



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

### CHAPTER 6

#### WITHDRAWAL OR REDUCTION OF EIS RELIEF

#### *Miscellaneous*

#### **232 Acquisition of a trade or trading assets**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if—
  - (a) at any time in period A, the company or any qualifying subsidiary—
    - (i) begins to carry on as its trade, or as part of its trade, a trade which was previously carried on at any time in that period otherwise than by the company or any qualifying subsidiary, or
    - (ii) acquires the whole, or the greater part, of the assets used for the purposes of a trade previously so carried on, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) or (3) applies.
- (2) This subsection applies to any person or group of persons—
  - (a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in period A, and
  - (b) who is or are a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged.
- (3) This subsection applies to any person or group of persons who—
  - (a) control or, at any time in period A, have controlled the company, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—
- (a) the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade are determined in accordance with section 344(1)(a) and (b), (2) and (3) of ICTA, and
  - (b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.
- (5) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—
- (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2) (reasonable remuneration for services),
- is to be withdrawn, the reference in subsection (3)(b), and (so far as relating to that provision) the reference in subsection (1)(a)(i), to any time in period A are to be read as references to any time before the end of period A.
- (6) Section 167(3) (director also an employee) applies for the purposes of subsection (5) as it applies for the purposes of section 168, and in subsection (5) “remuneration” includes any benefit or facility.
- (7) In this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

### **233 Acquisition of share capital**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if—
- (a) the company comes to acquire all of the issued share capital of another company at any time in period A, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) applies.
- (2) This subsection applies to any person or group of persons who—
- (a) control or have, at any time in period A, controlled the company, and
  - (b) is or are a person or group of persons who, at any such time, controlled the other company.
- (3) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—
- (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2),
- is to be withdrawn, the reference in subsection (2)(b) to any time in period A is to be read as a reference to any time before the end of period A.
- (4) Section 167(3) applies for the purposes of subsection (3) as it applies for the purposes of section 168, and in subsection (3) “remuneration” includes any benefit or facility.

## **234 Relief subsequently found not to have been due**

- (1) Any EIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) EIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
  - (a) that the requirements of sections 174 and 175 (the purpose of the issue and use of money raised requirements) are not met in respect of the shares, or
  - (b) that the issuing company is not a qualifying company in relation to the shares (see Chapter 4),unless the requirements of subsection (3) are met.
- (3) The requirements of this subsection are met if either—
  - (a) the issuing company has given notice under section 241, or paragraph 16(2) or (4) of Schedule 5B to TCGA 1992, (information to be provided by issuing company etc) in relation to the relevant issue of shares, or
  - (b) an officer of Revenue and Customs has given notice to that company stating the officer’s opinion that, because of the ground in question, the whole or any part of the EIS relief obtained by any individual in respect of shares included in the relevant issue of shares was not due.
- (4) In this section “the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares.