

**Notes for Guidance - Taxes
Consolidation Act 1997
Finance Act 2018 edition**

**Part 16 - Income Tax Relief for
Investment in Corporate Trades –
Employment and Investment Incentive
and Seed Capital Scheme**

Section 25 Finance Act 2018 replaced Part 16 of the Principal Act with a revised, simplified and consolidated text. Guidance Notes on the Finance Act 2018 changes will be published shortly.

What follows are Guidance Notes on Part 16 prior to the changes introduced by Finance Act 2018

December 2018



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Part 16 Income Tax Relief for Investment in Corporate Trades – Employment and Investment Incentive and Seed Capital Scheme

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PART 16 (EII)
INCOME TAX RELIEF FOR INVESTMENT IN CORPORATE TRADES –
EMPLOYMENT AND INVESTMENT INCENTIVE AND SEED CAPITAL
SCHEME

Overview

Part 16 provides tax relief for investment in corporate trades (the scheme is commonly known as the Employment and Investment Incentive or EII. In addition, the scheme also provides tax refunds to encourage employees or former employees to start their own businesses (this aspect of the scheme is known as SURE [Startup Refunds for Entrepreneurs] formerly known as the Seed Capital Scheme [SCS]).

488 Interpretation (Part 16)

Summary

This section gives the meaning for various expressions and terms used throughout this Part.

Details

Definitions

“associate” has the same meaning as in *section 433(3)* with the reference to “participator” (1) being replaced by one to “persons”.

“basic pay rate”, in relation to a qualifying employee of a qualifying company, means the employee’s emoluments (other than non-pecuniary emoluments) per hour from the company in respect of an employment held with the company

“control” except in *section 492(7)* and *section 505(2)(b)* is construed in accordance with *subsections (2) to (6)* of *section 432*.

“debenture” has the same meaning as in section 2 of the Companies Act, 1963. Essentially, “debenture” includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not.

“director” has the meaning set out in *section 433(4)*.

“eligible shares” are new ordinary shares which throughout the “relevant period” —

- carry no present or future preferential right to dividends or to a company’s assets on a winding up, and
- carry no present or future preferential right to be redeemed.

“emoluments” has the same meaning as in section 983;

“employment relevant number” means the total number of qualifying employees in receipt of emoluments from the qualifying company in the year of assessment in which, in relation to a subscription for eligible shares, a relevant period ends;

“employment threshold number” means the total number of qualifying employees in receipt of emoluments from the qualifying company in the year of assessment preceding the year of assessment in which the subscription for eligible shares was made;

“energy from renewable sources” means energy from renewable non-fossil sources, that is to say wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases and includes the development of any facilities for the storage of energy from renewable sources;

“expenditure on research and development” has the same meaning as in section 766;

“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 the effect equivalent to the extension of credit;

“financing or refinancing facilities” includes –

- (a) loans, mortgages, leasing, lease rental, and hire-purchase, and all similar arrangements,
- (b) equity or other investment
- (c) the factoring of debts and the discounting of bills, invoices and promissory notes, and all similar instruments, and
- (d) the underwriting of debt instruments and all other kinds of financial securities;

“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;

“full-time employee” and “full-time director” have the meanings set out in *section 250*.

“green energy activities” means activities undertaken with a view to producing energy from renewable sources;

“grid connection agreement” means an agreement with the transmission system operator or distribution system operator, or an offer from the transmission system operator or distribution system operator to enter into an agreement for connection to, or use of, the transmission or distribution system;

“internationally traded financial services” means, with the exception of activities listed in subparagraphs (b) or (c) of the definition of “relevant trading activities”, the services specified in the schedule to the Industrial Development (Service Industries) Order 2010 (S.I. No. 81 of 2010).

“market value” has the meaning set out in *section 548* (that is, the price which assets might reasonably be expected to fetch on a sale in the open market).

“ordinary shares” are shares forming part of a company’s ordinary share capital.

“planning consent” means any consent, permission or approval required under the Planning and Development Acts 2000 to 2010 before development can be lawfully carried out;

“qualifying company” has the meaning set out in *section 494*.

“qualifying employee”, in relation to a qualifying company, means an employee (within the meaning of section 983), other than a director, of that company -

(i) who throughout his or her period of employment with that company is employed by that company for at least 30 hours duration per week,

and

(ii) his or her employment is capable of lasting at least 12 months.

“qualifying new venture” means a venture consisting of relevant trading activities which are set up and commenced by a new company other than –

- (a) activities which were previously carried on by another person and to which the company has succeeded, or
- (b) a venture, the activities of which were previously carried on as part of another person’s trade or profession;

“relevant employment” requires a specified individual (that is, an individual making a SURE investment) to take up full-time employment for a specified period of 12 months in the company in which he/she has made his/ her SURE investment (being the first tranche of such an investment).

“relevant investment” is the total amount subscribed by a specified individual (that is, an individual making a SURE investment) in a year of assessment for eligible shares in a qualifying company which carries on or intends to carry on relevant trading operations.

“qualifying nursing home” means

- (a) a nursing home within the meaning of section 2 of the Health (Nursing Homes) Act 1990 and which is registered in accordance with section 4 of that Act,
and
- (b) where applicable, a qualifying residential unit constructed on the site of, and operated by, a nursing home,

It should be noted that a nursing home that is subject to any arrangement which results in the nursing home, or any part of the nursing home, being disposed of to the person, or any person acting on behalf of that person, from who it was purchased is not considered to be a “qualifying nursing home”.

“qualifying residential unit” means a house which

- (a) is constructed on the site of, or on a site that is immediately adjacent to the site of, a registered nursing home.
- (b) is either
 - a single story house
 - or
 - a house that is in a building of one or more storeys which has a fire safety certificate under Part III of the Building Control Regulations 1997 (S.I. No.496 of 1997) by a building control authority (within the meaning of section 2 of the Building Control Act 1990) where the house is situated where
 - (I) the house is designed and constructed to meet the needs of persons with disabilities, including in particular the needs of those in wheelchairs

and

- (II) the house has one or two bedrooms, a kitchen, a living room, bath or shower facilities, toilet facilities and a nurse call system linked to the registered nursing home.

and

- (c) is in a development where

those units are operated or managed by the registered nursing home and an on-site caretaker is provided

and

back-up medical care, including nursing care, is provided by the registered nursing home to the occupants of those units when required by the occupants.

“relevant amount” means the total emoluments (other than non-pecuniary emoluments) paid by a qualifying company to qualifying employees as referred to in the definition of “employment relevant number”, in the year of assessment in which, in relation to a subscription for eligible shares, a relevant period ends.

The term “relevant period” can apply in relation to 4 distinct aspects of the relief. Accordingly, the phrase has a different meaning depending on the context in which it is used:

- (a) subject to paragraphs (b), (c) and (d) the “relevant period” is the period beginning on the date of issue of the shares and ending 4 years after the date of the issue of the shares or, where the company was not at that date carrying on relevant trading activities, 4 years after the date on which it subsequently began to carry on such activities
- (b) as respects a “relevant employment”, the “relevant period” is the period beginning on the date on which the shares are issued, or if later, the date on which the employment commences and ending 12 months after that date, .
- (c) in the case of a “specified individual”, the “relevant period” is the period beginning on the share issue date and ending 1 year after that date, or where the company was not at that date carrying on relevant trading operations, 1 year after the date it commenced to carry on such operations,
- (d) for the purposes of *section 489(2)(b)*, *section 501(1)(a)(ii)*, and the definition of “*relevant amount*”, and “*employment relevant number*”,) the “relevant period” is the period beginning on the share issue date and ending 3 years after that date, or where the company was not at that date carrying on relevant trading operations, 3 year after the date it commenced to carry on such operations.

“relevant trading activities” means activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities related to –

- (a) adventures or concerns in the nature of trade,
- (b) dealing in commodities or futures or in shares, securities or other financial assets,
- (c) financing activities
- (d) the provision of services, which would result in a close company (within the meaning of section 430) that provides those services being treated as a service

company for the purpose section 441 if that close company had no other source of income,

- (e) dealing in or developing land,
- (f) the occupation of woodlands within the meaning of section 232,
- (g) operating or managing hotels, guest houses, self catering accommodation or comparable establishments or managing property used as an hotel, guest house, self catering accommodation or comparable establishment, except where the operating or managing of such hotels, guest houses, self catering accommodation or comparable establishment is a tourist traffic undertaking. The extension of the scheme to cover the operation of hotels, guest houses etc applies in respect of shares issued on or after 1 January 2013,
- (i) operations carried on in the coal industry or in the steel and shipbuilding sectors, and
- (j) the production of a film (within the meaning of section 481), but including tourist traffic undertakings;

“research and development activities” has the same meaning as in **section 766**;

“specified individual” has the meaning set out in **section 495**.

“specified period” means 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 4 years after the issue of the shares;

“specified relevant period” has the meaning assigned in section 766 to relevant period;

“relief” means relief under **section 489** and **493**, as the case may be, and references to the amount of the relief shall be construed in accordance with **subsection (2) of section 489** and **subsection (2) and (3) of section 493**, as the case may be;

“threshold amount” means the total emoluments (other than non-pecuniary emoluments) paid by a qualifying company to qualifying employees as referred to in the definition of “employment threshold number”, in the year of assessment preceding the year in which the subscription for eligible shares was made. Where there was a general reduction in the basic pay rate of qualifying employees then the threshold amount shall be reduced accordingly..

“tourist traffic undertakings means” –

- (a) the operation of tourist accommodation facilities for which the National Tourism Development Authority (trading as Fáilte Ireland) maintains a register,
- (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, Culture and Sport on the recommendation of the National Tourism Development Authority (trading as Fáilte Ireland) in accordance with specific codes of standards laid down by it, or
- (c) the promotion outside the State of any one of the foregoing facilities, including such hotels, guest houses and self catering accommodation so registered.

