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SCHEDULES

SCHEDULE 28B

VENTURE CAPITAL TRUSTS: MEANING OF “QUALIFYING HOLDINGS”

Introductory

- 1 (1) This Schedule applies, where any shares in or securities of any company (“the relevant company”) are at any time held by another company (“the trust company”), for determining whether and to what extent those shares or securities (“the relevant holding”) are, for the purposes of section 842AA, to be regarded as at that time comprised in the trust company’s qualifying holdings.
- (2) The relevant holding shall be regarded as comprised in the trust company’s qualifying holdings at any time if—
- (a) all the requirements of the following provisions of this Schedule are satisfied at that time in relation to the relevant company and the relevant holding; and
 - (b) the relevant holding consists of shares or securities which were first issued by the relevant company to the trust company and have been held by the trust company ever since.
- (3) Subject to paragraph 6(3) below, where the requirements of paragraph 6 or 7 below would be satisfied as to only part of the money raised by the issue of the relevant holding and that holding is not otherwise capable of being treated as comprising separate holdings, this Schedule shall have effect in relation to that holding as if it were two holdings consisting of—
- (a) a holding from which that part of the money was raised; and
 - (b) a holding from which the remainder was raised;
- and section 842AA shall have effect as if the value of the holding were to be apportioned accordingly between the two holdings which are deemed to exist in pursuance of this sub-paragraph.

Requirement that company must be unquoted company

- 2 (1) The requirement of this paragraph is that the relevant company (whether or not it is resident in the United Kingdom) must be an unquoted company.
- (2) In this paragraph “unquoted company” means a company none of whose shares, stocks, debentures or other securities is marketed to the general public.
- (3) For the purposes of this paragraph shares, stocks, debentures or other securities are marketed to the general public if they are—
- (a) listed on a recognised stock exchange,
 - (b) listed on a designated exchange in a country outside the United Kingdom, or

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- (c) dealt in on the Unlisted Securities Market or dealt in outside the United Kingdom by such means as may be designated.
- (4) In sub-paragraph (3) above “designated” means designated by an order made by the Board for the purposes of that sub-paragraph; and an order made for the purposes of paragraph (b) of that sub-paragraph 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.
- (5) Section 828(1) does not apply to an order made for the purposes of sub-paragraph (3) above.
- (6) Where a company any shares in or securities of which are included in the qualifying holdings of the trust company ceases at any time while the trust company is approved as a venture capital trust to be an unquoted company, the requirements of this paragraph shall be deemed, in relation to shares or securities acquired by the trust company before that time, to continue to be satisfied for a period of five years after that time.

Requirements as to company’s business

- 3 (1) The requirements of this paragraph are as follows.
- (2) The relevant company must be one of the following, that is to say—
 - (a) a company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities; ^[F1] or
 - (aa) the parent company of a trading group.]
- (3) Subject to sub-paragraph (4) below, the relevant company or a ^[F2]relevant qualifying subsidiary] of that company must, when the relevant holding was issued and at all times since, have been either—
 - (a) carrying on a qualifying trade wholly or mainly in the United Kingdom; or
 - (b) preparing to carry on a qualifying trade which at the time when the relevant holding was issued it intended to carry on wholly or mainly in the United Kingdom,

^[F3]and for the purposes of this sub-paragraph a company is a relevant qualifying subsidiary of another company at any time when it would be a qualifying subsidiary of that company if “90” were substituted for “75” in every place where “75” occurs in paragraph 10(3) below.]
- (4) The requirements of sub-paragraph (3) above shall not be capable of being satisfied by virtue of paragraph (b) of that sub-paragraph at any time after the end of the period of two years beginning with the issue of the relevant holding unless—
 - (a) the relevant company or the subsidiary in question began to carry on the intended trade before the end of that period, and
 - (b) that company or subsidiary has, at all times since the end of that period, been carrying on a qualifying trade wholly or mainly in the United Kingdom.

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- (5) The requirements of that sub-paragraph shall also be incapable of being so satisfied at any time after the abandonment, within the period mentioned in sub-paragraph (4) above, of the intention in question.
- [^{F4}(6) For the purposes of this paragraph a company is the parent company of a trading group if—
- (a) it has one or more subsidiaries;
 - (b) each of its subsidiaries is a qualifying subsidiary of the company; and
 - (c) the requirements of sub-paragraph (7) below are fulfilled by what would be the business of the company and its qualifying subsidiaries if all the activities, taken together, of the company and its qualifying subsidiaries were regarded as one business.
- (7) A business fulfils the requirements of this sub-paragraph if neither the business nor a substantial part of it consists in, or in either of, the following, that is to say—
- (a) activities falling within paragraph 4(2)(a) to (f) below but not within sub-paragraph (8) below; and
 - (b) activities carried on otherwise than in the course of a trade.
- (8) The activities falling within this sub-paragraph are—
- (a) the receiving of royalties or licence fees in circumstances where [^{F5}the requirement mentioned in paragraph 4(5) below is] satisfied in relation to the company receiving them;
 - (b) the letting of ships, other than oil rigs or pleasure craft, on charter in circumstances where the requirements mentioned in paragraphs (a) to (d) of paragraph 4(7) below are satisfied in relation to the company so letting them.
- (9) Activities of a company or of any of its qualifying subsidiaries shall be disregarded for the purposes of sub-paragraphs (6) to (8) above to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, one or more of the company’s qualifying subsidiaries; or
 - (b) the holding and managing of property used by the company or any of its qualifying subsidiaries for the purposes of—
 - (i) research and development from which it is intended that a qualifying trade to be carried on by the company or any of its qualifying subsidiaries will be derived; or
 - (ii) one or more qualifying trades so carried on.
- (10) Activities of a qualifying subsidiary of a company shall also be disregarded for the purposes of sub-paragraphs (6) to (8) above to the extent that they consist in—
- (a) the making of loans to the company; or
 - (b) in the case of a mainly trading subsidiary, activities carried on in pursuance of its insignificant purposes (within the meaning given by sub-paragraph (11) below).
- (11) In sub-paragraph (10) above “mainly trading subsidiary” means a qualifying subsidiary which, apart from purposes (“its insignificant purposes”) which are capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, exists wholly for the purpose of carrying on one or more qualifying trades.]

