

Status: Point in time view as at 03/02/2009.

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

SCHEDULES

SCHEDULE 2

TRANSITIONALS AND SAVINGS

PART 6

LOSSES ON DISPOSAL OF SHARES

Qualifying trading companies

- 38 (1) In relation to shares issued before 17 March 2004, section 134(2)(a) applies with the omission of sub-paragraph (iv) and the “and” immediately before it.
- (2) In relation to shares issued before 6 April 1998, section 134 applies with the substitution for subsections (2) to (5) of—
- “(2) Condition A is that the company either—
- (a) is a trading company on the date of the disposal, or
 - (b) has ceased to be a trading company at a time which is not more than 3 years before that date and has not since that time been an excluded company or an investment company.
- (3) Condition B is that the company either—
- (a) has been a trading company for a continuous period of 6 years ending on that date or at that time, or
 - (b) has been a trading company for a shorter continuous period ending on that date or [^{F1}at that time and has not before] the beginning of that period been an excluded company or an investment company.
- (4) Condition C is that none of the shares in the company has been listed on a recognised stock exchange at any time in the period—
- (a) beginning with the incorporation of the company or, if later, 12 months before the date on which the shares in question were subscribed for, and
 - (b) ending with the date on which the shares are disposed of.
- (5) Condition D is that the company has been UK resident throughout the period from its incorporation until the date of the disposal.”
- (3) In relation to shares issued before 7 March 2001, section 134(4)(b) applies with the substitution for “at the relevant time” of “throughout the relevant period”.
- (4) For the purposes of sub-paragraph (3), shares that were issued—
- (a) ^{F2}... after 5 April 1998, but
 - (b) before 7 March 2001,

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are treated as having been issued^{F2}... after 7 March 2001 in respect of any part of the relevant period which falls^{F2}... after that date.

- (5) Sub-paragraphs (1) to (4) apply in relation to section 576A of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 134.

Textual Amendments

- F1** Words in [Sch. 2 para. 38\(2\)](#) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) Order 2007 \(S.I. 2007/940\)](#), arts. 1(1), **2(2)(a)**
- F2** Words in [Sch. 2 para. 38\(4\)](#) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [Income Tax Act 2007 \(Amendment\) Order 2007 \(S.I. 2007/940\)](#), arts. 1(1), **2(2)(b)**

Disposals of new shares

- 39 (1) In relation to new shares issued before 6 April 2007, section 136(2) applies with the omission of “This is subject to section 145(3).”
- (2) In this paragraph “new shares” is to be read in accordance with section 145.

The trading requirement

- 40 (1) In relation to shares issued before 6 April 2007, section 137 applies with the following modifications—
- the omission of subsection (2),
 - in subsection (5), the omission of paragraph (d)(ii) and the “or” immediately before it, and
 - the omission of subsection (6).
- (2) In relation to shares issued before 6 April 2000, section 137 applies with the substitution for the definition of “research and development” in subsection (7) of—
- ““research and development” means any activity which is intended to result in a patentable invention (within the meaning of the Patents Act 1977) or in a computer program.”
- (3) Section 137 does not apply in relation to shares issued before 6 April 1998.
- (4) Sub-paragraphs (1) to (3) apply in relation to section 576B of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 137.

Ceasing to meet trading requirement because of administration or receivership

- 41 (1) In relation to shares issued before 17 March 2004, section 138 applies with the following modifications—
- in subsection (1), the omission of “merely” and the substitution for “the company or any of its subsidiaries” of “its”,
 - in subsection (2)(b), the omission of “concerned”,
 - in subsection (3)(a), the omission of “or any of its subsidiaries”,
 - in subsection (3)(b), the omission of “or any of its subsidiaries”, and

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- (e) in subsection (4), the omission of “is”, in the second place where it occurs.
- (2) In relation to an administration order the petition for which was presented before 15 September 2003, section 138(2) applies with the substitution for paragraph (a) of—
 - “(a) the making of the order in question, and”.
- (3) In relation to shares issued before 21 March 2000, section 138 applies with the omission of subsections (1) and (2).
- (4) In the application of sub-paragraph (3) on or after 21 March 2000, shares—
 - (a) that were issued on or after 6 April 1998 but before 21 March 2000, and
 - (b) to which EIS relief or relief under Schedule 5B to TCGA 1992 was attributable immediately before 21 March 2000,are treated as having been issued on or after 21 March 2000.
- (5) Section 138 does not apply in relation to shares issued before 6 April 1998.
- (6) Sub-paragraphs (1) to (5) apply in relation to section 576C of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 138.

