



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

### CHAPTER 8

#### SUPPLEMENTARY AND GENERAL

#### *Disposals of shares*

#### **245 Transfers between spouses or civil partners**

- (1) This section applies if—
- (a) shares to which an amount of EIS relief is attributable were issued to an individual (“A”),
  - (b) A transferred the shares to another individual (“B”) during their lives,
  - (c) A was married to, or was the civil partner of, B at the time of the transfer, and
  - (d) section 209 (disposal of shares) does not apply to the transfer.
- (2) This Part has effect, in relation to any subsequent disposal or other event, as if—
- (a) B were the individual who had subscribed for the shares,
  - (b) the amount that B had subscribed for the shares were the amount that A had subscribed for them,
  - (c) B's liability to income tax had been reduced in respect of the shares for the same tax year as that for which A's was so reduced,
  - (d) the amount by which B's liability to income tax had been reduced in respect of the shares were the same as that by which A's liability to income tax had been so reduced, and
  - (e) that amount of EIS relief had continued to be attributable to the shares despite the transfer.

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- (3) If the amount of EIS relief attributable to the shares had been reduced before the relief was obtained by A—
- (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of EIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and
  - (b) sections 210(3), 220(2) and 229(3) apply in relation to B as they would have applied in relation to A.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing EIS relief is to be made, the assessment is to be made on B.

## **246 Identification of shares on a disposal**

- (1) The rules in subsections (2) and (3) are for determining which shares of any class are treated as disposed of for the purposes of—
- (a) section 209 (disposal of shares), or
  - (b) section 245 (spouses or civil partners),
- if the investor disposes of some but not all of the shares of that class which the investor holds in a company.
- (2) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (3) Shares acquired on the same day are treated as disposed of in the following order—
- (a) first any to which [<sup>F1</sup>no EIS relief, deferral relief or SEIS relief] is attributable,
  - [<sup>F2</sup>(aa) next any to which SEIS relief is attributable,]
  - (b) next any to which deferral relief, but not EIS relief, is attributable,
  - (c) next any to which EIS relief, but not deferral relief, is attributable, and
  - (d) finally any to which both EIS relief and deferral relief are attributable.
- (4) Any shares within paragraph (c) or (d) of subsection (3) which are treated by section 201(6) as issued on an earlier day are treated as disposed of before any other shares falling within that paragraph of subsection (3).
- (5) The following—
- (a) any shares to which EIS relief is attributable and which were transferred to an individual as mentioned in section 245, and
  - (b) any shares to which deferral relief, but not EIS relief, is attributable and which were acquired by an individual on a disposal to which section 58 of TCGA 1992 applies,
- are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.
- (6) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (7) In this section—
- “deferral relief” has the same meaning as in Schedule 5B to TCGA 1992,

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“new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

[<sup>F3</sup>“SEIS relief” means relief under Part 5A (seed enterprise investment scheme).]

#### Textual Amendments

- F1** Words in s. 246(3)(a) substituted (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. 14\(2\)\(a\)](#)
- F2** S. 246(3)(aa) 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. 14\(2\)\(b\)](#)
- F3** Words in s. 246(7) 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. 14\(3\)](#)

### *Acquisition of issuing company*

#### **247 Continuity of EIS relief where issuing company is acquired by new company**

- (1) This section applies if—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
  - (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,
  - (e) at some time before the issue of the new shares—
    - (i) the old company issued shares which meet the requirements of section 173(2), and
    - (ii) a compliance certificate in respect of those shares was issued by that company for the purposes of subsection (1) of section 203 and in accordance with section 204, and
  - (f) before the issue of the new shares the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that they are satisfied that the exchange of shares—
    - (i) will be effected for genuine commercial reasons, and
    - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).

In this subsection references to shares, except in the expressions “subscriber shares” and “shares which meet the requirements of section 173(2)”, include securities.

- (2) Subsection (2) of section 138 of TCGA 1992 (procedure for advance clearance) applies for the purposes of subsection (1)(f) as it applies for the purposes of subsection (1) of that section.

