



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

#### CHAPTER 1

#### INTRODUCTION

#### *EIS relief*

#### **156 Meaning of “EIS relief” and commencement**

- (1) This Part provides for EIS income tax relief (“EIS relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares.
- (2) In this Part “EIS” stands for the enterprise investment scheme.
- (3) In accordance with section 1034(3), this Part has effect only in relation to shares issued on or after 6 April 2007.

This is subject to Schedule 2 (transitional provisions and savings).

#### **157 Eligibility for EIS relief**

- (1) An individual (“the investor”) is eligible for EIS relief in respect of an amount subscribed by the investor on the investor's own behalf for an issue of shares in a company (“the issuing company”) if—
  - (a) the shares (“the relevant shares”) are issued to the investor,
  - (b) the investor is a qualifying investor in relation to the relevant shares (see Chapter 2),

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- (c) the general requirements (including requirements as to the purpose of the issue of shares and the use of money raised) are met in respect of the relevant shares (see Chapter 3), and
  - (d) the issuing company is a qualifying company in relation to the relevant shares (see Chapter 4).
- (2) To be eligible for EIS relief in respect of an amount subscribed for shares issued by the issuing company in a tax year, the investor must have subscribed at least £500 for shares in the issuing company which—
- (a) meet the requirements of section 173(2) (ordinary shares which carry no preferential rights or rights of redemption), and
  - (b) are issued in the tax year.
- (3) Subsection (2) is subject to section 251(3) (approved investment funds).

### 158 Form and amount of EIS relief

- (1) If an individual—
- (a) is eligible for EIS relief in respect of any amount subscribed for shares, and
  - (b) makes a claim in respect of all or some of the shares included in the issue,
- the individual is entitled to a tax reduction for the tax year in which the shares were issued (“the current year”).

This is subject to the provisions of this Part.

- (2) The amount of the tax reduction to which the individual is entitled is the amount equal to tax at the [<sup>F1</sup>EIS rate] for the current year on—
- (a) the amount or, as the case may be, the sum of the amounts subscribed for shares issued in that year in respect of which the individual is eligible for and claims EIS relief, or
  - (b) if less, [<sup>F2</sup>£500,000].

[<sup>F3</sup>(2A) In this Part “the EIS rate” means 20%.]

- (3) The tax reduction is given effect at Step 6 of the calculation in section 23.
- (4) [<sup>F4</sup>... if in the case of any issue of shares—
- (a) which are issued [<sup>F4</sup>... in the current year, and
  - (b) in respect of the amount subscribed for which the individual is eligible for EIS relief,

the individual so claims, subsections (1) and (2) apply as if, in respect of such part of that issue as may be specified in the claim, the shares had been issued in the preceding tax year; and the individual's liability to tax for both tax years is determined accordingly.

[<sup>F5</sup>(5) .....

#### Textual Amendments

**F1** Words in s. 158(2) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 13\(2\)](#)

**F2** Word in s. 158(2)(b) substituted (21.7.2008 with effect in accordance with s. 31(2) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [s. 31\(1\)](#)

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- F3** S. 158(2A) inserted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 1 para. 13(3)**
- F4** Words in s. 158(4) omitted (with effect in accordance with Sch. 8 para. 13(2) of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 8 para. 6(2)**
- F5** S. 158(5) omitted (with effect in accordance with Sch. 8 para. 13(3) of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 8 para. 6(3)**

### *Miscellaneous*

#### **159 Periods A, B and C**

- (1) This section applies for the purposes of this Part in relation to any shares issued by a company.
- (2) “Period A” means the period—
- (a) beginning—
    - (i) with the incorporation of the company, or
    - (ii) if the company was incorporated more than two years before the date on which the shares were issued, two years before that date, and
  - (b) ending immediately before the termination date relating to the shares (see section 256).
- (3) “Period B” means the period—
- (a) beginning with the issue of the shares, and
  - (b) ending immediately before the termination date relating to the shares.
- (4) “Period C” means the period—
- (a) beginning 12 months before the issue of the shares, and
  - (b) ending immediately before the termination date relating to the shares.

#### **160 Overview of other Chapters of Part**

In this Part—

- (a) Chapter 5 provides for the attribution of EIS relief to shares and the making of claims for such relief,
- (b) Chapter 6 provides for EIS relief to be withdrawn or reduced in the circumstances mentioned in that Chapter,
- (c) Chapter 7 makes provision with respect to the procedure for the withdrawal or reduction of EIS relief, and
- (d) Chapter 8 contains supplementary and general provisions.

#### **161 Other tax reliefs relating to EIS**

- (1) Chapter 6 of Part 4 (losses on disposal of shares) provides for relief against the income of an individual who incurs an allowable loss for capital gains tax purposes on a disposal of shares to which EIS relief is attributable.
- (2) Subsection (3) of section 392 (loan to buy interest in close company) provides that subsection (2)(a) of that section does not apply if at any time—
- (a) the individual by whom the shares are acquired, or

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- (b) that individual's spouse or civil partner,  
 makes a claim for EIS relief in respect of the shares.
- (3) Section 150A of TCGA 1992 makes provision about gains or losses on the disposal of shares to which EIS relief is attributable.
- (4) Schedule 5B to TCGA 1992 provides relief in respect of the re-investment under EIS of the proceeds of assets disposed of in circumstances where there would otherwise be a chargeable gain.

<sup>F6</sup>(5) .....

#### **Textual Amendments**

**F6** S. 161(5) omitted (21.7.2008 with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 54](#)

## **CHAPTER 2**

### THE INVESTOR

#### *Introduction*

#### **162 Overview of Chapter**

The investor is a qualifying investor in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) no connection with the issuing company (see section 163),
- (b) no linked loans (see section 164), and
- (c) no tax avoidance (see section 165).

#### *The requirements*

#### **163 The no connection with the issuing company requirement**

- (1) The investor must not be connected with the issuing company (whether before or after its incorporation) at any time during the period—
  - (a) beginning two years before the issue of the shares, and
  - (b) ending immediately before the termination date relating to the shares.
- (2) This is subject to section 169(1).

#### **164 The no linked loans requirement**

- (1) No linked loan is to be made by any person, at any time in period A, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which—
  - (a) would not have been made, or
  - (b) would not have been made on the same terms,

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if the investor had not subscribed for the relevant shares, or had not been proposing to do so.

- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include references—
- (a) to the giving by that person of any credit to the investor or any associate of the investor, and
  - (b) to the assignment to that person of a debt due from the investor or any associate of the investor.

### **165 The no tax avoidance requirement**

The relevant shares must be subscribed for by the investor for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

*Meaning of connection with issuing company*

### **166 Connection with issuing company**

- (1) For the purposes of this Chapter (except section 168(4)), an individual is connected with the issuing company if the individual or an associate of the individual is connected with that company under—
- (a) section 167 (employees, directors and partners),
  - (b) section 170 (persons interested in capital etc of company), or
  - (c) section 171 (persons subscribing for shares under certain arrangements).
- (2) See too section 257(2).

### **167 Employees, directors and partners**

- (1) An individual is connected with the issuing company if the individual—
- (a) is an employee of—
    - (i) the issuing company,
    - (ii) any subsidiary of the issuing company, or
    - (iii) a partner of the issuing company or any of its subsidiaries,
  - (b) is a partner of—
    - (i) the issuing company, or
    - (ii) any subsidiary of the issuing company, or
  - (c) subject to section 168, is a director of—
    - (i) the issuing company,
    - (ii) any subsidiary of the issuing company, or
    - (iii) a company which is a partner of the issuing company or any of its subsidiaries.
- (2) In subsection (1) “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% subsidiary of the issuing company, whether or not it is such a subsidiary while the individual or associate concerned is such an employee, partner or director as is mentioned in that subsection.

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- (3) For the purposes of this section and sections 168 and 169, in the case of an individual (“A”) who is both a director and an employee of a company—
- (a) references (however expressed) to A in A's capacity as a director of the company include A in A's capacity as an employee of the company, but
  - (b) (apart from that) A is to be treated as a director, and not as an employee, of the company.

## **168 Directors excluded from connection**

- (1) An individual is not connected with the issuing company under section 167 merely because the individual, or an associate of the individual, is a director of that or another company unless the individual or associate (or a partnership of which the individual or associate is a member)—
- (a) receives a payment from the issuing company or a related person during the period mentioned in section 163, or
  - (b) is entitled to receive such a payment in respect of that period or any part of it.
- (2) For the purposes of subsection (1) the following are ignored—
- (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the individual or an associate of the individual in the performance of the individual's or associate's duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, and
  - (f) any necessary and reasonable remuneration which meets the conditions in subsection (3).
- (3) The conditions are that the remuneration—
- (a) is paid for services rendered to the issuing company or related person in the course of a trade or profession carried on wholly or partly in the United Kingdom (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and
  - (b) is taken into account in calculating for tax purposes the profits of that trade or profession.
- (4) In this section—
- (a) “related person”, in relation to the issuing company, means—
    - (i) any company of which the individual or an associate of the individual is a director and which is a subsidiary or partner of the issuing company, or a partner of a subsidiary of the issuing company, and
    - (ii) any person connected with the issuing company or with a company falling within sub-paragraph (i), and

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- (b) any reference to a payment to an individual includes a payment made to the individual indirectly or to the individual's order or for the individual's benefit.
- (5) In this section and section 169 “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% subsidiary of the issuing company.

## **169 Directors qualifying for relief despite connection**

- (1) Section 163(1) does not prevent the investor from being a qualifying investor despite the investor's connection with the issuing company at any time in period A relating to the relevant shares if—
- (a) the investor is connected with that company merely because of the investor, or the investor's associate—
    - (i) being a director of, or of a company which is a partner of, the issuing company or a subsidiary of the issuing company, and
    - (ii) being in receipt of, or entitled to receive, remuneration as such, and
  - (b) conditions A and B and (where applicable) condition C are met.
- (2) Condition A is that, in relation to the director (“D”), whether D is the investor or an associate of the investor—
- (a) D's remuneration, or
  - (b) the remuneration to which D is entitled,
- consists only of remuneration which is reasonable remuneration for services rendered to the company of which D is a director in D's capacity as such.
- (3) Condition B is that the investor was issued with the relevant shares, or a previous issue of shares in the issuing company which meet the requirements of section 173(2), at a time when the investor had never been—
- (a) connected with the issuing company, or
  - (b) involved in carrying on (whether on the investor's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a subsidiary of that company.
- (4) Condition C is that, if the issue of the relevant shares did not meet condition B, they were issued before the termination date relating to the latest issue of shares which met that condition.
- (5) For the purposes of condition A any necessary and reasonable remuneration falling within section 168(2)(f) is to be left out of account.
- (6) In this section “remuneration” includes any benefit or facility.

