



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

#### CHAPTER 4

#### THE ISSUING COMPANY

#### *Excluded activities*

#### 192 Meaning of “excluded activities”

- (1) The following are excluded activities for the purposes of sections 181 and 189—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
- [<sup>F1</sup>(ia) shipbuilding,  
(ib) producing coal,  
(ic) producing steel,]

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- (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
  - (l) any activities which are excluded activities under section 199 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
- (a) section 193 (wholesale and retail distribution),
  - (b) section 194 (leasing of ships),
  - (c) section 195 (receipt of royalties and licence fees),
  - (d) section 196 (property development),
  - [<sup>F2</sup>(da) section 196A (shipbuilding),
  - (db) section 196B (producing coal),
  - (dc) section 196C (producing steel),]
  - (e) section 197 (hotels and comparable establishments), and
  - (f) section 198 (nursing homes and residential care homes).

#### Textual Amendments

- F1** S. 192(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(a\), 10](#) (with [Sch. 11 para. 11](#))
- F2** S. 192(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(b\), 10](#) (with [Sch. 11 para. 11](#))

### 193 Excluded activities: wholesale and retail distribution

- (1) This section supplements section 192(1)(b).
- (2) In this section—
- (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and
  - (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.
- (3) A trade of wholesale distribution is one in which 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.
- (4) A trade of retail distribution is one in which goods are offered or exposed for sale and sold to members of the general public for their use or consumption.
- (5) A trade of wholesale or retail distribution is not an ordinary trade of wholesale or retail distribution if—
- (a) it consists to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and

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- (b) a substantial proportion of those goods are held for a period which is significantly longer than the period for which the trader would reasonably be expected to hold them while trying to dispose of them at their market value.
- (6) In determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution regard is to be had to the extent to which it has the following features—
- (a) the goods are bought by the trader in quantities larger than those in which the trader sells them,
  - (b) the goods are bought and sold by the trader in different markets,
  - (c) the trader 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, in addition to any remuneration paid to any person connected with it,
  - (d) there are purchases from or sales to persons who are connected with the trader,
  - (e) purchases are matched with forward sales or vice versa,
  - (f) the goods are held by the trader 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) the trader does not take physical possession of the goods.
- (7) In subsection (6)—
- (a) the features in paragraphs (a) to (c) are regarded as indications that the trade is an ordinary trade of wholesale or retail distribution, and
  - (b) those in paragraphs (d) to (h) are regarded as indications to the contrary.

#### **194 Excluded activities: leasing of ships**

- (1) This section supplements section 192(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(d) as a result only of its consisting in letting ships on charter.
- (4) The requirements of this subsection are that—
  - (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) throughout period B the company is solely responsible for arranging the marketing of the services of its ships, and
  - (d) the conditions mentioned in subsection (5) are met in relation to every letting on charter by the company.
- (5) The conditions referred to in subsection (4)(d) are—
  - (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,

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- (b) no provision for the grant of a new letting to end more than 12 months after the provision is made (whether in the charterparty or otherwise) is in force during the period of the letting otherwise than at the option of the charterer,
  - (c) the letting is by way of a bargain at arm's length between the company and a person who is not connected with it,
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period, and
  - (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of the company carrying on the trade (“the letting company”) the charterer is also a company and—
- (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,
- subsection (5) has effect with the omission of paragraph (c).
- (7) If any of the requirements of subsection (4) is not met in relation to any lettings of ships, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if—
- (a) those lettings, and
  - (b) any other excluded activities
- do not, taken together, amount to a substantial part of the trade.
- (8) In this section “pleasure craft” means any ship of a kind primarily used for sport or recreation.

## **195 Excluded activities: receipt of royalties and licence fees**

- (1) This section supplements section 192(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or 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.
- (4) 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—
  - [<sup>F3</sup>(a) by the issuing company, or]

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- [<sup>F3</sup>(b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset that is intellectual property, references to the creation of an 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 this section—
- <sup>F4</sup> ...
- “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice,
- “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
- (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).
- [<sup>F5</sup>(7) If—
- (a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,
- references in subsection (4) to the issuing company include the old company.]

#### Textual Amendments

- F3** S. 195(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(a\), 13](#)
- F4** Words in s. 195(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(b\), 13](#), [Sch. 27 Pt. 2\(16\)](#)
- F5** S. 195(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(c\), 13](#)

## 196 Excluded activities: property development

- (1) This section supplements section 192(1)(g).
- (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 subsection (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 section to an interest in land do not include—

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- (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.

#### [<sup>F6</sup>196A Excluded activities: shipbuilding

In section 192(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

##### Textual Amendments

**F6** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### 196B Excluded activities: producing coal

- (1) This section supplements section 192(1)(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation ([EC](#)) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

##### Textual Amendments

**F6** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### 196C Excluded activities: producing steel

In section 192(1)(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

##### Textual Amendments

**F6** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### 197 Excluded activities: hotels and comparable establishments

- (1) This section supplements section 192(1)(j).
- (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).

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- (3) The activities of a person are not to be taken to fall within section 192(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

### **198 Excluded activities: nursing homes and residential care homes**

- (1) This section supplements section 192(1)(k).
- (2) “Nursing home” means any establishment which 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.
- (3) “Residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care because of—
- (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illnesses, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within section 192(1)(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

### **199 Excluded activities: provision of services or facilities for another business**

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
- (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (k) of section 192(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 provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
- (a) A controls the company,
  - (b) the company is a close company and A or an associate of A is a director of the company and is either—
    - (i) the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) 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) at least half the business could, in accordance with section 344(2) of ICTA (persons to whom company's trade may be treated as belonging), be regarded

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as belonging to A for the purposes of section 343 of that Act (company reconstructions without a change of ownership).

- (4) In any other case, a person has a controlling interest in a business if the person is entitled to at least half the assets used for, or of the income arising from, the business.
- (5) For the purposes of this section—
  - (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.



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