



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART VII

GENERAL PROVISIONS RELATING TO TAXATION OF INCOME OF INDIVIDUALS

CHAPTER III

[^{F1}ENTERPRISE INVESTMENT SCHEME]

[^{F1}289 Eligibility for relief.

- (1) For the purposes of this Chapter, an individual is eligible for relief, subject to the following provisions of this Chapter, if—
- (a) eligible shares in a qualifying company for which he has subscribed ^{F2} . . . are issued to him and, under section 291, he qualifies for relief in respect of those shares,
 - [he subscribed for the shares (other than any of them which are bonus shares)
^{F3}(aza) wholly in cash,]
 - [at the time when they are issued the shares [^{F5}(other than any of them which are bonus shares) are fully paid up],]
 - (b) the shares [^{F6}(other than any of them which are bonus shares)] are issued in order to raise money for the purpose of a qualifying business activity,
 - [the requirements of subsection (1A) below are satisfied in relation to the company,]
^{F7}(ba) ^{F8} . . .
 - [^{F9}[^{F10}(c) at least 80 per cent. of the money raised by the issue of—
 - (i) the shares, and
 - (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,is employed wholly for the purpose of the activity mentioned in paragraph (b) above not later than the time mentioned in subsection (3) below, and]

Status: Point in time view as at 22/07/2004. This version of this provision has been superseded.

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- (d) all of the money so raised is employed wholly for that purpose not later than 12 months after that time.]

[^{FII}(1A) The requirements of this subsection are satisfied in relation to the qualifying company if at no time in the relevant period is any of the following, namely—

- (a) the relevant qualifying trade,
- (b) relevant preparation work (if any), and
- (c) relevant research and development (if any),

being carried on by a person other than the qualifying company or a qualifying 90% subsidiary of that company.

(1B) In a case where relevant preparation work is carried on by the qualifying company or a qualifying 90% subsidiary of that company, there is to be disregarded, for the purpose of determining whether the requirements of subsection (1A) above are satisfied in relation to the qualifying company, the carrying on of the relevant qualifying trade by a company other than—

- (a) the qualifying company, or
- (b) a subsidiary of that company,

at any time in the relevant period before the qualifying company or any qualifying 90% subsidiary of that company carries on that trade.

(1C) The requirements of subsection (1A) above are not to be regarded as failing to be satisfied in relation to the qualifying company if—

- (a) by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership, or
- (b) by reason only of the qualifying company or any other company being wound up or dissolved without winding up,

the relevant qualifying trade ceases to be carried on in the relevant period by the qualifying company or any qualifying 90% subsidiary of that company and is subsequently carried on in that period by a person who is not at any time in the period of restriction connected with the qualifying company.

(1D) Subsection (1C) above applies only if (as the case may be)—

- (a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for bona fide commercial reasons and is 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.

(1E) In this section—

“relevant preparation work” means preparations falling within subsection (2) (a)(ii) below which are the subject of the qualifying business activity mentioned in subsection (1) above,

“the relevant qualifying trade” means the qualifying trade which is the subject of that qualifying business activity,

“relevant research and development” means—

- (a) research and development falling within subsection (2)(b) below which is the subject of that qualifying business activity, and
- (b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.]

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- (2) In this Chapter “qualifying business activity”, in relation to a company, means—
 - (a) the company or any [^{F12}qualifying 90% subsidiary of that company]—
 - (i) carrying on a qualifying trade which, on the date the shares are issued, [^{F13}the company or any such subsidiary] is carrying on, or
 - (ii) [^{F14}preparing to carry on, or carrying on,] a qualifying trade which, on that date, [^{F15}is intended to be carried] on wholly or mainly in the United Kingdom [^{F16}by the company or any such subsidiary and which is begun to be carried on by the company or any such subsidiary] within two years after that date,
 but only if, at any time in the relevant period when the qualifying [^{F17}trade is so] carried on, it is carried on wholly or mainly in the United Kingdom, [^{F18}or
 - (b) the company or any [^{F19}qualifying 90% subsidiary of that company] carrying on research and development—
 - (i) which, on the date the shares are issued, [^{F20}the company or any such subsidiary is carrying on or which the company or any such subsidiary] begins to carry on immediately afterwards, and
 - (ii) from which it is intended that a qualifying trade which the company or any [^{F21}such subsidiary] will carry on wholly or mainly in the United Kingdom will be derived,
 but only if, at any time in the relevant period when the research and development or the qualifying trade derived from it is carried on, it is carried on wholly or mainly in the United Kingdom.^{F22} . . .
 - (c) ^{F23}
- (3) The time referred to in subsection (1)(c) above is—
 - (a) the end of the period of twelve months beginning with the issue of the eligible shares, or
 - (b) in the case of money raised only for the purpose referred to in subsection (2) (a) above, the end of that period or, if later, the end of the period of twelve months beginning when the company or [^{F24}a qualifying 90% subsidiary of that company] begins to carry on the qualifying trade,
 and for the purposes of this Chapter, the [^{F25}conditions in subsection (1)(c) and (d) above do] not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.