## **170 Persons interested in capital etc of company**

- (1) An individual is connected with the issuing company if the individual directly or indirectly possesses or is entitled to acquire more than 30% of—
- (a) the ordinary share capital of the company or any subsidiary of the company,
  - (b) the loan capital and issued share capital of the company or any such subsidiary, or
  - (c) the voting power in the company or any such subsidiary.
- (2) An individual is connected with the issuing company if the individual directly or indirectly possesses or is entitled to acquire such rights as would—

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- (a) in the event of the winding up of the company or any subsidiary of the company, or
  - (b) in any other circumstances,
- entitle the individual to receive more than 30% of the assets of the company or subsidiary (“the company in question”) which would then be available for distribution to equity holders of the company in question.
- (3) For the purposes of subsection (2)—
- (a) the persons who are equity holders of the company in question, and
  - (b) the percentage of the assets of the company in question to which the individual would be entitled,
- are determined in accordance with [F7 Chapter 6 of Part 5 of CTA 2010].
- (4) In making that determination—
- (a) references in [F8 section 166 of that Act to company A] are to be read as references to an equity holder, and
  - (b) references in that [F9 section] to a winding up are to be read as including references to any other circumstances in which assets of the company in question are available for distribution to its equity holders.
- (5) An individual is not connected with a company merely because one or more shares in the company are held by the individual or by an associate of the individual, 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 make preparations for carrying on, any trade or business.
- (6) An individual is connected with the issuing company if the individual has control of the issuing company or of any subsidiary of that company.
- (7) In this section “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% 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.
- (8) For the purposes of this section the loan capital of a company is treated as including any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).
- (9) For the purposes of this section—
- (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.
- (10) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by—
- (a) the company, or



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(b) any subsidiary of the company,  
by overdrawing an account with a person carrying on a business of banking is to be treated as loan capital of the company or subsidiary if the debt arose in the ordinary course of that business.

#### **Textual Amendments**

- F7** Words in s. 170(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 499\(a\)](#) (with [Sch. 2](#))
- F8** Words in s. 170(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 499\(b\)](#) (with [Sch. 2](#))
- F9** Word in s. 170(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 499\(c\)](#) (with [Sch. 2](#))

### **171 Persons subscribing for shares under certain arrangements**

(1) This section applies if an individual (“A”) subscribes for shares in a company (“the company”) with which A is not connected under section 167 or 170.

(2) If—

- (a) A subscribes for the shares as part of an arrangement, and
- (b) the arrangement provides for another person to subscribe for shares in another company with which (assuming it to be the issuing company) A, or any other individual who is a party to the arrangement, is connected,

A is connected with the company under this section.

## **CHAPTER 3**

### **GENERAL REQUIREMENTS**

#### *Introduction*

### **172 Overview of Chapter**

The general requirements are met in respect of the relevant shares if the requirements of this Chapter are met as to—

- (a) the shares (see section 173),
- [<sup>F10</sup>(aa) the maximum amount raised annually through risk capital schemes (see section 173A),]
- (b) the purpose of the issue (see section 174),
- (c) the use of the money raised (see section 175),
- (d) the minimum period (see section 176),
- (e) no pre-arranged exits (see section 177), and
- (f) no tax avoidance (see section 178).

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### Textual Amendments

**F10** S. 172(aa) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 5\(2\)](#) (with [Sch. 16 para. 5\(5\)\(6\)](#))

## *The requirements*

### **173 The shares requirement**

- (1) The relevant shares must meet—
  - (a) the requirements of subsection (2), and
  - (b) unless they are bonus shares, the requirements of subsection (3).
- (2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—
  - (a) any present or future preferential right to dividends or to a company's assets on its winding up, or
  - (b) any present or future right to be redeemed.
- (3) Shares meet the requirements of this subsection if they—
  - (a) are subscribed for wholly in cash, and
  - (b) are fully paid up at the time they are issued.
- (4) Shares are not fully paid up for the purposes of subsection (3)(b) if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.

### **[<sup>F11</sup>173A The maximum amount raised annually through risk capital schemes requirement**

- (1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed £2 million.
- (2) In subsection (1), the reference to relevant investments made in the issuing company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the issuing company (whether or not it was such a subsidiary when the investment was made).
- (3) A “relevant investment” is made in a company if—
  - (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205, or
    - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),
 in respect of the shares.
- (4) An investment within subsection (3)(b) is regarded as made when the shares are issued.]

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#### Textual Amendments

**F11** S. 173A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 5\(3\)](#) (with [Sch. 16 para. 5\(5\)\(6\)8](#))

#### Modifications etc. (not altering text)

**C1** S. 173A(3)(4) applied by 1992 c. 12, Sch. 5B para. 1(6) (as inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(b\)](#))

### 174 The purpose of the issue requirement

The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purpose of a qualifying business activity.

### 175 The use of the money raised requirement

[<sup>F12</sup>(1) The requirement of this section is that all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is, no later than the time mentioned in subsection (3), employed wholly for the purpose of the qualifying business activity for which it was raised.]

(2) The [<sup>F13</sup>requirement in subsection (1) does] not fail to be met merely because an amount of money which is not significant is employed for another purpose.

(3) The time referred to in [<sup>F14</sup>subsection (1)] is—

- (a) the end of the period of [<sup>F15</sup>two years] beginning with the issue of the shares, or
- (b) in the case of money raised only for the purpose of an activity to which section 179(2) applies, the end of the period of [<sup>F15</sup>two years] beginning with—

(i) the issue of the shares, or

(ii) if later, the time when the company or a qualifying 90% subsidiary of the company begins to carry on the qualifying trade.

(4) In determining for the purposes of subsection (3)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on by it of the trade before it became such a subsidiary is ignored.

#### Textual Amendments

**F12** S. 175(1) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(2\)](#)

**F13** Words in s. 175(2) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(3\)](#)

**F14** Words in s. 175(3) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(4\)\(a\)](#)

**F15** Words in s. 175(3) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(4\)\(b\)](#)

### 176 The minimum period requirement

(1) The issue of shares which includes the relevant shares must meet—

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- (a) the requirement of subsection (2) in a case where the money raised by an issue of shares is raised wholly for the purpose of a qualifying business activity falling within section 179(2),
  - (b) the requirement of subsection (3) in a case where the money raised by an issue of shares is raised wholly or partly for the purpose of a qualifying business activity falling within section 179(4).
- (2) The requirement is that—
- (a) the trade concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
  - (b) throughout that period—
    - (i) the trade must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) the trade must not have been carried on by any other person.
- (3) The requirement is that—
- (a) the research and development concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
  - (b) throughout that period—
    - (i) the research and development must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) the research and development must not have been carried on by any other person.
- (4) If—
- (a) merely because of the issuing company or any other company being wound up, or dissolved without winding up—
    - (i) the trade is carried on as mentioned in subsection (2), or
    - (ii) the research and development is carried on as mentioned in subsection (3),
 for a period shorter than 4 months, and
  - (b) the winding up or dissolution—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,
 subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.
- (5) If—
- (a) merely because of anything done as a result of the issuing company or any other company being in administration or receivership—
    - (i) the trade is carried on as mentioned in subsection (2), or
    - (ii) the research and development is carried on as mentioned in subsection (3),
 for a period shorter than 4 months, and
  - (b) the entry into administration or receivership, and everything done as a result of the company concerned being in administration or receivership—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

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subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.

## **177 The no pre-arranged exits requirement**

- (1) The issuing arrangements for the relevant shares must not include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company,
  - (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 issuing company or a person connected with that company,
  - (c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company, or
  - (d) arrangements the main purpose 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 the issuing company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 247(1).
- (3) The arrangements referred to in subsection (1)(b) and (c) do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the issuing arrangements include arrangements for the company to be wound up, or
  - (b) the arrangements are applicable on the winding up of the company otherwise than for genuine commercial reasons.
- (4) The arrangements referred to in subsection (1)(d) do not include any arrangements which are confined to the provision—
- (a) for the issuing company itself, or
  - (b) if the issuing company is a parent company that meets the trading requirement in section 181(2)(b), for the issuing company itself, for the issuing 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 might reasonably be expected to be provided in normal commercial circumstances.
- (5) In this section “the issuing 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 the individual in relation to or in connection with that issue.

## **178 The no tax avoidance requirement**

The relevant shares must be issued for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Income Tax Act 2007, Part 5. (See end of Document for details)*

### *Meaning of “qualifying business activity”*

#### **179 Meaning of “qualifying business activity”**

- (1) In this Part “qualifying business activity”, in relation to the issuing company, means—
- (a) activity A, or
  - (b) activity B,
- if it is carried on by the company or a qualifying 90% subsidiary of the company.

This is subject to subsections (3) and (5).

- (2) Activity A is—
- (a) the carrying on of a qualifying trade which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or
  - (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade—
    - (i) which, on that date, is intended to be carried on <sup>F16</sup>... by the company or such a subsidiary, and
    - (ii) which is begun to be carried on by the company or such a subsidiary within two years after that date.

<sup>F17</sup>(3) .....

- (4) Activity B is the carrying on of research and development—
- (a) which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or which the company or such a subsidiary begins to carry on immediately afterwards, and
  - (b) from which, on that date, it is intended—
    - (i) that a qualifying trade which the company or such a subsidiary will carry on <sup>F18</sup>... will be derived, or
    - (ii) that a qualifying trade which the company or such a subsidiary is carrying on, or will carry on, <sup>F19</sup>... will benefit.

<sup>F20</sup>(5) .....

- (6) In determining—
- (a) for the purposes of subsection (2)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of the company, or
  - (b) for the purposes of subsection (4)(a) when research and development is begun to be carried on by such a subsidiary,
- any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary is ignored.
- (7) References in subsection (2)(b)(i) or (4)(b) to a qualifying 90% subsidiary of the company include references to any existing or future company which will be such a subsidiary at any future time.

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

#### Textual Amendments

- F16** Words in s. 179(2)(b)(i) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(2)(a)**; S.I. 2011/662, art. 2
- F17** S. 179(3) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(2)(b)**; S.I. 2011/662, art. 2
- F18** Words in s. 179(4)(b)(i) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(2)(c)**; S.I. 2011/662, art. 2
- F19** Words in s. 179(4)(b)(ii) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(2)(c)**; S.I. 2011/662, art. 2
- F20** S. 179(5) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(2)(d)**; S.I. 2011/662, art. 2

## CHAPTER 4

### THE ISSUING COMPANY

#### *Introduction*

#### 180 Overview of Chapter

The issuing company is a qualifying company in relation to the relevant shares if the requirements of this Chapter are met as to—

- [<sup>F21</sup>(za) UK permanent establishment (see section 180A),  
(zb) financial health (see section 180B),]  
(a) trading (see section 181),  
(b) the issuing company to carry on the qualifying business activity (see section 183),  
(c) unquoted status (see section 184),  
(d) control and independence (see section 185),  
(e) gross assets (see section 186),  
[<sup>F22</sup>(ea) number of employees (see section 186A),]  
(f) qualifying subsidiaries (see section 187), and  
(g) property managing subsidiaries (see section 188).

#### Textual Amendments

- F21** S. 180(za)(zb) inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(3)**; S.I. 2011/662, art. 2
- F22** S. 180(ea) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 2(2)** (with Sch. 16 para. 2(4)(5))

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

### *The requirements*

#### **[<sup>F23</sup>180A The UK permanent establishment requirement**

- (1) The issuing company must meet the UK permanent establishment requirement throughout period B.
- (2) The UK permanent establishment requirement is that the issuing company has a permanent establishment in the United Kingdom.

#### **Textual Amendments**

**F23** Ss. 180A, 180B inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(4)**; S.I. 2011/662, art. 2

#### **180B The financial health requirement**

- (1) The issuing company must meet the financial health requirement at the beginning of period B.
- (2) The financial health requirement is that the issuing company is not in difficulty.
- (3) The issuing company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).]

#### **Textual Amendments**

**F23** Ss. 180A, 180B inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 1(4)**; S.I. 2011/662, art. 2

#### **181 The trading requirement**

- (1) The issuing company must meet the trading requirement throughout period B.
- (2) The trading requirement is that—
  - (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (3) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
  - (a) the company is treated as a parent company for the purposes of subsection (2) (b), and
  - (b) the reference in subsection (2)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.



