and 11(4), in so far as they are unrepealed.
No. 21 of 1969.	Finance Act, 1969.	Parts I and II, in so far as they are unrepealed. Section 63, in so far as it is unrepealed. Sections 64 and 65(1). Section 67(2) and (7). Fourth Schedule, Part I. Fifth Schedule, Part I.
No. 14 of 1970.	Finance Act, 1970.	Part I, in so far as it is unrepealed. Sections 57 to 59. Section 62(2) and (7).
No. 25 of 1970.	Finance (No. 2) Act, 1970.	Section 1. Section 8(2) and (5).
No. 23 of 1971.	Finance Act, 1971.	Part I, in so far as it is unrepealed. Section 55(2) and (6).
No. 19 of 1972.	Finance Act, 1972.	Part I, in so far as it is unrepealed. Section 42. Section 43, in so far as it is unrepealed. Section 46, in so far as it relates to income tax. Section 48(2) and (5). First Schedule, in so far as it is unrepealed. Third Schedule, in so far as it relates to income tax. Fourth Schedule, in so far as it relates to income tax.
No. 19 of 1973.	Finance Act, 1973.	Part I, in so far as it is unrepealed. Section 92, except in so far as it relates to death duties and stamp duty. Section 98(2) and (6). Third Schedule. Fifth Schedule.

Number and year (1)	Short title (2)	Extent of repeal (3)
No. 17 of 1974.	Finance (Taxation of Profits of Certain Mines) Act, 1974.	The whole Act, in so far as it is unrepealed.
No. 27 of 1974.	Finance Act, 1974.	Part I, in so far as it is unrepealed. Section 86. Section 88(2) and (5). First Schedule. Second Schedule.
No. 6 of 1975.	Finance Act, 1975.	Part I, in so far as it is unrepealed. Section 57(2) and (5). First Schedule. Second Schedule.
No. 19 of 1975.	Finance (No. 2) Act, 1975.	Sections 1 and 4(2).
No. 20 of 1975.	Capital Gains Tax Act, 1975.	The whole Act, in so far as it is unrepealed.
No. 7 of 1976.	Corporation Tax Act, 1976.	The whole Act, in so far as it is unrepealed.
No. 16 of 1976.	Finance Act, 1976.	Part I, in so far as it is unrepealed. Section 81(1) and (3)(a). Section 83(2) and (6). First Schedule. Fifth Schedule, Part I.
No. 18 of 1977.	Finance Act, 1977.	Part I, in so far as it is unrepealed. Section 53. Section 54, in so far as it relates to income tax, corporation tax and capital gains tax. Section 56(2) and (7). First Schedule. Second Schedule, in so far as it relates to income tax, corporation tax and capital gains tax.
No. 21 of 1978.	Finance Act, 1978.	Part I, in so far as it is unrepealed. Section 46, in so far as it relates to income tax, corporation tax and capital gains tax. Sections 47, 52(1) and 54(2) and (8). First Schedule. Second Schedule. Fourth Schedule, Part I.
No. 33 of 1978.	Capital Gains Tax (Amendment) Act, 1978.	The whole Act, in so far as it is unrepealed.
No. 11 of 1979.	Finance Act, 1979.	Part I, in so far as it is unrepealed. Section 59(2) and (6). First Schedule. Second Schedule.
No. 14 of 1980.	Finance Act, 1980.	Part I, in so far as it is unrepealed. Sections 89 and 96(2) and (7). First Schedule.
No. 16 of 1981.	Finance Act, 1981.	Part I, in so far as it is unrepealed. Sections 52 and 54(2) and (7). First Schedule.
No. 14 of 1982.	Finance Act, 1982.	Part I, in so far as it is unrepealed. Sections 105(2) and (7). First Schedule. Second Schedule. Third Schedule.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Number and year (1)	Short title (2)	Extent of repeal (3)
No. 15 of 1983.	Finance Act, 1983.	Part I, in so far as it is unrepealed. Part V. Section 120, in so far as it relates to income tax, corporation tax and capital gains tax. Section 122(2) and (6). Fourth Schedule, in so far as it relates to income tax, corporation tax and capital gains tax.
No. 9 of 1984.	Finance Act, 1984.	Part I, in so far as it is unrepealed. Section 116(2) and (7). First Schedule. Second Schedule.
No. 10 of 1985.	Finance Act, 1985.	Part I. Sections 69 and 71(2) and (7). First Schedule.
No. 13 of 1986.	Finance Act, 1986.	Part I, in so far as it is unrepealed. Sections 112 to 116. Sections 118(2), (7) (in so far as it relates to income tax, corporation tax and capital gains tax) and (8). First Schedule. Second Schedule. Third Schedule. Fourth Schedule.
No. 34 of 1986.	Income Tax (Amendment) Act, 1986.	The whole Act.
No. 10 of 1987.	Finance Act, 1987.	Part I. Sections 52 and 55(2) and (7).
No. 12 of 1988.	Finance Act, 1988.	Part I, in so far as it is unrepealed. Sections 70 to 74. Sections 77(2), (7) (except in so far as it relates to the Local Loans Fund) and (8). First Schedule. Second Schedule. Third Schedule.
No. 6 of 1989.	Judicial Separation and Family Law Reform Act, 1989.	Section 26.
No. 10 of 1989.	Finance Act, 1989.	Part I, in so far as it is unrepealed. Sections 86 to 89. Sections 95, 98 and 100(2), (7) (except in so far as it relates to capital acquisitions tax) and (8). First Schedule.
No. 10 of 1990.	Finance Act, 1990.	Part I. Sections 131, 136, 137, 138 and 140(2) and (8). First Schedule. Second Schedule. Third Schedule. Fourth Schedule. Fifth Schedule. Sixth Schedule.
No. 13 of 1991.	Finance Act, 1991.	Part I, in so far as it is unrepealed. Sections 126, 128, 130 and 132(2) and (8). First Schedule. Second Schedule.

Number and year (1)	Short title (2)	Extent of repeal (3)
No. 3 of 1992.	Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Act, 1992.	Section 4.
No. 9 of 1992.	Finance Act, 1992.	Part I, in so far as it is unrepealed. Part VII, except section 248 in so far as it relates to residential property tax. Section 254(2), (8) (except in so far as it relates to residential property tax) and (9). First Schedule. Second Schedule.
No. 28 of 1992.	Finance (No. 2) Act, 1992.	Part I. Section 30(2).
No. 13 of 1993.	Finance Act, 1993.	Part I, in so far as it is unrepealed. Sections 140 and 143(2) and (8). First Schedule.
No. 24 of 1993.	Waiver of Certain Tax, Interest and Penalties Act, 1993.	Sections 10 to 13.
No. 13 of 1994.	Finance Act, 1994.	Part I, in so far as it is unrepealed. Part VII, Chapter I. Section 161, except in so far as it relates to stamp duty. Sections 162, 163(2), 164 and 166(2) and (8). First Schedule. Second Schedule.
No. 8 of 1995.	Finance Act, 1995.	Part I, in so far as it is unrepealed. Part VII, Chapter I. Sections 172 to 177. Section 179(2), (8) and (9). First Schedule. Second Schedule. Third Schedule. Fourth Schedule.
No. 26 of 1995.	Family Law Act, 1995.	Section 37.
No. 9 of 1996.	Finance Act, 1996.	Part I, in so far as it is unrepealed. Part VI. Sections 139 and 143(2), (7) and (8). First Schedule. Fifth Schedule.
No. 25 of 1996.	Disclosure of Certain Information for Taxation and Other Purposes Act, 1996.	Sections 5, 6, 10, 11 and 12.
No. 31 of 1996.	Criminal Assets Bureau Act, 1996.	Sections 23 and 24(1) and (2).
No. 33 of 1996.	Family Law (Divorce) Act, 1996.	Section 31.
No. 22 of 1997.	Finance Act, 1997.	Parts I and VII. Sections 157, 158, 159, 160(1) and 166(2), (8) and (9). First Schedule. Second Schedule. Third Schedule. Fourth Schedule. Fifth Schedule. Sixth Schedule. Ninth Schedule. Tenth Schedule.

SCHEDULE 31

CONSEQUENTIAL AMENDMENTS

In the enactments specified in *Column (1)* of the following Table for the words set out or referred to in *Column (2)* there shall be substituted the words set out in the corresponding entry in *Column (3)*.

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Stamp Act, 1891: section 13(1), in the definition of "Appeal Commissioners" section 13(4)	section 156 of the Income Tax Act, 1967 Part XXVI (Appeals) of the Income Tax Act, 1967	section 850 of the Taxes Consolidation Act, 1997 Chapter 1 of Part 40 (Appeals) of the Taxes Consolidation Act, 1997
The Finance (1909-10) Act, 1910: section 49, in the first proviso to subsection (1) section 49, in the second proviso to subsection (1) section 49, in paragraph (a) of subsection (1A)	section 242 of the Finance Act, 1992 section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992 section 242 of the Finance Act, 1992 subsection (6) of the said section 242	section 1094 of the Taxes Consolidation Act, 1997 section 1094 of the Taxes Consolidation Act, 1997 section 1094 of the Taxes Consolidation Act, 1997 subsection (7) of that section
The Betting Act, 1931, the proviso to section 7 (3)	section 242 (as amended) by the Finance Act, 1993) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
The Auctioneers and House Agents Act, 1947: section 8, in the proviso to subsection (1) section 9, in the proviso to subsection (1) section 10, in the proviso to subsection (1)	section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992 section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992 section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997 section 1094 of the Taxes Consolidation Act, 1997 section 1094 of the Taxes Consolidation Act, 1997
The Finance Act, 1952, section 19(2)	section 156 of the Corporation Tax Act, 1976	section 9 of the Taxes Consolidation Act, 1997
The Gaming and Lotteries Act, 1956, the proviso to section 19	section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
The Civil Service Commissioners Act, 1956, section 27(3)	section 156(1) of the Income Tax Act, 1967	section 850(1) of the Taxes Consolidation Act, 1997
The Income Tax (Purchased Life Annuities) Regulations, 1959 (S.I. No. 152 of 1959): Regulation 2, in the definition of "the principal section" Regulation 5	section 22 of the Finance Act, 1959 subsection (3) subsection (4)	section 788 of the Taxes Consolidation Act, 1997 subsection (5) subsection (6)

