

Status: Point in time view as at 29/03/1999.

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 10 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—
- (a) 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;
 - (b) the gain is one accruing either on the disposal by the investor of any asset or in accordance with [^{F2}section 164F or 164FA,] paragraphs 4 and 5 below or paragraphs 4 and 5 of Schedule 5C;
 - (c) the investor makes a qualifying investment; and
 - (d) 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 subparagraph (4) below applies.
- [^{F3}(2) The investor makes a qualifying investment for the purposes of this Schedule if—
- (a) eligible shares in a company for which he has subscribed wholly in cash are issued to him at a qualifying time and, where that time is before the accrual time, the shares are still held by the investor at the accrual time,
 - (b) the company is a qualifying company in relation to the shares,
 - (c) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),
 - (d) the shares are subscribed for, and issued, for bona fide commercial purposes and not as part of arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
 - (e) the requirements of section 289(1A) of the Taxes Act are satisfied in relation to the company,
 - (f) all the shares comprised in the issue are issued in order to raise money for the purpose of a qualifying business activity, and
 - (g) the money raised by the issue is employed not later than the time mentioned in section 289(3) of the Taxes Act wholly for the purpose of that activity,
- and for the purposes of this Schedule, the condition in paragraph (g) above does 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.

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- (3) In sub-paragraph (2) above “a qualifying time”, in relation to any shares subscribed for by the investor, means—
- (a) any time in the period beginning one year before and ending three years after the accrual time, or
 - (b) 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—
- (a) 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 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.

Textual Amendments

- F2** Words in Sch. 5B para. 1(1)(b) inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 27\(1\)](#)
- F3** Sch. 5B para. 1(2)(3) substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 27\(2\)](#)

F⁴ Failure of conditions of application

Textual Amendments

- F4** Sch. 5B para. 1A and cross-heading inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 28](#)

- 1A (1) If the condition in sub-paragraph (2)(b) of paragraph 1 above is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.
- (2) If the condition in sub-paragraph (2)(e) of that paragraph is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.
- (3) If the condition in sub-paragraph (2)(f) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule as never having been eligible shares.
- (4) If the condition in sub-paragraph (2)(g) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule—
- (a) if the claim under this Schedule is made after the time mentioned in section 289(3) of the Taxes Act, as never having been eligible shares; and

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- (b) if that claim is made before that time, as ceasing to be eligible shares at that time.
- (5) None of the preceding sub-paragraphs applies unless—
 - (a) the company has given notice under paragraph 16(2) or (4) below or section 310(2) of the Taxes Act; or
 - (b) an inspector has given notice to the company stating that, by reason of the matter mentioned in that sub-paragraph, the shares should, in his opinion, be treated for the purposes of this Schedule as never having been or, as the case may be, as ceasing to be eligible shares.
- (6) The giving of notice by an inspector under sub-paragraph (5) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.
- (7) Where any issue has been determined on an appeal brought by virtue of section 307(1B) of the Taxes Act (appeal against notice that relief was not due), the determination shall be conclusive for the purposes of any appeal brought by virtue of sub-paragraph (6) above on which that issue arises.]

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—
 - [^{F5}(a) the investor's qualifying expenditure on any relevant shares is the amount subscribed by him for the 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.

Textual Amendments

- F5** Sch. 5B para. 2(3)(a) substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 29](#)

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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 [^{F6}the five year period];
 - (d) a person who acquired those shares on a disposal within marriage becomes a non-resident while holding those shares and within [^{F6}the five year period]; [^{F7}or
 - (e) those shares cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.]

^{F8}(2)

- (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.

[Any reference in the following provisions of this Schedule to a chargeable event ^{F9}(6) falling within a particular paragraph of sub-paragraph (1) above is a reference to a chargeable event arising for the purposes of this Schedule by virtue of that paragraph.]

