

*Status: Point in time view as at 31/07/1998.*

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## SCHEDULES

### SCHEDULE 13 **U.K.**

Section 74(1).

#### CHANGES TO EIS ETC

#### PART I **U.K.**

#### EIS INCOME TAX RELIEF

##### *Eligibility for relief*

- 1 (1) In subsection (1) of section 289 of the Taxes Act 1988—
- (a) in paragraph (a), after the words “has subscribed” there shall be inserted the words “wholly in cash”;
  - (b) after that paragraph there shall be inserted the following paragraph—
    - “(aa) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),”;
  - (c) in paragraph (b), after the words “the shares” there shall be inserted the words “and all other shares comprised in the same issue”; and
  - (d) in paragraph (c), for the words “that activity” there shall be substituted the words “the activity mentioned in paragraph (b) above”.
- (2) In subsection (1A)(c) of that section, for the word “subsidiary” there shall be substituted the words “90 per cent. subsidiary”.
- (3) In subsection (6) of that section, after the word “subscribed” there shall be inserted the word “for”.
- (4) In subsection (7) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.
- (5) After subsection (8) of that section there shall be inserted the following subsection—
- “(9) In this section “90 per cent. subsidiary”, in relation to the qualifying company, means a subsidiary of a kind which the company might hold by virtue of section 308 if—
    - (a) the references in subsection (2) of that section to 75 per cent. were references to 90 per cent.; and
    - (b) subsection (4) of that section were omitted.”

##### *Form of relief*

- 2 In subsection (4) of section 289A of the Taxes Act 1988, for “£15,000” there shall be substituted “£25,000”.

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*Attribution of relief to shares*

- 3 (1) In subsection (3)(b) of section 289B of the Taxes Act 1988, for the words “bonus shares in that company which are eligible shares” there shall be substituted the words “corresponding bonus shares in that company”.
- (2) After that subsection there shall be inserted the following subsection—
- “**(3A)** In subsection (3) above “corresponding bonus shares” means bonus shares which—
- (a) are issued in respect of the shares comprised in the original issue; and
- (b) are of the same class, and carry the same rights, as those shares.”
- (3) For subsection (4) of that section there shall be substituted the following subsection—
- “(4) Subject to subsection (5) below, in this Chapter references (however expressed) to an issue of eligible shares in any company to an individual are references to any eligible shares in the company that are of the same class and are issued to him on the same day.”
- (4) In subsection (5) of that section, for the words “the following provisions of this Chapter (except section 290(1))” there shall be substituted the words “sections 299(4) and 306(1)”.
- (5) Sub-paragraphs (1) and (2) above have effect in relation to bonus shares issued on or after 6th April 1998.

*Maximum subscriptions etc.*

- 4 In subsection (2) of section 290 of the Taxes Act 1988, for “£100,000” there shall be substituted “£150,000”.
- 5 Section 290A of the Taxes Act 1988 shall cease to have effect.

*Individuals qualifying for relief*

- 6 (1) In subsection (1) of section 291 of the Taxes Act 1988, for the words “the relevant period connected with the company” there shall be substituted the words “the seven year period connected with the company (whether before or after its incorporation)”.
- (2) In subsection (2) of that section, the words “and sections 291A and 291B” shall cease to have effect.
- (3) For subsection (3) of that section there shall be substituted the following subsection—
- “(3) In subsection (2) above “subsidiary”, in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned or his associate is such an employee, partner or director as is mentioned in that subsection.”
- (4) After subsection (5) of that section there shall be inserted the following subsection—

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“(6) In this Chapter “the seven year period”, in relation to relief in respect of any eligible shares issued by a company, means the period beginning two years before, and ending five years after, the issue of the shares.”

*Connected persons: directors*

- 7 (1) In subsection (1)(a) of section 291A of the Taxes Act 1988, for the words “the relevant period” there shall be substituted the words “the seven year period”.
- (2) In subsection (5) of that section—
- (a) for sub-paragraph (ii) of paragraph (b) there shall be substituted the following sub-paragraph—
- “(ii) involved in carrying on (whether on his own account or as a partner, director or employee) the whole or any part of the trade carried on by the issuing company or a subsidiary, and”; and
- (b) the words “and the reference to a trade previously carried on includes part of such a trade” shall cease to have effect.

*Connected persons: persons interested in capital etc.*

- 8 (1) After subsection (5) of section 291B of the Taxes Act 1988 there shall be inserted the following subsection—
- “(5A) An individual is not connected with a company by reason only of the fact that one or more shares in the company are held by him, or by an associate of his, at a time when the company—
- (a) has not issued any shares other than subscriber shares; and
- (b) has not begun to carry on, or to make preparations for carrying on, any trade or business.”
- (2) For subsection (6) of that section there shall be substituted the following subsection—
- “(6) In this section “subsidiary”, in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent. subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.”

*Qualifying companies and qualifying trades*

- 9 (1) In subsection (3B)(b) of section 293 of the Taxes Act 1988, after the word “activities” there shall be inserted the words “(other than research and development and oil exploration)”.
- (2) In paragraph (a) of subsection (6) of that section, the words “it is shown that” shall cease to have effect.
- (3) After that subsection there shall be inserted the following subsections—
- “(6A) The value of the relevant assets—

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- (a) must not exceed £15 million immediately before the issue of the eligible shares; and
  - (b) must not exceed £16 million immediately afterwards.
- (6B) Subject to subsection (6C) below, the reference in subsection (6A) above to the value of the relevant assets is a reference—
- (a) in relation to a time when the company did not have any qualifying subsidiaries, to the value of the gross assets of the company at that time; and
  - (b) in relation to any other time, to the aggregate value at that time of the gross assets of all the companies in the company's group.
- (6C) For the purposes of subsection (6B) above assets of any member of the company's group that consist in rights against, or in shares in or securities of, another member of the group shall be disregarded.
- (6D) In subsections (6B) and (6C) above references, in relation to any time, to the company's group are references to the company and its qualifying subsidiaries at that time."
- (4) Subsection (7) of that section shall cease to have effect.
- (5) In subsection (8) of that section, for the words "Subject to section 308" there shall be substituted the words " Subject to sections 304A and 308 ".
- (6) Sub-paragraph (2) above has effect in relation to events occurring on or after 6th April 1998.
- 10 In subsection (1) of section 297 of the Taxes Act 1988, the words "Subject to section 298(7) below" shall cease to have effect.
- 11 In subsection (1) of section 298 of the Taxes Act 1988, for the words "sections 293(9) and 297" there shall be substituted the words " section 297 ".

#### *Disposal of shares*

- 12 (1) In subsection (1) of section 299 of the Taxes Act 1988—
- (a) for the words from the beginning to "relevant period" there shall be substituted the words " Subject to section 304(1), where an individual makes, before the end of the relevant period, any disposal of eligible shares to which relief is attributable "; and
  - (b) in paragraphs (a) and (b)(ii), for the words "any relief" there shall be substituted the words " the relief ".
- (2) In subsection (3) of that section—
- (a) for the words "any issue of shares held by any person" there shall be substituted the words " any issue of eligible shares held by any individual "; and
  - (b) for the words "the shares" there shall be substituted the words " the issue ".
- (3) In subsection (4) of that section—
- (a) after the words "any issue of" there shall be inserted the word " eligible "; and
  - (b) after the word "shares" there shall be inserted the words " issued in that year (or treated by section 289B(5) as so issued) ".

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(4) After subsection (5) of that section there shall be inserted the following subsection—

“(5A) The shares to which such an option relates shall be taken to be those which, if—

- (a) the option were exercised immediately after the grant, and
- (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,

would be treated for the purposes of this section as disposed of in pursuance of the option.”

(5) For subsection (6) of that section there shall be substituted the following subsections—

“(6) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated for the purposes of this section as relating to those acquired on an earlier day rather than to those acquired on a later day.

(6A) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated for the purposes of this section as disposed of in the following order, namely—

- (a) first any to which neither relief under this Chapter nor deferral relief is attributable;
- (b) next any to which deferral relief, but not relief under this Chapter, is attributable;
- (c) next any to which relief under this Chapter, but not deferral relief, is attributable; and
- (d) finally any to which both relief under this Chapter and deferral relief are attributable;

and in this subsection and subsection (6C) below “deferral relief” has the same meaning as in Schedule 5B to the 1992 Act.

(6B) Any shares falling within paragraph (c) or (d) of subsection (6A) above which are treated by section 289B(5) as issued on an earlier day shall be treated as disposed of before any other shares falling within that paragraph.

(6C) The following, namely—

- (a) any shares to which relief under this Chapter is attributable and which were transferred to an individual as mentioned in section 304, and
- (b) any shares to which deferral relief, but not relief under this Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 of the 1992 Act applies,

shall be treated for the purposes of subsections (6) and (6A) above as acquired by him on the day on which they were issued.

(6D) In a case to which section 127 of the 1992 Act applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of subsections (6) and (6A) above as acquired when the original shares were acquired.

In this subsection “new holding” and “original shares” shall be construed in accordance with sections 126, 127, 135 and 136 of the 1992 Act.”

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- (6) Subsection (7) of that section shall cease to have effect.
- (7) Subsection (8)(a) of that section shall cease to have effect.
- (8) Sub-paragraphs (1), (3)(b), (5) and (6) above have effect in relation to disposals made on or after 6th April 1998.
- (9) Sub-paragraph (4) above has effect in relation to options granted on or after that date.

*Value received from company*

- 13 (1) For subsection (1) of section 300 of the Taxes Act 1988 there shall be substituted the following subsection—

“(1) Subsection (1A) below applies where an individual who subscribes for eligible shares in a company receives any value from the company at any time in the seven year period.”

- (2) For subsection (1C) of that section there shall be substituted the following subsection—

“(1C) References in subsection (1) above to the receipt of value from a company include references to the receipt of value from a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the time when the individual concerned receives the value from him; and other references to the company in this section and section 301 shall be read accordingly.”

- (3) After subsection (5) of that section there shall be inserted the following subsection—

“(6) Where by reason of an individual’s disposal of shares in a company any relief attributable to those shares is withdrawn or reduced under section 299, the individual shall not be treated for the purposes of this section as receiving value from the company in respect of the disposal.”

- (4) Sub-paragraph (3) above has effect in relation to disposals made on or after 6th April 1998.

- 14 (1) After subsection (4) of section 301 of the Taxes Act 1988 there shall be inserted the following subsection—

“(4A) For the purposes of this section and section 300, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.”

- (2) In subsection (5) of that section, for the words “the credit” there shall be substituted the words “ any credit ”.

- (3) Sub-paragraph (1) above has effect in relation to value received (within the meaning of section 300 of that Act) on or after 6th April 1998.

*Value received by persons other than claimants*

- 15 (1) For subsections (1) to (2) of section 303 of the Taxes Act 1988 there shall be substituted the following subsections—

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“(1) Where, in the case of an issue of eligible shares in a company, any relief is attributable to any shares comprised in the issue which are held by an individual, subsection (1A) below shall apply if at any time in the seven year period the company or any subsidiary—

(a) repays, redeems or repurchases any of its share capital which belongs to any member other than that individual or a person who falls within subsection (1B) below, or

(b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(1A) The relief—

(a) if it is greater than the amount mentioned in subsection (1C) below, shall be reduced by that amount, and

(b) if paragraph (a) above does not apply, shall be withdrawn.

(1B) A person falls within this subsection if the repayment, redemption, repurchase or payment in question—

(a) causes any relief attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a), or

(b) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act) in respect of him.

