



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 6

#### VENTURE CAPITAL TRUSTS

### CHAPTER 4

#### QUALIFYING HOLDINGS

##### *Introduction*

#### **286 Qualifying holdings: introduction**

- (1) If any shares in or securities of any company (“the relevant company”) are at any time held by another company (“the investing company”), this Chapter applies for determining whether and to what extent those shares or securities (“the relevant holding”) are, for the purposes of Chapter 3, to be regarded as at that time comprised in the investing company’s qualifying holdings.
- (2) The relevant holding is to be regarded as comprised in the investing company’s qualifying holding at any time if—
  - (a) all the following requirements of this Chapter are met at that time in relation to the relevant company and the relevant holding, and
  - (b) the relevant holding consists of shares or securities which were first issued by the relevant company to the investing company and have been held by the investing company ever since.
- (3) The requirements are those imposed as to—
  - (a) maximum qualifying investment (see section 287),
  - (b) no guaranteed loan (see section 288),
  - (c) proportion of eligible shares (see section 289),
  - (d) trading (see section 290),

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- (e) the carrying on of a qualifying activity (see section 291),
  - [<sup>F1</sup>(ea) the maximum amount raised annually through risk capital schemes (see section 292A),]
  - (f) use of the money raised (see section 293),
  - (g) the relevant company carrying on the relevant qualifying activity (see section 294),
  - (h) unquoted status (see section 295),
  - (i) control and independence (see section 296),
  - (j) gross assets (see section 297),
  - [<sup>F2</sup>(ja) number of employees (see section 297A),]
  - (k) qualifying subsidiaries (see section 298), and
  - (l) property managing subsidiaries (see section 299).
- (4) Subject to section 293(7), subsection (5) applies if—
- (a) the requirements of section 287, 293 or 294 would be met as to only part of the money raised by the issue of the relevant holding, and
  - (b) that holding is not otherwise capable of being treated as comprising separate holdings.
- (5) If this subsection applies, this Chapter has effect in relation to the relevant holding as if it were two separate holdings consisting of—
- (a) a holding from which the part of the money mentioned in subsection (4)(a) was raised, and
  - (b) a holding from which the remainder was raised.

Chapter 3 has effect as if the value of the relevant holding were to be apportioned between the two holdings treated as subsisting by this subsection.

#### **Textual Amendments**

- F1** S. 286(3)(ea) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 6\(2\)](#) (with [Sch. 16 para. 6\(5\)\(6\)](#))
- F2** S. 286(3)(ja) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(2\)\(5\)](#) (with [Sch. 16 para. 3\(6\)\(7\)](#))

### *The requirements*

#### **287 The maximum qualifying investment requirement**

- (1) The requirement of this section is that the relevant holding did not, when it was issued, represent an investment in excess of the maximum qualifying investment for the relevant period.
- (2) Subject to subsection (7), the maximum qualifying investment for any period is exceeded so far as the total amount of money which—
- (a) is raised in that period, and
  - (b) is so raised by the issue to the investing company during that period of shares in or securities of the relevant company,
- exceeds £1 million.

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- (3) If the relevant holding represented, when issued, an investment in excess of the maximum qualifying investment for the relevant period—
  - (a) the shares or securities which represented the excess are not to be regarded as part of the relevant holding, and
  - (b) the amount of money raised by those shares or securities is to be ignored for the purposes of any subsequent application of subsection (2).
- (4) For the purposes of this section, if there is any question as to whether any shares in or securities of the relevant company which are for the time being held by the investing company represent an investment in excess of the maximum qualifying investment for any period, that question is determined on the following assumption in relation to disposals by the investing company.
- (5) The assumption is that, as between shares or securities of the same description, those which represent the whole or any part of the excess are disposed of before those which do not.
- (6) Subsection (7) applies if—
  - (a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,
  - (b) the trade which meets the requirement of section 291 was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture, and
  - (c) the other partners or parties to the joint venture include at least one other company.
- (7) If this subsection applies, this section has effect in relation to the relevant company as if the sum of money for the time being specified in subsection (2) were to be divided by the number of companies (including the relevant company) which, at the time when the relevant holding was issued, were members of the partnership or, as the case may be, parties to the joint venture.
- (8) For the purposes of this section “the relevant period” is the period beginning with whichever is the earlier of—
  - (a) the time 6 months before the issue of the relevant holding, and
  - (b) the beginning of the tax year in which the issue of that holding took place,and (in either case) ending with the issue of that holding.

