

Status: Point in time view as at 01/10/2000.

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SCHEDULES

SCHEDULE 15

Section 63(1).

THE CORPORATE VENTURING SCHEME

PART I

INVESTMENT RELIEF: INTRODUCTION

Meaning of “investment relief”

- 1 This Schedule makes provision for—
- (a) relief against corporation tax (“investment relief”) on amounts subscribed by companies for shares (see this Part and Parts II to VI of this Schedule);
 - (b) relief against income of companies for losses on disposals of shares to which investment relief is attributable (see Part VII of this Schedule); and
 - (c) the postponement of certain chargeable gains of companies where the gains are reinvested in shares to which investment relief is attributable (see Part VIII of this Schedule).

Eligibility for investment relief

- 2 A company (“the investing company”) is eligible for investment relief in respect of an amount subscribed by it for an issue of shares in another company (“the issuing company”) if—
- (a) the shares (“the relevant shares”) are issued to the investing company;
 - (b) the investing company is a qualifying investing company in relation to the relevant shares (see Part II of this Schedule);
 - (c) the issuing company is a qualifying issuing company in relation to the relevant shares (see Part III of this Schedule); and
 - (d) the general requirements of Part IV of this Schedule are met in respect of the relevant shares.

Meaning of “the qualification period”

- 3 (1) In this Schedule “the qualification period”, in relation to the relevant shares, means the period beginning with the issue of the shares and ending—
- (a) immediately before the third anniversary of the issue date; or
 - (b) where the money raised by the issuance of the shares is employed wholly or mainly for the purposes of one or more qualifying trades that, on the issue date, were not being carried on—
 - (i) by the issuing company, or
 - (ii) if it is a parent company, by that company or any of its qualifying subsidiaries,

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immediately before the third anniversary of the trading date.

- (2) For this purpose “the trading date” means—
- (a) the date on which the issuing company or one of its qualifying subsidiaries begins to carry on the qualifying trade to which sub-paragraph (1)(b) refers, or
 - (b) if there is more than one such trade, the latest date on which the issuing company or one of its qualifying subsidiaries begins to carry on such a trade.

PART II

THE INVESTING COMPANY

Introduction

- 4 The investing company is a qualifying investing company in relation to the relevant shares if the requirements of this Part are met as to—
- (a) no material interest (see paragraph 5);
 - (b) no reciprocal arrangements (see paragraph 6);
 - (c) no control (see paragraph 8);
 - (d) non-financial activities (see paragraph 10);
 - (e) the shares being a chargeable asset (see paragraph 13); and
 - (f) no tax avoidance (see paragraph 14).

The “no material interest” requirement

- 5 The investing company must not, at any time during the qualification period relating to the shares, have a material interest in the issuing company.

The “no reciprocal arrangement” requirement

- 6 (1) The investing company must not subscribe for the relevant shares as part of any arrangements which provide for any other person to subscribe for shares in a related company.
- (2) For this purpose—
- (a) arrangements shall be disregarded to the extent that they provide for the issuing company to subscribe for shares in any of its qualifying subsidiaries, and
 - (b) “a related company” means a company in which the investing company, or any other person who is a party to the arrangements, has a material interest.
- (3) In sub-paragraph (2)(a) the reference to qualifying subsidiaries of the issuing company is not restricted to companies that were such subsidiaries at the time the arrangements were made.

Meaning of “material interest”

- 7 (1) For the purposes of paragraphs 5 and 6 a person has a material interest in a company if he (whether alone or together with any person connected with him) directly or indirectly possesses or is entitled to acquire more than 30% of—

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- (a) the ordinary share capital of the company or any subsidiary, or
 - (b) the voting power in the company or any subsidiary.
- (2) For the purposes of sub-paragraph (1) “ordinary share capital”, in relation to a company, means—
- (a) all of the issued share capital (by whatever name called) of the company, other than capital comprising relevant preference shares, and
 - (b) all of the loan capital of the company that comprises debt which carries (directly or indirectly) any right to conversion into, or to the acquisition of, shares within paragraph (a) (or that would be within that paragraph if issued).
- (3) For the purposes of sub-paragraph (2)(b) the loan capital of a company shall be treated as including any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
 - (b) for any right to receive income created in favour of the company, or
 - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).
- This is subject to sub-paragraph (4).
- (4) For the purposes of sub-paragraph (3) a debt which—
- (a) is incurred by a company or any subsidiary by overdrawing an account with a person carrying on the business of banking, and
 - (b) arises in the ordinary course of that business,
- shall not be treated as loan capital of the company.
- (5) For the purposes of sub-paragraph (1)—
- (a) a person is treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and
 - (b) there are attributed to a person any rights or powers of any other person who is an associate of his.
- (6) For the purposes of this paragraph a company is a subsidiary of another company if it is a 51% subsidiary of that company.

The “no contro”l requirement

- 8
- (1) The investing company must not, at any time during the qualification period relating to those shares, control the issuing company.
 - (2) For this purpose the question whether the investing company controls the issuing company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988 with the following modifications.
 - (3) The first modification is that, in determining whether the investing company controls the issuing company, there shall be disregarded—
 - (a) its or any other person’s possession of, or entitlement to acquire, relevant preference shares of the issuing company; and
 - (b) its or any other person’s possession of, or entitlement to acquire, rights as a loan creditor of the issuing company.

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- (4) For the purposes of sub-paragraph (3) a person is a “loan creditor” of a company if the person is a creditor in respect of the loan capital of that company (within the meaning of paragraph 7(3)).
- (5) The second modification is that in determining whether the conditions of section 416(2) of that Act are satisfied there shall be attributed to the investing company (to the extent that it would not otherwise be the case) any rights or powers in the issuing company, or any of its subsidiaries, that are held by—
- (a) any person connected with the investing company; or
 - (b) any person who is—
 - (i) a director of the investing company, or of any company connected with that company, or
 - (ii) a relative of such a director.

For this purpose “relative” means husband or wife, parent or remoter forebear or child or remoter issue.

Relevant preference shares

- 9 (1) In paragraphs 7 (meaning of “material interest”) and 8 (the “no control” requirement) “relevant preference shares” means shares which—
- (a) do not for the time being carry voting rights;
 - (b) are issued wholly for new consideration;
 - (c) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and
 - (d) do not carry any right to dividends other than dividends which—
 - (i) fall within sub-paragraph (2) or (3);
 - (ii) are not to any extent dependent on the results of the company’s business or any part of it or on the value of any of the company’s assets; and
 - (iii) together with any sum paid on a redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued.

In paragraph (b) “new consideration” has the meaning given by section 254 of the Taxes Act 1988.

- (2) Dividends fall within this sub-paragraph if they are of a fixed amount or at a fixed rate per cent of the nominal value of the shares.

This includes dividends where the amount or rate may be changed to another fixed amount or fixed rate in a manner determined under the terms of issue of the shares.

- (3) Dividends fall within this sub-paragraph if they are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—
- (a) a standard published rate of interest,
 - (b) a rate of tax,
 - (c) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, or

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- (d) a published index of prices of shares quoted in the official list of a recognised stock exchange.
- (4) For the purposes of sub-paragraph (1)(d)(ii) dividends shall not be treated as being to any extent dependent on the results of the company's business (or any part of it) or on the value of any of the company's assets by reason only of the fact that the amount or rate of the dividends—
 - (a) reduces in the event of the results of the business (or part) improving or the value of any of the company's assets increasing, or
 - (b) increases in the event of the results of the business (or part) deteriorating or the value of any of the company's assets diminishing.
- (5) Dividends are not prevented from falling within sub-paragraph (2) or (3) by the fact that the shares carry no rights at all to dividends for a period or periods determined under the terms of issue of the shares.

The non-financial activities requirement

- 10
- (1) Throughout the qualification period relating to the relevant shares the investing company must fall within sub-paragraph (2) or (3).
 - (2) The company falls within this sub-paragraph at any time when it—
 - (a) is a single company, and
 - (b) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more non-financial trades.
 - (3) The company falls within this sub-paragraph at any time when—
 - (a) it is a group company,
 - (b) the group is a non-financial trading group, and
 - (c) sub-paragraph (4) applies.
 - (4) This sub-paragraph applies where the company—
 - (a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more—
 - (i) non-financial trades, or
 - (ii) businesses other than trades; or
 - (b) is the parent company of the group.
 - (5) For the purposes of determining whether the company falls within sub-paragraph (2) (b) or (4)(a), the purposes for which the company exists shall be disregarded to the extent that they consist in the carrying on of the following activities—
 - (a) in the case of a single company, the holding and managing of property used by the company for one or more non-financial trades carried on by it,
 - (b) in the case of a group company, any activities within paragraph 12(3)(a) or (b), and
 - (c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.
 - (6) In this paragraph “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the company's activities.

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Meaning of “non-financial trade”

- 11 (1) A trade is a “non-financial trade” if—
- (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
 - (b) it does not consist wholly or as to a substantial part in the carrying on of financial activities.
- (2) For this purpose “financial activities” includes—
- (a) banking, or money-lending, carried on by a bank, building society or other person;
 - (b) debt-factoring, finance-leasing or hire-purchase financing;
 - (c) insurance;
 - (d) dealing in shares, securities, currency, debts or other assets of a financial nature; and
 - (e) dealing in commodity or financial futures or options.

Meaning of “non-financial trading group”

- 12 (1) A group is a “non-financial trading group” unless the business of the group consists wholly or as to a substantial part in the carrying on of one or more of the following—
- (a) trades other than non-financial trades;
 - (b) businesses which are not trades.
- (2) The business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (3) For this purpose activities of a group company shall be disregarded to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, another group company;
 - (b) the holding and managing of property used by a group company for the purposes of one or more non-financial trades carried on by a group company; or
 - (c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company’s business.

Requirement as to shares being a chargeable asset

- 13 (1) The investing company is not a qualifying investing company in relation to the relevant shares unless the shares are a chargeable asset of the company immediately after they are issued to it.
- (2) For this purpose an asset is a chargeable asset of that company at any time if, on a disposal at that time, a gain accruing to the company would be a chargeable gain.
- (3) In this paragraph “asset” has the same meaning as in the 1992 Act.

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Requirement as to no tax avoidance

- 14 The relevant shares must be subscribed for by the investing company for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

PART III

THE ISSUING COMPANY

Introduction

- 15 The issuing company is a qualifying issuing company in relation to the relevant shares if the requirements of this Part are met as to—
- (a) unquoted status (see paragraph 16);
 - (b) independence (see paragraph 17);
 - (c) individual-owners (see paragraph 18);
 - (d) partnerships and joint ventures (see paragraph 19);
 - (e) qualifying subsidiaries (see paragraph 20);
 - (f) gross assets (see paragraph 22); and
 - (g) trading activities (see paragraph 23).

The “unquoted statu”s requirement

- 16 (1) The unquoted status requirement is that, at the time the relevant shares are issued, none of the issuing company’s shares, debentures or other securities is (and there are no arrangements in existence for any of them to be)—
- (a) listed on a recognised stock exchange,
 - (b) listed on a designated exchange in a country outside the United Kingdom, or
 - (c) dealt in outside the United Kingdom by such means as may be designated.

This is subject to sub-paragraph (3).

- (2) The unquoted status requirement applies whether or not the company is resident in the United Kingdom.
- (3) The unquoted status requirement is treated as not met if at the time the relevant shares are issued—
- (a) arrangements are in existence for the issuing company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, in relation to which paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies, and
 - (b) arrangements have been made with a view to any of the new company’s shares, debentures or other securities being listed or dealt in as mentioned in paragraph (a), (b) or (c) of sub-paragraph (1).
- (4) For the purposes of sub-paragraph (1) “designated” means designated by an order (“a designation order”) made for the purposes of subsection (1B) of section 312 of the Taxes Act 1988 (definition of “unquoted company” for the purposes of EIS).

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- (5) Where the issuing company meets the unquoted status requirement when the relevant shares are issued, it shall not cease to meet it by virtue of—
- (a) any designation order, or
 - (b) any order under section 841 of the Taxes Act 1988 (designation of exchange as “recognised stock exchange”),
- made after that time.

The independence requirement

- 17 (1) The independence requirement is that—
- (a) the issuing company is not, at any time during the qualification period relating to the relevant shares—
 - (i) a 51% subsidiary of another company, or
 - (ii) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
 - (b) no arrangements are in existence at any time during that period by virtue of which the company could become such a subsidiary or fall under such control (whether during that period or otherwise).
- (2) For the purposes of sub-paragraph (1)(b) arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company) shall be disregarded.
- (3) In this paragraph “control” has the meaning given by section 840 of the Taxes Act 1988.

The “individual-owner”s requirement

- 18 (1) The “individual-owners” requirement is that, throughout the qualification period relating to the relevant shares, at least 20% of the ordinary share capital of the issuing company is beneficially owned by one or more independent individuals.
- (2) For the purposes of sub-paragraph (1) “independent individual” means an individual who is not, at any time during that period when he holds ordinary shares in the issuing company—
- (a) a director or employee of—
 - (i) the investing company, or
 - (ii) any company connected with that company, or
 - (b) a relative of such a director or employee.
- For this purpose “relative” means husband or wife, parent or remoter forebear or child or remoter issue.
- (3) Where part of the ordinary share capital of the issuing company forms part of the estate of a deceased person who immediately before his death—
- (a) was the beneficial owner of the shares in question, and
 - (b) was an independent individual for the purposes of sub-paragraph (1),

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the shares in question shall, by virtue of this sub-paragraph, continue to be treated as beneficially owned by an independent individual for the purposes of sub-paragraph (1) until such time as they cease to form part of the deceased's estate.

The partnerships and joint ventures requirement

- 19 (1) The requirement as to partnerships and joint ventures is that neither the issuing company nor any of its qualifying subsidiaries is at any time during the qualification period relating to the relevant shares—
- (a) a member of a partnership falling within sub-paragraph (2), or
 - (b) a party to a joint venture falling within sub-paragraph (3).
- (2) A partnership of which the issuing company, or any of its qualifying subsidiaries, is a member falls within this paragraph at any time when—
- (a) the relevant trade is being carried on, or to be carried on, by the partners in partnership,
 - (b) the other partners include at least one other company, and
 - (c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—
 - (i) the issuing company, and
 - (ii) at least one of the other partners.
- (3) A joint venture to which the issuing company, or any of its qualifying subsidiaries, is a party falls within this paragraph at any time when—
- (a) the relevant trade is being carried on, or to be carried on, by that party in its capacity as a party to the joint venture,
 - (b) the other parties include at least one other company, and
 - (c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—
 - (i) the issuing company, and
 - (ii) at least one of the other parties.
- (4) For the purposes of sub-paragraphs (2) and (3)—
- (a) “the relevant trade” means any trade by reference to which the trading activities requirement is met in respect of the issuing company in relation to the relevant shares; and
 - (b) there shall be attributed to any person any issued share capital or ordinary share capital held by any other person who is an associate of his.

The qualifying subsidiaries requirement

- 20 (1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those shares, it has a subsidiary which is not a qualifying subsidiary.
- (2) For this purpose—
- (a) “subsidiary” means any company which the company controls, either on its own or together with any person connected with it; and
 - (b) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

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Meaning of “qualifying subsidiar”y

- 21 (1) A company (“the subsidiary”) is a qualifying subsidiary of another company (“the relevant company”) if the following conditions are met.
- (2) The conditions are that—
- (a) the relevant company or another of its subsidiaries possesses not less than 75% of the issued share capital of, and not less than 75% of the voting power in, the subsidiary;
 - (b) the relevant company or another of its subsidiaries would—
 - (i) in the event of a winding up of the subsidiary, or
 - (ii) in any other circumstances,

be beneficially entitled to receive not less than 75% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
 - (c) the relevant company or another of its subsidiaries is beneficially entitled to not less than 75% of any profits of the subsidiary which are available for distribution to the shareholders 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 of the Taxes Act 1988; and
 - (e) no arrangements are in existence by virtue of which the conditions in paragraphs (a) to (d) would cease to be met.
- (3) The subsidiary shall not be regarded as ceasing to be a company in relation to which the conditions in sub-paragraph (2) are met by reason only of—
- (a) anything done as a consequence of the subsidiary, or any other company, being in administration or receivership, or
 - (b) the subsidiary, or any other company, being wound up or dissolved without winding up,
- if sub-paragraph (4) applies.
- (4) This paragraph applies where—
- (a) in a case within sub-paragraph (3)(a)—
 - (i) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and
 - (ii) everything done as a consequence of the company being in administration or receivership, or
 - (b) in a case within sub-paragraph (3)(b), the winding up or dissolution, is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (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 qualifying subsidiary if the disposal is to be for commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

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The gross assets requirement

- 22 (1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—
- (a) does not exceed £15 million immediately before the issue of the relevant shares, and
 - (b) does not exceed £16 million immediately afterwards.
- (2) The gross assets requirement in the case of a parent company is that the consolidated value of the group assets—
- (a) does not exceed £15 million immediately before the issue of the relevant shares, and
 - (b) does not exceed £16 million immediately afterwards.
- (3) The consolidated value of the group assets means the aggregate value of the gross assets of the group, disregarding any that consist in rights against, or shares in or securities of, another group company.

The trading activities requirement

- 23 (1) The issuing company is not a qualifying issuing company in relation to the relevant shares unless it meets the trading activities requirement throughout the qualification period relating to those shares.
- (2) The trading activities requirement in the case of a single company is that the company—
- (a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and
 - (b) is carrying on a qualifying trade or preparing to do so.
- (3) The trading activities requirement in the case of a parent company is that—
- (a) the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities, and
 - (b) at least one group company—
 - (i) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and
 - (ii) is carrying on a qualifying trade or preparing to do so.
- (4) For this purpose the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) The requirement of sub-paragraph (2) or (3) is not met at any time by reason of the issuing company or a subsidiary preparing to carry on a qualifying trade if the company or subsidiary does not begin to carry on the trade within two years after the issue of the relevant shares.
- (6) For the purposes of determining whether the company falls within sub-paragraph (2) (a) or (3)(b)(i), the purposes for which it exists shall be disregarded to the extent that they consist in the carrying on of the following activities—
- (a) in the case of a single company, the holding and managing of property used by the company for one or more qualifying trades carried on by it,
 - (b) in the case of a group company, any activities within sub-paragraph (7)(a), (b) or (d), and

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- (c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.
- (7) For the purposes of determining the business of a group, activities of a group company shall be disregarded to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, another group company;
 - (b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company;
 - (c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business, or
 - (d) incidental activities of a company which meets the trading activities requirement for a single company.
- (8) In sub-paragraph (3)(a) “non-qualifying activities” means—
- (a) excluded activities other than—
 - (i) the letting of ships to which paragraph 28 applies (ships other than oil rigs or pleasure craft) in circumstances where the requirement of sub-paragraph (2) of that paragraph is met; or
 - (ii) the receiving of royalties or licence fees within paragraph 29 in circumstances where the requirements mentioned in sub-paragraph (2) of that paragraph are met; and
 - (b) activities carried on otherwise than in the course of a trade.
- (9) In this paragraph—
- (a) “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question;
 - (b) “incidental activities” means activities carried on in pursuance of incidental purposes.

Ceasing to meet trading activities requirement by reason of administration, receivership, etc.

- 24 (1) A company which is in administration or receivership shall not be regarded as ceasing to meet the trading activities requirement by reason of anything done as a consequence of the company, or any of its qualifying subsidiaries, being in administration or receivership.

This sub-paragraph has effect subject to sub-paragraphs (2) and (3).

- (2) Sub-paragraph (1) applies only if—
- (a) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and
 - (b) everything done as a consequence of the company being in administration or receivership,
- is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) A company ceases to meet the trading activities requirement if—

Status: Point in time view as at 01/10/2000.

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- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its qualifying subsidiaries (or, in the case of a winding up otherwise than under the ^{M1}Insolvency Act 1986 or the ^{M2}Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
- (b) the company, or any of its qualifying subsidiaries, is dissolved without winding up.

This is subject to sub-paragraph (4).

- (4) A company shall not be regarded as ceasing to meet the trading activities requirement if—
- (a) it does so by reason of the company or any of its subsidiaries being wound up or dissolved without winding up, and
 - (b) the winding up or dissolution is for commercial reasons and not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Marginal Citations

- M1** 1986 c. 45.
M2 S.I. 1989/2405 (N.I.19).

Meaning of “qualifying trade”

- 25 (1) A trade is a qualifying trade if—
- (a) it is carried on wholly or mainly in the United Kingdom,
 - (b) it is conducted on a commercial basis and with a view to the realisation of profits, and
 - (c) it does not consist wholly or as to a substantial part in the carrying on of excluded activities.
- (2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit is treated as the carrying on of a qualifying trade.
- But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (3) For the purposes of sub-paragraph (2) a “connected qualifying trade” means a qualifying trade carried on—
- (a) by the company carrying on the activities of research and development, or
 - (b) if that company is a member of a group, by any other group company.

Excluded activities

- 26 (1) The following are excluded activities—
- (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;

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- (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 other licence fees;
- (e) providing legal or accountancy services;
- (f) property development;
- (g) farming or market gardening;
- (h) holding, managing or occupying woodlands, any other forestry activities or timber production;
- (i) operating or managing hotels or comparable establishments or managing property used as a hotel or comparable establishment; and
- (j) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home.

(2) Sub-paragraph (1) is supplemented by the following provisions—

- paragraph 27 (wholesale and retail distribution);
- paragraph 28 (leasing of ships);
- paragraph 29 (receipt of royalties and licence fees);
- paragraph 30 (property development);
- paragraph 31 (hotels and comparable establishments);
- paragraph 32 (nursing homes and residential care homes); and
- paragraph 33 (provision of facilities for another business).

Excluded activities: wholesale and retail distribution

- 27 (1) This paragraph supplements paragraph 26(1)(b).
- (2) 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.
- (3) 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.
- (4) A trade is not an ordinary trade of wholesale or retail distribution if—
- (a) 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 excluded activity taken together, and
 - (b) 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.
- (5) In determining 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—
- (a) the goods are bought by that person in quantities larger than those in which he sells them;

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- (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.
- (6) The features specified in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.

Those in sub-paragraph (5)(d) to (h) are indications of the contrary.

Excluded activities: leasing of ships

- 28 (1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the leasing of ships other than oil rigs or pleasure craft.
- (2) A trade shall not be treated as not being a qualifying trade by reason only of its consisting in letting such ships on charter if the following requirements are met—
- (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 (3) are satisfied in relation to every letting of a ship on charter by the company.
- (3) 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

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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) on behalf of the company.

(4) In relation to any letting between one company and another where—

- (a) one of those companies is the company carrying on the trade and the other is a qualifying subsidiary of that company, or
(b) both companies are qualifying subsidiaries of the company carrying on the trade,

sub-paragraph (3) has effect with the omission of paragraph (c).

(5) Where any of the requirements in sub-paragraph (2) are not met in relation to any lettings, the trade shall not thereby be treated as not a qualifying trade if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.

(6) In this paragraph—

“oil rig” means any ship which is an offshore installation for the purposes of the ^{M3}Mineral Workings (Offshore Installations) Act 1971; and

“pleasure craft” means any ship of a kind primarily used for sport or recreation.

Marginal Citations

M3 1971 c. 61.

Excluded activities: receipt of royalties and licence fees

- 29 (1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the receipt of royalties and licence fees.
- (2) A trade shall not be regarded as not being a qualifying trade by reason only that at some time in the qualification period relating to the relevant shares it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.
- (3) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—
- (a) by the company carrying on the trade, or
(b) by a company which at all times during which it created the asset was—
- (i) the parent company of the company carrying on the trade, or
(ii) a qualifying subsidiary of that parent company.
- (4) In this paragraph “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with normal accounting practice.

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For this purpose “normal accounting practice” means normal accounting practice in relation to the accounts of companies incorporated in any part of the United Kingdom.

- (5) In the case of a relevant asset that is intellectual property, references in this paragraph to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (6) In sub-paragraph (5) “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer’s right or plant breeder’s right; and
 - (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).

Excluded activities: property development

- 30 (1) This paragraph supplements paragraph 26(1)(f).
- (2) “Property development” means the development of land—
- (a) by a company which has, or at any time has had, an interest in the land, and
 - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to sub-paragraph (4)—
- (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
 - (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant it.
- (4) References in this paragraph to an interest in land do not include—
- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
 - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

Excluded activities: hotels and comparable establishments

- 31 (1) This paragraph supplements paragraph 26(1)(i).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).
- (3) The activities of a person shall not be taken to fall within paragraph 26(1)(i) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

Excluded activities: nursing homes and residential care homes

- 32 (1) This paragraph supplements paragraph 26(1)(j).