(1C) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given—

(a) where subsection (1) above does not apply in the case of any other individual, on the amount receivable by the member;

(b) where that subsection also applies in the case of one or more other individuals, on the appropriate fraction of that amount;

and subsection (4) of section 299 applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.

(1D) In subsection (1C) above “the appropriate fraction” is—

$$\frac{A}{B}$$

where—

A is the amount subscribed by the individual for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A)(b) above, would be attributable;

B is the aggregate of that amount and the amount or amounts subscribed by the other individual or individuals for such shares.

(2) Where the repayment, redemption, repurchase or payment mentioned in subsection (1) above falls within the seven year periods for two or more issues of eligible shares in the company, subsection (1A) above shall have effect in relation to each of those issues as if the amount receivable by the member were reduced by multiplying it by the fraction—

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$$\frac{C}{D}$$

where—

C is the amount subscribed by individuals for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A) (b) above, would be attributable;

D is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.”

(2) In subsection (3) of that section, for the words “the relevant period” there shall be substituted the words “the seven year period”.

(3) For subsection (9A) of that section there shall be substituted the following subsection—

“(9A) References in this section to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question or, as the case may be, the receipt of value in question.”

#### *Husband and wife*

16 (1) After subsection (3) of section 304 of the Taxes Act 1988 there shall be inserted the following subsection—

“(4) Subsections (6) to (6D) of section 299 shall apply for the purposes of this section as they apply for the purposes of that section.”

(2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

#### *Acquisition of share capital by new company*

17 (1) After section 304 of the Taxes Act 1988 there shall be inserted the following section—

#### **“304A Acquisition of share capital by new company.**

(1) This section applies where—

(a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);

(b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;

(e) at some time before the issue of the new shares—

(i) the old company issued eligible shares; and

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- (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and
  - (f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—
    - (i) will be effected for bona fide commercial reasons; and
    - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.
- (2) For the purposes of this Chapter—
- (a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and
  - (b) any relief under this Chapter which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and
  - (d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which his liability was so reduced in respect of the old shares.
- (4) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and
  - (d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.
- (5) Where relief becomes so attributable to any new shares—
- (a) this Chapter shall have effect as if anything which, under section 306(2), 307(1A) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

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- (b) any appeal brought by the old company against a notice under section 307(1A)(b) may be prosecuted by the new company as if it had been brought by that company.
  - (6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
  - (7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.
  - (8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.”
- (2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.

*Relief for loss on disposal of shares*

- 18 (1) In subsection (2) of section 305A of the Taxes Act 1988, for the words “576(2) and (3)” there shall be substituted the words “ 576(1) to (3) ”.
- (2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

*Claims*

- 19 (1) In subsection (1) of section 306 of the Taxes Act 1988, after the word “assessment”, in the first place where it occurs, there shall be inserted the words “ (or treated by section 289B(5) as so issued) ”.
- (2) In subsection (2) of that section, for the words “the conditions for the relief, so far as applying to the company and the trade,” there shall be substituted the words “ , except so far as they fall to be satisfied by that person, the conditions for the relief ”.
- (3) For subsection (3) of that section there shall be substituted the following subsection—
- “(3) Before issuing a certificate for the purposes of subsection (2) above a company shall furnish the inspector with a statement to the effect that, except so far as they fall to be satisfied by the persons to whom eligible shares comprised in the share issue have been issued, the conditions for the relief—
- (a) are satisfied in relation to that issue; and
  - (b) have been so satisfied at all times since the beginning of the relevant period.”
- (4) In subsection (3A) of that section, the words “but section 289B(5) shall not apply for the purposes of this subsection” shall cease to have effect.
- (5) For subsections (4) and (5) of that section there shall be substituted the following subsections—

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“(4) No certificate shall be issued for the purposes of subsection (2) above without the authority of the inspector; but where the company, or a person connected with the company, has given notice to the inspector under section 310(2) or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act, the authority must be given or renewed after the receipt of the notice.

(5) Any statement under subsection (3) above shall be in such form as the Board may direct and shall contain—

- (a) such additional information as the Board may reasonably require, including in particular information relating to the persons who have requested the issue of certificates under subsection (2) above;
- (b) a declaration that the statement is correct to the best of the company’s knowledge and belief; and
- (c) such other declarations as the Board may reasonably require.”

#### *Withdrawal of relief*

20 (1) In subsection (1A) of section 307 of the Taxes Act 1988—

- (a) for the words “section 289(1)(b) or (c)” there shall be substituted the words “ section 289(1)(b), (ba) or (c) ”; and
- (b) after the words “section 310” there shall be inserted the words “ or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act ”.

(2) After subsection (1B) of that section there shall be inserted the following subsection—

“(1C) Where any issue has been determined on an appeal brought by virtue of paragraph 1A(6) of Schedule 5B to the 1992 Act (appeal against notice that shares never have been, or have ceased to be, eligible shares), the determination shall be conclusive for the purposes of any appeal brought by virtue of subsection (1B) above on which that issue arises.”

(3) In subsection (4) of that section, for the words “ordinary shares” there shall be substituted the words “ eligible shares ”.

(4) In subsection (6)(b) of that section, for the words “section 291” there shall be substituted the words “ section 289(1)(ba), 291 ”.

#### *Application to subsidiaries*

21 In subsection (2) of section 308 of the Taxes Act 1988, for the words “90 per cent.”, in each place where they occur, there shall be substituted the words “ 75 per cent. ”.

#### *Information*

22 (1) In subsection (1) of section 310 of the Taxes Act 1988, for the words “299A, 300 or 304” there shall be substituted the words “ 299A or 300 ”.

(2) In subsection (2) of that section—

- (a) for the words “289(1)(c) or (6), 293, 297” there shall be substituted the words “ 289(1)(ba) or (c), 293 ”; and

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- (b) the words “or payment” shall cease to have effect.
- (3) In subsection (7) of that section, for the words “300, 301 and 303(3)” there shall be substituted the words “ 300 and 303(3) ”.
- (4) After subsection (9) of that section there shall be inserted the following subsection—  
“(9A) References in this section to withdrawal of relief include its reduction.”
- (5) This paragraph has effect in relation to events occurring on or after 6th April 1998.

