



# Income Tax Act 2007

## 2007 CHAPTER 3

### [<sup>F1</sup>PART 5A

#### SEED ENTERPRISE INVESTMENT SCHEME

##### Textual Amendments

- F1** Pt. 5A 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. 1](#)

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

- C1** Pt. 5A applied by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [Sch. 5BB para. 8\(4\)](#) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), Sch. 6 para. 5)

## CHAPTER 1

### INTRODUCTION

#### *SEIS relief*

#### **257A Meaning of “SEIS relief” and commencement**

- (1) This Part provides for SEIS income tax relief (“SEIS relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares in companies carrying on new businesses.
- (2) In this Part “SEIS” stands for the seed enterprise investment scheme.
- [<sup>F2</sup>(3) This Part has effect in relation to shares issued on or after 6 April 2012 only.]
- <sup>F3</sup>(4) .....

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#### Textual Amendments

- F2** S. 257A(3) substituted (17.7.2014) by [Finance Act 2014 \(c. 26\), s. 54\(2\)](#)  
**F3** S. 257A(4) omitted (17.7.2014) by virtue of [Finance Act 2014 \(c. 26\), s. 54\(3\)](#)

### 257AA Eligibility for SEIS relief

An individual (“the investor”) is eligible for SEIS relief in respect of an amount subscribed by the investor on the investor's own behalf for an issue of shares in a company (“the issuing company”) if—

- [<sup>F4(z)</sup> the risk-to-capital condition is met (see section 257AAA),]
- (a) the shares (“the relevant shares”) are issued to the investor,
  - (b) the investor is a qualifying investor in relation to the relevant shares (see Chapter 2),
  - (c) the general requirements (including requirements as to the purpose of the issue of shares and the use of money raised) are met in respect of the relevant shares (see Chapter 3), and
  - (d) the issuing company is a qualifying company in relation to the relevant shares (see Chapter 4).

#### Textual Amendments

- F4** S. 257AA(z) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 14\(2\)\(a\)\(4\)](#); S.I. 2018/931, reg. 2(a)

### [<sup>F5</sup>257AAA] Risk-to-capital condition

- (1) The risk-to-capital condition is met if, having regard to all the circumstances existing at the time of the issue of the shares, it would be reasonable to conclude that—
  - (a) the issuing company has objectives to grow and develop its trade in the long-term, and
  - (b) there is a significant risk that there will be a loss of capital of an amount greater than the net investment return.
- (2) For the purposes of subsection (1)(b)—
  - (a) the risk is to be determined by reference to a loss of capital, and the net investment return, for the investors generally,
  - (b) the reference to a loss of capital is to a loss of some or all of the amounts subscribed for the shares by the investors, and
  - (c) the reference to the net investment return is to the net investment return to the investors (whether by way of income or capital growth) taking into account the value of SEIS relief.
- (3) For the purposes of subsection (1) the circumstances to which regard may be had include—
  - (a) the extent to which the company's objectives include increasing the number of its employees or the turnover of its trade,

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- (b) the nature of the company's sources of income, including the extent to which there is a significant risk of the company not receiving some or all of the income,
  - (c) the extent to which the company has or is likely to have assets, or is or could become a party to arrangements for acquiring assets, that could be used to secure financing from any person,
  - (d) the extent to which the activities of the company are sub-contracted to persons who are not connected with it,
  - (e) the nature of the company's ownership structure or management structure, including the extent to which others participate in or devise the structure,
  - (f) how any opportunity for investment in the company is marketed, and
  - (g) the extent to which arrangements are in place under which opportunities for investments in the company are or may be marketed with, or otherwise associated with, opportunities for investments in other companies or entities.
- (4) If the issuing company is a parent company—
- (a) any reference in this section to the company's trade is to what would be the trade of the group if the activities of the group companies taken together were regarded as one trade, and
  - (b) any reference in subsection (3)(a) to (e) to the company is to any group company.]

#### Textual Amendments

**F5** S. 257AAA inserted (15.3.2018) by Finance Act 2018 (c. 3), s. 14(2)(b)(4); S.I. 2018/931, reg. 2(a)

### 257AB Form and amount of SEIS relief

- (1) If an individual—
- (a) is eligible for SEIS relief in respect of any amount subscribed for shares, and
  - (b) makes a claim in respect of all or some of the shares included in the issue,
- the individual is entitled to a tax reduction for the tax year in which the shares were issued (“the current tax year”).

This is subject to the provisions of this Part.

- (2) The amount of the tax reduction to which the individual is entitled is the amount equal to tax at the SEIS rate for the current tax year on—
- (a) the amount or, as the case may be, the sum of the amounts subscribed for shares issued in that year in respect of which the individual is eligible for and claims SEIS relief, or
  - (b) if less, £100,000.
- (3) In this Part “the SEIS rate” means 50%.
- (4) The tax reduction is given effect at Step 6 of the calculation in section 23.
- (5) If in the case of any issue of shares—
- (a) which are issued in the current tax year, and
  - (b) in respect of the amount subscribed for which the individual is eligible for SEIS relief,

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the individual so claims, subsections (1) and (2) apply as if, in respect of such part of that issue as may be specified in the claim, the shares had been issued in the preceding tax year, and the individual's liability to tax for both tax years is determined accordingly.

### *Miscellaneous*

#### **257AC Meaning of “period A” and “period B”**

- (1) This section applies for the purposes of this Part in relation to any shares issued by a company.
- (2) “Period A” means the period—
  - (a) beginning with the incorporation of the company, and
  - (b) ending immediately before the termination date relating to the shares.
- (3) “Period B” means the period—
  - (a) beginning with the issue of the shares, and
  - (b) ending immediately before the termination date relating to the shares.
- (4) In this section “the termination date”, in relation to the shares, means the third anniversary of the date on which the shares are issued.

#### **257AD Overview of other Chapters of Part**

In this Part—

- (a) Chapter 5 provides for the attribution of SEIS relief to shares and the making of claims for such relief,
- (b) Chapter 6 provides for SEIS relief to be withdrawn or reduced in the circumstances mentioned in that Chapter,
- (c) Chapter 7 makes provision with respect to the procedure for the withdrawal or reduction of SEIS relief, and
- (d) Chapter 8 contains supplementary and general provisions.

#### **257AE CGT reliefs relating to SEIS**

- (1) Section 150E of TCGA 1992 makes provision about gains or losses on the disposal of shares to which SEIS relief is attributable.
- (2) Schedule 5BB to that Act provides relief in respect of the re-investment under SEIS of the proceeds of assets disposed of in circumstances where there would otherwise be a chargeable gain.

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## CHAPTER 2

### THE INVESTOR

#### *Introduction*

#### **257B Overview of Chapter**

The investor is a qualifying investor in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) no employee investors (see section 257BA),
- (b) no substantial interest in the issuing company (see section 257BB),
- (c) no related investment arrangements (see section 257BC),
- (d) no linked loans (see section 257BD), and
- (e) no tax avoidance (see section 257BE).

#### *The requirements*

#### **257BA The no employee investors requirement**

- (1) Neither the investor nor an associate of the investor may, at any time during period B, be an employee of the issuing company or of any qualifying subsidiary of that company.
- (2) For this purpose a person is not to be treated as an employee of the issuing company, or of any qualifying subsidiary of that company, at any time when the person is a director of that company.