The control and independence requirement

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- (1) In relation to shares issued before 6 April 2007, section 139(1)(a) applies with the omission of “of the company”.
 - (2) In relation to shares issued before 21 March 2000, section 139 applies with the following modifications—
 - (a) the substitution for subsections (1) to (3) of—
 - “(1) The control element of the requirement is that—
 - (a) the company must not control (or together with any person connected with it control) another company or have a 51% subsidiary, and
 - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a).
 - (2) The independence element of the requirement is that—
 - (a) the company must not be under the control of another company (or another company and any other person connected with that company) or be a 51% subsidiary of another company, and
 - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a).
 - (3) This section is subject to section 145(3); and nothing in subsection (1) prevents the company having one or more qualifying subsidiaries.”, and
 - (b) in subsection (4) the omission of the definition of “arrangements” and, in the definition of “control”, the omission of “in subsection (1)(a)”.
 - (3) In the application of sub-paragraph (2) on or after 21 March 2000, shares—
 - (a) that were issued on or after 6 April 1998 but before 21 March 2000, and

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(b) to which EIS relief or relief under Schedule 5B to TCGA 1992 was attributable immediately before 21 March 2000, are treated as having been issued on or after 21 March 2000.

- (4) Section 139 does not apply in relation to shares issued before 6 April 1998.
- (5) Sub-paragraphs (1) to (4) apply in relation to section 576D of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 139.
- (6) For the purposes of sub-paragraph (5), sub-paragraph (2) applies with the following modifications—
- (a) in paragraph (a), the substitution for “section 145(3)” of “section 576J(3)”, and
 - (b) in paragraph (b), the insertion at the end of “and paragraph (b)”.

The qualifying subsidiaries requirement

- 43 (1) Section 140 does not apply in relation to shares issued before 6 April 1998.
- (2) Sub-paragraph (1) applies in relation to section 576E of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 140.

The property managing subsidiaries requirement

- 44 (1) Section 141 does not apply in relation to shares issued before 17 March 2004.
- (2) Sub-paragraph (1) applies in relation to section 576F of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 141.

The gross assets requirement

- 45 (1) In relation to shares issued before 6 April 2006, section 142 applies with the substitution in subsections (1) and (2)—
- (a) of “£15 million” for “£7 million”, and
 - (b) of “£16 million” for “£8 million”.
- (2) For the purposes of sub-paragraph (1) shares issued on or after 6 April 2006 to a person who subscribed for them before 22 March 2006 are treated as having been issued before 6 April 2006.
- (3) Section 142 does not apply in relation to shares issued before 6 April 1998.
- (4) Sub-paragraphs (1) to (3) apply in relation to section 576G of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 142.

The unquoted status requirement

- 46 (1) In relation to shares issued before 7 March 2001, section 143 applies with the following modifications—
- (a) the substitution for subsection (1) of—

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- “(1) The unquoted status requirement is that the company must be an unquoted company throughout the relevant period.”,
- (b) the substitution for subsection (2) of—
- “(2) If the company is an unquoted company at the time when any shares are issued, it is not treated for the purposes of this section as ceasing to be an unquoted company in relation to those shares at any subsequent time merely because any shares, stocks, debentures or other securities of the company are at that time—
- (a) listed on an exchange designated by an order made for the purposes of section 184(3)(b), or
- (b) dealt in by any means designated by an order made for the purposes of section 184(3)(c),
- if the order was made after the shares were issued.”, and
- (c) in subsection (3) the substitution for the definition of “arrangements” of—
- ““the relevant period” means the period—
- (a) beginning with the incorporation of the company or, if later, the date one year before the issue of the shares in question, and
- (b) ending with the date of the disposal.”
- (2) For the purposes of sub-paragraph (1)(a) and (c), shares that were issued—
- (a) ^{F3}...after 5 April 1998, but
- (b) before 7 March 2001,
- are treated as having been issued on or after 7 March 2001 in respect of any part of the relevant period which falls on or after that date.
- (3) In the application of sub-paragraph (1)(b) on or after 7 March 2001, shares—
- (a) that were issued ^{F4}... after 5 April 1998 but before 7 March 2001, and
- (b) to which EIS relief or relief under Schedule 5B to TCGA 1992 was attributable immediately before 7 March 2001,
- are treated as having been issued on or after 7 March 2001.
- (4) Section 143 does not apply in relation to shares issued before 6 April 1998.
- (5) Sub-paragraphs (1) to (4) apply in relation to section 576H of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 143.
- (6) For the purposes of sub-paragraph (5), sub-paragraph (1) applies with the insertion after “section 184(3)(b)” and “section 184(3)(c)” of “of ITA 2007”.