“transmission system operator” has the same meaning as in the Electricity Regulation Act 1999;

“unquoted company” is a company none of whose shares are listed in the official list of a stock exchange or quoted on an unlisted securities market other than —

- on the Enterprise Securities Market of the Irish Stock Exchange, or
- on the Enterprise Securities Market of the Irish Stock Exchange and on any similar or corresponding market of the stock exchange of one or more EU Member States provided the quotation on the Enterprise Securities Market of the Irish Stock Exchange occurs before or at the same time as the first quotation on an unlisted securities market of a stock exchange of another EU Member State.

Disposal of shares

A disposal of shares is treated as occurring on the disposal of an interest or right in or over those shares. **Section 587** applies to a scheme of reconstruction or amalgamation whereby a company (the first company) issues shares to the shareholders in a second company. This is treated for capital gains tax purposes as comprising an “exchange of shares”. However, for the purposes of relief under this Part, such a deemed “exchange” of shares is treated as a disposal of the shares in the second company by the shareholders of that company and, for the purpose of restricting the relief under **section 496** (disposal of shares), the value of the shares in the first company is a measure of the consideration received for the shares treated as disposed of by those shareholders. (2)

Reduction of amounts

Where there is a reference in this Part to the reduction of any amount the reference is to be taken as including the reduction of the amount to nil. (3)

489 The relief

Summary

Section 489 provides for relief under the Employment and Investment Incentive Scheme to an individual who subscribes for eligible shares in a qualifying company, where the share capital raised will be used by the qualifying company-

- for the purpose of carrying on “relevant trading activities” or research and development, and
- for the creation or maintenance of employment in the company.

Relief in respect of thirty fortieths (or 75%) of the amount subscribed by an individual will be given in the year of assessment in which the shares are issued once-

- in the case of a company which had commenced relevant trading activities at the time the eligible shares were issued, the company has carried on those activities for 4 months, or
- in the case of a company which had not commenced relevant trading activities at the time the eligible shares were issued, the company—
 - begins to carry on relevant trading activities within 2 years after that time, or

- expends not less than 30 per cent of the money subscribed for the shares on research and development activities which are connected with and undertaken with a view to the carrying on of the relevant trading activities.

Relief in respect of ten fortieths (or 25%) of the amount subscribed by an individual will be given in the fourth year following the issue of the shares provided—

- Both—
 - the number of qualifying employees in the company has increased between the year of assessment preceding the issue of the shares and the year of assessment in which the relevant period of 3 years ends, and
 - the average basis pay rate for qualifying employees has not been reduced in that same period, except in the case of a general pay reduction which applied to employees generally,or
- the amount of expenditure incurred by the company on research and development is increased.

This section shall only apply where the eligible shares are issued on or before 31 December 2020..

As this relief is included in Part 1 to the table in *section 458*, the general provisions relating to personal allowances/reliefs contained in *sections 458 to 460* apply for the purposes of relief under this Part. These provisions relate primarily to the need to make a claim for relief and submit a return of income.

Details

Application

The relief is available where — (1)

- a qualifying individual (*section 492*) subscribes for eligible shares in a qualifying company (*section 494*), (1)(a)
- the shares are issued for the purpose of (1)(b)
 - raising money for relevant trading activities (*section 488*) which is being carried on by the qualifying company,
 - in the case of a company that has not commenced to trade, in incurring expenditure on research and development activitiesor
- in the case of a company that owns and operates a qualifying nursing home for the purposes of enlarging the capacity of the nursing home.

The use of the money will contribute to the creation or maintenance of employment in the company.

Relief as deduction from income

Subject to being an investment in a designated fund the relief is given as follows: (2)

- (a) by means of a deduction equal to thirty fortieths of the amount subscribed for

eligible shares from the individual's total income in the year of assessment in which the shares are issued.

subject to satisfying the requirements of **subsection (10)** by means of a deduction equal to ten fortieths of the amount subscribed for eligible shares from the individual's total income in the year of assessment following the date on which the relevant period ends.

Investments through designated funds

Where a EII investment is made through a fund designated by the Revenue Commissioners under **section 506** and the shares in respect of which the investment are made are issued in the year of assessment following the year in which the investment is made in the fund, the investor may elect by notice in writing to the inspector to have the relief due given in the year of assessment in which the investment is made rather than in the year in which the shares are issued. (3)

Where an investment through a fund was made in the period from 1 January 2014 to 31 December 2014 and the fund invests in shares in the month of January 2016, then, notwithstanding subsection (3), relief will be available either in the 2014 or 2016 year of assessment. (3A)

Claims

The relief must be claimed and is not allowed — (4)

- in the case of a company that had commenced relevant trading activities at the time the eligible shares were issued, unless and until the company has carried on those activities for 4 months. (a)

If the company is not carrying on qualifying trading activities at the time the shares are issued, the relief is not allowed unless the company — (b)

- begins to carry on the relevant trading activities within 2 years of the time the shares are issued.
- expends not less than 30 per cent of the subscription money on research and development activities which are connected with and undertaken with a view to carrying on of the relevant trading activities,

Relief

The relief is given once all the conditions for the relief have been satisfied. (5)

Withdrawal of relief

Relief will be withdrawn where an event occurs within the appropriate relevant period which results in the claimant not being entitled to relief. (6)

Bona fide winding-up

Where a company carries on a qualifying trade for a period which is less than the stipulated 4 month period required by **subsection (4)(a)**, relief is not to be denied where it can be shown that the company was wound up or dissolved for genuine 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. (7)

Capital gains tax

Subject to **section 504** (which deals with capital gains tax on the disposal of shares) any (8)

relief granted is not taken into account in calculating any future capital gains tax which may arise on the disposal of shares.

Restriction of relief

“distribution” has the same meaning as in the Corporation Tax Acts. (9)

Relief is denied in respect of amounts subscribed for shares in a company where the shareholder or a person connected with the shareholder is either —

- assured of recovering part or all of the capital subscribed, other than a distribution, or
- assured of receiving an agreed dividend.

A shareholder is assured of recovering capital invested or of receiving a dividend where by virtue of an agreement, arrangement or understanding it could reasonably be considered that the risk element attaching to the investment is removed.

Restriction of relief

Relief will not be available by virtue of subsection (2)(b) unless in relation to a qualifying company – (10)

-

- the employment relevant number exceeds the employment threshold number by at least one qualifying employee, and (10)(a)
- the relevant amount exceeds the threshold amount by at least the total emoluments of one qualifying employee in the year of assessment in which the relevant period ends,

or

- the amount of expenditure on research and development incurred by the qualifying company in the specified relevant period ending in the year of assessment preceding the year of assessment in which, in relation to the subscription for eligible shares, a relevant period ends, exceeds the amount of expenditure on research and development incurred by the qualifying company in the specified relevant period ending in the year of assessment preceding the year of assessment in which the subscription for eligible shares was made. (10)(b)

Commencement of relevant trading activities

A company carrying on green energy activities shall be deemed to have commenced relevant trading activities when it has made an application for a grid connection agreement (11)

Evidence

The Revenue Commissioners may require the qualifying company to provide evidence as they consider necessary and may consult with such persons or body of persons as in their opinion may be of assistance to them, to enable them to verify that the conditions necessary for the claiming and granting of relief have been satisfied (12)

Cessation of relief

Relief is only available in respect of shares issued on or before 31 December 2020. (13)

490 Limits on the relief

Summary

This section imposes certain limits on the relief available under the EII and SURE. . The minimum amount on which relief is available is €250 and the maximum amount is €100,000 (SURE) or €150,000 (EII) per tax year. Where due to the operation of these upper limits or due to an insufficiency of total income the full amount of the investment cannot be relieved, the unrelieved amount may be carried forward and relieved in subsequent years. Investment carried forward in this way cannot be relieved beyond the tax year 2020. .

Details

Limits

No relief is given in respect of any amount subscribed by an individual for eligible shares in a company unless the amount or total amounts subscribed by the individual for eligible shares in that company exceeds €250 or more. However, where a married couple are jointly assessed under *section 1017* or where civil partners are jointly assessed under *section 1031C*, any amounts subscribed by the non-assessable spouse or civil partner for eligible shares are deemed to have been subscribed by the assessable spouse or civil partner. Consequently if both spouse's/civil partners subscribed for 125 €1 eligible shares in the same company, the minimum limit would be satisfied. (1)(a)(b)

Relief is unavailable to the extent that the amount of a qualifying investment made by an individual in one or more companies exceeds €100,000 in the case of SURE or €150,000 in the case of EII per tax year. (2)

Carry forward of relief

Where due to an insufficiency of total income or the operation of the upper maximum limit of €100,000 or €150,000 per tax year an individual cannot fully utilise his/ her relief in the tax year in which the shares are issued, the unused amount may be carried forward to the following year of assessment and treated as an amount directly subscribed for eligible shares issued to that individual in that year. However, the carry forward of relief does not apply for any year of assessment after the tax year 2020. (3)(a)(b)

Any amount which has been carried forward to a following year may, if not fully relieved in that following year, be carried forward to the next year and so on until the full amount is relieved. Amounts so carried forward are treated as an amount directly subscribed for eligible shares in those later years. However, the carry forward of relief does not apply for any year of assessment after the tax year 2020. (3)(a)(b)

Priority of relief

Relief is given to an individual for a year of assessment in the following order — (5)

- firstly, in respect of amounts carried forward from an earlier year of assessment (where amounts are carried forward from more than one year of assessment the earlier amounts are relieved before later amounts), and (a)
- then, the amounts invested in the current year of assessment. (b)

491 Restriction on relief where amounts raised exceed permitted maximum

Summary

This section provides that the maximum a company can raise under the EII and/or BES is €15 million. This €15 million maximum also applies to amounts raised under SURE. Where companies are associated, this overall maximum limit applies in relation to the amounts that can be raised by all such associated companies. A company may not raise more than €5,000,000 in any twelve-month period.