## **288 The no guaranteed loan requirement**

- (1) The requirement of this section is that there are no securities relating to a guaranteed loan in the relevant holding.
- (2) For the purposes of this section, a security relates to a guaranteed loan if (and only if) there are arrangements for the investing company to be or to become entitled to receive anything (whether directly or indirectly) from a third party in the event of the failure by any person to comply with—
  - (a) the terms of the loan to which the security relates, or
  - (b) the terms of the security.
- (3) For the purposes of subsection (2) it does not matter whether the arrangements apply in all cases of a failure to comply or only in some such cases.

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- (4) For the purposes of this section “third party” means any person except—
- (a) the relevant company, and
  - (b) if the relevant company is a parent company that meets the trading requirement in section 290(1)(b), the subsidiaries of that company.

## **289 The proportion of eligible shares requirement**

- (1) The requirement of this section is that eligible shares represent at least 10% by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the investing company.
- (2) For the purposes of this section the value at any time of any shares in or securities of a company is taken (subject to subsection (4)) to be their value immediately after—
  - (a) any relevant event occurring at that time, or
  - (b) if no relevant event occurs at that time, the last relevant event to occur before that time.
- (3) In subsection (2) “the relevant event”, in relation to any shares in or securities of the relevant company, means—
  - (a) the acquisition by the investing company of those shares or securities,
  - (b) the acquisition by the investing company of any other shares in or securities of the relevant company which—
    - (i) are of the same description as those shares or securities, and
    - (ii) are acquired by the investing company otherwise than by being allotted to the investing company without its being liable to give any consideration, or
  - (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the investing company as (by discharging that obligation) increases the value of any such shares or securities.
- (4) If at any time the value of any shares or securities held by the investing company is less than the consideration given by the investing company for those shares or securities, it is to be assumed for the purposes of this section that the value of the shares or securities at that time is equal to the amount of that consideration.
- (5) In this section “eligible shares” has the same meaning as in Chapter 3 (see section 285(3)).

## **290 The trading requirement**

- (1) The requirement of this section is that—
  - (a) the relevant company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the relevant 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.
- (2) If the relevant company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—

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- (a) the relevant company is treated as a parent company for the purposes of subsection (1)(b), and
- (b) the reference in subsection (1)(b) to the group includes the relevant 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.

- (3) For the purposes of subsection (1)(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.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purpose 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, or
  - (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.
- (6) Any reference in sub-paragraph (i) or (ii) of subsection (5)(d) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) 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, and
    - (b) activities carried on otherwise than in the course of a trade.
- (8) This section is supplemented by section 300 (meaning of “qualifying trade”) and sections 303 to 310 (excluded activities).

## **291 The carrying on of a qualifying activity requirement**

- (1) The requirement of this section, at any time on or after the issue of the relevant holding, is that a qualifying company (whether or not the same such company at every such

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time) must have been carrying on a qualifying activity at all times from the issue of the holding to the time in question.

- (2) A qualifying trade carried on wholly or mainly in the United Kingdom is a qualifying activity.
- (3) Preparing to carry on a qualifying trade is a qualifying activity if, at the time when the relevant holding was issued, the trade was intended to be carried on wholly or mainly in the United Kingdom by a qualifying company.

This is subject to subsections (4) and (5).