### *Interpretation of Chapter III*

- 23 (1) In subsection (1) of section 312 of the Taxes Act 1988—
- (a) the definition of “new consideration” shall cease to have effect; and
  - (b) for the definitions of “research and development” and “relief” there shall be substituted the following definitions—
    - “relief” means relief under this Chapter;
    - ‘research and development’ means any activity which is intended to result in a patentable invention (within the meaning of the <sup>M1</sup>Patents Act 1977) or in a computer program;
    - ‘the seven year period’ has the meaning given by section 291(6);”.
- (2) In subsection (1A) of that section, the words “(disregarding section 289B(5))” shall cease to have effect.
  - (3) In subsection (1B)(c) of that section, the words “dealt in on the Unlisted Securities Market or” shall cease to have effect.
  - (4) In subsection (2) of that section, for the words “sections 291 to 291B” there shall be substituted the words “ section 291, section 291A(1), (4) and (5) and section 291B ”.
  - (5) After subsection (4) of that section there shall be inserted the following subsections—
    - “(4A) In this Chapter references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day.
    - (4B) For the purposes of this Chapter shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.”
  - (6) In subsection (7) of that section, for the words “section 289(2)(c)” there shall be substituted the words “ subsection (2)(c) of section 289 ”.

#### **Marginal Citations**

**M1** 1977 c. 37.

*Status: Point in time view as at 31/07/1998.*

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## PART II U.K.

### EIS RELIEF AGAINST CHARGEABLE GAINS

- 24 (1) In subsections (1) and (2) of section 150A of the <sup>M2</sup>Taxation of Chargeable Gains Act 1992 (enterprise investment schemes), the word “eligible” shall cease to have effect.
- (2) In subsection (4)(a) of that section, for the words “issued to a person at different times a disposal relates” there shall be substituted the words “acquired by an individual at different times a disposal relates to”.
- (3) In subsection (5) of that section, for the words “Sections 104, 105 and 107” there shall be substituted the words “Sections 104, 105 and 106A”.
- (4) For subsection (6) of that section there shall be substituted the following subsections—
- “(6) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which relief is attributable and to which subsection (6A) below applies,
  - (b) shares to which relief is attributable and to which that subsection does not apply, and
  - (c) shares to which relief is not attributable,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this section) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (6A) This subsection applies to any shares if—
- (a) expenditure on the shares has been set under Schedule 5B to this Act against the whole or part of any gain; and
  - (b) in relation to the shares there has been no chargeable event for the purposes of that Schedule.”

(5) In subsection (8A)(a) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.

(6) After subsection (8C) of that section there shall be inserted the following subsection—

“(8D) Where shares to which relief is attributable are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—

    - (a) subsection (8) above shall not have effect to disapply section 135; and
    - (b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.”

(7) After subsection (10) of that section there shall be inserted the following subsection—

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“(10A) In this section—

“ordinary share capital” has the same meaning as in the Taxes Act;

“ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.”

(8) In this paragraph—

- (a) sub-paragraphs (1) to (3) have effect in relation to disposals made on or after 6th April 1998;
- (b) sub-paragraph (4) has effect in relation to reorganisations taking effect on or after that date;
- (c) sub-paragraph (5) has effect in relation to new shares (within the meaning of section 150A(8A) of the <sup>M3</sup>Taxation of Chargeable Gains Act 1992) issued on or after that date;
- (d) sub-paragraph (6) has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after that date; and
- (e) sub-paragraph (7) has effect in relation to events occurring on or after that date.

#### Marginal Citations

**M2** 1992 c. 12.

**M3** 1992 c. 12.

- 25 (1) In subsection (1) of section 150B of that Act (enterprise investment scheme: reduction of relief), the word “eligible” shall cease to have effect.
- (2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

### PART III U.K.

#### EIS DEFERRAL OF CHARGEABLE GAINS

##### *Preliminary*

- 26 Schedule 5B to the <sup>M4</sup>Taxation of Chargeable Gains Act 1992 (enterprise investment scheme: re-investment) shall be amended in accordance with the following provisions of this Part.

#### Marginal Citations

**M4** 1992 c. 12.

##### *Application of Schedule*

- 27 (1) In sub-paragraph (1)(b) of paragraph 1, after the words “in accordance with” there shall be inserted the words “section 164F or 164FA,”.

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(2) For sub-paragraphs (2) and (3) of that paragraph there shall be substituted the following sub-paragraphs—

“(2) The investor makes a qualifying investment for the purposes of this Schedule if—

- (a) eligible shares in a company for which he has subscribed wholly in cash are issued to him at a qualifying time and, where that time is before the accrual time, the shares are still held by the investor at the accrual time,
- (b) the company is a qualifying company in relation to the shares,
- (c) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),
- (d) the shares are subscribed for, and issued, for bona fide commercial purposes and not as part of arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
- (e) the requirements of section 289(1A) of the Taxes Act are satisfied in relation to the company,
- (f) all the shares comprised in the issue are issued in order to raise money for the purpose of a qualifying business activity, and
- (g) the money raised by the issue is employed not later than the time mentioned in section 289(3) of the Taxes Act wholly for the purpose of that activity,

and for the purposes of this Schedule, the condition in paragraph (g) above does not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.

(3) In sub-paragraph (2) above “a qualifying time”, in relation to any shares subscribed for by the investor, means—

- (a) any time in the period beginning one year before and ending three years after the accrual time, or
- (b) any such time before the beginning of that period or after it ends as the Board may by notice allow.”

*Failure of conditions of application*

28 After that paragraph there shall be inserted the following paragraph—

*“ Failure of conditions of application*

1A (1) If the condition in sub-paragraph (2)(b) of paragraph 1 above is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.

