



Income Tax Act 2007

2007 CHAPTER 3

PART 5 **U.K.**

ENTERPRISE INVESTMENT SCHEME

CHAPTER 3 **U.K.**

GENERAL REQUIREMENTS

Introduction

172 Overview of Chapter **U.K.**

The general requirements are met in respect of the relevant shares if the requirements of this Chapter are met as to—

- (a) the shares (see section 173),
- [^{F1}(aa) the maximum amount raised annually through risk [^{F2}finance investments] (see section 173A),]
- [^{F3}(aaa) the maximum risk finance investments at the issue date (see section 173AA),
- (aab) the maximum risk finance investments at times during period B (see section 173AB),]
- ^{F4}(ab)
- (b) the purpose of the issue (see section 174),
- (c) the use of the money raised (see section 175),
- [^{F5}(ca) the permitted maximum age (see section 175A),]
- (d) the minimum period (see section 176),
- (e) no pre-arranged exits (see section 177), and
- (f) no tax avoidance (see section 178)[^{F6}, and
- (g) no disqualifying arrangements (see section 178A)].

Status: Point in time view as at 18/11/2015.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 3. (See end of Document for details)

Textual Amendments

- F1** S. 172(aa) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 5(2)** (with [Sch. 16 para. 5\(5\)\(6\)](#))
- F2** Words in s. 172(aa) substituted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 6(a)**
- F3** S. 172(aaa)(aab) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 6(b)**
- F4** S. 172(ab) omitted (with effect in accordance with Sch. 5 para. 21 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 6(c)**
- F5** S. 172(ca) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 6(d)**
- F6** S. 172(g) and preceding word inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 5**

The requirements

173 The shares requirement **U.K.**

- (1) The relevant shares must meet—
 - (a) the requirements of subsection (2), and
 - (b) unless they are bonus shares, the requirements of subsection (3).
- (2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—
 - [^{F7}(a) any present or future preferential right to dividends that is within subsection (2A),
 - (aa) any present or future preferential right to a company's assets on its winding up,] or
 - (b) any present or future right to be redeemed.
- [^{F8}(2A) A preferential right to dividends carried by a share in a company is within this subsection if—
 - (a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or
 - (b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right, but has not been paid.]
- (3) Shares meet the requirements of this subsection if they—
 - (a) are subscribed for wholly in cash, and
 - (b) are fully paid up at the time they are issued.
- (4) Shares are not fully paid up for the purposes of subsection (3)(b) if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.

Status: Point in time view as at 18/11/2015.

Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 3. (See end of Document for details)

Textual Amendments

- F7** S. 173(2)(a)(aa) substituted (17.7.2012) for s. 173(2)(a) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 6\(2\)](#)
- F8** S. 173(2A) inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 6\(3\)](#)

[^{F9}173A The maximum amount raised annually through risk [^{F10}finance investments] requirement **U.K.**]

(1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed [^{F11}£5 million].

[^{F12}(2) In subsection (1), the reference to relevant investments made in the issuing company includes—

- (a) a relevant investment made in any company that has at any time in the year mentioned there been a 51% subsidiary of the issuing company (including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the end of that year, not those made after it last ceased to be such a subsidiary),
- (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time in that year been a 51% subsidiary of the issuing company (but, if it is not such a subsidiary at the end of that year, ignoring any money so employed after it last ceased to be such a subsidiary), and
- (c) any other relevant investment made in a company if—
 - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and
 - (ii) in that year, after the investment was made, the trade (or a part of it) became a relevant transferred trade (see subsection (2B)).

(2A) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which becomes a relevant transferred trade, the reference in subsection (2)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.

(2B) Where—

- (a) in the year mentioned in subsection (1) a trade is transferred—
 - (i) to the issuing company,
 - (ii) to a company that has at any time during that year been a 51% subsidiary of the issuing company, or
 - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, in that year before the company became such a subsidiary but, if the company is not such a subsidiary at the end of that year, not where it is transferred to such a company or partnership after the company last ceased to be such a subsidiary), and
- (b) that trade or a part of it was previously (at any time) carried on by another person,

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the trade or part mentioned in paragraph (b) becomes a “ relevant transferred trade ” at the time it is transferred as mentioned in paragraph (a).]

