

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 16

Relief for Investment in Corporate Trades

December 2021



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**Notes for Guidance - Taxes Consolidation Act 1997
Finance Act 2021 edition**

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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 Relief for Entrepreneurs] formerly known as the Seed Capital Scheme [SCS]) and the Start-Up Capital Incentive (SCI).

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 (1) “participator” being replaced by one to “persons”.

“company” means a body corporate;

“compliance period” means the pre-investment period and the relevant period.

“control” is construed in accordance with *subsections (2) to (6)* of *section 432*.

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

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

“General Block Exemption Regulation” means Commission Regulation (EU) No. 651/2014 of 17 June 2014.

“innovation” means process innovation or organisational innovation. Innovation can be implementing a new organisational method, or a significant improvement in production or delivery methods.

“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).

“organisational innovation” means the implementation of a new organisational method in an undertaking’s business practices, workplace organisation or external relations, other than –

changes that are based on organisational methods already in use in the undertaking,

changes in management strategy, mergers and acquisitions, or any of the following –

- (i) ceasing to use a process,
- (ii) simple capital replacement or extension,
- (iii) changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes, or
- (iv) trading of new or significantly improved products.

“PPS Number” has the meaning assigned to it in section 891B(1) (that is, in relation to an individual, means the individual’s personal public service number).

“pre-investment period”, in relation to relief in respect of any eligible shares issued by a company, means the period beginning 2 years before the shares were issued, or if later, beginning on the date the first company in the RICT group was incorporated and ending immediately before the subscription for eligible shares.

“process innovation” means the implementation of a new or significantly improved production or delivery method (including significant changes in techniques, equipment or software), other than –

- (a) minor changes or improvements,
- (b) increases in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use, or
- (c) any of the following –
 - (i) ceasing to use a process,
 - (ii) simple capital replacement or extension,
 - (iii) changes resulting purely from changes in factor prices, customisation, localisation, regular, seasonal and other cyclical changes, or
 - (iv) trading of new or significantly improved products.

“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 period” in relation to relief in respect of any eligible shares issued by a company, means the period beginning on the date on which the shares were issued and ending 4 years after that date.

“relief” means a deduction from total income granted under this Part, and includes reliefs granted on a share issue at any time after 6 April 1984 (and the foregoing reference to this part includes this Part as it stood enacted at any time before the commencement of section 23 of the Finance Act 2018 or, as the case may be, the commencement of section 33(1)(a) of the Finance Act 2011) and *subsection (2)* supplements this definition;

“R&D+I” means research and development activities (within the meaning of *section 766*) and innovation.

Relief

A reference to relief is a reference as it operates under one or all of *section 502*, *section 503* (SCI) and *section 507* (SURE). (2)

Disposal of shares

A disposal of shares is treated as occurring on the disposal of an interest or right in or over those shares, including an exchange of shares pursuant to *section 587*. *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. (3)

Reduction of amounts

References in this Part to the reduction of any amount include references to its reduction to nil. (4)

General Block Exemption Regulations

A word or expression that is used in this Part and is also used in General Block Exemption Regulation shall have the meaning in this Part that it has in that Regulation. (5)

489 The relief

489. Interpretation (Chapter 2)

(1) In this Part—

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

‘*financial activities*’ means the provision of, and all matters relating to the provision of, financing or refinancing facilities by any means which involves, or has an effect equivalent to, the extension of credit;

‘*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;

'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;

'linked businesses' means two or more businesses that are regarded as linked enterprises, within the meaning of Annex 1 to Commission Regulation (EU) No. 651/201 of 17 June 2014 of the General Block Exemption Regulation, (commonly referred to as “GBER”)

'partner businesses' means two or more businesses that are regarded as partner enterprises, within the meaning of Annex 1 to Commission Regulation (EU) No. 651/201 of 17 June 2014 of the General Block Exemption Regulation, (commonly referred to as “GBER”)

'qualifying subsidiary', has the meaning assigned to it by *section 492*

'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 professional services (within the meaning of [section 128F\(1\)](#)),
- (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 such activity is a tourist traffic undertaking (within the meaning of [section 491](#)),

- (h) operations carried on in the coal industry or in the steel and shipbuilding sectors, and
- (i) the production of a film (within the meaning of [section 481](#));

‘*RICT group*’ means the company concerned (that is to say the company referred to in the provision concerned of this Part), its partner businesses and linked businesses, and references to a RICT group shall be taken to refer to any RICT group of which the company is part, and—

(a) for the purposes of [section 496\(5\)](#), includes any company that was, at any time, part of a RICT group with the qualifying company or its qualifying subsidiaries

(b) for the purposes of [sections 500](#), [508P](#) and [508R](#), includes any company which is at any point during the compliance period a subsidiary of the qualifying company, whether it becomes a subsidiary before, during or after—

(i) the year of assessment in respect of which the individual concerned claims relief and whether or not it is such a subsidiary while he or she is a partner, director or employee, or has an interest in the capital of the company, mentioned in [section 500\(2\)\(b\)](#), or

(ii) the individual concerned receives any value from it;

RICT meaning ‘Relief for Investment in Corporate Trades’.

‘*SME*’ means a RICT group that would fall within the SME category of Annex 1 to Commission Regulation (EU) No. 651/201 of 17 June 2014 of the General Block Exemption Regulation, (commonly referred to as “GBER”)

‘*unlisted*’, in respect of a company, means a company none of whose shares, stock or debentures (within the meaning of [section 2](#) of the [Companies Act 2014](#)) are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—

(a) on the market known as the Euronext Growth market operated by the Irish Stock Exchange plc trading as Euronext Dublin, or

(b) on any similar or corresponding market of the stock exchange—

(i) in a Member State, or

(ii) in an EEA state other than the State.

490 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, Start-Up Capital Incentive (SCI) funds and/or Start-Up Relief for Entrepreneur (SURE) funds.

The RICT Group

The RICT Group 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”). (2)(a)(b)

The RICT Group shall not be an undertaking in difficulty. “Undertaking in Difficulty” takes its meaning as set out in the General Block Exemption Regulations.

As well as the company itself, each company in the RICT Group must be unlisted and have no agreement at the time of the share issue to become a listed company.

The company cannot be subject to a recovery order for State Aid previously granted and deemed illegal and incompatible with the internal market by the commission. The company must hold a tax clearance cert.

All company’s in the RICT Group must have their issued shares fully paid up throughout the relevant period. (3)(b)

Qualifying companies

For the purposes of Part 16 TCA 1997, a company shall be qualifying if it is incorporated in the State, in another EEA State or in the UK and complies with section 490 and section 491. (1)

Throughout the relevant period (as defined in section 488) the company seeking relief and in order to be a qualifying company, must be resident in the State, or in an EEA State other than the State, or resident in the United Kingdom. It must intend to carry on relevant trading activities from a fixed place of business in the State. (3)(a)

The company cannot at any time throughout the relevant period, control or with a person connected with it, control another company other than a qualifying subsidiary. The company cannot at any time throughout the relevant period be under the control of another company, unless that control is by the National Asset Management Agency, or by a company referred to in S616(1)(g). No arrangements can exist at any time in the relevant period whereby the company could not fulfil these criteria.