- (4) The requirement of this section is not capable of being met by virtue of subsection (3) at any time after the end of the period of two years beginning with the issue of the relevant holding unless—
  - (a) the intended trade was begun to be carried on by a qualifying company before the end of that period, and
  - (b) at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has been carrying on a qualifying trade wholly or mainly in the United Kingdom.
- (5) The requirement of this section is also not capable of being met by virtue of subsection (3) at any time after the abandonment, within the period mentioned in subsection (4), of the intention in question.
- (6) In determining for the purposes of subsection (4)(a) when the intended trade was begun to be carried on by a qualifying company which is a qualifying 90% subsidiary of the relevant company, any carrying on by it of the trade before it became such a subsidiary of the relevant company is ignored.
- (7) In this section “qualifying company” means the relevant company or any qualifying 90% subsidiary of that company.
- (8) The reference in subsection (7) to a qualifying company which is a qualifying 90% subsidiary of the relevant company includes, in its application to subsection (3), a reference to any existing or future qualifying company which will be a qualifying 90% subsidiary of the relevant company at any future time.

## **292 Ceasing to meet requirements because of administration or receivership**

- (1) A company is not regarded as ceasing to meet the requirement of section 290 or 291 merely because of anything done in consequence of its being in administration or receivership.
- (2) Subsection (1) applies only if—
  - (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company 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.

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### [<sup>F3</sup>292A The maximum amount raised annually through risk capital schemes requirement

- (1) The total amount of relevant investments made in the relevant company in the year ending with the date the relevant holding is issued must not exceed £2 million.
- (2) In subsection (1), the reference to relevant investments made in the relevant company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the relevant company (whether or not it was such a subsidiary when the investment was made).
- (3) A “relevant investment” is made in a company if—
  - (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205 (enterprise investment scheme), or
    - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),in respect of the shares.
- (4) For the purposes of subsections (1) and (2), an investment within subsection (3)(b) is regarded as made when the shares are issued.
- (5) Subsection (6) applies if, by virtue of the provision of a compliance statement under section 205 above or paragraph 42 of Schedule 15 to FA 2000, the requirement of this section is not met.
- (6) The requirement is to be treated as having been met throughout the period—
  - (a) beginning with the time the relevant holding was issued, and
  - (b) ending with the time the compliance statement was provided.]

#### Textual Amendments

**F3** S. 292A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 6\(3\)](#) (with [Sch. 16 paras. 6\(5\)\(6\), 8](#))

### 293 The use of the money raised requirement

- (1) The requirement of this section at any time on or after the issue of the relevant holding is that—
  - (a) if that time is not more than 12 months after the trading time, any of conditions A, B and C is met,
  - (b) if that time is more than 12 months but not more than 24 months after the trading time, either of conditions B and C is met, and
  - (c) in any other case, condition C is met.
- (2) Condition A is that at least 80% of the money raised by the issue of the relevant holding has been or is intended to be employed wholly for the purposes of a relevant qualifying activity.
- (3) Condition B is that at least 80% of the money raised by the issue of the relevant holding has been employed wholly for the purposes of the activity.

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- (4) Condition C is that all of the money raised by the issue of the relevant holding has been employed wholly for the purposes of the activity.
- (5) In subsection (1) “the trading time” means whichever is applicable of the following—
- (a) in a case where the requirement of section 291 was met in relation to the time when the relevant holding was issued and the relevant qualifying activity falls within subsection (2) of that section, the time when the relevant holding was issued, and
  - (b) in a case where that requirement was met in relation to that time and the relevant qualifying activity falls within subsection (3) of that section, the time when the condition in subsection (4)(a) of that section was met by a qualifying company beginning to carry on the intended trade.
- (6) For the purposes of this section money is not to be treated as employed otherwise than wholly for the purposes of a relevant qualifying activity if the only amount employed for other purposes is an amount which is not a significant amount.
- (7) Nothing in section 286(5) requires any money whose use is ignored by virtue of subsection (6) to be treated as raised by a different holding.
- (8) In this section—
- “qualifying activity” and “qualifying company” have the same meaning as in section 291, and
- a qualifying activity is a “relevant qualifying activity” if—
- (a) it was also a qualifying activity at the time when the relevant holding was issued, or
  - (b) it is a qualifying trade and preparing to carry it on was a qualifying activity at that time.