- (3) A “relevant investment” is made in a company if—
- (a) an investment (of any kind) in the company is made by a VCT , or
 - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
 - (i) a compliance statement under section 205, or
 - [a compliance statement under section 257ED (seed enterprise ^{F13}(ia) investment scheme).]
 - ^{F14}(ii)
 - in respect of the shares^{F15}, or
 - ^{F16}(ba) [an investment is made in the company and (at any time) the company provides a compliance statement under section 257PB (tax relief for social investments) in respect of the investment, or]
 - (c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the [^{F17}European Commission's Guidelines on State aid to promote risk finance investment] (as those guidelines may be amended or replaced from time to time).]
- (4) An investment within subsection (3)(b) is regarded as made when the shares are issued.
- [Section 257KB applies in determining for those purposes when an investment within ^{F18}(5) subsection (3)(ba) is made as it applies for the purposes of Part 5B (tax relief on social investments).]
- [For the purposes of this section—
- ^{F19}(6) (a) references to a trade include a part of a trade (and references to the carrying on of a trade are to be construed accordingly);
- (b) when determining the amount of money raised by a relevant investment which has been employed for the purposes of a trade such apportionments are to be made as are just and reasonable.
- (7) In this section “trade” includes—
- (a) any business or profession,
 - (b) so far as not within paragraph (a), the carrying on of research and development activities from which it is intended a trade will be derived or will benefit, and
 - (c) preparing to carry on a trade.]]

Textual Amendments

- F9** S. 173A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 5\(3\)](#) (with [Sch. 16 para. 5\(5\)\(6\)8](#))
- F10** Words in s. 173A heading substituted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(6\)](#)
- F11** Words in s. 173A(1) substituted (19.7.2012) (with effect in accordance with Sch. 7 para. 23(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 7\(2\), 23\(1\)](#); [S.I. 2012/1896, art. 2\(a\)](#)
- F12** S. 173A(2)-(2B) substituted for s. 173A(2) (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(2\)](#)

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- F13** S. 173A(3)(b)(ia) inserted (17.7.2012) (with effect in accordance with Sch. 6 para. 24(1) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 12](#)
- F14** S. 173A(3)(b)(ii) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 7\(3\)\(a\)](#)
- F15** S. 173A(3)(c) and preceding word inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 7\(3\)\(b\)](#)
- F16** S. 173A(3)(ba) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(3\)\(a\)](#)
- F17** Words in s. 173A(3)(c) substituted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(3\)\(b\)](#)
- F18** S. 173A(5) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(4\)](#)
- F19** S. 173A(6)(7) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 7\(5\)](#)

Modifications etc. (not altering text)

- C1** S. 173A(3)(4) applied by 1992 c. 12, Sch. 5B para. 1(6) (as inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#)), [Sch. 16 para. 7\(2\)\(b\)](#))

[^{F20}173A] Maximum risk finance investments at the issue date requirement **U.K.**

- (1) The total amount of relevant investments made in the issuing company on or before the issue date must not exceed—
 - (a) if the issuing company is a knowledge-intensive company at the issue date (see section 252A), £20 million, and
 - (b) in any other case, £12 million.
- (2) In subsection (1) the reference to relevant investments made in the issuing company includes—
 - (a) any relevant investment made in any company that at the issue date is, or has at any time before that date been, a 51% subsidiary of the issuing company (including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the issue date, not investments made in it after it last ceased to be such a subsidiary),
 - (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time before the issue date been a 51% subsidiary of the issuing company (but, if it is not such a subsidiary at that date, ignoring any money so employed after it last ceased to be such a subsidiary), and
 - (c) any other relevant investment made in a company if—
 - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and
 - (ii) after the investment was made, but on or before the issue date, that trade became a relevant transferred trade (see subsection (4)).
- (3) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which becomes a relevant transferred trade, the reference in subsection (2)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.
- (4) Where—

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- (a) at any time on or before the issue date, a trade is transferred—
- (i) to the issuing company,
 - (ii) to a company that at the issue date is, or has at any time before that date been, a 51% subsidiary of the issuing company, or
 - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,
- (including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, before the company became such a subsidiary but, if the company is not such a subsidiary at the issue date, not where it is transferred to such a company or partnership after the company last ceased to be such a subsidiary), and
- (b) the trade or a part of it was previously (at any time) carried on by another person,

the trade or part mentioned in paragraph (b) becomes a “relevant transferred trade” at the time it is transferred as mentioned in paragraph (a).

(5) In this section—

“the issue date” means the date on which the relevant shares are issued;

“relevant investment” has the meaning given by section 173A(3), and section 173A(4) and (5) (which determines when certain investments are made) applies for the purposes of this section;

and section 173A(6) and (7) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 173A.