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Textual Amendments

- F1** Sch. 28B para. 3(2)(aa) and preceding word substituted for para. 2(2)(b)(c) (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 2(1)**
- F2** Words in Sch. 28B para. 3 substituted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(3)**
- F3** Words in Sch. 28B para. 3 inserted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(3)**
- F4** Sch. 28B para. 3(6)-(11) inserted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 2(2)**
- F5** Words in Sch. 28B para. 3(8)(a) substituted (with effect in accordance with Sch. 16 para. 1(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 16 para. 1(1)**

Meaning of “qualifying trade”

- 4 (1) For the purposes of this Schedule—
- (a) a trade is a qualifying trade if it is a trade complying with this paragraph; and
 - (b) the carrying on of any activities of research and development from which it is intended that there will be derived a trade that—
 - (i) will comply with this paragraph, and
 - (ii) will be carried on wholly or mainly in the United Kingdom,
 shall be treated as the carrying on of a qualifying trade.
- (2) Subject to sub-paragraphs (3) to (9) below, a trade complies with this paragraph if neither that trade nor a substantial part of it consists in one or more of the following activities, that is to say—
- (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) or receiving royalties or licence fees;
 - (e) providing legal or accountancy services;
 - [^{F6}(ea) property development;
 - (eb) farming or market gardening;
 - (ec) holding, managing or occupying woodlands, any other forestry activities or timber production;
 - (ed) operating or managing hotels or comparable establishments, or managing property used as an hotel or comparable establishment;
 - (ee) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home;]
 - (f) providing services or facilities for any such trade carried on by another person (not being a company of which the company providing the services or facilities is a subsidiary) as—

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- (i) consists, to a substantial extent, in activities within any of paragraphs (a) to [F7(ee)] above; and
 - (ii) is a trade in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company providing the services or facilities.
- (3) For the purposes of sub-paragraph (2)(b) above—
 - (a) a trade of wholesale distribution is one in which the 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;
 - (b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption; and
 - (c) a trade is not an ordinary trade of wholesale or retail distribution if—
 - (i) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or in that activity and any other activity of a kind falling within sub-paragraph (2)(a) to (f) above, taken together; and
 - (ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.
- [F8(3A) For the purposes of this Schedule the activities of a person shall not be taken to fall within paragraph (ed) or (ee) of sub-paragraph (2) above except where that person has an estate or interest in, or is in occupation of, the hotels or comparable establishments or, as the case may be, the nursing homes or residential care homes.]
- (4) In determining for the purposes of this paragraph whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features, that is to say—
 - (a) the goods are bought by that person in quantities larger than those in which he sells them;
 - (b) the goods are bought and sold by that person in different markets;
 - (c) that person 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, to any remuneration paid to any person connected with it;
 - (d) there are purchases or sales from or to persons who are connected with that person;
 - (e) purchases are matched with forward sales or vice versa;
 - (f) the goods are held by that person 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) that person does not take physical possession of the goods;and for the purposes of this sub-paragraph the features specified in paragraphs (a) to (c) above shall be regarded as indications that the trade is such an ordinary trade and those in paragraphs (d) to (h) above shall be regarded as indications of the contrary.
- [F9(5) A trade shall not be treated as failing to comply with this paragraph by reason only that it consists to a substantial extent in the receiving of royalties or licence fees if the

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royalties and 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.

- (6) 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—
- (a) by the company carrying on the trade, or
 - (b) by a company which at all times during which it created the intangible asset was—
 - (i) the parent company of the company carrying on the trade, or
 - (ii) a qualifying subsidiary of that parent company.
- (6A) In the case of a relevant asset that is intellectual property, references in sub-paragraph (6) above to the creation of the 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).
- (6B) For the purposes of sub-paragraphs (5) to (6A) above “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.
- For this purpose “normal accounting practice” means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.
- (6C) For the purposes of sub-paragraph (6) above
- (a) “parent company” means a company that—
 - (i) has one or more 51% subsidiaries, but
 - (ii) is not itself a 51% subsidiary of another company; and
 - (b) paragraph 10 below (meaning of “qualifying subsidiary”) shall apply as if the references in that paragraph to the relevant company were references to the parent company referred to in sub-paragraph (6)(b) above.
- (6D) For the purposes of sub-paragraph (6A) above “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer’s right or plant breeder’s right; and
 - (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) above.]
- (7) A trade shall not be treated as failing to comply with this paragraph by reason only of its consisting in letting ships, other than oil rigs or pleasure craft, on charter if—
- (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) the company is solely responsible for arranging the marketing of the services of its ships; and
 - (d) the conditions mentioned in sub-paragraph (8) below are satisfied in relation to every letting of a ship on charter by the company;

but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings, the trade shall not thereby be treated as failing to comply with this paragraph if those lettings and any other activity of a kind falling

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within sub-paragraph [F10(2)(a) to (f)] above do not, when taken together, amount to a substantial part of the trade.