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Textual Amendments

- F6** Words in Sch. 5B para. 3(1)(c)(d) substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 30\(1\)\(a\)](#)
- F7** Sch. 5B para. 3(1)(e) and preceding word substituted for Sch. 5B para. 3(1)(e)(f) (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 30\(1\)\(b\)](#)
- F8** Sch. 5B para. 3(2) repealed (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 30\(2\)](#), [Sch. 27 Pt. III\(14\)](#)
- F9** Sch. 5B para. 3(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 30\(3\)](#)

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 chargeable gain shall be treated as accruing at the time of the event; and
 - 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.
- [^{F10}(2) Any question for the purposes of capital gains tax as to whether any shares to which a disposal (including a disposal within marriage) relates are shares to which deferral relief is attributable shall be determined in accordance with sub-paragraphs (3) and (4) below.
- (3) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (4) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated as disposed of in the following order, namely—
- first any to which neither deferral relief nor relief under Chapter III of Part VII of the Taxes Act is attributable;
 - next any to which deferral relief, but not relief under that Chapter, is attributable;
 - next any to which relief under that Chapter, but not deferral relief, is attributable; and
 - finally any to which both deferral relief and relief under that Chapter are attributable.
- (4A) The following, namely—
- any shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable and which were disposed of to an individual by a disposal within marriage, and
 - any shares to which relief under that Chapter is attributable and which were transferred to an individual as mentioned in section 304 of that Act,
- shall be treated for the purposes of sub-paragraphs (3) and (4) above as acquired by him on the day on which they were issued.
- (4B) Chapter I of Part IV of this Act has effect subject to sub-paragraphs (2) to (4A) above.

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- (4C) Sections 104, 105 and 106A shall not apply to shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.]
- (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, [F11sub-paragraphs (3) to (4A) above] shall apply with the necessary modifications in relation to those assets as they would apply in relation to the shares.

Textual Amendments

- F10** Sch. 5B para. 4(2)-(4C) substituted for Sch. 5B para. 4(2)-(4) (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 31\(1\)](#)
- F11** Words in Sch. 5B para. 4(5)(b) substituted (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 31\(2\)](#)

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, [F12or
 - (c) to the person who holds the shares in question when they cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.]
- (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,

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.

Textual Amendments

- F12** Sch. 5B para. 5(1)(c) and preceding word substituted for Sch. 5B para. 5(1)(c)(d) (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 32](#)

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F¹³ Claims

Textual Amendments

F13 Sch. 5B para. 6 and cross-heading substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 33](#)

- 6 (1) Subject to sub-paragraph (2) below, section 306 of the Taxes Act shall apply in relation to a claim under this Schedule in respect of relevant shares as it applies in relation to a claim for relief under Chapter III of Part VII of that Act in respect of eligible shares.
- (2) That section, as it so applies, shall have effect as if—
- (a) any reference to the conditions for the relief were a reference to the conditions for the application of this Schedule;
 - (b) in subsection (1), the words “(or treated by section 289B(5) as so issued)” were omitted; and
 - (c) subsections (7) to (9) were omitted.]

F¹⁴ Reorganisations

Textual Amendments

F14 Sch. 5B paras. 7-9 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 34](#)

- 7 (1) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which deferral relief and relief under Chapter III of Part VII of the Taxes Act are attributable,
 - (b) shares to which deferral relief but not relief under that Chapter is attributable, and
 - (c) shares to which deferral relief is not attributable,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this paragraph) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (2) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
 - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
 - (c) immediately following the reorganisation, the existing holding or the allotted shares are shares to which deferral relief is attributable,
- sections 127 to 130 shall not apply in relation to the existing holding.