Textual Amendments

F20 Ss. 173AA, 173AB inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 8](#)

173AB Maximum risk finance investments during period B requirement U.K.

- (1) The requirement of this section applies if condition A or B is met.
- (2) Condition A is that—
- (a) a company becomes a 51% subsidiary of the issuing company at any time during period B,
 - (b) all or part of the money raised by the issue of the relevant shares is employed for the purposes of a qualifying business activity which consists wholly or in part of a trade carried on by that company, and
 - (c) that trade (or a part of it) was carried on by that company before it became a 51% subsidiary as mentioned in paragraph (a).
- (3) Condition B is that all or part of the money raised by the issue of the relevant shares is employed for the purposes of a qualifying business activity which consists wholly or in part of a trade which, during period B, becomes a relevant transferred trade.
- (4) The requirement of this section is that, at all times in period B, the total of the relevant investments made in the issuing company before the time in question (“the relevant time”) must not exceed—
- (a) if the issuing company is a knowledge-intensive company at the issue date (see section 252A), £20 million, and

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- (b) in any other case, £12 million.
- (5) In subsection (4) the reference to relevant investments made in the issuing company includes—
- (a) any relevant investment made in any company that at any time before the relevant time has been a 51% subsidiary of the issuing company (including investments made in a company before it became such a subsidiary but, if it is not such a subsidiary at the relevant time, not investments made in it after it last ceased to be such a subsidiary),
 - (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time before the relevant time been a 51% subsidiary of the issuing company (but, if it is not such a subsidiary at the relevant time, ignoring any money so employed after it last ceased to be such a subsidiary), and
 - (c) any other relevant investments made in a company where—
 - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and
 - (ii) after the investment was made, but before the relevant time, that trade (or a part of it) becomes a relevant transferred trade (see subsection (7)).
- (6) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which became a relevant transferred trade, the reference in subsection (5)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.
- (7) Where—
- (a) before the relevant time, a trade is transferred—
 - (i) to the issuing company,
 - (ii) to a company that is at the relevant time, or has before that time been, a 51% subsidiary of the issuing company, or
 - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, before the company became such a subsidiary but, if the company is not such a subsidiary at the relevant time, not where it is transferred to such a company or partnership after the company last ceased to be such a subsidiary), and
 - (b) the trade or a part of it was previously (at any time) carried on by another person,
- the trade or part mentioned in paragraph (b) becomes a “relevant transferred trade” at the time it is transferred as mentioned in paragraph (a).
- (8) In this section—
- “the issue date” means the date on which the relevant shares are issued, and
 - “relevant investment” has the meaning given by section 173A(3), and section 173A(4) and (5) (which determines when certain investments are made) applies for the purposes of this section;
- and section 173A(6) and (7) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 173A.]

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Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 3. (See end of Document for details)

Textual Amendments

F20 Ss. 173AA, 173AB inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 8**

^{F21}173B The spending of money raised by SEIS investment requirement **U.K.**

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Textual Amendments

F21 S. 173B omitted (with effect in accordance with Sch. 5 para. 21 of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 9**

174 The purpose of the issue requirement **U.K.**

[^{F22}(1)] The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purpose of a qualifying business activity [^{F23}so as to promote business growth and development].

[^{F24}(2) For this purpose “business growth and development” means the growth and development of—

- (a) if the issuing company is a single company, the business of that company, and
- (b) if the issuing company is a parent company, what would be the business of the group if the activities of the group companies taken together were regarded as one business.]

Textual Amendments

F22 S. 174(1): s. 174 renumbered as s. 174(1) (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 10(2)**

F23 Words in s. 174(1) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 10(3)**

F24 S. 174(2) inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 5 para. 10(4)**

175 The use of the money raised requirement **U.K.**

[^{F25}(1) The requirement of this section is that all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is, no later than the time mentioned in subsection (3), employed wholly for the purpose of the qualifying business activity for which it was raised.]