(8) The conditions are that—

- (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) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;
 - (c) the letting is by way of a bargain made 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) above on behalf of the company;

but this sub-paragraph shall have effect, in relation to any letting between one company and another where one of those companies is the relevant company and the other is a qualifying subsidiary of that company, or where both companies are qualifying subsidiaries of the relevant company, as if paragraph (c) were omitted.

(9) A trade shall not comply with this paragraph unless it is conducted on a commercial basis and with a view to the realisation of profits.

Textual Amendments

- F6** Sch. 28B para. 4(2)(ea)-(ee) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(1)**
- F7** Words in Sch. 28B para. 4(2)(f) substituted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(2)**
- F8** Sch. 28B para. 4(3A) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(3)**
- F9** Sch. 28B para. 4(5)-(6D) substituted for para. 4(5)(6) (with effect in accordance with Sch. 18 para. 5(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 5(1)**
- F10** Words in Sch. 28B para. 4(7) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 3**

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Provisions supplemental to paragraph 4

- 5 (1) In paragraph 4 above—
- “film” means an original master negative of a film, an original master film disc or an original master film tape;
- [^{F11}“nursing home” means any establishment which exists wholly or mainly for the provision of nursing care for persons suffering from sickness, injury or infirmity or for women who are pregnant or have given birth to children;
- “oil rig” means any ship which is an offshore installation for the purposes of the ^{M1}Mineral Workings (Offshore Installations) Act 1971;
- “pleasure craft” means any ship of a kind primarily used for sport or recreation;
- [^{F12}“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;]
- [^{F13}“research and development” has the meaning given by section 837A;]
- [^{F14}“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 by reason of old age, mental or physical disabilities, past or present dependence on alcohol or drugs or any past illnesses or past or present mental disorders;] and
- “sound recording”, in relation to a film, means its sound track, original master audio disc or original master audio tape.
- (2) For the purposes of paragraph 4 above, in the case of a trade carried on by a company, a person has a controlling interest in that trade if—
- (a) he controls the company;
- (b) the company is a close company and he or an associate of his, being a director of the company, either—
- (i) is the beneficial owner of more than 30 per cent. of the ordinary share capital of the company, or
- (ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30 per cent. of that share capital;
- or
- (c) not less than half of the trade could, in accordance with section 344(2), be regarded as belonging to him for the purposes of section 343;
- and, in any other case, a person has a controlling interest in a trade if he is entitled to not less than half of the assets used for, or of the income arising from, the trade.
- (3) For the purposes of sub-paragraph (2) above there shall be attributed to any person any rights or powers of any other person who is an associate of his.
- (4) References in paragraph 4 above or this paragraph to a trade, except the references in paragraph 4(2)(f) to the trade for which services or facilities are provided, shall be construed without reference to so much of the definition of trade in section 832(1)

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as relates to adventures or concerns in the nature of trade; and those references in paragraph 4(2)(f) above to a trade shall have effect, in relation to cases in which what is carried on is carried on by a person other than a company, as including references to any business, profession or vocation.

(5) In this paragraph—

“associate” has the meaning given in subsections (3) and (4) of section 417, except that in those subsections, as applied for the purposes of this paragraph, “relative” shall not include a brother or sister; and

“director” shall be construed in accordance with subsection (5) of that section;

[^{F15}“interest in land” means (subject to sub-paragraph (6) below)—

(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 the estate, interest or right.

[References in paragraph 4 above, in relation to an hotel, to a comparable ^{F16}(6) establishment are references to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (whether with or without catering services).

(7) References in this paragraph to an interest in land do not include references to—

(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.]]]

Textual Amendments

F11 Sch. 28B para. 5(1): definition of “nursing home” inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(1)**

F12 Sch. 28B para. 5(1): definition of “property development” inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(2)**

F13 Sch. 28B para. 5(1): definition of “research and development” substituted (with effect in accordance with Sch. 18 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 6(1)** (with Sch. 18 para. 6(3))

F14 Sch. 28B para. 5(1): definition of “residential care home” inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(3)**

F15 Sch. 28B para. 5(5): definition of “interest in land” inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(4)**

F16 Sch. 28B para. 5(6)(7) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(5)**

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M1 1971 c. 61.