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- (2) “Nursing home” means an establishment that exists wholly or mainly for the provision of nursing care—
 - (a) for persons suffering from sickness, injury or infirmity, or
 - (b) for women who are pregnant or have given birth to children.
- (3) “Residential care home” means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—
 - (a) old age,
 - (b) mental or physical disability,
 - (c) past or present dependence on alcohol or drugs,
 - (d) any past illness, or
 - (e) past or present mental disorder.
- (4) The activities of a person shall not be taken to fall within paragraph 26(1)(j) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

Excluded activities: provision of facilities for another business

- 33 (1) Providing services or facilities for a business carried on by another person is an excluded activity if—
 - (a) the business consists to a substantial extent of excluded activities within sub-paragraph 26(1), and
 - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the company providing the services or facilities.
- (2) Sub-paragraphs (3) to (5) define what is meant by a controlling interest in a business for the purposes of sub-paragraph (1)(b).
- (3) In the case of a business carried on by a company, a person has a controlling interest if—
 - (a) he controls the company,
 - (b) the company is a close company and he or an associate of his, being a director of the company, either—
 - (i) is the beneficial owner of more than 30% 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% of that share capital,
 - or
 - (c) not less than half of the business could, in accordance with section 344(2) of the Taxes Act 1988, be regarded as belonging to him for the purposes of section 343 of that Act.
- (4) In any other case, a person has a controlling interest in a business if he is entitled to not less than half of the assets used for, or of the income arising from, the business.
- (5) For the purposes of sub-paragraph (3)(a) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

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- (6) For the purposes of this paragraph—
- (a) there shall be attributed to any person any rights or powers of any other person who is an associate of his, and
 - (b) “business” includes any trade, profession or vocation.

PART IV

GENERAL REQUIREMENTS

Introduction

- 34 The investing company is not eligible for investment relief in respect of the amount subscribed by it for the relevant shares unless the requirements of this Part are met as to—
- (a) the shares (see paragraph 35);
 - (b) the money raised (see paragraph 36);
 - (c) no pre-arranged exits (see paragraph 37); and
 - (d) no tax avoidance (see paragraph 38).

Requirement as to the shares

- 35 (1) The relevant shares must satisfy sub-paragraphs (2) and (3).
- (2) Shares satisfy this sub-paragraph if they are—
- (a) ordinary shares,
 - (b) subscribed for wholly in cash, and
 - (c) fully paid up at the time they are issued.
- Shares are not fully paid up for the purposes of paragraph (c) if there is any undertaking to pay cash to the issuing company at a future date.
- (3) Shares satisfy this sub-paragraph if they do not, at any time during the qualification period relating to the relevant shares, carry—
- (a) any present or future preferential right to dividends or to a company’s assets on its winding up, or
 - (b) any present or future right to be redeemed.

Requirement as to the money raised

- 36 (1) The money raised by the issuance of the relevant issue of shares must have been employed wholly for the purposes of a relevant trade not later than—
- (a) the end of the period of 12 months beginning with the issue of the shares, or
 - (b) where the relevant trade was not being carried on at the time the shares were issued the end of the period of 12 months beginning when the issuing company or a subsidiary begins to carry on the relevant trade.

This is subject to sub-paragraph (5).

- (2) For the purposes of this paragraph—

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“the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares;

“relevant trade” means a trade by reference to which the issuing company meets the trading activities requirement.

- (3) In this paragraph references to employing money for the purposes of a trade (except where the carrying on of the trade is within paragraph 25(2)) include references to employing it for the purpose of preparing to carry on the trade.
- (4) In sub-paragraph (2) the reference to a trade by reference to which the trading activities requirement is met includes, where the carrying on of that trade is within paragraph 25(2), a reference to any qualifying trade—
- (a) which is derived or benefits from that trade, and
 - (b) which is carried on—
 - (i) by the issuing company, or
 - (ii) if that company is a parent company, by that company or a qualifying subsidiary of that company.
- (5) Where—
- (a) any of the money mentioned in sub-paragraph (1) is employed for the purposes of a trade that is a relevant trade by virtue of sub-paragraph (4), and
 - (b) that trade was not being carried on by the issuing company, or a qualifying subsidiary of that company, at the time the shares were issued,
- the requirement of sub-paragraph (1) is not met unless that money is so employed before the third anniversary of the issue date.
- (6) For the purposes of this paragraph money is not 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.

Requirement as to no pre-arranged exits

- 37 (1) The issuing arrangements for the relevant shares must not include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing 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 issuing company or a person connected with that company;
 - (c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company; or
 - (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 the issuing company against what would otherwise be the risks attached to making the investment.
- (2) For the purposes of this paragraph “the issuing arrangements” means—
- (a) the arrangements under which the relevant shares are issued to the investing company,

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- (b) any arrangements made, before the issue of the relevant shares to that company, in relation to or in connection with that issue, and
 - (c) if before the relevant shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the relevant issue, any arrangements made—
 - (i) on or after the issue of the shares, but
 - (ii) before the end of the qualification period relating to them.
- (3) For the purposes of sub-paragraph (2)—
- (a) “information on pre-arranged exits” means any information indicating the possibility of making, on or after the issue of the relevant shares but before the end of the qualification period relating to them, arrangements of the kind described in paragraph (a), (b), (c) or (d) of sub-paragraph (1), and
 - (b) “the relevant issue” means the issue of shares in the issuing company which includes the relevant shares.
- (4) The arrangements referred to in sub-paragraph (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company).
- (5) The arrangements referred to in sub-paragraph (1)(b) and (c) do not include any arrangements applicable only on the winding up of the issuing company except in a case where—
- (a) the issuing arrangements include arrangements for the issuing company to be wound up, or
 - (b) the issuing company is wound up otherwise than for commercial reasons.
- (6) The arrangements referred to in sub-paragraph (1)(d) do not include any arrangements which are confined to the provision—
- (a) for the issuing company itself, or
 - (b) where the issuing company is the parent company of a group, for any group company,
- of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided for normal commercial reasons.

Requirement as to no tax avoidance

- 38 The relevant shares must be issued for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

PART V

INVESTMENT RELIEF

Form of investment relief

- 39 (1) Where—

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- (a) the investing company is eligible for investment relief in respect of an amount subscribed by it for an issue of shares, and
 - (b) it makes a claim under this Part,
- the company's liability for corporation tax for the accounting period in which the shares were issued shall be reduced by the appropriate amount.
- (2) In sub-paragraph (1) "the appropriate amount" means whichever is the smaller of—
- (a) 20% of the amount or aggregate amount—
 - (i) which was subscribed by the company for shares issued in that period, and
 - (ii) in respect of which the company is eligible for and claims investment relief, and
 - (b) the amount which reduces the liability to nil.

Entitlement to claim

- 40 (1) The investing company is entitled to make a claim to investment relief in respect of the amount subscribed by it for the relevant shares if it appears to it that the requirements for the relief are for the time being met.

This is subject to sub-paragraph (2).

- (2) The investing company is not entitled to make a claim to investment relief in relation to the amount subscribed by it for the relevant shares unless—
- (a) the funded trade has been carried on by the issuing company or a subsidiary of the company for four months (disregarding any time spent preparing to carry on that trade), and
 - (b) the investing company has received from the issuing company a compliance certificate in respect of those shares.

- (3) For the purposes of this paragraph, "the funded trade" means the trade or trades by reference to which the requirement of paragraph 36 (use of money raised) is met in respect of the relevant issue of shares (as defined by sub-paragraph (2) of that paragraph).

This is subject to sub-paragraph (4).

- (4) To the extent that the funded trade would, by virtue of sub-paragraph (3), be a trade derived or benefiting from a trade within paragraph 25(2), the funded trade shall be deemed, for the purposes of this paragraph, to be the trade within that paragraph.

- (5) Where—

- (a) the company or subsidiary concerned, by reason of its being wound up, or dissolved without winding up, carries on the funded trade for a period shorter than four months, and
- (b) the winding up or dissolution was for commercial reasons and was not part of a scheme or arrangement the main purpose or one of the main purposes of which was the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

- (6) Where—

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- (a) the company or subsidiary concerned, by reason of anything done as a consequence of its being in administration or receivership, carries on the funded trade for a period shorter than four months, and
- (b) the making of the order within paragraph (a) or, as the case may be, (b) of paragraph 102(4) (administration orders and orders for appointment of receiver etc.), and everything done as a consequence of the company being in administration or receivership, is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

- (7) No application shall be made under section 55(3) or (4) of the Taxes Management Act 1970 (application for postponement of payment of tax pending appeal) on the ground that the investing company is eligible for investment relief unless a claim for the relief has been duly made by that company.

Compliance certificates

- 41 (1) A “compliance certificate” is a certificate which—
- (a) is issued by the issuing company in respect of the relevant shares,
 - (b) states that, except so far as they fall to be met by or in relation to the investing company, the requirements for investment relief are for the time being met in relation to those shares, and
 - (c) is in such form as the Inland Revenue may direct.
- (2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide the Inland Revenue with a compliance statement in respect of the issue of shares which includes the relevant shares.
- (3) The issuing company must not issue a compliance certificate without the authority of the Inland Revenue.
- (4) Where the company or a person connected with the company has given notice to the Inland Revenue under paragraph 65 (information to be provided by issuing company etc.) the authority of the Inland Revenue must be given or renewed after the receipt of the notice.

Compliance statements

- 42 (1) A “compliance statement” is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be satisfied by or in relation to companies to which the shares included in that issue have been issued, the requirements for investment relief—
- (a) are for the time being met in relation to the shares to which the statement relates, and
 - (b) have been so met at all times since the shares were issued.

In determining for the purposes of this sub-paragraph whether those requirements are met at any time in relation to the issue of shares, references in this Schedule to “the relevant shares” shall be read as references to the shares included in the issue.

Status: Point in time view as at 01/10/2000.

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- (2) A compliance statement must be in such form as the Inland Revenue direct and must contain—
- (a) such additional information as the Inland Revenue reasonably require,
 - (b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and
 - (c) such other declarations as the Inland Revenue reasonably require.
- (3) Without prejudice to the generality of sub-paragraph (2)(a) the information required by the Inland Revenue may include—
- (a) information relating to the companies to which compliance certificates may be issued under paragraph 41 in respect of any shares included in the issue of shares to which the statement relates, and
 - (b) information to enable the Inland Revenue to determine whether the requirements of paragraph 35(2)(b) and (c) (shares to be subscribed for wholly in cash and fully paid up) are met in relation to shares included in that issue subscribed for by such companies.
- (4) The issuing company may not provide the Inland Revenue with a compliance statement in respect of any shares issued by it in any accounting period—
- (a) before the condition in paragraph 40(2)(a) (no claim until trade carried on for four months) is satisfied; or
 - (b) later than two years after the end of that accounting period or, if that condition is first satisfied after the end of that accounting period, later than two years after the condition is first satisfied.

Appeal against refusal to authorise compliance certificate

- 43 For the purposes of the provisions of the ^{M4}Taxes Management Act 1970 relating to appeals, the refusal of the Inland Revenue to authorise the issue of a compliance certificate shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax.

Marginal Citations

M4 1970 c. 9.

Penalties for fraudulent certificate or statement etc.

- 44 The issuing company is liable to a penalty not exceeding £3,000 if—
- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
 - (b) it issues a compliance certificate in contravention of paragraph 41(3) or (4) (no certificate to be issued without Inland Revenue approval).

Attribution of relief to shares

- 45 (1) References in this Schedule, in relation to a company, to the investment relief attributable to any shares or issue of shares shall be read as references to any reduction made in the company's liability to corporation tax that is attributed to those shares or that issue in accordance with this paragraph.

Status: Point in time view as at 01/10/2000.

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This is subject to the provisions of Part VI of this Schedule providing for the reduction or withdrawal of investment relief.