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Acquisition of share capital by new company

- 8 (1) This paragraph applies where—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
 - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
 - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
 - (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;
 - (e) at some time before the issue of the new shares—
 - (i) the old company issued eligible shares; and
 - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied); and
 - (f) by virtue of section 127 as applied by section 135(3), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (2) For the purposes of this Schedule, deferral relief attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
 - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company; and
 - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (4) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were acquired by the individual on a disposal within marriage, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for at the time when, and for the amount for which, the old shares were subscribed for;
 - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company; and
 - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (5) Where deferral relief becomes so attributable to any new shares—
- (a) this Schedule shall have effect as if anything which, under paragraph 1A(5) above, paragraph 16 below or section 306(2) of the Taxes Act as applied by paragraph 6 above has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

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- (b) any appeal brought by the old company against a notice under paragraph 1A(5)(b) may be prosecuted by the new company as if it had been brought by that company.
- (6) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in sub-paragraph (1) above references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.
- (7) Nothing in section 293(8) of the Taxes Act, as applied by the definition of “qualifying company” in paragraph 19(1) below, shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in sub-paragraph (1) above or arrangements with a view to such an exchange.

Other reconstructions and amalgamations

- 9 (1) Subject to sub-paragraphs (2) and (3) below, sections 135 and 136 shall not apply in respect of shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.
- (2) Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where—
 - (a) the new holding consists of new ordinary shares (“the new shares”) carrying no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future right to be redeemed,
 - (b) the new shares are issued after the end of the relevant period, and
 - (c) the condition in sub-paragraph (4) below is satisfied.
- (3) Sub-paragraph (1) above shall not have effect to disapply section 135 where shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable are exchanged for other shares in such circumstances as are mentioned in paragraph 8(1) above.
- (4) The condition is that at some time before the issue of the new shares—
 - (a) the company issuing them issued eligible shares, and
 - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied).
- (5) In sub-paragraph (2) above “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.]

[^{F15}Re-investment in same company etc.

Textual Amendments

F15 Sch. 5B paras. 10-15 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 35](#)

- 10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or other securities of any company (“the initial holding”), the qualifying company—

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- (a) is the company in which the initial holding subsisted; or
 - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.
- (2) Where—
- (a) any eligible shares in a qualifying company (“the acquired holding”) are issued to an individual,
 - (b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the “postponed gain”), and
 - (c) after the issue of those shares, eligible shares in a relevant company are issued to him,
- he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.
- (3) For the purposes of sub-paragraph (2) above a company is a relevant company if—
- (a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;
 - (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or
 - (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

Pre-arranged exits

- 11 (1) Where an individual subscribes for eligible shares (“the shares”) in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;
 - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
 - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
 - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.

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- (3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
 - (a) the relevant arrangements include arrangements for the company to be wound up; or
 - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—
 - (a) for the company itself, or
 - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in sub-paragraph (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section.
- (6) In this paragraph “the relevant arrangements” means—
 - (a) the arrangements under which the shares are issued to the individual; and
 - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

Put options and call options

- 12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and—
 - (a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or
 - (b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.
- (2) The shares to which the option relates shall be treated for the purposes of this Schedule—
 - (a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.
- (3) The shares to which the option relates shall be taken to be those which, if—
 - (a) the option were exercised immediately after the grant, and
 - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,would be treated for the purposes of this Schedule as disposed of in pursuance of the option.
- (4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.

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- (5) An individual who acquires any eligible shares on a disposal within marriage shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

Value received by investor

- 13 (1) Where an individual who subscribes for eligible shares ("the shares") in a company receives any value from the company at any time in the seven year period, the shares shall be treated as follows for the purposes of this Schedule—
- (a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.
- (2) For the purposes of this paragraph an individual receives value from the company if the company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;
 - (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—
 - (i) on or after the date on which he subscribed for the shares; and
 - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
 - (c) makes to the individual any payment for giving up his right to any debt on its extinguishment;
 - (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
 - (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;
 - (f) provides a benefit or facility for the individual;
 - (g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
 - (h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or
 - (i) makes any payment to the individual other than a qualifying payment.
- (3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
 - (b) the amount of any debt due from the individual to a third person which has been assigned to the company.
- (4) For the purposes of this paragraph an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6) of the Taxes Act.