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- (4) For the purpose of subsection (2)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or
    - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (7) Any reference in subsection (6)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (8) In this section—
- “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,
  - “mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly, and
  - “non-qualifying activities” means—
    - (a) excluded activities, and
    - (b) activities (other than research and development) carried on otherwise than in the course of a trade.
- (9) This section is supplemented by section 189 (meaning of “qualifying trade”) and sections 192 to 199 (excluded activities).

## **182 Ceasing to meet trading requirement because of administration or receivership**

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—
- (a) the entry into administration or receivership, and

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(b) everything done as a result of the company concerned being in administration or receivership,  
 is for genuine 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.

- (3) A company ceases to meet the trading requirement if before the end of period B—
- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or
  - (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply if the winding up or dissolution is for genuine 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.

### **183 The issuing company to carry on the qualifying business activity requirement**

- (1) The requirement of this section is met in relation to the issuing company if, at no time in period B, is any of the following—
- (a) the relevant qualifying trade,
  - (b) relevant preparation work (if any), and
  - (c) relevant research and development (if any),
- carried on by a person other than the issuing company or a qualifying 90% subsidiary of that company.
- (2) Subsection (3) has effect for the purpose of determining whether the requirement of this section is met in relation to the issuing company in a case where relevant preparation work is carried out by that company or a qualifying 90% subsidiary of that company.
- (3) The carrying on of the relevant qualifying trade by a company other than the issuing company or a subsidiary of that company is to be ignored if it takes place at any time in period B before the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (4) The requirement of this section is not regarded as failing to be met in relation to the issuing company if, merely because of any act or event within subsection (5), the relevant qualifying trade—
- (a) ceases to be carried on in period B by the issuing company or any qualifying 90% subsidiary of that company, and
  - (b) is subsequently carried on in that period by a person who is not at any time in period C connected with the issuing company.
- (5) The following are acts and events within this subsection—
- (a) anything done as a consequence of the issuing company or any other company being in administration or receivership, and
  - (b) the issuing company or any other company being wound up, or dissolved without being wound up.
- (6) Subsection (4) applies only if—

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- (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for genuine 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.

(7) In this section—

“relevant preparation work” means preparations within section 179(2) (b) which are the subject of the qualifying business activity mentioned in section 174,

“the relevant qualifying trade” means the qualifying trade which is the subject of that qualifying business activity,

“relevant research and development” means—

- (a) research and development within section 179(4) which is the subject of that qualifying business activity, and
- (b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.

## **184 The unquoted status requirement**

(1) At the beginning of period B—

- (a) the issuing company must be an unquoted company,
- (b) there must be no arrangements in existence for the issuing company to cease to be an unquoted company, and
- (c) there must be no arrangements in existence for the issuing company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
  - (i) section 247 applies in relation to the exchange, and
  - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.

(2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.

(3) For the purposes of subsection (2), shares, stocks, debentures or other securities are marketed to the general public if they are—

- (a) listed on [<sup>F24</sup>a recognised stock exchange,]
- (b) listed on a designated exchange in a country outside the United Kingdom, or
- (c) dealt in outside the United Kingdom by such means as may be designated.

(4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of that provision.

(5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.

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- (6) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company are at any subsequent time—
- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section [F25 1005(1)(b)], or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (3)(b) or (c),
- if the order was made after the beginning of period B.

#### Textual Amendments

**F24** Words in s. 184(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(4\)\(a\)](#)

**F25** Word in s. 184(6)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(4\)\(b\)](#)

### 185 The control and independence requirement

- (1) The control element of the requirement is that—
- (a) the issuing company must not at any time in period B control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the issuing company, and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (2) The independence element of the requirement is that—
- (a) the issuing company must not at any time in period B—
    - (i) be a 51% subsidiary of another company, or
    - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (3) This section is subject to section 247(4) (exchange of shares).

### 186 The gross assets requirement

- (1) In the case of relevant shares issued by a single company, the value of the company's assets—
- (a) must not exceed £7 million immediately before the relevant share issue, and
  - (b) must not exceed £8 million immediately afterwards.
- (2) In the case of relevant shares issued by a parent company, the value of the group assets—
- (a) must not exceed £7 million immediately before the relevant share issue, and
  - (b) must not exceed £8 million immediately afterwards.
- (3) In this section—

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- (a) the relevant share issue is the issue of shares in the company that includes the relevant shares, and
- (b) the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

### [<sup>F26</sup>186A The number of employees requirement

- (1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant shares are issued.
- (2) If the issuing company is a parent company, the sum of—
  - (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,must be less than 50 when the relevant shares are issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
  - Step 1*  
Find the number of full-time employees of the company.
  - Step 2*  
Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
  - (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.]

#### Textual Amendments

**F26** S. 186A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 2\(3\)](#) (with [Sch. 16 para. 2\(4\)\(5\)](#))

### 187 The qualifying subsidiaries requirement

Any subsidiary that the issuing company has at any time in period B must be a qualifying subsidiary of the company.

### 188 The property managing subsidiaries requirement

- (1) Any property managing subsidiary that the issuing company has at any time in period B must be a qualifying 90% subsidiary of the company.

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- (2) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
- (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

### *Definitions*

#### **189 Meaning of “qualifying trade”**

- (1) For the purposes of this Part, a trade is a qualifying trade if—
- (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not at any time in period B consist wholly or as to a substantial part in the carrying on of excluded activities.
- (2) References in this section and sections 192 to 198 to a trade are to be read without regard to the definition of “trade” in section 989.

#### **190 Meaning of “qualifying 90% subsidiary”**

- (1) For the purposes of this Part, a company (“the subsidiary”) is a qualifying 90% subsidiary of another company (“the relevant company”) if the following conditions are met—
- (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,
 be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

[<sup>F27</sup>(1A) For the purposes of this Part, a company (“company A”) which is a subsidiary of another company (“company B”) is a qualifying 90% subsidiary of a third company (“company C”) if—

- (a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or

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- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.
- (1B) For the purposes of subsection (1A), no account is to be taken of any control company C may have of company A.
- (1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1) (a) to (e) would be met if—
- (a) company X were the subsidiary,
  - (b) company Y were the relevant company, and
  - (c) in subsection (1) for “at least 90%” in each place there were substituted “100%”.]
- (2) Subsections (3), (4) and (5) of section 191 (conditions not regarded as ceasing to be met because of winding up, dissolution, administration, receivership or arrangements for disposal not having tax avoidance as main purpose) apply in relation to the conditions in subsection (1)—
- (a) as they apply in relation to the conditions in subsection (2) of that section, but
  - (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary”.
- (3) For the purposes of subsection (1)—
- (a) the persons who are equity holders of the subsidiary, and
  - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with [F28Chapter 6 of Part 5 of CTA 2010].
- (4) In making that determination—
- (a) references in [F29section 166 of that Act to company A] are to be read as references to an equity holder, and
  - (b) references in that [F30section] to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

#### Textual Amendments

- F27** S. 190(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 16 paras. 16\(2\), 18](#)
- F28** Words in s. 190(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(a\)](#) (with [Sch. 2](#))
- F29** Words in s. 190(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(b\)](#) (with [Sch. 2](#))
- F30** Word in s. 190(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(c\)](#) (with [Sch. 2](#))

### 191 Meaning of “qualifying subsidiary”

- (1) For the purposes of this Part, a company (“the subsidiary”) is a qualifying subsidiary of another company (“the relevant company”) if the following conditions are met.
- (2) The conditions are that—

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

- (a) the subsidiary is a 51% subsidiary of the relevant company,
  - (b) no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding up or dissolution—
- (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for genuine 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.
- (5) The conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of all its interest in the subsidiary, if the disposal—
- (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

**Modifications etc. (not altering text)**

**C2** S. 191 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 2 para. 42** (with Sch. 2)

**[<sup>F31</sup>191A Meaning of “permanent establishment”**

- (1) This section applies for the purposes of this Part.
- (2) A company has a “permanent establishment” in the United Kingdom if (and only if)—
  - (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to enter into contracts on behalf of the company.
- (3) For the purposes of this section “fixed place of business” includes (without prejudice to the generality of that expression)—
  - (a) a place of management,
  - (b) a branch,
  - (c) an office,
  - (d) a factory,
  - (e) a workshop,



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- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
  - (g) a building site or construction or installation project.
- (4) If the condition in subsection (5) is met, a company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that—
- (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company.
- (5) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (6) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
- (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company,
  - (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery,
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person, and
  - (d) purchasing goods or merchandise, or collecting information, for the company.
- (7) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it carries on business there through an agent of independent status (including a broker or a general commission agent) acting in the ordinary course of the agent's business.
- (8) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it controls a company that—
- (a) is resident there, or
  - (b) carries on business there (whether through a permanent establishment or otherwise).
- (9) The Treasury may by regulations amend this section.]

#### **Textual Amendments**

**F31** S. 191A inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(5\)](#); S.I. 2011/662, art. 2

#### *Excluded activities*

### **192 Meaning of “excluded activities”**

- (1) The following are excluded activities for the purposes of sections 181 and 189—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,

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- (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
  - [<sup>F32</sup>(ia) shipbuilding,
  - (ib) producing coal,
  - (ic) producing steel,]
  - (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
  - (l) any activities which are excluded activities under section 199 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
- (a) section 193 (wholesale and retail distribution),
  - (b) section 194 (leasing of ships),
  - (c) section 195 (receipt of royalties and licence fees),
  - (d) section 196 (property development),
  - [<sup>F33</sup>(da) section 196A (shipbuilding),
  - (db) section 196B (producing coal),
  - (dc) section 196C (producing steel),]
  - (e) section 197 (hotels and comparable establishments), and
  - (f) section 198 (nursing homes and residential care homes).

#### Textual Amendments

**F32** S. 192(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(a\)](#), [10](#) (with [Sch. 11 para. 11](#))

**F33** S. 192(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(b\)](#), [10](#) (with [Sch. 11 para. 11](#))

#### Modifications etc. (not altering text)

**C3** S. 192 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 2 para. 43](#) (with [Sch. 2](#))

### 193 Excluded activities: wholesale and retail distribution

- (1) This section supplements section 192(1)(b).
- (2) In this section—
  - (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and

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- (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.
- (3) A trade of wholesale distribution is one in which goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.
- (4) A trade of retail distribution is one in which goods are offered or exposed for sale and sold to members of the general public for their use or consumption.
- (5) A trade of wholesale or retail distribution is not an ordinary trade of wholesale or retail distribution if—
  - (a) it consists to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and
  - (b) a substantial proportion of those goods are held for a period which is significantly longer than the period for which the trader would reasonably be expected to hold them while trying to dispose of them at their market value.
- (6) In determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution regard is to be had to the extent to which it has the following features—
  - (a) the goods are bought by the trader in quantities larger than those in which the trader sells them,
  - (b) the goods are bought and sold by the trader in different markets,
  - (c) the trader employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, in addition to any remuneration paid to any person connected with it,
  - (d) there are purchases from or sales to persons who are connected with the trader,
  - (e) purchases are matched with forward sales or vice versa,
  - (f) the goods are held by the trader for longer than is normal for goods of the kind in question,
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade,
  - (h) the trader does not take physical possession of the goods.
- (7) In subsection (6)—
  - (a) the features in paragraphs (a) to (c) are regarded as indications that the trade is an ordinary trade of wholesale or retail distribution, and
  - (b) those in paragraphs (d) to (h) are regarded as indications to the contrary.

