



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

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This Chapter provides for EIS relief to be withdrawn or reduced under—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

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- (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If the disposal is not made by way of a bargain made at arm's length, the EIS relief attributable to the shares must be withdrawn.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  - (b) in any other case, be withdrawn.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>F1</sup>

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

where—

R is the amount or value of the consideration received by the investor for the shares, and  
 [<sup>F2</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

- F1** 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\(a\)](#)
- F2** 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>F3</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—

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# 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).

## Textual Amendments

- F3** 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.

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### *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>F4</sup>

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

where—

R is the amount of the value received by the investor, and  
 [<sup>F5</sup>EISR is the EIS rate.]

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

**F4** 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\(a\)](#)

**F5** 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—

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- (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
  - (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—

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- (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,
  - (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.

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- (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.

## **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.

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<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

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## **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—

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

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—



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

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.

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—
- the amount of the reduction (“A”), is less than
  - the amount (“B”) which is equal to income tax at the [<sup>F6</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.

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- (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**

- F6** 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
- (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,

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- (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 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

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- (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—
- (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),

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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.
- (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>F7</sup>

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

where—

R is the amount received by the member, and  
[<sup>F8</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),

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- (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.
- (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

- F7** 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\(a\)](#)
- F8** 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.

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*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6. (See end of Document for details)*

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- (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—

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

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—

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

*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6. (See end of Document for details)*

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—

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

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.



*Status: Point in time view as at 21/07/2009.*

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## 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>F9</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 “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

- F9** 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>F10</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>F11</sup>(3) .....

### Textual Amendments

- F10** 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)

*Status: Point in time view as at 21/07/2009.*

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**F11** 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.

- (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—

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*Status: Point in time view as at 21/07/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6. (See end of Document for details)*

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- (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)—
- (a) the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade are determined in accordance with section 344(1)(a) and (b), (2) and (3) of ICTA, 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.

### **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.

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*Status: Point in time view as at 21/07/2009.*

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- (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—
- (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.

**Status:**

Point in time view as at 21/07/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 6.