[In determining—

 - ^{F26}(3A) (a) for the purposes of subsection (2)(a)(ii) or (3)(b) above when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, or
 - (b) for the purposes of subsection (2)(b)(i) above when research and development is begun to be carried on by such a subsidiary of a company,
 there shall be disregarded any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary of the company.]
 - (4) ^{F27}
 - (5) ^{F27}
 - (6) An individual is not eligible for relief in respect of any shares unless the shares are subscribed [^{F28}for], and issued, for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

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- (7) In this Chapter “eligible shares” means new ordinary shares which, throughout [F29 the period—
- (a) beginning with the issue of the shares, and
 - (b) ending immediately before the termination date relating to those shares,]
- carry no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future ^{F30} . . . right to be redeemed.
- (8) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.
- [Shares are not fully paid up for the purposes of subsection (1)(aa) above if there is ^{F31}(8A) any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.]
- [F32(9) For the purposes of this Chapter, a company (“the relevant subsidiary”) is a qualifying 90% subsidiary of another company (“the holding company”) if the following conditions are met—
- (a) the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the relevant subsidiary;
 - (b) the holding company would—
 - (i) in the event of a winding up of the relevant subsidiary, or
 - (ii) in any other circumstances,

be beneficially entitled to receive not less than 90% of the assets of the relevant subsidiary which would then be available for distribution to the equity holders of the subsidiary;
 - (c) the holding company is beneficially entitled to not less than 90% of any profits of the relevant subsidiary which are available for distribution to the equity holders of the subsidiary;
 - (d) no person other than the holding company has control of the relevant 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.
- (10) Subsections (3), (3A) and (4) of section 308 apply in relation to the conditions in subsection (9) above as they apply in relation to the conditions in subsection (2) of that section, but with the following modifications.
- (11) Those modifications are—
- (a) that references in subsections (3), (3A) and (4) of that section to the subsidiary are to be read as references to the relevant subsidiary, and
 - (b) that subsection (4) of that section is to be read as if the words the holding company were substituted for the words “the qualifying company or (as the case may be) by another subsidiary”.
- (12) For the purposes of subsection (9) above—
- (a) the persons who are equity holders of the relevant subsidiary, and
 - (b) the percentage of the assets of the relevant subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with paragraphs 1 and 3 of Schedule 18.
- (13) But in making that determination—

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- (a) references in paragraph 3 of Schedule 18 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 relevant subsidiary are available for distribution to its equity holders.]]

Textual Amendments

- F1** Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**
- F2** Words in s. 289(1)(a) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 1(2)(a), **Sch. 42 Pt. 2(13)**, Note 6
- F3** S. 289(1)(aza) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(b)**
- F4** S. 289(1)(aa) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 1(1)(b)**
- F5** Words in s. 289(1)(aa) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(c)**
- F6** Words in s. 289(1)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(d)**
- F7** S. 289(1)(ba) inserted (with effect in accordance with Sch. 8 para. 1 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 8 para. 2(1)**
- F8** Word at the end of s. 289(1)(ba) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6
- F9** S. 289(1)(c)(d) substituted for s. 289(1)(c) (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 6(a)**
- F10** S. 289(1)(c) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(e)**
- F11** S. 289(1A)-(1E) substituted for s. 289(1A)-(1D) (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para 1(3)**
- F12** Words in s. 289(2)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(a)**
- F13** Words in s. 289(2)(a)(i) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(b)**
- F14** Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(i)**
- F15** Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(ii)**
- F16** Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(iii)**
- F17** Words in s. 289(2)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(d)**
- F18** Word at the end of s. 289(2)(a) inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 2(b)(i)**
- F19** Words in s. 289(2)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(i)**
- F20** Words in s. 289(2)(b)(i) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(ii)**
- F21** Words in s. 289(2)(b)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(iii)**
- F22** Word preceding s. 289(2)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

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- F23** S. 289(2)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 2(b)(ii), **Sch. 33 Pt. 2(3)**, Note 6
- F24** Words in s. 289(3)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(5)**
- F25** Words in s. 289(3) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 6(b)**
- F26** S. 289(3A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(6)**
- F27** S. 289(4)(5) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 2(c), **Sch. 33 Pt. 2(3)**, Note 6
- F28** Word in s. 289(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 1(3)**
- F29** Words in s. 289(7) substituted (with effect in accordance with Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 1**
- F30** Word in s. 289(7) repealed (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 1(4), **Sch. 27 Pt. 3(14)**, Note 4
- F31** S. 289(8A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(7)**
- F32** S. 289(9)-(13) substituted for s. 289(9) (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(8)**

Modifications etc. (not altering text)

- C1** S. 289 amended (as it has effect in relation to shares issued before 1st January 1994) by Finance Act 1995 (c. 4), **s. 68(1)(2)**

Status:

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