



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

#### 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>F1</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>F2</sup>(ea) number of employees (see section 186A),]
- (f) qualifying subsidiaries (see section 187), and
- (g) property managing subsidiaries (see section 188).

#### Textual Amendments

- F1** 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

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**F2** S. 180(ea) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 2\(2\)](#) (with [Sch. 16 para. 2\(4\)\(5\)](#))

### *The requirements*

#### [<sup>F3</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**

**F3** 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**

**F3** 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

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- (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.

- (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.

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

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

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- (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—
- (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>F4</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.

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- (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.
- (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 [F5 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

- F4** Words in s. 184(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 12\(4\)\(a\)](#)
- F5** 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 [F6 £15 million] immediately before the relevant share issue, and
  - (b) must not exceed [F7 £16 million] immediately afterwards.

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- (2) In the case of relevant shares issued by a parent company, the value of the group assets—
- (a) must not exceed [<sup>F8</sup>£15 million] immediately before the relevant share issue, and
  - (b) must not exceed [<sup>F9</sup>£16 million] immediately afterwards.
- (3) In this section—
- (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.

#### Textual Amendments

- F6** Words in s. 186(1)(a) substituted (19.7.2012) (with effect in accordance with Sch. 7 para. 23(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 11\(a\), 23\(1\)](#); [S.I. 2012/1896](#), art. 2(b)
- F7** Words in s. 186(1)(b) substituted (19.7.2012) (with effect in accordance with Sch. 7 para. 23(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 11\(b\), 23\(1\)](#); [S.I. 2012/1896](#), art. 2(b)
- F8** Words in s. 186(2)(a) substituted (19.7.2012) (with effect in accordance with Sch. 7 para. 23(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 11\(a\), 23\(1\)](#); [S.I. 2012/1896](#), art. 2(b)
- F9** Words in s. 186(2)(b) substituted (19.7.2012) (with effect in accordance with Sch. 7 para. 23(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 11\(b\), 23\(1\)](#); [S.I. 2012/1896](#), art. 2(b)

#### [<sup>F10</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 [<sup>F11</sup>250] 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 [<sup>F12</sup>250] 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 [<sup>F13</sup>, paternity or shared parental] leave, or

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(ii) a student on vocational training.]

#### **Textual Amendments**

- F10** S. 186A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 2\(3\)](#) (with [Sch. 16 para. 2\(4\)\(5\)](#))
- F11** Word in s. 186A(1) substituted (19.7.2012) (with effect in accordance with [Sch. 7 para. 23\(2\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 12, 23\(1\)](#); S.I. 2012/1896, art. 2(c)
- F12** Word in s. 186A(2) substituted (19.7.2012) (with effect in accordance with [Sch. 7 para. 23\(2\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 12, 23\(1\)](#); S.I. 2012/1896, art. 2(c)
- F13** Words in s. 186A(4)(b)(i) substituted (1.12.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 70](#); S.I. 2014/1640, art. 5(2)(cc)

### **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.
- (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.



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## 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>F14</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
- (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 [<sup>F15</sup>Chapter 6 of Part 5 of CTA 2010].

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- (4) In making that determination—
- (a) references in [<sup>F16</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>F17</sup>section] 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**

- F14** S. 190(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 16\(2\)](#), 18
- F15** 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](#))
- F16** 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](#))
- F17** 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—
  - (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

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- (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)**

**C1** 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>F18</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,
  - (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

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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

**F18** 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,
  - (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>F19</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, <sup>F20</sup> ...
  - [<sup>F21</sup>(ka) the subsidised generation or export of electricity, <sup>F22</sup> ...]
  - [<sup>F23</sup>(kb) the subsidised generation of heat or subsidised production of gas or fuel, 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),

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- (c) section 195 (receipt of royalties and licence fees),
- (d) section 196 (property development),
- [<sup>F24</sup>(da) section 196A (shipbuilding),
- (db) section 196B (producing coal),
- (dc) section 196C (producing steel),]
- (e) section 197 (hotels and comparable establishments), <sup>F25</sup> ...
- (f) section 198 (nursing homes and residential care homes) [<sup>F26</sup>, <sup>F27</sup> ...
- (g) section 198A (subsidised generation or export of electricity)] [<sup>F28</sup>, and
- (h) section 198B (subsidised generation of heat and subsidised production of gas or fuel).]

#### Textual Amendments

- F19** 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](#))
- F20** Word in s. 192(1)(k) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 13(2)**
- F21** S. 192(1)(ka) inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 13(2)**
- F22** Word in s. 192(1)(ka) omitted (with effect in accordance with s. 56(8) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **s. 56(2)(a)**
- F23** S. 192(1)(kb) inserted (with effect in accordance with s. 56(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 56(2)(a)**
- F24** 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](#))
- F25** Word in s. 192(2)(e) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 13(3)**
- F26** S. 192(2)(g) and word inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 13(3)**
- F27** Word in s. 192(2)(f) omitted (with effect in accordance with s. 56(8) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **s. 56(2)(b)**
- F28** S. 192(2)(h) and word inserted (with effect in accordance with s. 56(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 56(2)(b)**

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

- C2** 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
  - (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.

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- (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)**

- C3** 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.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.