Details

Definition

“qualifying subsidiary” has the meaning assigned to it by *section 505* (1)

Restriction on amounts raised

A lifetime limit of €15 million applies in respect of the aggregate amount which a company or associated companies can raise through EII and/or BES funding. (2)

Where the allowable limit has already been raised by associated companies (including the applicant company) no further amounts can be raised by the applicant company under the scheme. Where the amount previously raised by the associated companies (including the applicant company) is less than the allowable limit, the applicant company may only raise an amount equal to the difference between the amounts so raised and the allowable limit. (2)(3)

Relief will not be given to the extent that a company (or a group of associated companies) raises more than €5,000,000 in either a single issue or by way of aggregate amounts raised in issues made in any twelve-month period. (4)

A company will be associated with another company where it could reasonably be considered that — (5)

- both companies act in pursuit of a common purpose, (i)
- any person or group(s) 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 (ii)
- both companies are under the control of any person or group(s) of persons having a reasonable commonality of identity. (iii)

The subsidiaries of companies are also taken into account for the purposes of these rules. (5)
A company is not considered 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 who manage a designated investment fund acting as a nominee for any person or group of persons or groups of persons.

Shares not qualifying for relief

In determining the amounts raised by a company or associated companies for the purpose of the overall allowable limit no account is taken of any amount — (6)

- subscribed by a person who does not qualify for relief, or (a)
- in respect of which relief is precluded by virtue of the operation of the €100,000/€150,000 limit placed on the relief available to an individual (by *section 490*). (b)

Apportionment

Where relief is denied to 2 or more individuals due to the application of the overall allowable limit, the available relief is divided between the individuals respectively in proportion to the amounts which have been subscribed by them for the shares to which their claims relate and which would, apart from the operation of the overall limit placed on relief, be eligible for relief. (7)

492 Individuals qualifying for relief

Summary

This section sets out the conditions which an individual must satisfy in order to qualify for relief.

Details

Qualifying individuals

An individual qualifies for relief if he/she subscribes on his/her own behalf (except where the investment is made through an approved designated fund) for eligible shares in a qualifying company and is not at any time in the relevant period connected with the company, or with its qualifying subsidiaries. (1)

Connected individuals

An individual is connected with a qualifying company, if, at any time during the period (in this note and in the section referred to as the “relevant period”) — (2)

- beginning on the date of incorporation of the company and ending 3 years after the issue of the shares, or
- where the company was incorporated more than 2 years before the date of the share issue, beginning 2 years before that date and ending 3 years after that date,

the individual or an associate of the individual is a partner of the company or, in certain circumstances, a director or employee of the qualifying company or of another company which is a partner of that company.

An individual is not connected with a company by virtue only of the fact that, the individual or an associate of the individual is a director or employee of the company in which his/her investment is made or of another company which is a partner of that company unless the individual or his/her associate receives or is entitled to receive payment from the company during the relevant period. However, for this purpose certain payments are disregarded, these are — (3)

- payments or reimbursement in respect of expenses wholly, exclusively and necessarily incurred by the individual or his/her associates in the performance his/her duties as a director or employee, (3)(a)
- interest on money (which represents no more than a reasonable commercial return) lent to either company, (3)(b)
- dividends on investments in either company which do not exceed normal returns, (3)(c)
- payments for the supply of goods to either company which do not exceed their market value, and (3)(d)

- any reasonable and necessary remuneration which — (3)(e)
 - is paid for services rendered to either company in the course of a trade or profession (other than a secretarial or managerial services or services of a kind provided by the company itself), and which is taken into account in any Schedule D, Case I or II computation of the trade or profession, or (3)(e)(i)(I)(II)
 - in the case of a director or employee of either company who is not otherwise connected with either company, is paid for services rendered to the company of which he/she is a director or employee. (3)(e)(ii)

In addition, an individual is connected with a company if he/she, or an associate of the individual, directly or indirectly possesses or is entitled to acquire any of the — (4)

- issued ordinary share capital of the qualifying company, (4)(a)
- loan capital and issued share capital of the qualifying company, or (4)(b)
- voting power in the qualifying company. (4)(c)

The term “loan capital” in **subsection (4)(b)** includes any debt incurred by the company for — (5)

- any money borrowed or capital assets acquired by the company, (5)(a)
- any right to receive income created in favour of the company, or (5)(b)
- consideration whose value to the company was, at the time when the debt was incurred, substantially less than the amount of the debt, including any premium thereon. (5)(c)

The inclusion of borrowed money in the loan capital of a company does not extend to bank overdrafts if the debt arises in the ordinary course of the bank’s business. (10)

An individual is connected with a company if he/she, or an associate of the individual, directly or indirectly possesses or is entitled to acquire such rights as would, in the event of a winding up or in any other circumstances, entitle him/her to receive any of the assets of the company available for distribution to equity holders. Whether a person is an “equity holder” is determined in accordance with **section 413**, and the percentage of assets to which the individual is entitled at any time is defined in accordance with **section 415**. (6)

An individual is connected with a qualifying company if he/she can control it in the manner set out in **section 11**. (7)

Seed capital exception to “connected” rules

For the purposes of **subsection (4)** and **(6)(a)** no account shall be taken of — (8)

shares held by the individual in the company, (8)(a)

(i) for which the individual was entitled to relief under this part for the acquisition of the shares, and (a)(i)

(ii) the individual, or a person connected with the individual, does not at any time in the ‘specified period’ control (with the meaning of **section 432**) the company, or (a)(ii)

Shares acquired on the formation of the company where (8)(b)

- (i) the company has issued no other shares other than the shares issued on formation, and (b)(i)
- (ii) the company has not commenced, or made preparations for, the carrying on of any trade or business. (b)(ii)

Subsection 8 applies to shares issued on or after the 2nd November 2017.

Future entitlement

An individual is treated as entitled to acquire anything which he/she is entitled to acquire at a future date or will at some future date be entitled to acquire. This prevents the use of options and other deferred transactions which may be used in order to prevent an individual being connected with a company. Moreover, for the purpose of this section all the rights and powers of an individual's associate are deemed to be those of the individual. (9)

Cross shareholdings

An individual is treated as connected with a company, if the individual subscribes for shares in the company as part of an arrangement which provides for another person to subscribe for shares in another company with which that individual, or any other individual who is a party to the arrangement, is connected. Such an arrangement would exist where, for example, individual A subscribes for shares in individual B's company and individual B, in turn subscribes for shares in individual C's company, who completes the circle by subscribing for shares in A's company. (11)

493 Seed capital relief

Summary

This section sets out conditions which must be satisfied in order to qualify for SURE, [Startup Refunds for Entrepreneurs] formerly know as the Seed Capital Scheme [SCS]

Notwithstanding section 489, this section shall apply for affording relief from income tax where – (1)

An individual qualifying for SURE (specified individual) makes a relevant investment (1)(a)

The shares issued to the specified individual are issued for the purposes of raising money by a qualifying company for the benefit of its activities referred to in ***paragraph (d)***, (1)(b)

The activities carried on by the qualifying company are a qualifying new venture (1)(c)

The money was used, is being used or is intended to be used for the benefit of a qualifying new venture for the purpose of carrying on relevant trading activities, or in the case of a company that has not commenced qualifying trading activities, incurring expenditure on research and development within the meaning of ***section 766***, (1)(d)

The use of the money set out in ***paragraph (d)*** will contribute directly to the creation or maintenance of employment in the company. (1)(e)

Relief as deduction from income

Subject to ***subsection (3)*** the relief in respect of a relevant investment is given by means of a deduction (equal to the amount subscribed for eligible shares) from the individual's total income in the year of assessment in which the shares are issued. (2)

Relief for SURE investment

A specified individual (that is, an individual making a SURE investment) in relation to his/her first relevant investment (that is, the first SURE investment) is entitled to have the relief due in respect of that investment given as a deduction from his/her total income for any one of the 6 tax years immediately before the tax year in which the eligible shares are issued in respect of that investment. For the purpose of granting relief only, but subject to certain limits on relief set out in **section 490** and in **paragraphs (c)** and **(d)** below, the shares which are issued in respect of the investment are deemed to have issued in the nominated year. (3)(a)

Where a specified individual makes a second SURE investment — (3)(b)

- in the same company as the first such investment, and
- within the 2 tax years following the tax year in which the initial such investment is made,

the relief due for the second investment is given as a deduction from the investor's total income for any one or more of the 6 tax years, which he/she nominates, immediately before the tax year in which the eligible shares were issued in respect of the first such investment. The nominated year may be the same or different to that nominated in respect of the first such investment. Again, for the purpose of granting relief only, but subject to certain limits on relief set out in **section 490** and in **paragraphs (c)** and **(d)**, the shares which are issued in respect of the investment are deemed to have issued in the nominated year.

Any unabsorbed relief in respect of both the first and second SURE investments is carried forward to the tax years nominated by the individual for this purpose between the tax year originally nominated and the tax year in which the shares actually issued in respect of the first such investment. (3)(c)

This procedure ensures that tax refunds for up to 6 tax years are paid to the individual.

Any relief still outstanding in respect of the first or second SURE investment is given in the year in which the shares are actually issued or in a subsequent year as normal EII relief. (3)(d)

The SURE relief is only available in respect of 2 relevant investments made by a specified individual in all tax years. (3)(e)

Subsection (5) is to apply notwithstanding the general time limit for making a claim for a repayment of tax contained in **section 865**. Any excess tax paid may be repaid on foot of a timely (within the time limits set out in **section 503**) and valid claim within the meaning of **section 865(1)(b)**. (The meaning of a valid claim is dealt with in **section 865**). (3)(f)

Meaning of “relief”

References in this Part to the amount of the relief are references to the amount qualifying as a deduction from the investor's total income given by way of SURE relief. (4)

Claiming of Relief (5)

The relief must be claimed and is not allowed —

- in the case of a SURE investment unless and until the qualifying new venture commences to carry on relevant trading activities or in the case of a company that has not commenced the carrying on of qualifying trading activities, has expended not less than 30 per cent of the relevant investment on research and development

activities which are connected with and undertaken with a view to the carrying on of relevant trading activities

Withdrawal of relief

Relief will be withdrawn where an event occurs within the appropriate relevant period (6) which results in the claimant not being entitled to relief.

SURE: relevant employment

A specified individual (that is, a SURE investor) must take up relevant employment (7) within the year of assessment in which the relevant investment is made, or if later, within 6 months of —

- the date of the relevant investment in the case of a single investment, or
- where more than one investment is made in that year of assessment, the date of the last such investment.