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VALID FROM 22/07/2004

Meaning of “relevant qualifying subsidiary”

- 5A (1) For the purposes of this Schedule, a company (“the subsidiary”) is a relevant qualifying subsidiary of the relevant company at any time when it falls within sub-paragraph (2) below.
- (2) The subsidiary falls within this sub-paragraph if—
- (a) the relevant company possesses not less than 90 per cent. of the issued share capital of, and not less than 90 per cent. 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 not less than 90 per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;
 - (c) the relevant company is beneficially entitled to not less than 90 per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;
 - (d) no person other than the relevant company has control of the subsidiary within the meaning of section 840; and
 - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.
- (3) Sub-paragraphs (4) to (4C) and (5) of paragraph 10 below apply in relation to sub-paragraph (2) of this paragraph as they apply in relation to sub-paragraph (3) of that paragraph, but with the following modification.
- (4) That modification is that sub-paragraph (5) of that paragraph is to be read as if the words “or (as the case may be) by another subsidiary of that company” were omitted.
- (5) For the purposes of this paragraph—
- (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,
- shall be determined in accordance with paragraphs 1 and 3 of Schedule 18.
- (6) But in making that determination—
- (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
 - (b) references in that paragraph 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.

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Requirements as to the money raised by the investment in question

- 6 [F17](1) The requirements of this paragraph are that either—
- (a) at least 80% of the money raised by the issue of the relevant holding must—
 - (i) have been employed wholly for the purposes of the trade by reference to which the requirements of paragraph 3(3) above are satisfied; or
 - (ii) be money which the relevant company or a relevant qualifying subsidiary of that company is intending to employ wholly for the purposes of that trade; or
 - (b) all of the money so raised must have been employed as mentioned in paragraph (a)(i) above.
- (2) For the purposes of this Schedule—
- (a) the requirements of sub-paragraph (1) above shall not be capable of being satisfied by virtue of paragraph (a)(ii) of that sub-paragraph at any time after 12 months have expired from the trading time, and
 - (b) the requirements of that sub-paragraph shall not be capable of being satisfied by virtue of paragraph (a)(i) of that sub-paragraph at any time after 24 months have expired from the trading time.
- (2AA) In sub-paragraph (2) above, “the trading time” means whichever is applicable of the following—
- (a) in a case where the requirements of sub-paragraph (3) of paragraph 3 above were satisfied in relation to the time when the relevant holding was issued by virtue of paragraph (a) of that sub-paragraph, that time; and
 - (b) in a case where they were satisfied in relation to that time by virtue of paragraph (b) of that sub-paragraph, the time when the relevant company or, as the case may be, the subsidiary in question began to carry on the intended trade.]

[F18](2A) Where the relevant company is a company falling within paragraph 3(2)(aa) above, the requirements of this paragraph are not satisfied unless—

 - (a) the trader company is a company in relation to which the requirements of paragraph 3(2)(a) above are satisfied, or
 - (b) the trader company is a company in relation to which those requirements would be satisfied if its purposes were disregarded to the extent that they consist in the carrying on of activities such as are mentioned in paragraph 3(9)(a) and (b) and (10)(a) above, or
 - (c) the trader company is a [F19]relevant qualifying subsidiary] of the relevant company and falls within sub-paragraph (2B) below.

(2B) A [F19]relevant qualifying subsidiary] of the relevant company falls within this sub-paragraph if—

 - (a) apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, it exists wholly for the purpose of carrying on activities such as are mentioned in paragraph 3(9)(b) above; or
 - (b) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.

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- (2C) In sub-paragraph (2A) above “the trader company” means the company (whether the relevant company or a qualifying subsidiary of the relevant company) carrying on, or preparing to carry on, the trade by reference to which the requirements of paragraph 3(3) above are satisfied.]
- (3) For the purposes of this paragraph money shall not be treated as employed otherwise than wholly for the purposes of a trade if the only amount employed for other purposes is an amount which is not a significant amount; and nothing in paragraph 1(3) above shall require any money whose use is disregarded by virtue of this sub-paragraph to be treated as raised by a different holding.
- (4) References in this paragraph to employing money for the purposes of a trade shall include references to employing it for the purpose of preparing for the carrying on of the trade.
- [^{F20}(5) For the purposes of this paragraph a company is a relevant qualifying subsidiary of another company at any time when it would be a qualifying subsidiary of that company if “90” were substituted for “75” in every place where “75” occurs in paragraph 10(3) below.]

Textual Amendments

- F17** Sch. 28B para. 6(1)(2)(2AA) substituted for para. 6(1)(2) (with effect in accordance with Sch. 16 para. 2(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 16 para. 2(1)**
- F18** Sch. 28B para. 6(2A)-(2C) inserted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 4**
- F19** Words in Sch. 28B para. 6(1)(b)(2A)(c)(2B) substituted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(4)**
- F20** Sch. 28B para. 6(5) inserted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(4)**

Modifications etc. (not altering text)

- C1** Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9, 11**

Requirement imposing a maximum on qualifying investments in the relevant company

- 7 (1) The requirement of this paragraph is that the relevant holding did not, when it was issued, represent an investment in excess of the maximum qualifying investment for the relevant period.
- (2) Subject to sub-paragraph (4) below, the maximum qualifying investment for any period is exceeded to the extent that the aggregate amount of money raised in that period by the issue to the trust company during that period of shares in or securities of the relevant company exceeds £1 million.
- (3) Any question for the purposes of this paragraph as to whether any shares in or securities of the relevant company which are for the time being held by the trust company represent an investment in excess of the maximum qualifying investment for any period shall be determined on the assumption, in relation to disposals by the

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trust company, that, as between shares or securities of the same description, those representing the whole or any part of the excess are disposed of before those which do not.