#### **294 The relevant company to carry on the relevant qualifying activity requirement**

- (1) The requirement of this section is met if, at no time after the issue of the relevant holding, has the relevant qualifying activity in question been carried on by a person other than—
- (a) the relevant company, or
  - (b) a qualifying 90% subsidiary of that company.

In this subsection “the relevant qualifying activity in question” means the relevant qualifying activity by reference to which the requirement of section 293 is met.

- (2) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question by a person other than the relevant company, or a qualifying subsidiary of that company, at any time—
- (a) after the issue of the relevant holding, and
  - (b) before the relevant company, or any qualifying 90% subsidiary of that company, carries on that trade.
- (3) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question—
- (a) by the partners in a partnership of which the relevant company, or a qualifying 90% subsidiary of that company, is a member, or



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- (b) by the parties to a joint venture to which the relevant company, or a qualifying 90% subsidiary of that company, is a party.
- (4) The requirement of this section is not to be regarded as failing to be met if—
- (a) merely because of anything done as a consequence of the relevant company or any other company being in administration or receivership, or
  - (b) merely because of the relevant company or any other company being wound up or dissolved without winding up,
- the trade in question ceases to be carried on by the relevant company or a qualifying 90% subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is 12 months before the issue of the relevant holding, with the relevant company.
- (5) Subsection (4) applies only if—
- (a) the entry into administration or receivership and everything done in 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 purpose or one of the main purposes of which is the avoidance of tax.
- (6) In this section “the trade in question” means so much of the relevant qualifying activity mentioned in subsection (1) as consists of—
- (a) a trade which was being carried on at the time when the relevant holding was issued, or
  - (b) a trade for the carrying on of which preparations were being made at that time.
- (7) The definition of “relevant qualifying activity” in subsection (8) of section 293 applies for the purposes of this section as it applies for the purposes of that section.

## **295 The unquoted status requirement**

- (1) The requirement of this section is that the relevant company must 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, stocks, debentures or other securities are marketed to the general public if they are—
- (a) listed on [<sup>F4</sup>a recognised stock exchange, ]
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in <sup>F5</sup>... 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.

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- (6) If—
- (a) any shares in or securities of a company are included in the qualifying holdings of the investing company, and
  - (b) that company ceases to be an unquoted company at any time while the investing company is approved as a VCT,
- the requirements of this section are to be treated, in relation to shares or securities acquired before that time, as continuing to be met for a period of 5 years after that time.

#### Textual Amendments

- F4** Words in s. 295(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(a\)](#)
- F5** Words in s. 295(3)(c) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(b\)](#), [Sch. 27 Pt. 6\(5\)](#)

### 296 The control and independence requirement

- (1) The control element of the requirement is that—
- (a) the relevant company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the relevant company, and
  - (b) no arrangements must be in existence by virtue of which the relevant company could fail to meet paragraph (a).
- (2) The independence element of the requirement is that—
- (a) the relevant company must not be under the control of another company (or of another company and any other person connected with that other company), and
  - (b) no arrangements must be in existence by virtue of which the relevant company could fail to meet paragraph (a).
- (3) This section is subject to section 327(7) (exchange of shares).

### 297 The gross assets requirement

- (1) The requirement of this section in the case of a relevant company that is a single company is that the value of the company's gross assets—
- (a) did not exceed £7 million immediately before the issue of the relevant holding, and
  - (b) did not exceed £8 million immediately afterwards.
- (2) The requirement of this section in the case of a relevant company that is a parent company is that the value of the group assets—
- (a) did not exceed £7 million immediately before the issue of the relevant holding, and
  - (b) did not exceed £8 million immediately afterwards.
- (3) The value of the group assets means 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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## [<sup>F6</sup>297A The number of employees requirement

- (1) If the relevant company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant holding is issued.
- (2) If the relevant 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 50 when the relevant holding is 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.]

### Textual Amendments

- F6** S. 297A inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(3\)\(5\)](#) (with [Sch. 16 para. 3\(6\), \(7\)](#))

## 298 The qualifying subsidiaries requirement

Any subsidiary that the relevant company has must be a qualifying subsidiary of the company.

