

SCHEDULES

SCHEDULE 14

Section 70.

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
 - (c) dealt in on the Unlisted Securities Market or dealt in outside the United Kingdom by such means as may be designated.

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- (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;
 - (b) a company whose business consists entirely in the holding of shares in or securities of, or the making of loans to, one or more qualifying subsidiaries of that company; or
 - (c) a company whose business consists entirely in—
 - (i) the holding of such shares or securities, or the making of such loans; and
 - (ii) the carrying on of one or more qualifying trades.
- (3) Subject to sub-paragraph (4) below, the relevant company or a 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.
- (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.
- (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.

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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;
 - (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—
 - (i) consists, to a substantial extent, in activities within any of paragraphs (a) to (e) 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.
- (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—

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- (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.

- (5) A trade shall not be treated as failing to comply with this paragraph by reason only of its consisting, to a substantial extent, in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged in—
 - (i) the production of films; or
 - (ii) the production of films and the distribution of films produced by it since the issue of the relevant holding;
 - and
 - (b) all royalties and licence fees received by it are in respect of films produced by it since the issue of the relevant holding, in respect of sound recordings in relation to such films or in respect of other products arising from such films.
- (6) A trade shall not be treated as failing to comply with this paragraph by reason only of its consisting, to a substantial extent, in the receiving of royalties or licence fees if—
 - (a) the company carrying on the trade is engaged in research and development; and
 - (b) all royalties and licence fees received by it are attributable to research and development which it has carried out.
- (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 (2) 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.

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;
 - “oil rig” means any ship which is an offshore installation for the purposes of the Mineral Workings (Offshore Installations) Act 1971;
 - “pleasure craft” means any ship of a kind primarily used for sport or recreation;
 - “research and development” means any activity which is intended to result in a patentable invention (within the meaning of the Patents Act 1977) or in a computer program; 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—

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- (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) 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.

Requirements as to the money raised by the investment in question

- 6 (1) The requirements of this paragraph are that the money raised by the issue of the relevant holding must—
 - (a) have been employed wholly for the purposes of the trade by reference to which the requirements of paragraph 3(3) above are satisfied; or
 - (b) be money which the relevant company or a qualifying subsidiary of that company is intending to employ wholly for the purposes of that trade.
- (2) The requirements of sub-paragraph (1) above shall not be capable of being satisfied by virtue of paragraph (b) of that sub-paragraph at any time after twelve months have expired from whichever is applicable of the following, that is to say—
 - (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.

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- (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.

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 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.

Requirement as to the assets of the relevant company

- 8 (1) The requirement of this paragraph is that the value of the relevant assets—

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- (a) did not exceed £10 million immediately before the issue of the relevant holding; and
 - (b) did not exceed £11 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.
- (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.

Requirements as to the subsidiaries etc. of the relevant company

- 9 (1) The requirements of this paragraph are that, subject to sub-paragraph (2) below, 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) A company shall not fall within sub-paragraph (1)(b) above where—
- (a) the other company is the trust company or a venture capital trust which is not the trust company; and
 - (b) the fact that the relevant company is under the control of the other is attributable primarily to a change in the value of any shares in or securities of the relevant company.

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 each of sub-paragraphs (2) and (3) below.
- (2) The subsidiary falls within this sub-paragraph if—
- (a) it is a company in relation to which the requirements of paragraph 3(2)(a) above are satisfied;
 - (b) it exists wholly for the purpose of holding and managing property used by the relevant company or any of the relevant company’s other subsidiaries for the purposes of—

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- (i) research and development from which it is intended that a qualifying trade to be carried on by the relevant company or any of its qualifying subsidiaries will be derived, or
 - (ii) one or more qualifying trades so carried on;
 - (c) it would exist wholly for such a purpose apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities; or
 - (d) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.
- (3) The subsidiary falls within this sub-paragraph if—
 - (a) the relevant company, or another of its subsidiaries, 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, 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 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, or another of its subsidiaries, 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 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 sub-paragraphs (2) and (3) above if it is shown—
 - (a) that it would fall within those sub-paragraphs 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 sub-paragraphs (2) and (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.

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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.

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 4 and 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.

General interpretation

- 13 (1) In this Schedule—
- “debenture” has the meaning given by section 744 of the 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.
- (2) Section 839 applies for the purposes of this Schedule.
- (3) For the purposes of paragraphs 5(2) and 9 above a person shall be taken to have control of a company if he would be so taken for the purposes of Part XI by virtue of section 416(2) to (6).