

Status: Point in time view as at 01/05/1995.

Changes to legislation: Taxation of Chargeable Gains Act 1992, SCHEDULE 5B is up to date with all changes known to be in force on or before 15 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)

SCHEDULES

[^{F1}SCHEDULE 5B

ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT

Textual Amendments

- F1** Sch. 5B inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 4\(3\)](#)

Application of Schedule

- 1 (1) This Schedule applies where—
- there would (apart from paragraph 2(2)(a) below) be a chargeable gain (“the original gain”) accruing to an individual (“the investor”) at any time (“the accrual time”) on or after 29th November 1994;
 - the gain is one accruing either on the disposal by the investor of any asset or in accordance with paragraphs 4 and 5 below or paragraphs 4 and 5 of Schedule 5C;
 - the investor makes a qualifying investment; and
 - the investor is resident or ordinarily resident in the United Kingdom at the accrual time and the time when he makes the qualifying investment and is not, in relation to the qualifying investment, a person to whom sub-paragraph (4) below applies.
- (2) The investor makes a qualifying investment for the purposes of this Schedule if—
- he subscribes for any shares to which any relief given to him under Chapter III of Part VII of the Taxes Act is attributable;
 - those shares are issued at a qualifying time; and
 - where that time is before the accrual time, those shares are still held by the investor at the accrual time;
- and in this Schedule “relevant shares”, in relation to a case to which this Schedule applies, means any of the shares which are acquired by the investor in making the qualifying investment.
- (3) In this Schedule “a qualifying time”, in relation to any shares subscribed for by the investor, means—
- any time in the period beginning one year before and ending three years after the accrual time, or
 - any such time before the beginning of that period or after it ends as the Board may by notice allow.
- (4) This sub-paragraph applies to the investor in relation to a qualifying investment if—
- though resident or ordinarily resident in the United Kingdom at the time when he makes the investment, he is regarded for the purposes of any double

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taxation relief arrangements as resident in a territory outside the United Kingdom, and

- (b) were section 150A to be disregarded, the arrangements would have the effect that he would not be liable in the United Kingdom to tax on a gain arising on a disposal, immediately after their acquisition, of the shares acquired in making that investment.

Postponement of original gain

- 2 (1) On the making of a claim by the investor for the purposes of this Schedule, so much of the investor's unused qualifying expenditure on relevant shares as—
- (a) is specified in the claim, and
 - (b) does not exceed so much of the original gain as is unmatched,
- shall be set against a corresponding amount of the original gain.
- (2) Where an amount of qualifying expenditure on any relevant shares is set under this Schedule against the whole or part of the original gain—
- (a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time; but
 - (b) paragraphs 4 and 5 below shall apply for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of those relevant shares.
- (3) For the purposes of this Schedule—
- (a) the investor's qualifying expenditure on any relevant shares is so much of the amount subscribed by him for the shares as represents the amount in respect of which there is given the relief under section 289A of the Taxes Act which is attributable to those shares; and
 - (b) that expenditure is unused to the extent that it has not already been set under this Schedule against the whole or any part of a chargeable gain.
- (4) For the purposes of this paragraph the original gain is unmatched, in relation to any qualifying expenditure on relevant shares, to the extent that it has not had any other expenditure set against it under this Schedule or Schedule 5C.

Chargeable events

- 3 (1) Subject to the following provisions of this paragraph, there is for the purposes of this Schedule a chargeable event in relation to any relevant shares if, after the making of the qualifying investment—
- (a) the investor disposes of those shares otherwise than by way of a disposal within marriage;
 - (b) those shares are disposed of, otherwise than by way of a disposal to the investor, by a person who acquired them on a disposal made by the investor within marriage;
 - (c) the investor becomes a non-resident while holding those shares and within the first relevant period;
 - (d) a person who acquired those shares on a disposal within marriage becomes a non-resident while holding those shares and within the first relevant period;
 - (e) the company that issued those shares ceases to be a qualifying company within the second relevant period; or