Capital gains tax

Subject to *section 506* (which deals with capital gains tax on the disposal of shares) any relief granted is not taken into account in calculating any future capital gains tax which may arise on the disposal of shares. (8)

Restriction of relief

“distribution” has the same meaning as in the Corporation Tax Acts. (9)

Relief is denied in respect of amounts subscribed for shares in a company where the shareholder or a person connected with the shareholder is either —

- assured of recovering part or all of the capital subscribed, other than a distribution, or
- assured of receiving an agreed dividend.

A shareholder is assured of recovering capital invested or of receiving a dividend where by virtue of an agreement, arrangement or understanding it could reasonably be considered that the risk element attaching to the investment is removed.

Restriction of relief

Where a specified individual claims relief under SURE, no relief shall be granted to that individual under *section 489* (EII) in respect of the same qualifying company (10)

Evidence

The Revenue Commissioners may require the qualifying company to provide evidence as they consider necessary and may consult with such persons or body of persons as in their opinion may be of assistance to them, to enable them to verify that the conditions necessary for the claiming and granting of relief have been satisfied (11)

494 Qualifying companies

Summary

This section sets out the rules which a company must comply with in order to be a qualifying company for the purpose of raising Employment and Investment Incentive (EII) funds and/or SURE funds.

Definitions

“EEA Agreement” is defined as is “EEA State” which is a contracting party to that Agreement. (1)

A “qualifying subsidiary” of a company is a company which complies with the conditions of *section 505*.

Qualifying companies

A qualifying company is one which —

- is incorporated in the State or in an EEA State other than the State and complies with this section, (2)
- is throughout the period (in this note and in the section referred to as the “relevant period”) — (3)(a)
 - of 3 years beginning on the date of issue of the shares, or
 - if the company was not at that time carrying on qualifying trading activities, of 3 years beginning from the date the company begins to carry on such a trade,

unquoted (but for the purposes of this section a company listed on the Enterprise Securities Market of the Irish Stock Exchange or a similar market of another EU Member State stock exchange may be categorised as unquoted) and is resident in the State, or is resident in an EEA State other than the State and carries on business in the State through a branch or agency.

In addition, the company must throughout the relevant period either —

- exist wholly for the purpose of carrying on qualifying trading activities and which carries on relevant trading activities from a fixed place of business in the State
- be a company whose business consists wholly of the holding of shares or securities of, or the making of loans to, one or more qualifying subsidiaries of the company. Such a company can, in addition to these activities also carry on relevant trading activities where the company carries on qualifying trading activities from a fixed place of business in the State.

Where a company issues eligible shares for the purposes of raising money for relevant trading activities which are, or are intended to be, carried on by a qualifying subsidiary the amount so raised can be used only for the purpose of acquiring eligible shares in the qualifying subsidiary and for no other purpose. (3)(b)

The company shall be a micro, small or medium-sized enterprise within the meaning of Annex 1 to Commission Regulation (EU) No. 651/201 of 17 June 2014 (commonly referred to as “GBER”): (4)

The company shall meet the requirements of paragraphs 5 and 6 of Article 21 of Commission Regulation (EU) No. 651/201 of 17 June 2014 (commonly referred to as “GBER”) is not a qualifying company. (4A)

Internationally Traded Financial Services

A company whose relevant trading activities includes internationally traded financial services must be in receipt of a certificate from Enterprise Ireland confirming that the company’s activities are of a kind specified in the schedule to the Industrial Development (Service Industry) Order 2010 (S..I. No. 81 of 2010). (5)

Tourist traffic undertakings

A company engaged in tourism activities, within the meaning of **section 488**, is not to be a qualifying company unless and until it has satisfied the Revenue Commissioners that the National Tourism Development Authority (trading as Fáilte Ireland) has approved a 3 year development and marketing plan prepared by it which is primarily designed and formulated to increase tourist traffic and revenue from outside the State. (6)(a)

In considering whether to approve such a plan, the National Tourism Development Authority (trading as Fáilte Ireland) shall have regard only to such guidelines in relation to such approval as are agreed between it and the Minister for Tourism, Culture and Sport with the consent of the Minister for Finance. These guidelines may set out — (6)(b)

- the extent to which the company's interest in land and buildings may form part of its total assets,
- specific requirements which have to be met in order to comply with the objective of increasing tourist traffic and revenue from outside the State, and
- the extent to which, EII, and or SURE funds raised should be used on promotional work abroad.

Green energy activities

A company whose relevant trading activities includes green energy activities shall cease to be a qualifying company unless it has expended all of the money subscribed for eligible shares on such activities, within a period ending 1 month before the end of the relevant period. (7)

Nursing Home extensions

A company whose relevant trading activities includes operating a qualifying nursing home and is engaged in enlarging the capacity of the nursing home will cease to be a qualifying company if, before 30 days of the end of the relevant period, it has expended all of the funds subscribed for eligible shares on enlarging the capacity of the nursing home. (7A)

Research and development activities

Where a company raised funds through the scheme at a time when it had not commenced to trade, and such funds were used to fund expenditure on research and development, that company will cease to be a qualifying company unless it has: (8)(a)

- within a period ending 1 month before the end of the 3 year holding period-

(a) expended all the funds raised on research and development,

and

(b) disposed of a specified intangible asset which has arisen as a result of such research and development, to another person for the purposes of that other person's trade,

or

Within 2 years commenced to carry on relevant trading activities and has expended all the funds raised on relevant trading activities or research and development (b)

Company winding up

Without interfering with the general conditions for a company to be a qualifying company, a qualifying company ceases to retain that status if at any time in the relevant period a resolution is passed, or an order is made, for the winding up of the company (or any act is done for the same purpose) or the company is dissolved without winding up. (9)

However, a company does not cease to be a qualifying company by reason of being (10)

wound up, or dissolved without winding up, if it can be demonstrated that the winding up or dissolution was for genuine commercial reasons (and not part of an arrangement mainly for avoiding tax) and steps are taken to distribute the company's net assets, if any, to its members within the relevant period or within 3 years of the commencement of the winding up.

Genuine commercial reasons need not be limited to insolvency but could include other matters, for example, a falling off of trade or a bona fide reconstruction.

Issued share capital

A qualifying company's share capital must not at any time in the relevant period include any issued share capital which is not fully paid up. This is consistent with the objective of the relief, that is, the issue of shares solely to provide additional capital for the company. **(11)**

Control

The existence of some form of direct or indirect control over, or by, a company may disqualify that company from being treated as a qualifying company. This status will be lost if, at any time in the relevant period the company — **(12)**
(a)(b)

- controls a second company,
- together with any person connected with the company, controls a second company,
- is under the control of a second company,
- is under the control of a second company and any person connected with that second company,
- is a 51 per cent subsidiary of a second company, or
- has a 51 per cent subsidiary.

Additionally, if at any time within the relevant period arrangements are in existence whereby one of these prohibitions could apply, the qualifying company status will be relinquished.

This provision does not apply to qualifying subsidiaries within the meaning of **section 505**. It also does not apply where the company is controlled by the National Asset Management Agency (NAMA) or a company referred to in **section 616(1)(g)** or where the company is a 51 per cent subsidiary of NAMA or a company referred to in **section 616(1)(g)**.

Anti-avoidance

A company in which a SURE investment has been made, is not to be a qualifying company, if during the relevant period, the company engages in dealings with the investor's immediate former employer company and such dealings are conducted on a non-arm's length basis. A company is also not to be a qualifying company where it carried on a trade which is similar to another trade which is under common control (that is, if an individual acquires a controlling interest in the company's trade after 5 April, 1984, and has had a controlling interest in another similar trade at any time in the period beginning 2 years before and ending 3 years after the date the shares issued or, if later, the date the company begins to trade). **(13)(a)**
& (16)

A similar trade is one which — **(13)(b)**

- is concerned with the same or similar types of property (or parts of property),
- provides the same or similar services or facilities, or

- serves substantially the same or similar outlets or markets, as the company’s trade (or a substantial part of it).

The purpose of this rule is to prevent relief being given where, for instance, the proprietor of company A channels all new contracts to company B after the shareholders of A had subscribed for B’s shares. Company A can then be wound up and its shareholders reimbursed. Without this rule, the minority shareholders of A would effectively get relief on the transfer of an existing business from one company to another without the injection of any new venture capital.

A company’s trade for these purposes includes the trade carried on by any of its subsidiaries. (17)

Controlling interest

An individual for the purposes of this section, is treated as having a controlling interest in a trade if — (14)

- in the case of a trade carried on by a company —
 - he/she controls the company,
 - the company is a close company and he/she (or an associate of him/her) is both a director of the company and 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 30 per cent of its ordinary share capital, or
 - he/she owns at least one half of the trade by reference to the test of ownership set out in *section 400(2)*,
- in any other case, he/she is entitled to not less than half of the assets used for, or the income arising from, the trade.

Associates

The rights or powers of any person’s associate count as his/her rights or powers for the purposes of the controlling interest tests. (15)

Firms in difficulty

Excluded from the scope of “qualifying companies” are companies while they are regarded as firms in difficulty for the purposes of the relevant EU Guidelines on State Aid for rescuing and restructuring such firms. (18)

495 Specified individuals

Summary

This section sets out the conditions which must be satisfied by an individual in order to qualify for SURE.

Details

Specified individual

Income test

This individual must not have been in receipt of income chargeable to tax other than employment income (whether from an employment in the State or abroad) in excess of (2)

the lesser of —

- the aggregate of the individual’s employment income, and
- €50,000

The income test applies for each of the three tax years before the tax year preceding the tax year in which the individual makes his/her first SURE investment. There is no restriction on the source of the individual’s income in the year which immediately precedes the year in which he/she makes that investment.

Share ownership test

The individual must, throughout a period (in this note and in the section referred to as the “relevant period”) — (3)

- of one year beginning on the date of issue of the shares, or
- where the company is not at that date carrying on the required trading operations, of one year beginning on the date it so begins to carry on such operations,

possess at least 15 per cent of the issued ordinary share capital of the company in which he/she makes a SURE investment. Where an individual makes two SURE investments this requirement applies in respect of both.