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- (5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act, be treated as connected with the company—
- (a) purchases any of its share capital or securities which belong to the individual; or
 - (b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.
- (6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.
- (7) In this paragraph “qualifying payment” means—
- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
 - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
 - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
 - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;
 - (e) any payment for the supply of goods which does not exceed their market value;
 - (f) any payment for the acquisition of an asset which does not exceed its market value;
 - (g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
 - (h) any reasonable and necessary remuneration which—
 - (i) is paid by any company for services rendered to that company in the course of a trade or profession; and
 - (ii) is taken into account in computing the profits of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits are assessed under that Schedule;
 - (i) a payment in discharge of an ordinary trade debt.
- (8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (9) In this paragraph—
- (a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and

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- (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (10) In this paragraph—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;
 - (b) any reference to an individual includes a reference to an associate of his; and
 - (c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.
- (11) In this paragraph “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
- (a) does not exceed six months; and
 - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

Value received by other persons

- 14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and at any time in the seven year period the company or any subsidiary—
- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or an individual falling within sub-paragraph (3) below, or
 - (b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- (2) The shares shall be treated for the purposes of this Schedule—
- (a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.
- (3) An individual falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) gives rise to a qualifying chargeable event in respect of him, or
 - (b) causes any relief under Chapter III of Part VII of the Taxes Act attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of that Act.
- (4) In sub-paragraph (3) above “qualifying chargeable event” means—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or
 - (b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).
- (5) Where—

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- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and
- (b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares,

the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

- (6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) above to the Companies Act 1985 and to section 117 of that Act shall have effect as references to the Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.
- (7) References in this paragraph to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

Investment-linked loans

- 15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares (“the shares”) in a company, the shares shall be treated for the purposes of this Schedule—
- (a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and
 - (b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.
- (2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.
- (3) References in this paragraph to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
 - (b) to the assignment or assignation to that person of any debt due from that individual.
- (4) In this paragraph any reference to an individual includes a reference to an associate of his.]

[^{F16}Information

Textual Amendments

- F16** Sch. 5B paras. 16-19 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 36](#)

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- 16 (1) Where, in relation to any relevant shares held by an individual—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above occurs at any time in the five year period,
 - (b) a chargeable event falling within paragraph 3(1)(c) or (d) above occurs, or
 - (c) a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 12(2)(b), 13(1)(b) or 15(1)(b) above,
- the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (2) Where, in relation to any relevant shares in a company, a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 1A(1) or (2), 13(1)(b) or 14(2)(b) above—
- (a) the company, and
 - (b) any person connected with the company who has knowledge of that matter,
- shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (3) A chargeable event falling within paragraph 3(1)(e) above which, but for paragraph 1A(5) above, would occur at any time by virtue of paragraph 1A(1) or (2) above shall be treated for the purposes of sub-paragraph (2) above as occurring at that time.
- (4) Where a company has issued a certificate under section 306(2) of the Taxes Act (as applied by paragraph 6 above) in respect of any eligible shares in the company, and the condition in paragraph 1(2)(g) above is not satisfied in relation to the shares—
- (a) the company, and
 - (b) any person connected with the company who has knowledge of that matter,
- shall within 60 days of the time mentioned in section 289(3) of the Taxes Act or, in the case of a person within paragraph (b) above, of his coming to know that the condition is not satisfied, give notice to the inspector setting out the particulars of the case.
- (5) If the inspector has reason to believe that a person has not given a notice which he is required to give—
- (a) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
 - (b) under sub-paragraph (4) above in respect of any particular case,
- the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Schedule.
- (6) Where a claim is made under this Schedule in respect of shares in a company and the inspector has reason to believe that it may not be well founded by reason of any such arrangements as are mentioned in paragraphs 1(2)(d) or 11(1) above, or section 293(8) or 308(2)(e) of the Taxes Act, he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—
- (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed;