**Modifications etc. (not altering text)**

- C4** S. 193(5)(b) applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 2 para. 44](#) (with [Sch. 2](#))

**194 Excluded activities: leasing of ships**

- (1) This section supplements section 192(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.

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- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(d) as a result only of its consisting in letting ships on charter.
- (4) The requirements of this subsection are that—
- (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company,
  - (b) every ship beneficially owned by the company is registered in the United Kingdom,
  - (c) throughout period B the company is solely responsible for arranging the marketing of the services of its ships, and
  - (d) the conditions mentioned in subsection (5) are met in relation to every letting on charter by the company.
- (5) The conditions referred to in subsection (4)(d) are—
- (a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer,
  - (b) no provision for the grant of a new letting to end more than 12 months after the provision is made (whether in the charterparty or otherwise) is in force during the period of the letting otherwise than at the option of the charterer,
  - (c) the letting is by way of a bargain at arm's length between the company and a person who is not connected with it,
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period, and
  - (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of the company carrying on the trade (“the letting company”) the charterer is also a company and—
- (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,
- subsection (5) has effect with the omission of paragraph (c).
- (7) If any of the requirements of subsection (4) is not met in relation to any lettings of ships, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if—
- (a) those lettings, and
  - (b) any other excluded activities

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do not, taken together, amount to a substantial part of the trade.

- (8) In this section “pleasure craft” means any ship of a kind primarily used for sport or recreation.

**Modifications etc. (not altering text)**

- C5** S. 194 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 2 para. 45** (with Sch. 2)

**195 Excluded activities: receipt of royalties and licence fees**

- (1) This section supplements section 192(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or 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.
- (4) 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—
- [<sup>F34</sup>(a) by the issuing company, or]
  - [<sup>F34</sup>(b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset that is intellectual property, references to the creation of an 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).
- (6) In this section—
- <sup>F35</sup> ...
  - “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice,
  - “intellectual property” means—
    - (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
    - (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).
- [<sup>F36</sup>(7) If—
- (a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
  - (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,
- references in subsection (4) to the issuing company include the old company.]

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#### Textual Amendments

- F34** S. 195(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(a\)](#), 13
- F35** Words in s. 195(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(b\)](#), 13, [Sch. 27 Pt. 2\(16\)](#)
- F36** S. 195(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(c\)](#), 13

#### Modifications etc. (not altering text)

- C6** S. 195 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 2 para. 46](#) (with [Sch. 2](#))
- C7** S. 195 modified (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 79\(9\)](#), 1184(1) (with [Sch. 2](#))

### 196 Excluded activities: property development

- (1) This section supplements section 192(1)(g).
- (2) “Property development” means the development of land—
  - (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to subsection (4)—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.
- (4) References in this section to an interest in land do not include—
  - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

### <sup>F37</sup>196A Excluded activities: shipbuilding

In section 192(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

#### Textual Amendments

- F37** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6](#), 10 (with [Sch. 11 para. 11](#))

### 196B Excluded activities: producing coal

- (1) This section supplements section 192(1)(ib).

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- (2) “Coal” has the meaning given by Article 2 of Council Regulation (EC) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

#### Textual Amendments

**F37** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

### 196C Excluded activities: producing steel

In section 192(1)(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

#### Textual Amendments

**F37** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

### 197 Excluded activities: hotels and comparable establishments

- (1) This section supplements section 192(1)(j).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).
- (3) The activities of a person are not to be taken to fall within section 192(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

### 198 Excluded activities: nursing homes and residential care homes

- (1) This section supplements section 192(1)(k).
- (2) “Nursing home” means any establishment which exists wholly or mainly for the provision of nursing care—
  - (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth.
- (3) “Residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care because of—
  - (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illnesses, or
  - (e) past or present mental disorder.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

- (4) The activities of a person are not to be taken to fall within section 192(1)(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

### **199 Excluded activities: provision of services or facilities for another business**

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
- (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (k) of section 192(1), and
  - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
- (a) A controls the company,
  - (b) the company is a close company and A or an associate of A is a director of the company and is either—
    - (i) the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half the business could, in accordance with [F38 section 942 of CTA 2010], be regarded as belonging to A for the purposes of [F39 section 941 of that Act].
- (4) In any other case, a person has a controlling interest in a business if the person is entitled to at least half the assets used for, or of the income arising from, the business.
- (5) For the purposes of this section—
- (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.

#### **Textual Amendments**

**F38** Words in s. 199(3)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 501\(a\)](#) (with [Sch. 2](#))

**F39** Words in s. 199(3)(c) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 501\(b\)](#) (with [Sch. 2](#))

#### **Modifications etc. (not altering text)**

**C8** S. 199 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 2 para. 49](#) (with [Sch. 2](#))



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## *Supplementary*

### **200 Power to amend by Treasury order**

The Treasury may by order make such amendments of sections 181, 182, 184 to 189 and 192 to 199 as they consider appropriate.

## **CHAPTER 5**

### ATTRIBUTION OF AND CLAIMS FOR EIS RELIEF

#### *Attribution*

### **201 Attribution of EIS relief to shares**

- (1) References in this Part, in relation to any individual, to the EIS relief attributable to any shares or issue of shares are to be read as references to any reduction made in the individual's liability to income tax that is attributed to those shares or that issue in accordance with this section.

This is subject to the provisions of Chapters 6 and 7 providing for the withdrawal or reduction of EIS relief.

- (2) If an individual's liability to income tax is reduced in any tax year, then—
- (a) if the reduction is obtained because of one issue of shares, the amount of the reduction is attributed to that issue, and
  - (b) if the reduction is obtained because of two or more issues of shares, the amount of the reduction—
    - (i) is apportioned between those issues in the same proportions as the amounts claimed by the individual in respect of each issue, and
    - (ii) is attributed to those issues accordingly.
- (3) If under this section an amount of any reduction of income tax is attributed to an issue of shares (“the original issue”) to an individual, a proportionate part of that amount is attributed to each share in respect of which the claim was made.
- (4) If corresponding bonus shares are issued to the individual in respect of any shares (“the original shares”) to which EIS relief is attributed—
- (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if the original issue had included those shares.
- (5) In subsection (4) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.
- (6) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

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*Status: Point in time view as at 19/07/2011.*

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- (7) If, at a time when EIS relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under Chapters 6 and 7—
- (a) if it falls to be withdrawn, the relief attributable to each of the shares in question is reduced to nil, and
  - (b) if it falls to be reduced by any amount, the relief attributable to each of the shares in question is reduced by a proportionate part of that amount.

*Claims: general*

**202 Time for making claims for EIS relief**

- (1) A claim for EIS relief in respect of shares issued by a company in any tax year may be made—
  - (a) not earlier than the time the requirement in section 176(2) or (3) (trade etc must have been carried on for 4 months) is first met, and
  - (b) not later than the fifth anniversary of the normal self-assessment filing date for the tax year.
- (2) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

**203 Entitlement to claim**

- (1) The investor is entitled to make a claim for EIS relief in respect of the amount subscribed by the investor for the relevant shares if the investor has received from the issuing company a compliance certificate in respect of those shares.
- (2) For the purposes of PAYE regulations no regard is to be had to EIS relief unless a claim for it has been duly made.
- (3) No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is eligible for EIS relief unless a claim for the relief has been duly made by the investor.

*Claims: supporting documents*

**204 Compliance certificates**

- (1) A “compliance certificate” is a certificate which—
  - (a) is issued by the issuing company in respect of the relevant shares,
  - (b) states that, except so far as they fall to be met by or in relation to the investor, the requirements for EIS relief are for the time being met in relation to those shares, and
  - (c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.
- (2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide an officer of Revenue and Customs with a compliance statement in respect of the issue of shares which includes the relevant shares.

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- (3) The issuing company must not issue a compliance certificate without the authority of an officer of Revenue and Customs.
- (4) If the issuing company, or a person connected with the issuing company, has given notice to an officer of Revenue and Customs under section 241 of this Act or paragraph 16(2) or (4) of Schedule 5B to TCGA 1992, a compliance certificate must not be issued unless the authority is given or renewed after the receipt of the notice.
- (5) If an officer of Revenue and Customs—
  - (a) has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) has decided whether or not to do so,the officer must give notice of the officer's decision to the issuing company.

## **205 Compliance statements**

- (1) A “compliance statement” is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be met by or in relation to the individuals to whom shares included in that issue have been issued, the requirements for EIS relief (see section 157)—
  - (a) are for the time being met in relation to the shares to which the statement relates, and
  - (b) have been so met at all times since the shares were issued.
- (2) In determining for the purposes of subsection (1) whether the requirements for EIS relief are met at any time in relation to the issue of shares, references in this Part to “the relevant shares” are read as references to the shares included in the issue.
- (3) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs direct and must contain—
  - (a) such additional information as the Commissioners reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
  - (b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and
  - (c) such other declarations as the Commissioners may reasonably require.
- (4) The issuing company may not provide an officer of Revenue and Customs with a compliance statement in respect of any shares issued by it in any tax year—
  - (a) before the requirement in section 176(2) or (3) (trade etc must have been carried on for 4 months) is met, or
  - (b) later than two years after the end of that tax year or, if that requirement is first met after the end of that tax year, later than two years after the requirement is first met.

## **206 Appeal against refusal to authorise compliance certificate**

For the purpose of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the issuing company.

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

## 207 Penalties for fraudulent certificate or statement etc

The issuing company is liable to a penalty not exceeding £3,000 if—

- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
- (b) it issues a compliance certificate in contravention of section 204(3) or (4).

## CHAPTER 6

### WITHDRAWAL OR REDUCTION OF EIS RELIEF

#### *Introduction*

## 208 Overview of Chapter

This Chapter provides for EIS relief to be withdrawn or reduced under—

- (a) section 209 (disposal of shares),
- (b) section 211 (call options),
- (c) section 212 (put options),
- (d) section 213 (value received by the investor),
- (e) section 224 (repayments etc of share capital to other persons),
- (f) section 232 (acquisition of a trade or trading assets),
- (g) section 233 (acquisition of share capital), and
- (h) section 234 (relief subsequently found not to have been due).

#### *Disposals*

## 209 Disposal of shares

- (1) This section applies if—
  - (a) the investor disposes of any of the relevant shares,
  - (b) the disposal takes place before period A ends, and
  - (c) EIS relief is attributable to the shares.
- (2) If the disposal is not made by way of a bargain made at arm's length, the EIS relief attributable to the shares must be withdrawn.
- (3) If the disposal is made by way of a bargain made at arm's length, the EIS relief attributable to the shares must—
  - (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is— <sup>F40</sup>

$$R \times \text{EISR}$$

where—

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R is the amount or value of the consideration received by the investor for the shares, and  
[<sup>F41</sup>EISR is the EIS rate.]

- (4) This section does not apply to a disposal of shares to which an amount of EIS relief is attributable if—
- (a) the disposal was made by an individual (“A”) to another individual (“B”), and
  - (b) A and B were married to, or were civil partners of, each other and living together at the time of the disposal.
- (5) Section 246 contains rules for determining which shares of any class are treated as disposed of for the purposes of this section if the investor disposes of some but not all the shares of that class which are held by the investor.

#### Textual Amendments

- F40** Formula in s. 209(3) amended (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 14\(a\)](#)
- F41** Words in s. 209(3) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 14\(b\)](#)

## 210 Cases where maximum EIS relief not obtained

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to tax at the [<sup>F42</sup>EIS rate] on the amount on which the investor claims EIS relief in respect of the shares,
- section 209(3) has effect in relation to a disposal of any of the shares as if the amount or value referred to as “R” were reduced by multiplying it by the fraction—

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

- (2) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, subsection (1) has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (3) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (4) Subsection (3) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief if there is a corresponding issue of bonus shares).