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

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

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

- C4** 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>F29</sup>(a) by the issuing company, or]
- [<sup>F29</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>F30</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>F31</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

- F29** S. 195(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(a\)](#), 13
- F30** 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\(16\)](#)
- F31** 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)

- C5** 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](#))
- C6** 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>F32</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

- F32** 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**

**F32** 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**

**F32** 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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- (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.

**[<sup>F33</sup>198A Excluded activities: subsidised generation or export of electricity**

- (1) This section supplements section 192(1)(ka).
- (2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).

- [<sup>F34</sup>(3) The generation of electricity is “subsidised” if—
- (a) a person receives a FIT subsidy in respect of the electricity generated,
  - (b) a renewables obligation certificate is issued in connection with the generation of the electricity, or
  - (c) a scheme established in a territory outside the United Kingdom, and corresponding to that set out in a renewables obligation order under section 32 of the Electricity Act 1989, operates to incentivise the generation of the electricity.]

- (4) The export of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity exported.

- (5) But the generation or export of electricity is not to be taken to fall within section 192(1)(ka) if Condition A, B or C is met.

- (6) Condition A is that the generation or export is carried on by—
- (a) a community interest company,
  - (b) a co-operative society,
  - (c) a community benefit society, <sup>F35</sup>...
  - (d) a NI industrial and provident society [<sup>F36</sup>, or
  - (e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.]

- (7) Condition B is that the plant used for the generation of the electricity relies wholly or mainly on anaerobic digestion.

- (8) Condition C is that the electricity is hydroelectric power.

- (9) For the purposes of this section—

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);

[<sup>F37</sup>“community benefit society” means—

- (a) a society registered as a community benefit society under the Co-operative and Community Benefit Societies Act 2014, or
- (b) a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(ii) of that Act;]

[<sup>F37</sup>“co-operative society” means—

- (a) a society registered as a co-operative society under the Co-operative and Community Benefit Societies Act 2014, or

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(b) a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act;]

“FIT subsidy” means—

- (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or
- (b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

“NI industrial and provident society” means a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

“small-scale low-carbon generation” has the meaning given by section 41(4) of the Energy Act 2008.

[<sup>F38</sup>“renewables obligation certificate” means a certificate issued under section 32B of the Electricity Act 1989 or Article 54 of the Energy (Northern Ireland) Order 2003.]]

#### Textual Amendments

- F33** S. 198A inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 14**
- F34** S. 198A(3) substituted (with effect in accordance with s. 56(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 56(3)(a)**
- F35** Word in s. 198A(6) omitted (with effect in accordance with s. 56(8) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), **s. 56(3)(b)**
- F36** S. 198A(6)(e) and word inserted (with effect in accordance with s. 56(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 56(3)(b)**
- F37** Words in s. 198A(9) substituted (1.8.2014) by [Co-operative and Community Benefit Societies Act 2014 \(c. 14\)](#), s. 154, **Sch. 4 para. 106** (with Sch. 5)
- F38** Words in s. 198A(9) inserted (with effect in accordance with s. 56(8) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 56(3)(c)**

#### [<sup>F39</sup>198B Excluded activities: subsidised generation of heat and subsidised production of gas or fuel

- (1) This section supplements section 192(1)(kb).
- (2) The generation of heat, or production of gas or fuel, is “subsidised” if a payment is made, or another incentive is given, under—
  - (a) a scheme established by regulations under section 100 of the Energy Act 2008 or section 113 of the Energy Act 2011 (renewable heat incentives), or
  - (b) a similar scheme established in a territory outside the United Kingdom, in respect of the heat generated, or gas or fuel produced.
- (3) But the generation of heat, or production of gas or fuel, is not to be taken to fall within section 192(1)(kb) if Condition A or B is met.
- (4) Condition A is that the generation or production is carried on by—
  - (a) a community interest company,
  - (b) a co-operative society,
  - (c) a community benefit society,

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- (d) a NI industrial and provident society, or
  - (e) an SCE formed in accordance with Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society.
- (5) Condition B is that the plant used for the generation of the heat, or production of the gas or fuel, relies wholly or mainly on anaerobic digestion.
- (6) Section 198A(9) (definitions) applies for the purposes of this section as for the purposes of section 198A.]

#### Textual Amendments

- F39** S. 198B inserted (with effect in accordance with s. 56(8) of the amending Act) by Finance Act 2014 (c. 26), s. 56(4)

### 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 [F40(ka)] 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 [F41section 942 of CTA 2010], be regarded as belonging to A for the purposes of [F42section 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.

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#### Textual Amendments

- F40** Word in s. 199(1)(a) substituted (17.7.2012) (with effect in accordance with Sch. 7 para. 24 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 15**
- F41** 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](#))
- F42** 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)

- C7** 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](#))

### *Supplementary*

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

[<sup>F43</sup>(1)] The Treasury may by order make such amendments of sections 181, 182, 184 to 189 and 192 to 199 as they consider appropriate.

[<sup>F44</sup>(2) An order under this section may—

- (a) make different provision for different cases or purposes, or
- (b) include such transitional provision as the Treasury consider appropriate.]

#### Textual Amendments

- F43** S. 200(1) renumbered (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 16**
- F44** S. 200(2) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 16**

**Status:**

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**Changes to legislation:**

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