[^{F26}(1ZA) Employing money raised by the issue of the relevant shares (whether on its own or together with other money) on the acquisition, directly or indirectly, of—

- (a) an interest in another company such that a company becomes a 51% subsidiary of the issuing company,
- (b) a further interest in a company which is a 51% subsidiary of the issuing company,

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- (c) a trade,
 - (d) intangible assets employed for the purposes of a trade, or
 - (e) goodwill employed for the purposes of a trade,
- does not amount to employing that money for the purposes of a qualifying business activity.
- (1ZB) The Treasury may by regulations provide that subsection (1ZA) does not apply in relation to acquisitions of intangible assets which are of a description specified, or which occur in circumstances specified, in the regulations.
- (1ZC) For the purposes of subsections (1ZA) and (1ZB)—
- “goodwill” has the same meaning as in Part 8 of CTA 2009 (see section 715(3));
 - “intangible assets” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice;
- and section 173A(6) and (7) (meaning of “trade” etc) applies as it applies for the purposes of section 173A.
- (1A) Also, otherwise employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of a qualifying business activity.]
- (2) The [^{F27}requirement in subsection (1) does] not fail to be met merely because an amount of money which is not significant is employed for another purpose.
- (3) The time referred to in [^{F28}subsection (1)] is—
- (a) the end of the period of [^{F29}two years] beginning with the issue of the shares, or
 - (b) in the case of money raised only for the purpose of an activity to which section 179(2) applies, the end of the period of [^{F29}two years] beginning with—
 - (i) the issue of the shares, or
 - (ii) if later, the time when the company or a qualifying 90% subsidiary of the company begins to carry on the qualifying trade.
- (4) In determining for the purposes of subsection (3)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on by it of the trade before it became such a subsidiary is ignored.

Textual Amendments

- F25** S. 175(1) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(2\)](#)
- F26** S. 175(1ZA)-(1A) substituted for s. 175(1A) (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 11\(2\)](#)
- F27** Words in s. 175(2) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(3\)](#)
- F28** Words in s. 175(3) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(4\)\(a\)](#)
- F29** Words in s. 175(3) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 7\(4\)\(b\)](#)

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[^{F30}175A The permitted maximum age requirement U.K.]

- (1) The requirement of this section is that, if the relevant shares are issued after the initial investing period, condition A, B or C must be met.
- (2) “The initial investing period” means—
 - (a) where the issuing company is a knowledge-intensive company at the issue date, the period of 10 years beginning with the relevant first commercial sale, and
 - (b) in any other case, the period of 7 years beginning with that sale.
- (3) Condition A is that—
 - (a) a relevant investment was made in the issuing company before the end of the initial investing period, and
 - (b) some or all of the money raised by that investment was employed for the purposes of the relevant qualifying business activity (or a part of it).
- (4) Condition B is that—
 - (a) the total amount of relevant investments made in the issuing company in a period of 30 consecutive days which includes the issue date is at least 50% of the average turnover amount, and
 - (b) the money raised by those investments is employed for the purpose of entering a new product or geographical market.
- (5) Condition C is that—
 - (a) condition B in subsection (4) or condition B in section 294A(4) (VCT: permitted company age requirement) was previously met in relation to one or more relevant investments made in the issuing company, and
 - (b) some or all of the money raised by those investments was employed for the purposes of the relevant qualifying business activity.
- (6) “The relevant first commercial sale” means the earliest of the following—
 - (a) the first commercial sale made by the issuing company;
 - (b) the first commercial sale made by a company that is at the issue date, or before that date has been, a 51% subsidiary of the issuing company (including a sale made by a company before it became such a subsidiary but, if it is not such a subsidiary at the issue date, not a sale made after it last ceased to be such a subsidiary);
 - (c) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on, on or before the issue date, by—
 - (i) the issuing company, or
 - (ii) a company that is at the issue date, or before that date has been, a 51% subsidiary of the issuing company,

(including a trade subsequently carried on by such a company before it became such a subsidiary but, if it is not such a subsidiary at the issue date, not a trade which it carried on only after it last ceased to be such a subsidiary);
 - (d) the first commercial sale made by a company which becomes a 51% subsidiary of the issuing company after the issue date in circumstances where all or part of the money raised by the issue of the relevant shares is employed for the purposes of an activity carried on by that subsidiary (including a sale made by such a company before it became such a subsidiary);

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- (e) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on by a company mentioned in paragraph (d) (including a trade carried on by such a company before it became such a subsidiary);
- (f) if the money raised by the issue of the relevant shares (or any part of it) is employed for the purposes of a trade which has been transferred, after the issue date, to the issuing company or a 51% subsidiary of that company (or a partnership of which the issuing company or such a subsidiary is a member), having previously (at any time) been carried on by another person, the first commercial sale made by that other person.

(7) “The average turnover amount” means one fifth of the total relevant turnover amount for the [^{F31}relevant five year period.]