Textual Amendments

F3 Words in [Sch. 2 para. 46\(2\)\(a\)](#) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [Income Tax Act 2007 \(Amendment\) Order 2007 \(S.I. 2007/940\)](#), arts. 1(1), [2\(3\)](#)

F4 Words in [Sch. 2 para. 46\(3\)\(a\)](#) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [Income Tax Act 2007 \(Amendment\) Order 2007 \(S.I. 2007/940\)](#), arts. 1(1), [2\(3\)](#)

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Power to amend requirements by Treasury order

- 47 (1) Section 144 does not apply in relation to shares issued before 6 April 1998.
- (2) Sub-paragraph (1) applies in relation to section 576I of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 144.

Relief after an exchange of shares for shares in another company

- 48 (1) In relation to new shares issued before 6 April 2007, section 145 applies with—
- (a) the substitution for subsection (1)(e) of—
- “(e) before the issue of the new shares, the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that the exchange of shares—
- (i) will be effected for genuine commercial reasons, and
- (ii) will not form part of any such scheme or arrangement as is mentioned in section 137(1) of TCGA 1992.”, and
- (b) the omission of subsection (3)(a).
- (2) Section 145 does not apply in relation to shares issued before 6 April 1998.
- (3) Sub-paragraphs (1)(a) and (2) apply in relation to section 576J of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 145.
- (4) For the purposes of sub-paragraph (3), sub-paragraph (1) applies with the substitution for “TCGA 1992” of “the 1992 Act”.

Substitution of new shares for old shares

- 49 (1) Section 146 does not apply in relation to shares issued before 6 April 1998.
- (2) Sub-paragraph (1) applies in relation to section 576K of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 146.

Interpretation of Chapter

- 50 (1) In relation to shares issued before 6 April 1998, section 151 applies with the following modifications—
- (a) in the definition of “excluded company” in subsection (1), the substitution for “in land, in commodities or futures or in shares, securities or other financial instruments” of “in shares, securities, land, trades or commodity futures”,
- (b) in subsection (7), the insertion after “excluded company” of “or is a non-UK resident”.
- (2) Sub-paragraph (1) applies in relation to section 576L of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 151.

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- (3) For the purposes of sub-paragraph (2), sub-paragraph (1)(b) has effect with the substitution for “subsection (7)” of “subsection (5)”.

Meaning of “qualifying subsidiary”

- 51 (1) In relation to shares issued before 17 March 2004, section 191 (as applied by sections 137(7), 139(4), 140(2) and 142(4)) applies with the following modifications—
- (a) in subsection (1), the insertion at the end of “and, except as provided by subsection (3), continue to be met until the time that is relevant for the purposes of section 134(2)”,
 - (b) in subsection (2), the substitution for paragraph (a) of—
 - “(a) the relevant company, or another of its subsidiaries, possesses at least 75% of the issued share capital of, and at least 75% of the voting power in, the subsidiary,
 - (aa) the relevant company, or another of its subsidiaries, would in the event of a winding up of the subsidiary, or in any other circumstances, be beneficially entitled to receive at least 75% of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary,
 - (ab) the relevant company, or another of its subsidiaries, is beneficially entitled to at least 75% of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary,”
 - (c) in paragraph (c) of subsection (2), the substitution for “either of the conditions in paragraphs (a) and (b)” of “any of the conditions in paragraphs (a), (aa), (ab) and (b)”
 - (d) in subsection (3), the substitution for “any other company” of “the relevant company” and the substitution for the words from “the winding up or dissolution” to the end of that subsection of—
 - “(a) the winding up or dissolution is for genuine commercial reasons, and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,
 - (b) the net assets, if any, of the subsidiary or, as the case may be, the relevant company are distributed to its members, or dealt with as bona vacantia, before the time that is relevant for the purposes of section 134(2) or, in the case of a winding up, the end (if later) of 3 years from the commencement of the winding up.”
 - (e) the omission of subsection (4),
 - (f) in subsection (5), the substitution for “arrangements are in existence for” of “of” and the insertion after “another subsidiary” of “within the continuous period that is relevant for the purposes of section 134(3)”,
 - (g) in subsection (5)(a), the omission of “to be”,
 - (h) in subsection (5)(b), the substitution for “is not to be” of “not”, and
 - (i) after subsection (5), the insertion of—
 - “(6) The persons who are equity holders of a subsidiary, and the percentage of the assets of a subsidiary to which an equity holder