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- (3) For the purposes of this Part—
- (a) the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares, and
  - (b) any EIS relief which is attributable to any old shares is attributable instead to the new shares for which they are exchanged.
- (4) Nothing in section 185 (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.
- (5) For the purposes of this section 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.
- (6) References in sections 248 and 249 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

#### **248 Carry over of obligations etc where EIS relief attributed to new shares**

- (1) This section applies if, under section 247, any EIS relief which is attributable to any old shares becomes attributable instead to any new shares.
- (2) This Part has effect as if anything which, under—
- (a) section 203(1) (entitlement to claim),
  - (b) section 234(3) (relief subsequently found not to be due), or
  - (c) sections 241 to 244 (information to be provided),
- 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.
- (3) Any appeal brought by the old company against a notice under section 234(3)(b) may be prosecuted by the new company as if it had been brought by that company.

#### **249 Substitution of new shares for old shares**

- (1) Subsection (2) applies if, in the case of any new shares held by an individual to which EIS relief becomes attributable under section 247, the old shares for which they were exchanged were subscribed for by and issued to the individual.
- (2) This Part<sup>F4</sup>; (except section 195(7)) has effect as if—
- (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued to the individual by the new company at the time when the old shares were issued to the individual by the old company,
  - (c) the claim for EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the individual's liability was so reduced in respect of the old shares.
- (3) Subsection (4) applies if, in the case of any new shares held by an individual to which EIS relief becomes so attributable under section 247, the old shares for which they were exchanged were transferred to the individual as mentioned in section 245.

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- (4) This Part<sup>F5</sup>; (except section 195(7))] has effect in relation to any subsequent disposal or other event as if—
- (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for,
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company,
  - (c) the claim for EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

#### Textual Amendments

- F4** Words in s. 249(2) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(a\)](#), 13
- F5** Words in s. 249(4) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(b\)](#), 13

#### *Nominees etc*

### **250 Nominees and bare trustees**

- (1) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.
- (2) If shares have been issued to a bare trust for two or more beneficiaries, this Part has effect (with the necessary modifications) as if—
  - (a) each beneficiary had subscribed as an individual for all of those shares, and
  - (b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.
- (3) In subsection (2) and section 251 “shares” means shares which meet the requirements of section 173(2).

### **251 Approved investment fund as nominee**

- (1) Subsection (2) applies if an individual claims EIS relief in respect of shares in a company at a time when—
  - (a) the shares have been issued to the managers of an approved fund as nominee for the individual,
  - (b) the fund has closed, that is to say, no further investments in the fund are to be accepted, and
  - (c) the amounts which the managers have, as nominee for the individual, subscribed for shares issued within <sup>F6</sup>12 months after the closing of the fund represent at least 90% of the individual's investment in the fund.

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In this section “the managers of an approved fund” means the person or persons having the management of an investment fund approved for the purposes of this section by the Commissioners for Her Majesty's Revenue and Customs.

- (2) In any case where this subsection applies, section 158 (form and amount of EIS relief) and section 201 (attribution of EIS relief to shares) have effect as if—
- (a) any reference to the tax year or other period in which the shares are issued were a reference to the tax year or other period in which the fund closes, and
  - (b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.
- <sup>F7</sup>(3) .....
- (4) If an individual claims EIS relief in respect of shares in a company which have been issued to the managers of an approved fund as nominee for the individual, section 203(1) (entitlement to claim) applies as if—
- (a) it required the certificate referred to in that section to be issued by the company to the managers, and
  - (b) it provided that no claim for EIS relief may be made unless the person making the claim has received from the managers a certificate issued by the managers in accordance with subsection (5).
- (5) A certificate is issued in accordance with this subsection if—
- (a) it certifies that the managers hold compliance certificates issued to them by the companies concerned, for the purposes of section 203(1), in respect of the holding of shares shown on the managers' certificate, and
  - (b) it is in such form as the Commissioners for Her Majesty's Revenue and Customs may authorise.
- (6) The managers of an approved fund may be required by a notice given to them by an officer of Revenue and Customs to deliver to the officer, within the time limited by the notice, a return of the holdings of shares shown on certificates issued by them in accordance with subsection (5) in the tax year to which the return relates.
- (7) Section 207 (penalties for fraudulent certificate or statement etc) does not apply in relation to any certificate issued by the managers of an approved fund for the purposes of subsection (4).

#### **Textual Amendments**

- F6** Word in s. 251(1)(c) substituted (with effect in accordance with Sch. 16 para. 19(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 19(1)**
- F7** S. 251(3) omitted (17.7.2012) by virtue of [Finance Act 2012 \(c. 14\)](#), **Sch. 7 para. 20**

### *Interpretation*

## **252 Meaning of a company being “in administration” or “in receivership”**

- (1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.