[Subject to subsection (7B), the relevant five year period is the five year period which ^{F32}(7A) ends immediately before the beginning of the last accounts filing period.

(7B) If the last accounts filing period ends more than 12 months before the issue date, the relevant five year period is the five year period which ends 12 months before the issue date.]

(8) In this section—

“entering a new product or geographical market” has the same meaning as in Commission Regulation (EU) No 651/2014 (General block exemption Regulation);

“first commercial sale” has the same meaning as in the European Commission's Guidelines on State aid to promote risk finance investments (as those guidelines may be amended or replaced from time to time);

“the issue date” means the date on which the relevant shares are issued;

“the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the issuing company which ends before the date on which the relevant shares are issued;

“relevant investment” has the meaning given by section 173A(3), and section 173A(4) and (5) (which determines when certain investments are made) applies for the purposes of this section;

“relevant qualifying business activity” means the qualifying business activity for which the money raised by the issue of the relevant shares is employed;

“the total relevant turnover amount” for a period is—

- (a) if the issuing company is a single company at the issue date, the sum of—
 - (i) the issuing company's turnover for that period,
 - (ii) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of an activity carried on by a company which becomes a 51% subsidiary of the issuing company after the issue date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
 - (iii) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within subparagraphs (i) and (ii));

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- (b) if the issuing company is a parent company at the issue date, the sum of—
- (i) the issuing company's turnover for that period,
 - (ii) the turnover for that period of each company which at the issue date is a qualifying subsidiary of the issuing company,
 - (iii) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of an activity carried on by a company which becomes a 51% subsidiary of the issuing company after the issue date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
 - (iv) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within subparagraphs (i) to (iii));

“transferred trade” means a trade which has been transferred to the company which is carrying on the trade at the time the money raised by the issue of the relevant shares is employed or to a partnership of which that company is a member;

“turnover”—

- (a) in relation to a company, has the meaning given by section 474(1) of the Companies Act 2006 and is to be determined by reference to the accounts of companies and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a company's turnover for a period);
- (b) in relation to any other person carrying on a trade, also has the meaning given by section 474(1) of that Act (reading references in that provision to a company as references to the person) and is to be determined by reference to the accounts of the person and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a person's turnover for a period);
- (c) in relation to a transferred trade carried on by a company or other person, means such proportion of the turnover of the company or other person as it is just and reasonable to attribute to the transferred trade;

and section 173A(6) and (7) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 173A.]

Textual Amendments

- F30** S. 175A inserted (with effect in accordance with Sch. 5 para. 23 of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 5 para. 12](#)
- F31** Words in s. 175A(7) substituted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(1\)\(a\)\(6\)](#) (with s. 30)
- F32** S. 175A(7A)(7B) inserted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(1\)\(b\)\(6\)](#) (with s. 30)

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176 The minimum period requirement **U.K.**

- (1) The issue of shares which includes the relevant shares must meet—
 - (a) the requirement of subsection (2) in a case where the money raised by an issue of shares is raised wholly for the purpose of a qualifying business activity falling within section 179(2),
 - (b) the requirement of subsection (3) in a case where the money raised by an issue of shares is raised wholly or partly for the purpose of a qualifying business activity falling within section 179(4).
- (2) The requirement is that—
 - (a) the trade concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
 - (b) throughout that period—
 - (i) the trade must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
 - (ii) the trade must not have been carried on by any other person.
- (3) The requirement is that—
 - (a) the research and development concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
 - (b) throughout that period—
 - (i) the research and development must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
 - (ii) the research and development must not have been carried on by any other person.
- (4) If—
 - (a) merely because of the issuing company or any other company being wound up, or dissolved without winding up—
 - (i) the trade is carried on as mentioned in subsection (2), or
 - (ii) the research and development is carried on as mentioned in subsection (3),for a period shorter than 4 months, and
 - (b) the winding up or dissolution—
 - (i) is for genuine commercial reasons, and
 - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.
- (5) If—
 - (a) merely because of anything done as a result of the issuing company or any other company being in administration or receivership—
 - (i) the trade is carried on as mentioned in subsection (2), or
 - (ii) the research and development is carried on as mentioned in subsection (3),for a period shorter than 4 months, and
 - (b) the entry into administration or receivership, and everything done as a result of the company concerned being in administration or receivership—
 - (i) is for genuine commercial reasons, and

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(ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,
 subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.