(4) Where—

- (a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,
- (b) the trade by virtue of which the requirements of paragraph 3(3) above are satisfied was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture as such, and
- (c) the other partners or parties to the joint venture include at least one other company,

this paragraph shall have effect in relation to the relevant company as if the sum of money for the time being specified in sub-paragraph (2) above were to be divided by the number of companies (including the relevant company) which, at the time when the relevant holding was issued, were members of the partnership or, as the case may be, parties to the joint venture.

(5) For the purposes of this paragraph the relevant period is the period beginning with whichever is the earlier of—

- (a) the time six months before the issue of the relevant holding; and
- (b) the beginning of the year of assessment in which the issue of that holding took place.

Modifications etc. (not altering text)

- C2** Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by [The Venture Capital Trust \(Exchange of Shares and Securities\) Regulations 2002 \(S.I. 2002/2661\)](#), [regs. 7-9](#), 11

Requirement as to the assets of the relevant company

- 8 (1) The requirement of this paragraph is that the value of the relevant assets—
- (a) did not exceed [^{F21}£15 million] immediately before the issue of the relevant holding; and
 - (b) did not exceed [^{F21}£16 million] immediately afterwards.
- (2) Subject to sub-paragraph (3) below, the reference in sub-paragraph (1) above to the value of the relevant assets is a reference—
- (a) in relation to a time when the relevant company did not have any qualifying subsidiaries, to the value of the gross assets of that company at that time; and
 - (b) in relation to any other time, to the aggregate value at that time of the gross assets of all the companies in the relevant company’s group.
- (3) For the purposes of this paragraph assets of any member of the relevant company’s group that consist in rights against, or in shares in or securities of, another member of the group shall be disregarded.

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- (4) In this paragraph references, in relation to any time, to the relevant company’s group are references to the relevant company and its qualifying subsidiaries at that time.

Textual Amendments

F21 Words in [Sch. 28B para. 8\(1\)](#) substituted (with effect in accordance with [s. 73\(6\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 73\(5\)](#)

Modifications etc. (not altering text)

C3 [Sch. 28B paras. 6-9, 10B](#) modified (13.11.2002 with effect in accordance with [reg. 1\(2\)](#) of the modifying S.I.) by [The Venture Capital Trust \(Exchange of Shares and Securities\) Regulations 2002 \(S.I. 2002/2661\), regs. 7-9, 11](#)

Requirements as to the subsidiaries etc. of the relevant company

- 9 (1) The requirements of this paragraph are that ^{F22} . . . the relevant company must not be—
- (a) a company which controls (whether on its own or together with any person connected with it) any company that is not a qualifying subsidiary of the relevant company; or
 - (b) a company which is under the control of another company (or of another company and a person connected with the other company);
- and arrangements must not be in existence by virtue of which the relevant company could fall within paragraph (a) or (b) above.
- (2) ^{F23}

Textual Amendments

F22 Words in [Sch. 28B para. 9\(1\)](#) repealed (retrospectively) by [Finance Act 1996 \(c. 8\), s. 161\(1\)\(2\)\(a\), Sch. 41 Pt. 5\(22\)](#), Note

F23 [Sch. 28B para. 9\(2\)](#) repealed (retrospectively) by [Finance Act 1996 \(c. 8\), s. 161\(1\)\(2\)\(b\), Sch. 41 Pt. 5\(22\)](#), Note

Modifications etc. (not altering text)

C4 [Sch. 28B paras. 6-9, 10B](#) modified (13.11.2002 with effect in accordance with [reg. 1\(2\)](#) of the modifying S.I.) by [The Venture Capital Trust \(Exchange of Shares and Securities\) Regulations 2002 \(S.I. 2002/2661\), regs. 7-9, 11](#)

Meaning of “qualifying subsidiary”

- 10 (1) Subject to the following provisions of this paragraph, a company is a qualifying subsidiary of the relevant company for the purposes of this Schedule if—
- (a) the company in question (“the subsidiary”), and
 - (b) where the relevant company has more than one subsidiary, every other subsidiary of the relevant company,
- is a company falling within [^{F24}sub-paragraph] (3) below.

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- (2) ^{F25}
- (3) The subsidiary falls within this sub-paragraph if—
- (a) the relevant company, or another of its subsidiaries, possesses not less than [^{F26}75] per cent. of the issued share capital of, and not less than [^{F26}75] per cent. of the voting power in, the subsidiary;
 - (b) 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 not less than [^{F26}75] per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;
 - (c) the relevant company, or another of its subsidiaries, is beneficially entitled to not less than [^{F26}75] per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;
 - (d) no person other than the relevant company or another of its subsidiaries has control of the subsidiary within the meaning of section 840; and
 - (e) no arrangements are in existence by virtue of which the relevant company could cease to fall within this sub-paragraph.
- (4) The subsidiary shall not be regarded, at a time when it is being wound up, as having ceased on that account to be a company falling within [^{F27}sub-paragraph] (3) above if it is shown—
- (a) that it would fall within [^{F28}that sub-paragraph] apart from the winding up; and
 - (b) that the winding up is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (5) The subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the relevant company, or (as the case may be) by another subsidiary of that company, of all its interest in the subsidiary in question, as having ceased on that account to be a company falling within [^{F27}sub-paragraph] (3) above if it is shown that the disposal is to be for bona fide commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (6) For the purposes of this paragraph the persons who are equity holders of the subsidiary and the percentage of the assets of the subsidiary to which an equity holder would be entitled shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder, and 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.