The company must exist wholly for the purpose of carrying on relevant trading activities or be a company whose business consists wholly of the holding of shares or securities or the making of loans to, one or more qualifying subsidiaries of the company. In the case of the latter, a company can in addition to these activities, carry on relevant trading activities also. These relevant trading activities must be carried on from a fixed place of business in the State. (4)(a)

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. (4)(b)

Company Winding Up

Without interfering with the general conditions for a company to be a qualifying company, a qualifying company will cease to retain that status if before the end of the relevant period, a resolution is passed, or an order is made, for the winding up for the company (or any other act is done for the like purpose) or the company is dissolved without winding up. (5)

However, a company does not cease to be a qualifying company by reason only of the fact that it is wound up or dissolved without winding up if it can be demonstrated that the winding up or dissolution is for genuine commercial reasons and (not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax), and the company's net assets, if any, are distributed to its members before the end of the relevant period or, in the case of a winding up, the end (if later) of 3 years from the commencement of the winding up. (6)

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.

S491 Qualifying companies (supplemental)

Internationally Traded Financial Services

(1)

“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).

In order to be a qualifying company, 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).

Tourist traffic undertakings

(2)

A company engaged in tourism activities, within the meaning of section 489, is not to be a qualifying company unless and until it has satisfied the Revenue Commissioners that the National Tourism Development Authority (trading as Failte 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. (2)(b)

In considering whether to approve a plan, the National Tourism Development Authority (trading as Failte Ireland) shall have regard only to the guidelines for the approval of plans 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 – (2)(c)

- 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, SCI and/or SURE funds raised should be used on promotional work abroad.

Green energy activities

“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. (3)(a)

“Green energy activities” refers to activities carried out with the purpose of 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

A company who is carrying on green energy activities will be considered to have commenced these activities when it has made an application for a grid connection agreement. (3)(b)

S492 Qualifying subsidiaries

Summary

This section provides for the conditions to be met in order for a subsidiary of a qualifying company to be a qualifying subsidiary

Details

As set out in section 490, a qualifying company may, upon certain conditions being satisfied, have one or more qualifying subsidiaries. In order for a subsidiary company to be a qualifying subsidiary it must satisfy the following conditions (1)

- 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 –

- o The purchase of goods or material for use by the qualifying company or its subsidiaries,
- o The sale of goods or materials produced by the qualifying company or its subsidiaries, or
- o 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 –

- The subsidiary must be a 51 per cent subsidiary of the qualifying company, (2)
- 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 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.

S493 Qualifying Investments

S493 Interpretation

“business plan” means a written business plan which contains details of product, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the investment is sought to support

“expansion risk finance investment” means the issue of eligible shares to fund entering a new product on the market or entering a new geographic market as set out under Paragraph 5 of the General Block Exemption Regulations.

“follow-on risk finance investment “ means the issue of eligible shares subsequent to an

initial risk finance investment or an expansion risk finance investment, as set out under Paragraph 5 and 6 of the General Block Exemption Regulations.

“initial risk finance investment” means the first issue of eligible shares other than an expansion risk finance investment, as set out under Paragraph 5 and 6 of the General Block Exemption Regulations.

S494 Eligible Shares

In this Part “eligible shares” means new shares forming part of a company’s share capital and which comply with this section. Where shares are subscribed for, issued to, held by or disposed of for an individual by a nominee, those shares shall be treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by that individual where the nominee has complied with the requirements of sections 892 and 894 in respect of those shares. (1)(2)

The shares, other than where relief under [section 507](#) (SURE) is claimed, may carry a right to preferential rights to a dividend or to repayment of capital on a winding up, and be redeemable. (3)

S495 Anti-avoidance: eligible shares

In this section “distribution” has the same meaning as in the Corporation Tax Acts. (1)

For the purposes of this section, an amount specified or implied shall include an amount specified or implied in a foreign currency. (2)

The person beneficially owning shares shall be deemed to be a reference to both that person and any person connected with that person. (4)

Relief from income tax shall not be allowed under this Part in respect of the amount subscribed for any shares to which this section applies. (5)

This section applies to shares in a company where any agreement, arrangement or understanding exists which could reasonably be considered to substantially reduce the risk that the person beneficially owning those shares might, at a time specified or implied by that, be unable to realise directly or indirectly in money or money’s worth an amount so specified or implied, other than a distribution, in respect of those shares. Or might not receive an amount so specified or implied of distributions in respect of those shares. (3)

Such agreements, arrangements or understandings may include the rights associated with the shares as set out in the company’s constitution other than those permitted under [section 494\(3\)](#). The terms of any shareholders agreement, or any other agreement, arrangement or understanding with any member of the RICT group or any person connected with any member of the RICT group, including personal guarantees from (6)

existing shareholders that the investor will be able to dispose of the shares after the relevant period, or rights over the assets of the qualifying company or its qualifying subsidiaries, in the event that the investor is not able to dispose of the shares after the relevant period.

S496 Qualifying investment (company perspective)

Summary

This section provides that an investment shall be a qualifying investment where an individual subscribes for eligible shares in a qualifying company, and the company uses that amount which has been subscribed wholly or mainly for a qualifying purpose within the relevant period, and the investment complies with this section. (1)

A qualifying purpose means using the amounts in the qualifying company, or a qualifying subsidiary for the purposes of carrying on relevant trading activities. If the company has not commenced to trade, means using the amounts for the purpose of carrying on R&D+I which is connected with and undertaken with the intention of carrying on of relevant trading activities. The use of the money will contribute directly to the creation or maintenance of employment in the company, and does not include using the amounts on the acquisition either directly or indirectly, of an interest in another company whereby that company becomes a qualifying subsidiary, a further interest in a qualifying subsidiary, or a trade. (2)

If only part of the amount subscribed is used wholly or mainly for a qualifying purpose then references to a qualifying investment shall refer to the corresponding proportion of that investment. (3)

An investment shall not be a qualifying investment unless it is based on a business plan. (4)

An initial investment which may be a qualifying investment will be one where a RICT Group makes its first investment, issuing eligible shares, and it is less than 7 years since it has made its first commercial sale, then it shall be a qualifying investment. (5)

A qualifying investment that is expansion risk finance investment shall only be qualifying where it is an investment made based on a business plan prepared specifically with the purpose of entering a new product or geographical market. The amount to be raised through the issue of those shares relating to the expansion risk finance investment must be greater than 50 per cent of the RICT group's average annual turnover in the preceding 5 years. (6)

A qualifying investment that is follow-on risk finance investment shall only be qualifying where the initial risk finance investment, or expansion risk finance investment, whichever the case may be, involved the issue of eligible shares on or after 6 April 1984 in respect of which relief was available under this Part, and the possibility of (7)

the follow-on risk finance investment was foreseen in the business plan upon which the initial risk finance investment, or expansion risk finance investment (if they had a new product or new market), whichever the case may be, was based.

S497 Limits on amounts a qualifying company can raise

Summary

This section provides that the maximum a RICT Group can raise under the EII is €15million. This €15 million maximum also includes amounts raised under SURE and SCI. Where companies are associated through a RICT Group, this overall maximum limit applies in relation to the amounts that can be raised by all companies forming the RICT group. A RICT Group through the issue of eligible shares may not raise more than €5 million in any twelve-month period. (2)

Details

The lifetime limit of €15 million applies in respect of the aggregate amount which a company and the companies within that RICT Group can raise through EII/SCI and SURE. (2)(b)

Where the lifetime limit has already been reached by a company and/or companies in the RICT Group, the company seeking relief under the scheme can raise no further amounts. Where the amount previously raised by a company and/or companies in the RICT Group is less than the allowable limit, the applicant company may only raise an amount equal to the difference between the amounts already raised and the allowable limit. (4)

Relief will not be given where a company and/or companies in the RICT Group raises more than €5 million whether it's in a single issue or where aggregate amounts raised through issues in any twelve month period. Where shares are issued to 2 or more people and as a result of the lifetime and annual limits they would be precluded on claiming relief, the relief available will be divided between them in proportion to the amounts which have been subscribed by them for the shares to which their claims relate and which otherwise apart from this section would be eligible for relief. (2)(a)

When determining whether these limits have been reached, no account shall be taken of amounts subscribed for eligible shares by someone other than the individual who qualifies for the relief. (5)

Account shall not be taken of an amount subscribed for eligible shares by a person other than an individual who qualifies for relief. (1)(a)

When determining eligible shares, this will include any shares issued on or after 6

April 1984 in respect of which relief was available under Part 16.