#### **257BB The no substantial interest in the issuing company requirement**

The investor must not have a substantial interest in the issuing company at any time during period A.

#### **257BC The no related investment arrangements requirement**

The investor (“P”) must not subscribe for the relevant shares as part of an arrangement which provides for another person to subscribe for shares in another company in which P, or any other individual who is party to the arrangement, has a substantial interest.

#### **257BD The no linked loan requirement**

- (1) No linked loan is to be made by any person, at any time in period A, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which—
  - (a) would not have been made, or
  - (b) would not have been made on the same terms,if the investor had not subscribed for the relevant shares, or had not been proposing to do so.

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- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include a reference—
- (a) to the giving by that person of any credit to the investor or any associate of the investor, and
  - (b) to the assignment to that person of a debt due from the investor or any associate of the investor.

### **257BE The no tax avoidance requirement**

The relevant shares must be subscribed for by the investor 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.

*Meaning of substantial interest in a company*

### **257BF Persons with a substantial interest in a company**

- (1) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire more than 30% of—
- (a) the ordinary share capital of the company or any subsidiary of the company,
  - (b) the issued share capital of the company or any such subsidiary, or
  - (c) the voting power in the company or any such subsidiary.
- (2) An individual has a substantial interest in a company if the individual directly or indirectly possesses or is entitled to acquire such rights as would—
- (a) in the event of the winding up of the company or any subsidiary of the company, or
  - (b) in any other circumstances,
- entitle the individual to receive more than 30% of the assets of the company or subsidiary (“the company in question”) which would then be available for distribution to equity holders of the company in question.
- (3) For the purposes of subsection (2)—
- (a) the persons who are equity holders of the company in question, and
  - (b) the percentage of the assets of the company in question to which the individual would be entitled,
- are determined in accordance with Chapter 6 of Part 5 of CTA 2010.
- (4) In making that determination—
- (a) references in section 166 of that Act to company A are to be read as references to an equity holder, and
  - (b) references in that section to a winding up are to be read as including a reference to any other circumstances in which assets of the company in question are available for distribution to its equity holders.
- (5) An individual does not have a substantial interest in a company merely because one or more shares in the company are held by the individual or by an associate of the individual, at a time when the company—
- (a) has not issued any shares other than subscriber shares, and

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- (b) has not begun to carry on, or make preparations for carrying on, any trade or business.
- (6) An individual has a substantial interest in a company if the individual has control of the company or any subsidiary of that company.
- (7) For the purposes of this section—
  - (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.
- (8) In this section “subsidiary”, in relation to a company, means a company which at any time in period A is a 51% subsidiary of the company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.

## CHAPTER 3

### GENERAL REQUIREMENTS

#### *Introduction*

#### **257C Overview of Chapter**

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 257CA),
- (b) the purpose of the issue (see section 257CB),
- (c) the spending of the money raised (see section 257CC),
- (d) no pre-arranged exits (see section 257CD),
- (e) no tax avoidance (see section 257CE), and
- (f) no disqualifying arrangements (see section 257CF).

#### *The requirements*

#### **257CA The shares requirement**

- (1) The relevant shares must meet—
  - (a) the requirements of subsection (2), and
  - (b) unless they are bonus shares, the requirements of subsection (4).
- (2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—
  - (a) any present or future preferential right to dividends that is within subsection (3),
  - (b) any present or future preferential right to a company's assets on its winding up, or

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- (c) any present or future right to be redeemed.
- (3) 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.
- (4) 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.
- (5) Shares are not fully paid up for the purposes of subsection (4)(b) if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.

#### **257CB The purpose of the issue requirement**

- (1) The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purposes of a qualifying business activity carried on, or to be carried on, by the issuing company or a qualifying 90% subsidiary of that company.
- (2) For the meaning of “qualifying business activity” see section 257HG.

#### **257CC The spending of the money raised requirement**

- (1) The requirement of this section is that before the end of period B all of the money raised by the issue of the relevant shares (other than any of them which are bonus shares) is spent for the purposes of the qualifying business activity for which it was raised.
- (2) Spending money on the acquisition of shares or stock in a company does not of itself amount to spending the money for the purposes of a qualifying business activity.
- (3) This requirement does not fail to be met merely because an amount of money which is not significant is spent for another purpose or remains unspent at the end of period B.

#### **257CD The no pre-arranged exits requirement**

- (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



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- (d) arrangements the main purpose of which, 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.
- [<sup>F6</sup>(2) The arrangements referred to in subsection (1)(a) do not include—
- (a) any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 257HB(1), or
  - (b) any arrangements with a view to any shares in the issuing company being exchanged for, or converted into, shares in that company of a different class.]
- (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 to 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 257DA(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 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,
  - (b) any arrangements made, before the shares were issued, in relation to or in connection with the issue, and
  - (c) if before the shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the issuing company, any arrangements made during period B.
- (6) For the purposes of subsection (5)(c) “information on pre-arranged exits” means any information indicating the possibility of making, during period B, arrangements of the kind described in paragraph (a), (b), (c) or (d) of subsection (1).

#### Textual Amendments

- F6** S. 257CD(2) substituted (with effect in accordance with s. 11(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 11(3)

### 257CE The no tax avoidance requirement

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.

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## **257CF The no disqualifying arrangements requirement**

- (1) The relevant shares must not be issued, nor any money raised by the issue spent, 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 spent as required by section 257CC, 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 257HG(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 257HG(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;

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

  - (a) SEIS relief in respect of the shares;
  - (b) EIS relief in respect of the shares;
  - (ba) [F7]SI relief under Part 5B in respect of the shares;]

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- (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: re-investment) 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

- F7** Words in s. 257CF(6) inserted (with effect in accordance with Sch. 1 para. 16 of the amending Act) by Finance (No. 2) Act 2017 (c. 32), **Sch. 1 para. 11(3)**

## CHAPTER 4

### THE ISSUING COMPANY

#### *Introduction*

#### **257D Overview of Chapter**

The issuing company is a qualifying company in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) trading (see section 257DA),
- (b) the issuing company's carrying on of the qualifying business activity (see section 257DC),
- (c) UK permanent establishment (see section 257DD),
- (d) financial health (see section 257DE),
- (e) unquoted status (see section 257DF),
- (f) control and independence (see 257DG),
- (g) no partnerships (see section 257DH),
- (h) gross assets (see section 257DI),
- (i) number of employees (see section 257DJ),
- (j) no previous other risk capital scheme investments (see section 257DK),
- (k) the amount raised through the SEIS (see section 257DL),
- (l) qualifying subsidiaries (see section 257DM), and
- (m) property managing subsidiaries (see section 257DN).

#### *The requirements*

#### **257DA The trading requirement**

- (1) The issuing company must meet the trading requirement throughout period B.

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- (2) The trading requirement is that—
- (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more new qualifying trades (see section 257HF), or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (3) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more new qualifying trades—
- (a) the company is treated as a parent company for the purposes of subsection (2)(b), and
  - (b) the reference in subsection (2)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (4) For the purpose of subsection (2)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or
    - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (7) Any reference in subsection (6)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (8) Where period B begins after the incorporation of the company, the requirement of subsection (2) must have been complied with since its incorporation; but for the purposes of that subsection any interval between the incorporation of the company and the time when it commenced business is to be ignored.
- (9) In this section—

“incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question;

“mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one

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or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly;

“non-qualifying activities” means—

- (a) excluded activities (within the meaning of sections 192 to 199), and
- (b) activities (other than research and development) carried on otherwise than in the course of a trade;

“qualifying trade” has the same meaning as in Part 5 (see sections 189 and 192 to 200).

### **257DB Ceasing to meet trading requirement: administration etc**

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This is subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—
  - (a) the entry into administration or receivership, and
  - (b) everything done as a result 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.

- (3) A company ceases to meet the trading requirement if before the end of period B—
  - (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
  - (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply 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.

### **257DC The issuing company to carry on the qualifying business activity**

- (1) The requirement of this section is met in relation to the issuing company if, at no time in period B, is any of the following—
  - (a) the relevant new qualifying trade,
  - (b) relevant preparation work (if any), and
  - (c) relevant research and development (if any),

carried on by a person other than the issuing company or a qualifying 90% subsidiary of that company.

- (2) Subsection (3) has effect for the purpose of determining whether the requirement of this section is met in relation to the issuing company in a case where relevant preparation work is carried out by that company or a qualifying 90% subsidiary of that company.

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- (3) The carrying on of the relevant new qualifying trade by a company other than the issuing company or a subsidiary of that company is to be ignored if it takes place at any time in period B before the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (4) The requirement of this section is not regarded as failing to be met in relation to the issuing company if, merely because of any act or event within subsection (5), the relevant new qualifying trade—
- (a) ceases to be carried on in period B by the issuing company or any qualifying 90% subsidiary of that company, and
  - (b) is subsequently carried on in that period by a person who is not at any time in period A connected with the issuing company.
- (5) The following are acts and events within this subsection—
- (a) anything done as a consequence of the issuing company or any other company being in administration or receivership, and
  - (b) the issuing company or any other company being wound up, or dissolved without being wound up.
- (6) Subsection (4) applies only if—
- (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
  - (b) 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.
- (7) In this section—
- “the relevant new qualifying trade” means the new qualifying trade which is the subject of that qualifying business activity;
  - “relevant preparation work” means preparations within section 257HG(2) (b) which are the subject of the qualifying business activity mentioned in section 257CB;
  - “relevant research and development” means—
    - (a) research and development within section 257HG(3) which is the subject of that qualifying business activity, and
    - (b) any other preparations for the carrying on of the new qualifying trade which is the subject of that activity.

### **257DD The UK permanent establishment requirement**

- (1) The issuing company must meet the UK permanent establishment requirement throughout period B.
- (2) The UK permanent establishment requirement is that the issuing company has a permanent establishment in the United Kingdom.

### **257DE The financial health requirement**

- (1) The issuing company must meet the financial health requirement at the beginning of period B.

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- (2) The financial health requirement is that the issuing company is not in difficulty.
- (3) The issuing company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02).

#### **257DF The unquoted status requirement**

- (1) At the beginning of period B—
  - (a) the issuing company must be an unquoted company,
  - (b) there must be no arrangements in existence for the issuing company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the issuing company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 257HB applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.
- (3) For the purposes of subsection (2), shares, stock, debentures or other securities are marketed to the general public if they are—
  - (a) listed on a recognised stock exchange,
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in outside the United Kingdom by such means as may be designated.
- (4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of that provision.
- (5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (6) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company are at any subsequent time—
  - (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b), or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (3)(b) or (c),if the order was made after the beginning of period B.

#### **257DG The control and independence requirement**

- (1) The control element of the requirement is that—
  - (a) the issuing company must not at any time in period A control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the issuing company, and

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- (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).

[<sup>F8</sup>(2) The independence element of the requirement is that—

- (a) the issuing company must not at any time in period A (ignoring any on-the-shelf period) be within subsection (2A), and
- (b) no arrangements must be in existence at any time in period A by virtue of which the issuing company could be within that subsection (whether during period A or otherwise).

(2A) The issuing company is within this subsection at any time if it is under the control of any other company (or of another company and any other person connected with that other company).

(2B) In subsection (2)(a) “on-the-shelf period” means a period during which the issuing company—

- (a) has not issued any shares other than subscriber shares, and
- (b) has not begun to carry on, or make preparations for carrying on, any trade or business.]

(3) This section is subject to section 257HB(4) (exchange of shares).

#### **Textual Amendments**

**F8** S. 257DG(2)-(2B) substituted for s. 257DG(2) (with effect in accordance with s. 56(6) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 56\(4\)](#)

### **257DH The no partnerships requirement**

- (1) Neither the issuing company nor any qualifying 90% subsidiary of that company may, at any time during period A, be a member of a partnership.
- (2) “Partnership” includes—
  - (a) a limited liability partnership, and
  - (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,
 and “member”, in relation to a partnership, is to be read accordingly.

### **257DI The gross assets requirement**

- (1) In the case of relevant shares issued by a single company, the value of the company's assets must not exceed £200,000 immediately before the relevant shares are issued.
- (2) In the case of relevant shares issued by a parent company, the value of the group assets must not exceed £200,000 immediately before the relevant shares are issued.
- (3) For the purposes of this section the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.



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## 257DJ The number of employees requirement

- (1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 25 when the relevant shares are issued.
- (2) If the issuing company is a parent company, the sum of—
  - (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,must be less than 25 when the relevant shares are issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—

*Step 1* Find the number of full-time employees of the company.

*Step 2* Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable. The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
  - (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity [<sup>F9</sup>, paternity or shared parental] leave, or
    - (ii) a student on vocational training.

### Textual Amendments

**F9** Words in s. 257DJ(4)(b)(i) substituted (1.12.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 7 para. 71](#); S.I. 2014/1640, art. 5(2)(cc)

## 257DK No previous other risk capital scheme investments

- (1) The requirement of this section is that—
  - (a) no EIS investment or VCT investment is or has been made in the issuing company on or before the day on which the relevant shares are issued, and
  - (b) no EIS investment or VCT investment has been made on or before that day in a company which at the time the relevant shares are issued is a qualifying subsidiary of the issuing company.
- (2) An “EIS investment” is made in the company if the company—
  - (a) issues shares (money having been subscribed for them), and
  - (b) (at any time) provides a compliance statement under section 205 in respect of the shares;and the EIS investment is regarded as made when the shares are issued.
- (3) A “VCT investment” is made in the company if an investment (of any kind) in the company is made by a VCT.