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would be entitled, is to be determined in accordance with paragraphs 1 and 3 of Schedule 18 to ICTA, taking—

- (a) references in paragraph 3 to the first company as references to an equity holder, and
 - (b) references to a winding up as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.”
- (2) Sub-paragraph (1) applies in relation to section 191 as applied by sections 576B(7), 576D(4), 576E(2) and 576G(4) of ICTA (which make corresponding provision for the purposes of corporation tax) as it applies in relation to section 191 as applied by sections 137(7), 139(4), 140(2) and 142(4).
- (3) For the purposes of sub-paragraph (2), sub-paragraph (1) applies with—
- (a) in paragraphs (a) and (d), the substitution for “section 134(2)” of “section 576A(2) of ICTA”, and
 - (b) in paragraph (f), the substitution for “section 134(3)” of “section 576A(3) of ICTA”.

Meaning of “excluded activities”

- 52 (1) In relation to shares issued before 7 March 2001, section 192(1) (as applied by section 137(7)) applies with the insertion after paragraph (c) of—
- “(ca) oil extraction activities (within the meaning of Chapter 5 of Part 12 of ICTA),”.
- (2) In the application of sub-paragraph (1) on or after 7 March 2001, shares—
- (a) that were issued on or after 6 April 1998 but before 7 March 2001, and
 - (b) to which EIS relief or relief under Schedule 5B to TCGA 1992 was attributable immediately before 7 March 2001,
- are treated as having been issued on or after 7 March 2001.
- (3) Sub-paragraphs (1) and (2) apply in relation to section 192(1) as applied by section 576B(7) of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 192(1) as applied by section 137(7).

Excluded activities: wholesale and retail distribution

- 53 (1) In relation to shares issued before 6 April 2007, section 193(5)(b) (as applied by section 137(7)) applies with the following modifications—
- (a) the insertion after “held” of “by the company”, and
 - (b) the substitution for “the trader” of “a vendor”.
- (2) Sub-paragraph (1) applies in relation to section 193(5)(b) as applied by section 576B(7) of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 193(5)(b) as applied by section 137(7).

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Excluded activities: leasing of ships

- 54 (1) In relation to shares issued before 6 April 2007, section 194 (as applied by the definition of “non-qualifying activities” in section 137(7)) applies with the omission of subsection (7).
- (2) In relation to shares issued before 6 April 2004, section 194 (as applied by section 137(7)) applies with the following modifications—
- (a) in subsection (1), the substitution for “offshore installations” of “oil rigs”,
 - (b) in subsection (2), the substitution for “offshore installation” of “oil rig”, and
 - (c) in subsection (8), the insertion after “this section” of—

““oil rig” means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971,”.
- (3) Sub-paragraphs (1) and (2) apply in relation to section 194 as applied by section 576B(7) of ICTA (which makes corresponding provision for the purposes of corporation tax) as they apply in relation to section 194 as applied by section 137(7).