Any amount raised by another company that was a part of the RICT Group in which the company now seeking to raise eligible shares is also part of shall be included when determining if the limits set out have been reached. However, any amount raised when the company seeking to raise eligible shares is no longer part of that RICT Group, shall not be included. (1)(c)

S498 Qualifying investment (investment perspective)

An investment by an individual for an amount less than €250 in a year of assessment will not qualify for relief. (1)

If the individual who makes a qualifying investment is a married person or nominated civil partner assessed to tax for a year of assessment, any amount subscribed by the individual's spouse or civil partner for eligible shares, shall be taken to have been subscribed by the individual themselves for eligible shares issued to them by the company. (2)

S499 Anti-avoidance: qualifying investment (investor perspective)

Summary

This section provides the circumstances in which an investment made by an individual shall not be deemed to be a qualifying investment.

Details

If at any time during the compliance period, the company itself or any of its qualifying subsidiaries begins to carry on a business previously carried on at any time in that period otherwise than by that company itself or any of its qualifying subsidiaries or acquires the whole or greater part of the assets used for the purpose of a business being previously carried on, the investment will not be deemed a qualifying investment. (1)(a)

An individual or a group of persons who has an interest of greater than 50 per cent share in the business that was previously carried on and has at any time during the compliance period of the company has at any such time been such an individual that now has an interest in the business carried on by the company or any of its subsidiaries cannot make a qualifying investment. (1)(b)

Furthermore, a person or group of persons who controls or has at any time controlled the company or who controlled another company which carried on the business they will not be entitled to relief in respect of the shares in the company. (1)(b)

For the purposes of determining both of the above, the persons or persons that the business belongs, their shares shall be determined in accordance with paragraphs (a) and (b) of subsection (1), and subsections (2) and (3) of section 400, and any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person. (3)

An individual is not entitled to relief in respect of any shares in a company where the company at any time in the compliance period acquires all of the issued share capital of another company and a person or group of persons either controls or has at any time controlled the company and the individual is one of the persons or the group of persons that controlled that other company. (2)

S500 & S501 Qualifying investors

Summary

An individual qualifies for relief if he/she subscribes on his/her own behalf (except where the investment is made through an investment fund as provided for in *Chapter 7*) for eligible shares in a qualifying company and is not at any time in the compliance period (defined in S488) connected with the company, or with its qualifying subsidiaries. (2)

Connected Individuals

An individual cannot be a qualifying investor if at any stage in the compliance period that individual is connected with the company. If the individual or an associate of the individual is a partner of the company, or any company in the RICT group, has an interest in the capital of the company, or any company in the RICT group or, in certain circumstances is a director or employee of the qualifying company or of another company which is a partner of that company, they will be connected with the company. (2)(a)(b)

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 of his/her duties as a director or employee,
- Interest which represents no more than a reasonable commercial return on money lent to a company in the RICT group.

- Any dividend or other distribution paid or made by a company in the RICT group which does not exceed a normal return on the investment.
- Payments for the supply of goods to either company which do not exceed their market value, and any reasonable and necessary remuneration which –
 - Is paid for services rendered to a member of the RICT group in the course of a trade or profession (other than a secretarial or managerial service or services of a kind provided by any company in the RICT group and which is taken into account in any Schedule D, Case I or Case II computation of the trade or profession, or
 - In the case of a director or employee of a company in the RICT group who is not otherwise connected with any company in the RICT group, is paid for services rendered to the company of which the individual is a director or employee.

Those payments referred to above shall apply to payments which an individual is entitled to receive in respect of the relevant period (defined in S488) in the same way it applies to payments actually made in that period, or payments made to an individual indirectly or under the individuals instruction and to that individuals' benefit. (4)

In addition, an individual is connected with a company in a RICT group if he/she, or an associate of the individual, directly or indirectly possesses or is entitled to acquire any of the – (5)(a)

- Issued share capital of the qualifying company,
- Loan capital and issued share capital of the qualifying company,
- Voting power in the qualifying company, or
- Rights to the assets on a winding up of a qualifying company.

The loan capital of a company shall be treated as including any debt incurred by the company- (5)(b)

- For any money borrowed or capital assets acquired by the company,
- For any right to receive income created in favour of the company, or
- For consideration the value of which to the company was substantially less than the amount of the debt.

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 that business.

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 (5)(c)

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**.

An individual is connected with a qualifying company if he/she can control it in the manner set out in **section 11**. An individual is connected with a qualifying company if he/she within the compliance period had control of another company which has since that time and before the end of the relevant period become a subsidiary of the company. (6)(a)

In determining whether an individual is so connected with a qualifying company, no account shall be taken of shares in that company, held by the individual or an associate of that individual where, that individual or associate was entitled to relief under Part 16 for those shares and the individual or a person connected with that individual, at any time in the compliance period, does not control the company.

In addition, no account shall be taken of shares subscribed to the individual concerned where those shares were issued on the formation of the company and no other shares have been issued and that company has not yet started to trade or made preparations to begin to trade. (6)(b)

An individual shall be treated as entitled to acquire anything, which he/she is entitled to acquire at a future date or will acquire at a future date. Any rights or powers which an associate of that individual holds, will be attributed to that individual. (7)

An individual will be treated as connected with a company, if they subscribe for shares in a company as part of a scheme or arrangement which allows another individual to subscribe for shares in a company which the first mentioned individual is connected with.

S502 The relief

Definitions

“basic pay rate” means an employee’s emoluments per hour from the company in respect of an employment held with the company or a subsidiary of the company

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

“employment threshold number” means the total number of employees in receipt of emoluments from the qualifying company or a qualifying subsidiary, in the year of assessment before the year of assessment in which the subscription for eligible shares were made.

“qualifying employee”, in relation to a qualifying company or a qualifying subsidiary means an employee other than a director of the company who throughout his/her period of employment with that company is employed for at least 30 hours per week and that employment is capable of lasting at least 12 months.

“relevant amount” means total emoluments paid to qualifying employees as defined in “employment relevant number”, in relation to the subscription of shares, in the year of assessment in which the subsequent period ends.

“threshold amount” means the total emoluments paid by a qualifying company or a qualifying subsidiary to the qualifying employees referred to in the definition of employment threshold number, in the year of assessment before the year of assessment in which the subscription for eligible shares were made. If there was a reduction in the basic pay rate of the qualifying employees then the threshold amount shall be reduced accordingly.

“subsequent period” means the period beginning on the date on which the shares were issued and ending 3 years after that date.