## 257DL The amount raised through the SEIS

- (1) The sum of the following amounts must not exceed £150,000—
  - (a) the amount of the SEIS investment made in the issuing company which includes the relevant shares (“the current investment”),

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- (b) the amount of other SEIS investments made in the issuing company on the same day as the current investment,
  - (c) the amount of any SEIS investments made in the issuing company during the period of 3 years ending immediately before that day, and
  - (d) the total of any other aid which—
    - (i) is granted to the issuing company on the day the current investment is made or during that period, and
    - (ii) disregarding any SEIS investment within paragraph (a) or (b), would be de minimis aid.
- (2) An “SEIS investment” is made in a company if—
- (a) the company issues shares (money having been subscribed for them), and
  - (b) (at any time) the company provides a compliance statement under section 257ED in respect of the shares;
- and an SEIS investment is made on the day when the shares are issued, and the amount of the investment is the amount subscribed for the shares.
- (3) “De minimis aid” means de minimis aid within the meaning of Article 2 of Commission Regulation (EC) No 1998/2006 (de minimis aid).
- The amount of the aid is the amount of the grant, or if the aid is not in the form of a grant, the gross grant equivalent amount (within the meaning of that Regulation).
- (4) Subsection (5) applies where, in relation to the current investment—
- (a) the sum of the amounts mentioned in subsection (1) exceeds £150,000, but
  - (b) the sum of the amounts in paragraphs (c) and (d) of that subsection does not exceed £150,000.
- (5) In the case of the current investment and each other SEIS investment made in the issuing company on the same day (if any)—
- (a) the appropriate proportion of the shares in the issue constituting the investment and the remainder are to be treated as two separate issues for the purposes of this Part, and
  - (b) the requirement in subsection (1) is to be treated as met in respect of the issue comprised of the appropriate proportion of the shares in the issue, but not in respect of the issue comprised of the remaining shares.
- (6) “The appropriate proportion” of the shares is—
- $$A - B C$$
- where—
- A is £150,000,
  - B is the sum of the amounts in paragraphs (c) and (d) of subsection (1), and
  - C is the sum of the amounts in paragraphs (a) and (b) of that subsection.

### **257DM The qualifying subsidiaries requirement**

Any subsidiary that the issuing company has at any time in period B must be a qualifying subsidiary of the company.

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## **257DN The property managing subsidiaries requirement**

- (1) Any property managing subsidiary that the issuing company has at any time in period B must be a qualifying 90% subsidiary of the company.
- (2) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any interest in settled property deriving its value directly or indirectly from land, and
  - (c) any option, consent or embargo affecting the disposition of land.

## **CHAPTER 5**

### **ATTRIBUTION AND CLAIMS FOR SEIS RELIEF**

#### *Attribution*

## **257E Attribution of SEIS relief to shares**

- (1) References in this Part, in relation to any individual, to the SEIS relief attributable to any shares or issue of shares are to be read as references to any reduction made in the individual's liability to income tax that is attributed to those shares or that issue in accordance with this section.

This is subject to the provisions of Chapters 6 and 7 providing for the withdrawal or reduction of SEIS relief.

- (2) If an individual's liability to income tax is reduced in any tax year, then—
  - (a) if the reduction is obtained because of one issue of shares, the amount of the tax reduction is attributed to that issue, and
  - (b) if the reduction is obtained because of two or more issues of shares, the amount of the reduction—
    - (i) is apportioned between those issues in the same proportions as the amounts claimed by the individual in respect of each issue, and
    - (ii) is attributed to those issues accordingly.
- (3) If under this section an amount of any reduction of income tax is attributed to an issue of shares (“the original issue”), a proportionate part of that amount is attributed to each share in respect of which the claim is made.
- (4) If corresponding bonus shares are issued to the individual in respect of any shares (“the original shares”) to which SEIS relief is attributed—
  - (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if the original issue had included those shares.

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- (5) In subsection (4) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.
- (6) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (7) If, at a time when SEIS relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under Chapters 6 and 7—
  - (a) if it falls to be withdrawn, the relief attributable to each of the shares in question is reduced to nil, and
  - (b) if it falls to be reduced by any amount, the relief attributable to each of the shares in question is reduced by a proportionate part of that amount.

*Claims: general*

#### **257EA Time for making claims for SEIS relief**

- (1) A claim for SEIS relief in respect of shares issued by a company in any tax year may not be made later than the fifth anniversary of the normal self-assessment filing date for the tax year.
- (2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

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

**C2** S. 257EA applied by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [Sch. 5BB para. 3\(1\)](#) (as inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), Sch. 6 para. 5)

#### **257EB Entitlement to claim**

- (1) The investor is entitled to make a claim for SEIS relief in respect of the amount subscribed by the investor for the relevant shares if the investor has received from the issuing company a compliance certificate in respect of those shares.
- (2) For the purposes of PAYE regulations no regard is to be had to SEIS relief unless a claim for it has been duly made.
- (3) No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is eligible for SEIS relief unless a claim for the relief has been duly made by the investor.

*Claims: supporting documents*

#### **257EC Compliance certificates**

- (1) A “compliance certificate” is a certificate which—

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- (a) is issued by the issuing company in respect of the relevant shares,
  - (b) states that, except so far as they fall to be met by or in relation to the investor, the requirements for SEIS relief (see section 257AA) are for the time being met in relation to those shares, and
  - (c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.
- (2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide an officer of Revenue and Customs with a compliance statement in respect of the issue of shares which includes the relevant shares.
- (3) The issuing company must not issue a compliance certificate without the authority of an officer of Revenue and Customs.
- (4) If the issuing company, or a person connected with the issuing company, has given notice to an officer of Revenue and Customs under section 257GF, a compliance certificate must not be issued unless the authority is given or renewed after the receipt of the notice.
- (5) If an officer of Revenue and Customs—
- (a) has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) has decided whether or not to do so,
- the officer must give notice of the officer's decision to the issuing company.

### **257ED Compliance statements**

- (1) A “compliance statement” is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be met by or in relation to the individuals to whom shares included in that issue have been issued, the requirements for SEIS relief (see section 257AA)—
- (a) are for the time being met in relation to the shares to which the statement relates, and
  - (b) have been so met at all times since the shares were issued.
- (2) In determining for the purposes of subsection (1) whether the requirements for SEIS relief are met at any time in relation to the issue of shares, references in this Part to the relevant shares are read as references to the shares included in the issue.
- (3) A compliance statement must not be made in respect of an issue of shares before at least one of the following conditions is met—
- (a) at least 70% of the money raised by the issue has been spent for the purposes of the qualifying business activity for which it was raised;
  - (b) the new qualifying trade which constitutes the qualifying business activity or to which that activity relates has been carried on by the issuing company or a qualifying 90% subsidiary of that company for at least 4 months.
- (4) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs direct and must—
- (a) state which of the conditions in subsection (3) is met at the time the statement is made,

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- (b) contain such additional information as the Commissioners reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
- (c) contain a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and
- (d) contain such other declarations as the Commissioners may reasonably require.

### **257EE Appeal against refusal to authorise compliance certificate**

For the purposes of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the issuing company.

### **257EF Penalties for fraudulent certificate or statement etc**

The issuing company is liable to a penalty not exceeding £3,000 if—

- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
- (b) it issues a compliance certificate in contravention of section 257EC(3) or (4).

### **257EG Power to amend sections 257EC and 257ED**

- (1) The Treasury may by order make such amendments of sections 257EC and 257ED as they consider appropriate.
- (2) An order under this section may include incidental, supplemental, consequential and transitional provision and savings.

## **CHAPTER 6**

### WITHDRAWAL OR REDUCTION OF SEIS RELIEF

#### *Introduction*

### **257F Overview of Chapter**

This Chapter provides for SEIS relief to be withdrawn or reduced under—

- (a) section 257FA (disposal of shares),
- (b) section 257FC (call options),
- (c) section 257FD (put options),
- (d) section 257FE (value received by the investor),
- (e) section 257FP (acquisition of a trade or trading asset),
- (f) section 257FQ (acquisition of share capital), and
- (g) section 257FR (relief subsequently found not to have been due).