Restriction on ownership of other companies

The individual at the specified date in relation to his/her first SURE investment in a company or within a twelve-month period immediately preceding that date, either directly or indirectly, must not possess or have possessed or must not be or have been entitled to acquire more than 15 per cent of — (4)(b)

- the issued ordinary share capital,
- the loan capital (within the meaning of *section 492(5)*) and the issued share capital, or
- the voting power,

The “specified date” is — (4)(a)

- where the SURE investment consists of only one subscription for eligible shares, the date of that subscription, or
- where that SURE investment consists of more than one such subscription, the date of the last such subscription.

Dormant companies

An individual who fails one or more of the conditions as to ownership of other companies is not disqualified for relief by virtue of that ownership if the other company in which his/her 15 per cent interest in satisfies certain conditions. These conditions are that the company during a period of 3 years ending on the specified date in relation to an individual’s first SURE investment must — (5)

- have had no entitlement to assets other than cash or a sum of money on deposit not exceeding €130,
- not have carried on a trade, profession, business or other activity including the making of investments, and

- not have paid any charges on income within the meaning of *section 243*.

Exception for small companies

“an accounting period” is an accounting period determined in accordance with *section 27*. (6)(a)

A company is treated as carrying on wholly or mainly relevant trading activities, where it receives not less than 75 per cent of its total income from the trade over a period of 3 accounting periods in the case of tourist traffic undertakings and 90 per cent of its total income from the trade over a period of 3 accounting periods in the case of other relevant trading activities.

An individual is not to be treated as having failed to satisfy the requirements as to not owning more than 15 per cent of another company, merely because the individual fails to satisfy those requirements in relation to only one other company — (6)(b)

- which exists wholly or mainly for the purposes of carrying on relevant trading activities, and
- where that company’s turnover in each of the 3 accounting periods immediately preceding the accounting period of that company in which the specified date falls does not exceed €127,000.

Bona fide winding up

An individual is not regarded as ceasing to comply with the requirement to retain at least a 15 per cent ownership of the company for the relevant period referred to where he/she does so by reason of the company concerned being wound up for bona fide commercial reasons and not because of a tax avoidance scheme. (7)

496 Disposals of shares

Summary

The purpose of this section is to make it unprofitable for an investor to dispose of shares within a specified period after their purchase. Accordingly, it seeks to provide an incentive to him/her to leave his/her money in the company and thus fulfil the purpose of the relief which is to encourage long term investment in risk capital.

Where a shareholder disposes of his/her shares within the period (in this note and in the section referred to as the “relevant period”) —

- beginning with the incorporation of the company and ending 3 years after the date the shares issue, or
- if the company was incorporated more than 2 years before the shares issue, beginning 2 years before that date and ending 3 years after the shares issue,

and the shares are sold, other than at market value, the whole of the relief on those shares is withdrawn. Where shares are sold at market value, any relief given is reduced by the amount of the sale price. No withdrawal of relief occurs where the disposal of shares is between a married couple who for income tax purposes are treated as living together.

Details

Withdrawal of relief on disposal

Where a shareholder disposes of eligible shares within the relevant period (other than by an arm's length bargain) his/her entitlement to relief in respect of those shares is withdrawn. If he/she sells the shares at an arm's length price, the relief is reduced by the amount which he/she receives for the sale. (1)

For this purpose, "disposal" takes its ordinary dictionary meaning and, therefore, includes such "natural" disposals as gifts and exchanges in addition to sales. Its meaning is extended (by *section 488(2)*) to include a disposal of an interest or right in or over shares, and also share for share exchanges within the meaning of *section 587*.

A disposal otherwise than by way of a bargain at arm's length is not defined and accordingly takes its ordinary natural meaning (that is, disposal for a consideration which is not equivalent to the price which would have been obtained for them if sold on the open market).

Example

On 25 February 2014, X subscribes €20,000 for an issue of 20,000 shares of €1 each. He obtained relief under this Part amounting to €15,000 (Thirty fortieths of his investment) in 2014. He sold his shares in February 2015 for €12,000. On the assumption that this transaction was concluded at arm's length, the relief granted for 2014 must be reduced as follows —

| | |
|---------------------------------|---------------|
| | € |
| Full investment | 20,000 |
| value of consideration received | <u>12,000</u> |
| Revised investment | <u>8,000</u> |

Disposals by spouses/civil partners

The withdrawal of relief does not arise where a disposal is made by one spouse/civil partner to the other at a time when they are treated as living together for income tax purposes within the meaning of *section 1015 or of section 1031A*. (2)

If, however, following such a transfer of shares between spouses/civil partners the transferee disposes of those shares to a third party, within the relevant period the relief is to be withdrawn either to the full extent, where the disposal is not made by way of bargain at arm's length, or to the extent of the proceeds of the disposal where the disposal is by way of bargain at arm's length.

If, before this subsequent disposal takes place, the husband and wife/civil partners cease to be treated as living together for income tax purposes, any assessment for withdrawing relief arising from the disposal is to be made on the spouse/civil partner who makes the disposal to the third party.

Put and call options

References to an option or an agreement include references to a right or obligation to acquire or grant an option or enter into an agreement. Similarly, references to the exercise of an option include references to the exercise of an option which may be acquired or (3)(a)

granted by the exercise of a right, or under an obligation, to acquire or grant an option or enter into an agreement.

No relief is available in respect of shares to which an option or agreement of the type described in the following paragraphs relates. **(3)(b)**

An option obtained in the relevant period either directly or indirectly which when exercised would, either under the terms of the option or because of any arrangement or understanding which is subject to the option, oblige the person from whom the option was acquired or any other person to purchase any eligible shares for a price which, having regard to the terms of the option or the terms of any arrangement or understanding relating to the option, is other than the market value of the eligible shares at the time the purchase is made. **((3)(b)(i) (I)**

An agreement entered into in the relevant period either directly or indirectly the terms of which, or under the terms of any other agreement or arrangement which is subject to the agreement which, would require the person with whom the agreement is made or any other person to purchase, or result in that person or any other person in purchasing eligible shares at a price which having regard to the terms of the agreement or to the terms of any agreement or understanding which is subject to that agreement is less than the market value of the shares at the time of the purchase or acquisition. **(3)(b)(i)(II)**

An option granted in the relevant period either directly or indirectly which when exercised would, either under the terms of the option or because of any arrangement or understanding which is subject to the option, oblige the person who granted the option to dispose of any eligible shares to the person to whom the option is granted or to any other person for a price which, having regard to the terms of the option or the terms of any arrangement or understanding subject to the option, is other than the market value of the eligible shares at the time of the disposal. **(3)(b)(ii) (I)**

Similarly, in respect of any shares which are subject, either directly or indirectly, to an agreement which would require a person to dispose of eligible shares at a price that is less than the market value of the shares at the time of the disposal. **(3)(b)(ii) (II)**

Mixed shareholdings

Where an individual's holding of ordinary shares in a company partly consists of shares in respect of which relief has been given under this Part and partly of shares which do not attract relief, a disposal of ordinary shares, (except where the disposal is one to which **section 479(3)** or **section 512(2)** applies) is to be treated for the purposes of this section as relating to shares in respect of which relief was given under this Part. This prevents avoidance of the retention rule by providing that relieved shares are to be treated as disposed of before unrelieved shares of the same class. **(4)**

Priority of disposal

Shares in respect of which relief has been given which are issued earlier are to be treated as disposed of before similar shares issued later. **(5)**

Example

X subscribes for shares issued by F Ltd as follows —

| Date | No. | Cost € |
|------------------|-------|-----------|
| 10 February 2012 | 1,000 | 1,500 |

| | | |
|----------------|--------|--------|
| 23 August 2012 | 7,500 | 18,000 |
| 14 May, 2013 | 10,000 | 31,750 |

No relief was available for the holding acquired on 10 February 2012. Initially full relief was obtained in 2012 for the subscription made on 23 August, 2012, and relief of €31,750 was allowed in 2013.

X subsequently made the following disposal, by way of bargain at arm's length —

| Date | No. | Proceeds € |
|----------------|-------|---------------|
| 15 March, 2014 | 5,000 | 10,000 |

For the purpose of establishing whether relief should be withdrawn, the disposals must be matched with acquisitions as follows —

| | |
|------------------------------------|-------|
| Disposal 15 March, 2014 | 5,000 |
| Acquisition 23 August, 2012 (part) | 5,000 |

Where a disposal occurs within a period of 3 years following the date of share issue, the relief available under this Part is adjusted. The amount of relief which can finally be obtained, therefore, is shown below —

| | |
|---|---------------|
| Issue 23 August, 2012 – 7,500 shares | € |
| Not disposed of within 3 years – 2,500 shares | |
| Cost $\frac{2,500}{7,500} \times 18,000$ | 6,000 |
| Disposed of within 5 years – 5,000 shares | |
| Cost $\frac{5,000}{7,500} \times 18,000$ | <u>12,000</u> |
| Less disposal consideration | <u>10,000</u> |
| Revised relief 2012 | <u>2,000</u> |
| | <u>8,000</u> |

Bonus issue of shares

Where there is an allotment of shares to a company's shareholders in proportion to their holdings and that allotment is not made for any payment (for example, bonus issue), the shares comprising an individual's new holding (the original shares on which the relief was given plus the bonus shares) are to be treated as shares in respect of which relief has been given and any disposal of those shares within the relevant period is treated as a disposal of shares in respect of which relief has been given (a part disposal of the new holding being treated as a disposal of a corresponding part of both the original shares and the bonus shares). (6)

These rules avoid the problems of identification which would otherwise arise if the shareholder retains the original shares and undertook a disposal of the bonus shares as a means of obtaining a return of capital invested on which relief has been given. Thus, the purpose of the relief (that is, to encourage long term risk investment in the capital of a company) could be frustrated and the investor could obtain a substantial benefit at the expense of the Exchequer while recovering a portion of his/her investment through the sale of bonus shares. (6)

Example

X subscribed €10,000 for an issue of 10,000 ordinary shares in H Ltd on 4 September, 2012, which qualified for relief under this Part. The company made a bonus issue of two ordinary shares for each share held on 1 April, 2013, thereby increasing X’s holding to 30,000 shares. On 18 June, 2013 X realised €2,500 from the arm’s length sale of 12,000 shares.