Details

For shares issued on or before 8 October 2019 a qualifying investor who has made a qualifying investment in a qualifying company shall be entitled to relief for 30/40ths of that amount subscribed for shares, in the year of assessment in which the shares were issued. This will be granted as a deduction from his/her total income. (2)(a)

If the relevant conditions of subsection (4) are met, a qualifying investor shall be entitled to relief for the remaining 10/40ths of that amount. This will be granted as a deduction from his/her total income. It will be deducted from his/her total income for the year of assessment following the year of assessment in which the subsequent period ends. (2)(b)

For shares issued after 8 October 2019 a qualifying investor who has made a qualifying investment in a qualifying company shall be entitled to relief for the full amount subscribed for the shares, granted as a deduction from his/her total income for the year of assessment in which the shares are issued. (2A)

The maximum qualifying investment in which an individual can claim relief is €150,000 in the year of assessment 2019. (3)(a)

The maximum qualifying investment in which an individual can claim relief is €250,00 in the year of assessment 2020 and each year of assessment after that. This will be extended to a maximum qualifying investment of €500,000 but only where the investment is made in eligible shares where the investor will not dispose of those shares for a period of at least 7 years after the investment is made. (3)(b)

For all qualifying investments, the investor may be required to provide information to Revenue as and when it is required. (3)(c)

For shares issued on or before 8 October 2019, in relation to the granting of the balancing 10/40ths of relief, it shall not be given in relation to a qualifying company and its qualifying subsidiaries unless the employment relevant number exceeds the employment threshold number by at least 1 qualifying employee and the relevant amount must exceed the threshold amount by at least the total emoluments of 1 qualifying employee in the year of assessment in which the subsequent period ends. Alternatively, the amount of expenditure on R&D+I incurred in the year of assessment where the subsequent period ends, exceeds the amount of expenditure on R&D+I incurred in the year of assessment prior to the year of assessment in which the subscription for the eligible shares was made. (4)

For investments made from 1 January 2022, in relation to relief granted under section 502(2A), an amount equal to ten fortieths of the relief granted will be deducted unless, in relation to a qualifying company and its qualifying subsidiaries, the employment relevant number exceeds the employment threshold number by at least 1 qualifying employee and the relevant amount exceeds the threshold amount by at least the total emoluments of 1 qualifying employee in the year of assessment in which the subsequent period ends. Alternatively, the amount of expenditure on R&D+I incurred in the year of assessment where the subsequent period ends, exceeds the amount of expenditure on R&D+I incurred in the year of assessment prior to the year of assessment in which the subscription for eligible shares was made. (5)

S503: The relief: Start-Up Capital Incentive

Summary

This section relates the conditions that must be fulfilled by the qualifying company in order for certain investors to avail of relief under the Part. (1)

If the company and the investment comply with this section, the conditions set out in section 500(5) shall not apply in respect of associates of an investor.

Details

At the time the shares were issued the qualifying company shall be a micro-enterprise, defined in Annex 1 of GBER and it must exist only for the purpose of carrying on a qualifying new venture. (2)(a)

At the time the shares were issued the qualifying company shall not have commenced carrying on, or made preparations for the carrying on of, any trade or business more than 7 years prior to the share issue date or have any partner or linked business as set out in (2)(b)

Annex 1 of GBER.

The maximum amount which a qualifying company may raise in respect of this section (3) is €500,000 in total in the lifetime of the company.

Chapter 5 – SURE

Summary

This chapter sets out conditions which must be satisfied in order to qualify for SURE (Start-up Refunds for Entrepreneurs) formerly known as the Seed Capital Scheme [SCS]

S504 Interpretation Start-Up relief for entrepreneurs (SURE)

Definitions

“employment period” in respect of a relevant employment begins on the date on which the shares are issued or, if later, the date on which the employment commences and will end 12 months after that date.

“full-time employee” and “full-time director” in relation to a company, mean an employee or director, who is required to devote substantially the whole of their time to the service of the company.

“relevant employment” means employment throughout the employment period, by the company in which the specified individual makes a relevant investment and where the specified individual is a full-time employee or full-time director of the company.

“relevant investment” means the amount or the aggregate of the amounts of the qualifying investments made in a year of assessment by the specified individual for eligible shares in a qualifying company.

“specified individual” is defined in section 505, is an individual who subscribes for shares on his or her own behalf.

“specified period” is the period beginning on the date on which the shares were issued and ending either one year after that date or where the company was not at that date carrying on relevant trading activities, one year after the date on which it subsequently began to carry on such activities.

S505 Specified Individuals

Summary

A specified individual is an individual who subscribes on his/her own behalf for eligible shares in a qualifying company. (1)

Details

Where it is the individual's first such investment, in each of the 3 years of assessment prior to the year of assessment that comes immediately before the year of assessment in which the individual makes a relevant investment, that individual may have been in receipt of income otherwise than employment income (whether from an employment held in the State or abroad) in excess of the lesser of the aggregate of the individual's employment income and €50,000. (2)

Share Ownership Test

The individual must, throughout a period (in this note and in the section referred to as the "specified period")-

- of one year beginning on the date of issue of the shares, or
- 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 where the company is not at that date carrying on the required trading.

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 500(5)(b)) and the issued share capital,

or

- the voting power,

of any company other than the company in which they make that relevant investment or a company which during a period of 3 years ending on the specified date in relation to an individual's first relevant investment in a company, was not entitled to any assets, other than cash on hand or a sum of money no greater than €130 and did not carry on a trade, profession, business or other activity, and did not pay charges on income. (5)

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 the SURE investment consists of more than one subscription, the date of the last such subscription.

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. (6)(b)

An individual is not to be treated as having failed to satisfy the requirements as to not owing 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)(c)

- 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 dates falls does not exceed €127,000

S506: 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 (including its’ subsidiaries) 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). (1)

References to a company’s trade include references to the trade of any subsidiaries. (4)

A similar trade is one which – (1)(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 substantial part of it).

A person will have a controlling interest in a trade, when it is a trade carried on by a company it that person actually controls the company, if the company is a close company and that person or their associate is a director of the company or is the beneficial owner being able to control more than 30% of the ordinary share capital of the company, either directly or through other companies or any other indirect means. A person will also have a controlling interest when the trade is by a company if no less than 50% of the trade could be regarded as belonging to that person (as defined in section 400(2)). (2)(a)

A person will also have a controlling interest in a trade in any other case if such a person is entitled to no less than 50% of the assets used for, or the income arising from the trade. (2)(b)

When determining if a person has such a controlling interest there shall be given to any person any rights or powers of any other person who is an associate of that person. (3)

S507: The relief (SURE)

Where a specified individual (as defined) makes a relevant investment in a qualifying company, shall be entitled to relief in respect of that relevant investment. The relief will be given as a deduction from his/her total income for the year of assessment in which the shares are issued. (1)

For the purposes of a SURE investment, in any one year of assessment, the maximum relevant investment which a person may claim is €100,000. (2)

A specified individual may elect to have the relief given as a deduction from that individuals income in any one of the years of assessment that comes immediately before the year of assessment in with the eligible shares for that investment are issued instead of claiming the relief in the year the shares are issued. This election must be made in writing to the Revenue Commissioners. If such an election is made, the shares will be 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 that first such investment. Again, for the purpose of granting relief only, but subject to the limits set out in this paragraph (c) and (d) of this subsection, 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 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. (3)(d)

No more than two relevant investments can be made by a specified individual on or after 2 June 1995. (3)(e)

This applies notwithstanding any limitation in section 865(4) or section 959V(6) on the time within which a claim for a repayment of tax is required to be made. Any excess tax paid may be repaid on foot of a timely (within the time limits set out in section 508G) 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)

Chapter 6 – Administrative requirements and reporting obligations

S508: Carry forward of unused relief

Where due to an insufficiency of total income or the operation of the upper maximum limits set out in section 507 for SURE or section 502 in all other cases 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 to any year after the tax year 2024. (1)

Any amount which has been carried forward to a following year may, if not fully relieved in that following year, may 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 to any year after the tax year 2024.

Priority of relief

Relief is given to an individual for a year of assessment in the following order –

- 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 (2)
- then, the amounts invested in the current year of assessment.

S508A: Statement of qualification by qualifying company

The qualifying company will issue to a qualifying investor or if a designated fund or qualifying investment fund, the managers of such a fund a statement of qualification for a qualifying investment. (1)

This is known as a Statement of Qualification. It is a statement made by the company that (2)

- the company is a qualifying company, and
- the investment is a qualifying investment within the meaning of section 496.