- (2) Where a company's liability to corporation tax is reduced for an accounting period under paragraph 39 (form of investment relief), then—
 - (a) where the reduction is obtained by reason of one issue of shares, the amount of the reduction shall be attributed to that issue, and
 - (b) where the reduction is obtained by reason of two or more issues of shares, the reduction—
 - (i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the company for each issue, and
 - (ii) shall be attributed to those issues accordingly.
- (3) Where under this paragraph an amount of any reduction of corporation tax is attributed to an issue of shares (“the original issue”) to a company a proportionate part of that amount shall be attributed to each share comprised in the original issue.
- (4) If corresponding bonus shares are issued to the company in respect of any shares (“the original shares”) comprised in the original issue that have been continuously held by the company from the time they were issued until the issue of the bonus shares—
 - (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued shall be attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
 - (b) after the issue of the bonus shares, this Schedule shall apply as if—
 - (i) the original issue had included the bonus shares, and
 - (ii) the bonus shares had been held by the company continuously from the time the original shares were issued until the bonus shares were issued.
- (5) In sub-paragraph (4) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.
- (6) If investment relief attributable to any shares falls to be withdrawn under Part VI of this Schedule the relief attributable to each of the shares shall be reduced to nil.
- (7) If investment relief attributable to any shares falls to be reduced under Part VI of this Schedule by any amount the relief attributable to each of the shares shall be reduced by a proportionate part of that amount.

PART VI

WITHDRAWAL OF INVESTMENT RELIEF

Disposal of shares

- 46 (1) This paragraph applies where—
- (a) the investing company disposes of any of the relevant shares which have been held by it continuously from the time they were issued until the disposal,

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- (b) the disposal takes place during the qualification period relating to the relevant shares, and
- (c) investment relief is attributable to the shares.

(2) If the disposal is not—

- (a) by way of a bargain made at arm's length for full consideration,
- (b) by way of a distribution in the course of dissolving or winding up the issuing company,
- (c) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset), or
- (d) a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible),

the investment relief attributable to those shares must be withdrawn.

(3) If the disposal is within paragraph (a), (b), (c) or (d) of sub-paragraph (2) the investment relief attributable to those shares must—

- (a) if it is greater than an amount equal to 20% of the amount or value of the consideration (if any) which the company receives for the shares, be reduced by that amount, and
- (b) in any other case, be withdrawn.

(4) Where—

- (a) the amount of the reduction (“A”) in the investing company’s liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than
- (b) the amount (“B”) which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (3)(a) shall have effect in relation to a disposal of any of those shares as if the amount or value referred to in that sub-paragraph were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

(5) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (4) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.

(6) Sub-paragraph (5) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Value received by investing company

47 (1) Sub-paragraph (2) applies where the investing company receives any value (other than insignificant value) from the issuing company during the period of restriction relating to the relevant shares.

(2) Any investment relief attributable to the shares shall—

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- (a) if it exceeds the amount mentioned in sub-paragraph (3), be reduced by that amount, and
 - (b) in any other case, be withdrawn.
- (3) The amount referred to in sub-paragraph (2)(a) is an amount equal to 20% of the amount of the value received.
- (4) This paragraph is subject to the following paragraphs—
 - paragraph 51 (value received where there is more than one issue of shares);
 - paragraph 52 (cases where maximum investment relief not obtained); and
 - paragraph 54 (receipt of replacement value).
- (5) Where—
 - (a) value is received (“the relevant receipt”) by the investing company from the issuing company at any time during the period of restriction relating to the relevant shares,
 - (b) the investing company has received from the issuing company one or more receipts of insignificant value at a time or times—
 - (i) during that period, but
 - (ii) not later than the time of the relevant receipt, and
 - (c) the aggregate amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value,

the investing company shall be treated for the purposes of this Part as if the relevant receipt had been a receipt of an amount of value equal to that aggregate amount.

For this purpose a receipt does not fall within paragraph (b) if it has been previously aggregated under this sub-paragraph.
- (6) If, at any time in the period—
 - (a) beginning one year before the relevant shares are issued, and
 - (b) expiring at the end of the issue date,

arrangements are in existence which provide for the investing company to receive, or to be entitled to receive, any value from the issuing company at any time in the period of restriction relating to those shares, no amount of value received by the investing company shall be treated as a receipt of insignificant value for the purposes of this paragraph.
- (7) For the purposes of this paragraph—
 - (a) references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value;
 - (b) “an amount of insignificant value” means an amount of value which—
 - (i) does not exceed £1,000, or
 - (ii) if it exceeds that amount, is insignificant in relation to the amount subscribed by the investing company for the shares.

This is subject to sub-paragraph (6).
- (8) Where by reason of the investing company’s disposal of any shares any investment relief attributable to those shares is withdrawn or reduced, the investing company shall not be treated for the purposes of this paragraph as receiving value from the issuing company in respect of the disposal.

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- (9) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.

Meaning of “the period of restriction”

48 For the purposes of this Schedule “the period of restriction” relating to the relevant shares means the period—

- (a) beginning one year before the shares are issued, and
- (b) ending at the end of the qualification period relating to the shares.

When value is received

49 (1) For the purposes of paragraphs 47 (value received by investing company) and 51 (value received where there is more than one issue of shares) the investing company receives value from the issuing company at any time when the issuing company—

- (a) repays, redeems or repurchases any of its share capital or securities which belong to the investing company or makes any payment to that company for giving up its right to any of the issuing 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 relevant shares, any debt owed to the investing company other than a debt which was incurred by the issuing company—
 - (i) on or after the date of issue of those shares; and
 - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
- (c) makes to the investing company any payment for giving up the company’s right to any debt on its extinguishment;
- (d) releases or waives any liability of the investing company to the issuing company or discharges, or undertakes to discharge, any liability of the investing company to a third person;
- (e) makes a loan or advance to the investing company which has not been repaid in full before the issue of the relevant shares;
- (f) provides a benefit or facility for the directors or employees of the investing company or any of their associates;
- (g) disposes of an asset to the investing company 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 investing company for a consideration which is or the value of which is more than the market value of the asset; or
- (i) makes a payment to the investing company other than a qualifying payment.

(2) For the purposes of sub-paragraph (1)(e) there shall be treated as if it were a loan made by the issuing company to the investing company—

- (a) the amount of any debt (other than an ordinary trade debt) incurred by the investing company to the issuing company, and
- (b) the amount of any debt due from the investing company to a third person which has been assigned to the issuing company.

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- (3) For the purposes of sub-paragraph (1)(d) the issuing 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.
- (4) For the purposes of this paragraph—
- (a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment;
 - (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; and
 - (c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to his order or for his benefit.

In paragraphs (a) to (c) references to “a person” include references to any person who, at any time in the period of restriction in question, is connected with that person, whether or not he is so connected at the material time.

- (5) 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; and
- “qualifying payment” means—
- (a) any payment by any person for any goods, services or facilities provided by the investing company (in the course of its trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities;
 - (b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person;
 - (c) 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;
 - (d) any payment for the acquisition of an asset which does not exceed its market value;
 - (e) the payment by any person, as rent for any property occupied by the person, of an amount not exceeding a reasonable and commercial rent for the property; and
 - (f) a payment in discharge of an ordinary trade debt.

The amount of value received

- 50 For the purposes of paragraph 47 the amount of the value received is—
- (a) in a case within paragraph 49(1)(a), (b) or (c)—
 - (i) the amount received by the investing company, or
 - (ii) the market value of the shares, securities or debt in question, whichever is greater;

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- (b) in a case within paragraph 49(1)(d), the amount of the liability;
- (c) in a case within paragraph 49(1)(e)—
 - (i) the amount of the loan or advance, less
 - (ii) the amount of any repayment made before the issue of the relevant shares;
- (d) in a case within paragraph 49(1)(f)—
 - (i) the cost to the issuing company of providing the benefit or facility, less
 - (ii) any consideration given for it by the recipient or any associate of his;
- (e) in a case within paragraph 49(1)(g) or (h), the difference between the market value of the asset and the consideration (if any) received for it; and
- (f) in a case within paragraph 49(1)(i), the amount of the payment.

Value received where there is more than one issue of shares

- 51 (1) This paragraph applies where—
- (a) two or more issues of shares in the issuing company have been made to the investing company (being issues in relation to which the investing company is eligible for and claims investment relief), and
 - (b) the value received falls within the periods of restriction relating to two or more of those issues.
- (2) Where this paragraph applies paragraph 47 has effect in relation to the shares comprised in each of the issues referred to in sub-paragraph (1)(b) as if the amount of the value received were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

Where—

A is the amount subscribed by the investing company for the shares comprised in the issue in question to which investment relief is (or, but for paragraph 47 would be) attributable; and

B is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

Cases where maximum investment relief not obtained

- 52 (1) Where—
- (a) the amount of the reduction (“C”) in the investing company’s liability to corporation tax obtained in respect of the relevant shares, is less than
 - (b) the amount (“D”) which is equal to 20% of the amount subscribed by the investing company for those shares,
- paragraph 47 has effect as if the amount of the value received were reduced by multiplying it by the fraction—

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$$\frac{C}{D}$$

- (2) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (1) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.
- (3) Sub-paragraph (2) does not apply to a reduction of investment relief by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Receipts of value by and from connected persons

- 53 In paragraphs 47, 49 and 50 references to the investing company or the issuing company include references to any person who at any time in the period of restriction relating to the relevant shares is connected with the company concerned, whether or not he is connected at the material time.

Receipt of replacement value

- 54 (1) Where—
- (a) any investment relief attributable to the relevant shares would, in the absence of this paragraph, be reduced or withdrawn under paragraph 47 by reason of a receipt of value within paragraph 49(1) (“the original value”),
 - (b) the original supplier receives value (“the replacement value”) from the original recipient by reason of a qualifying receipt, and
 - (c) [^{F1}the amount of]the replacement value is not less than the amount of the original value,
- paragraph 47 shall not, by reason of the receipt of the original value, have effect to reduce or withdraw the investment relief.
- (2) For the purposes of this paragraph and paragraph 55—
- “the original recipient” means the person who receives the original value;
 - and
 - “the original supplier” means the person from whom that value was received.
- (3) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) if it arises—
- (a) by reason of the original recipient making a payment to the original supplier other than—
 - (i) a qualifying payment (within the meaning of paragraph 49(5)), or
 - (ii) a payment for shares in or securities of any company in circumstances that do not fall within paragraph (c) below;

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- (b) where the receipt of the original value was within paragraph 49(1)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
 - (c) where the receipt of the original value was within paragraph 49(1)(g) or (h), by reason of—
 - (i) the original recipient acquiring any asset from the original supplier for a consideration which is or the value of which is more than the market value of the asset, or
 - (ii) the original recipient disposing of any asset to the original supplier for no consideration or for a consideration which is, or the value of which is, less than the market value of the asset.
- (4) For the purposes of this paragraph—
- (a) paragraph 50 shall apply for the purposes of determining the amount of the original value; and
 - (b) the amount of the replacement value is—
 - (i) in a case within sub-paragraph (3)(a), the amount of the payment,
 - (ii) in a case within sub-paragraph (3)(b), the same as the amount of the original value, and
 - (iii) in a case within sub-paragraph (3)(c), the difference between the market value of the asset and the consideration (if any) received for it.

Textual Amendments

F1 Words in Sch. 15 para. 54(1)(a) inserted (*retrospectively*) by 2001 c. 9, s. 64, Sch. 16 Pt. 2 para. 6(1)(6)

- 54 (1) Where—
- (a) any investment relief attributable to the relevant shares would, in the absence of this paragraph, be reduced or withdrawn under paragraph 47 by reason of a receipt of value within paragraph 49(1) (“the original value”),
 - (b) the original supplier receives value (“the replacement value”) from the original recipient by reason of a qualifying receipt, and
 - (c) the replacement value is not less than the amount of the original value,
- paragraph 47 shall not, by reason of the receipt of the original value, have effect to reduce or withdraw the investment relief.
- (2) For the purposes of this paragraph and paragraph 55—
- “the original recipient” means the person who receives the original value; and
 - “the original supplier” means the person from whom that value was received.
- (3) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) if it arises—
- (a) by reason of the original recipient making a payment to the original supplier other than—
 - (i) a qualifying payment (within the meaning of paragraph 49(5)), or

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- (ii) a payment for shares in or securities of any company in circumstances that do not fall within paragraph (c) below;
 - (b) where the receipt of the original value was within paragraph 49(1)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
 - (c) where the receipt of the original value was within paragraph 49(1)(g) or (h), by reason of—
 - (i) the original recipient acquiring any asset from the original supplier for a consideration which is or the value of which is more than the market value of the asset, or
 - (ii) the original recipient disposing of any asset to the original supplier for no consideration or for a consideration which is, or the value of which is, less than the market value of the asset.
- (4) For the purposes of this paragraph—
- (a) paragraph 50 shall apply for the purposes of determining the amount of the original value; and
 - (b) the amount of the replacement value is—
 - (i) in a case within sub-paragraph (3)(a), the amount of the payment,
 - (ii) in a case within sub-paragraph (3)(b), the same as the amount of the original value, and
 - (iii) in a case within sub-paragraph (3)(c), the difference between the market value of the asset and the consideration (if any) received for it.