The enlarged holding of 30,000 shares represents “a new holding” for the purposes of section 584(1). The disposal of 12,000 shares represents 40 per cent of the new holding and the relief must be restricted for 2012as follow—

| | | € |
|--------------------------------------|---------------|-------|
| Full relief | 60% x €10,000 | 6,000 |
| Restricted relief | 40% x €10,000 | 4,000 |
| Less value of consideration received | 2,500 | 1,500 |
| Revised relief | | 7,500 |

Shares of the same class

Shares in a company are not 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. (7)

497 Value received from company

Summary

Where an individual subscribes for shares in a company and then withdraws his/her capital in one form or another within a period (in this note and in the section referred to as the “relevant period”) —

- beginning with the incorporation of the company and ending 3 years after the issue of the shares, or
- if the company was incorporated more than 2 years before the shares were issued, beginning 2 years before that date and ending 3 years after that date,

any relief in respect of shares he/she has subscribed for in that company is reduced by the value he/she received.

SURE investors who make their initial investment by way of a loan to a company (instead of investing in shares) qualify for the relief subject to certain conditions being met. The individual will not be regarded as having received value from the company in that situation.

Details

“ordinary trade debts” are debts for goods or services supplied in the ordinary course of a trade or business where credit does not normally exceed 6 months and is not longer than that normally given to the customers of the person carrying on the trade or business. (1)

In the context of this section, “individual” is to be read as including that person’s associates. (2)

References to “the company” includes any person connected with the company. (2)(b)

Payments or transfers to an individual or an associate include payments or transfers made (2)(a)

indirectly or to that person's order or benefit

- An individual receives value from a company, where the company — (3)
- repays, redeems or repurchases any of its share capital or securities owned by the individual or pays the individual to renounce his/her rights to any such share capital or securities, ((3)(a)
 - repays any debt owed to the individual, however, an ordinary trade debt or a debt which is genuinely incurred by the company on or after the date he/she subscribed for the shares on which the relief is claimed (that is, a debt which is not simply in exchange for a debt incurred before that date) are not treated as the receipt of value, (3)(b)
 - makes any payment to the individual for giving up his/her rights to any debt on its extinguishment, (3)(c)
 - releases or waives any liability of the individual to the company or discharges any liability of the individual to a third person, (3)(d)
 - makes a loan or advance to the individual, (3)(e)
 - provides a benefit or facility for the individual, (3)(f)
 - transfers an asset to the individual for no consideration or for consideration less than its market value, or acquires from the individual an asset at more than its market value, or (3)(g)
 - makes any other payment to the individual. (3)(h)

Not treated as the receipt of value from a company are payments made to an individual for giving up his/her rights to a debt on its extinguishment, being a debt connected with the payment or reimbursement of reasonable expenses or payment for services rendered to the company (other than secretarial or managerial services or services of a kind provided by the company itself), or reasonable payments for services the profit from which would be assessable under Case I or II of Schedule D, or a payment in respect of a debt which is an ordinary trade debt or other genuine debt. Also not treated as the receipt of value are — (3)(b)

- expenses payments made to employees or directors,
- interest at a commercial rate paid in respect of a loan,
- normal dividends,
- payments for goods purchased which do not exceed the value of the goods,
- reasonable remuneration for employees and directors,
- reasonable payments for services the profit from which would be assessable under Case I or II of Schedule D.

- A specified individual will not have received value from a company where— (4)
- an investment in the company by the specified individual was by means of a loan, (4)(a)(i)
- and the loan is converted into eligible shares within one year of the making of the loan, (4)(a)(ii)
- and
- the specified individual provides a statement by the company's auditor that the money raised by the loan was used solely for the purposes referred to in *section* (4)(a)(iii)

493(1)(d).

Conversion of the loan into eligible shares is treated as the making of a relevant investment by the specified individual on the date the loan was made. (4)(b)

Although the winding up or dissolution of a company undertaken for bona fide commercial reasons does not destroy the ability of that company to be treated as a qualifying company (see *section 494(10)*), any payment or asset which an individual receives in the relevant period by reason of such a winding up or dissolution is treated as value received from the company. Effectively it would be redemption or part redemption of his/her shares. (5)

Where a shareholder receives his/her money back from someone connected with the company (within the meaning of *section 492*) rather than the company itself, the amount received from that person is treated as value received by the shareholder from the company. (6)

Rules are provided for the measurement of the amount of any value received in accordance with any of the methods described in *subsections (3), (4) and (5)*. (7)

A company is to be taken as having released or waived a liability (for the purpose of determining whether value has been received) if the liability is not discharged within 12 months of the time when it ought to have been discharged. (8)

The term “loan” is to include the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company and the amount of any debt due from the individual to a third person which has been assigned to the company. (9)

Where an individual receives value from a company within the relevant period that amount is to be deducted from the relief to which he/she would otherwise be entitled. (10)

Where relief is to be reduced by reason of the receipt of value the relief is to be reduced in respect of shares issued earlier rather than in respect of shares issued later. (11)

498 Replacement capital

Summary

This section is designed to prevent company funds being used directly or indirectly to acquire assets from an individual in return for his/her subscribing for shares. Where this occurs the relief available under this Part must be entirely withdrawn.

Details

“subsidiary” is a subsidiary which a qualifying company may have by virtue of *section 505*. (1)

“trade” includes any business, profession or vocation, and a reference to a trade previously carried on include a reference to a part of such a trade.

Relief in respect of shares in a company is denied to an individual to which this section applies where during the period (in this note and the section referred to as the relevant period) — (2)

- beginning with the incorporation of the company and ending 3 years after the issue of the shares, or
- if the company was incorporated more than 2 years before the shares were

issued, beginning 2 years before that date and ending 3 years after that date,

the company, or one of its subsidiaries, either takes over a trade which was previously carried on by some other person or acquires all, or nearly all, of the assets used for the purposes of such a trade.

The individuals or groups of individuals who are denied relief in accordance with this section are individuals or groups of individuals who during the relevant period have an interest amounting to more than a half share in both the trade which was previously carried on and the trade as carried on by the company or one of its subsidiaries, or control both the company which previously carried on the trade and the company whose shares would otherwise be the subject of a relief claim and which, or one of the subsidiaries of which, currently carries on the trade. (3)

Relief in respect of shares in a company is denied to an individual who is one of a group which at any time in the relevant period controls the company if the company acquires all the share capital of another company which at any time in that period the individual or that group also controlled. (4)

Subsections (1)(a) and (b), (2) and (3) of section 400 are to be applied when determining the identity of the person to whom a trade belongs. Any interest, rights or powers of a person who is an associate of another person are to be treated as those of that other person. (5)

499 Value received by persons other than claimants

Summary

This section ensures that the subscription price received by a company from an individual for the issue of eligible shares is not effectively used to make capital repayments to some other member of the company. Otherwise the aim of the relief, to increase the capital of the company, would be thwarted even though the relief would have been given.

Capital repayments by the company to some person other than the individual claiming relief or another individual whose relief would thereby be reduced under *section 497* will result in the amount of relief otherwise available to that individual being reduced or eliminated entirely.

Details

A reduction in the relief available to an individual under this Part occurs, if during the period (in the note and in the section referred to as “the relevant period”) — (1)

- beginning with the incorporation of the company and ending 3 years after the issue of the shares, or
- if the company was incorporated more than 2 years before the shares were issued, beginning 2 years before that date and ending 3 years after that date,

the company repays, redeems or repurchases any of its share capital which belongs to any member other than —

- the individual claiming relief (which situation is already dealt with in *section 497(3)*), or (1)(a)
- another member whose relief is reduced by reason of *section 497(3)* (which (1)(b)

deals with the receipt of value by a claimant from the company).

The reduction in relief also applies if the company makes any payment to any member, other than such a member for giving up his/her right to any of the company's share capital on its cancellation or extinguishment. (1)(b)

The reduction in relief does not apply in relation to the redemption of share capital where the redemption date was fixed before 26 January, 1984. (2)

The reduction in relief does not apply in the case of the redemption of share capital within 12 months of its issue which is share capital issued after 5 April, 1984 and which is of nominal value equal to the authorised minimum required for a public company to do business by section 6 of the Companies (Amendment) Act, 1983, and after the Registrar of Companies has issued the company with a certificate under that section the company issues eligible shares. (3)

The relief available to the individual is to be reduced by the amount received by the member in question or, if greater, the nominal value of the share capital which has been redeemed, etc. Where 2 or more individuals would have been entitled to the relief reduction is to be made in proportion to the amounts of relief to which they would otherwise have been entitled. (4)

Where during the relevant period a member of a company receives value from the company, then, for the purposes of the "30 per cent" rule in *section 492(4)* the amount of the company's issued ordinary share capital and the amounts held by each person (which includes shares which the individual directly or indirectly possesses or entitled to acquire) are treated as reduced. For this purpose the nominal value of the ordinary shares of the claimant is reduced in the proportion which the amount of value he/she has received bears to the amount subscribed for those shares by the claimant and the total nominal value of the ordinary shares held by all members is the sum of the individual holdings after adjustments for value received. (5)(6)(7)

The receipt of value means the situations described within *paragraphs (d), (e), (f), (g) or (h)* of *section 497(3)*, except that payments made for full consideration are not included in *paragraph (h)*. (8)

A person is treated as entitled to receive anything which he/she is entitled to receive at a future date or which he/she will at a future date be entitled to receive (for example, by exercising an option). (9)

Any relief to be withdrawn under this section from an individual who has received eligible shares in the company at different times is to be withdrawn in respect of those issued earlier rather than those issued later. (10)

500 Prevention of misuse

This section is a general anti-avoidance provision which provides that relief is only available for shares which are subscribed and issued for bona fide commercial purposes and not for reasons of tax avoidance.

501 Claims

Summary

This section provides the procedure for claiming relief.