The statement of qualification will contain information in respect of the company, investment and investor. In respect of the company the statement of qualification will have the company's name, address and tax reference number. It will contain at a minimum, the date of the share issue, the class of shares issued and the amount subscribed and the number of shares issued. It will have the name, address and PPS number of the individual investors. It must contain the amount of the investment which qualifies for relief under section 502(2)(a) after any reduction required by section 497 or section 508R. (3)(a)

If an investment is made through a designated investment fund or qualifying investment fund, the name, address and tax reference number of that fund are required.

The statement of qualification can contain any other information that Revenue may request and it must be in the format that Revenue direct and contain the Statement that this statement is made under this section. (3)(b)(c)

A statement of qualification cannot be issued in respect of a qualifying investment more than 4 months after the end of the year in which the shares were issued. (4)

S508B: Statement of qualification (second stage relief) by qualifying company

The qualifying company will issue to a qualifying investor or if a designated funds, the managers of such a fund a statement of qualification (second stage relief) for a qualifying investment that qualifies for relief under section 502(2)(b). This is known as a Statement of Qualification (second stage relief). (1)

It is a statement made by the company that (2)

- the company is a qualifying company, and
- the investment is a qualifying investment within the meaning of section 496.

The statement of qualification (second stage relief) will contain information in respect of the company, investment and investor. In respect of the company the statement of qualification will have the company's name, address and tax reference number. It will contain at a minimum, the date of the share issue, the class of shares issued and the amount subscribed and the number of shares issued. It will have the name, address and PPS number of the individual investors. It must contain the date on which 30 per cent of the amount raised has been spent on a qualifying purpose and the amount of the investment which qualifies for relief under section 502(2)(a) after any reduction required by section 497 or section 508R. In addition the statement of qualification (second stage relief) will confirm that the conditions for relief under section 502(2)(b) have been satisfied. (3)(a)

If an investment is made through a Designated Investment Fund, the name, address and tax reference number of that fund are required.

The statement of qualification (second stage relief) can contain any other information that Revenue may request and it must be in the format that Revenue direct and contain the Statement that this statement is made under this section. (3)(b)(c)

A statement of qualification (second stage relief) cannot be issued in respect of a qualifying investment until the relevant period (as defined in section 488) has ended and it has satisfied the conditions of section 502(4) (4)

S508C: Statement of qualification (SURE) by qualifying company

The qualifying company will issue to a specified individual a statement of qualification (SURE) for a relevant investment. This is known as a Statement of Qualification (SURE). It is a statement made by the company that the company is a qualifying company. (1)(2)

The statement of qualification (SURE) will contain information in respect of the company, investment and investor. In respect of the company the statement of qualification will have the company's name, address and tax reference number. It will contain at a minimum, the date of the share issue, the class of shares issued and the amount subscribed and the number of shares issued. It will have the name, address and PPS number of the individual investors and the amount of the investment which qualifies for relief under section 507 after any reduction required by section 497 or (3)

section 508R.

The statement of qualification (SURE) can contain any other information that Revenue may request and it must be in the format that Revenue direct and contain the Statement that this statement is made under this section.

A statement of qualification cannot be issued in respect of a qualifying investment more than 4 months after the end of the year in which the shares were issued. (4)

S508D: Confirmation of compliance with certain conditions

A company before issuing a Statement of Qualification a company may apply to the Revenue Commissioners for confirmation that any of the following conditions have been met in respect of an investment made in eligible shares. (1)

The conditions set out in section 490(2)(a)(ii) and the conditions set out in subsections (4) to (7), as appropriate, of section 496.

The application referred to here shall be a statement made by the company to the Revenue Commissioners and that statement shall – (2)

- (a) contain all relevant facts and circumstances, and
- (b) be in such form as the Revenue Commissioners direct.

S508E: Reporting of relief by qualifying companies

A qualifying company shall include details of the qualifying investment in a return required under Part 41A for the accounting period in which the eligible shares were issued, and the company shall, notwithstanding anything contrary in Part 41A or section 1084 be deemed to be a chargeable person for that accounting period. (1)

No more than 4 months after the end of the year of assessment in which the shares were issued for a qualifying investment a qualifying company must give to the Revenue Commissioners through the electronic means Revenue makes available, any information they may require for the purposes of annual reports required under Article 11 of the General Block Exemption Regulation and as necessary for the administration of the relief. (2)

This will include, the name and address of the company, the CRO number of the company. It will include, the amount of finance raised and the date of share issue and type of relief availed of, as well as the name, address and PPS Number of each investor (2)(a)(b)

and the amount of relevant investment made by each investor.

Notwithstanding section 851A, the Revenue Commissioners may provide any information obtained as set out under subsection (2)(a) to the person submitting such annual report and it will publish the following information regarding all qualifying companies: (3)

- the name of the company
- the address of the company
- the CRO number of the company
- the amount of finance raised
- the date of the share issue and type of relief

Where a company does not comply with the requirements to provide information under this section, the company will be liable to a penalty of €2,000. If they have still not provided that information after the date the return must be filed under section 41A, or 30 days, whichever is appropriate, an additional penalty of €50 for each day that failure continues. (4)

S508F: Claims for relief by qualifying investors

An individual who is a qualifying investor will not be able to claim relief in respect of a qualifying investment until they have received a Statement of Qualification or Statement of Qualification (second stage relief) from the company. (1)

A claim for relief must include:

- the name and tax reference number of the company in which the qualifying investment was made; (2)
- The amount of the qualifying investment;
- Where section 502(2)(b) applies, the date the conditions set out in section 508B(4)(a) are met

S508G: Claims for Relief by specified individuals

An individual who is a specified individual will not be able to claim relief in respect of a relevant investment under section 507 until a statement of qualification (SURE) has been received from the company. (1)

A claim for relief must include: (2)

- The name and tax reference number of the company in which the relevant investment was made;
- The date the relevant investment was made;
- The amount of the relevant investment;

Chapter 7 – Investment Funds

S508H: Authorised officers

The Revenue Commissioners can nominate in writing a Revenue officer to perform any acts and discharge any functions authorised by this Chapter and section 508D to be performed or discharged by the Revenue Commissioners.

S508I: Designated investment funds

The Revenue Commissioners if they see fit, dependent on the circumstances of a specific case, consulting as necessary with those who they deem may be of assistance and subject to the relevant conditions they deem appropriate to attach, may designate an investment fund for the purposes of this Part and such a fund that is so designated is referred to as a “designated fund”. (1)

The Revenue Commissioners can by notice in writing to the managers of a designated investment fund withdraw the designation. The withdrawal of the designation will be published as soon as it can be in Iris Oifigiuil. (2)(a)

On the giving of such a notice, the fund will cease to be a designated fund with respects to any subscriptions made after the date of the notice in Iris Oifigiuil. (2)(b)

The Revenue Commissioners will only designate a fund for the purposes of Part 16 only if they are satisfied that – (3)

- The fund is established under irrevocable trusts, with the sole purpose of investing in qualifying companies, and (3)(a)
- Under the terms of the trusts it is stated that – (3)(b)
 - The entire fund will be invested without undue delay in eligible shares,
 - While awaiting investment of the funds in eligible shares, the moneys received by the fund for the purchase of such shares are to be placed on deposit in a separate account with a bank licensed to transact business in the State,
 - Any amounts received as dividends or interest are subject to a commission in respect of management expenses at a rate not exceeding a rate which shall be specified in the deed of the trust under which the fund has been established and is to be paid without undue delay to the

- participants,
- any changes to be made by means of management or other expenses in connection with the establishment, the running, the winding down or the termination of the fund shall be at a rate not exceeding a rate which shall be specified in the deed of trust under which the fund is established,
 - audited accounts of the fund are submitted annually to the Revenue Commissioners as soon as may possible after the end of each period for which accounts of the fund are made up,
 - the managers, trustees of the fund and any of the associates are not for the time being connected either directly or indirectly with any company whose shares comprise part of the fund,
 - any discounts on eligible shares received by the trustees or managers of the fund are accepted solely for the benefit of the participants,
 - if a limit is placed on the size of the fund or a minimum amount for investment is stipulated, any subscriptions not accepted are to be returned without undue delay, and
 - no participant is allowed to have any shares in any company in which the fund has invested transferred in his/her own name until 4 years have elapsed from the date of the issues of the shares to the fund.