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 5. (See end of Document for details)*

### Textual Amendments

**F42** Words in s. 210(1)(b) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 15](#)

## 211 Call options

- (1) This section applies if the investor grants an option which, if exercised, would bind the investor to sell any of the relevant shares.
- (2) The grant of the option is treated for the purposes of section 209 as a disposal of the shares to which the option relates.
- (3) Nothing in this section prejudices section 177 (no pre-arranged exits).

## 212 Put options

- (1) This section applies if, at any time in period A, a person grants the investor an option which, if exercised, would bind the grantor to purchase any of the relevant shares.
- (2) Any EIS relief attributable to the shares to which the option relates must be withdrawn.
- (3) For the purposes of subsection (2) the shares to which an option relates are those which, if—
  - (a) the option were exercised immediately after the grant, and
  - (b) any shares in the issuing company acquired by the investor after the grant were disposed of immediately after being acquired,
 would be treated for the purposes of section 209 as disposed of in pursuance of the option.

*Value received by investor*

## 213 Value received by the investor

- (1) This section applies if the investor receives any value from the issuing company at any time in period C relating to the relevant shares.
- (2) Any EIS relief attributable to the shares must—
  - (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is— <sup>F43</sup>

$$R \times \text{EISR}$$

where—

R is the amount of the value received by the investor, and  
 [<sup>F44</sup>EISR is the EIS rate.]

- (3) This section is subject to the following sections—
  - (a) section 214 (value received: receipts of insignificant value),

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- (b) section 218 (value received where there is more than one issue of shares),
- (c) section 219 (value received where part of share issue treated as made in previous tax year),
- (d) section 220 (cases where maximum EIS relief not obtained),
- (e) section 221 (receipts of value by and from connected persons etc), and
- (f) section 222 (receipt of replacement value).

Sections 218 to 220 are to be applied in the order in which they appear in this Part.

- (4) Value received is to be ignored, for the purposes of this section, to the extent to which EIS relief attributable to the shares has already been withdrawn or reduced on its account.
- (5) For the purposes of this section and sections 214 to 223, an individual who acquires any relevant shares on such a transfer as is mentioned in section 245 (spouses or civil partners) is treated as the investor.

#### Textual Amendments

- F43** Formula in s. 213(2) amended (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 16\(a\)](#)
- F44** Words in s. 213(2) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 16\(b\)](#)

### 214 Value received: receipts of insignificant value

- (1) Section 213(2) does not apply if the receipt of value is a receipt of insignificant value.

This is subject to subsection (2).

- (2) If—
  - (a) value is received (“the relevant receipt”) by the investor from the issuing company at any time in period C relating to the relevant shares,
  - (b) the investor has received from the issuing company one or more receipts of insignificant value at a time or times—
    - (i) during that period, but
    - (ii) not later than the time of the relevant receipt, and
  - (c) the total amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value,

the investor is treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

- (3) A receipt does not fall within subsection (2)(b) if it has previously formed part of a total amount falling within subsection (2)(c).

### 215 Meaning of “receipts of insignificant value”

- (1) This section applies for the purposes of section 214.
- (2) “A receipt of insignificant value” means a receipt of an amount of insignificant value, that is, an amount of value which—
  - (a) is not more than £1,000, or

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- (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the relevant shares.

This is subject to subsection (3).

- (3) If at any time in the period—
  - (a) beginning 12 months before the issue of the relevant shares, and
  - (b) ending at the end of the issue date,
 repayment arrangements are in existence, no amount of value received by the investor is treated as a receipt of insignificant value.
- (4) For this purpose “repayment arrangements” means arrangements which provide for the investor to receive, or to be entitled to receive, any value from the issuing company at any time in period C relating to the relevant shares.
- (5) For the purposes of this section—
  - (a) the references to the investor include references to any person who at any time in period C relating to the relevant shares is an associate of the investor (whether or not that person is such an associate at the material time), and
  - (b) the reference in subsection (4) to the issuing company includes a reference to a person who at any time in period C relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

## **216 When value is received**

- (1) This section applies for the purposes of sections 213 (value received by the investor) and 218 (value received where there is more than one issue of shares).
- (2) The investor receives value from the issuing company at any time when the issuing company—
  - (a) repays, redeems or repurchases any of its share capital or securities which belong to the investor or makes any payment to the investor for giving up the investor's right to any of the issuing 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 in respect of which EIS relief is claimed, any debt owed to the investor other than a debt which was incurred by the company—
    - (i) on or after the date of issue of those shares, and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
  - (c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than a debt in respect of a repayment of the kind mentioned in section 168(2)(a) or (f) (ignoring of certain expenses or remuneration) or an ordinary trade debt,
  - (d) releases or waives any liability of the investor to the issuing company or discharges or undertakes to discharge any liability of the investor to a third person,
  - (e) makes a loan or advance to the investor which has not been repaid in full before the issue of the shares in respect of which EIS relief is claimed,
  - (f) provides a benefit or facility for the investor,



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- (g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
- (h) makes to the investor any other payment except—
  - (i) a payment of a kind mentioned in any of the provisions of section 168(2) (ignoring of certain payments), or
  - (ii) a payment in discharge of an ordinary trade debt.
- (3) For the purposes of subsection (2)(d) the issuing company is to 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.
- (4) For the purposes of subsection (2)(e) the following is to be treated as if it were a loan made by the issuing company to the investor—
  - (a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the issuing company, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the issuing company.
- (5) The investor also receives value from the issuing company if—
  - (a) in respect of ordinary shares held by the investor any payment or asset is received in a winding up or in connection with a dissolution of the company, and
  - (b) the winding up or dissolution falls within section 182(4) (no tax avoidance).
- (6) The investor also receives value from the issuing company if any person who would, for the purposes of section 163, be treated as connected with the company—
  - (a) purchases any of its share capital or securities which belong to the investor, or
  - (b) makes any payment to the investor for giving up any right in relation to any of the company's share capital or securities.
- (7) If because of the investor's disposal of shares in a company any EIS relief attributable to those shares is withdrawn or reduced under section 209, the investor is not to be treated as receiving value from the company in respect of the disposal.
- (8) The investor is not to be treated as receiving value from the issuing company merely because of the payment to the investor, or any associate of the investor, of any remuneration for services rendered to that company as a director if the remuneration is reasonable remuneration.
- (9) Section 167(3) (director also an employee) applies for the purposes of subsection (8) as it applies for the purposes of section 167, and the reference in that subsection to the payment of remuneration includes the provision of any benefit or facility.
- (10) In this section “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
  - (a) is for not more than 6 months, and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

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## 217 The amount of value received

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 213 and 218 is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The amount of value received</i>
Section 216(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the shares, securities or debt
Section 216(2)(d)	The amount of the liability
Section 216(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the issue of the relevant shares
Section 216(2)(f)	The cost to the issuing company of providing the benefit or facility, less any consideration given for it by the investor
Section 216(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 216(2)(h)	The amount of the payment
Section 216(5)	The amount of the payment or the market value of the asset
Section 216(6)	The amount received by the investor or, if greater, the market value of the shares or securities

## 218 Value received where there is more than one issue of shares

- (1) This section applies if—
- (a) two or more issues of shares in the issuing company have been made to the investor which include shares in respect of which the investor obtains EIS relief, and
  - (b) value is received by the investor at any time in the applicable periods for two or more of those issues.
- (2) Section 213(2) has effect in relation to the shares included in each of the issues referred to in subsection (1)(b) as if the amount of value referred to as “R” were reduced by multiplying it by the fraction—

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

where—

A is the amount on which the investor obtains EIS relief in respect of the shares included in the issue in question, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

- (3) For the purposes of subsection (1) “the applicable period” for an issue of shares is period C in relation to those shares.

## **219 Value received where part of share issue treated as made in previous tax year**

- (1) This section applies if—
- (a) section 213(2) applies to an issue of shares, and
  - (b) section 158(1) and (2) (form and amount of EIS relief) applies in the case of that issue as if part of the issue had been issued in a previous tax year.
- (2) This subsection explains how the calculation under section 213(2) is to be made.

### *Step 1*

Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

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

where—

A is the amount on which the investor obtains EIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

### *Step 2*

In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues of shares in those tax years.

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In calculating amounts X1 and X2, apply section 220 if appropriate but do not apply section 218.

*Step 3*

Add amounts X1 and X2 together.

The result is the required amount.

## 220 Cases where maximum EIS relief not obtained

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to income tax at the [<sup>F45</sup>EIS rate] on the amount on which the investor claims EIS relief in respect of the shares,
- section 213(2) has effect in relation to any value received as if the amount referred to as “R” were reduced by multiplying it by the fraction—

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

- (2) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsection (1) as “A” is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (3) Subsection (2) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief where there is a corresponding issue of bonus shares).

### Textual Amendments

- F45** Words in s. 220(1)(b) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 17](#)

## 221 Receipts of value by and from connected persons etc

In sections 213, 214 and 216 to 218—

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor's order or for the investor's benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and

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- (c) any reference to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

## **222 Receipt of replacement value**

- (1) If—
  - (a) any EIS relief attributable to the relevant shares would, in the absence of this section, be reduced or withdrawn under section 213 because of a receipt of value within section 216(2) or (6) (“the original value”),
  - (b) the original supplier receives value (“the replacement value”) from the original recipient and the receipt is a qualifying receipt, and
  - (c) the amount of the replacement value is at least the amount of the original value, section 213 does not, because of the receipt of the original value, have effect to reduce or withdraw the EIS relief.

This is subject to section 223(1) and (2).

- (2) For the purposes of this section—
  - “the original recipient” means the person who receives the original value,
  - “the original supplier” means the person from whom that value was received.
- (3) If the amount of the original value is, by virtue of section 218, treated as reduced for the purposes of section 213(2) as it applies in relation to the relevant shares in question, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—
  - (a) because of the original recipient doing one or more of the following—
    - (i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,
    - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset,
    - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,
  - (b) if the receipt of the original value was within section 216(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or
  - (c) if the receipt of the original value was within section 216(6), because of the original recipient repurchasing the share capital or securities in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.
- (5) This subsection applies to—
  - (a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—
    - (i) the original supplier, or
    - (ii) any other person who, at any time in period C relating to the relevant shares, is an associate of, or is connected with, that supplier (whether

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- or not the other person is such an associate, or is so connected, at the material time),
- which is reasonable in relation to the market value of those goods, services or facilities,
- (b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period C relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
  - (c) any payment for the acquisition of an asset which does not exceed its market value,
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period C relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
 of an amount not exceeding a reasonable and commercial rent for the property,
  - (e) any payment in discharge of an ordinary trade debt, and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4), the sum of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,
  - (b) in a case within subsection (4)(b), the same as the amount of the original value, and
  - (c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.

Section 217 applies for the purpose of determining the amount of the original value.

- (7) In this section—
- (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and
  - (b) “ordinary trade debt” has the meaning given by section 216(10).

## **223 Section 222: supplementary**

- (1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 222(1) to the extent to which it has previously been set (under that section) against a receipt of value to prevent any reduction or withdrawal of EIS relief under section 213.
- (2) The receipt of the replacement value by the original supplier (“the event”) is ignored for the purposes of section 222 if—

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- (a) the event occurs before period C relating to the relevant shares,
- (b) if the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
- (c) if an appeal has been brought by the investor against an assessment to withdraw or reduce any EIS relief attributable to the relevant shares because of the receipt of the original value, the event occurs more than 60 days after the day on which the amount of relief which falls to be withdrawn has been finally determined.