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Income Tax (Purchased Life Annuities) Regulations, 1959 (S.I. No. 152 of 1959): — <i>contd.</i>		
Regulation 7	Subsection (3) of section 5 of the Finance Act, 1929 (No. 32 of 1929), as amended by section 3 of the Finance Act, 1958 (No. 25 of 1958)	Subsection (3) of section 933 of the Taxes Consolidation Act, 1997
Regulation 9	Sections 149 and 196 of the Income Tax Act, 1918	Sections 941 and 942 of the Taxes Consolidation Act, 1997
Regulation 17	Rule 17 of the General Rules	Section 1023 of the Taxes Consolidation Act, 1997
The Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960):		
Regulation 2, in paragraph (1)	“the Act” means the Finance (No. 2) Act, 1959 (No. 42 of 1959)	“the Act” means the Taxes Consolidation Act, 1997
Regulation 2, paragraph (1), in the definition of “emoluments”	Part II of the Act	Chapter 4 of Part 42 of the Act
Regulation 36, in paragraph (2)	Section 7 of the Finance Act, 1923 (No. 21 of 1923), as applied by section 11 of the Act	Section 962 of the Act, as applied by section 993 of the Act
Regulation 36, in paragraph (3)	Section 11 of the Finance Act, 1924 (No. 27 of 1924), as applied by section 11 of the Act	Section 963 of the Act, as applied by section 993 of the Act
Regulation 59	section 222 or 223 of the Income Tax Act, 1967 (No. 6 of 1967) or by virtue of section 16, 17 or 25 of the Finance Act, 1972 (No. 19 of 1972)	section 774 or 776 of the Act
Regulation 60	Chapter IV of Part V of the Income Tax Act, 1967	Chapter 4 of Part 42 of the Act
The Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971):		
Regulation 2, in the definition of “certified sub-contractor”	subsection (9)(a) of the principal section	subsection (13)(a) of section 531 of the Act
Regulation 2, in the definition of “principal”	the principal section	section 530 of the Act
	subsection (2) of that section	section 531 of the Act
Regulation 2	“principal section” means section 17 (inserted by the Finance Act, 1976 (No. 16 of 1976)) of the Finance Act, 1970 (No. 14 of 1970);	“the Act” means the Taxes Consolidation Act, 1997;
Regulation 2, in the definition of “relevant contract”	the principal section	section 530 of the Act

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971): — <i>contd.</i>		
Regulation 2, in the definition of “repayment period”	subsection (4) of the principal section	subsection (5) of section 531 of the Act
Regulation 2, in the definition of “sub-contractor”	subsection (2) of the principal section	subsection (1) of section 531 of the Act
Regulation 2, in the definition of “sub-contractor’s certificate”	subsection (7) of the principal section	subsection (11) of section 531 of the Act
Regulation 4	subsection (8)(a) of the principal section	subsection (12)(a) of section 531 of the Act
Regulation 4A, in paragraph (1)	subsection (8)(a) of the principal section	subsection (12)(a) of section 531 of the Act
Regulation 4A, in paragraph (2)(c)	section 103(5) of the Corporation Tax Act, 1976	section 433(4) of the Act
	subsection (1) of the principal section	subsection (1) of section 530 of the Act
Regulation 4B, in paragraph (4)	subsection (8)(a) of the principal section	subsection (12)(a) of section 531 of the Act
Regulation 4C, in paragraph (2)(a)(ii)	subsection (7) of the principal section	subsection (11) of section 531 of the Act
Regulation 4C, in paragraph (2)(b)	subsection (5)(a)(i) of the principal section	subsection (6)(a)(i) of section 531 of the Act
Regulation 4C, in paragraph (2)(c)	the principal section	section 530 of the Act
Regulation 4C, in paragraph (2)(d)	subsection (7) of the principal section	subsection (11) of section 531 of the Act
Regulation 6, in paragraph (3)	subsection (8) of the principal section	subsection (12) of section 531 of the Act
Regulation 8, in paragraph (1)	subsection (2) of the principal section	subsection (1) of section 531 of the Act
Regulation 10, in paragraph (1)	the principal section	section 531 of the Act
Regulation 11, in paragraph (1)	the principal section	section 531 of the Act
	sections 480, 485, 486, 488 and 491 of the Income Tax Act, 1967	sections 962, 963, 966 and 998 of the Act
Regulation 12, in paragraph (1)	the principal section	section 531 of the Act
Regulation 13, in paragraph (1)	subsection (2) of the principal section	subsection (1) of section 531 of the Act
Regulation 13, in paragraph (3)	subsection (4)(c)(ii) of the principal section	subsection (5)(c)(ii) of section 531 of the Act
Regulation 14	Chapter IV of Part V of the Income Tax Act, 1967	Chapter 4 of Part 42 of the Act
Regulation 19, in paragraph (1)	subsection (8)(a) of the principal section	subsection (12)(a) of section 531 of the Act

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971): — <i>contd.</i>		
Regulation 20	subsection (9)(a) of the principal section the said subsection (9)(a)	subsection (13)(a) of section 531 of the Act subsection (13)(a) of section 531 of the Act
Regulation 21, in paragraph (3)	Chapter III of Part IV of the Income Tax Act, 1967 (No. 6 of 1967)	Part 43 of the Act
The Finance Act, 1969, section 49(2B)(c)	section 94 of the Finance Act, 1983	section 1078 of the Taxes Consolidation Act, 1997
The Value-Added Tax Act, 1972:		
section 1, in the definition of “Appeal Commissioners”	section 156 of the Income Tax Act, 1967	section 850 of the Taxes Consolidation Act, 1997
section 1, in the definition of “Collector-General”	section 162 of the Income Tax Act, 1967	section 851 of the Taxes Consolidation Act, 1997
section 1, in the definition of “inspector of taxes”	section 161 of the Income Tax Act, 1967	section 852 of the Taxes Consolidation Act, 1997
section 1, in the definition of “secretary”	section 207(2) of the Income Tax Act, 1967	section 1044(2) of the Taxes Consolidation Act, 1997
section 1(2)(bb)	section 73 of the Finance Act, 1988	section 1002 of the Taxes Consolidation Act, 1997
section 1(2)(c)(i)	Chapter III of Part I of the Finance Act, 1987	Chapter 1 of Part 18 of the Taxes Consolidation Act, 1997
section 1(2)(c)(ii)	section 17 of the Finance Act, 1970	Chapter 2 of Part 18 of the Taxes Consolidation Act, 1997
section 18(1)(a)(iia)	section 94 (as amended by section 243 of the Finance Act, 1992) of the Finance Act, 1983	section 1078 of the Taxes Consolidation Act, 1997
section 24(1)(b)	sections 480, 485, 486, 487, 488 and 491 of the Income Tax Act, 1967	sections 962, 963, 964(1), 966, 967 and 998 of the Taxes Consolidation Act, 1997
section 24(5)	under section 485 of the Income Tax Act, 1967 section 485	under section 962 of the Taxes Consolidation Act, 1997 section 962
section 27(11)	section 94 (as amended by section 243 of the Finance Act, 1992) of the Finance Act, 1983	section 1078 of the Taxes Consolidation Act, 1997
section 31	section 512 of the Income Tax Act, 1967	section 1065 of the Taxes Consolidation Act, 1997
First Schedule, in paragraph (i)(g)	section 18 of the Finance Act, 1989	section 734 of the Taxes Consolidation Act, 1997

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Imposition of Duties (No. 21) (Excise Duties) Order, 1975 (S.I. No. 307 of 1975), the proviso to paragraph 12 (12)	section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
The Capital Acquisitions Tax Act, 1976:		
section 16(2), in the definition of "private company"	section 95 of the Corporation Tax Act, 1976	section 431 of the Taxes Consolidation Act, 1997
	subsection (1)	subsection (3)
	subsection (4)	subsection (6)
section 52(1), in the definition of "Appeal Commissioners"	section 156 of the Income Tax Act, 1967	section 850 of the Taxes Consolidation Act, 1997
section 58(2)(b)	section 142 of the Income Tax Act, 1967	section 466 of the Taxes Consolidation Act, 1997
section 63(9)	sections 128(4), 507, 508, 510, 511, 512, 517 and 518 of the Income Tax Act, 1967	sections 987(4), 1061, 1062, 1063, 1064, 1065, 1066 and 1068 of the Taxes Consolidation Act, 1997
Second Schedule, Part I, paragraph 9, in the definition of "investment income"	section 2 of the Income Tax Act, 1967	section 3 of the Taxes Consolidation Act, 1997
The Value-Added Tax Regulations, 1979 (S.I. No. 63 of 1979):		
Regulation 15, in paragraph (2)	Section 485 of the Income Tax Act, 1967	Section 962 of the Taxes Consolidation Act, 1997
	the words from "modifications in subsection (1)" to the end of the paragraph	modification in subsection (1), namely, the words "any sum which may be levied on that person in respect of income tax" shall be construed as referring to value-added tax payable by the person concerned
Regulation 15, in paragraph (3)	Section 486 of the Income Tax Act, 1967	Section 963 of the Taxes Consolidation Act, 1997
Regulation 15, in paragraph (3)(a)	income tax or sur-tax	income tax
Regulation 15, in paragraph (3)(b)	the Collector or other officer of the Revenue Commissioners, duly authorised to collect the said tax	the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax
	the Collector or other officer under this section	the Collector-General or other officer under this section
Regulation 15, in paragraph (4)	Section 487 of the Income Tax Act, 1967	Section 964(1) of the Taxes Consolidation Act, 1997
Regulation 15, in paragraph (5)	Section 488 of the Income Tax Act, 1967	Section 966 of the Taxes Consolidation Act, 1997
Regulation 15, in paragraph (5)(a)	income tax or sur-tax	income tax
Regulation 15, in paragraph (5)(b)	references to an inspector and to the Collector	references to an inspector and to the Collector-General