S508IA Qualifying investment funds

Definitions

‘alternative investment fund manager’ has the meaning assigned to it by the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013); (1)

‘investment limited partnership’ means a partnership authorised in accordance with the Investment Limited Partnerships Act 1994;

‘limited partnership’ means a limited partnership registered in accordance with the Limited Partnerships Act 1907 and managed by an alternative investment fund manager in accordance with the European Union (Alternative Investment Fund Managers) Regulations 2013;

‘partnership agreement’ means any valid written agreement of the partners governed by the law of the State and subject to the exclusive jurisdiction of the courts of the State as to the affairs of a limited partnership or an investment limited partnership that is a qualifying investment fund for the purposes of this Part and the conduct of its business as may be amended, supplemented or restated from time to time;

‘qualifying investment fund’ means an investment limited partnership or a limited partnership that meets the requirements of subsection (2).

Requirements to be met by a Qualifying Investment Fund

A limited partnership or an investment limited partnership, as the case may be, shall be a (2)

qualifying investment fund for the purposes of this Part if –

- it is established under a partnership agreement and has as its principal business,
- to be expressed in the partnership agreement establishing the qualifying investment fund, the investment of its funds in accordance with a defined investment policy for the benefit of its investors, and
- under the terms of the partnership agreement it is provided that -
 - the funds to be invested in eligible shares are to be invested without undue delay,
 - pending investment in eligible shares, any moneys subscribed for the purchase of shares are to be placed on deposit in a separate account with a bank licensed to transact business in the State,
 - any amounts received by means of dividends or interest are, subject to a commission in respect of management expenses at a rate not exceeding a rate which shall be specified in the partnership agreement under which the qualifying investment fund has been established, to be paid without undue delay to the partners,
 - any charges to be made by means of management or other expenses in connection with the establishment, running, winding down or termination of the qualifying investment fund shall be at a rate not exceeding a rate which shall be specified in the partnership agreement under which the qualifying investment fund is established,
 - audited accounts of the qualifying investment fund are prepared annually and submitted to the Revenue Commissioners when requested,
 - the alternative investment fund manager, and any associate of that manager is not for the time being connected either directly or indirectly with any company whose shares comprise part of the qualifying investment fund,
 - any discounts on eligible shares received by the alternative investment fund manager of the qualifying investment fund are accepted solely for the benefit of the partners,
 - if a limit is placed on the size of the qualifying investment fund or a minimum amount for investment is stipulated, any subscriptions not accepted are to be returned without undue delay, and
 - no partner is allowed to have any eligible shares in any company in which the qualifying investment fund has invested transferred into his or her name until 4 years have elapsed from the date of the issue of the shares to the fund.

S508J: Relief for investment through designated investment funds and qualifying investment funds

Whereby a person or persons having the management of a designated investment fund, as designated by the Revenue Commissioners or a person or persons having the management of a qualifying investment fund subscribe for shares as a nominee for an individual and where that amount subscribed forms part of the fund, relief will be given under section 502 and section 498(1) will not apply. **(1)(a)**

Relief will not be given where as a nominee a person or persons having the management of the investment fund subscribes for the shares on the behalf of an individual and where that amount subscribed forms part of the fund, apart from the circumstances outlined at **(1)(b)**

paragraph (a).

Within 30 days of receipt of a statement of qualification, the fund managers will provide to the Revenue Commissioners a return of the holdings of eligible shares shown on the statements of qualification received by the designated fund. This will be through the electronic means made available by the Revenue Commissioners. (2)

Where an individual that has claimed relief in respect of shares in a company which have been issued to the fund managers as a nominee for that individual, section 508F(1) will still apply to the managers of the designated fund, as if the claim that the individual makes for relief must be made with a certificate issued by the managers of the designated fund. It must be in the form prescribed by the Revenue Commissioners, with the information as the Revenue Commissioners require and which will certify that the managers of the designated fund hold statements given to them by the relevant companies concerned and for the purposes of section 508F(1). (3)

Where relief is due to a qualifying individual as nominee where the fund managers have subscribed on the behalf of that individual and the eligible shares in respect of the amount which was subscribed are issued in the year of assessment following the year of assessment in which that amount was subscribed to the designated fund or qualifying investment fund, then the individual will be entitled to relief, under section 502(2)(a) or 502(2A), as a deduction from his or her total income for the year of assessment in which the amount was subscribed to the designated fund or qualifying investment fund. (4)

Chapter 8 – Capital gains tax implications.

S508K: 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 share 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 the 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 (2)

qualified for relief, it is necessary to identify the shares disposed of and to determine 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.

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)

Subject to this section, no account shall be taken of the relief, in so far as it is not withdrawn, in determining whether any sums are excluded by virtue of section 554 from the sums allowable as a deduction in the computation of gains and losses for the purposes of the Capital Gains Tax Acts. (5)

Chapter 9 – Anti-Avoidance

S508L: Prevention of misuse

This section is a general anti-avoidance provision which provides that relief is only available for shares unless the raising of risk aid financing by the company, and the subscription for shares by the individual are subscribed and issued for bona fide commercial purposes and not for reasons of tax avoidance.

Chapter 10 – Clawback events

S508M: 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 4 years after the date the shares issue, or
- if the company was incorporated more than 2 years before the share issue, beginning 2 years before that date and ending 4 years after the share 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. (2)(b)(i)

If, before this subsequent disposal takes place, the husband and wife/civil partners cease to be treated as living together for income tax purposes within the meaning of **section 1015 or of section 1031A**. (2)(b)(ii)

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 partner 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.

Mixed shareholdings

Where an individual's holding of any class of 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 512(2)** applies) is to be treated for the purposes of this section and **section 508N** 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. (3)

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. (4)

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, 2104	5,000	10,000

For the purposes 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 4 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> <u>2,000</u>
Revised relief 2012	- <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). (5)

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.

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 2012 as follows –

		€
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. (6)

S508N: Anti-avoidance: disposal of shares

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 granted by the exercise of a right, or under an obligation, to acquire or grant an option or enter into an agreement. (1)

No relief is available in respect of shares to which an option or agreement of the type described in the following paragraphs relates. (2)

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 the 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)(a)

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 (3)(b)(i)

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 the option, is other than the market value of the eligible shares at the time of the disposal.

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)

S508O: Anti-avoidance: disposal of a qualifying subsidiary

This applies before the end of the relevant period for a qualifying investment, a qualifying company disposes of a qualifying subsidiary (this will include on a winding up or dissolution), and if the amounts raised from the qualifying investment were invested in eligible shares of that qualifying subsidiary, and the amounts raised from that disposal were not returned to the qualifying investors without undue delay. The qualifying investors for the purposes of section 508M, shall be treated as if, on the date of that disposal, they partially disposed of the shares that they hold in the qualifying company for an amount equal to the portion (their shareholding in respect of their eligible shares) of the market value of the qualifying subsidiary on the date it is disposed of, or the amount for which it was disposed if higher. (1)(2)

S508P: Anti-avoidance: qualifying investor receiving value from the 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 4 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.