But nothing in section 222 or this section requires the replacement value to be received after the original value.

- (3) This subsection applies if—
  - (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 222(1), and
  - (b) in consequence of the receipt any receipts of value are ignored for the purposes of section 213 as that section applies in relation to the shares in question or any other shares subscribed for by the investor, and
  - (c) the event which gives rise to the receipt is (or includes) a subscription for shares by—
    - (i) the investor, or
    - (ii) any person who at any time in period C relating to the relevant shares is an associate of the investor (whether or not the person is such an associate at the material time).
- (4) If either of the following applies—
  - (a) subsection (3), and
  - (b) paragraph 13C(3) of Schedule 5B to TCGA 1992 (which makes corresponding provision in relation to relief under that Schedule in respect of re-investment under EIS),the person who subscribes for the shares is not to be eligible for any EIS relief in relation to those shares or any other shares in the same issue.
- (5) In this section “the original recipient”, “the original supplier” and “replacement value” have the same meaning as in section 222.

#### *Repayments etc of share capital to other persons*

### **224 Repayments etc of share capital to other persons**

- (1) This section applies if any EIS relief is attributable to shares held by an individual and, at any time in period C, the issuing company or any subsidiary—
  - (a) repays, redeems or repurchases any of its share capital which belongs to any member other than—
    - (i) the individual, or
    - (ii) a person who falls within subsection (4), or
  - (b) makes any payment to any such member for giving up the member's right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

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- (2) The EIS relief must—
- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is— <sup>F46</sup>

$$R \times \text{EISR}$$

where—

R is the amount received by the member, and  
 [<sup>F47</sup>EISR is the EIS rate.]

- (3) This section is subject to the following sections—
- (a) section 225 (insignificant repayments ignored for the purposes of this section),
  - (b) section 226 (amount of repayments etc where there is more than one issue of shares),
  - (c) section 227 (single issue affecting more than one individual),
  - (d) section 228 (single issue treated as made partly in previous tax year),
  - (e) section 229 (maximum relief not obtained for share issue),
  - (f) section 230 (repayment of authorised minimum within 12 months), and
  - (g) section 231 (restriction on withdrawal of relief).

Sections 226 to 229 are to be applied in the order in which they appear in this Part.

- (4) A person falls within this subsection if the repayment—
- (a) causes any EIS relief attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—
    - (i) section 209 (disposal of shares), or
    - (ii) section 216(2)(a) (receipt of value by virtue of repayment of share capital etc),
  - (b) causes any investment relief under Schedule 15 to FA 2000 (the corporate venturing scheme) attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—
    - (i) paragraph 46 of that Schedule (disposal of shares), or
    - (ii) paragraph 49(1)(a) of that Schedule (receipt of value by virtue of repayment of share capital etc), or
  - (c) gives rise to a qualifying chargeable event within the meaning of paragraph 14(4) of Schedule 5B to TCGA 1992 (EIS: deferral relief) in respect of that person's shares in the issuing company.
- (5) A repayment is treated as having the effect mentioned in subsection (4)(a), (b) or (c) if it would have that effect were it not a receipt of insignificant value for the purposes of whichever of the following is applicable—
- (a) section 213,
  - (b) paragraph 47 of Schedule 15 to FA 2000, and
  - (c) paragraph 13 of Schedule 5B to TCGA 1992.
- (6) A repayment is to be ignored, for the purposes of this section, to the extent to which EIS relief attributable to any shares has already been withdrawn or reduced on its account.



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- (7) In this section and sections 225 to 231—
- (a) “repayment” means a repayment, redemption, repurchase or payment mentioned in subsection (1)(a) or (b), and
  - (b) references to a subsidiary of a company are references to a company which, at any time in period A relating to the shares in question, is a 51% subsidiary of the company, whether or not it is such a subsidiary at the time of the repayment.

#### Textual Amendments

- F46** Formula in s. 224(2) amended (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 18\(a\)](#)
- F47** Words in s. 224(2) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 18\(b\)](#)

### 225 Insignificant repayments ignored for purposes of section 224

- (1) A repayment is ignored for the purposes of section 224 (repayments etc of share capital to other persons) if both—
- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
  - (b) the amount received by the member in question,
- are insignificant in relation to the market value of the remaining issued share capital of the issuing company (or, as the case may be, the subsidiary) immediately after the event occurs.
- This is subject to subsection (3).
- (2) For the purposes of subsection (1) it is assumed that the target shares are cancelled at the time the repayment is made.
- (3) Subsection (1) does not apply if repayment arrangements are in existence at any time in the period—
- (a) beginning 12 months before the issue of the relevant shares, and
  - (b) ending at the end of the issue date.
- (4) For this purpose “repayment arrangements” means arrangements which provide—
- (a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or
  - (b) for anyone to be entitled to such a repayment,
- at any time in period C relating to the relevant shares.

### 226 Amount of repayments etc where there is more than one issue of shares

- (1) This section applies if, in relation to the same repayment, section 224(2) applies to EIS relief attributable to two or more issues of shares.
- (2) Section 224(2) has effect in relation to the shares included in each of those issues as if the amount referred to as “R” were reduced by multiplying it by the fraction—

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

where—

A is the amount on which EIS relief was obtained by the individuals in respect of shares which are included in the issue and to which EIS relief is or, but for section 224(2)(b), would be attributable, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

**227 Single issue affecting more than one individual**

- (1) This section applies if, in relation to the same repayment, section 224(2) applies to EIS relief attributable to shares held by two or more individuals.
- (2) Section 224(2) has effect in relation to each individual as if the amount referred to as “R” were reduced by multiplying it by the fraction—

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

where—

A is the amount on which the individual obtains EIS relief in respect of the shares to which EIS relief is or, but for section 224(2)(b), would be attributable, and

B is the sum of that amount and the corresponding amount or amounts on which the other individual or individuals obtain EIS relief in respect of such shares.

**228 Single issue treated as made partly in previous tax year**

- (1) This section applies if—
  - (a) section 224(2) applies to EIS relief attributable to shares held by an individual, and
  - (b) part of the issue of shares has been treated as issued to the individual in a previous tax year for the purposes of section 158(1) and (2) (form and amount of EIS relief).
- (2) This subsection explains how the calculation under section 224(2) is to be made.

*Step 1*

Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

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

where—

A is the amount on which the individual obtains EIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

*Step 2*

In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues of shares in those tax years.

In calculating amounts X1 and X2, apply section 229 if appropriate but do not apply section 226 or 227.

*Step 3*

Add amounts X1 and X2 together.

The result is the required amount.

## **229 Maximum relief not obtained for share issue**

- (1) This section applies if section 224(2) applies to EIS relief attributable to shares held by an individual and—
  - (a) the amount of the reduction (“A”) in the individual's liability to income tax for any tax year in respect of the shares, is less than
  - (b) the amount (“B”) which is equal to income tax at the [<sup>F48</sup>EIS rate] on the amount on which the individual claims EIS relief in respect of the shares.
- (2) Section 224(2) has effect as if the amount referred to as “R” were reduced by multiplying it by the fraction—

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

- (3) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsections (1) and (2) as

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“A” is to be treated for the purposes of those subsections as the amount that it would have been without that reduction.

- (4) Subsection (3) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief where there is a corresponding issue of bonus shares).

**Textual Amendments**

**F48** Words in s. 229(1)(b) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 19](#)

**230 Repayment of authorised minimum within 12 months**

- (1) This section applies if—
  - [<sup>F49</sup>(a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the Companies Act 2006) for the purposes of complying with section 761 of that Act (public company: requirement as to minimum share capital),]
  - (b) the registrar of companies issues the company with a certificate under that section.

- (2) Section 224(2) does not apply in relation to any redemption of the original shares within 12 months of the date on which they were issued.

<sup>F50</sup>(3) . . . . .

**Textual Amendments**

**F49** S. 230(1)(a) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), [39\(2\)](#) (with art. 4)

**F50** S. 230(3) repealed (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 39(2), [Sch.](#) (with art. 4)

**231 Restriction on withdrawal of relief under section 224**

- (1) This section applies if, because of a repayment, any investment relief which is attributable under Schedule 15 to FA 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.
- (2) For the purposes of this section “the relevant amount” is the amount determined by the formula—

$$A - 5B$$

where—  
A is the amount of the repayment, and  
B is the total amount of investment relief withdrawn because of the repayment.

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- (3) If the relevant amount does not exceed £1,000, the repayment is ignored for the purposes of section 224(1), unless repayment arrangements are in existence at any time in the period—
  - (a) beginning 12 months before the issue of the shares mentioned in subsection (1), and
  - (b) ending at the end of the issue date.
- (4) For this purpose “repayment arrangements” means arrangements which provide—
  - (a) for a repayment by the issuing company or any subsidiary of that company, or
  - (b) for anyone to be entitled to such a repayment,at any time.
- (5) Subsection (4)(a) applies in relation to a subsidiary of the issuing company whether or not it is such a subsidiary when the arrangements were made.
- (6) If the repayment is not ignored by virtue of subsection (3), the amount received because of the repayment is treated for the purposes of section 224(2) as an amount equal to the relevant amount.
- (7) In this section—
  - (a) “investment relief” has the same meaning as in Schedule 15 to FA 2000 (corporate venturing scheme), and
  - (b) references to the withdrawal of investment relief include its reduction.

#### *Miscellaneous*

### **232 Acquisition of a trade or trading assets**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if—
  - (a) at any time in period A, the company or any qualifying subsidiary—
    - (i) begins to carry on as its trade, or as part of its trade, a trade which was previously carried on at any time in that period otherwise than by the company or any qualifying subsidiary, or
    - (ii) acquires the whole, or the greater part, of the assets used for the purposes of a trade previously so carried on, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) or (3) applies.
- (2) This subsection applies to any person or group of persons—
  - (a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in period A, and
  - (b) who is or are a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged.
- (3) This subsection applies to any person or group of persons who—
  - (a) control or, at any time in period A, have controlled the company, and
  - (b) is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—

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- (a) [<sup>F51</sup>for the purpose of determining] the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in [<sup>F52</sup>that trade—
- (i) apply section 941(6) of CTA 2010, and
  - (ii) an interest in a trade belonging to a company may be treated in accordance with any of the options set out in section 942 of that Act, and]
- (b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.
- (5) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—
- (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2) (reasonable remuneration for services),
- is to be withdrawn, the reference in subsection (3)(b), and (so far as relating to that provision) the reference in subsection (1)(a)(i), to any time in period A are to be read as references to any time before the end of period A.
- (6) Section 167(3) (director also an employee) applies for the purposes of subsection (5) as it applies for the purposes of section 168, and in subsection (5) “remuneration” includes any benefit or facility.
- (7) In this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

#### **Textual Amendments**

- F51** Words in s. 232(4)(a) inserted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 502\(a\)](#) (with [Sch. 2](#))
- F52** Words in s. 232(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 502\(b\)](#) (with [Sch. 2](#))

### **233 Acquisition of share capital**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if—
- (a) the company comes to acquire all of the issued share capital of another company at any time in period A, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) applies.
- (2) This subsection applies to any person or group of persons who—
- (a) control or have, at any time in period A, controlled the company, and
  - (b) is or are a person or group of persons who, at any such time, controlled the other company.
- (3) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—

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- (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
- (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2),

is to be withdrawn, the reference in subsection (2)(b) to any time in period A is to be read as a reference to any time before the end of period A.