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
<p>The Value-Added Tax Regulations, 1979 (S.I. No. 63 of 1979): — <i>contd.</i></p> <p>Regulation 15, in paragraph (6)</p>	<p>Section 491 of the Income Tax Act, 1967</p> <p>income tax or sur tax</p>	<p>Section 998 of the Taxes Consolidation Act, 1997</p> <p>income tax</p>
<p>The Health Contributions Act, 1979:</p> <p>section 1, in the definition of “the Collector-General”</p> <p>section 1, in the definition of “emoluments”</p> <p>section 7A</p>	<p>section 162 of the Income Tax Act, 1967</p> <p>Chapter IV of Part V of the Income Tax Act, 1967, but without regard to section 192 of that Act</p> <p>section 3 of the Finance Act, 1983</p>	<p>section 851 of the Taxes Consolidation Act, 1997</p> <p>Chapter 4 of Part 42 of the Taxes Consolidation Act, 1997, but without regard to section 1015 of that Act</p> <p>section 1025 of the Taxes Consolidation Act, 1997</p>
<p>The Health Contribution Regulations, 1979 (S.I. No. 107 of 1979):</p> <p>Regulation 3, in the definition of “the Collector”</p> <p>Regulation 3, in the definition of “excepted farmer”</p> <p>Regulation 3, in the definition of “farm land occupied by the individual”</p> <p>Regulation 4</p> <p>Regulation 6</p>	<p>section 162 of the Income Tax Act, 1967 (No. 6 of 1967)</p> <p>“an individual to whom section 16 applies” within the meaning of Chapter II of Part I of the Finance Act, 1974 (No. 27 of 1974), if paragraphs (b) and (d) of section 16(1), and section 16(2), of that Act did not apply</p> <p>section 13(1) of the Finance Act, 1974</p> <p>Chapter IV of Part V of the Income Tax Act, 1967, applies but without regard to Chapter I of Part IX of that Act</p> <p>Chapter I (inserted by the Finance Act, 1980) (No. 14 of 1980) of Part IX of the Income Tax Act, 1967 (No. 6 of 1987)</p> <p>section 33 of the Finance Act, 1975 (No. 6 of 1975)</p>	<p>section 851 of the Taxes Consolidation Act, 1997</p> <p>“an individual to whom subsection (1) applies” within the meaning of section 657 of the Taxes Consolidation Act, 1997, if paragraphs (b) and (d) of the definition of “an individual to whom subsection (1) applies” in subsection (1) of that section of that Act and subsection (2) of that section of that Act did not apply</p> <p>section 654 of the Taxes Consolidation Act, 1997</p> <p>Chapter 4 of Part 42 of the Taxes Consolidation Act, 1997, applies but without regard to sections 1015 to 1024 of that Act</p> <p>sections 1015 to 1024 of the Taxes Consolidation Act, 1997</p> <p>the definition of “capital allowance” in section 2(1) of the Taxes Consolidation Act, 1997</p>
<p>The Youth Employment Agency Act, 1981:</p> <p>section 1 (1), in the definition of “the Collector-General”</p> <p>section 1 (1), in the definition of “emoluments”</p> <p>section 18A</p>	<p>section 162 of the Income Tax Act, 1967</p> <p>Chapter IV of Part V of the Income Tax Act, 1967 (but without regard to Chapter I (inserted by the Finance Act, 1980) of Part IX of that Act)</p> <p>section 3 of the Finance Act, 1983</p>	<p>section 851 of the Taxes Consolidation Act, 1997</p> <p>Chapter 4 of Part 42 of the Taxes Consolidation Act, 1997 (but without regard to sections 1015 to 1024 of that Act)</p> <p>section 1025 of the Taxes Consolidation Act, 1997</p>

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
<p>The Youth Employment Levy Regulations 1982, (S.I. No. 84 of 1982):</p> <p>Regulation 3, in the definition of “the Collector”</p> <p>Regulation 3, in the definition of “excepted farmer”</p> <p>Regulation 3, in the definition of “farm land occupied by the individual”</p> <p>Regulation 6</p> <p>Regulation 16</p>	<p>section 162 of the Income Tax Act, 1967 (No. 6 of 1967)</p> <p>an individual to whom section 16 applies within the meaning of Chapter II of Part I of the Finance Act, 1974 (No. 27 of 1974), if paragraph (b) and (d) of subsection (1) and subsection (2) of section 16 of that Act did not apply</p> <p>section 13(1) of the Finance Act, 1974</p> <p>Chapter I (inserted by the Finance Act, 1980 (No. 14 of 1980)) of Part IX of the Income Tax Act, 1967 (No. 6 of 1967)</p> <p>section 33 of the Finance Act, 1975 (No. 6 of 1975)</p> <p>section 195 of the Income Tax Act, 1967</p>	<p>section 851 of the Taxes Consolidation Act, 1997</p> <p>an individual to whom subsection (1) applies within the meaning of section 657 of the Taxes Consolidation Act, 1997, if paragraphs (b) and (d) of the definition of “an individual to whom subsection (1) applies” in subsection (1) of that section of that Act and subsection (2) of that section of that Act did not apply</p> <p>section 654 of the Taxes Consolidation Act, 1997</p> <p>sections 1015 to 1024 of the Taxes Consolidation Act, 1997</p> <p>the definition of “capital allowance” in section 2(1) of the Taxes Consolidation Act, 1997</p> <p>section 1018 of the Taxes Consolidation Act, 1997</p>
<p>The Income Tax (Rent Relief) Regulations, 1982 (S.I. No. 318 of 1982):</p> <p>Regulation 2</p> <p>Regulation 3</p> <p>Regulation 5</p>	<p>Chapter IV of Part IV of the Income Tax Act, 1967 (No. 6 of 1967)</p> <p>section 142A (inserted by section 5 of the Finance Act, 1982 (No. 14 of 1982)) of the Income Tax Act, 1967</p> <p>subsection (5)(a)(i)</p> <p>section 6 of the Finance Act, 1968 (No. 33 of 1968), and section 34 of the Finance Act, 1976 (No. 16 of 1976)</p>	<p>Chapter 8 of Part 4 of the Taxes Consolidation Act, 1997</p> <p>section 473 of the Taxes Consolidation Act, 1997</p> <p>subsection (6)(a)(i)</p> <p>sections 886 and 905</p>
<p>The Finance Act, 1984, section 108(1)(b)(ii)</p>	<p>subsection (9) of section 235 of the Income Tax Act, 1967</p> <p>section 235A</p>	<p>subsection (1) of section 783 of the Taxes Consolidation Act, 1997</p> <p>section 785</p>
<p>The Finance Act, 1986:</p> <p>section 94(1)(a), in the definition of “Corporation Tax Acts”</p> <p>section 94(1)(a), in the definition of “relevant interest”</p>	<p>section 155(1) of the Corporation Tax Act, 1976</p> <p>section 84(2)(d) of the Corporation Tax Act, 1976</p>	<p>section 1 of the Taxes Consolidation Act, 1997</p> <p>section 130(2)(d) of the Taxes Consolidation Act, 1997</p>

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Health Contributions (Amendment) Regulations, 1988 (S.I. No. 51 of 1988), Regulation 3, in paragraph (2)	section 195 of the Income Tax Act, 1967	section 1018 of the Taxes Consolidation Act, 1997
The Finance Act, 1989, the proviso to section 45(3)(b)	section 242 (as amended by the Finance Act, 1993) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
The Finance Act, 1990: section 112(5) section 129(1)	section 94 of the Finance Act, 1983 subsection (9) of section 235 of the Income Tax Act, 1967	section 1078 of the Taxes Consolidation Act, 1997 subsection (1) of section 783 of the Taxes Consolidation Act, 1997
The Finance Act, 1991: section 108(1) section 109(1) section 129(1), in the definition of "the Collector" section 129(3)	section 485 of the Income Tax Act, 1967 Sections 128(4), 507, 508, 510, 511, 512, 517 and 518 of the Income Tax Act, 1967 Income Tax Act, 1967 section 162 of the Income Tax Act, 1967 Section 187 of the Income Tax Act, 1967	section 962 of the Taxes Consolidation Act, 1997 Sections 987(4), 1061, 1062, 1063, 1064, 1065, 1066 and 1068 of the Taxes Consolidation Act, 1997 Taxes Consolidation Act, 1997 section 851 of the Taxes Consolidation Act, 1997 Section 928(1) and 964(2) of the Taxes Consolidation Act, 1997
The Finance Act, 1992: section 206(a), (aa) and (c)(ii) section 206(b) section 207(2)	section 18 of the Finance Act, 1989 subsection (5A) (inserted by section 34 of the Finance Act, 1977) of section 31 of the Capital Gains Tax Act, 1975 section 18 of the Finance Act, 1989	section 734 of the Taxes Consolidation Act, 1997 subsection (6) of section 731 of the Taxes Consolidation Act, 1997 section 734 of the Taxes Consolidation Act, 1997
The Finance Act, 1993: section 106(2)(b) section 109(1), in the definition of "dependent relative" section 112(a)(i)(A) section 112(a)(i)(B) section 112(a)(iii) section 112(d), proviso (i) section 133(1)	section 31 of the Finance Act, 1991 subsection (9A) (inserted by the Finance Act, 1979) of section 25 of the Capital Gains Tax Act, 1975 section 235(9) of the Income Tax Act, 1967 section 235 or section 235A section 236 of the Income Tax Act, 1967 subsection (1A) of section 142 of the Income Tax Act, 1967 section 36 of the Finance Act, 1988	section 110 of the Taxes Consolidation Act, 1997 subsection (11) of section 604 of the Taxes Consolidation Act, 1997 section 783(1) of the Taxes Consolidation Act, 1997 section 784 or section 785 section 787 of the Taxes Consolidation Act, 1997 subsection (1) of section 466 of the Taxes Consolidation Act, 1997 section 451 of the Taxes Consolidation Act, 1997

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Social Welfare (Consolidation) Act, 1993:		
section 2, in the definition of "Collector-General"	section 162 of the Income Tax Act, 1967	section 851 of the Taxes Consolidation Act, 1997
section 2, in the definition of "reckonable emoluments"	Chapter IV of Part V of the Income Tax Act, 1967	Chapter 4 of Part 42 of the Taxes Consolidation Act, 1997
section 2, in the definition of "reckonable income"	section 2 or section 18 of the Finance Act, 1969	section 195, 231 or 232 of the Taxes Consolidation Act, 1997
	Chapter 1 (inserted by the Finance Act, 1980) of Part IX of the Income Tax Act, 1967	Chapter 1 of Part 44 of the Taxes Consolidation Act, 1997
section 2, in the definition of "reckonable income"	section 33 of the Finance Act, 1975	the definition of "capital allowance" in section 2(1) of the Taxes Consolidation Act, 1997
section 18(1)(b)	section 48(1) of the Finance Act, 1986	section 1084(1) of the Taxes Consolidation Act, 1997
section 20(5)	section 195 of the Income Tax Act, 1967	section 1018 of the Taxes Consolidation Act, 1997
section 212(5)	section 17 (as amended by section 28 of the Finance Act, 1992) of the Finance Act, 1970	Chapter 2 of Part 18 of the Taxes Consolidation Act, 1997
First Schedule, Part III, paragraph 3(a)	section 33 of the Finance Act, 1975	the definition of "capital allowance" in section 2(1) of the Taxes Consolidation Act, 1997
First Schedule, Part III, paragraph 4	Chapter II or III of Part IV of the Income Tax Act, 1967	Chapter 3 of Part 4, or Part 43, of the Taxes Consolidation Act, 1997
First Schedule, Part III, paragraph 6	Chapter II or III of Part IV of the Income Tax Act, 1967	Chapter 3 of Part 4, or Part 43, of the Taxes Consolidation Act, 1997
The Industrial Training (Apprenticeship Levy) Act, 1994, section 1(1)	section 162 of the Income Tax Act, 1967	section 851 of the Taxes Consolidation Act, 1997
The Casual Trading Act, 1995, section 4(2A)	section 161 of the Income Tax Act, 1967	section 852 of the Taxes Consolidation Act, 1997
The Finance Act, 1995:		
section 103	section 156 of the Income Tax Act, 1967	section 850 of the Taxes Consolidation Act, 1997
section 105(3)	Part XXVI (as amended) other than sections 429 and 430 and (in so far as it relates to those sections) section 431, of the Income Tax Act, 1967	Part 40, other than sections 942, 943 and (in so far as it relates to those sections) 944 of the Taxes Consolidation Act, 1997
The Consumer Credit Act, 1995:		
section 93(10)(d)	section 242 (as amended by the Finance Act, 1997) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
section 93(10A)(a)(i)	section 242 of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997