Provision supplementary to paragraph 54

- 55 (1) The receipt of the replacement value shall be disregarded for the purposes of sub-paragraph (1) of paragraph 54 to the extent to which it has previously been set (under that paragraph) against a receipt of value to prevent any reduction or withdrawal of investment relief under paragraph 47.
- (2) The receipt of the replacement value by the original supplier (“the event”) shall be disregarded for the purposes of paragraph 54(1) if—
- (a) the event occurs before the start of the period of restriction relating to the relevant shares,
 - (b) there was an unreasonable delay in the event occurring, or
 - (c) where an appeal has been brought by the investing company against an assessment to withdraw or reduce any investment relief attributable to the relevant shares by reason of the receipt of the original value, the event occurs more than 60 days after the amount of relief which falls to be withdrawn has been finally determined.

But nothing in paragraph 54 or this paragraph requires the replacement value to be received after the original value.

- (3) Sub-paragraph (4) applies where—
- (a) the receipt of the replacement value is a qualifying receipt for the purposes of paragraph 54(1) (receipt of replacement value which prevents loss of investment relief), and
 - (b) the event which gives rise to the receipt is (or includes) a subscription for shares by—

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- (i) the investing company, or
 - (ii) any person who at any time in the period of restriction relating to the relevant shares is connected with the investing company, whether or not he is connected at the material time.
- (4) Where this sub-paragraph applies the person who subscribes for the shares shall not—
- (a) be eligible for—
 - (i) any investment relief, or
 - (ii) any relief under Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief),
 in relation to those shares or any other shares in the same issue; or
 - (b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of Schedule 5B to the 1992 Act (EIS: deferral relief).
- [^{F2}(5) In this paragraph “the original value” and “the replacement value” shall be construed in accordance with paragraph 54.]

Textual Amendments

F2 Sch. 15 para. 55(5) inserted (*retrospectively*) by 2001 c. 9, s. 64, **Sch. 16 para. 7**

Value received by other persons

- 56 (1) Where any investment relief is attributable to such of the relevant shares as are held by the investing company, sub-paragraph (2) shall apply if at any time in the period of restriction relating to the relevant shares the issuing company or any subsidiary—
- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than—
 - (i) the investing company, or
 - (ii) a person who falls within sub-paragraph (3), or
 - (b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- (2) The investment relief—
- (a) if it is greater than the amount mentioned in sub-paragraph (4), shall be reduced by that amount, and
 - (b) in any other case, must be withdrawn.
- (3) A person falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) causes any investment relief attributable to that person’s shares in the issuing company to be withdrawn or reduced by virtue of—
 - (i) paragraph 46 (disposal of shares), or
 - (ii) paragraph 49(1)(a) (receipt of value by virtue of repayment of share capital etc.);

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- (b) causes any relief under Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief) attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—
 - (i) section 299 of that Act (disposal of shares), or
 - (ii) section 300(2)(a) of that Act (receipt of value by virtue of repayment of share capital etc.);or
 - (c) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act (EIS: deferral relief)) in respect of that person.
- (4) The amount referred to in sub-paragraph (2) is an amount equal to 20%—
- (a) where sub-paragraph (1) does not apply in the case of any other company holding shares in the issuing company, of the amount received by the member, and
 - (b) where sub-paragraph (1) also applies in the case of one or more such other companies, of the appropriate fraction of that amount.
- (5) For the purposes of sub-paragraph (4) “the appropriate fraction” is—

$$\frac{A}{B}$$

Where—

A is the amount subscribed by the investing company for such of the relevant shares as are shares to which investment relief is or, but for sub-paragraph (2)(b), would be attributable, and

B is the aggregate of that amount and the amount or amounts subscribed by the other company or companies for such shares which are comprised in the same issue of shares.

- (6) Where—
- (a) the amount of the reduction (“C”) in the investing company's liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than
 - (b) the amount (“D”) which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (4) has effect as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

- (7) Where the amount of investment relief attributable to the relevant shares has been reduced before the relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (6) to be the amount of the corporation tax reduction that would have been

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obtained had no such reduction of investment relief been made before the relief was obtained.

- (8) Sub-paragraph (7) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Insignificant repayments disregarded

- 57 (1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) if whichever is the greater of—
- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
 - (b) the amount received by the member in question,
- is insignificant in relation to the market value of the remaining share capital of the issuing company (or, as the case may be, subsidiary) immediately after the event occurs.
- This is subject to sub-paragraph (4).
- (2) For the purposes of this paragraph “repayment” means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) (repayments etc. which cause withdrawal of investment relief).
- (3) For the purposes of sub-paragraph (1) it shall be assumed that the target shares are cancelled at the time the [F³ repayment] is made.
- (4) Sub-paragraph (1) does not apply if, at a relevant time, arrangements are in existence that provide—
- (a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or
 - (b) for anyone to be entitled to such a repayment,
- at any time in the period of restriction relating to the shares.
- (5) For the purposes of sub-paragraph (4) “a relevant time” means any time in the period—
- (a) beginning one year before the relevant shares are issued, and
 - (b) expiring at the end of the issue date.

Textual Amendments

F3 Word in *Sch. 15 para. 57(3)* substituted (*retrospectively*) by 2001 c. 9, s. 64, *Sch. 16 Pt. 2 para. 9(2)(4)*

- 57 (1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) if whichever is the greater of—
- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
 - (b) the amount received by the member in question,

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is insignificant in relation to the market value of the remaining share capital of the issuing company (or, as the case may be, subsidiary) immediately after the event occurs.

This is subject to sub-paragraph (4).

- (2) For the purposes of this paragraph “repayment” means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) (repayments etc. which cause withdrawal of investment relief).
- (3) For the purposes of sub-paragraph (1) it shall be assumed that the target shares are cancelled at the time the payment is made.
- (4) Sub-paragraph (1) does not apply if, at a relevant time, arrangements are in existence that provide—
 - (a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or
 - (b) for anyone to be entitled to such a repayment,at any time in the period of restriction relating to the shares.
- (5) For the purposes of sub-paragraph (4) “a relevant time” means any time in the period—
 - (a) beginning one year before the relevant shares are issued, and
 - (b) expiring at the end of the issue date.

Provision supplementary to paragraph 56 and 57

- 58
- (1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.
 - (2) In any case where—
 - (a) investment relief is attributable to such of the relevant shares as are held by the investing company;
 - (b) the issuing company has made one or more other issues of shares each of which includes shares (“designated shares”) to which investment relief is attributable, and
 - (c) the repayment falls—
 - (i) within the period of restriction relating to the relevant shares, and
 - (ii) within one or more of the equivalent periods relating to any of the designated shares,paragraph 56(4) shall have effect in relation to each of the issues of shares as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the relevant fraction.
 - (3) For the purposes of sub-paragraph (2) “the equivalent period”, in relation to any designated shares, means the period—
 - (a) beginning one year before the shares are issued, and
 - (b) ending at the end of the qualification period relating to the shares.

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For the purposes of determining the qualification period relating to any designated shares, the references in paragraph 3 to the relevant shares shall be read as references to those designated shares.

- (4) In sub-paragraph (2)—
- (a) “the appropriate fraction” has the meaning given by paragraph 56(5), and
 - (b) “the relevant fraction” means—

$$\frac{E}{F}$$

Where—

E is the amount subscribed by companies for shares which are included in the issue in question and to which investment relief is or, but for paragraph 56(2)(b), would be attributable; and

F is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

- (5) Where—
- (a) a company issues share capital of nominal value equal to the authorised minimum (within the meaning of the ^{M5}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) the registrar of companies issues the company with a certificate under section 117,
- paragraph 56(1) shall not apply in relation to any redemption of those shares within 12 months of the date on which they were issued.
- (6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) to the ^{M6}Companies Act 1985 and to section 117 of that Act shall have effect as references to the ^{M7}Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.
- (7) References in paragraphs 56 and 57 and this paragraph to a subsidiary of the issuing company are references to any company which at any time in the period of restriction relating to the relevant shares is a 51% subsidiary of the issuing company whether or not it is such a subsidiary at the time of the repayment in question.
- (8) For the purposes of this paragraph “repayment” has the meaning given in paragraph 57(2).

Marginal Citations

- M5** 1985 c. 6.
M6 1985 c. 6.
M7 S.I. 1986/1032 (N.I.6).

Status: Point in time view as at 01/10/2000.

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Put options and call options

- 59 (1) Sub-paragraph (2) applies where—
- (a) an option, the exercise of which would bind the grantor to purchase any of the relevant shares, is granted to the investing company during the qualification period relating to those shares; or
 - (b) an option, the exercise of which would bind the investing company to sell such shares, is granted by the investing company during that period.
- (2) Any investment relief attributable to the shares to which the option relates must be withdrawn.
- (3) The shares to which the option relates are those which, if—
- (a) the option were exercised immediately after the grant, and
 - (b) any shares in the issuing company acquired by the investing company 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 prejudices the operation of paragraph 37 (pre-arranged exits).

Withdrawal of relief

- 60 (1) Where any investment relief has been obtained which—
- (a) is subsequently found not to have been due, or
 - (b) falls to be withdrawn under this Part,
- it shall be withdrawn by making an assessment to corporation tax under Case VI of Schedule D for the accounting period for which the relief was obtained.
- (2) Investment relief obtained by the investing company in respect of the relevant shares may not be withdrawn on the ground—
- (a) that the issuing company is not a qualifying issuing company in relation to those shares,
 - (b) that the requirements of Part IV of this Schedule are not met in respect of the shares,
 - (c) by virtue of paragraph 47 (value received by investing company), or
 - (d) by virtue of paragraph 56 (value received by other persons),
- unless sub-paragraph (3) is satisfied.
- (3) This sub-paragraph is satisfied if—
- (a) either—
 - (i) the issuing company has given notice under paragraph 65 (information to be provided by issuing company etc.) in relation to those shares, or
 - (ii) the Inland Revenue have given notice to that company stating that, by reason of the ground in question, the whole or any part of the investment relief obtained by any company or companies in respect of shares included in the relevant issue of shares was not in their opinion due,
- and

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- (b) in the case of a withdrawal within sub-paragraph (2)(c) or (d), the Inland Revenue have given notice to the investing company stating the matters mentioned in paragraph (a)(ii) above.

(4) In this paragraph—

- (a) references to the withdrawal of investment relief include its reduction; and
(b) “the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares.

Appeals against withdrawal of relief

- 61 For the purposes of the provisions of the ^{M8}Taxes Management Act 1970 relating to appeals, the giving of notice by the Inland Revenue under paragraph 60(3)(a)(ii) shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax.

Marginal Citations

M8 1970 c. 9.

Time limits

- 62 (1) The Inland Revenue may not—
- (a) make an assessment for withdrawing or reducing the investment relief attributable to any of the relevant shares, or
- (b) give a notice under paragraph 60(3)(a)(ii) or (b),
- more than six years after the end of the relevant accounting period.
- (2) In sub-paragraph (1) “the relevant accounting period” means—
- (a) the accounting period in which the time mentioned in paragraph 36(1) (time limit for employing money raised) falls, or
- (b) the accounting period in which the event which causes the investment relief to be withdrawn or reduced occurs,
- whichever is later.
- (3) This paragraph is subject to sub-paragraphs (2) and (3) of paragraph 46 of Schedule 18 to the ^{M9}Finance Act 1998 (fraud or negligence).

Those sub-paragraphs shall apply in relation to any notice under paragraph 60(3)(a)(ii) or (b) as if it were an assessment relating to the accounting period to which any assessment made by virtue of the notice would relate.

Marginal Citations

M9 1998 c. 36.