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- (b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (7) For the purposes of sub-paragraph (6) above, the persons who are persons concerned are—
- (a) in relation to paragraph 1(2)(d) above, the claimant, the company and any person controlling the company;
 - (b) in relation to paragraph 11(1) above, the claimant, the company and any person connected with the company; and
 - (c) in relation to section 293(8) or 308(2)(e) of the Taxes Act, the company and any person controlling the company;
- and for those purposes the references in paragraphs (a) and (b) above to the claimant include references to any person to whom the claimant appears to have made a disposal within marriage of any of the shares in question.
- (8) Where deferral relief is attributable to shares in a company—
- (a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of paragraph 13 above, and
 - (b) any person on whose behalf such a payment or asset is received,
- shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.
- (9) Where a claim has been made under this Schedule in relation to shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state—
- (a) whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself; and
 - (b) if so, the name and address of that person.
- (10) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

Trustees: general

- 17 (1) Subject to the following provisions of this paragraph, this Schedule shall apply as if—
- (a) any reference to an individual included a reference to the trustees of a settlement, and
 - (b) in relation to any such trustees, the reference in paragraph 1(1) above to any asset were a reference to any asset comprised in any settled property to which this paragraph applies (a “trust asset”).
- (2) This paragraph applies—
- (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
 - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals.

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- (3) If, at the time of the disposal of the trust asset in a case where this Schedule applies by virtue of this paragraph—
- (a) the settled property comprising that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, but
 - (b) not all the beneficiaries are individuals,
- only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of this Schedule as it so applies.
- (4) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(a) above unless, immediately after the acquisition of the relevant shares, the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(a) above.
- (5) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above unless, immediately after the acquisition of the relevant shares—
- (a) the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, and
 - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the trust asset.
- (6) If, at any time, in the case of settled property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, both individuals and others have interests in possession, “the relevant proportion” at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—
- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
 - (b) the total amount of all the income of the settled property.
- (7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this paragraph shall apply as if—
- (a) the interests of the relevant beneficiaries were a single interest in possession, and
 - (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.
- (8) In this paragraph references to interests in possession do not include interests for a fixed term and, except in sub-paragraph (1), references to individuals include any charity.

Trustees: anti-avoidance

- 18 (1) Paragraphs 13 and 15 above shall have effect in relation to the subscription for shares by the trustees of a settlement as if references to the individual subscribing for the shares were references to—
- (a) those trustees;

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- (b) any individual or charity by virtue of whose interest, at a relevant time, paragraph 17 above applies to the settled property; or
 - (c) any associate of such an individual, or any person connected with such a charity.
- (2) The relevant times for the purposes of sub-paragraph (1)(b) above are the time when the shares are issued and—
- (a) in a case where paragraph 13 above applies, the time when the value is received;
 - (b) in a case where paragraph 15 above applies, the time when the loan is made.

Interpretation

- 19 (1) For the purposes of this Schedule—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - “associate” has the meaning that would be given by subsections (3) and (4) of section 417 of the Taxes Act if in those subsections “relative” did not include a brother or sister;
 - “eligible shares” has the meaning given by section 289(7) of that Act;
 - “the five year period”, in the case of any relevant shares, means the period of five years beginning with the issue of the shares;
 - “non-resident” means a person who is neither resident nor ordinarily resident in the United Kingdom;
 - “ordinary share capital” has the same meaning as in the Taxes Act;
 - “ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;
 - “qualifying business activity” has the meaning given by section 289(2) of the Taxes Act;
 - “qualifying company”, in relation to any eligible shares, means a company which, in relation to those shares, is a qualifying company for the purposes of Chapter III of Part VII of that Act;
 - “the relevant period”, in the case of any shares, means the period found by applying section 312(1A)(a) of that Act by reference to the company that issued the shares and by reference to the shares;
 - “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;
 - “the seven year period” has the meaning given by section 291(6) of the Taxes Act.
- (2) For the purposes of this Schedule, “deferral relief” is attributable to any shares if—
- (a) expenditure on the shares has been set under this Schedule against the whole or part of any gain; and
 - (b) in relation to the shares there has been no chargeable event for the purposes of this Schedule.
- (3) In this Schedule—
- (a) references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day;

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- (b) references to a disposal within marriage are references to any disposal to which section 58 applies; and
 - (c) references 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.
- (4) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.
- (5) 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.]]

Status:

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