Enactment amended (1)	Words to be replaced (2)	Words to be substituted (3)
The Consumer Credit Act, 1995: — <i>contd.</i>		
section 93(10A)(a)(ii)	section 242	section 1094
section 116(9)(d)	section 242 (as amended by the Finance Act, 1997) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
section 116(9A)(a)(i)	section 242 of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
section 116(9A)(a)(ii)	section 242	section 1094
section 144(9)(d)	section 242 (as amended by the Finance Act, 1997) of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
section 144(9A)(a)(i)	section 242 of the Finance Act, 1992	section 1094 of the Taxes Consolidation Act, 1997
section 144(9A)(a)(ii)	section 242	section 1094
The Finance Act, 1996, section 108(4)	section 94(2)(d) of the Finance Act, 1983	section 1078(2)(d) of the Taxes Consolidation Act, 1997
The Social Welfare (Consolidated Contributions and Insurability) Regulations, 1996 (S.I. No. 312 of 1996):		
Regulation 3, in the definition of “inspector of taxes”	section 161 of the Act of 1967	section 852 of the Act of 1997
Regulation 3, in the definition of “reckonable earnings”	Chapter IV of Part V of the Act of 1967	Chapter 4 of Part 42 of the Act of 1997
	section 192 of that Act	section 1015 of that Act
	the Act of 1967 (other than Chapter IV of Part V)	the Act of 1997 (other than Chapter 4 of Part 42)
	section 192 of that Act	section 1015 of that Act
Regulation 3, in the definition of “reckonable income”	the Act of 1967	the Act of 1997
	Chapter 11 of Part I of the Finance Act, 1972 (No. 19 of 1972)	Chapter 1 of Part 30
Regulation 3, the definition of “the Act of 1967”	“the Act of 1967” means the Income Tax Act, 1967 (No. 6 of 1967);	“the Act of 1997” means the Taxes Consolidation Act, 1997;
Regulation 10, in paragraph (1)	section 129 of the Act of 1967	section 991 of the Act of 1997
Regulation 27	section 8(1) of the Finance Act, 1979 (No. 11 of 1979)	section 125 of the Act of 1997

SCHEDULE 32

TRANSITIONAL PROVISIONS

Stock of local authorities

[ITA67 s472(1)]

1. (1) Any stock under section 87 of the Local Government Act, 1946, issued on or after the 13th day of July, 1955, shall be deemed to be securities issued under the authority of the Minister for Finance under section 36, and that section shall apply accordingly.

(2) Section 49 shall apply as if in subsection (1) of that section “or paragraph 1 of Schedule 32” were inserted after “or 41”.

[ITA67 s353; FA97 s11(2)]

Income tax: exemption from tax of income from certain scholarships

2. Where a payment of income is made before the 6th day of April, 1998, in respect of a scholarship awarded before the 26th day of March, 1997, section 193 shall apply as if—

(a) in subsection (1) of that section the definitions of “relevant body” and “relevant scholarship” and paragraph (b) were deleted, and

(b) subsections (3) and (4) of that section were deleted.

[FA88 s42; FA97 s49(4)]

Corporation tax: exemption from tax of profits of Custom House Docks Development Authority

3. (1) Notwithstanding any provision of the Corporation Tax Acts, profits arising to the Custom House Docks Development Authority in any accounting period ending on or after the 17th day of November, 1986, shall be exempt from corporation tax.

(2) Subparagraph (1) shall be repealed with effect from the 1st day of May, 1997.

[FA80 s45(1) and (2)]

Meaning of “relevant distributions” for the purposes of section 147 in relation to distributions made before 6th April, 1989

4. (1) In this paragraph, “relevant accounting period” has the same meaning as it had for the purposes of Chapter VI of Part I of the Finance Act, 1980.

(2) For the purposes of section 147, a distribution made by a company before the 6th day of April, 1989, shall be a relevant distribution if it was made on a day (in this paragraph referred to as “the relevant day”) on or after the 1st day of January, 1981, and if the total amount of the distributions made by the company on that day did not exceed an amount (in this paragraph referred to as “the amount of the primary fund”) determined by the formula—

$$(A - B) + (C - D) + E - F$$

where, subject to sections 46 to 49 of the Finance Act, 1980—

A is the amount of the company’s income the corporation tax in respect of which was reduced under section 41 of that Act for the last relevant accounting period of the company which ended before the relevant day; but where the distribution was not a distribution declared by the company in a general meeting held as an annual general meeting, this definition shall apply as if the

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

preceding reference to the last relevant accounting period which ended before the relevant day were a reference to the relevant accounting period of the company in which the distribution was made, SCH.32

- B is the amount of the corporation tax as reduced under section 41 of that Act in respect of the amount of income mentioned in the definition of “A”,
- C is the aggregate of the amounts of the company’s income the corporation tax in respect of which was reduced under section 41 of that Act for all relevant accounting periods of the company preceding the relevant accounting period which is to be taken into account in the definition of “A”,
- D is the aggregate of the amounts of the corporation tax as reduced under section 41 of that Act in respect of the amounts of income comprised in the aggregate amount calculated in accordance with the definition of “C”,
- E is the aggregate amount of the relevant distributions received by the company at any time before the relevant day; but a relevant distribution shall not be included within this definition if the distribution, together with the tax credit to which the company is entitled in respect of it, is franked investment income against which relief was given under section 15(4), 25 or 26 of the Corporation Tax Act, 1976, and which relief was not subsequently withdrawn under those sections, and
- F is the aggregate amount of the relevant distributions made by the company on any day earlier than the relevant day.

(3) Where in relation to a company the amount of the primary fund was greater than zero but was less than the total amount of the distributions made by the company on the relevant day, a distribution made by the company on that day shall be treated as if it consisted of 2 distributions, being respectively—

- (a) a relevant distribution equal to such an amount as bears to the whole of the distribution the same proportion as the amount of the primary fund bore to the total amount of the distributions so made on that day, and
- (b) a separate distribution which is not a relevant distribution and which consisted of the balance of the distribution.

Distributions out of certain income of manufacturing companies — provisions relating to relief for certain losses and capital allowances carried forward from 1975-76

[FA80 s47; FA88 s32(3) and Sch2 PtII pars1(c) and (d); FA95 s54(2) and Sch4 PtII pars2(1)(a) and (b); FA97 s59(2) and Sch6 PtII par2]

5. (1) In this paragraph, “relevant accounting period” has the same meaning as in *Part 14*.

(2) Where for any accounting period of a company which coincides with or includes a relevant accounting period—

- (a) the corporation tax referable to the income of the company from the sale in the course of a trade of goods for the relevant accounting period is to be reduced under *section 448*, and

- (b) a reduced relief under *paragraph 16* is allowed as respects the accounting period in accordance with *subparagraph (3)(ii)* of that paragraph,

then—

- (i) the amount of the company's income which apart from this clause is to be taken into account in the definitions in *section 147(1)* of "A", in respect of the relevant accounting period, and of "R", in respect of the accounting period, shall be reduced as follows—

- (I) as respects A, by the amount determined by the formula—

$$G \times S \times \frac{H}{J}$$

where—

G is the amount of the reduction in the relief in respect of the trade for the accounting period under *paragraph 16(3)(ii)*,

H is the income of the accounting period within the meaning of *paragraph 18(4)(a)(i)*,

J is the relevant corporation tax for the accounting period within the meaning of *paragraph 16*, and

S is—

(A) as respects accounting periods beginning before the 1st day of April, 1997, 38/28, and

(B) as respects accounting periods beginning on or after that date, 36/26,

and

- (II) as respects R, by an amount determined by the formula—

$$V \times \frac{H}{J}$$

where—

H and J have the same meanings respectively as in *subclause (I)*, and

V is the amount of the relief for the accounting period under *paragraph 16* before any reduction in that relief under *subparagraph (3)(ii)* of that paragraph, and

- (ii) the amount of the corporation tax (as reduced under *section 448*) which apart from this clause is to be taken into account in the definition of "B" in *section 147(1)* in respect of the relevant accounting period shall be reduced by an amount determined by the formula—

where—

G has the same meaning as in *clause (i)(I)*, and

S is—

- (I) as respects accounting periods beginning before the 1st day of April, 1997, 10/28, and
- (II) as respects accounting periods beginning on or after that date, 10/26.

(3) (a) For the purposes of *subparagraph (2)*, where an accounting period begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into one part beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and another part 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 as if they were separate accounting periods.

(b) Where under *clause (a)* a part of an accounting period is treated as a separate accounting period, the corporation tax charged for the part which is so treated shall, in so far as it is affected by the rate of corporation tax which is taken to have been charged, be taken for the purposes of this paragraph to be the corporation tax which would have been charged if that part were a separate accounting period.

Distributions out of certain income of manufacturing companies — provisions relating to relief for certain corporation profits tax losses —

[FA80 s48; FA88 s32(3) and Sch2 PtII pars1(e) and (f); FA95 s54(2) and Sch4 PtII par2(1)(c); FA97 s59(2) and Sch6 PtII par2]

6. (1) In this paragraph, “relevant accounting period” has the same meaning as in *Part 14*.