Interest

- 63 (1) This paragraph applies where—
- (a) investment relief is withdrawn or reduced by virtue of—

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- (i) a failure to meet any of the requirements of paragraphs 5 to 10 or of Part III of this Schedule (requirements to be met in relation to investing company or issuing company);
 - (ii) paragraph 46 (disposal of shares);
 - (iii) paragraph 47 (value received by investing company);
 - (iv) paragraph 56 (value received by other persons); or
 - (v) paragraph 59 (put options and call options);
- (b) as a result, an assessment to corporation tax is made by virtue of paragraph 60; and
- (c) the relevant event occurs after the date when the tax assessed became due and payable or, if there is more than one such date, the latest of them.
- (2) Section 87A of the ^{M10}Taxes Management Act 1970 (interest on overdue corporation tax etc.) has effect in relation to the tax assessed as if it became due and payable on the date the relevant event occurred.
- (3) In this paragraph references to “the relevant event” are to the event by virtue of which the relief is withdrawn or reduced as mentioned in sub-paragraph (1)(a).

Marginal Citations

M10 1970 c. 9.

Information to be provided by the investing company

- 64 (1) This paragraph applies where—
- (a) the investing company has obtained investment relief in respect of the relevant shares, and
 - (b) an event occurs by reason of which—
 - (i) the company is not a qualifying investing company in relation to those shares,
 - (ii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 47 (receipt of value by investing company), or
 - (iii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 59 (put options and call options).
- (2) Where this paragraph applies the investing company must give the Inland Revenue a notice containing particulars of the event.
- (3) Where the investing company—
- (a) is required under this paragraph to give notice of a receipt of value (within paragraph 49(1)), and
 - (b) has knowledge of any replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,
- the notice shall include particulars of that receipt of replacement value (or expected receipt).

In this paragraph “replacement value”, “original recipient”, “original supplier” and “qualifying receipt” shall be construed in accordance with paragraph 54.

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- (4) Subject to sub-paragraph (5), any notice required to be given by the company under sub-paragraph (2) must be given—
- (a) within 60 days after the event, or
 - (b) where the event is the receipt of value by a person connected with the company (see paragraph 53), within 60 days after the company's coming to know of the event.
- (5) In a case within sub-paragraph (1)(b)(ii), where the event occurred before the issue of the relevant shares, any notice required to be given by the investing company under sub-paragraph (2) must be given—
- (a) within 60 days after the issue of the shares, or
 - (b) where—
 - (i) the event is the receipt of value by a person connected with the company (see paragraph 53), and
 - (ii) the company comes to know of the event on or after the issue of the shares,
 within 60 days after the company's coming to know of the event.

Information to be provided by the issuing company etc.

- 65 (1) This paragraph applies where—
- (a) the issuing company has provided the Inland Revenue with a compliance statement in respect of an issue of shares, and
 - (b) an event occurs by reason of which—
 - (i) the issuing company is not a qualifying issuing company in relation to any of the shares included in that issue, or would not be such a company if investment relief had been obtained in respect of the shares in question,
 - (ii) the requirements of Part IV of this Schedule are not met in respect of any of the shares included in that issue, or would not be met if investment relief had been obtained in respect of the shares in question, or
 - (iii) paragraph 47 (value received by investing company) or 56 (value received by other persons) has effect to cause any investment relief attributable to any of the shares included in that issue to be withdrawn or reduced, or would have such an effect if investment relief had been obtained in respect of the shares in question.
- (2) Where this paragraph applies—
- (a) the company, and
 - (b) any person connected with the company who has knowledge of the matters mentioned in sub-paragraph (1),
- must give the Inland Revenue a notice containing particulars of the event.
- (3) Sub-paragraph (3) of paragraph 64 shall apply in relation to a person required to give notice under this paragraph of a receipt of value within paragraph 49(1) as it applies to a company required to give such a notice under paragraph 64.
- (4) Subject to sub-paragraph (6) any notice required to be given by a company under sub-paragraph (2)(a) must be given—
- (a) within 60 days after the event, or

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- (b) where the event is—
 - (i) a failure by the company to meet the requirement of paragraph 18 (the “individual-owners requirement”) in respect of any of those shares; or
 - (ii) a receipt of value within paragraph 49(1) from a person connected with the company (see paragraph 53),
within 60 days after the company’s coming to know of the event.
- (5) Subject to sub-paragraph (6) any notice required to be given by a person within sub-paragraph (2)(b) must be given within 60 days after the person’s coming to know of the event.
- (6) In a case within sub-paragraph (1)(b)(iii), any notice required to be given by a person under sub-paragraph (2) must be given within 60 days after the issue of the shares if—
 - (a) the event occurred, and
 - (b) the person came to know of it,
before those shares were issued.

Power of Inland Revenue to obtain information

- 66 (1) This paragraph applies where the Inland Revenue have reason to believe that a company or other person—
- (a) has not given a notice which it is required to give under paragraph 64 or 65 in respect of any event, or
 - (b) has given or received value (within the meaning of paragraph 49(1)) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.
- (2) The Inland Revenue may by notice require the person concerned to furnish them, within such time as the Inland Revenue may direct (not being less than 60 days), with such information relating to the event as the Inland Revenue may reasonably require for the purposes of this Schedule.
- (3) In sub-paragraph (1)(b) the reference to an amount of insignificant value shall be construed in accordance with paragraph 47(7)(b).

PART VII

RELIEF FOR LOSSES ON DISPOSALS OF SHARES

Eligibility for relief against income

- 67 (1) The investing company is eligible for relief under this Part (“loss relief”) if—
- (a) it incurs an allowable loss on the disposal of shares to which investment relief is attributable (and not withdrawn in full as a result of the disposal), and
 - (b) the requirements of sub-paragraphs (2) and (3) are met.
- (2) The first requirement is that the shares must have been held continuously by the investing company from the time they were issued until the disposal.

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- (3) The second requirement is that the disposal on which the loss is incurred must be a disposal of the kind described in paragraph (a), (b), (c) or (d) of paragraph 46(2).

Entitlement to claim

- 68 (1) Where the investing company is eligible for loss relief it may make a claim requiring that the loss be set off for the purposes of corporation tax against income—
- (a) of the accounting period in which the loss is incurred, and
 - (b) if the claim so requires, of accounting periods ending within the preceding 12 month period.
- (2) A claim under sub-paragraph (1) must be made within two years after the end of the accounting period in which the loss is incurred.
- (3) In this paragraph “the preceding 12 month period” means the 12 months ending immediately before the accounting period in which the loss is incurred.

Form of loss relief

- 69 (1) Where a claim is made under sub-paragraph (1) of paragraph 68, the income of any of the accounting periods mentioned in that sub-paragraph shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this sub-paragraph against income of a later accounting period.
- This is subject to loss relief first being obtained for any earlier loss.
- (2) The amount of the reduction which may be made under this paragraph in the income of an accounting period beginning before the preceding 12 month period (within the meaning of paragraph 68(3)) shall not exceed a part of that income proportionate to the part of the accounting period falling within that period.

Priority of loss relief

- 70 (1) Where loss relief is claimed by the investing company it must be claimed—
- (a) in priority to any relief claimed by that company under section 573 of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), and
 - (b) before any deduction is made for charges on income or other amounts which can be deducted from or set against or treated as reducing profits of any description.
- (2) Where loss relief is obtained for an amount of a loss no deduction shall be made in respect of that amount—
- (a) by virtue of section 573(2) of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), or
 - (b) for the purposes of corporation tax on chargeable gains.

Tax avoidance

- 71 (1) Sub-paragraph (2) applies where shares would, in the absence of paragraph 82 (which disapplies sections 135 and 136 of the 1992 Act in respect of shares to

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which investment relief is attributable), be the subject of an exchange or arrangement which—

- (a) is of the kind mentioned in section 135 or 136 of the 1992 Act (company reconstructions etc.), and
 - (b) would involve a disposal of shares, by reason of—
 - (i) section 137(1) of that Act (schemes with tax avoidance purpose), or
 - (ii) paragraph 96(2)(b) (company treated as disposing of shares in the case of certain reconstructions and amalgamations involving tax avoidance).
- (2) Where this sub-paragraph applies no loss relief may be obtained in respect of any allowable loss incurred on the disposal.
- (3) Where a claim is made under this Part in respect of a loss accruing on the disposal of shares, section 30 of the 1992 Act (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and (5) of that section to a tax-free benefit there were substituted references to any benefit whether tax-free or not.

Adjustment of corporation tax

- 72 The Inland Revenue shall make any adjustment of corporation tax required as a result of—
- (a) loss relief being obtained in respect of an allowable loss, or
 - (b) loss relief not being obtained for the whole or part of a loss in respect of which a claim is made under this Part,
- whether by way of assessment, discharge or repayment of tax.

PART VIII

DEFERRAL RELIEF

Introduction

- 73 (1) This Part applies where—
- (a) a chargeable gain (“the original gain”) accrues to the investing company at any time (“the accrual time”),
 - (b) the gain is one accruing either—
 - (i) on a disposal of shares to which investment relief was attributable immediately before the disposal, or
 - (ii) by virtue of paragraph 79 on the occurrence of a chargeable event in relation to shares to which deferral relief is attributable immediately before the event,
- and
- (c) the investing company makes a qualifying investment.
- (2) In determining for the purposes of sub-paragraph (1)(a) whether or not a chargeable gain accrues at any time paragraph 76 (postponement of original gain) shall be disregarded.

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- (3) Sub-paragraph (1)(b)(i) does not apply to a disposal of shares unless the shares were held by the investing company continuously from the time they were issued until the disposal.

Meaning of “qualifying investment”

- 74 (1) For the purposes of this Part the investing company makes a qualifying investment if—
- (a) it subscribes for any shares to which investment relief is attributable,
 - (b) the shares are not issued by a prohibited company,
 - (c) the shares are issued to the investing company at a qualifying time, and
 - (d) where the shares were issued before the accrual time—
 - (i) they have been held continuously by the investment company from the time they were issued until that time, and
 - (ii) investment relief is attributable to the shares at that time.
- (2) For the purposes of sub-paragraph (1)—
- “a prohibited company” means—
- (a) the company whose shares comprised the original holding, or
 - (b) a company that was, at the accrual time or the time of the issue of the qualifying shares (or both), a member of the same group as that company; and
- “a qualifying time” means any time in the period of four years beginning one year before the accrual time.
- (3) For the purposes of the definition of “a prohibited company” in sub-paragraph (2), “the original holding” means—
- (a) where the original gain accrued as mentioned in sub-paragraph (i) of paragraph 73(1)(b), the shares disposed of, and
 - (b) where the original gain accrued as mentioned in sub-paragraph (ii) of paragraph 73(1)(b), the shares in relation to which the chargeable event occurred.

Meaning of “the qualifying share”

- 75 (1) For the purposes of this Part “the qualifying shares”, in relation to a case where this Part applies, means the shares which are acquired by the investing company in making the qualifying investment.
- This is subject to sub-paragraphs (2) and (4).
- (2) If any corresponding bonus shares are issued to the investing company, this Part shall apply as if references to the qualifying shares were to all the shares comprising the qualifying shares and the bonus shares so issued.
- (3) In sub-paragraph (2) “corresponding bonus shares” means bonus shares which—
- (a) are issued in respect of the qualifying shares, and
 - (b) are in the same company, of the same class and carry the same rights as those shares.
- (4) If in circumstances where paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies new shares are issued in exchange for old

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shares, references in this Part to the qualifying shares, so far as they relate to the old shares, shall be construed as references to the new shares.

For this purpose “old shares” and “new shares” have the same meaning as in that paragraph.

Postponement of original gain

- 76 (1) On the making of a claim by the investing company for the purposes of this Part, so much of the investing company’s unused qualifying expenditure on the qualifying 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 the qualifying shares is set under this paragraph against the whole or part of the original gain, then for the purposes of corporation tax on chargeable gains—
- (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) paragraph 79 applies for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of the qualifying shares.
- (3) For the purposes of this Part—
- (a) the investing company’s qualifying expenditure on the qualifying shares is the amount subscribed by it for the shares, and
 - (b) that expenditure is unused to the extent that it has not already been set under this paragraph 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 the qualifying shares to the extent that it has not had any other expenditure set against it under this paragraph.

Meaning of “deferral relief”

- 77 For the purposes of this Schedule “deferral relief” is attributable to any shares if—
- (a) expenditure on the shares has been set under paragraph 76 against the whole or part of any gain, and
 - (b) there has been no chargeable event for the purposes of this Part in relation to the shares.