### **257FA Disposal of shares**

- (1) This section applies if—
  - (a) the investor disposes of any of the relevant shares,

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- (b) the disposal takes place before period B ends, and
  - (c) SEIS relief is attributable to the shares.
- (2) If the disposal is not made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must be withdrawn.
- (3) If the disposal is made by way of a bargain made at arm's length, the SEIS relief attributable to the shares must—
- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- The formula is—
- $$R \times \text{SEISR}$$
- where—
- R is the amount or value of the consideration received by the investor for the shares, and
- SEISR is the SEIS rate.
- (4) This section does not apply to a disposal of shares to which an amount of SEIS relief is attributable if—
- (a) the disposal was made by an individual (“A”) to another individual (“B”), and
  - (b) A and B were married to, or were civil partners of, each other and living together at the time of the disposal.
- (5) Section 257HA contains rules for determining which shares of any class are treated as disposed of for the purposes of this section if the investor disposes of some but not all of the shares of that class which are held by the investor.
- (6) Nothing in this section applies to a disposal of shares occurring as a result of the investor's death.

### **257FB Cases where maximum SEIS relief not obtained**

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,
- section 257FA(3) has effect in relation to a disposal of any of the shares as if the amount or value referred to as “R” were reduced by multiplying it by the fraction—
- $$\frac{A}{B}$$
- (2) If section 257AB(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, subsection (1) has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (3) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as A is

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to be treated for the purposes of that subsection as the amount that it would have been without that reduction.

- (4) Subsection (3) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief if there is a corresponding issue of bonus shares).

### **257FC Call options**

- (1) This section applies if the investor grants an option which, if exercised, would bind the investor to sell any of the relevant shares.
- (2) The grant of the option is treated for the purposes of section 257FA as a disposal of the shares to which the option relates.
- (3) Nothing in this section prejudices section 257CD (no pre-arranged exits).

### **257FD Put options**

- (1) This section applies if, at any time in period A, a person grants the investor an option which, if exercised, would bind the grantor to purchase any of the relevant shares.
- (2) Any SEIS relief attributable to the shares to which the option relates must be withdrawn.
- (3) For the purposes of subsection (2) the shares to which an option relates are those which, if—
- (a) the option were exercised immediately after the grant, and
  - (b) any shares in the issuing company acquired by the investor after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of section 257FA as disposed of in pursuance of the option.

*Value received by investor*

### **257FE Value received by the investor**

- (1) This section applies if the investor receives any value from the issuing company at any time in period A relating to the relevant shares.
- (2) Any SEIS relief attributable to the shares must—
- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is—

$$R \times \text{SEISR}$$

where—

R is the amount of the value received by the investor, and

SEISR is the SEIS rate.

- (3) This section is subject to the following sections—



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- (a) section 257FF (value received: receipts of insignificant value),
- (b) section 257FJ (value received where there is more than one issue of shares),
- (c) section 257FK (value received where part of share issue treated as made in previous tax year),
- (d) section 257FL (cases where maximum SEIS relief not obtained),
- (e) section 257FM (receipts of value by and from connected persons etc), and
- (f) section 257FN (receipt of replacement value).

Sections 257FJ to 257FL are to be applied in the order in which they appear in this Part.

- (4) Value received is to be ignored, for the purposes of this section, to the extent to which SEIS relief attributable to the shares has already been withdrawn or reduced on its account.
- (5) For the purposes of this section and sections 257FF to 257FO, an individual who acquires any relevant shares on such a transfer as is mentioned in section 257H (spouses or civil partners) is treated as the investor.

#### **257FF Value received: receipts of insignificant value**

- (1) Section 257FE(2) does not apply if the receipt of value is a receipt of insignificant value.

This is subject to subsection (2).

- (2) If—
  - (a) value is received (“the relevant receipt”) by the investor from the issuing company at any time in period A relating to the relevant shares,
  - (b) the investor has received from the issuing company one or more receipts of insignificant value at a time or times—
    - (i) during that period, but
    - (ii) not later than the time of the relevant receipt, and
  - (c) the total value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value,

the investor is treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

- (3) A receipt does not fall within subsection (2)(b) if it has previously formed part of a total amount falling within subsection (2)(c).

#### **257FG Meaning of “a receipt of insignificant value”**

- (1) This section applies for the purposes of section 257FF.
- (2) “A receipt of insignificant value” means a receipt of an amount of insignificant value, that is, an amount of value which—
  - (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the relevant shares.

This is subject to subsection (3).

- (3) If at any time in the period—
  - (a) beginning 12 months before the issue of the relevant shares, and

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- (b) ending at the end of the issue date,  
 repayment arrangements are in existence, no amount of value received by the investor is treated as a receipt of insignificant value.
- (4) For this purpose “repayment arrangements” means arrangements which provide for the investor to receive, or to be entitled to receive, any value from the issuing company at any time in period A relating to the relevant shares.
- (5) For the purposes of this section—
- (a) the references in this section to the investor include a reference to any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not that person is such an associate at the material time), and
  - (b) the reference in subsection (4) to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

#### **257FH When value is received**

- (1) This section applies for the purposes of sections 257FE (value received by the investor) and 257FJ (value received where there is more than one issue).
- (2) The investor receives value from the issuing company at any time when the issuing company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the investor or makes any payment to the investor for giving up the investor's right to any of the issuing company's share capital or any security on its cancellation or extinguishment,
  - (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which SEIS relief is claimed, any debt owed to the investor other than a debt which was incurred by the company—
    - (i) on or after the date of issue of those shares, and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
  - (c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than a debt in respect of a payment of the kind mentioned in subsection (3)(a) or (f) or an ordinary trade debt,
  - (d) releases or waives any liability of the investor to the issuing company or discharges or undertakes to discharge any liability of the investor to a third person,
  - (e) makes a loan or advance to the investor which has not been repaid in full before the issue of the shares in respect of which SEIS relief is claimed,
  - (f) provides a benefit or facility for the investor,
  - (g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
  - (h) makes to the investor any other payment except—
    - (i) an excluded payment, or
    - (ii) a payment in discharge of an ordinary trade debt.

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- (3) “Excluded payment” means—
- (a) any payment or reimbursement of travelling or other expenses, exclusively and necessarily incurred by the investor or an associate of the investor in the performance of the investor's or associate's duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or any person connected with that company,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a person connected with that company which does not exceed a reasonable and commercial rent for the property, and
  - (f) any necessary and reasonable remuneration which meets the conditions in subsection (4).
- (4) The conditions are that the remuneration—
- (a) is paid for services rendered to the issuing company or a person connected with that company in the course of a trade or profession (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and
  - (b) is taken into account in calculating for tax purposes the profits of that trade or profession.
- (5) For the purposes of subsection (2)(d) the issuing company is to be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (6) For the purposes of subsection (2)(e) the following is to be treated as if it were a loan made by the issuing company to the investor—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the issuing company, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the issuing company.
- (7) The investor also receives value from the issuing company if—
- (a) in respect of ordinary shares held by the investor any payment or asset is received in a winding up or in connection with a dissolution of the company, and
  - (b) the winding up or dissolution falls within section 257DB(4) (no tax avoidance).
- (8) The investor also receives value from the issuing company if a person within subsection (9)—
- (a) purchases any of its share capital or securities which belong to the investor, or
  - (b) makes any payment to the investor for giving up any right in relation to any of the company's share capital or securities.
- (9) Those persons are—
- (a) any person who has a substantial interest in the company within the meaning of section 257BB;

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- (b) any employee of the issuing company;
  - (c) any director of the issuing company.
- (10) If because of the investor's disposal of shares in a company any SEIS relief attributable to those shares is withdrawn or reduced under section 257FA, the investor is not to be treated as receiving value from the company in respect of the disposal.
- (11) The investor is not to be treated as receiving value from the issuing company merely because of the payment to the investor, or any associate of the investor, of any remuneration for services rendered to that company as a director if the remuneration is reasonable remuneration.
- (12) For the purposes of subsection (11)—
- (a) the reference in that subsection to the payment of remuneration includes a reference to the provision of any benefit or facility, and
  - (b) in the case of an individual who is both a director and an employee of a company, the reference in that subsection to services rendered to that company as a director includes a reference to services rendered to that company as an employee.
- (13) In this section—
- (a) “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
    - (i) is for not more than 6 months, and
    - (ii) is not longer than that normally given to customers of the person carrying on the trade or business, and
  - (b) any reference to a payment to an individual includes a payment made to the individual indirectly or to the individual's order or for the individual's benefit.