(2) Where for any accounting period of a company which coincides with or includes a relevant accounting period—

- (a) the corporation tax referable to the income of the company from the sale in the course of the trade of goods for the relevant accounting period is to be reduced under *section 448*, and
- (b) a reduced relief under *paragraph 18* is allowed as respects the accounting period in accordance with *subparagraph (4)(c)* of that paragraph,

then—

- (i) the amount of the company’s income which apart from this clause is to be taken into account in the definition in *section 147(1)* of “A”, in respect of the relevant accounting period, and of “R”, in respect of the accounting period, shall be reduced as follows—
 - (I) as respects A, by an amount determined by the formula—

$$K \times \frac{L}{M} \times \frac{N}{P}$$

where—

K is the amount of the relief for the accounting period under *paragraph 18* before any reduction in that relief under *subparagraph (4)(c)* of that paragraph,

L is the income of the accounting period within the meaning of *paragraph 18(4)(a)(i)*,

M is the relevant corporation tax within the meaning of *paragraph 16* in relation to the accounting period,

N is the income from the sale of goods within the meaning of *section 448* for the relevant accounting period, and

P is the total income brought into charge to corporation tax for the accounting period, and

(II) as respects R, by an amount determined by the formula—

$$K \times \frac{L}{M}$$

where—

K, L, and M have the same meanings as in *subclause (I)*, and

(ii) the amount of the corporation tax (as reduced under *section 448*) which apart from this clause is to be taken into account in the definition of “B” in *section 147(1)* in respect of the relevant accounting period shall be reduced by an amount determined by the formula—

$$Q \times S$$

where—

Q is the amount of the reduction in the relief for the accounting period under *paragraph 18(4)(c)*, and

S is—

(a) as respects accounting periods beginning before the 1st day of April, 1997, 10/28, and

(b) as respects accounting periods beginning on or after that date, 10/26.

(3) (a) For the purposes of *subparagraph (2)*, where an accounting period begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into one part beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and another part beginning on the 1st day of April, 1997, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

ending on the day on which the accounting period ends, SCH.32
and both parts shall be treated as if they were separate
accounting periods.

- (b) Where under *clause (a)* a part of an accounting period is treated as a separate accounting period, the corporation tax charged for the part which is so treated shall, in so far as it is affected by the rate of corporation tax which is taken to have been charged, be taken for the purposes of this paragraph to be the corporation tax which would have been charged if that part were a separate accounting period.

Approved share option schemes

[FA86 s10(1) and
(2)(a) and (b);
FA92 s12]

7. (1) This paragraph shall apply where on or after the 6th day of April, 1986, an individual obtains a right to acquire shares in a body corporate—

- (a) by reason of his or her office or employment as a director or employee of that or any other body corporate, and
(b) in accordance with the provisions of a scheme approved under the Second Schedule to the Finance Act, 1986;

but neither this paragraph nor that Schedule shall apply in relation to such a right obtained on or after the 29th day of January, 1992.

(2) Where the individual exercises the right in accordance with the provisions of the scheme referred to in *subparagraph (1)(b)* at a time when it is approved under the Second Schedule to the Finance Act, 1986—

- (a) income tax shall not be chargeable under *section 128* in respect of any gain realised by the exercise of the right, and
(b) if but for this clause *section 547* would apply, that section shall not apply in calculating the consideration for the acquisition of the shares by the individual or for any corresponding disposal of them to the individual.
(3) (a) This paragraph shall apply notwithstanding that the Second Schedule to the Finance Act, 1986, is not re-enacted by this Act, and accordingly this Act shall apply with any modifications necessary to give effect to this paragraph.
(b) Without prejudice to the generality of *clause (a)*, *sections 1052, 1053 and 1054* shall apply for the purposes of that clause as if in *Schedule 29* there were included in *Column 2* a reference to paragraph 14 of the Second Schedule to the Finance Act, 1986.

Interest on certain loans: relief from corporation tax

[CTA76 s177]

8. (1) For the purposes of this paragraph, “permanent loan” means a loan of a permanent character made under an agreement entered into before the 27th day of November, 1975, and which under the agreement is—

- (a) secured by mortgage or debenture or otherwise on the assets or income of a company, and

(b) if subject to repayment, is subject to repayment at not less than 3 months' notice;

but a loan shall not be regarded as a permanent loan for the purposes of this paragraph if under the terms of the loan agreement the rate of interest or other conditions of the loan may be altered during the currency of the loan.

(2) Where for the purposes of corporation tax the income of a company for an accounting period includes interest payable in respect of a permanent loan, the company shall be entitled on a due claim to have its liability to corporation tax for the accounting period reduced as provided by *subparagraph (3)*.

(3) The reduction referred to in *subparagraph (2)* shall be determined in accordance with *subparagraph (4)* (apart from *clause (c)*) of *paragraph 18* as if the interest were a relevant deficiency within the meaning of *subparagraph (1)* of that paragraph.

(4) Where in computing the reduction provided for by *subparagraph (3)* the appropriate amount as determined in accordance with *paragraph 18(4)(a)(ii)* is the company's income for the accounting period, the excess of such interest as is mentioned in *subparagraph (2)* for the accounting period over that income shall for the purposes of this paragraph be aggregated with the amount of any such interest for the next accounting period and relief shall be allowed for that period in respect of the aggregated amount and, if that aggregated amount exceeds the income for that period, the excess shall be carried forward to the accounting period succeeding that period and so on.

(5) A claim under this paragraph shall be made to the inspector within 2 years from the end of the accounting period.

[FA81 s25; FA86 s51(2); FA88 s49]

Allowance for certain capital expenditure on construction of multi-storey car-parks

9. (1) In this paragraph—

“multi-storey car-park” means a building or structure consisting of 3 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;

“relevant expenditure” means capital expenditure incurred on or after the 29th day of January, 1981, and before the 1st day of April, 1991, on the construction of a multi-storey car-park.

(2) The provisions of the Tax Acts (other than *section 273*) relating to the making of allowances or charges in respect of capital expenditure on the construction of an industrial building or structure shall apply to relevant expenditure as if it were expenditure incurred on the construction 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 *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*.

[FA81 s26; FA84 s39; FA89 s17]

Allowance for certain capital expenditure on roads, bridges, etc

10. (1) In this paragraph—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

“chargeable period” and “chargeable period or its basis period” SCH.32 have the same meanings as in *section 321(2)*;

“qualifying period” means the period commencing on the 29th day of January, 1981, and ending on the 31st day of March, 1989, or, in the case of a relevant agreement entered into on or after the 6th day of April, 1987, ending on the 31st day of March, 1992;

“relevant agreement” means an agreement between a road authority and another person under section 9 of the Local Government (Toll Roads) Act, 1979, by virtue of which that other person incurs relevant expenditure;

“relevant expenditure” means capital expenditure incurred by a person during the qualifying period by virtue of a relevant agreement including, in the case of a relevant agreement entered into on or after the 6th day of April, 1987, interest on money borrowed to meet such capital expenditure, but does not include any expenditure in respect of which any person is entitled to a deduction, relief or allowance under any provision of the Tax Acts other than this paragraph;

“relevant income” means income which arises to a person by virtue of a relevant agreement;

“road authority” has the meaning assigned to it by the Local Government (Toll Roads) Act, 1979.

(2) Where in the case of a relevant agreement entered into before the 6th day of April, 1987, a person, having made a claim in that behalf, proves as respects a chargeable period that relevant income was receivable by such person in that chargeable period or its basis period and that such person has incurred relevant expenditure, then, such person shall, subject to *subparagraph (4)*, be entitled, for the purpose only of ascertaining the amount (if any) of relevant income on which such person is to be charged to tax for the chargeable period, to an allowance equal to 50 per cent of the relevant expenditure; but the aggregate amount of all allowances made to that person under this subparagraph in relation to any relevant expenditure shall not exceed an amount equal to 50 per cent of that expenditure.

(3) Where a person, having made a claim in that behalf, proves as respects a chargeable period that relevant income was receivable and relevant expenditure was incurred by such person in the chargeable period or its basis period by virtue of the relevant agreement (being a relevant agreement entered into on or after the 6th day of April, 1987) giving rise to the relevant income, such person shall, subject to *subparagraph (4)*, be entitled, for the purpose only of ascertaining the amount (if any) of that relevant income on which such person is to be charged to tax—

- (a) to an allowance equal to 50 per cent of the relevant expenditure for that chargeable period, and
- (b) to an allowance equal to 10 per cent of the relevant expenditure for each of the next 5 chargeable periods in which that relevant income is receivable by such person;

and, for the purposes of this subparagraph, all relevant expenditure so incurred before the chargeable period in which relevant income is first receivable shall be deemed to have been incurred on the first day of that chargeable period.

SCH.32

(4) Where an allowance to which a person is entitled under this paragraph cannot be given full effect for any chargeable period by reason of a want or deficiency of relevant income, then (so long as the person has relevant income), the amount unallowed shall be carried forward to the succeeding chargeable period and the amount so carried forward shall be treated for the purposes of this paragraph, including any further application of this subparagraph, as the amount of a corresponding allowance for that period.

(5) An appeal to the Appeal Commissioners shall lie on any question arising under this paragraph 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.

[FA86 s42]

Urban Renewal Scheme, 1986 — capital allowances in relation to certain commercial premises in designated areas other than the Custom House Docks Area

11. Where but for the repeal by this Act of the repealed enactments an allowance or charge would be made to or on a person for any chargeable period under Chapter II of Part XV, or Chapter I of Part XVI, of the Income Tax Act, 1967 (including any such allowance as increased under section 25 of the Finance Act, 1978), by virtue of section 42 of the Finance Act, 1986 (in so far as that section applied to areas other than the Custom House Docks Area within the meaning section 41 of that Act), then, notwithstanding that that section as it so applied is not re-enacted by this Act, that allowance or charge shall be made to or on the person under this Act, and accordingly this Act shall apply with any modifications necessary to give effect to this paragraph.

[FA86 s44]

Urban Renewal Scheme, 1986 — allowances to owner-occupiers in relation to certain residential premises in designated areas other than the Custom House Docks Area

12. Where but for the repeal by this Act of the repealed enactments a person would, in the computation of his or her total income for any year of assessment, be entitled to a deduction under section 44 of the Finance Act, 1986 (in so far as that section applied to areas other than the Custom House Docks Area within the meaning of section 41 of that Act), then, notwithstanding that that section as it so applied is not re-enacted by this Act, the person shall be entitled to that deduction for that year of assessment under this Act, and accordingly this Act shall apply with any modifications necessary to give effect to this paragraph.

[FA86 s45]

Urban Renewal Scheme, 1986 — double rent allowance in relation to certain premises in designated areas other than the Custom House Docks Area

13. Where but for the repeal by this Act of the repealed enactments a further deduction on account of rent in respect of any premises would be made to a person under section 45 of the Finance Act, 1986 (in so far as that section applied to areas other than the Custom House Docks Area within the meaning of section 41 of that Act), in the computation of the amount of the profits or gains of the person's trade or profession, then, notwithstanding that that section as it so applied is not re-enacted by this Act, that further deduction shall be made to the person under this Act, and accordingly this Act shall apply with any modifications necessary to give effect to this paragraph.