- (4) Section 167(3) applies for the purposes of subsection (3) as it applies for the purposes of section 168, and in subsection (3) “remuneration” includes any benefit or facility.

### **234 Relief subsequently found not to have been due**

- (1) Any EIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) EIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
  - (a) that the requirements of sections 174 and 175 (the purpose of the issue and use of money raised requirements) are not met in respect of the shares, or
  - (b) that the issuing company is not a qualifying company in relation to the shares (see Chapter 4),unless the requirements of subsection (3) are met.
- (3) The requirements of this subsection are met if either—
  - (a) the issuing company has given notice under section 241, or paragraph 16(2) or (4) of Schedule 5B to TCGA 1992, (information to be provided by issuing company etc) in relation to the relevant issue of shares, or
  - (b) an officer of Revenue and Customs has given notice to that company stating the officer's opinion that, because of the ground in question, the whole or any part of the EIS relief obtained by any individual in respect of shares included in the relevant issue of shares was not due.
- (4) In this section “the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares.

## **CHAPTER 7**

### **WITHDRAWAL OR REDUCTION OF EIS RELIEF: PROCEDURE**

#### *Assessments and appeals*

### **235 Assessments for the withdrawal or reduction of EIS relief**

If any EIS relief which has been obtained falls to be withdrawn or reduced under Chapter 6, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

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### 236 Appeals against section 234(3)(b) notices

- (1) For the purposes of the provisions of TMA 1970 relating to appeals, the giving of notice by an officer of Revenue and Customs under section 234(3)(b) is taken to be a decision disallowing a claim by the issuing company.
- (2) If any issue has been determined on an appeal brought by virtue of paragraph 1A(6) of Schedule 5B to TCGA 1992 (appeal against notice that shares never have been, or have ceased to be, eligible shares), the determination is conclusive for the purposes of any appeal brought by virtue of subsection (1) on which that issue arises.

### 237 Time limits for assessments

- (1) An officer of Revenue and Customs may <sup>F53</sup>... —
  - (a) make an assessment for withdrawing or reducing the EIS relief attributable to any of the relevant shares, or
  - (b) give a notice under section 234(3)(b),  
<sup>F54</sup>at any time not more than] 6 years after the end of the relevant tax year.
- (2) In subsection (1) “the relevant tax year” means—
  - (a) the tax year in which the time mentioned in section 175(3) (the use of money raised requirement) falls, or
  - (b) the tax year in which the event which causes the EIS relief to be withdrawn or reduced occurs,
 whichever is the later.
- (3) Subsection (1) is without prejudice to section <sup>F55</sup>36(1A)] of TMA 1970 <sup>F56</sup>(loss of tax brought about deliberately etc)].

#### Textual Amendments

- F53** Word in s. 237(1) omitted (1.4.2010) by virtue of [Finance Act 2008 \(c. 9\), s. 118\(2\), Sch. 39 para. 59\(2\)\(a\)](#); [S.I. 2009/403, art. 2\(2\)](#) (with [art. 10](#))
- F54** Words in s. 237(1) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\), s. 118\(2\), Sch. 39 para. 59\(2\)\(b\)](#); [S.I. 2009/403, art. 2\(2\)](#) (with [art. 10](#))
- F55** Word in s. 237(3) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\), s. 118\(2\), Sch. 39 para. 59\(3\)\(a\)](#); [S.I. 2009/403, art. 2\(2\)](#) (with [art. 10](#))
- F56** Words in s. 237(3) substituted (1.4.2010) by [Finance Act 2008 \(c. 9\), s. 118\(2\), Sch. 39 para. 59\(3\)\(b\)](#); [S.I. 2009/403, art. 2\(2\)](#) (with [art. 10](#))

### 238 Cases where assessment not to be made

- (1) No assessment for withdrawing or reducing EIS relief in respect of shares issued to an individual may be made because of an event occurring after the individual's death.
- (2) Subsection (3) applies if an individual has, by a disposal or disposals to which section 209(3) applies, disposed of all shares which—
  - (a) have been issued to the individual by the issuing company, and
  - (b) are shares—
    - (i) to which EIS relief is attributable, or
    - (ii) in relation to which period A has not come to an end.



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- (3) No assessment for withdrawing or reducing EIS relief in respect of those shares may be made because of any subsequent event unless the event occurs at a time when the individual is connected with the company within the meaning of section 166.

### *Interest*

#### **239 Date from which interest is chargeable**

- (1) In its application to an assessment made by virtue of section 235 in the case of relief withdrawn or reduced by virtue of a provision listed [<sup>F57</sup>in subsection (2)], section 86 of TMA 1970 (interest on overdue income tax) has effect as if the relevant date were [<sup>F58</sup>31 January next following the tax year for which the assessment is made].

<sup>F59</sup> .....

- [<sup>F60</sup>(2) The provisions are—  
section 163,  
section 164,  
section 173A,  
any of sections 181 to 188,  
section 209,  
section 212(1),  
section 213,  
section 224,  
section 232, and  
section 233.]

#### **Textual Amendments**

- F57** Words in s. 239(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 105\(2\)\(a\)](#)  
**F58** Words in s. 239(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 105\(2\)\(b\)](#)  
**F59** S. 239(1) Table omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\), s. 105\(2\)\(c\)](#)  
**F60** S. 239(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), s. 105\(3\)](#)

### *Information*

#### **240 Information to be provided by the investor**

- (1) This section applies if the investor has obtained EIS relief in respect of the relevant shares, and an event occurs as a result of which—
- (a) the investor is not a qualifying investor in relation to the shares,
  - (b) the EIS relief falls to be withdrawn or reduced by virtue of section 164 (no linked loans requirement),
  - (c) the EIS relief falls to be withdrawn or reduced under—
    - (i) section 209 (disposal of shares),
    - (ii) section 211 (call options), or
    - (iii) section 212 (put options), or

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- (d) the EIS relief falls to be withdrawn or reduced under section 213 (receipt of value by the investor), or would fall to be so withdrawn or reduced but for section 222 (receipt of replacement value).
- (2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) If the investor—
  - (a) is required under this section to give notice of a receipt of value which is within section 213, or would be within that section but for section 222, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
 the notice must include particulars of that receipt of replacement value (or expected receipt).
- (4) In subsection (3) “qualifying receipt” and “replacement value” are to be read in accordance with section 222.

#### **241 Information to be provided by the issuing company etc**

- (1) This section applies if the issuing company has provided an officer of Revenue and Customs with a compliance statement in respect of an issue of shares and an event occurs as a result of which—
  - (a) the requirement of section 175 (the use of money raised) is not met in respect of any of the shares included in the issue, or would not be met if EIS relief had been obtained in respect of the shares in question,
  - (b) any provision of Chapter 4 has effect to prevent the issuing company being a qualifying company in relation to any of the shares included in the issue, or would have such an effect if EIS relief had been obtained in respect of the shares in question, or
  - (c) any provision of Chapter 6 which is listed in subsection (2) has effect to cause any EIS relief attributable to any of the shares included in the issue to be withdrawn or reduced, or—
    - (i) would have such an effect if EIS relief had been obtained in respect of the shares in question, or
    - (ii) in the case of section 213, would have such an effect but for section 222 (receipt of replacement value).
- (2) The provisions are—
  - (a) section 213 (value received by the investor),
  - (b) section 224 (repayments etc of share capital to other persons),
  - (c) section 232 (acquisition of a trade or trading assets), and
  - (d) section 233 (acquisition of share capital).
- (3) If this section applies—
  - (a) the issuing company, and
  - (b) any person connected with the issuing company who has knowledge of the matters mentioned in subsection (1),
 must give a notice to an officer of Revenue and Customs containing particulars of the event.

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- (4) Any notice required to be given by the issuing company under subsection (3)(a) must be given—
  - (a) within 60 days of the event, or
  - (b) if the event is a receipt of value within section 216(2) from a person connected with the company (see section 221), within 60 days of the company coming to know of the event.
- (5) Any notice required to be given by a person under subsection (3)(b) must be given within 60 days of the person coming to know of the event.
- (6) If a person—
  - (a) is required under this section to give notice of a receipt of value which is within section 213, or would be within that section but for section 222, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,the notice must include particulars of that receipt of replacement value (or expected receipt).
- (7) In subsection (6) “qualifying receipt” and “replacement value” are to be read in accordance with section 222.

#### **242 Power to require information where section 240 or 241 applies or could have applied**

- (1) This section applies if an officer of Revenue and Customs has reason to believe that a person—
  - (a) has not given a notice which the person is required to give under section 240 or 241 in respect of any event,
  - (b) has given or received value within the meaning of section 216(2) or (6) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice, or
  - (c) has made or received any repayment within the meaning given by section 224(7) which, but for the fact that it falls to be ignored for the purposes of section 224 by virtue of section 225(1), would have triggered a requirement to give a notice under section 241.
- (2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) In subsection (1)(b) the reference to an amount of insignificant value is construed in accordance with section 215(2).

#### **243 Power to require information in other cases**

- (1) Subsection (2) applies if EIS relief is claimed in respect of shares in a company, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangement or scheme as is mentioned in—
  - (a) section 165 or 182(2) or (4) (no tax avoidance),

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- (b) section 171 (persons subscribing for shares under certain arrangements),
- (c) section 176(4) or (5), 183(6) or 191(3), (4) or (5) (winding up, administration etc),
- (d) section 177(1) (no pre-arranged exits), or
- (e) section 185(1) or (2), 190(1) or 191(2) (conditions ceasing to be met).

The reference in paragraph (c) to subsections (3), (4) and (5) of section 191 is to be read as including those subsections as applied by section 190(2).

- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and
  - (b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) For the purposes of subsection (2), in a case falling within a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

<i><b>Provision</b></i>	<i><b>The person concerned</b></i>
Subsection (1)(a)	The claimant, the company and any person controlling the company
Subsection (1)(b)	The claimant
Subsection (1)(c)	The claimant, the company, any other company in question and any person controlling the company or any other company in question
Subsection (1)(d)	The claimant, the company and any person connected with the company
Subsection (1)(e)	The company and any person controlling the company

References in this subsection to the claimant include references to any person to whom the claimant appears to have made such a transfer as is mentioned in section 245 (spouses or civil partners) of any of the shares in question.

- (5) If EIS relief has been obtained in respect of shares in a company—
  - (a) any person who receives from the company any payment or asset which may constitute value received (by the person or another) for the purposes of section 213, and
  - (b) any person on whose behalf such a payment or asset is received,
 must, if so required by an officer of Revenue and Customs, state whether the payment or asset so received is received on behalf of any other person and, if so, the name and address of that other person.
- (6) If EIS relief has been claimed in respect of shares in a company—

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- (a) any person who holds or has held shares in the company, and
  - (b) any person on whose behalf any such shares are or were held,
- must, if so required by an officer of Revenue and Customs, state whether the shares so held are or were held on behalf of any other person and, if so, the name and address of that other person.

#### **244 Obligations of secrecy**

No obligation of secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a company that EIS relief has been obtained or claimed in respect of a particular number or proportion of its shares.