### **257FI The amount of value received**

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 257FE and 257FJ is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The amount of value received</i>
Section 257FH(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the shares, securities or debt
Section 257FH(2)(d)	The amount of the liability
Section 257FH(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the issue of the relevant shares
Section 257FH(2)(f)	The cost to the issuing company of providing the benefit or facility, less any consideration given for it by the investor
Section 257FH(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 257FH(2)(h)	The amount of the payment

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Section 257FH(7)	The amount of the payment or the market value of the asset
Section 257FH(8)	The amount received by the investor or, if greater, the market value of the shares or securities

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### **257FJ Value received where there is more than one issue**

- (1) This section applies if—
- two or more issues of shares in the issuing company have been made to the investor which include shares in respect of which the investor obtains SEIS relief, and
  - value is received by the investor at any time in the applicable periods for two or more of those issues.
- (2) Section 257FE(2) has effect in relation to the shares included in each of the issues referred to in subsection (1)(b) as if the amount of value referred to as “R” were reduced by multiplying it by the fraction—
- $$\frac{A}{B}$$
- where—
- A is the amount on which the investor obtains SEIS relief in respect of the shares included in the issue in question, and
- B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.
- (3) For the purposes of subsection (1) “the applicable period” for an issue of shares is period A in relation to those shares.

### **257FK Value received where part of issue treated as made in previous tax year**

- (1) This section applies if—
- section 257FE(2) applies to an issue of shares, and
  - section 257AB(1) and (2) (form and amount of SEIS relief) applies in the case of that issue as if part of the issue had been issued in a previous tax year.
- (2) This subsection explains how the calculation under section 257FE(2) is to be made.
- Step 1* Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—
- $$\frac{A}{B}$$
- where—
- A is the amount on which the investor obtains SEIS relief in respect of the shares treated as issued in the tax year in question, and
- B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.
- Step 2* In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given

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by the formula if there were separate issues of shares in those tax years. In calculating amounts X1 and X2, apply section 257FL if appropriate but do not apply section 257FJ.

*Step 3* Add amounts X1 and X2 together. The result is the required amount.

### **257FL Cases where maximum SEIS relief not obtained**

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to income tax at the SEIS rate on the amount on which the investor claims SEIS relief in respect of the shares,
- section 257FE(2) has effect in relation to any value received as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (2) If the amount of SEIS relief attributable to any of the relevant shares has been reduced before the SEIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (3) Subsection (2) does not apply to a reduction of SEIS relief by virtue of section 257E(4) (attribution of SEIS relief where there is a corresponding issue of bonus shares).

### **257FM Receipts of value by and from connected persons etc**

In sections 257FE, 257FF and 257FH to 257FJ—

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor's order or for the investor's benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and
- (c) any reference to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

### **257FN Receipt of replacement value**

- (1) If—
- (a) any SEIS relief attributable to the relevant shares would, in the absence of this section, be reduced or withdrawn under section 257FE because of a receipt of value within section 257FH(2), (7) or (8) (“the original value”),
  - (b) the original supplier receives value (“replacement value”) from the original recipient and the receipt is a qualifying receipt, and
  - (c) the amount of the replacement value is at least the amount of the original value,
- section 257FE does not, because of the receipt of value, have effect to reduce or withdraw the SEIS relief.

This is subject to section 257FO(1) and (2).

- (2) For the purposes of this section—

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“the original recipient” means the person who receives the original value;  
“the original supplier” means the person from whom that value was received.

- (3) If the amount of the original value is, by virtue of section 257FJ, treated as reduced for the purposes of section 257FE(2) as it applies in relation to the relevant shares in question, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—
- (a) because of the original recipient doing one or more of the following—
    - (i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,
    - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset,
    - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,
  - (b) if the receipt of the original value was within section 257FH(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or
  - (c) if the receipt of the original value was within section 257FH(8), because of the original recipient repurchasing the share capital or securities in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.
- (5) This subsection applies to—
- (a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—
    - (i) the original supplier, or
    - (ii) any other person who, at any time in period A relating to the relevant shares, is an associate of, or is connected with, that supplier (whether or not the other person is such an associate, or is so connected, at the material time),which is reasonable in relation to the market value of those goods, services or facilities,
  - (b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
  - (c) any payment for the acquisition of an asset which does not exceed its market value,
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period A relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),

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- of an amount not exceeding a reasonable and commercial rent for the property,
  - (e) any payment in discharge of an ordinary trade debt, and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4), the sum of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,
  - (b) in a case within subsection (4)(b), the same as the amount of the original value, and
  - (c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.
- Section 257FI applies for the purpose of determining the original value.
- (7) In this section—
- (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and
  - (b) “ordinary trade debt” has the meaning given by section 257FH(13).

### **257FO Section 257FN: supplementary**

- (1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 257FN(1) to the extent to which it has previously been set (under that section) against a receipt of value to prevent any reduction or withdrawal of SEIS relief under section 257FE.
- (2) The receipt of the replacement value by the original supplier (“the event”) is ignored for the purposes of section 257FN if—
  - (a) the event occurs before period A relating to the relevant shares,
  - (b) if the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
  - (c) if an appeal has been brought by the investor against an assessment to withdraw or reduce any SEIS relief attributable to the relevant shares because of the receipt of the original value, the event occurs more than 60 days after the day on which the amount of relief which falls to be withdrawn has been finally determined.

But nothing in section 257FN or this section requires the replacement value to be received after the original value.

- (3) This subsection applies if—
  - (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 257FN(1),
  - (b) in consequence of the receipt, any receipts of value are ignored for the purposes of section 257FE as that section applies in relation to the shares in question or any other shares subscribed for by the investor, and



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- (c) the event which gives rise to the receipt is (or includes) a subscription for shares by—
  - (i) the investor, or
  - (ii) any person who at any time in period A relating to the relevant shares is an associate of the investor (whether or not the person is such an associate at the material time).
- (4) If subsection (3) applies, the person who subscribes for the shares is not to be eligible for any SEIS relief in relation to those shares or any other shares in the same issue.
- (5) In this section “the original recipient”, “the original supplier” and “replacement value” have the same meaning as in section 257FN.