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

Rented residential accommodation — deduction for expenditure incurred on construction, conversion or refurbishment in areas other than the Custom House Docks Area

SCH.32
[FA81 s23 and s24;
FA85 s21 and s22;
FA91 s56, s57 and
s58]

14. Where, in computing the amount of a surplus or deficiency in respect of rent from any premises in any area other than the Custom House Docks Area (within the meaning of section 41 of the Finance Act, 1986), a person would, but for the repeal by this Act of the repealed enactments—

- (a) be entitled to a deduction, or
- (b) be deemed to have received an amount as rent,

under—

- (i) section 23 of the Finance Act, 1981,
- (ii) section 23 of the Finance Act, 1981, as applied by virtue of section 24 of that Act or section 22 of the Finance Act, 1985, or
- (iii) section 23 of the Finance Act, 1981, as applied by section 21 of the Finance Act, 1985,

in so far as those sections applied to areas other than the Custom House Docks Area (within the meaning of section 41 of the Finance Act, 1986), then, notwithstanding that those sections as they so applied are not re-enacted by this Act, the person shall be entitled to that deduction or be deemed to have received that amount as rent, as the case may be, under this Act, and accordingly this Act shall apply with any modifications necessary to give effect to this paragraph.

Loss relief, etc

15. The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) in so far as it determines whether and to what extent—

- (a) losses or expenditure incurred in, or an excess of deficiencies over surpluses in, or other amounts referable to, a year of assessment or accounting period earlier than a year of assessment or accounting period to which this Act applies may be taken into account for any tax purposes in a year of assessment or accounting period to which this Act applies, or
- (b) losses or expenditure incurred in, or an excess of deficiencies over surpluses in, or other amounts referable to, a year of assessment or accounting period to which this Act applies may be taken into account for any tax purposes in a year of assessment or accounting period earlier than a year of assessment or accounting period to which this Act applies.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

Relief in respect of unrelieved losses and capital allowances carried forward from the year 1975-76

SCH.32
[CTA76 s182 (apart
from clauses (b)
and (c) of proviso
to (3)); FA80
s47(1); FA97 s59
and Sch6 PtI
par2(1) and (3)]

16. (1) In this paragraph—

“relevant amount”, in relation to a company, means the aggregate of the following amounts—

- (a) such part of a loss, including any amount to be treated as a loss under section 316 of the Income Tax Act, 1967, incurred by the company in a trade before the date on which the company comes within the charge to corporation tax in respect of the trade and which, but for the Corporation Tax Act, 1976, could have been carried forward to the year 1976-77 under section 309 of the Income Tax Act, 1967, and
- (b) such part of any capital allowance to which the company which carries on the trade was entitled in charging the profits or gains of the trade for years before the year 1976-77 and to which effect has not been given by means of relief before that year;

“relevant corporation tax”, in relation to an accounting period, means the corporation tax (other than an amount which by virtue of sections 239, 241, 440 and 441 is to be treated as corporation tax of an accounting period) which, apart from this paragraph, *paragraph 18* and *section 448*, would be chargeable for the accounting period exclusive of the corporation 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.

(2) Relief, as provided in *subparagraph (3)*, shall be allowed in respect of a relevant amount against corporation tax payable by the company and such relief shall be given as far as possible from the tax payable for the first accounting period for which the company is within the charge to corporation tax in respect of the trade and, in so far as it cannot be so given, from the tax payable for the next accounting period and so on.

(3) The relief for an accounting period shall be an amount calculated by applying to that part of the relevant amount in respect of which relief from tax has not been allowed a rate equal to—

- (a) as respects accounting periods beginning before the 1st day of April, 1997, 23 per cent, and
- (b) as respects accounting periods beginning on or after that date, the standard credit rate for the year of assessment in which the accounting period ends;

but—

- (i) the amount to which that rate is applied shall not exceed the amount of income from the trade included in chargeable profits for the accounting period reduced by the amount, if any, included in charges on income paid by the company in the accounting period in respect of payments

made wholly and exclusively for the purposes of the trade, and SCH.32

- (ii) where the corporation tax payable by the company for an accounting period is reduced by virtue of a claim under *section 448(2)*, the relief to be given under this paragraph for the accounting period shall be reduced in the same proportion as the corporation tax payable by the company for the accounting period in so far as it is attributable to the income from the trade is so reduced; and the corporation tax attributable to the income from the trade shall be an amount equal to the same proportion of the relevant corporation tax for the accounting period as the income from the trade for the accounting period bears to the total income brought into charge to corporation tax.

(4) Relief under this paragraph shall not be allowed against corporation tax payable by a company which by virtue of agreements between the Government and the Government of the United Kingdom in respect of double income tax was entitled to exemption from income tax for the year 1975-76 in respect of income arising in the State.

(5) For the purposes of this paragraph, where an accounting period begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into one part beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and another part 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 as if they were separate accounting periods.

Relief in respect of losses or deficiencies within Case IV or V of Schedule D [CTA76 s183]

17. (1) Where—

- (a) a company was entitled to relief under section 89 or 310 of the Income Tax Act, 1967, or would have been entitled to relief under section 310 of that Act if section 237(5) of that Act had not been enacted, for the year 1975-76 or an earlier year of assessment in respect of a loss within Case IV of Schedule D or a deficiency or an excess of deficiencies within Case V of Schedule D, with the addition of any associated capital allowances in each case, and

- (b) because of an insufficiency of income of the description concerned, relief could not be fully granted to the company under those sections for any of those years of assessment,

then, the unrelieved amount of loss, deficiency or excess of deficiencies (with the addition of any unrelieved associated capital allowances), as the case may be, shall be treated as if it were a loss in a trade carried on by a company and, if the company so requires, may be relieved under *paragraph 16* against income of the same description of the company within the charge to corporation tax as if that income were income of the same trade, and that paragraph shall apply accordingly with any necessary modifications.

(2) Notwithstanding *subparagraph (1)*—

- (a) a loss within Case IV of Schedule D, with the addition of any associated capital allowances, shall be relieved under

SCH.32

this paragraph only against income of the company chargeable to corporation tax under Case IV of Schedule D,

- (b) a deficiency or an excess of deficiencies within Case V of Schedule D, with the addition of any associated capital allowances, shall be relieved only against income of the company chargeable to corporation tax under Case V of Schedule D, and
- (c) so much of any deficiency or so much of any amount treated as a loss as, under section 62 of the Finance Act, 1974, could not have been carried forward or set against profits or gains for income tax purposes if that tax had continued shall be treated as not being a deficiency or loss for the purposes of this paragraph.

Relief in respect of corporation profits tax losses

[CTA76 s174(3)-
proviso and s184
(apart from clauses
(i), (ii) and (iii) of
proviso to (3));
FA80 s48(1); FA97
s59 and Sch6 PtI
par2]

18. (1) In this paragraph, “relevant deficiency”, in relation to a company, means, subject to *subparagraph (2)*, the aggregate of the following amounts—

- (a) the total of the amounts which under section 25 of the Finance Act, 1964, could (on the assumption that for corporation profits tax purposes an accounting period of the company ended on the 5th day of April, 1976, and a new accounting period commenced on the 6th day of April, 1976, and the enactments in relation to corporation profits tax mentioned in the Third Schedule to the Corporation Tax Act, 1976, had not been repealed) have been deducted from or set off against profits of the company’s business in an accounting period commencing on the 6th day of April, 1976, and
- (b) the total of the amounts by which under subsections (1) and (3) of section 181 of the Corporation Tax Act, 1976, losses and allowances in respect of capital expenditure were reduced for the purposes of corporation tax;

but any loss or any excess of deficiencies over surpluses which if such loss or excess were a profit or an excess of surpluses over deficiencies would be chargeable to corporation tax on the company for the accounting period shall not be taken into account for the purposes of *clause (a)*.

(2) Where for any accounting period an election was made under section 174(3) of the Corporation Tax Act, 1976, all amounts which under section 25 of the Finance Act, 1964, could be deducted from or set off against profits of the company’s trade or business for that accounting period, computed without regard to section 174(3) of the Corporation Tax Acts, 1976, shall be deemed to have been so deducted or set off and shall not be included in the computation of any relevant deficiency for the purposes of this paragraph.

- (3) (a) Subject to *clause (b)*, relief as provided in *subparagraph (4)* shall be allowed in respect of a relevant deficiency against corporation tax payable by the company and such relief shall be given as far as possible from the tax payable for the first accounting period for which the company is within the charge to corporation tax and, in so far as it cannot be so given, from the tax payable for the next accounting period and so on.

(b) Relief shall not be allowed against corporation tax payable SCH.32 for any accounting period against the profits of which (if the Corporation Tax Act, 1976, had not been enacted and if the enactments in relation to corporation profits tax referred to in the Third Schedule of that Act had not been repealed) a loss incurred before the 6th day of April, 1976, could not be set off under section 25 of the Finance Act, 1964.

(4) (a) For the purposes of this subparagraph—

- (i) 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, and
- (ii) the appropriate amount shall be the smaller of the amount of the relevant deficiency in respect of which relief has not been allowed and the amount of the company's income for the accounting period.

(b) Subject to *clause (c)*, relief for an accounting period shall be an amount determined by the formula—

$$(A - B) - (C - D)$$

where—

A is the excess of the amount of corporation tax which, apart from *paragraph 16*, this paragraph and *section 448*, is chargeable for the accounting period,

B is an amount determined by applying a rate equal to—

- (a) as respects accounting periods beginning before the 1st day of April, 1997, 23 per cent, and
- (b) as respects accounting periods beginning on or after that date, the standard credit rate for the year of assessment in which the accounting period ends,

to the amount of the company's income for the accounting period,

C is the excess of the amount of corporation tax which, apart from *paragraph 16*, this paragraph and *section 448*, would be chargeable for the accounting period if the amount of the company's income for the accounting period were reduced by the appropriate amount, and

D is an amount determined by applying a rate equal to—

- (a) as respects accounting periods beginning before the 1st day of April, 1997, 23 per cent, and
- (b) as respects accounting periods beginning on or after that date, the standard credit rate for the year of assessment in which the accounting period ends,

to the amount of the company's income for the accounting period as reduced by the appropriate amount.