Chargeable events

- 78 (1) There is, for the purposes of this Part, a chargeable event in relation to any of the qualifying shares if—
- (a) the investing company disposes of those shares, or
 - (b) any other event occurs by reason of which the investment relief attributable to those shares is reduced or withdrawn otherwise than by virtue of paragraph 46(2) or (3) (withdrawal of investment relief on disposal of shares).
- (2) For the purposes of sub-paragraph (1)(b), where the qualifying investment is made before the time at which the original gain accrues, any reduction of the investment

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relief attributable to the qualifying shares that is made by reason of an event that occurs before the accrual time shall be disregarded.

Gain accruing on chargeable event

- 79 (1) This paragraph applies where a chargeable event occurs in relation to any of the qualifying shares in relation to which there has not been a previous chargeable event.
- (2) Where this paragraph applies, then for the purposes of corporation tax on chargeable gains—
- (a) a chargeable gain shall be treated as accruing to the investing company at the time of the event, and
 - (b) the amount of the gain shall be equal to so much of the deferred gain as is attributable to the shares in relation to which the chargeable event occurs.
- (3) In order to determine, for this purpose, the amount of the deferred gain attributable to any shares, a proportionate part of the amount of the gain shall be attributed to each of the qualifying shares held immediately before the occurrence of the chargeable event in question by the investing company.
- (4) In this paragraph “the deferred gain” means—
- (a) the amount of the original gain against which expenditure has been set under paragraph 76, less
 - (b) the amount of any gain treated as accruing under this paragraph previously in consequence of a chargeable event in relation to any of the qualifying shares.
- (5) For the purposes of section 10 of the 1992 Act (taxation of chargeable gains accruing to non-resident with UK branch or agency) a chargeable gain treated as accruing by virtue of this paragraph shall be treated as a chargeable gain accruing on the disposal of an asset to which subsection (3) of that section applies.

PART IX

COMPANY RESTRUCTURING

Share reorganisations

- 80 (1) Where a company (“the company”) holds shares which—
- (a) form part of the ordinary share capital of another company,
 - (b) are of the same class and held in the same capacity, and
 - (c) include shares falling within two or more of the categories in sub-paragraph (2),
- then, where there is a reorganisation affecting those shares to which section 116 or section 127 of the 1992 Act applies, section 116 or (as the case may be) section 127 shall apply separately to shares falling within each of those categories.
- (2) The categories referred to in sub-paragraph (1)(c) are—
- (a) shares to which deferral relief is attributable;
 - (b) shares—
 - (i) to which investment relief but not deferral relief is attributable, and

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- (ii) which have been held continuously by the company since the time they were issued until the reorganisation; and
- (c) shares not within paragraph (a) or (b) above.

(3) In this paragraph “reorganisation” has the meaning given in section 126 of the 1992 Act.

Rights issues etc.

- 81 (1) Where—
- (a) a company (“the company”) holds shares (“the existing holding”) which—
 - (i) form part of the ordinary share capital of another company, and
 - (ii) are of the same class and held in the same capacity,
 - (b) there is by virtue of such an allotment as is mentioned in section 126(2)(a) of the 1992 Act (an allotment of shares or debentures in respect of and in proportion to an original holding), other than an allotment of corresponding bonus shares, a reorganisation affecting the existing holding,
 - (c) immediately following the reorganisation, investment relief is attributable to the shares comprised in the existing holding or the shares allotted in respect of those shares, and
 - (d) if investment relief is attributable to the shares comprised in the existing holding at that time, those shares have been held by the company continuously from the time they were issued until the reorganisation,
- sections 127 to 130 of that Act (treatment of share capital following a reorganisation) shall not apply in relation to the existing holding.
- (2) Subsection (10) of section 116 of that Act (reorganisations, conversions and reconstructions) shall not apply in any case where the old asset consists of shares held (in the same capacity) by a company—
- (a) that have been held by it continuously from the time they were issued until the relevant transaction, and
 - (b) to which investment relief is attributable immediately before that transaction.

In this sub-paragraph “old asset” and “the relevant transaction” have the meanings given in section 116 of that Act.

- (3) For the purposes of sub-paragraph (1)—
- “corresponding bonus shares” means bonus shares that—
- (a) are issued in respect of shares comprised in the existing holding, and
 - (b) are of the same class, and carry the same rights, as those shares;
- “reorganisation” has the meaning given in section 126 of that Act.

Company reconstructions and amalgamations

- 82 (1) Where—
- (a) a company (“the company”) holds shares (“the existing holding”) in a company (“company A”),
 - (b) there is a reconstruction or amalgamation affecting the existing holding,
 - (c) immediately before the reconstruction or amalgamation, investment relief is attributable to the shares comprised in the existing holding, and

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(d) the shares comprised in the existing holding have been held by the company continuously from the time they were issued until the reconstruction or amalgamation,

sections 135 and 136 of the 1992 Act (company reconstructions and amalgamations) shall not apply in respect of the existing holding.

This is subject to paragraph 84 (no disposal on certain exchanges of shares).

- (2) Sub-paragraph (1)(a) applies only where the shares are held by the company in the same capacity.
- (3) For the purposes of sub-paragraph (1) a “reconstruction or amalgamation” means an issue by a company (“company B”) of shares in or debentures of that company in exchange for or in respect of shares in or debentures of company A.

Certain exchanges resulting in acquisition of share capital by new company

- 83 (1) Paragraphs 84 and 85 apply where—
- (a) arrangements are made in accordance with which a company (“the new company”) acquires all the shares (“old shares”) in another company (“the old company”);
 - (b) the acquisition provided for by the arrangements falls within sub-paragraph (2); and
 - (c) the Inland Revenue have, before any exchange of shares takes place under the arrangements, given an approval notification.
- (2) An acquisition of shares falls within this sub-paragraph if—
- (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;
 - (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—
 - (i) subscriber shares, and
 - (ii) new shares previously issued in consideration of old shares;
 - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description; and
 - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.
- (3) For the purposes of sub-paragraph (1)(c) an approval notification is one which, on an application by either the old company or the new company, is given to the applicant company and states that the Inland Revenue are satisfied that the exchange of shares under the arrangements—
- (a) will be effected for commercial reasons, and
 - (b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act (schemes with tax avoidance purpose).
- (4) 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.
- (5) In this paragraph references to “shares”, except in the expression “subscriber shares”, include securities.

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- (6) References in paragraphs 84 to 87 to “shares”, “old shares”, “new shares”, “the old company” and “the new company” shall be construed in accordance with this paragraph.

No disposal on certain exchanges of shares

- 84 (1) Where this paragraph applies (see paragraph 83), nothing in paragraph 82 has effect to disapply section 135 of the 1992 Act (exchange of shares etc. for those in another company).

Accordingly, by virtue of section 127 of that Act (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) In its application by virtue of sub-paragraph (1), section 127 of the 1992 Act shall have effect subject to paragraph 80 (shares to which investment relief or investment and deferral relief is attributable treated as separate holdings).

Attribution of relief to new shares

- 85 (1) Where this paragraph applies (see paragraph 83), any investment relief or deferral relief which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

- (2) Where investment relief becomes so attributable to any new shares—

(a) this Schedule shall have effect as if anything which under paragraph 41, 42, 60 or 65 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

(b) any appeal brought by the old company against—

(i) the refusal of the Inland Revenue to authorise the issue of a compliance certificate, or

(ii) a notice under paragraph 60(3)(b),

may be prosecuted by the new company as if it had been brought by that company.

Substitution of new shares for old shares

- 86 (1) This paragraph applies where—

(a) relief becomes attributable, by virtue of paragraph 85, to any new shares held by a company (“the company”), and

(b) the old shares for which those shares were exchanged (“the relevant old shares”) were—

(i) subscribed for by and issued to the company, and

(ii) held by it continuously from the time they were issued until the exchange.

- (2) Where this paragraph applies this Schedule shall have effect as if—

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- (a) the matching new shares had been subscribed for by the company at the time when, and for the amount for which, the relevant old shares were subscribed for,
 - (b) the matching new shares had—
 - (i) been issued at the time when the relevant old shares were issued, and
 - (ii) been held continuously by the company from that time until the exchange,
 - (c) any claim for relief under Part V (investment relief), or Part VIII (deferral relief), of this Schedule made in respect of the relevant old shares had been made in respect of the matching new shares, and
 - (d) the company's liability to corporation tax had been reduced under Part V of this Schedule in respect of the matching new shares for the same accounting period as that for which its liability was so reduced in respect of the relevant old shares.
- (3) For the purposes of this paragraph old shares and new shares are matching shares in relation to each other if the old shares are the shares for which those new shares are exchanged under the arrangements.

Operation of requirements of Parts II and III in relation to new shares

- 87 (1) This paragraph applies where paragraph 86 (substitution of new shares for old shares) applies in relation to any new shares held by a company.
- (2) If, immediately before the exchange, any of the requirements of paragraphs 5, 8 and 13 (requirements to be met by a qualifying investing company in relation to the relevant shares) was (or was deemed to be) met to any extent by the company in relation to the matching old shares, the requirement shall be deemed to be met by the company to the same extent in relation to the new shares.
- (3) If, immediately before the exchange, any of the requirements of paragraphs 16 to 22 (requirements to be met by a qualifying issuing company) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares, it shall be deemed to be met to the same extent by the new company in relation to the new shares.
- (4) In determining whether the requirements of paragraphs 17 (the independence requirement) and 20 (the qualifying subsidiaries requirement) are met in relation to the old company or the new company at a time in the period for giving effect to the arrangements, both—
- (a) the arrangements themselves, and
 - (b) any exchange of new shares for old shares that has already taken place under the arrangements,
- shall be disregarded.
- (5) If, immediately before the period for giving effect to the arrangements, the requirement of paragraph 23(1) (the trading activities requirement) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares—
- (a) it shall be deemed to be met to the same extent by the new company in relation to the new shares, and
 - (b) to the extent that it would not otherwise be the case, it shall also be deemed to be met by that company in relation to those shares at all times which—

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- (i) fall in the period for giving effect to the arrangements, and
 - (ii) do not fall after a time when (apart from the arrangements) the requirement would have ceased to have been met by the old company in relation to the matching old shares.
- (6) For the purposes of this paragraph—
- (a) “the period for giving effect to the arrangements” means the period which—
 - (i) begins when those arrangements first come into existence; and
 - (ii) ends when the new company completes its acquisition under the arrangements of all the old shares;
 - and
 - (b) references to matching shares shall be construed in accordance with paragraph 86(3).

Relationship between this Part and the 1992 Act

- 88 The following provisions of the 1992 Act have effect subject to paragraphs 80, 81, 82 and 84 (which make special provision in respect of company reorganisations etc. involving shares to which investment relief is attributable)—
- section 116 (reorganisations, conversions and reconstructions); and
- Chapter II of Part IV (reorganisation of share capital, conversion of securities etc.).

PART X

ADVANCE CLEARANCE

Application for advance clearance notice

- 89 (1) A company (“the applicant”) may, before issuing any shares, make an application to the Board for an advance clearance notice in respect of that issue.
- (2) An advance clearance notice is a notice issued by the Board in respect of an issue of shares which states that, on the basis of the particulars, declarations and undertakings provided by the applicant, the Board are satisfied that, at the time the shares are issued, the requirements of Parts III and IV of this Schedule will be met (or, in the case of any requirement that cannot be met until a future date, will be met for the time being) in relation to the shares.
- (3) For the purposes of determining whether they are satisfied as mentioned in subparagraph (2) the Inland Revenue shall assume that the shares included in the issue of shares are “the relevant shares”.
- (4) An application under this paragraph must—
- (a) contain the particulars, declarations and undertakings required by the Board, and
 - (b) disclose all facts and circumstances material for the decision of the Board.
- (5) In this Part references to an “application” are to an application under this paragraph.

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Provision of further information

- 90 (1) On receiving an application for an advance clearance notice, the Board may by notice (“an information notice”) require the applicant to provide them, within such time as the Board may direct (not being less than 30 days), with such further particulars as the Board deem necessary to enable them to decide whether or not to issue an advance clearance notice.
- (2) An information notice must be given—
- (a) within 30 days after the receipt of the application, or
 - (b) if further particulars have already been provided in response to an earlier information notice, within 30 days after the receipt of those particulars.
- (3) If the applicant does not comply with an information notice within the period specified in the notice, the Board need not proceed further on the application.