### **CHAPTER 8**

#### **SUPPLEMENTARY AND GENERAL**

##### *Disposals of shares*

#### **245 Transfers between spouses or civil partners**

- (1) This section applies if—
  - (a) shares to which an amount of EIS relief is attributable were issued to an individual (“A”),
  - (b) A transferred the shares to another individual (“B”) during their lives,
  - (c) A was married to, or was the civil partner of, B at the time of the transfer, and
  - (d) section 209 (disposal of shares) does not apply to the transfer.
- (2) This Part has effect, in relation to any subsequent disposal or other event, as if—
  - (a) B were the individual who had subscribed for the shares,
  - (b) the amount that B had subscribed for the shares were the amount that A had subscribed for them,
  - (c) B's liability to income tax had been reduced in respect of the shares for the same tax year as that for which A's was so reduced,
  - (d) the amount by which B's liability to income tax had been reduced in respect of the shares were the same as that by which A's liability to income tax had been so reduced, and
  - (e) that amount of EIS relief had continued to be attributable to the shares despite the transfer.
- (3) If the amount of EIS relief attributable to the shares had been reduced before the relief was obtained by A—
  - (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of EIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and
  - (b) sections 210(3), 220(2) and 229(3) apply in relation to B as they would have applied in relation to A.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing EIS relief is to be made, the assessment is to be made on B.

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## **246 Identification of shares on a disposal**

- (1) The rules in subsections (2) and (3) are for determining which shares of any class are treated as disposed of for the purposes of—
  - (a) section 209 (disposal of shares), or
  - (b) section 245 (spouses or civil partners),
 if the investor disposes of some but not all of the shares of that class which the investor holds in a company.
- (2) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (3) Shares acquired on the same day are treated as disposed of in the following order—
  - (a) first any to which neither EIS relief nor deferral relief is attributable,
  - (b) next any to which deferral relief, but not EIS relief, is attributable,
  - (c) next any to which EIS relief, but not deferral relief, is attributable, and
  - (d) finally any to which both EIS relief and deferral relief are attributable.
- (4) Any shares within paragraph (c) or (d) of subsection (3) which are treated by section 201(6) as issued on an earlier day are treated as disposed of before any other shares falling within that paragraph of subsection (3).
- (5) The following—
  - (a) any shares to which EIS relief is attributable and which were transferred to an individual as mentioned in section 245, and
  - (b) any shares to which deferral relief, but not EIS relief, is attributable and which were acquired by an individual on a disposal to which section 58 of TCGA 1992 applies,
 are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.
- (6) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (7) In this section—
 

“deferral relief” has the same meaning as in Schedule 5B to TCGA 1992,  
 “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

### *Acquisition of issuing company*

## **247 Continuity of EIS relief where issuing company is acquired by new company**

- (1) This section applies if—
  - (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,

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- (c) the consideration for the 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 shares which meet the requirements of section 173(2), and
  - (ii) a compliance certificate in respect of those shares was issued by that company for the purposes of subsection (1) of section 203 and in accordance with section 204, and
- (f) before the issue of the new shares the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that they are satisfied that the exchange of shares—
  - (i) will be effected for genuine commercial reasons, and
  - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).

In this subsection references to shares, except in the expressions “subscriber shares” and “shares which meet the requirements of section 173(2)”, include securities.

- (2) Subsection (2) of section 138 of TCGA 1992 (procedure for advance clearance) applies for the purposes of subsection (1)(f) as it applies for the purposes of subsection (1) of that section.
- (3) For the purposes of this Part—
  - (a) the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares, and
  - (b) any EIS relief which is attributable to any old shares is attributable instead to the new shares for which they are exchanged.
- (4) Nothing in section 185 (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.
- (5) 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.
- (6) References in sections 248 and 249 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

## **248 Carry over of obligations etc where EIS relief attributed to new shares**

- (1) This section applies if, under section 247, any EIS relief which is attributable to any old shares becomes attributable instead to any new shares.
- (2) This Part has effect as if anything which, under—
  - (a) section 203(1) (entitlement to claim),
  - (b) section 234(3) (relief subsequently found not to be due), or
  - (c) sections 241 to 244 (information to be provided),

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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.

- (3) Any appeal brought by the old company against a notice under section 234(3)(b) may be prosecuted by the new company as if it had been brought by that company.

## 249 Substitution of new shares for old shares

- (1) Subsection (2) applies if, in the case of any new shares held by an individual to which EIS relief becomes attributable under section 247, the old shares for which they were exchanged were subscribed for by and issued to the individual.
- (2) This Part<sup>F61</sup>; (except section 195(7)) has effect as if—
- (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued to the individual by the new company at the time when the old shares were issued to the individual by the old company,
  - (c) the claim for EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the individual's liability was so reduced in respect of the old shares.
- (3) Subsection (4) applies if, in the case of any new shares held by an individual to which EIS relief becomes so attributable under section 247, the old shares for which they were exchanged were transferred to the individual as mentioned in section 245.
- (4) This Part<sup>F62</sup>; (except section 195(7)) has effect in relation to any subsequent disposal or other event as if—
- (a) the new shares had been subscribed for by the individual 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 EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

### Textual Amendments

**F61** Words in s. 249(2) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(a\)](#), 13

**F62** Words in s. 249(4) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(b\)](#), 13



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### *Nominees etc*

#### **250 Nominees and bare trustees**

- (1) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.
- (2) If shares have been issued to a bare trust for two or more beneficiaries, this Part has effect (with the necessary modifications) as if—
  - (a) each beneficiary had subscribed as an individual for all of those shares, and
  - (b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.
- (3) In subsection (2) and section 251 “shares” means shares which meet the requirements of section 173(2).

#### **251 Approved investment fund as nominee**

- (1) Subsection (2) applies if an individual claims EIS relief in respect of shares in a company at a time when—
  - (a) the shares have been issued to the managers of an approved fund as nominee for the individual,
  - (b) the fund has closed, that is to say, no further investments in the fund are to be accepted, and
  - (c) the amounts which the managers have, as nominee for the individual, subscribed for shares issued within [<sup>F63</sup>12] months after the closing of the fund represent at least 90% of the individual's investment in the fund.

In this section “the managers of an approved fund” means the person or persons having the management of an investment fund approved for the purposes of this section by the Commissioners for Her Majesty's Revenue and Customs.

- (2) In any case where this subsection applies, section 158 (form and amount of EIS relief) and section 201 (attribution of EIS relief to shares) have effect as if—
  - (a) any reference to the tax year or other period in which the shares are issued were a reference to the tax year or other period in which the fund closes, and
  - (b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.
- (3) Section 157(2) (minimum subscription) does not apply if the amount is subscribed as nominee for an individual by the managers of an approved fund.
- (4) If an individual claims EIS relief in respect of shares in a company which have been issued to the managers of an approved fund as nominee for the individual, section 203(1) (entitlement to claim) applies as if—
  - (a) it required the certificate referred to in that section to be issued by the company to the managers, and
  - (b) it provided that no claim for EIS relief may be made unless the person making the claim has received from the managers a certificate issued by the managers in accordance with subsection (5).

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- (5) A certificate is issued in accordance with this subsection if—
- (a) it certifies that the managers hold compliance certificates issued to them by the companies concerned, for the purposes of section 203(1), in respect of the holding of shares shown on the managers' certificate, and
  - (b) it is in such form as the Commissioners for Her Majesty's Revenue and Customs may authorise.
- (6) The managers of an approved fund may be required by a notice given to them by an officer of Revenue and Customs to deliver to the officer, within the time limited by the notice, a return of the holdings of shares shown on certificates issued by them in accordance with subsection (5) in the tax year to which the return relates.
- (7) Section 207 (penalties for fraudulent certificate or statement etc) does not apply in relation to any certificate issued by the managers of an approved fund for the purposes of subsection (4).

#### **Textual Amendments**

- F63** Word in s. 251(1)(c) substituted (with effect in accordance with Sch. 16 para. 19(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 19(1)**

### *Interpretation*

#### **252 Meaning of a company being “in administration” or “in receivership”**

- (1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.
- (2) A company is “in administration” if—
- (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
- (3) A company is “in receivership” if there is in force in relation to it—
- (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or
  - (b) any corresponding order under the law of a country or territory outside the United Kingdom.

#### **Modifications etc. (not altering text)**

- C9** S. 252 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 2 para. 50(2)-(5)** (with Sch. 2)

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### **253 Meaning of “associate”**

- (1) In this Part “associate”, in relation to a person, means—
  - (a) any relative or partner of that person,
  - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of that person (living or dead), is or was a settlor, and
  - (c) if that person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
    - (ii) if that person is a company, any other company which has an interest in those shares or obligations.
- (2) In subsection (1)(a) and (b) “relative” means spouse or civil partner, ancestor or lineal descendant.

### **254 Meaning of “disposal of shares”**

- (1) In this Part references to a disposal of shares include references to a disposal of an interest or right in or over shares.
- (2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

### **255 Meaning of “issue of shares”**

- (1) In this Part—
  - (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and are issued on the same day, and
  - (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual on the same day.
- (2) Subsection (1)(b) has effect subject to sections 201(6), 202(2), 210(2), 219(1) and 228(1).

### **256 Meaning of “the termination date”**

- (1) In this Part “the termination date”, in relation to any shares issued by a company, means—
  - (a) the third anniversary of the issue date, or
  - (b) if—
    - (i) the money raised by the issue was raised wholly or mainly for the purpose of a qualifying business activity within section 179(2) (the issuing company or a qualifying 90% subsidiary of that company carrying on or preparing to carry on a qualifying trade), and
    - (ii) neither the issuing company nor any of its qualifying 90% subsidiaries had begun to carry on the trade in question on the issue date,the third anniversary of the date on which the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.

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- (2) In determining for the purposes of subsection (1) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on of the trade by it before it became such a subsidiary is to be ignored.

## 257 Minor definitions etc

- (1) In this Part—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),

“director” is read in accordance with [F64section 452 of CTA 2010],

“group” means a parent company and its qualifying subsidiaries,

“group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,

“ordinary shares” means shares forming part of a company's ordinary share capital,

“parent company” means a company that has one or more qualifying subsidiaries and “single company” means a company that does not,

“period A”, “period B” and “period C” have the meaning given by section 159, and

“research and development” has the meaning given by section 1006.

- (2) Section 993 (connected persons) does not apply for the purposes of Chapter 2 (other than section 168(4)).

- (3) Section 995 (control) does not apply for the purposes of the following provisions—

section 185(1)(a),

section 199(3)(a) and (b)(ii),

section 232(3),

section 233(2), and

section 243(4),

and in those provisions “control” is to be read in accordance with [F65sections 450 and 451 of CTA 2010].

- (4) In this Part—

- (a) references in any provision to the reduction of any EIS relief attributable to any shares include a reference—

(i) to the reduction of the relief to nil, and

(ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the EIS relief, and

- (b) references to the withdrawal of EIS relief in respect of any shares are—

(i) to the withdrawal of the EIS relief attributable to those shares, or

(ii) if no relief has yet been obtained, to ceasing to be eligible for EIS relief in respect of those shares.

- (5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on [F66a recognised stock exchange].

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- (6) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (7) In this Part—
- (a) references to EIS relief obtained by an individual in respect of any shares include references to EIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and
  - (b) references to the withdrawal or reduction of EIS relief obtained by an individual in respect of any shares include references to the withdrawal or reduction of EIS relief obtained by the individual in respect of those shares at any such time.
- (8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met.

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**Textual Amendments**

- F64** Words in s. 257(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 503\(a\)](#) (with [Sch. 2](#))
- F65** Words in s. 257(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 503\(b\)](#) (with [Sch. 2](#))
- F66** Words in s. 257(5) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 12\(5\)](#)

**Status:**

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**Changes to legislation:**

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