Claims for relief

- A claim to the relief shall be made **not earlier than** - (1)(a)
- In the case of an investment under SURE the date on which the company commences to carry on relevant trading activities or a company has expended not less than 30 per cent of the relevant investment on research and development activities which are connected with and undertaken with a view to the carrying on of relevant trading activities. (1)(a)(i)
 - In the case of accompany which had not commenced relevant trading activities at the time the eligible shares were issued and does not begin to carry on relevant trading activities , the time of the disposal and in any other case the end of the period of four months, following the commencement of trading, as provided for in **section 489(4)(a)** in the case an investment under the Employment and Investment Incentive (EII), (1)(a)(ii)

In the case of the relief on the ten fortieths under section 489(2)(b), the date on which the relevant period ends, (1)(a)(iii)

and

- A claim to the relief shall be made **not later than** - (1)(b)
- two years after the end of the year of assessment in which the shares were issued, in tandem with the commencement of trading requirement provided for in **section 489(4)**, which linked condition is re-emphasised here, for the avoidance of doubt, or (1)(b)(i)
 - three months after the date that the statement, in the required format, is furnished to the Revenue Commissioners, by the qualifying company or its agent, where such statement is furnished within the three months prior to the expiry of the time specified in **subparagraph (1)(b)(i)** above. (1)(b)(ii)

A claim for relief must be accompanied by a certificate from the company in which the investment is made certifying that it satisfies, as regards the company and the trade, the conditions for relief. (2)

Before a company can issue such a certificate it must furnish the inspector with a statement showing that, in relation to the company and the trade, all conditions necessary for relief have been satisfied throughout the period — (3)

- beginning on the date the shares issued and ending 3 years later, or
- where the company was not at that date carrying on a qualifying trade, beginning on the date the shares issued and ending 3 years after the date the company subsequently began to carry on such a trade.

No such certificate can be issued without the authority of the inspector or where if, after the issue of eligible shares but before the admission of a claim, the company has received information that some event has occurred which would lead to a withdrawal of the relief. (4)

The statement from the company (under **subsection (3)**) must be made in the manner prescribed by the Revenue Commissioners and contain all such information as may be reasonably required. It must also contain a declaration from the company that the statement is correct to the best of the company's knowledge and belief. (5)

Penalty

A company shall be liable to a penalty of €4,000 where it has issued a certificate under (6)

subsection (2) or has furnished a statement under *subsection (3)*, that is false or misleading, or where it has furnished a certificate in contravention of *subsection (4)*. Where a certificate is issued either without the authority of the inspector or if the company has information that an event has occurred which would trigger the withdrawal of relief (*subsection (4)*), the penalty is €4,000.

PAYE

The relief may be given under PAYE, but only if a claim for relief has been made and admitted. (7)

Interest on overdue tax

Any amount of interest imposed by *section 1080* (interest on overdue tax) in a case where tax is not paid by the due date remains unaffected by the fact that relief may be due under the scheme for the year in question. Unless paid earlier or due and payable later such part of the tax outstanding equivalent to the amount of the relief due is to be treated as paid on the date the claim is made. *Section 1081* which provides for the writing off of interest due on an amount of tax which is subsequently discharged because of a claim to a personal relief is not to apply to any amount of tax which is discharged or repaid by reason of relief under this Part. (8)

The interest charge on tax outstanding is to run up to the date on which the tax is paid or the claim to relief under this Chapter is made, whichever is the earlier.

A claim for relief under either *section 489(2)* or *section 493* will not be allowed unless at the time the claim is made the company qualifies for a tax clearance certificate under *section 1095*. (9)

502 Assessments for withdrawing relief

Summary

Where an event occurs which results in the withdrawal of relief already granted, the withdrawal is to be made by means of a Schedule D Case IV assessment for the tax year for which the relief has been given. Assessments withdrawing relief may be made up to 4 years after the end of the tax year in which the event giving rise to the withdrawal occurs, although extended time limits apply in the case of fraud or neglect. However, no assessment withdrawing relief is to be made by reason of an event occurring after the individual's death.

Details

If an event occurs which results in the withdrawal of relief which has been given, the withdrawal is to be achieved by the making of an assessment under Case IV of Schedule D for the year of assessment in which the relief was given (and not for the year in which the event leading to the withdrawal occurred). (1)

Where a husband and wife/civil partners cease to be jointly assessed to tax, any assessment for withdrawing relief which arises on a disposal of shares is to be made on the person who made the disposal. The amount of the assessment will comprise the reduction flowing from the relief granted disregarding both the allocation of that relief between the spouses/civil partners under separate assessment and any repayment of tax under the year of marriage/registration of civil partnership provisions. In other words, the relief is to be recovered from the individual making the disposal irrespective of where in (2)

the pool of a family's finances the tax flowing from the relief has gone.

An assessment which is required because of an event occurring after the date of the claim may be made within 4 years after the end of the year of assessment in which that event occurred. (3)

No assessment is to be raised by reason of an event occurring after the subscriber's death. This is to apply despite the fact that this event takes place within the appropriate relevant period following the issue of shares. This provision would not, however, preclude the withdrawal of relief where an event occurs before the death or disposal but only comes to light subsequently, or when it is later shown that there was a scheme or arrangement for the avoidance of tax within the meaning of *section 500*. (4)

Where the claimant disposes of all ordinary shares issued to him/her by a company, and the relief has been reduced under *section 496(1)(b)*, there is to be no further withdrawal of relief by reason of events taking place subsequent to the disposal date, unless the event occurs at a time when the individual is connected with the company (as defined in *section 492*). This connection would entail total denial or withdrawal of relief. (5)

(This provision has no application where the disposal of shares was not made on an arm's length basis, as a transaction of this nature will be sufficient, again under *section 496*, to eliminate all relief previously granted).

Section 959AD applies so as to secure that where an act of fraud or neglect has been committed an assessment within the meaning of this section can be raised at any time rather than within the time limit provided for in *subsection (3)*. (6)

Specific rules apply for determining the date from which interest on overdue tax (charged under *section 1080*) starts to run where a Case IV assessment is made to withdraw relief by reason of an event occurring after the date of a claim. Such interest is to be charged from — (7)

- the date of the event giving rise to the withdrawal, where the withdrawal is made by virtue of —
 - the individual ceasing to qualify for relief (*section 492*),
 - the company ceasing to be a qualifying company (*section 494*),
 - a trade ceasing to be a relevant trading activity (*section 494*),
 - the company replacing capital (*section 498*), and
 - any value is received by non-qualifying individuals (*section 499(1)*),
- the disposal date, where eligible shares are disposed of (*section 496(1)*),
- the date the qualifying individual receives any value from the company (*section 497*),
- the date the relief was granted, where it is determined that the subscription was part of a tax avoidance scheme or arrangement (*section 500*) (however, where the relief was granted to an individual, who is taxed under PAYE, the withdrawal will take effect from the 31st December in the tax year in which the relief was granted),
- the date a SURE investor fails or ceases to hold full time employment in the SURE company or where a SURE investor ceases to be a qualifying individual for the purpose of the scheme.

The date on which relief is granted is the date on which the claimant received a repayment of tax or the date on which the inspector issued a notice to the claimant showing that his/her tax liability has been reduced by the relief, as appropriate. (8)

503 Information

Summary

This section provides that where an event occurs requiring the withdrawal of relief, notification by the company and persons connected with the company, or in certain instances, by individuals, must be made to the inspector. In addition, the inspector has powers to require information.

Details

An individual who has obtained relief is obliged to give notice in writing to the inspector, within 60 days of coming to know of certain events which would lead to a withdrawal of that relief. These events are where — (1)

- the individual becomes connected with the company (*section 492*);
- the individual disposes of eligible shares in the company (*section 496*);
- the individual disposes of shares transferred by his/her spouse or civil partner at a time when they are living together (*section 17(2)*);
- the individual receives value from the company (*section 497(1)*).

The company, and any person connected with the company who has knowledge of the matter, is obliged to notify the inspector in writing within 60 days of the event, if relief is to be withdrawn because of the occurrence of one of the following events — (2)

- the company ceases to be a qualifying company (*section 494*);
- the company ceases to be carrying on a relevant trading activities (*section 494*);
- the company gives value to any of its shareholders (*sections 497 and 499*);
- the company does anything which disqualifies an individual from the relief under the replacement capital rules (*section 498*);
- the eligible shares on which relief has been claimed were not issued for bona fide commercial purposes (*section 500*).

In the case of a connected person, the 60 day period runs from the date of his/ her coming to know of the event.

Where an inspector has reason to believe that a person has failed to give such a notice, he/she may require that person, by a notice in writing, to furnish him/ her with such information relating to any event as the inspector may reasonably require for the purposes of this Part. The time limit prescribed by the inspector for furnishing the information must not be less than 60 days. (3)

Where there has been a claim for relief the inspector may serve a notice, requiring the provision of information, on the person concerned (being the claimant in the case of *section 492(11)*, the company and any person controlling it in the case of *section 494(12)* and both in the case of *section 500* should he/she have reason to believe that certain events justifying the refusal of relief have occurred. These events are — (4) & (5)

- the person claiming relief has subscribed for the company's shares as part of any arrangement which provides for another person to subscribe for shares in another company with which that individual, or any other individual who is a part to the arrangement, is connected (*section 492(11)*);
- the company exercises or acquires some form of direct or indirect control over another company or comes under the control of another company (*section 494(12)*);
- the shares have been subscribed for and issued as part of a scheme, the main purpose or one of the main purposes of which is the avoidance of tax (*section 500*).

Where relief has been granted in respect of shares in a company, an inspector is able to trace the ultimate beneficiary where value passes from the company in the form of a payment or asset which may constitute value received within the meaning of *section 497* or *section 499(5)*. The recipient of such a payment or asset and any person on whose behalf it was received can be required by an inspector to state whether the payment or asset received by him/her was received on behalf of another person and if so to give the name and address of the person on whose behalf it was received. (6)

Where relief has been claimed in respect of shares, an inspector is entitled to ascertain the name and address of the beneficial owner of the shares not only where they are held in the name of a nominee but also where they are held through a series of nominees. (7)

Accordingly, where any relief has been claimed, the inspector is empowered to require any person who holds or has held shares in the company, and any person on whose behalf any such shares are or were held, to state whether they are or were held on his/her address of that other person.

No obligation of secrecy can preclude an inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares. (This power would not, however, entitle him/her to disclose which or whose shares have been the subject of relief). (8)

504 Capital gains tax

Summary

This section sets out the capital gains tax treatment on the disposal of qualifying shares.