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)(b)

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

Payments or transfers to an individual or an associate include payments or transfers made indirectly or to that person's order or benefit (2)(a)

An individual receives value from a company, where the company –

- repays, redeems or purchases 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)
- 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)(a)
- makes any payment to the individual for giving up his/her rights to any debt on its extinguishment, (3)(b)
- releases or waives any liability of the individual to the company or discharges any liability of the individual to a third person. 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 (3)(c)
- not discharged within 12 months of the time when it ought to have been discharged. (3)(d)
- makes a loan or advance to the individual. 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. (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 that 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 –

- expenses payments made to employees or directors,
- interest at a commercial rate paid in respect of a loan,
- normal dividends,
- payments for goods purchases 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.

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 490(6)*), 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 (4)

Where a shareholder receives his/her money back from someone connected with the company (within the meaning of section 500) rather than the company itself, the amount received from that person is treated as value received by the shareholder from the company. (5)

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). (6)

Where an individual receives value from a company within the compliance period that amount is to be deducted from the relief to which he/she would otherwise be entitled. (7)

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. (8)

Where during the compliance period of a qualifying investment, the company redeems shares or purchases shares (referred to as the “redemption”) of an individual investor where the compliance period for that share issue being redeemed has ended, then notwithstanding subsection (7) the relief that individual is entitled to (other than pursuant to *section 503 or 507*), will not be reduced where the most recent qualifying investment in respect of which relief under this Part is made, in a company in the RICT group was more than 18 months before the redemption took place, and where there is no further qualifying investment in respect of which relief under this Part is made, in any company in the RICT group within 12 months after the redemption and where there is no qualifying investment by that individual, in respect of which a claim for relief under this Part is made, in any company in the RICT group in the period of 5 years after the date of the redemption. (9)

S508Q: Qualification to section 508P for specified persons

Summary

SURE investors who make their initial investment by way of a loan to a company (instead of investing in shares) qualify for the relief.

Details

A specified individual will not have received value from a company (*by reference to section 508P(3)(b)*) where – (1)

An investment in the company by the specified individual was by means of a loan, and the loan is converted into eligible shares within one year of the making of the loan and the specified individual provides a statement by the company’s auditor that the money

raised by the loan was used by it solely for a qualifying purpose.

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. (2)

S508R: Value received by persons other than qualifying investors

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 other person other than the individual claiming relief or another individual whose relief would thereby be reduced under *section 508P* will result in the amount of relief otherwise available to that individual being reduced or eliminated entirely.

Capital repayment by the company to some other person other than the individual however, may not be reduced or eliminated entirely if certain conditions regarding the raising of qualifying investments are adhered to.

Details

A reduction in the relief available to an individual under this Part occurs, if during the period (in the section referred to as “the compliance period”) – (1)(a)

- beginning with the incorporation of the company and ending 4 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 4 years after that date,

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

- shares belonging to that individual, or (1)(b)
- shares belonging to another individual whose relief on those shares has been reduced by virtue of section 508P(3),

or the company makes any payment to any such member for giving up their member’s right to any of the company’s share capital on its cancellation or extinguishment, or if during the period a company in the RICT group acquires any of the share capital in the qualifying company from any member other than –

- shares belonging to that individual, or
- shares belonging to another individual whose relief on those shares has been

reduced by virtue of section 508P(3)

or the company makes any payment to any such member for giving up such member's right to any of the qualifying company's share capital on its cancellation or extinguishment.

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. (2)

Where during the compliance period a member of a company receives value from the company, then, for the purposes of *section 500(5)* the amount of the company's issued ordinary share capital and the amounts held by each person (which includes shares which an individual directly or indirectly possesses or is entitled to acquire) are treated as reduced. For this purpose the nominal value of the ordinary shares of the claimant is reduced in 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. (3)

The receipt of value means the situations described within *paragraph (d), (e), (f), (g) or (h) of section 508P(3)*, except that payments made for full consideration are not included in *paragraph (h)*. (6)

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). (7)

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. (8)

Where during the compliance period of a qualifying investment, the company redeems shares or purchases shares (referred to as the "redemption") of any member that is not that individual investor within the compliance period, then notwithstanding subsection (1)(a), the relief that the individual investor within the compliance period (other than pursuant to *section 503 or 507*), will not be reduced where the most recent qualifying investment in respect of which relief under this Part is made, in a company in the RICT group was more than 18 months before the redemption took place, and where there is no further qualifying investment in respect of which relief under this Part is made, in any company in the RICT group within 12 months after the redemption. (9)

S508S: Failure to commence a relevant employment (relief under section 508G)

Summary

It is a requirement of this Part that a specified individual (that being an individual

making a SURE investment) takes up full-time employment for a specified period of 12 months in the company. This employment must be taken up within a certain period.

Details

With regard to a claim made *under 508G* before a specified individual begins a relevant employment with the company in which that individual has made a relevant investment (being the first investment by the individual in that company), the relief will be withdrawn if that individual does not begin that employment within the year of assessment in which that first investment is made. If it is later, and that first investment is only made by means of one subscription, it must be within 6 months of the date of subscription for eligible shares where only one such subscription was made or if the investment consists of more than one subscription for eligible shares, than 6 months of the last subscription.

Chapter 11 – Withdrawing Relief

S508T: Withdrawing Relief – general

S508U: Assessments for withdrawing relief claimed under Chapter 4 – company

S508V: Assessments for withdrawing relief under Chapter 4 - investor

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. 508V(2)

Details

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. 508T(1)

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 508L*. 508T(2)

Where the claimant disposes of all ordinary shares issued to him/her by a company, and the relief has been reduced under **section 508M(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 500**). This connection would entail total denial or withdrawal of relief. **508V(1)**
508T(3)

Where a company issues an incorrect statement of qualification and as a result of which an individual claims relief in excess of that amount that would have been claimed had a correct statement of qualification been issued, that excess relief will be withdrawn. This will be withdrawn by means of a Schedule D Case IV assessment for corporation tax on the qualifying company, in the year of assessment for which relief was given. This will be in an amount equal to 1.2 times the amount in **section 508A(3)(a)(vii)**, or such part of that amount that does not qualify for the relief. **508U(1)**

Where relief has been claimed as a result of the conditions of Chapter 4 of this Part and it is no longer due, the excess amount claimed will be withdrawn by the making of a Schedule D Case IV assessment to corporation tax on the qualifying company, in the year for which relief was given. This will be in an amount equal to 1.2 times the amount in **section 508A(3)(a)(vi)**, or such part of that amount that does not qualify for the relief. This is the case where, within the relevant period, the company has ceased to be a qualifying company, an investment has ceased or partially ceased, to be a qualifying investment (within the meaning of **section 496**), or the amount of relief available is to be reduced by **section 508R**. **508U(2)**

Where a company issues an incorrect statement of qualification (second stage relief) and as a result of which an individual claims relief in excess of that amount that would have been claimed had a correct statement of qualification been issued, that excess relief will be withdrawn. This will be withdrawn by means of a Schedule D Case IV assessment for corporation tax on a qualifying company, in the year of assessment for which relief was given. This will be in an amount equal to 0.4 times the amount in **section 508B(3)(a)(vi)**, or such part of that amount that does not qualify for the relief. **508U(3)**

Where relief is to be withdrawn as a result of section 502(5), that relief will be withdrawn by the making of an assessment on the qualifying company to corporation tax under Case IV of Schedule D for the year of assessment following the year of assessment in which the subsequent period ends in an amount equal to 0.4 times the amount referred to in section 502(5). **508U(3A)**

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 – **508U(4)**

- the date of the event giving rise to the withdrawal, where the withdrawal is made by virtue of – **508U(5)**
 - an event occurring as referred to in **section 508U(1)**, the date referred to in **section 508A(3)(a)(ii)**
 - an event occurring as referred to in section 508U(2), the date the event happens which causes the relief to be withdrawn, or
 - an event occurring as referred to in section 508U(3), the year of

assessment following the year of assessment in which the subsequent period ends.