## 299 The property managing subsidiaries requirement

- (1) Any property managing subsidiary that the relevant company has must be a qualifying 90% subsidiary of the company.
- (2) “Property managing subsidiary” means a subsidiary of the relevant 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 partnership interest deriving its value directly or indirectly from land,

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- (c) any interest in settled property deriving its value directly or indirectly from land, and
- (d) any option, consent or embargo affecting the disposition of land.

### *Definitions*

#### **300 Meaning of “qualifying trade”**

- (1) For the purposes of this Chapter, a trade is a qualifying trade if—
  - (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not consist wholly or as to a substantial part in the carrying on of excluded activities (see sections 303 to 310).
- (2) The carrying on of any activities of research and development from which it is intended—
  - (a) that a trade will be derived which—
    - (i) will be a qualifying trade, and
    - (ii) will be carried on wholly or mainly in the United Kingdom, or
  - (b) that a trade will benefit which—
    - (i) is or will be a qualifying trade, and
    - (ii) is or will be carried on wholly or mainly in the United Kingdom,
 is to be treated as the carrying on of a qualifying trade.
- (3) But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (4) References in this section to a trade are to be read without regard to the definition of “trade” in section 989.

#### **301 Meaning of “qualifying 90% subsidiary”**

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying 90% subsidiary of the relevant company at any time when the following conditions are met—
  - (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,
 be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

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[<sup>F7</sup>(1A) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of a company that is not the relevant company (“company B”) is a qualifying 90% subsidiary of the relevant company if—

- (a) company A would be a qualifying 90% subsidiary of company B (if company B were the relevant company), and company B is a qualifying 100% subsidiary of the relevant company, or
- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the relevant company.

(1B) For the purposes of subsection (1A), no account is to be taken of any control the relevant company may have of company A.

(1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1)

(a) to (e) would be met if—

- (a) company X were the subsidiary,
- (b) company Y were the relevant company, and
- (c) in subsection (1) for “at least 90%” in each place there were substituted “;100%”.]

(2) Subsections (3), (4) and (5) of section 302 apply in relation to the conditions in subsection (1)—

- (a) as they apply in relation to the conditions in subsection (2) of that section, but
- (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary of that company”.

(3) For the purposes of subsection (1)—

- (a) the persons who are equity holders of the subsidiary, and
- (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,

are to be determined in accordance with paragraphs 1 and 3 of Schedule 18 to ICTA.

(4) In making that determination—

- (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
- (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

#### **Textual Amendments**

**F7** S. 301(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 17, 18](#)

### **302 Meaning of “qualifying subsidiary”**

(1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying subsidiary of the relevant company if the following conditions are met.

(2) The conditions are that—

- (a) the subsidiary is a 51% subsidiary of the relevant company,

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- (b) no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, if the winding up—
- (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence 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.
- (5) The conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of that company of all its interest in the subsidiary, if the disposal—
- (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### *Excluded activities*

### **303 Meaning of “excluded activities”**

- (1) The following are excluded activities for the purposes of sections 290 and 300—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
- [<sup>F8</sup>(ia) shipbuilding,
- (ib) producing coal,
  - (ic) producing steel,]

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- (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
  - (l) any activities which are excluded activities under section 310 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
- (a) section 304 (wholesale and retail distribution),
  - (b) section 305 (leasing of ships),
  - (c) section 306 (receipt of royalties and licence fees),
  - (d) section 307 (property development),
  - [<sup>F9</sup>(da) section 307A (shipbuilding),
  - (db) section 307B (producing coal),
  - (dc) section 307C (producing steel),]
  - (e) section 308 (hotels and comparable establishments), and
  - (f) section 309 (nursing homes and residential care homes).