### *Miscellaneous*

#### **257FP Acquisition of trade or trading assets**

- (1) Any SEIS 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 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) controls or, at any time in period A, has controlled the company, and
  - (b) at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—
  - (a) for the purposes of determining the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade—
    - (i) apply section 941(6) of CTA 2010, and
    - (ii) an interest in a trade belonging to a company may be treated in accordance with any of the options set out in section 942 of that Act, 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 this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

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### **257FQ Acquisition of share capital**

- (1) Any SEIS 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) controls or, at any time in period A, has controlled the company, and
  - (b) at any such time, controlled the other company.

### **257FR Relief subsequently found not to have been due**

- (1) Any SEIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) SEIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
  - (a) that the requirements of sections 257CB and 257CC (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 257GF (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 SEIS 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.

## **CHAPTER 7**

### WITHDRAWAL OR REDUCTION OF SEIS RELIEF: PROCEDURE

#### *Assessments and appeals*

### **257G Assessments for the withdrawal or reduction of SEIS relief**

If any SEIS relief which has been obtained falls to be withdrawn or reduced under Chapter 6, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

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### **257GA Appeals against section 257FR(3)(b) notices**

For the purposes of the provisions of TMA 1970 relating to appeals, the giving of notice by an officer of Revenue and Customs under section 257FR(3)(b) is taken to be a decision disallowing a claim by the issuing company.

### **257GB Time limits for assessments**

- (1) An officer of Revenue and Customs may—
  - (a) make an assessment for withdrawing or reducing the SEIS relief attributable to any of the relevant shares, or
  - (b) give a notice under section 257FR(3),at any time not more than 6 years after the end of the relevant tax year.
- (2) In subsection (1) “the relevant tax year” means—
  - (a) the tax year in which period B ends, or
  - (b) the tax year in which the event which causes the SEIS relief to be withdrawn or reduced occurs,whichever is the later.
- (3) Subsection (1) is without prejudice to section 36(1A) of TMA 1970 (loss of tax brought about deliberately etc).

### **257GC Cases where assessments not to be made**

- (1) No assessment for withdrawing or reducing SEIS relief in respect of shares issued to an individual may be made because of an event occurring after the individual's death.
- (2) Subsection (3) applies if an individual has, by a disposal or disposals to which section 257FA(3) applies, disposed of all shares which—
  - (a) have been issued to the individual by the issuing company, and
  - (b) are shares—
    - (i) to which SEIS relief is attributable, or
    - (ii) in relation to which period A has not come to an end.
- (3) No assessment for withdrawing or reducing SEIS relief in respect of those shares may be made because of any subsequent event unless the event occurs at a time when the individual—
  - (a) has a substantial interest in the company within the meaning of section 257BB,
  - (b) is an employee of the issuing company, or
  - (c) is a director of the issuing company.

### *Interest*

### **257GD Date from which interest is chargeable**

- (1) In its application to an assessment made by virtue of section 257G in the case of relief withdrawn or reduced by virtue of a provision listed in subsection (2), section 86 of TMA 1970 (interest on overdue income tax) has effect as if the relevant date were 31 January next following the tax year in which the assessment is made.

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- (2) The provisions are—
- (a) section 257BB (no substantial interest in the issuing company),
  - (b) section 257BD (no linked loan requirement),
  - (c) sections 257DA to 257DN (Chapter 4 requirements),
  - (d) section 257FA (disposal of shares),
  - (e) section 257FD (put options),
  - (f) section 257FE (receipt of value by the investor),
  - (g) section 257FP (acquisition of a trade or trading asset),
  - (h) section 257FQ (acquisition of share capital).

### *Information*

#### **257GE Information to be provided by the investor**

- (1) This section applies if the investor has obtained SEIS relief in respect of the relevant shares, and an event occurs as a result of which—
- (a) the investor is not a qualifying investor in relation to the shares,
  - (b) the SEIS relief falls to be withdrawn or reduced by virtue of section 257BD (no linked loans requirement),
  - (c) the SEIS relief falls to be withdrawn or reduced under—
    - (i) section 257FA (disposal of shares),
    - (ii) section 257FC (call options), or
    - (iii) section 257FD (put options), or
  - (d) the SEIS relief falls to be withdrawn or reduced under section 257FE (receipt of value by the investor), or would fall to be so withdrawn or reduced but for section 257FN (receipt of replacement value).
- (2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) If the investor—
- (a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).
- (4) In subsection (3) “qualifying receipt” and “replacement value” are to be read in accordance with section 257FN.

#### **257GF Information to be provided by the issuing company etc**

- (1) This section applies if the issuing company has provided an officer of Revenue and Customs with a compliance statement in respect of an issue of shares and an event occurs as a result of which—
- (a) the requirement of section 257CC (spending of the money raised) is not met in respect of any of the shares included in the issue, or would not be met if SEIS relief had been obtained in respect of the shares in question,

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- (b) any provision of Chapter 4 has effect to prevent the issuing company being a qualifying company in relation to any of the shares included in the issue, or would have such an effect if SEIS relief had been obtained in respect of the shares in question, or
  - (c) any of the provisions of Chapter 6 mentioned in subsection (2) has effect to cause any SEIS relief attributable to any of the shares included in the issue to be withdrawn or reduced, or—
    - (i) would have such an effect if SEIS relief had been obtained in respect of the shares in question, or
    - (ii) in the case of section 257FE, would have such an effect but for section 257FN (receipt of replacement value).
- (2) The provision are—
- (a) section 257FE (value received by the investor),
  - (b) section 257FP (acquisition of a trade or trading asset), and
  - (c) section 257FQ (acquisition of share capital).
- (3) If this section applies—
- (a) the issuing company, and
  - (b) any person connected with the issuing company who has knowledge of the matters mentioned in subsection (1),
- must give a notice to an officer of Revenue and Customs containing particulars of the event.
- (4) Any notice required to be given by the issuing company under subsection (3)(a) must be given—
- (a) within 60 days of the event, or
  - (b) if the event is a receipt of value within section 257FH(2) from a person connected with the company (see section 257FM), within 60 days of the company coming to know of the event.
- (5) Any notice required to be given by a person under subsection (3)(b) must be given within 60 days of the person coming to know of the event.
- (6) If a person—
- (a) is required under this section to give notice of a receipt of value which is within section 257FE, or would be within that section but for section 257FN, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).
- (7) In subsection (6) “qualifying receipt” and “replacement value” are to be read in accordance with section 257FN.

### **257GG Power to require information where section 257GE or 257GF applies or could have applied**

- (1) This section applies if an officer of Revenue and Customs has reason to believe that a person—
- (a) has not given a notice which the person is required to give under section 257GE or 257GF in respect of any event, or

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- (b) has given or received value within the meaning of section 257FH(2) or (8) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.
- (2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) In subsection (1)(b), the reference to an amount of insignificant value is construed in accordance with section 257FG(2).

### **257GH Power to require information in other cases**

- (1) Subsection (2) applies if SEIS relief is claimed in respect of shares in a company, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangements or scheme as is mentioned in—
  - (a) section 257BC (no related investment arrangements),
  - (b) section 257BE or 257DB(2) or (4) (no tax avoidance),
  - (c) section 257CD(1) (no pre-arranged exits),
  - (d) section 257CF (no disqualifying arrangements),
  - (e) section 257DB(4) (winding up, administration etc), or
  - (f) section 257DG(1) or (2) (conditions ceasing to be met).
- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
  - (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and
  - (b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) For the purposes of subsection (2), in a case falling within a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The person concerned</i>
Subsection (1)(a)	The claimant, the company and any person controlling the company
Subsection (1)(b)	The claimant
Subsection (1)(c)	The claimant, the company and any person connected with the company
Subsection (1)(d)	The claimant, the company, any person controlling the company and any person who an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question

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Subsection (1)(e)	The claimant, the company, any other company in question and any person controlling the company or any other company in question
Subsection (1)(f)	The company and any person controlling the company

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References in this subsection to the claimant include references to any person to whom the claimant appears to have made such a transfer as is mentioned in section 257H (spouses or civil partners) of any of the shares in question.