(2) If the condition in sub-paragraph (2)(e) of that paragraph is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.

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- (3) If the condition in sub-paragraph (2)(f) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule as never having been eligible shares.
- (4) If the condition in sub-paragraph (2)(g) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule—
  - (a) if the claim under this Schedule is made after the time mentioned in section 289(3) of the Taxes Act, as never having been eligible shares; and
  - (b) if that claim is made before that time, as ceasing to be eligible shares at that time.
- (5) None of the preceding sub-paragraphs applies unless—
  - (a) the company has given notice under paragraph 16(2) or (4) below or section 310(2) of the Taxes Act; or
  - (b) an inspector has given notice to the company stating that, by reason of the matter mentioned in that sub-paragraph, the shares should, in his opinion, be treated for the purposes of this Schedule as never having been or, as the case may be, as ceasing to be eligible shares.
- (6) The giving of notice by an inspector under sub-paragraph (5) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.
- (7) Where any issue has been determined on an appeal brought by virtue of section 307(1B) of the Taxes Act (appeal against notice that relief was not due), the determination shall be conclusive for the purposes of any appeal brought by virtue of sub-paragraph (6) above on which that issue arises.”

*Postponement of original gain*

- 29 In sub-paragraph (3) of paragraph 2, for paragraph (a) there shall be substituted the following paragraph—
- “(a) the investor’s qualifying expenditure on any relevant shares is the amount subscribed by him for the shares; and”.

*Chargeable events*

- 30 (1) In sub-paragraph (1) of paragraph 3—
- (a) in paragraphs (c) and (d), for the words “the first relevant period” there shall be substituted the words “ the five year period ”; and
  - (b) for paragraphs (e) and (f) there shall be substituted the words “or
    - (e) those shares cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.”
- (2) Sub-paragraph (2) of that paragraph shall cease to have effect.
- (3) After sub-paragraph (5) of that paragraph there shall be inserted the following sub-paragraph—

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“(6) Any reference in the following provisions of this Schedule to a chargeable event falling within a particular paragraph of sub-paragraph (1) above is a reference to a chargeable event arising for the purposes of this Schedule by virtue of that paragraph.”

*Gains accruing on chargeable event*

31 (1) For sub-paragraphs (2) to (4) of paragraph 4 there shall be substituted the following sub-paragraphs—

“(2) Any question for the purposes of capital gains tax as to whether any shares to which a disposal (including a disposal within marriage) relates are shares to which deferral relief is attributable shall be determined in accordance with sub-paragraphs (3) and (4) below.

(3) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated as disposed of in the following order, namely—

- (a) first any to which neither deferral relief nor relief under Chapter III of Part VII of the Taxes Act is attributable;
- (b) next any to which deferral relief, but not relief under that Chapter, is attributable;
- (c) next any to which relief under that Chapter, but not deferral relief, is attributable; and
- (d) finally any to which both deferral relief and relief under that Chapter are attributable.

(4A) The following, namely—

- (a) any shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable and which were disposed of to an individual by a disposal within marriage, and
- (b) any shares to which relief under that Chapter is attributable and which were transferred to an individual as mentioned in section 304 of that Act,

shall be treated for the purposes of sub-paragraphs (3) and (4) above as acquired by him on the day on which they were issued.

(4B) Chapter I of Part IV of this Act has effect subject to sub-paragraphs (2) to (4A) above.

(4C) Sections 104, 105 and 106A shall not apply to shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.”

(2) In sub-paragraph (5)(b) of that paragraph, for the words “the assumptions for which sub-paragraph (3) above provides” there shall be substituted the words “ sub-paragraphs (3) to (4A) above ”.

(3) This paragraph has effect in relation to disposals made on or after 6th April 1998.

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*Persons to whom gain accrues*

32 In sub-paragraph (1) of paragraph 5, for paragraphs (c) and (d) there shall be substituted the words “or

- (c) to the person who holds the shares in question when they cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.”

*Claims*

33 For paragraph 6 there shall be substituted the following paragraph—

*“ Claims*

- 6 (1) Subject to sub-paragraph (2) below, section 306 of the Taxes Act shall apply in relation to a claim under this Schedule in respect of relevant shares as it applies in relation to a claim for relief under Chapter III of Part VII of that Act in respect of eligible shares.
- (2) That section, as it so applies, shall have effect as if—
- (a) any reference to the conditions for the relief were a reference to the conditions for the application of this Schedule;
- (b) in subsection (1), the words “(or treated by section 289B(5) as so issued)” were omitted; and
- (c) subsections (7) to (9) were omitted.”

*Reorganisations and reconstructions*

34 After paragraph 6 there shall be inserted the following paragraphs—

*“ Reorganisations*

- 7 (1) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which deferral relief and relief under Chapter III of Part VII of the Taxes Act are attributable,
- (b) shares to which deferral relief but not relief under that Chapter is attributable, and
- (c) shares to which deferral relief is not attributable,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this paragraph) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (2) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
- (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and

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- (c) immediately following the reorganisation, the existing holding or the allotted shares are shares to which deferral relief is attributable, sections 127 to 130 shall not apply in relation to the existing holding.

*Acquisition of share capital by new company*

- 8 (1) This paragraph applies where—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
  - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
  - (e) at some time before the issue of the new shares—
    - (i) the old company issued eligible shares; and
    - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied); and
  - (f) by virtue of section 127 as applied by section 135(3), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (2) For the purposes of this Schedule, deferral relief attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company; and
  - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (4) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were acquired by the individual on a disposal within marriage, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company; and

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- (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (5) Where deferral relief becomes so attributable to any new shares—
  - (a) this Schedule shall have effect as if anything which, under paragraph 1A(5) above, paragraph 16 below or section 306(2) of the Taxes Act as applied by paragraph 6 above has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and
  - (b) any appeal brought by the old company against a notice under paragraph 1A(5)(b) may be prosecuted by the new company as if it had been brought by that company.
- (6) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in sub-paragraph (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
- (7) Nothing in section 293(8) of the Taxes Act, as applied by the definition of “qualifying company” in paragraph 19(1) below, shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in sub-paragraph (1) above or arrangements with a view to such an exchange.