Where an amount is chargeable to tax under **section 508U**, that amount will be treated as income against which no loss, deficit, expense or allowance may be set off, and as not forming part of the income of the company when calculating a surcharge under **section 440**. **508V(1)**

Where relief has been claimed under Chapter 4 and is subsequently found not to have been due, except where section 508U applies, or is no longer due because within the relevant period –

- (i) the relief is to be withdrawn by virtue of section 495,
- (ii) the investment ceases to be a qualifying investment by virtue of section 499,
- (iii) the mount of relief is subject to a reduction under Chapter 10 (other than section 508R),
- (iv) The relief is withdrawn because of section 508L, or

The investor ceases to be a qualifying investor.

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). **508V(2)**

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 the claim. Such interest is to be charged from – **508V(3)**

- The date on which the relief was claimed in the case of relief withdrawn where it was subsequently found not to have been due other than in circumstances where section 508U applies (**subsection (1)(a)**)
- The date the agreements, arrangements or understandings were entered into, where relief is withdrawn because within the relevant period the relief is to be withdrawn by virtue of section 495 (**subsection (1)(b)(i)**)
- The date of the event the happening of which causes the relief to be withdrawn because within the relevant period the investment ceases to be a qualifying investment by virtue of section 499 (**subsection (1)(b)(ii)**)
- The date of disposal, or the date on which the value was received as the case may be, because within the relevant period the amount of relief is subject to a reduction under Chapter 10 (other than section 508R) (**subsection (1)(b)(iii)**)
- The date the relief was granted, where it was determined that the subscription was part of a tax avoidance scheme or arrangement (section 508L) (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) (**subsection (1)(b)(iv)**)
- The date of the event the happening of which causes the relief to be withdrawn because within the relevant period the investor ceases to be a qualifying investor

(subsection (1)(b)(v)).

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. **508V(4)**

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 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 the pool of a family's finances the tax flowing from the relief is gone. **508V(5)**

Where by virtue of Section 503, an individual claimed relief and an assessment is made on the company pursuant to *section 508U*, the tax payable under that assessment remains unpaid, and it is reasonable to consider that there were arrangements in place the main purpose, or one of the main purposes, of which was to avoid paying any tax arising on such an assessment, then notwithstanding *subsection (1)(a)* and *section 508U*, that relief will be withdrawn in accordance with *subsection (2)*. **508V(6)**

S508W: Assessments for withdrawing relief under Chapter 5

Summary

This section applies where an event occurs that results in the relief claimed under Chapter 5 is subsequently found not to have been due.

Details

Where any relief claimed under Chapter 5 (SURE) is subsequently found not to have been due because – **(1)(a)**

- (i) The company was not a qualifying company,
- (ii) The investment was not a relevant investment, or
- (iii) The individual was not a specified person,

Where the relief claimed under Chapter 5 (SURE) is subsequently found to no longer due – **(1)(b)**

- (i) The relief is to be withdrawn by virtue of section 495,
- (ii) The investment ceases to be a qualifying investment by virtue of section 499,
- (iii) The amount of relief is subject to a reduction under Chapter 10,
- (iv) The relief is withdrawn because of section 508L,
- (v) A specified individual failed or ceased to hold a relevant employment, or
An individual ceased to be a specified individual.

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). (2)

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 the claim. Such interest is to be charged from – (3)

- The date on which the relief was claimed in the case of relief withdrawn where it was subsequently found not to have been due (*subsection (1)(a)*)
- The date the agreements, arrangements or understandings were entered into, where relief is withdrawn because within the relevant period the relief is to be withdrawn by virtue of section 495 (*subsection (1)(b)(i)*)
- The date of the event the happening of which causes the relief to be withdrawn because within the relevant period the investment ceases to be a qualifying investment by virtue of section 499 (*subsection (1)(b)(ii)*)
- The date of disposal, or the date on which the value was received as the case may be, because within the relevant period the amount of relief is subject to a reduction under Chapter 10 (*subsection (1)(b)(iii)*)
- The date the relief was granted, where it was determined that the subscription was part of a tax avoidance scheme or arrangement (section 508L) (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) (*subsection (1)(b)(iv)*)
- The date of the event the happening of which causes the relief to be withdrawn because within the relevant period the investor ceases to be a qualifying investor (*subsection (1)(b)(v)*)
- 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. (*subsection (1)(b)(v) & (vi)*).

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. (4)

S508X: Treatment of statement of qualification as a return

Summary

This section will apply to statements made under Chapter 6 and will provide for the application of section 1077E to these statements.

Detail

In subsections (2) and (5) of section 1077E, the provision to an investor of - (1)(a)

- (i) a statement of qualification

- (ii) a statement of qualification (second stage) relief, or
- (iii) a statement of qualification (SURE),

will be treated as the making or deliver of a return by the company.

Subsections (4) and (7) of section 1077E, will mean 25 per cent of the amounts referred to in *subsections (1) and (3) of section 508U* shall be treated as an amount calculated under *section 1077E(11)* and where an assessment is made pursuant to *section 508W(1)(a)(i)*, the amount calculated in accordance with *section 1077E(11)* will be treated as a tax liability of the company which provided the statement to the specified individual. (1)(b)

Subsection (11) of section 1077E will have effect as if a reference to “the person concerned” were references to “the qualifying investor” or “specified individual” as the case may be and references to “that person” were references to “the company which provided the statement to the investor”. (1)(c)

For the purposes of section 1086, where an assessment is made pursuant to *section 508W(1)(a)(i)* any interest arising under section 1080 will be treated as interest payable by, and the amount calculated under *subsection (1)(b)(ii)* will be treated as a tax liability of the company which provided the statement to the specified individual. (2)

S508Y: 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

In order to satisfy themselves that the conditions necessary for the claiming and granting of the relief have been satisfied, the Revenue Commissioners may require the qualifying company to provide them with evidence as they consider necessary and may consult with persons or body of persons in their opinion might be of assistance. (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
- The company ceases to be carrying on relevant trading activities
- The company gives value to any of its shareholders
- The company does anything which disqualifies an individual from the relief under the replacement capital rules
- The eligible shares on which relief has been claimed were not issued for bona

fide commercial purposes.

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

In the event that a person does not comply with the limits set out in subsection (2) a penalty of €3,000 will apply. (2A)

In the event that the person mentioned in subsection (2) is a company, that company will be liable to a penalty of €4,000 and the secretary of the company will be liable to a separate penalty of €3,000. (2B)

Where there has been a claim for relief the inspector may serve a notice, requiring the provision of information, on the person concerned, the company and any person controlling it in the case of *section 490(3)* and both in the case of *section 501* should he/she have reason to believe that certain events justifying the refusal of relief have occurred. (3)

These events are 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 for which that individual, or any other individual who is a part to the arrangement, is connected (*section 501*);

the company exercises or acquires some form of direct or indirect control over another company or comes under the control of another company (*section 490(3)*);

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 501*).

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 with the meaning of *section 508P* or *section 508R*. 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.

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. (5)(b)

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. (6)

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 (7)

shares have been the subject of relief).

Chapter 12

S508Z

Relief under this part will apply only to eligible shares which are issued on or before 31 December 2024. (1)

Relief cannot be carried forward, under section 508, into any year of assessment subsequent to the year of assessment 2024. (2)