



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

### CHAPTER 4

#### THE ISSUING COMPANY

#### *Definitions*

#### **189 Meaning of “qualifying trade”**

- (1) For the purposes of this Part, a trade is a qualifying trade if—
- (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not at any time in period B consist wholly or as to a substantial part in the carrying on of excluded activities.
- (2) References in this section and sections 192 to 198 to a trade are to be read without regard to the definition of “trade” in section 989.

#### **190 Meaning of “qualifying 90% subsidiary”**

- (1) For the purposes of this Part, a company (“the subsidiary”) is a qualifying 90% subsidiary of another company (“the relevant company”) if the following conditions are met—
- (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,

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 Income Tax Act 2007, Cross Heading: Definitions. (See end of Document for details)*

- be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
- (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- [<sup>F1</sup>(1A) For the purposes of this Part, a company (“company A”) which is a subsidiary of another company (“company B”) is a qualifying 90% subsidiary of a third company (“company C”) if—
- (a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or
  - (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.
- (1B) For the purposes of subsection (1A), no account is to be taken of any control company C may have of company A.
- (1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1) (a) to (e) would be met if—
- (a) company X were the subsidiary,
  - (b) company Y were the relevant company, and
  - (c) in subsection (1) for “at least 90%” in each place there were substituted “100%”.]
- (2) Subsections (3), (4) and (5) of section 191 (conditions not regarded as ceasing to be met because of winding up, dissolution, administration, receivership or arrangements for disposal not having tax avoidance as main purpose) apply in relation to the conditions in subsection (1)—
- (a) as they apply in relation to the conditions in subsection (2) of that section, but
  - (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary”.
- (3) For the purposes of subsection (1)—
- (a) the persons who are equity holders of the subsidiary, and
  - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with [<sup>F2</sup>Chapter 6 of Part 5 of CTA 2010].
- (4) In making that determination—
- (a) references in [<sup>F3</sup>section 166 of that Act to company A] are to be read as references to an equity holder, and
  - (b) references in that [<sup>F4</sup>section] to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

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### Textual Amendments

- F1** S. 190(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 16 paras. 16\(2\), 18](#)
- F2** Words in s. 190(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(a\)](#) (with [Sch. 2](#))
- F3** Words in s. 190(4)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(b\)](#) (with [Sch. 2](#))
- F4** Word in s. 190(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 500\(c\)](#) (with [Sch. 2](#))

## 191 Meaning of “qualifying subsidiary”

- (1) For the purposes of this Part, 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—
- the subsidiary is a 51% subsidiary of the relevant company,
  - no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding up or dissolution—
- is for genuine 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.
- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, if—
- the entry into administration or receivership, and
  - everything done as a consequence of the company concerned being in administration or receivership,
- is for genuine 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 conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of all its interest in the subsidiary, if the disposal—
- is to be for genuine commercial reasons, and
  - is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### Modifications etc. (not altering text)

- C1** S. 191 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 2 para. 42](#) (with [Sch. 2](#))

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## **[<sup>F5</sup>191A Meaning of “permanent establishment”**

- (1) This section applies for the purposes of this Part.
- (2) A company has a “permanent establishment” in the United Kingdom if (and only if)—
  - (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to enter into contracts on behalf of the company.
- (3) For the purposes of this section “fixed place of business” includes (without prejudice to the generality of that expression)—
  - (a) a place of management,
  - (b) a branch,
  - (c) an office,
  - (d) a factory,
  - (e) a workshop,
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
  - (g) a building site or construction or installation project.
- (4) If the condition in subsection (5) is met, a company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that—
  - (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company.
- (5) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (6) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
  - (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company,
  - (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery,
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person, and
  - (d) purchasing goods or merchandise, or collecting information, for the company.
- (7) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it carries on business there through an agent of independent status (including a broker or a general commission agent) acting in the ordinary course of the agent's business.
- (8) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it controls a company that—
  - (a) is resident there, or
  - (b) carries on business there (whether through a permanent establishment or otherwise).
- (9) The Treasury may by regulations amend this section.]

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### Textual Amendments

- F5** S. 191A inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(1), 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 1(5)**; S.I. 2011/662, art. 2

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