
Status: Point in time view as at 28/07/2000.

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SCHEDULES

SCHEDULE 18

VENTURE CAPITAL TRUSTS: AMENDMENTS

PART II

QUALIFYING HOLDINGS

Introductory

- 4 Schedule 28B to the Taxes Act 1988 (venture capital trusts: qualifying holdings) is amended as follows.

Qualifying trade: receipt of royalties or licence fees

- 5 (1) In paragraph 4 (meaning of “qualifying trade”) for sub-paragraphs (5) and (6) (trades consisting of receiving royalties and licence fees) substitute—

“(5) A trade shall not be treated as failing to comply with this paragraph by reason only that it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(6) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—

- (a) by the company carrying on the trade, or
- (b) by a company which at all times during which it created the intangible asset was—
 - (i) the parent company of the company carrying on the trade, or
 - (ii) a qualifying subsidiary of that parent company.

(6A) In the case of a relevant asset that is intellectual property, references in sub-paragraph (6) above to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6B) For the purposes of sub-paragraphs (5) to (6A) above “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

For this purpose “normal accounting practice” means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

(6C) For the purposes of sub-paragraph (6) above

Status: Point in time view as at 28/07/2000.

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- (a) “parent company” means a company that—
 - (i) has one or more 51% subsidiaries, but
 - (ii) is not itself a 51% subsidiary of another company; and
 - (b) paragraph 10 below (meaning of “qualifying subsidiary”) shall apply as if the references in that paragraph to the relevant company were references to the parent company referred to in sub-paragraph (6)(b) above.
- (6D) For the purposes of sub-paragraph (6A) above “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer’s right or plant breeder’s right; and
 - (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a) above.”.
- (2) This paragraph has effect for the purpose of determining whether shares or securities issued on or after 6th April 2000 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.

Meaning of “research and development”

- 6 (1) In paragraph 5 (provisions supplemental to paragraph 4), in sub-paragraph (1) for the definition of “research and development” substitute—
- ““research and development” has the meaning given by section 837A;”.
- (2) This paragraph has effect for the purpose of determining whether shares or securities issued on or after 6th April 2000 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.
- (3) Nothing in this paragraph affects the operation of Schedule 28B to the Taxes Act 1988 as it has effect for the purpose of determining whether shares or securities issued before that date are, for the purposes of section 842AA of that Act, to be regarded as comprised in a company’s qualifying holdings.

Company in administration or receivership

- 7 (1) After paragraph 11 insert—

“ Company in administration or receivership

- 11A (1) A company which is in administration or receivership shall not be regarded as ceasing to comply with paragraph 3(2) or (3) by reason of anything done as a consequence of its being in administration or receivership.
- (2) For this purpose—
- (a) a company is “in administration” if there is in force in relation to it—
 - (i) an administration order under Part II of the ^{M1}Insolvency Act 1986 or Part III of the ^{M2}Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom; and

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- (b) a company is “in receivership” if there is in force in relation to it—
- (i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the ^{M3}Insolvency Act 1986 or Part IV of the ^{M4}Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom.
- (3) This paragraph applies only if—
- (a) the making of the order in question, and
 - (b) everything done as a consequence of the company being in administration or receivership,
- is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.”.
- (2) This paragraph has effect for the purposes of determining whether shares or securities are, as at any time on or after 21st March 2000, to be regarded as comprised in a company’s qualifying holdings.

Marginal Citations

- M1** 1986 c. 45.
M2 S.I. 1989/2405 (N.I. 19).
M3 1986 c. 45.
M4 S.I. 1989/2405 (N.I. 19).

Company reorganisations etc. involving exchange of shares

- 8 (1) After paragraph 11A (inserted by paragraph 7 above), insert—

“ Company reorganisations etc. involving exchange of shares

- 11B (1) The Treasury may by regulations make provision for cases where—
- (a) a holding of shares or securities that meets the requirements of this Schedule is exchanged for other shares or securities,
 - (b) the exchange is made for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is the avoidance of tax, and
 - (c) the new shares or securities do not meet some or all of the requirements of this Schedule,
- providing that the new shares or securities shall be treated as meeting those requirements.
- (2) The references in sub-paragraph (1) to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares or securities in a company receiving other shares or securities—
- (a) whether the original shares or securities are transferred, cancelled or retained, and

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, Part II. (See end of Document for details)

- (b) whether the new shares or securities are in the same or another company.
- (3) The regulations shall specify—
- (a) the cases in which, and conditions subject to which, they apply,
 - (b) which requirements of this Schedule are to be treated as met, and
 - (c) the period for which those requirements are to be treated as met.
- (4) The regulations may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or expedient.
- (5) The regulations may authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by the regulations are met.
- (6) Regulations under this paragraph—
- (a) may make different provision for different cases,
 - (b) may include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate, and
 - (c) may include provision having retrospective effect.”.
- (2) In section 842AA of the Taxes Act 1988 (venture capital trusts: requirements for approval), after subsection (5AC) insert—
- “(5AD) Regulations under paragraph 11B of Schedule 28B may make provision for the purposes of subsection (2)(b) to (d) above for securing that where—
- (a) there is an exchange of shares to which regulations under that paragraph apply, and
 - (b) the new shares are treated by virtue of the regulations as meeting the requirements of that Schedule,
- the value of the holding of new shares, and of any original shares that are retained under the exchange, shall be taken to be an amount such that the requirements of subsection (2)(b) to (d) above do not cease to be met by reason of the exchange.
- (5AE) In subsection (5AD) above—
- (a) “shares” includes securities; and
 - (b) “exchange of shares”, “new shares” and “original shares” have the same meaning as in paragraph 11B of Schedule 28B.”.
- (3) In the first column of the table in section 98 of the ^{M5}Taxes Management Act 1970 (penalty for failure to comply with notice requiring information etc.), after the entry relating to paragraph 4 of Schedule 22 to the Taxes Act 1988 insert “regulations under paragraph 11B(5) of Schedule 28B”.
- (4) This paragraph applies to exchanges of shares or securities (within the meaning of paragraph 11B(1) of Schedule 28B to the Taxes Act 1988) taking effect on or after 21st March 2000.

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Marginal Citations

M5 1970 c. 9.

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