*Other reconstructions and amalgamations*

- 9 (1) Subject to sub-paragraphs (2) and (3) below, sections 135 and 136 shall not apply in respect of shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.
- (2) Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where—
  - (a) the new holding consists of new ordinary shares (“the new shares”) carrying no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future right to be redeemed,
  - (b) the new shares are issued after the end of the relevant period, and
  - (c) the condition in sub-paragraph (4) below is satisfied.
- (3) Sub-paragraph (1) above shall not have effect to disapply section 135 where shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable are exchanged for other shares in such circumstances as are mentioned in paragraph 8(1) above.
- (4) The condition is that at some time before the issue of the new shares—
  - (a) the company issuing them issued eligible shares, and
  - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied).
- (5) In sub-paragraph (2) above “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.”

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*Anti-avoidance provisions*

35 After paragraph 9 there shall be inserted the following paragraphs—

*“ Re-investment in same company etc.*

- 10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—
- (a) is the company in which the initial holding subsisted; or
  - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.
- (2) Where—
- (a) any eligible shares in a qualifying company (“the acquired holding”) are issued to an individual,
  - (b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the “postponed gain”), and
  - (c) after the issue of those shares, eligible shares in a relevant company are issued to him,
- he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.
- (3) For the purposes of sub-paragraph (2) above a company is a relevant company if—
- (a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;
  - (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or
  - (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

*Pre-arranged exits*

- 11 (1) Where an individual subscribes for eligible shares (“the shares”) in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;

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- (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
  - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.
- (3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
  - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
  - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in sub-paragraph (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section.
- (6) In this paragraph “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and
  - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

*Put options and call options*

- 12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and—
- (a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or
  - (b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.

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- (2) The shares to which the option relates shall be treated for the purposes of this Schedule—
  - (a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.
- (3) The shares to which the option relates shall be taken to be those which, if—
  - (a) the option were exercised immediately after the grant, and
  - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,would be treated for the purposes of this Schedule as disposed of in pursuance of the option.
- (4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.
- (5) An individual who acquires any eligible shares on a disposal within marriage shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

*Value received by investor*

- 13 (1) Where an individual who subscribes for eligible shares (“the shares”) in a company receives any value from the company at any time in the seven year period, the shares shall be treated as follows for the purposes of this Schedule—
- (a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.
- (2) For the purposes of this paragraph an individual receives value from the company if the company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company’s share capital or any security on its cancellation or extinguishment;
  - (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—
    - (i) on or after the date on which he subscribed for the shares; and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
  - (c) makes to the individual any payment for giving up his right to any debt on its extinguishment;
  - (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;

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- (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;
  - (f) provides a benefit or facility for the individual;
  - (g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
  - (h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or
  - (i) makes any payment to the individual other than a qualifying payment.
- (3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
  - (b) the amount of any debt due from the individual to a third person which has been assigned to the company.
- (4) For the purposes of this paragraph an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6) of the Taxes Act.
- (5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act, be treated as connected with the company—
- (a) purchases any of its share capital or securities which belong to the individual; or
  - (b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.
- (6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.
- (7) In this paragraph "qualifying payment" means—
- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
  - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
  - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
  - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;

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- (e) any payment for the supply of goods which does not exceed their market value;
  - (f) any payment for the acquisition of an asset which does not exceed its market value;
  - (g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
  - (h) any reasonable and necessary remuneration which—
    - (i) is paid by any company for services rendered to that company in the course of a trade or profession; and
    - (ii) is taken into account in computing the profits of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits are assessed under that Schedule;
  - (i) a payment in discharge of an ordinary trade debt.
- (8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (9) In this paragraph—
- (a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and
  - (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (10) In this paragraph—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;
  - (b) any reference to an individual includes a reference to an associate of his; and
  - (c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.
- (11) In this paragraph “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
- (a) does not exceed six months; and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

*Value received by other persons*

- 14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and at any time in the seven year period the company or any subsidiary—

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- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or an individual falling within sub-paragraph (3) below, or
  - (b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- (2) The shares shall be treated for the purposes of this Schedule—
- (a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.
- (3) An individual falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) gives rise to a qualifying chargeable event in respect of him, or
  - (b) causes any relief under Chapter III of Part VII of the Taxes Act attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of that Act.
- (4) In sub-paragraph (3) above “qualifying chargeable event” means—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or
  - (b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).
- (5) Where—
- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the <sup>M5</sup>Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and
  - (b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares,
- the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.
- (6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) above to the <sup>M6</sup>Companies Act 1985 and to section 117 of that Act shall have effect as references to the <sup>M7</sup>Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.
- (7) References in this paragraph to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

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### *Investment-linked loans*

- 15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares (“the shares”) in a company, the shares shall be treated for the purposes of this Schedule—
- (a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.
- (2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.
- (3) References in this paragraph to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
  - (b) to the assignment or assignation to that person of any debt due from that individual.
- (4) In this paragraph any reference to an individual includes a reference to an associate of his.”

#### **Marginal Citations**

- M5** 1985 c. 6.
- M6** 1985 c. 6.
- M7** S.I. 1986/1032 (N.I.6).

### *Supplementary provisions*

- 36 After paragraph 15 there shall be inserted the following paragraphs—

#### *“ Information*

- 16 (1) Where, in relation to any relevant shares held by an individual—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above occurs at any time in the five year period,
  - (b) a chargeable event falling within paragraph 3(1)(c) or (d) above occurs, or
  - (c) a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 12(2)(b), 13(1)(b) or 15(1)(b) above,
- the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (2) Where, in relation to any relevant shares in a company, a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 1A(1) or (2), 13(1)(b) or 14(2)(b) above—

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- (a) the company, and
  - (b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (3) A chargeable event falling within paragraph 3(1)(e) above which, but for paragraph 1A(5) above, would occur at any time by virtue of paragraph 1A(1) or (2) above shall be treated for the purposes of sub-paragraph (2) above as occurring at that time.
- (4) Where a company has issued a certificate under section 306(2) of the Taxes Act (as applied by paragraph 6 above) in respect of any eligible shares in the company, and the condition in paragraph 1(2)(g) above is not satisfied in relation to the shares—
  - (a) the company, and
  - (b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the time mentioned in section 289(3) of the Taxes Act or, in the case of a person within paragraph (b) above, of his coming to know that the condition is not satisfied, give notice to the inspector setting out the particulars of the case.
- (5) If the inspector has reason to believe that a person has not given a notice which he is required to give—
  - (a) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
  - (b) under sub-paragraph (4) above in respect of any particular case,

the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Schedule.
- (6) Where a claim is made under this Schedule in respect of shares in a company and the inspector has reason to believe that it may not be well founded by reason of any such arrangements as are mentioned in paragraphs 1(2)(d) or 11(1) above, or section 293(8) or 308(2)(e) of the Taxes Act, he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed;
  - (b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (7) For the purposes of sub-paragraph (6) above, the persons who are persons concerned are—
  - (a) in relation to paragraph 1(2)(d) above, the claimant, the company and any person controlling the company;

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- (b) in relation to paragraph 11(1) above, the claimant, the company and any person connected with the company; and
  - (c) in relation to section 293(8) or 308(2)(e) of the Taxes Act, the company and any person controlling the company;
- and for those purposes the references in paragraphs (a) and (b) above to the claimant include references to any person to whom the claimant appears to have made a disposal within marriage of any of the shares in question.
- (8) Where deferral relief is attributable to shares in a company—
    - (a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of paragraph 13 above, and
    - (b) any person on whose behalf such a payment or asset is received, shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.
  - (9) Where a claim has been made under this Schedule in relation to shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state—
    - (a) whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself; and
    - (b) if so, the name and address of that person.
  - (10) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

*Trustees: general*

- 17 (1) Subject to the following provisions of this paragraph, this Schedule shall apply as if—
  - (a) any reference to an individual included a reference to the trustees of a settlement, and
  - (b) in relation to any such trustees, the reference in paragraph 1(1) above to any asset were a reference to any asset comprised in any settled property to which this paragraph applies (a “trust asset”).
- (2) This paragraph applies—
  - (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
  - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals.
- (3) If, at the time of the disposal of the trust asset in a case where this Schedule applies by virtue of this paragraph—
  - (a) the settled property comprising that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, but
  - (b) not all the beneficiaries are individuals,

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only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of this Schedule as it so applies.

- (4) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(a) above unless, immediately after the acquisition of the relevant shares, the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(a) above.
- (5) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above unless, immediately after the acquisition of the relevant shares—
- (a) the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, and
  - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the trust asset.
- (6) If, at any time, in the case of settled property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, both individuals and others have interests in possession, “the relevant proportion” at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—
- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
  - (b) the total amount of all the income of the settled property.
- (7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this paragraph shall apply as if—
- (a) the interests of the relevant beneficiaries were a single interest in possession, and
  - (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.
- (8) In this paragraph references to interests in possession do not include interests for a fixed term and, except in sub-paragraph (1), references to individuals include any charity.

*Trustees: anti-avoidance*

- 18 (1) Paragraphs 13 and 15 above shall have effect in relation to the subscription for shares by the trustees of a settlement as if references to the individual subscribing for the shares were references to—
- (a) those trustees;

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- (b) any individual or charity by virtue of whose interest, at a relevant time, paragraph 17 above applies to the settled property; or
  - (c) any associate of such an individual, or any person connected with such a charity.
- (2) The relevant times for the purposes of sub-paragraph (1)(b) above are the time when the shares are issued and—
- (a) in a case where paragraph 13 above applies, the time when the value is received;
  - (b) in a case where paragraph 15 above applies, the time when the loan is made.

#### *Interpretation*

- 19 (1) For the purposes of this Schedule—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “associate” has the meaning that would be given by subsections (3) and (4) of section 417 of the Taxes Act if in those subsections “relative” did not include a brother or sister;
  - “eligible shares” has the meaning given by section 289(7) of that Act;
  - “the five year period”, in the case of any relevant shares, means the period of five years beginning with the issue of the shares;
  - “non-resident” means a person who is neither resident nor ordinarily resident in the United Kingdom;
  - “ordinary share capital” has the same meaning as in the Taxes Act;
  - “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;
  - “qualifying business activity” has the meaning given by section 289(2) of the Taxes Act;
  - “qualifying company”, in relation to any eligible shares, means a company which, in relation to those shares, is a qualifying company for the purposes of Chapter III of Part VII of that Act;
  - “the relevant period”, in the case of any shares, means the period found by applying section 312(1A)(a) of that Act by reference to the company that issued the shares and by reference to the shares;
  - “relevant shares”, in relation to a case to which this Schedule applies, means any of the shares which are acquired by the investor in making the qualifying investment;
  - “the seven year period” has the meaning given by section 291(6) of the Taxes Act.
- (2) For the purposes of this Schedule, “deferral relief” is attributable to any shares if—
- (a) expenditure on the shares has been set under this Schedule against the whole or part of any gain; and
  - (b) in relation to the shares there has been no chargeable event for the purposes of this Schedule.

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- (3) In this Schedule—
- (a) references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day;
  - (b) references to a disposal within marriage are references to any disposal to which section 58 applies; and
  - (c) references to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.
- (4) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.
- (5) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.”