- (c) Notwithstanding *clause (b)*, where the corporation tax payable by a company for an accounting period is reduced by virtue of a claim under *section 448(2)*, the amount of relief to be allowed under the preceding provisions of this paragraph shall be reduced in the same proportion which the amount by which the corporation tax referable to the income from the sale of goods (within the meaning of *section 448*) for that accounting period is so reduced bears to the relevant corporation tax, and for the purposes of this clause "relevant corporation tax" has the same meaning as in *paragraph 16*.
- (5) (a) *Subparagraphs (3) and (4)* shall not apply to a company which by virtue of agreements between the Government and the Government of the United Kingdom in respect of double income tax was entitled to exemption from income tax for the year 1975-76 in respect of income arising in the State; but in such a case the relevant deficiency shall, subject to *clause (b)*, be set off against income coming within the charge to corporation tax for the accounting period commencing on the 6th day of April, 1976, and, in so far as the relevant deficiency cannot be so set off, it shall be set off against income coming within the charge to corporation tax for the next accounting period and so on.
 - (b) A relevant deficiency shall not be set off under *clause (a)* against income arising in any accounting period against the profits of which (if the Corporation Tax Act, 1976, had not been enacted and if the enactments in relation to corporation profits tax mentioned in the Third Schedule to that Act had not been repealed) a loss incurred before the 6th day of April, 1976, could not be set off under section 25 of the Finance Act, 1964.
- (6) (a) For the purposes of this paragraph, where an accounting period begins before the 1st day of April, 1997, and ends on or after that day, it shall be divided into one part beginning on the day on which the accounting period begins and ending on the 31st day of March, 1997, and another part 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 as separate accounting periods.
 - (b) Where under *clause (a)* a part of an accounting period is treated as a separate accounting period, the corporation tax charged for the part which is so treated shall, in so

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

far as it is affected by the rate of corporation tax which is taken to have been charged, be taken for the purposes of this paragraph to be the corporation tax which would have been charged if that part were a separate accounting period.

SCH.32

Capital gains tax losses accruing before 6th April, 1976 [CTA76 s175]

19. Any losses of a company allowable against chargeable gains for the purposes of capital gains tax in respect of the year of assessment 1974-75 or 1975-76, in so far as they cannot be allowed against chargeable gains for the purposes of that tax, shall be treated for the purposes of corporation tax as if they were allowable losses accruing to the company while within the charge to corporation tax.

Income tax: relief for expenditure on certain buildings in certain areas [FA89 s4(1) to (6); FA93 s31]

20. (1) Where a person is immediately before the commencement of this Act, entitled to have a deduction made from his or her total income under section 4 of the Finance Act, 1989, he or she shall not cease to be so entitled by reason only of the repeal by this Act of that section, notwithstanding that that section is not re-enacted by this Act, and accordingly this Act shall apply with any modifications necessary to give effect to any such entitlements.

(2) Notwithstanding the repeal by this Act of section 4 of the Finance Act, 1989, relief given under that section, whether before or after the passing of this Act, may be withdrawn in accordance with subsection (4) of that section where the circumstances set out in that subsection apply; and accordingly this Act shall apply with any modifications necessary to give effect to such withdrawal.

Income tax: relief for income accumulated under trusts [ITA67 s154; FA73 s5]

21. (1) Where—

- (a) in pursuance of any will or settlement any income arising from any fund is accumulated for the benefit of any person contingently on that person attaining a specified age or marrying, and
- (b) the aggregate amount (in this paragraph referred to as “the aggregate yearly income”) in any year of assessment of—
 - (i) that income,
 - (ii) the income from any other fund subject to the like trusts for accumulation, and
 - (iii) the total income of that person from all sources,

is of such an amount only as would entitle an individual either to total exemption from income tax or to relief from income tax,

then, that person shall, on making a claim for the purpose within 6 years after the end of the year of assessment in which the contingency happens, be entitled, on proof of the claim in the manner prescribed by subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28, to have repaid to him or her on account of the income

SCH.32

tax which has been paid in respect of the income during the period of accumulation a sum equal to the aggregate amount of relief to which he or she would have been entitled if his or her total income from all sources for each of the several years of that period had been equal to the aggregate yearly income for that year; but in calculating that sum a deduction shall be made in respect of any relief already received.

(2) For the purposes of *subparagraph (1)*, no account shall be taken of any income tax paid in respect of income for a year of assessment beginning after the year 1972-73 or of any relief to which a person would have been entitled for such a year of assessment in the circumstances mentioned in *subparagraph (1)*.

[FA96 s31(2)(a), (3) and (4); FA97 s30(2)]

Relief for investment in films in respect of certain sums

22. (1) Where an allowable investor company has in the period of 12 months ending on the 22nd day of January, 1997, made a relevant investment, the reference in *section 481(4)* to £8,000,000 shall, in respect of that period, be construed as a reference to £6,000,000 or, where the company has in that period paid a sum of money to which *subparagraph (2)* applies, as a reference to £6,000,000 less the amount or, if there are more amounts than one, the aggregate of such amounts of such sums of money.

(2) The amendments effected to section 35 of the Finance Act, 1987, by section 31(1) of the Finance Act, 1996, shall not apply as respects a sum of money paid on or after the 23rd day of January, 1996, and on or before the 31st day of March, 1996, where the sum of money is paid in respect of shares in a qualifying company, and—

- (a) the Minister for Arts, Culture and the Gaeltacht had received before the 23rd day of January, 1996, an application in writing to give a certificate to the company stating, in relation to a film to be produced by the company, that the film is a qualifying film, and
- (b) a certificate given by the Minister to the company after the 23rd day of January, 1996, includes a statement that the Minister had received that application before that date.

(3) Where a sum of money is a sum of money—

- (a) to which the amendments effected to section 35 of the Finance Act, 1987, by section 31(1) of the Finance Act, 1996, do not apply by virtue of *subparagraph (2)*, or
- (b) which is paid before the 23rd day of January, 1996,

the provisions of section 35 of the Finance Act, 1987, which were in force immediately before the 23rd day of January, 1996, (in this paragraph referred to as “the former provisions”) shall, subject to *subparagraph (4)*, continue to apply to that sum of money.

(4) Where the sum of money referred to in *subparagraph (3)* is a sum of money paid on or after the 6th day of April, 1995, or is a sum of money to which *subparagraph (2)* applies, and the sum of money is used for the purpose of enabling the qualifying company to produce a qualifying film in respect of which an application (to give a certificate under subsection (1A) of the former provisions) had not been received by the Minister before the 23rd day of January, 1996, the former provisions shall apply as if—

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(i) subsection (2) of the former provisions was amended by the substitution for “a deduction of the amount of that investment” of “a deduction of an amount equal to 80 per cent of that investment”, and

SCH.32

(ii) subsection (3A) of the former provisions was amended by the substitution for “a deduction of the amount of that investment” of “a deduction of an amount equal to 80 per cent of that investment”.

(5) *Subparagraphs (2) to (4)* shall apply notwithstanding that the former provisions are not re-enacted by this Act and shall be construed together with the former provisions, and accordingly this Act shall apply with any modifications necessary to give effect to those subparagraphs.

(6) As respects a relevant investment made before the 26th day of March, 1997, *section 481* shall apply as if in *subsection (4)(b)(i)* of that section the reference to £3,000,000 were a reference to £2,000,000.

(7) As respects the 12 months period ending on the 22nd day of January, 1996, *section 481* shall apply as if in *subsection (4)(b)(ii)* of that section the reference to £3,000,000 were a reference to £2,000,000.

(8) In relation to a film in respect of which the Minister has received an application before the 26th day of March, 1997, to enable the Minister to consider whether a certificate should be given under *subsection (2) of section 481*, that subsection shall apply as if *paragraph (c)(ii)(II)* of that subsection were deleted.

Farming: application of section 658 in relation to expenditure incurred before 27th January, 1994

[FA74 s22(2); FA77 s14; FA82 s16; FA88 s52(1)(a); FA89 s15; FA90 s77; FA91 s25(a)]

23. (1) *Section 658* shall apply—

(a) as respects capital expenditure incurred before the 27th day of January, 1994, as if the following subsections were substituted for *subsection (2)* of that section:

“(2) (a) Where a person to whom this section applies incurs, for the purpose of a trade of farming land occupied by such person, any capital expenditure on the construction of farm buildings (excluding a building or part of a building used as a dwelling), fences, roadways, holding yards, drains or land reclamation or other works, there shall, subject to *paragraph (b)*, be made to such person during a writing-down period of 10 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as ‘farm buildings allowances’) in respect of that expenditure, and such allowances shall be made in taxing the trade.

(b) The farm buildings allowance to be granted for any chargeable period shall, subject to *paragraphs (c) and (d)*, be increased by such amount as is specified in the claim for the

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

allowance by the person to whom the allowance is to be made and, in relation to a case in which this paragraph has applied, any reference in the Tax Acts to a farm buildings allowance made under this section shall be construed as a reference to that allowance as increased under this paragraph.

- (c) The maximum farm buildings allowance to be made under this section by means of an allowance increased under *paragraph (b)*—
- (i) in relation to capital expenditure incurred before the 1st day of April, 1989, shall not for any chargeable period exceed 30 per cent of that capital expenditure,
 - (ii) in relation to capital expenditure incurred on or after the 1st day of April, 1989, and before the 1st day of April, 1991, whether claimed in one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of that capital expenditure, and
 - (iii) in relation to capital expenditure incurred on or after the 1st day of April, 1991, and before the 1st day of April, 1992, whether claimed in one chargeable period or more than one such period, shall not in the aggregate exceed 25 per cent of that capital expenditure.
- (d) Notwithstanding *paragraph (c)(iii)*, the maximum farm buildings allowances to be made under this section by means of an allowance increased under *paragraph (b)* in relation to capital expenditure incurred—
- (i) on or after the 1st day of April, 1991, and before the 1st day of April, 1993,
 - (ii) for the purposes of the control of farmyard pollution, and
 - (iii) on works in respect of which grant-aid has been paid under—
 - (I) the programme, as amended, known as ‘the Farm Improvement Programme’ implemented by the Minister for Agriculture and Food pursuant to Council Regulation (EEC) No. 797/85 of 12 March 1985¹, or
 - (II) the scheme known as ‘the Scheme of Investment Aid for the Control of Farmyard Pollution’ implemented by the Minister for Agriculture and Food pursuant to an operational

¹O.J. No. L 93 of 30.3.1985, p.1.

programme under Council Regulation (EEC) No. 2052/88 of 24 June 1988¹, SCH.32

whether claimed for one chargeable period or more than one such period, shall not in the aggregate exceed 50 per cent of that capital expenditure.

(e) The reference in *paragraph (a)* to roadways, holding yards, drains or land reclamation shall apply only as respects expenditure incurred on or after the 1st day of April, 1989.

(2A) (a) For the purposes of this subsection, the first relevant year of assessment in relation to expenditure incurred by any person is—

(i) the year of assessment in the basis period for which that person incurs the expenditure, or

(ii) the year of assessment in the basis period for which (if that person's profits or gains from farming for that year of assessment had been chargeable to tax under Case I of Schedule D) that person incurred the expenditure.