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- (2) A company is “in administration” if—
- (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
- (3) A company is “in receivership” if there is in force in relation to it—
- (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or
  - (b) any corresponding order under the law of a country or territory outside the United Kingdom.

**Modifications etc. (not altering text)**

- C1 S. 252 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. 50(2)–(5)** (with Sch. 2)

**253 Meaning of “associate”**

- (1) In this Part “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 that person (living or dead), is or was a settlor, and
  - (c) if that person has an interest 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 which has an interest in those shares or obligations.
- (2) In subsection (1)(a) and (b) “relative” means spouse or civil partner, ancestor or lineal descendant.

**254 Meaning of “disposal of shares”**

- (1) In this Part references to a disposal of shares include references to a disposal of an interest or right in or over shares.
- (2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

**255 Meaning of “issue of shares”**

- (1) In this Part—

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- (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 are issued on the same day, and
  - (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual on the same day.
- (2) Subsection (1)(b) has effect subject to sections 201(6), 202(2), 210(2), 219(1) and 228(1).

## 256 Meaning of “the termination date”

- (1) In this Part “the termination date”, in relation to any shares issued by a company, means—
- (a) the third anniversary of the issue date, or
  - (b) if—
    - (i) the money raised by the issue was raised wholly or mainly for the purpose of a qualifying business activity within section 179(2) (the issuing company or a qualifying 90% subsidiary of that company carrying on or preparing to carry on a qualifying trade), and
    - (ii) neither the issuing company nor any of its qualifying 90% subsidiaries had begun to carry on the trade in question on the issue date,
 the third anniversary of the date on which the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (2) In determining for the purposes of subsection (1) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on of the trade by it before it became such a subsidiary is to be ignored.

## [<sup>F8</sup>256A Meaning of “the EIS original rate”

In this Part “the EIS original rate”, in relation to EIS relief, means the EIS rate for the tax year for which the EIS relief was obtained.]

### Textual Amendments

**F8** S. 256A inserted (13.10.2011) (with effect in accordance with s. 42(7)(8) of the amending Act) by Finance Act 2011 (c. 11), s. 42(4)(6); S.I. 2011/2459, art. 2

## 257 Minor definitions etc

- (1) In this Part—
- [<sup>F9</sup>“arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);
  - “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),
  - “director” is read in accordance with [<sup>F10</sup>section 452 of CTA 2010],
  - “group” means a parent company and its qualifying subsidiaries,
  - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,



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“ordinary shares” means shares forming part of a company's ordinary share capital,

“parent company” means a company that has one or more qualifying subsidiaries and “single company” means a company that does not,

“period A”, “period B” and “period C” have the meaning given by section 159, and

“research and development” has the meaning given by section 1006.

- (2) Section 993 (connected persons) does not apply for the purposes of Chapter 2 (other than section 168(4)).
- (3) Section 995 (control) does not apply for the purposes of the following provisions—
  - section 185(1)(a),
  - section 199(3)(a) and (b)(ii),
  - section 232(3),
  - section 233(2), and
  - section 243(4),and in those provisions “control” is to be read in accordance with [F11 sections 450 and 451 of CTA 2010].
- (4) In this Part—
  - (a) references in any provision to the reduction of any EIS relief attributable to any shares include a reference—
    - (i) to the reduction of the relief to nil, and
    - (ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the EIS relief, and
  - (b) references to the withdrawal of EIS relief in respect of any shares are—
    - (i) to the withdrawal of the EIS relief attributable to those shares, or
    - (ii) if no relief has yet been obtained, to ceasing to be eligible for EIS relief in respect of those shares.
- (5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on [F12 a recognised stock exchange].
- (6) For the purposes of this Part 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.
- (7) In this Part—
  - (a) references to EIS relief obtained by an individual in respect of any shares include references to EIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and
  - (b) references to the withdrawal or reduction of EIS relief obtained by an individual in respect of any shares include references to the withdrawal or reduction of EIS relief obtained by the individual in respect of those shares at any such time.
- (8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met.

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#### **Textual Amendments**

- F9** Words in s. 257(1) substituted (retrospective to 6.4.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 7 paras. 21, 25**
- F10** Words in s. 257(1) 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. 503(a)** (with [Sch. 2](#))
- F11** Words in s. 257(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. 503(b)** (with [Sch. 2](#))
- F12** Words in s. 257(5) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 26 para. 12(5)**

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