#### PART IV U.K.

##### BES INCOME TAX RELIEF AND RELIEF AGAINST CHARGEABLE GAINS

- 37 Any reference in this Part to a provision of Chapter III of Part VII of the Taxes Act 1988 is a reference to that provision as it has effect in relation to shares issued before 1st January 1994.
- 38 (1) In subsection (8) of section 293 of the Taxes Act 1988 (qualifying companies), for the words “Subject to sections 308 and 309” there shall be substituted the words “Subject to sections 304A, 308 and 309”.
- (2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.
- 39 (1) At the beginning of subsection (1) of section 299 of the Taxes Act 1988 (disposals of shares) there shall be inserted the words “Subject to section 304(5),”.
- (2) For subsection (4) of that section there shall be substituted the following subsections—
- “(4) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall, subject to subsection (3) above, be treated for the purposes of this section as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (4A) Where shares of any class in a company have been acquired by an individual on the same day, any disposal by him of shares of that class shall, subject to subsection (3) above, be treated for the purposes of this section as relating to those in respect of which relief has not been given, or has been withdrawn, rather than to those in respect of which relief has been given and has not been withdrawn.
- (4B) Any shares in respect of which relief has been given and has not been withdrawn and which were transferred to an individual as mentioned in

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section 304 shall be treated for the purposes of subsections (4) and (4A) above as acquired by him on the day on which they were issued.

(4C) In a case to which section 127 of the 1992 Act applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of subsections (4) and (4A) above as acquired when the original shares were acquired.

In this subsection “new holding” and “original shares” shall be construed in accordance with sections 126, 127, 135 and 136 of the 1992 Act.”

(3) This paragraph has effect in relation to disposals made on or after 6th April 1998.

40 (1) After subsection (6) of section 304 of the Taxes Act 1988 (husband and wife) there shall be inserted the following subsection—

“(7) Subsections (3) to (4C) of section 299 shall apply for the purposes of this section as they apply for the purposes of that section.”

(2) This paragraph has effect in relation to disposals made on or after 6th April 1998.

41 (1) After that section there shall be inserted the following section—

**“304A Acquisition of share capital by new company.**

(1) This section applies where—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
- (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
- (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
- (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
- (e) at some time before the issue of the new shares—
  - (i) the old company issued eligible shares; and
  - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and
- (f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—
  - (i) will be effected for bona fide commercial reasons; and
  - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.

(2) For the purposes of this Chapter—

- (a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and
- (b) any relief which has been given (and not withdrawn) in respect of any old shares shall be treated as given (and not withdrawn) in respect of the new shares for which they are exchanged.

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- (3) Where, in the case of any new shares held by an individual in respect of which relief is treated as so given (and not withdrawn), the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares;
  - (d) relief had been given to him in respect of the new shares for the same year of assessment as that for which relief was given to him in respect of the old shares; and
  - (e) any reduction made, or falling to be made, in the amount of relief given to him in respect of the old shares had been made, or fell to be made, in the amount of relief given to him in respect of the new shares.
- (4) Where, in the case of any new shares held by an individual in respect of which relief is treated as so given (and not withdrawn), the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;
  - (c) the claim for relief made in respect of the old shares had been made in respect of the new shares;
  - (d) relief had been given to him in respect of the new shares for the same year of assessment as that for which relief was given in respect of the old shares; and
  - (e) any reduction made, or falling to be made, in the amount of relief given in respect of the old shares had been made, or fell to be made, in the amount of relief given to him in respect of the new shares.
- (5) Where relief is treated as so given (and not withdrawn) in respect of any new shares, this Chapter shall have effect as if anything which, under section 306(2) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company.
- (6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
- (7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.

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- (8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.”
- (2) This paragraph has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after 6th April 1998.
- 42 (1) In subsection (4)(a) of section 150 of the <sup>M8</sup>Taxation of Chargeable Gains Act 1992 (business expansion schemes)—
- (a) for the words “issued to a person” there shall be substituted the words “acquired by an individual”; and
- (b) after the word “relates” there shall be inserted the word “to”.
- (2) In subsection (5) of that section, for the words “Notwithstanding anything in section 107(1) and (2), section 107 does not apply” there shall be substituted the words “Sections 104, 105 and 106A do not apply”.
- (3) In subsection (7) of that section, for the words “eligible shares” there shall be substituted the words “shares in respect of which relief has been given and not withdrawn”.
- (4) In subsection (8) of that section, the word “eligible” shall cease to have effect.
- (5) In subsection (8A)(a) of that section, the word “preferential”, in the second place where it occurs, shall cease to have effect.
- (6) After subsection (8C) of that section there shall be inserted the following subsection—
- “(8D) Where shares in respect of which relief has been given and not withdrawn are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—
- (a) subsection (8) above shall not have effect to disapply section 135; and
- (b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.”
- (7) After subsection (11) of that section there shall be inserted the following subsection—
- “(12) In this section—
- “ordinary share capital” has the same meaning as in the Taxes Act;
- “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital.”
- (8) In this paragraph—
- (a) sub-paragraphs (1) and (2) have effect in relation to disposals made on or after 6th April 1998;
- (b) sub-paragraph (3) has effect in relation to subsequent disposals made on or after that date;

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- (c) sub-paragraph (4) has effect in relation to events occurring on or after that date;
- (d) sub-paragraph (5) has effect in relation to new shares (within the meaning of section 150(8A) of the <sup>M9</sup>Taxation of Chargeable Gains Act 1992) issued on or after that date;
- (e) sub-paragraph (6) has effect in relation to new shares (within the meaning of section 304A of the Taxes Act 1988) issued on or after that date; and
- (f) sub-paragraph (7) has effect in relation to events occurring on or after that date.

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**Marginal Citations**

**M8** 1992 c. 12.

**M9** 1992 c. 12.

**Status:**

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**Changes to legislation:**

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