



Income Tax Act 2007

2007 CHAPTER 3

[^{F1}PART 5A

SEED ENTERPRISE INVESTMENT SCHEME

[^{F1}CHAPTER 4

THE ISSUING COMPANY

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](#)

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),

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- (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.
- (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.

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- (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 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—

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- (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.
- (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.

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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.
- (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—

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- (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
 - (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).
- (2) The independence element of the requirement is that—
 - (a) the issuing company must not at any time in period A be under the control of any other company (whether on its own or together with any person connected with it), and
 - (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).
- (3) This section is subject to section 257HB(4) (exchange of shares).

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 or paternity leave, or
 - (ii) a student on vocational training.

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”),
 - (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—

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- (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.

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.

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- (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.]

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