Details

In computing a capital gain or loss on the disposal of shares in respect of which relief has been granted no account is taken of the relief granted where sums allowable as a deduction (that is, the cost of acquiring the shares plus indexation relief) do not exceed the consideration arising on the disposal. However, where there is a loss on the disposal the sums allowable as a deduction are reduced by the lower of — (1)

- the amount of the relief granted, and
- the excess of the allowable sums over the consideration.

This reduction will normally result in a no gain/no loss situation. These rules do not, apply to disposals made between a husband and wife/civil partners living together.

Where an individual disposes of part only of his/her shareholding or has an aggregate holding of shares in a single company, some of which have and some which have not qualified for relief, it is necessary to identify the shares disposed of and to determine (2)

whether, and to what extent, they relate to shares which have obtained relief which has not been withdrawn. In such cases disposals are to be identified with acquisitions in the following order —

- firstly, shares for which relief has been obtained,
- secondly, other shares.

In the case of shares in respect of which relief was granted, shares acquired earlier are treated as having been disposed of before other shares acquired later.

To enable an individual's shares on which relief has been given and not wholly withdrawn to be traced through a reorganisation of share capital (for example an allotment of bonus shares or an alteration of class rights affecting both the individual's relieved and unrelieved shares in the company) the rule in **section 584(3)** (that the original shares and the new holding are treated as the same asset) applies separately to the relieved set of shares and the unrelieved set. Each set of shares, therefore, is treated as a separate holding of original shares and identified with a separate new holding. (3)

If bonus shares are issued, those attributable to the original shares for which relief has been given will be treated as having obtained relief, while those attributable to the unrelieved shares will not.

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. (4)

505 Application to subsidiaries

Summary

This section provides for a qualifying company to have one or more subsidiaries.

Details

Where certain conditions are satisfied a qualifying company may, in the period (in this note and the section referred to as “the relevant period”) — (1)

- beginning on the date on which the shares were issued and ending 3 years after that date, or
- where the company was not at that date carrying on relevant trading operations, beginning on the date the shares were issued and ending 3 years after the date on which it started to carry on the trade,

have one or more qualifying subsidiaries. A subsidiary company must satisfy the following conditions —

- it must throughout the relevant period be an unquoted company resident in the State or an EEA State, and be a company which carries on relevant trading activities from a fixed place of business in the State, or
- it must throughout the relevant period exist solely for the purpose of carrying on a trade which consists of any one or more of the following trading operations —
 - the purchase of goods or materials for use by the qualifying company or its subsidiaries,

- the sale of goods or materials produced by the qualifying company or its subsidiaries, or
- the rendering of services to or on behalf of the qualifying company or its subsidiaries.

In addition to the above the following conditions must also be satisfied — (2)

- the subsidiary must be a 51 per cent subsidiary of the qualifying company,
- no other person must have control of the subsidiary within the meaning of *section 11* (that is, no other person must be able, by means of their shareholding or voting power or by means of powers conferred by the articles of association, to secure that the affairs of the company are conducted in accordance with that person’s wishes),
- arrangements must not exist whereby these conditions could cease to apply.

These conditions must be satisfied until the end of the relevant period, but will not be regarded as having been breached merely because, within that period, the holding company, or a subsidiary of that company, is wound up (or dissolved without winding up) for bona fide commercial reasons and not as part of a tax avoidance device. Where this happens the assets of the company must be distributed to its members before the end of the relevant period or within 3 years of the winding up, whichever is the later. (3)

Where a qualifying company has one or more subsidiaries in the relevant period, this Part applies subject to *Schedule 10*, which contains other detailed adjustments to cater for a company with qualifying subsidiaries. (4)

506 Nominees and designated funds

Summary

This section provides for shares to be subscribed for by an individual through a nominee or a designated fund. Relief is available to the individual on whose behalf the nominee is acting. Relief is also available by investing through a designated fund approved by the Revenue Commissioners. The section sets out certain general rules which must be complied with in order for a fund to be a designated fund.

Details

Nominee shareholders

Shares issued by a company and registered in the name of a nominee are treated for all the purposes of this Part as if the shares were registered in the beneficial owner’s name. All acts of the nominee in relation to such shares are treated as acts of the beneficial owner. (1)

Designated funds

Relief is only to be given where a subscription for eligible shares is made as nominee for an individual by the manager of an investment fund “designated” by the Revenue Commissioners and the minimum subscription amount of €250 laid down in *section 490(1)(a)* is not to apply in such circumstances. (2)

Consultation

The Revenue Commissioner may consult with any person or body of persons which they consider might be able to assist them in “designating” a fund for the purpose of the relief (3)

and subject to such conditions as they think proper they may designate an investment fund for the purposes of this Part.

Withdrawal of designation

The Revenue Commissioners may by notice in writing withdraw the designation given to an investment fund. In such circumstances the fund will cease to be a designated fund as and from the date such notice is published in *Iris Oifigiúil*. (4)

Certificates

Where a designated fund has subscribed for eligible share as nominee for an individual, the certificate from the company required by **section 501(2)** to accompany a claim for relief must be made by the company to the fund managers. The taxpayer must send with his/her claim for relief a certificate from the managers, in a form authorised by the Revenue Commissioners, certifying that the managers hold the company's certificate under **section 501(2)** for the eligible shares in question. (5)

Returns

The managers of a designated fund must furnish, if required by notice to do so by an inspector or other Officer of the Revenue Commissioners, a return of all eligible shares for which they issued certificates in accordance with **subsection (5)** in the year of assessment to which the return relates. (6)

Penalties

Section 501(6) which provides for penalties for companies who issue certificates fraudulently or negligently, does not apply in relation to a certificate issued by a manager of a designated fund for the purposes of **subsection (5)**. Thus, responsibility for a false certificate issued by a company to an investment fund rests with the company and is not passed on to the managers who issued a certificate based on the company's certificate. (7)

Conditions for designation

Guidelines are set out in the form of rules which must be followed in relation to investment funds if the shares subscribed for through such funds are to attract relief under this Part. These rules do not prejudice the general terms of **subsection (3)** in regard to such consultation by the Revenue Commissioners as they consider might assist them in designating a fund. The fund must be established under irrevocable trusts and be for the sole purpose of enabling "qualifying individuals" (**section 492**) to invest in "eligible shares" (**section 488(1)**) of a "qualifying company" (**section 494**). The same conditions which are applied to direct investors under other sections of this Part, apart from the minimum investment provided for in **section 490(1)(a)**, apply to investors who invest through a designated investment funds. It must be emphasised that these rules, with the exception of the final one have been included in the scheme solely for the protection of investors and not with a view to limiting the relief. If the final rule were not made, a participant could avoid the minimum subscription laid down by **section 490(1)(a)** by investing through a fund and then having the shares transferred into his/her own name. (8)(a)(b)

The terms of the trusts under which the investment funds are established must provide that — (8)(b)

- all of the fund is to be invested in eligible shares, without delay, (8)(b)(i)
- the fund subscribes exclusively for shares which will entitle the participants to (8)(b)(ii)

relief,

- money subscribed to the fund must, while awaiting investment, be placed on deposit in a separate account in a licensed bank in the State, (8)(b)(iii)
- interest or dividends received by the fund must be paid over without undue delay to the participants – the rate of management fees must be stated in the trust deed establishing the fund, (8)(b)(iv)
- management expenses and other expenses incurred in connection with the setting up of the fund, the winding down or termination of the fund must not exceed the rate specified in the trust deed establishing the fund, (8)(b)(v)
- audited accounts of the fund are submitted to the Revenue Commissioners each year as soon as possible after the end of the period for which the accounts are made up, (8)(b)(vi)
- managers or trustees, or their associates, are not connected either directly or indirectly with any company whose shares have been subscribed for by the fund, (8)(b)(vii)
- any discounts on shares purchased by a fund are passed on to the participants only, (8)(b)(viii)
- the fund should be open for participation up to a stated limit date and that the closing date for the receipt of monies from participants should be before the making of any investment by the fund, (8)(b)(ix)
- if the fund has a maximum limit or if a minimum amount is required from a participant, any subscriptions not accepted are to be returned without delay, (8)(b)(x)
- the shares subscribed for on behalf of a participant remain in the names of the fund managers as nominees until 3 years have passed since the shares were issued to the fund. (8)(b)(xi)

Nomination of officer

The Revenue Commissioners may nominate an inspector or other officer to perform acts and discharge functions under this section. (9)

507 Reporting of relief

Summary

The Revenue Commissioners may request information from qualifying companies and the managers of designated funds in relation to the EII, and SURE schemes and may make this information available as required in connection with European Commission reporting requirements in relation to the approval of State aids.

Details

Obligation to give information

A qualifying company or the manager of a designated fund, when requested by way of written notice by the Revenue Commissioners, is obliged to provide the information requested to the Commissioners in a timely manner. This information is needed for: (1)

- Annual reports that must be made to the European Commission on foot of the relevant European Community Guidelines relating to State Aid promoting risk capital (1)(a)

investments in small and medium-sized enterprises.

- Publishing the following information in respect of all qualifying companies: **(1)(b)**
 - (i) the name of the company;
 - (ii) the address of the company;
 - (iii) the Companies Registration Office (CRO) number of the company;
 - (iv) the amount of finance raised;
 - (v) the date the shares were issued and the type of relief (i.e. EII or SURE).

Waiver of secrecy

The information supplied to the Revenue Commissioners in accordance with ***subsection (2) (1)*** can be made available by the Revenue Commissioners notwithstanding the provisions of ***Section 851A***.

Delegation

The Revenue Commissioners may delegate to any of their officers any of the functions **(3)** authorised by the section to be discharged by the Revenue Commissioners.

The information supplied to the Revenue Commissioners in accordance with ***subsection (4) (1)*** can be published by them notwithstanding the provisions of ***Section 851A***

Penalties

Failure by a person to provide the required information to the Revenue Commissioners **(5)** will result in a penalty of €2,000 and a further penalty of €50 a day if the failure continues beyond the 30-day time limit mentioned in ***subsection (1)***.