(b) Where any capital expenditure referred to in *subsection (2)(a)* was incurred by a person on or after the 6th day of April, 1971, and before the 6th day of April, 1974, a farm buildings allowance shall for the purposes of this section be deemed—

(i) to have been made to that person, and

(ii) to have been made in charging the profits or gains of the trade for the first relevant year of assessment and for each subsequent year of assessment before the year 1974-75;

but where that expenditure was incurred in the year 1973-74, a farm buildings allowance shall for the purposes of this section be deemed to have been made in charging the profits or gains of the trade for that year of assessment.

(2B) Notwithstanding any other provision of this section other than *subsection (2)(d)*, no farm buildings allowance made in relation to capital expenditure incurred on or after the 1st day of April, 1992, shall be increased under this section.”

and

(b) as respects expenditure incurred before the 6th day of May, 1993, as if the following subsection were substituted for *subsection (13)* of that section:

¹O.J. No. L 185 of 15.7.1988, p.9.

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.32

“(13) Expenditure shall not be regarded for the purposes of this section as having been incurred by a person in so far as it has been met directly or indirectly by the State, by any board established by statute or by any public or local authority.”

(2) (a) This subparagraph shall apply to expenditure incurred on the construction of fences, roadways, holding yards or drains or on land reclamation.

(b) Where on or after the 6th day of April, 1977, and before the 1st day of April, 1989, a person to whom *section 658* applies incurs capital expenditure to which this subparagraph applies, being expenditure in respect of which the person is entitled to claim an allowance under that section, the allowance to be granted for the chargeable period related to the expenditure or any subsequent chargeable period shall be increased by such amount as is specified by the person to whom the allowance is to be made in making the person's claim for the allowance, and in relation to a case in which this subsection has applied, any reference in the Tax Acts to a farm buildings allowance made under *section 658* shall be construed as a reference to that allowance as increased under this subparagraph.

[FA93 s12(2)(b)]

Transitional provisions arising from amendments made to the system of taxation of life assurance companies by Finance Act, 1993

24. Notwithstanding *section 713*, where chargeable gains and allowable losses accrued on disposals deemed by virtue of *section 46A* of the Corporation Tax Act, 1976, as applied by *section 12(2)(a)* of the Finance Act, 1993, to have been made by a life assurance company for the accounting period ended on the 31st day of December, 1992, the amount of any fraction of the difference between the aggregate of such chargeable gains and the aggregate of such allowable losses treated by virtue of *section 720* (being the re-enactment of *section 46B* of the Corporation Tax Act, 1976) as a chargeable gain of any accounting period ending on or after the 6th day of April, 1997, shall be deducted from the amount of the unrelieved profits (within the meaning of *section 713*) of that accounting period for the purposes of computing the relief due under *section 713*.

[CGTA75 s31(5);
FA94 s64(2)]

Disposals in the year 1993-94 of units in certain unit trusts

25. Where throughout the year of assessment 1993-94 all the assets of a unit trust were assets, whether mentioned in *section 19* of the Capital Gains Tax Act, 1975, or in any other provision of that Act, or of any other enactment relating to capital gains tax, to which *section 19* of the Capital Gains Tax Act, 1975, applied, the units in the unit trust shall for that year be deemed not to be chargeable assets for the purposes of the Capital Gains Tax Acts.

[FA72 s16(4);
CTA76 s140(1) and
Sch2 PtI par 31]

Application of section 774(6) in certain circumstances

26. In the case of any employer for a chargeable period, being—

(i) where the chargeable period is an accounting period of a company, an accounting period ending on or before the 21st day of April, 1997, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

- (ii) where the chargeable period is a year of assessment, any year of assessment the employer's basis period for which ends on a day after that date, SCH.32

section 774 shall apply as if the following subsection were substituted for *subsection (6)* of that section:

“(6) (a) Any sum paid by an employer by means of contributions under the scheme shall—

- (i) in the case of income tax, for the purposes of Case I or II of Schedule D, be allowed to be deducted as an expense incurred in the year in which the sum is paid, and
 - (ii) in the case of corporation tax, for the purposes of Case I or II of Schedule D and the provisions of *sections 83* and *707(4)* relating to expenses of management, be allowed to be deducted as an expense or expense of management incurred in the accounting period in which the sum is paid.
- (b) The amount of an employer's contributions which may be deducted under *paragraph (a)* shall not exceed the amount contributed by the employer under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to income tax or corporation tax, as the case may be.
- (c) A sum not paid by means of an ordinary annual contribution shall for the purposes of this subsection be treated, as the Revenue Commissioners may direct, either as an expense incurred in the year or the accounting period, as the case may be, in which the sum is paid, or as an expense to be spread over such period of years as the Revenue Commissioners think proper.”.

Settlements: application of section 792 for the year of assessment 1997-98 in relation to certain dispositions to certain individuals residing with, and sharing normal household expenses with, the disponer [FA95 s13(3)]

27. (1) Where—

- (a) the conditions set out in *subparagraph (3)* are satisfied, and
- (b) the Revenue Commissioners are satisfied that the application of the amendments to section 439 of the Income Tax Act, 1967, effected by subsections (1) and (2) of section 13 of the Finance Act, 1995, which subsections are re-enacted in *subsections (1)* and *(2)* of *section 792*, would give rise to hardship,

then, those amendments shall not, to the extent that the Revenue Commissioners consider just, apply before the 6th day of April, 1998, in respect of a disposition, to which *clause (a)* of *subparagraph (2)* applies, by a person (in this paragraph referred to as “the disponer”), in so far as, by virtue or in consequence of such disposition, income is payable in a year of assessment to or for the benefit of an individual to whom *clause (b)* of *subparagraph (2)* applies, and accordingly, notwithstanding that section 439 of the Income Tax Act, 1967, as it stood before its amendment by subsections (1) and (2) of section 13 the Finance Act, 1995, is not re-enacted by this Act, this Act shall

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

apply with any modifications necessary to give effect to this paragraph.

- (2) (a) This clause shall apply to—
- (i) a disposition made before the 6th day of April, 1993, or
 - (ii) a disposition made on or after the 6th day of April, 1993, to immediately replace a disposition made before that date which has ceased to be effective and only to the extent that the amount payable to or for the benefit of an individual to whom *clause (b)* applies under such later disposition does not exceed the amount payable to or for the benefit of that individual under the earlier disposition.
- (b) This clause shall apply to an individual who is not a child of the disponer and who, for the whole of the year of assessment, is resident with, and shares the normal household expenses with, the disponer.
- (3) The conditions referred to in *subparagraph (1)* are:
- (a) the making of the disposition referred to in *subparagraph (2)(a)(i)* shall have been notified to the Revenue Commissioners before the 8th day of February, 1995,
 - (b) a child, to whom *subparagraph (4)* applies, of the disponer or of the individual to whom *clause (b)* of *subparagraph (2)* applies or of both of them is resident with them for the whole or substantially the whole of the year of assessment, and
 - (c) the child to whom *clause (b)* relates is wholly or mainly maintained by the disponer and the individual jointly at their own expense.
- (4) A child to whom this subparagraph applies shall be a child who for a year of assessment—
- (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.

Construction of certain references to Ministers of the Government

28. (1) Subject to *subparagraphs (2)* and *(3)*, a reference in this Act to a Minister of the Government mentioned in *column (1)* of the Table to this paragraph shall, in respect of the period from the commencement of this Act to the date mentioned in *column (3)* of that Table opposite that mention in *column (1)*, be construed as a reference to the Minister of the Government mentioned in *column (2)* of that Table opposite that mention in *column (1)*.

(2) A reference in *Chapter 1* of *Part 24* to the Minister for the Marine and Natural Resources shall—

- (a) in respect of the period from the commencement of this Act to the 11th day of July, 1997, be construed as a reference to the Minister for Transport, Energy and Communications, and

[1997.] *Taxes Consolidation Act, 1997.* [No. 39.]

(b) in respect of the period from the 12th day of July, 1997, to the 14th day of July, 1997, be construed as a reference to the Minister for Public Enterprise. SCH.32

(3) A reference in *Chapter 2 of Part 24* to the Minister for the Marine and Natural Resources shall—

(a) in respect of the period from the commencement of this Act to the 11th day of July, 1997, be construed as a reference to the Minister for Transport, Energy and Communications, and

(b) in respect of the period from the 12th day of July, 1997, to the 30th day of September, 1997, be construed as a reference to the Minister for Public Enterprise.

TABLE

(1)	(2)	(3)
Minister for Justice, Equality and Law Reform	Minister for Justice	8th July, 1997
Minister for Health and Children	Minister for Health	11th July, 1997
Minister for Social, Community and Family Affairs	Minister for Social Welfare	11th July, 1997
Minister for Arts, Heritage, Gaeltacht and the Islands	Minister for Arts, Culture and the Gaeltacht	11th July, 1997
Minister for Enterprise, Trade and Employment	Minister for Enterprise and Employment	11th July, 1997
Minister for Tourism, Sport and Recreation	Minister for Tourism and Trade	11th July, 1997
Minister for Agriculture and Food	Minister for Agriculture, Food and Forestry	11th July, 1997
Minister for the Marine and Natural Resources	Minister for the Marine	11th July, 1997
Minister for Public Enterprise	Minister for Transport, Energy and Communications	11th July, 1997
Minister for the Environment and Local Government	Minister for the Environment	21st July, 1997
Minister for Education and Science	Minister for Education	30th September, 1997

Construction of certain references to Government Departments

29. A reference in this Act to a Government Department mentioned in *column (1)* of the Table to this paragraph shall, in respect of the period from the commencement of this Act to the date mentioned in *column (3)* of that Table opposite that mention in *column (1)*, be construed as a reference to the Government Department mentioned in *column (2)* of that Table opposite that mention in *column (1)*.

TABLE

(1)	(2)	(3)
Department of Agriculture and Food	Department of Agriculture, Food and Forestry	11th July, 1997
Department of the Environment and Local Government	Department of the Environment	21st July, 1997

[No. 39.] *Taxes Consolidation Act, 1997.* [1997.]

SCH.32

*Construction of reference to Secretary General
of Department of Finance*

30. A reference in this Act to the Secretary General of the Department of Finance shall, in respect of the period from the commencement of this Act to the 31st day of August, 1997, be construed as a reference to the Secretary of the Department of Finance.

Construction of certain references to educational institutions

31. A reference in this Act to an educational institution mentioned in *column (1)* of the Table to this paragraph shall, in respect of the period from the commencement of this Act to the date mentioned in *column (3)* of that Table opposite that mention in *column (1)*, be construed as a reference to the educational institution mentioned in *column (2)* of that Table opposite that mention in *column (1)*.

TABLE

(1)	(2)	(3)
National University of Ireland, Dublin	University College, Dublin	15th June, 1997
National University of Ireland, Cork	University College, Cork	15th June, 1997