177 The no pre-arranged exits requirement **U.K.**

- (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 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) The arrangements referred to in subsection (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 247(1).
- (3) The arrangements referred to in subsection (1)(b) and (c) do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the issuing arrangements include arrangements for the company to be wound up, or
 - (b) the arrangements are applicable on the winding up of the company otherwise than for genuine commercial reasons.
- (4) The arrangements referred to in subsection (1)(d) do not include any arrangements which are confined to the provision—
- (a) for the issuing company itself, or
 - (b) if the issuing company is a parent company that meets the trading requirement in section 181(2)(b), for the issuing company itself, for the issuing company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.
- (5) In this section “the issuing arrangements” means—
- (a) the arrangements under which the shares are issued to the individual, and
 - (b) any arrangements made before the issue of the shares to the individual in relation to or in connection with that issue.

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178 The no tax avoidance requirement **U.K.**

The relevant shares must be issued for genuine 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.

[^{F33}178A The no disqualifying arrangements requirement **U.K.**

- (1) The relevant shares must not be issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.
- (2) Arrangements are “disqualifying arrangements” if—
 - (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
 - (i) that a qualifying business activity is or will be carried on by the issuing company or a qualifying 90% subsidiary of that company, and
 - (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT,
 - (b) that activity is the relevant qualifying business activity, and
 - (c) one or both of conditions A and B are met.
- (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant shares being employed as required by section 175, an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.
- (4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying business activity would have been carried on as part of another business by a relevant person or relevant persons.
- (5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.
- (6) In this section—

“component activities” means—

 - (a) if the relevant qualifying business activity is activity A (see section 179(2)), the carrying on of a qualifying trade or preparing to carry on such a trade, which constitutes that activity, and
 - (b) if the relevant qualifying business activity is activity B (see section 179(4)), the carrying on of research and development which constitutes that activity;

“qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);

“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“relevant qualifying business activity” means the activity for the purposes of which the issue of the relevant shares raised money;

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“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) EIS relief in respect of the shares;
- (b) SEIS relief under Part 5A in respect of the shares;
- (c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
- (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;
- (e) relief under Schedule 5B to that Act (enterprise investment scheme: reinvestment) in consequence of which deferral relief is attributable to the shares (see paragraph 19(2) of that Schedule);
- (f) relief under Schedule 5BB to that Act (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule).]

Textual Amendments

F33 S. 178A inserted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 9](#)

Meaning of “qualifying business activity”

179 Meaning of “qualifying business activity” **U.K.**

(1) In this Part “qualifying business activity”, in relation to the issuing company, means—

- (a) activity A, or
- (b) activity B,

if it is carried on by the company or a qualifying 90% subsidiary of the company.

^{F34}

(2) Activity A is—

- (a) the carrying on of a qualifying trade which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or
- (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade—
 - (i) which, on that date, is intended to be carried on ^{F35}... by the company or such a subsidiary, and
 - (ii) which is begun to be carried on by the company or such a subsidiary within two years after that date.

^{F36}(3)

(4) Activity B is the carrying on of research and development—

- (a) which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or which the company or such a subsidiary begins to carry on immediately afterwards, and
- (b) from which, on that date, it is intended—

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- (i) that a qualifying trade which the company or such a subsidiary will carry on ^{F37}... will be derived, or
- (ii) that a qualifying trade which the company or such a subsidiary is carrying on, or will carry on, ^{F38}... will benefit.

^{F39}(5)

(6) In determining—

- (a) for the purposes of subsection (2)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of the company, or
- (b) for the purposes of subsection (4)(a) when research and development is begun to be carried on by such a subsidiary,

any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary is ignored.

(7) References in subsection (2)(b)(i) or (4)(b) to a qualifying 90% subsidiary of the company include references to any existing or future company which will be such a subsidiary at any future time.

Textual Amendments

- F34** Words in s. 179(1) omitted (17.7.2012) (with effect in accordance with Sch. 7 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 7 para. 10](#)
- F35** Words in s. 179(2)(b)(i) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(2\)\(a\)](#); S.I. 2011/662, art. 2
- F36** S. 179(3) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(2\)\(b\)](#); S.I. 2011/662, art. 2
- F37** Words in s. 179(4)(b)(i) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(2\)\(c\)](#); S.I. 2011/662, art. 2
- F38** Words in s. 179(4)(b)(ii) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(2\)\(c\)](#); S.I. 2011/662, art. 2
- F39** S. 179(5) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 1\(2\)\(d\)](#); S.I. 2011/662, art. 2

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Income Tax Act 2007, Chapter 3.