Decision on application and review procedure

- 91 (1) The Board must within 30 days after receiving an application or, where an information notice is given in relation to the application, within 30 days after that notice being complied with—
- (a) issue an advance clearance notice in respect of the shares to which the application relates, or
 - (b) notify the applicant that the Board are not satisfied as mentioned in paragraph 89(2) in respect of those shares.
- This is subject to sub-paragraph (3) and to paragraph 90(3) (circumstances in which Board need not proceed on application).
- (2) In a case where two or more information notices are given in relation to the application, the time limit in sub-paragraph (1) is calculated by reference to the time when the later (or last) of the notices is complied with.
- (3) If before the Board issue an advance clearance notice in respect of the issue of shares to which the application relates, or notify the applicant under sub-paragraph (1), the applicant issues the shares in question, the Board need not proceed further on the application.
- (4) If the Board—
- (a) notify the applicant that they are not satisfied as mentioned in paragraph 89(2), or
 - (b) in a case to which sub-paragraph (3) does not apply, fail to notify their decision to the applicant in accordance with sub-paragraph (1),
- the applicant may, within 30 days after the notification or failure, require the Board to transmit the application, together with any information notices given and further particulars provided under paragraph 90, to the Special Commissioners.
- (5) Where sub-paragraph (4) applies any notification by the Special Commissioners that they are satisfied as mentioned in paragraph 89(2) shall have effect as if it were an advance clearance notice issued by the Board in respect of the issue of shares in question.

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Effect of advance clearance notice

- 92 (1) For the purposes of this Schedule, where an advance clearance notice is issued in respect of an issue of shares before the shares are issued, the requirements of Parts III and IV of this Schedule shall be treated as met (or, in the case of any requirement that cannot be met until a future date, as met for the time being) in relation to those shares at the time they are issued.
- (2) If—
- (a) any particulars provided in the application for the notice, or in response to any information notice relating to the application, do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, or
 - (b) the applicant or any of its subsidiaries fails to act in accordance with any declaration or undertaking which was given in, or in connection with, the application,
- any resulting advance clearance notice shall be void.
- (3) Sub-paragraph (2)(b) applies in relation to a subsidiary of the applicant whether or not it was such a subsidiary at the time the declaration or undertaking in question was given.

PART XI

SUPPLEMENTARY AND GENERAL

Identification of shares on a disposal

- 93 (1) In any case where—
- (a) a company (“the company”) disposes of part of a holding of shares (“the holding”), and
 - (b) the holding includes shares to which investment relief is attributable that have been held continuously by the company from the time they were issued until the disposal,
- this paragraph applies for the purpose of identifying the shares disposed of.
- (2) For the purposes of this paragraph “holding” means any number of shares of the same class in another company held by the company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.
- (3) Where shares included in the holding have been acquired by the company on different days, then, for the purposes of corporation tax on chargeable gains and of this Schedule, any disposal by the company of any of those shares shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (4) Where shares included in the holding have been acquired by the company on the same day, then, for the purposes of corporation tax on chargeable gains and of this Schedule, if there is a disposal by the company of any of those shares, any shares—
- (a) to which investment relief is attributable, and
 - (b) which have been held by the company continuously from the time they were issued until the time of disposal,

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shall be treated as disposed of after any other shares included in the holding which were acquired by the company on that day.

- (5) Chapter I of Part IV of the 1992 Act (share pooling, etc.) shall have effect subject to this paragraph.
- (6) Sections 104 to 106 and 107 of that Act (which make provision for the purposes of corporation tax on chargeable gains for the identification of shares on a disposal) shall not apply to shares to which investment relief is attributable.
- (7) In a case to which section 127 of that Act (equation of original shares and new holding) applies (whether or not by virtue of section 135(3) of that Act), shares comprised in the new holding shall be treated for the purposes of sub-paragraphs (3) and (4) as acquired when the original shares were acquired.

In this sub-paragraph “new holding” and “original shares” shall be construed in accordance with sections 126, 127, 135 and 136 of that Act.

Determination of loss where investment relief is attributable to shares

- 94 (1) This paragraph applies for the purposes of corporation tax on chargeable gains where—
- (a) a company disposes of shares which were held by it continuously from the time they were issued until the disposal,
 - (b) investment relief is attributable to the shares (and not withdrawn in full as a result of the disposal), and
 - (c) apart from sub-paragraph (2), there would be a loss on the disposal.
- (2) For the purpose of determining the gain or loss on the disposal the consideration given by the company for the shares is treated as reduced by the amount of the investment relief attributable to the shares immediately after the disposal.
- (3) Any gain which accrues by virtue of sub-paragraph (2) is not a chargeable gain.
- (4) Notwithstanding the definition of “allowable loss” in section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), nothing in sub-paragraph (3) has effect in relation to any loss determined in accordance with sub-paragraph (2) to prevent it being an allowable loss.

Nominees

- 95 Shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for any person shall be treated for the purposes of this Schedule as subscribed for by, issued to, acquired or held by or disposed of by that person.

Meaning of “disposal”

- 96 (1) Subject to sub-paragraph (2), in this Schedule “disposal” shall be construed in accordance with the 1992 Act, and cognate expressions shall be construed accordingly.

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- (2) A company shall be treated for the purposes of this Schedule, and for the purposes of corporation tax on chargeable gains, as disposing of any shares which but for paragraph 82 (company reconstructions and amalgamations) it—
- (a) would be treated as exchanging for other shares by virtue of section 136(1) of the 1992 Act, or
 - (b) would be so treated but for section 137(1) of the 1992 Act (which restricts sections 135 and 136 of that Act to bona fide reconstructions and amalgamations).

Construction of references to shares being “held continuously”

- 97 (1) This paragraph applies where for the purposes of this Schedule it falls to be determined whether a company has held shares continuously throughout any period.
- (2) The company shall not be treated as having held shares continuously throughout a period if—
- (a) it is deemed, under any provision of the 1992 Act, to have disposed of and immediately reacquired the shares at any time during the period, or
 - (b) it is treated as having disposed of the shares at any such time, by virtue of paragraph 96(2) (on reconstruction or amalgamation company treated as disposing of shares continuously held by it to which investment relief is attributable).

Meaning of “issue of share”

- 98 In this Schedule—
- (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and issued on the same day; and
 - (b) references (however expressed) to an issue of shares in a company to a person are references to such of the shares in an issue of shares in that company as are issued to that person in one capacity.

Meaning of “associate”

- 99 (1) In this Schedule “associate”, in relation to a person, means—
- (a) any relative or partner of that person,
 - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and
 - (c) where that person is interested in any shares or obligations of a company which are subject to any trust, or are part of the estate of a deceased person—
 - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
 - (ii) if that person is a company, any other company interested in those shares or obligations.
- (2) In sub-paragraph (1)(a) and (b) “relative” means husband or wife, parent or remoter forebear or child or remoter issue.
- (3) In sub-paragraph (1)(b) “settlor” and “settlement” have the same meaning as in Chapter IA of Part XV of the Taxes Act 1988 (see section 660G(1) and (2)).

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“The Board” and “the Inland Revenue”

100 In this Schedule—

- (a) “the Board” means the Commissioners of Inland Revenue; and
- (b) references to “the Inland Revenue” are to any officer of the Board.

Power to amend by Treasury order

101 The Treasury may by order amend this Schedule—

- (a) to make such amendments of—
 - (i) paragraphs 10 to 12 (the non-financial activities requirement), or
 - (ii) paragraphs 23 to 33 (the trading activities requirement),
 as they consider expedient;
- (b) to substitute different sums of money for those for the time being specified in paragraph 22 (gross assets requirement).

Minor definitions etc.

102 (1) In this Schedule—

“allowable loss” means an allowable loss for the purposes of corporation tax on chargeable gains;

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;

“chargeable gain” means a chargeable gain for the purposes of corporation tax on chargeable gains;

“class”, in relation to shares or securities, means a class of shares in or securities of any one company (see sub-paragraph (2));

“director” shall be construed in accordance with section 417(5) of the Taxes Act 1988;

“group” means a parent company and its 51% subsidiaries;

“group company”, in relation to a group, means the parent company and any of its 51% subsidiaries;

“ordinary share capital”, except in paragraph 7 (meaning of “material interest”), has the meaning given in section 832(1) of the Taxes Act 1988;

“ordinary shares” means shares forming part of a company’s ordinary share capital;

“parent company” means a company that—

- (a) has one or more 51% subsidiaries, but
- (b) is not itself a 51% subsidiary of another company;

“research and development” has the meaning given by section 837A of the Taxes Act 1988;

“single company” means a company that is not a parent company or a 51% subsidiary of a parent company;

“the 1992 Act” means the ^{M11}Taxation of Chargeable Gains Act 1992.

- (2) For the purposes of this Schedule shares in or securities of 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.

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- (3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.
- (4) References in this Schedule to a company being in administration or receivership shall be construed as follows—
- (a) references to a company being “in administration” are to there being in force in relation to it—
 - (i) an administration order under Part II of the ^{M12}Insolvency Act 1986 or Part III of the ^{M13}Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom;
 - (b) references to a company being “in receivership” are to there being in force in relation to it—
 - (i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the ^{M14}Insolvency Act 1986 or Part IV of the ^{M15}Insolvency (Northern Ireland) Order 1989, or
 - (ii) any corresponding order under the law of a country or territory outside the United Kingdom.
- (5) For the purposes of this Schedule the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (6) In this Schedule—
- (a) references to investment relief obtained by a company in respect of any shares include references to investment relief obtained by it in respect of those shares at any time after it has disposed of them, and
 - (b) references to the withdrawal or reduction of investment relief obtained by a company in respect of any shares include references to the withdrawal or reduction of investment relief obtained in respect of those shares at any such time.
- (7) In the case of a requirement that cannot be met until a future date—
- (a) references in this Schedule to a requirement being met for the time being are to nothing having occurred to prevent its being met, and
 - (b) references to its continuing to be met are to nothing occurring to prevent its being met.

Marginal Citations

- M11** 1992 c. 12.
- M12** 1986 c. 45.
- M13** S.I. 1989/2405 (N.I.19).
- M14** 1986 c. 45.
- M15** S.I. 1989/2405 (N.I.19).

Index of defined expressions

- 103 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

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allowable loss	paragraph 102(1)
application (in Part X)	paragraph 89(5)
arrangements	paragraph 102(1)
associate	paragraph 99
the Board	paragraph 100
chargeable gain	paragraph 102(1)
class (of shares)	paragraph 102(1) and (2)
compliance certificate	paragraph 41
compliance statement	paragraph 42
connected person	paragraph 102(3)
deferral relief	paragraph 77
director	paragraph 102(1)
disposal	paragraph 96
excluded activities	paragraph 26
group	paragraph 102(1)
group company	paragraph 102(1)
held continuously (in relation to shares)	paragraph 97
the Inland Revenue	paragraph 100
the investing company	paragraph 2
investment relief	paragraph 1
issue of shares	paragraph 98
the issuing company	paragraph 2
loss relief	paragraph 67(1)
market value	paragraph 102(5)
material interest	paragraph 7
new company (in paragraphs 83 to 87)	paragraph 83
new shares (in paragraphs 83 to 87)	paragraph 83
non-financial trade	paragraph 11
non-financial trading group	paragraph 12
old company (in paragraphs 83 to 87)	paragraph 83
old shares (in paragraphs 83 to 87)	paragraph 83
ordinary share capital	paragraphs 7 and 102(1)
ordinary shares	paragraph 102(1)
parent company	paragraph 102(1)

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the period of restriction	paragraph 48
the qualification period	paragraph 3
the qualifying shares (in Part VIII)	paragraph 75
qualifying subsidiary	paragraph 21
qualifying trade	paragraph 25
in receivership	paragraph 102(4)(b)
relevant preference shares	paragraph 9
the relevant shares	paragraph 2
relief attributable to shares	
investment relief	paragraph 45
deferral relief	paragraph 77
research and development	paragraph 102(1)
single company	paragraph 102(1)
the 1992 Act	paragraph 102(1)
trading activities requirement	paragraph 23(2) and (3)

Status:

Point in time view as at 01/10/2000.

Changes to legislation:

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