Textual Amendments

- F24** Words in Sch. 28B para. 10(1) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), Sch. 9 para. 5(1)
- F25** Sch. 28B para. 10(2) repealed (with effect in accordance with Sch. 9 para. 6 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 9 para. 5(2), Sch. 18 Pt. 6(9), Note

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- F26** Words in Sch. 28B para. 10(3) substituted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), s. 73(2)
- F27** Words in Sch. 28B para. 10(4)(5) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), Sch. 9 para. 5(3)
- F28** Words in Sch. 28B para. 10(4)(a) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), Sch. 9 para. 5(4)

VALID FROM 22/07/2004

Requirement as to property managing subsidiaries

- 10ZA (1) The requirement of this paragraph is that the relevant company must not have a property managing subsidiary which is not a relevant qualifying subsidiary of the relevant company.
- (2) “Property managing subsidiary” means a qualifying subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2) above, “land” and “property deriving its value from land” have the same meaning as in section 776.

Requirement that securities should not relate to a guaranteed loan

- 10A (1) The requirement of this paragraph is that there are no securities relating to a guaranteed loan in the relevant holding.
- (2) For the purposes of this paragraph a security relates to a guaranteed loan if (and only if) there are arrangements for the trust company to be or become entitled, in the event of a failure by any person to comply with—
- (a) the terms of the loan to which the security relates, or
 - (b) the terms of the security,
- to receive anything (whether directly or indirectly) from a third party.
- (3) For the purposes of sub-paragraph (2) above it shall be immaterial whether the arrangements apply in all cases of a failure to comply or only in certain such cases.
- (4) For the purposes of this paragraph “third party” means any person except—
- (a) the relevant company; and
 - (b) if the relevant company is the parent company of a trading group for the purposes of paragraph 3 above, the subsidiaries of the relevant company.

Requirement that a proportion of the holding in each company must be eligible shares

- 10B (1) The requirement of this paragraph is that eligible shares represent at least 10 per cent. by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the trust company.

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- (2) For the purposes of this paragraph the value at any time of any shares in or securities of a company shall be taken (subject to sub-paragraph (4) below) to be their value immediately after—
- (a) any relevant event occurring at that time; or
 - (b) where no relevant event occurs at that time, the last relevant event to occur before that time.
- (3) In sub-paragraph (2) above “relevant event”, in relation to any shares in or securities of the relevant company, means—
- (a) the acquisition by the trust company of those shares or securities;
 - (b) the acquisition by the trust company of any other shares in or securities of the relevant company which—
 - (i) are of the same description as those shares or securities, and
 - (ii) are acquired otherwise than by virtue of being allotted to the trust company without that company’s becoming liable to give any consideration;
- or
- (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the trust company as (by discharging that obligation) increases the value of any such shares or securities.
- (4) If at any time the value of any shares or securities held by the trust company is less than the amount of the consideration given by the trust company for those shares or securities, it shall be assumed for the purposes of this paragraph that the value of those shares or securities at that time is equal to the amount of that consideration.
- (5) In this paragraph “eligible shares” has the same meaning as in section 842AA.

Modifications etc. (not altering text)

- C5** Sch. 28B para. 10B modified (31.7.1998) by Finance Act 1998 (c. 36), s. 72(5)
- C6** Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), regs. 7-9, 11

Acquisitions for restructuring purposes

- 10C (1) This paragraph applies where—
- (a) arrangements are made for a company (“the new company”) to acquire all the shares (“old shares”) in another company (“the old company”);
 - (b) the acquisition provided for by the arrangements falls within sub-paragraph (2) below; and
 - (c) the Board have, before any exchange of shares takes place under the arrangements, given an approval notification.
- (2) An acquisition of shares falls within this sub-paragraph if—
- (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;