Excluded activities: receipt of royalties and licence fees

- 55 (1) In relation to shares issued before 6 April 2000, Chapter 6 of Part 4 applies with the substitution for section 195 (as applied by section 137(7)) of—

“195 Excluded activities: receipt of royalties and licence fees

- (1) This section supplements section 192(1)(e) (receipt of royalties and licence fees).
- (2) 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 it consisting to a substantial extent in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged throughout the relevant period in—
 - (i) the production of films, or
 - (ii) the production of films and the distribution of films produced by it in the relevant period, and
 - (b) all royalties and licence fees received by it in the relevant period are in respect of films produced by it in that period or sound recordings in relation to such films or other products arising from such films.
- (3) 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 it consisting to a substantial extent in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged in research and development throughout the relevant period, and
 - (b) all royalties and licence fees received by it in the relevant period are attributable to research and development which it has carried out.
- (4) In this section “the relevant period” means the continuous period that is relevant for the purposes of section 134(3).”

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- (2) Sub-paragraph (1) applies in relation to section 195 as applied by section 576B(7) of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 195 as applied by section 137(7).
- (3) For the purposes of sub-paragraph (2) sub-paragraph (1) applies with the substitution for “section 134(3)” of “section 576A(3) of ICTA”.

Excluded activities: provision of services or facilities for another business

- 56 (1) In relation to shares issued before 6 April 2007, section 199 (as applied by section 137(7)) applies with the following modifications—
- (a) in subsections (1) to (4), the substitution of “trade” for “business”, wherever it occurs, and
 - (b) in subsection (5) the substitution for paragraph (b) of—
 - “(b) references to a trade, in relation to the provider of the services or facilities, are to be read without regard to the definition of “trade” in section 989, and
 - (c) “trade”, in relation to the other person, includes any business, profession or vocation”.
- (2) Sub-paragraph (1) applies in relation to section 199 as applied by section 576B(7) of ICTA (which makes corresponding provision for the purposes of corporation tax) as it applies in relation to section 199 as applied by section 137(7).

Meaning of a company being “in administration”

- 57 (1) Sub-paragraph (2) applies in relation to—
- (a) an administration order under Part 3 of the Insolvency (Northern Ireland) Order 1989 the petition for which was presented before 6 April 2007, or
 - (b) any corresponding order under the law of a country or territory outside the United Kingdom the proceedings for which were instituted before that date.
- (2) Section 252 (as it applies for the purposes of Chapter 6 of Part 4) applies with the substitution for subsection (2) of—
- “(2) A company is “in administration” if—
- (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986, or
 - (b) there is in force in relation to it—
 - (i) an administration order under Part 3 of the Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom.”
- (3) For the purposes of sub-paragraph (2), section 252 applies for the purposes of Chapter 6 of Part 4 in any case where—
- (a) it is applied by section 138(5),
 - (b) it applies for the purposes of section 190 as applied by section 141(2), or
 - (c) it applies for the purposes of section 191 as applied by section 137(7), 139(4), 140(2) or 142(4).

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- (4) In relation to an administration order under Part 2 of the Insolvency Act 1986 the petition for which was presented before 15 September 2003, section 252 (as applied by section 138(5)) applies with the substitution for subsection (2) of—
- “(2) A company is “in administration” if there is in force in relation to it—
- (a) an administration order under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989, or
 - (b) any corresponding order under the law of a country or territory outside the United Kingdom.”
- (5) Section 252 (as applied by section 138(5)) does not apply in relation to shares issued before 21 March 2000.
- (6) In the application of sub-paragraph (5) on or after 21 March 2000, shares—
- (a) that were issued on or after 6 April 1998 but before 21 March 2000, and
 - (b) to which EIS relief or relief under Schedule 5B to TCGA 1992 was attributable immediately before 21 March 2000,
- are treated as having been issued on or after 21 March 2000.
- (7) Sub-paragraphs (1) to (6) apply in relation to Chapter 5A of Part 13 of ICTA and section 576C(5) of that Act (which make corresponding provision for the purposes of corporation tax) as they apply in relation to Chapter 6 of Part 4 and section 138(5).
- (8) For the purposes of sub-paragraph (7), section 252 applies for the purposes of Chapter 5A of Part 13 of ICTA in any case where—
- (a) it is applied by section 576C(5) of ICTA,
 - (b) it applies for the purposes of section 190 as applied by section 576F(2) of ICTA, or
 - (c) it applies for the purposes of section 191 as applied by section 576B(7), 576D(4), 576E(2) or 576G(4) of ICTA.

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