



Income Tax Act 2007

2007 CHAPTER 3

PART 5

ENTERPRISE INVESTMENT SCHEME

CHAPTER 4

THE ISSUING COMPANY

The requirements

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 [^{F1}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 [F21005(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

- F1** Words in s. 184(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(4\)\(a\)](#)
F2 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.

[^{F3}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

F3 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.

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