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- (f) the relief given under section 289A of the Taxes Act in respect of the amount subscribed for those shares is withdrawn or reduced in circumstances not falling within any of paragraphs (a) to (e) above.
- (2) For the purposes of sub-paragraph (1) above—
 - (a) the first relevant period in the case of any relevant shares is the period found by applying section 312(1A)(a) of the Taxes Act by reference to the company that issued the shares and by reference to the shares;
 - (b) the second relevant period in the case of any shares is the period found by applying section 312(1A)(b) of that Act by reference to the company that issued the shares and by reference to the shares; and
 - (c) whether a company is a qualifying company at any given time shall be determined in accordance with section 293 of that Act.
- (3) For the purposes of this Schedule there shall not be a chargeable event by virtue of sub-paragraph (1)(c) or (d) above in relation to any shares if—
 - (a) the reason why the person in question becomes a non-resident is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
 - (b) he again becomes resident or ordinarily resident in the United Kingdom within the period of three years from the time when he became a non-resident, without having meanwhile disposed of any of those shares;and accordingly no assessment shall be made by virtue of sub-paragraph (1)(c) or (d) above before the end of that period in a case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.
- (4) For the purposes of sub-paragraph (3) above a person shall be taken to have disposed of any shares if and only if there has been such a disposal as would have been a chargeable event in relation to those shares if the person making the disposal had been resident in the United Kingdom.
- (5) Where in any case—
 - (a) the investor or a person who has acquired any relevant shares on a disposal within marriage dies, and
 - (b) an event occurs at or after the time of the death which (apart from this sub-paragraph) would be a chargeable event in relation to any relevant shares held by the deceased immediately before his death,that event shall not be a chargeable event in relation to the shares so held.

Gain accruing on chargeable event

- 4 (1) On the occurrence of a chargeable event in relation to any relevant shares in relation to which there has not been a previous chargeable event—
 - (a) a chargeable gain shall be treated as accruing at the time of the event; and
 - (b) the amount of the gain shall be equal to so much of the original gain as is an amount against which there has under this Schedule been set any expenditure on those shares.
- (2) Any question for the purposes of this Schedule as to whether any relevant shares to which a chargeable event relates are shares the expenditure on which has under this Schedule been set against the whole or any part of any gain shall be determined in accordance with the assumptions for which sub-paragraph (3) below provides.

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- (3) For the purposes of sub-paragraph (2) above it shall be assumed, in relation to any disposal of shares (including a disposal within marriage) that—
- (a) as between qualifying shares acquired by the same person on different days, those acquired on an earlier day are disposed of by that person before those acquired on a later day; and
 - (b) as between qualifying shares acquired by the same person on the same day, those the expenditure on which has been set under this Schedule against the whole or any part of any gain are disposed of by that person only after he has disposed of any other qualifying shares acquired by him on that day.
- (4) In sub-paragraph (3) above “qualifying shares” means any shares which—
- (a) were subscribed for by a person eligible for relief in respect of those shares under Chapter III of Part VII of the Taxes Act (the enterprise investment scheme), and
 - (b) are shares in respect of which relief is given under section 289A of that Act in respect of the whole or any part of the amount subscribed.
- (5) Where at the time of a chargeable event any relevant shares are treated for the purposes of this Act as represented by assets which consist of or include assets other than those shares—
- (a) the expenditure on those shares which was set against the gain in question shall be treated, in determining for the purposes of this paragraph the amount of expenditure on each of those assets which is to be treated as having been set against that gain, as apportioned in such manner as may be just and reasonable between those assets; and
 - (b) as between different assets treated as representing the same relevant shares, the assumptions for which sub-paragraph (3) above provides shall apply with the necessary modifications in relation to those assets as they would apply in relation to the shares.

Person to whom gain accrues

- 5 (1) The chargeable gain which accrues, in accordance with paragraph 4 above, on the occurrence in relation to any relevant shares of a chargeable event shall be treated as accruing, as the case may be—
- (a) to the person who makes the disposal,
 - (b) to the person who becomes a non-resident,
 - (c) to the person who holds the shares in question when the company ceases to be a qualifying company, or
 - (d) to the person who holds the shares in question when the circumstances arise in respect of which the relief is withdrawn or reduced.
- (2) Where—
- (a) sub-paragraph (1) above provides for the holding of shares at a particular time to be what identifies the person to whom any chargeable gain accrues, and
 - (b) at that time, some of those shares are held by the investor and others are held by a person to whom the investor has transferred them by a disposal within marriage,

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the amount of the chargeable gain accruing by virtue of paragraph 4 above shall be computed separately in relation to the investor and that person without reference to the shares held by the other.

Interpretation

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- (1) In this Schedule “non-resident” means a person who is neither resident nor ordinarily resident in the United Kingdom.
 - (2) In this Schedule references to a disposal within marriage are references to any disposal to which section 58 applies.
 - (3) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.
 - (4) Chapter III of Part VII of the Taxes Act shall apply for the purposes of this Schedule to determine whether and to what extent any relief under that Chapter is attributable to any shares.
 - (5) References in this Schedule to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.]

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