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- (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than subscriber shares and new shares previously issued in consideration of old shares;
 - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description; and
 - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.
- (3) For the purposes of sub-paragraph (1)(c) above an approval notification is one which, on an application by either the old company or the new company, is given to the applicant company and states that the Board are satisfied that the exchange of shares under the arrangements—
- (a) will be effected for bona fide commercial reasons; and
 - (b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.
- (4) If the requirements of paragraph 3 above were satisfied in relation to the old company and any old shares immediately before the beginning of the period for giving effect to the arrangements, then (to the extent that it would not otherwise be the case) those requirements shall be deemed to be satisfied in relation to the new company and the matching new shares at all times which—
- (a) fall in that period; and
 - (b) do not fall after a time when (apart from the arrangements) those requirements would have ceased by virtue of—
 - (i) sub-paragraph (4) or (5) of that paragraph, or
 - (ii) any cessation of a trade by any company,
 to be satisfied in relation to the old company and the matching old shares.
- (5) For the purposes of paragraph 3 above the period of two years mentioned in sub-paragraph (4) of that paragraph shall be deemed, in the case of any new shares, to expire at the same time as it would have expired (or by virtue of this sub-paragraph would have been deemed to expire) in the case of the matching old shares.
- (6) Subject to sub-paragraph (7) below, where—
- (a) there is an exchange under the arrangements of any new shares for any old shares, and
 - (b) those old shares are shares in relation to which the requirements of paragraphs 6 and 8 above were (or were deemed to be) satisfied to any extent immediately before the exchange,
- those requirements shall be deemed, at all times after that time, to be satisfied to the same extent in relation to the matching new shares.
- (7) Where there is a time following any exchange under the arrangements of any new shares for any old shares when (apart from the arrangements) the requirements of paragraph 6 above would have ceased under—
- (a) sub-paragraph (2) of that paragraph, or
 - (b) this sub-paragraph,
- to be satisfied in relation to those old shares, those requirements shall cease at that time to be satisfied in relation to the matching new shares.
- (8) For the purposes of paragraph 7 above any new shares acquired under the arrangements shall be deemed to represent an investment which—

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- (a) raised the same amount of money as was raised (or, by virtue of this sub-paragraph, is deemed to have been raised) by the issue of the matching old shares, and
 - (b) raised that amount by an issue of shares in the new company made at the time when the issue of the matching old shares took place (or, as the case may be, is deemed to have taken place).
- (9) In determining whether the requirements of paragraph 9 above are satisfied in relation to the old company or the new company at a time in the period for giving effect to the arrangements, both—
 - (a) the arrangements themselves, and
 - (b) any exchange of new shares for old shares that has already taken place under the arrangements,shall be disregarded.
- (10) For the purposes of paragraph 10B above the value of the new shares, both immediately after the time of their acquisition and immediately after the time of any subsequent relevant event occurring by virtue of the arrangements, shall be taken to be the same as the value, when last valued in accordance with that paragraph, of the old shares for which they are exchanged.
- (11) Nothing in this paragraph shall deem any of the requirements of this Schedule to be satisfied in relation to any new shares unless the matching old shares were first issued to the trust company and have been held by that company from the time when they were issued until they are acquired by the new company.
- (12) References in this paragraph to the period for giving effect to the arrangements are references to the period which—
 - (a) begins with the time when those arrangements first came into existence; and
 - (b) ends with the time when the new company completes its acquisition under the arrangements of all the old shares.
- (13) If, at any time after the arrangements first came into existence and before the new company has acquired all the old shares, the arrangements—
 - (a) cease to be arrangements for the acquisition of all the old shares by the new company, or
 - (b) cease to be arrangements for an acquisition falling within sub-paragraph (2) above,this paragraph shall not deem any requirement of this Schedule to be satisfied, and sub-paragraph (10) above shall not apply, in the case of any new shares at any time after the arrangements have so ceased.
- (14) Subject to sub-paragraph (15) below, references in this paragraph, except in the expression “subscriber shares”, to shares in a company include references to any securities of that company.
- (15) For the purposes of this paragraph, a relevant security of the old company shall not be treated as a security of that company if—
 - (a) the arrangements do not provide for the acquisition of the security by the new company; or
 - (b) such treatment prevents sub-paragraph (1)(b) above from being satisfied in connection with the arrangements.

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- (16) In sub-paragraph (15) above “relevant security” means an instrument which is a security for the purposes of this Schedule by reason only of section 842AA(12).
- (17) For the purposes of this paragraph—
- (a) old shares and new shares are of a corresponding description if, were they shares in the same company, they would be of the same description; and
 - (b) old shares and new shares are matching shares in relation to each other if the old shares are the shares for which those new shares are exchanged under the arrangements.

Conversion of convertible shares and securities

- 10D (1) This paragraph applies where—
- (a) shares have been issued to the trust company by virtue of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company (“the convertibles”);
 - (b) the shares so issued are in the same company as the convertibles to which the right was attached;
 - (c) the convertibles to which the right was attached were first issued to the trust company and were held by that company from the time they were issued until converted; and
 - (d) the right was attached to the convertibles when they were first so issued and was not varied before it was exercised.
- (2) Sub-paragraphs (5) to (8) of paragraph 10C above shall apply in relation to the exchange of convertibles for shares by virtue of the exercise of the right of conversion as if—
- (a) that exchange were an exchange under any such arrangements as are mentioned in that paragraph of new shares for old shares; and
 - (b) the references in those sub-paragraphs and sub-paragraph (17)(b) of that paragraph to the arrangements were references to the provision conferring the right of conversion.
- (3) For the purposes of paragraph 10B above the value of the new shares immediately after the time of their acquisition by the trust company shall be taken to be the same as the value, when last valued in accordance with that paragraph, of the convertibles for which they are exchanged.

