



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

### 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).

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#### **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,
 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

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- (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.
- (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—

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- (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
  - (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 <sup>F1</sup>—
- (a) the termination date relating to the latest issue of shares which met that condition, or
  - (b) if that issue is an issue in respect of which the investor is eligible for SEIS relief (within the meaning of Part 5A), before the date specified in section 257AC(4) in relation to the shares.]
- (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.

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### Textual Amendments

- F1** Words in s. 169(4) substituted (17.7.2012) (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 10](#)

## 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 <sup>F2</sup>... 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—
  - (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 [<sup>F3</sup>Chapter 6 of Part 5 of CTA 2010].
- (4) In making that determination—
  - (a) references in [<sup>F4</sup>section 166 of that Act to company A] are to be read as references to an equity holder, and
  - (b) references in that [<sup>F5</sup>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.

<sup>F6</sup>(8) .....

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(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.

<sup>F7</sup>(10) .....

#### Textual Amendments

- F2** Words in s. 170(1)(b) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 4\(a\)](#)
- F3** 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](#))
- F4** 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](#))
- F5** 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](#))
- F6** S. 170(8) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 4\(b\)](#)
- F7** S. 170(10) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 4\(b\)](#)

## 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.

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