- (5) If SEIS relief has been obtained in respect of shares in a company—
- (a) any person who receives from the company any payment or asset which may constitute value received (by the person or another) for the purposes of section 257FE, and
  - (b) any person on whose behalf such a payment or asset is received,
- must, if so required by an officer of Revenue and Customs, state whether the payment or asset so received is received on behalf of any other person and, if so, the name and address of that other person.
- (6) If SEIS relief has been claimed in respect of shares in a company—
- (a) any person who holds or has held shares in the company, and
  - (b) any person on whose behalf any such shares are or were held,
- must, if so required by an officer of Revenue and Customs, state whether the shares so held are or were held on behalf of any other person and, if so, the name and address of that other person.

### **257GI Obligations of secrecy**

No obligation of secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a company that SEIS relief has been obtained or claimed in respect of a particular number or proportion of its shares.

## **CHAPTER 8**

### **SUPPLEMENTARY AND GENERAL**

#### *Disposals of shares*

### **257H Transfers between spouses or civil partners**

- (1) This section applies if—
- (a) shares to which an amount of SEIS 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 257FA (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,

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- (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 SEIS relief had continued to be attributable to the shares despite the transfer.
- (3) If the amount of SEIS 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 SEIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and
  - (b) sections 257FB(3) and 257FL(2) 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 SEIS relief is to be made, the assessment is to be made on B.

#### **257HA 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 257FA (disposal of shares), or
  - (b) section 257H (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 no SEIS relief is attributable,
  - (b) next any to which SEIS relief (but not SEIS re-investment relief) is attributable, and
  - (c) next any to which SEIS relief and SEIS re-investment relief are attributable.
- (4) Any shares to which SEIS relief is attributable and which were transferred to an individual as mentioned in section 257H are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.
- (5) 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.
- (6) In this section—
- “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);



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“SEIS re-investment relief” means relief under Schedule 5BB to TCGA 1992.

### *Acquisition of issuing company*

## **257HB Continuity of SEIS 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 257CA(2), and
    - (ii) a compliance certificate in respect of those shares was issued by that company for the purposes of subsection (1) of section 257EB and in accordance with section 257EC, 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 257CA(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.
- (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 SEIS relief which is attributable to any old shares is attributable instead to the new shares for which they are exchanged.
- (4) Nothing in section 257DG (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.

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- (6) References in sections 257HC and 257HD to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

### **257HC Carry over of obligations etc where SEIS relief attributed to new shares**

- (1) This section applies if, under section 257HB, any SEIS 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 257EB(1) (entitlement to claim),
  - (b) section 257FR(3) (relief subsequently found not to be due), or
  - (c) sections 257GF to 257GH (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 257FR(3)(b) may be prosecuted by the new company as if it had been brought by that company.

### **257HD 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 SEIS relief becomes attributable under section 257HB, the old shares for which they were exchanged were subscribed for by and issued to the individual.
- (2) This Part 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 SEIS 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 SEIS relief becomes so attributable under section 257HB, the old shares for which they were exchanged were transferred to the individual as mentioned in section 257H.
- (4) This Part 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 SEIS 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.

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### *Nominees etc*

#### **257HE 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) “shares” means shares which meet the requirements of section 257CA(2).

### *Interpretation*

#### **257HF Meaning of “new qualifying trade”**

- (1) For the purposes of this Part a qualifying trade carried on by the issuing company or a qualifying 90% subsidiary of that company (“the relevant company”) is a “new qualifying trade” if (and only if)—
  - (a) the trade does not begin to be carried on (whether by the relevant company or any other person) before the two year pre-investment period, and
  - (b) at no time before the relevant company begins to carry on the trade was any other trade being carried on by the issuing company or by any company that was a 51% subsidiary of the issuing company at the time in question.
- (2) In this section—

“qualifying trade” has the same meaning as in Part 5 (see sections 189 and 192 to 200);

“two year pre-investment period” means the period of 2 years ending immediately before the day on which the relevant shares are issued.

#### **257HG Meaning of “qualifying business activity”**

- (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.

This is subject to subsection (3).
- (2) Activity A is—
  - (a) the carrying on of a new 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 new qualifying trade—

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- (i) which, on that date, is intended to be carried on by the company or such a subsidiary, and
  - (ii) which is begun to be carried on by the company or such a subsidiary.
- (3) 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—
    - (i) that a new qualifying trade which the company or such a subsidiary will carry on will be derived, or
    - (ii) that a new qualifying trade which the company or such a subsidiary is carrying on, or will carry on, will benefit.
- (4) For the purposes of subsection (3)(a), when research and development is begun to be carried on by a qualifying 90% subsidiary of the issuing company, any carrying on of the research and development by it before it became such a subsidiary is ignored.
- (5) References in subsection (2)(b)(i) or (3)(b) to a qualifying 90% subsidiary of the issuing company include references to any existing or future company which will be such a subsidiary at any future time.

#### **257HH Meaning of “disposal of shares”**

- (1) In this Part references to a disposal of shares include a reference 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.

#### **257HI Meaning of “issue of shares”**

- (1) In this Part—
  - (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 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 in one capacity on the same day.
- (2) Subsection (1)(b) has effect subject to sections 257E(6), 257EA(2), 257FB(2) and 257FK(1).

#### **257HJ Minor definitions**

- (1) In this Part—
  - “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);
  - “associate” has the same meaning as in Part 5 (see section 253);
  - “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);

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“director” is read in accordance with section 452 of CTA 2010;

“EIS relief” means relief under Part 5;

“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;

“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;

“permanent establishment” has the same meaning as in Part 5 (see section 191A);

“qualifying subsidiary” has the same meaning as in Part 5 (see section 191);

“qualifying 90% subsidiary” has the same meaning as in Part 5 (see section 190);

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

- (2) Section 252 (meaning of a company being “in administration” or “in receivership”) applies for the purposes of this Part.
- (3) Section 995 (control) does not apply for the purposes of the following provisions—
- (a) section 257DG(1)(a),
  - (b) section 257FP,
  - (c) section 257FQ,
  - (d) section 257GH(4);
- and in those provisions “control” is to be read in accordance with sections 450 and 451 of CTA 2010.
- (4) In this Part—
- (a) references in any provision to the reduction of any SEIS 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 SEIS relief, and
  - (b) references to the withdrawal of SEIS relief in respect of any shares are—
    - (i) to the withdrawal of the SEIS relief attributable to those shares, or
    - (ii) if no relief has yet been obtained, to ceasing to be eligible for SEIS 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 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 SEIS relief obtained by an individual in respect of any shares include a reference to SEIS 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 SEIS relief obtained by an individual in respect of any shares include a reference to the withdrawal or

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reduction of SEIS relief obtained by the individual in respect of those shares at any 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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