Winding up of the relevant company

- 11 None of the requirements of this Schedule shall be regarded, at a time when the relevant company is being wound up, as being, on that account, a requirement that is not satisfied in relation to that company if it is shown—
- (a) that the requirements of this Schedule would be satisfied in relation to that company apart from the winding up; and
 - (b) that the winding up is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

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Company in administration or receivership

- 11A (1) A company which is in administration or receivership shall not be regarded as ceasing to comply with paragraph 3(2) or (3) by reason of anything done as a consequence of its being in administration or receivership.
- (2) For this purpose—
- (a) a company is “in administration” if there is in force in relation to it—
- (i) an administration order under Part II of the ^{M2}Insolvency Act 1986 or Part III of the ^{M3}Insolvency (Northern Ireland) Order 1989, or
- (ii) any corresponding order under the law of a country or territory outside the United Kingdom; and
- (b) a company is “in receivership” if there is in force in relation to it—
- (i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the ^{M4}Insolvency Act 1986 or Part IV of the ^{M5}Insolvency (Northern Ireland) Order 1989, or
- (ii) any corresponding order under the law of a country or territory outside the United Kingdom.
- (3) This paragraph applies only if—
- (a) the making of the order in question, and
- (b) everything done as a consequence of the company being in administration or receivership,
- is for bona fide 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.

Marginal Citations

- M2** 1986 c. 45.
M3 S.I. 1989/2405 (N.I. 19).
M4 1986 c. 45.
M5 S.I. 1989/2405 (N.I. 19).

Company reorganisations etc. involving exchange of shares

- 11B (1) The Treasury may by regulations make provision for cases where—
- (a) a holding of shares or securities that meets the requirements of this Schedule is exchanged for other shares or securities,
- (b) the exchange is made for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is the avoidance of tax, and
- (c) the new shares or securities do not meet some or all of the requirements of this Schedule,
- providing that the new shares or securities shall be treated as meeting those requirements.

Status: Point in time view as at 11/05/2001. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, SCHEDULE 28B is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The references in sub-paragraph (1) to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares or securities in a company receiving other shares or securities—
 - (a) whether the original shares or securities are transferred, cancelled or retained, and
 - (b) whether the new shares or securities are in the same or another company.
- (3) The regulations shall specify—
 - (a) the cases in which, and conditions subject to which, they apply,
 - (b) which requirements of this Schedule are to be treated as met, and
 - (c) the period for which those requirements are to be treated as met.
- (4) The regulations may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or expedient.
- (5) The regulations may authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by the regulations are met.
- (6) Regulations under this paragraph—
 - (a) may make different provision for different cases,
 - (b) may include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate, and
 - (c) may include provision having retrospective effect.

Power to amend Schedule

- 12 The Treasury may by order amend this Schedule for any or all of the following purposes, that is to say—
 - (a) to make such modifications of paragraphs [F293 to 5] above as they may consider expedient;
 - (b) to substitute different sums for the sums of money for the time being specified in paragraphs 7(2) and 8(1) above.

Textual Amendments

F29 Words in [Sch. 28B para. 12\(a\)](#) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 70\(3\)](#)

General interpretation

- 13 (1) [F30Subject to paragraph 10C(15) above,] in this Schedule—

“debenture” has the meaning given by section 744 of the ^{M6}Companies Act 1985; and

“securities” has the same meaning as in section 842AA;

and references in this Schedule to the issue of any securities, in relation to any security consisting in a liability in respect of an unsecured loan, shall have effect as references to the making of the loan.

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- [^{F31}(2) For the purposes of paragraphs 5(2) and 9 above, the question whether a person controls a company shall be determined in accordance with subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) below.
- (3) The modification is that, in determining whether a person controls a company, there shall be disregarded—
- (a) his or any other person’s possession of, or entitlement to acquire, relevant fixed-rate preference shares of the company; and
 - (b) his or any other person’s possession of, or entitlement to acquire, rights as a loan creditor of the company.
- (4) Section 839 shall apply for the purposes of this Schedule, but as if the reference in subsection (8) to section 416 were a reference to subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) above.
- (5) For the purposes of sub-paragraph (3) above—
- (a) relevant fixed-rate preference shares are fixed-rate preference shares that do not for the time being carry voting rights; ^{F32} . . .
 - (b) ^{F32}]
- [^{F33}(6) In this paragraph “fixed-rate preference shares” means shares which—
- (a) were issued wholly for new consideration;
 - (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and
 - (c) do not carry any right to dividends other than dividends which—
 - (i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and
 - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued;
- and in paragraph (a) above “new consideration” has the meaning given by section 254.]

Textual Amendments

- F30** Words in Sch. 28B para. 13(1) inserted (16.6.1999 with effect in accordance with s. 69(5)(a) of the amending Act) by Finance Act 1999 (c. 16), s. 69(3)(5)(b)
- F31** Sch. 28B para. 13(2)-(5) substituted for para. 13(2)(3) (retrospectively) by Finance Act 1996 (c. 8), s. 161(1)(3)
- F32** Sch. 28B para. 13(5)(b) and preceding word repealed (2.7.1997) by Finance (No. 2) Act 1997 (c. 58), s. 25(3)(8), Sch. 8 Pt. 2(8), Note 3
- F33** Sch. 28B para. 13(6) inserted (2.7.1997) by Finance (No. 2) Act 1997 (c. 58), s. 25(4)(8)

Marginal Citations

- M6** 1985 c. 6.

Status:

Point in time view as at 11/05/2001. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation:

Income and Corporation Taxes Act 1988, SCHEDULE 28B is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.