#### Textual Amendments

- F8** S. 303(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(a\), 10](#) (with [Sch. 11 paras. 12, 13](#))
- F9** S. 303(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(b\), 10](#) (with [Sch. 11 paras. 12, 13](#))

### 304 Excluded activities: wholesale and retail distribution

- (1) This section supplements section 303(1)(b).
- (2) In this section—
- (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and
  - (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.
- (3) A trade of wholesale distribution is one in which goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.
- (4) A trade of retail distribution is one in which goods are offered or exposed for sale and sold to members of the general public for their use or consumption.
- (5) A trade of wholesale or retail distribution is not an ordinary trade of wholesale or retail distribution if—
- (a) it consists to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and

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

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

- (1) This section supplements section 303(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(d) as a result only of its consisting in letting ships on charter.
- (4) The requirements of this subsection are that—
  - (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company,
  - (b) every ship beneficially owned by the company is registered in the United Kingdom,
  - (c) the company is solely responsible for arranging the marketing of the services of its ships, and
  - (d) the conditions mentioned in subsection (5) are met in relation to every letting on charter by the company.
- (5) The conditions referred to in subsection (4)(d) are—



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

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

- (1) This section supplements section 303(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—

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- [<sup>F10</sup>(a) by the relevant company, or]
- [<sup>F10</sup>(b) by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]

(5) In the case of an intangible asset that is intellectual property, references to the creation of an asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6) In this section—

<sup>F11</sup>  
...

“intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice, and

“intellectual property” means—

- (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
- (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).

[<sup>F12</sup>(7) If—

- (a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,

references in subsection (4) to the relevant company include the old company.]

#### Textual Amendments

- F10** S. 306(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(2\), 13](#)
- F11** Words in s. 306(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(3\), 13](#), [Sch. 27 Pt. 2\(16\)](#)
- F12** S. 306(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(4\), 13](#)

### 307 Excluded activities: property development

- (1) This section supplements section 303(1)(g).
- (2) “Property development” means the development of land—
  - (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to subsection (4)—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.

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- (4) References in this section to an interest in land do not include—
- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

### **[<sup>F13</sup>307A Excluded activities: shipbuilding**

In section 303(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

#### **Textual Amendments**

**F13** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### **307B Excluded activities: producing coal**

- (1) This section supplements section 303(1)(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation ([EC](#)) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

#### **Textual Amendments**

**F13** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### **307C Excluded activities: producing steel**

In section 303(1)(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

#### **Textual Amendments**

**F13** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### **308 Excluded activities: hotels and comparable establishments**

- (1) This section supplements section 303(1)(j).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).

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- (3) The activities of a person are not to be taken to fall within section 303(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

**309 Excluded activities: nursing homes and residential care homes**

- (1) This section supplements section 303(1)(k).
- (2) “Nursing home” means any establishment which exists wholly or mainly for the provision of nursing care—
- (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth.
- (3) “Residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care because of—
- (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illnesses, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within section 303(1)(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

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

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
- (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (k) of section 303(1), and
  - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
- (a) A controls the company,
  - (b) the company is a close company and A or an associate of A, being a director of the company, either—
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half the business could, in accordance with section 344(2) of ICTA (persons to whom company's trade may be treated as belonging), be regarded

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

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

### *Supplementary*

#### **311 Power to amend Chapter**

The Treasury may by order amend this Chapter—

- (a) to make such modifications of sections 290, 291, 298 and 300, sections 303 to 310 and section 313(3) as they consider appropriate, and
- (b) to substitute different sums for the sums of money for the time being specified in sections 287(2) and 297.

#### **312 Winding up of the relevant company**

None of the requirements of this Chapter is to be regarded, at a time when the relevant company is being wound up, as being, on that account, a requirement that is not met in relation to that company if—

- (a) the requirements of this Chapter would be met in relation to that company apart from the winding up, and
- (b) the winding up 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.

#### **313 Interpretation of Chapter**

- (1) In this Chapter —
  - “the investing company” has the meaning given by section 286(1),
  - “the relevant company” has the meaning given by section 286(1), and
  - “the relevant holding” has the meaning given by section 286(1).
- (2) References in this Chapter to the issue of any securities, in relation to any security consisting in a liability in respect of an unsecured loan, have effect as references to the making of the loan.
- (3) References in sections 303 to 309 to a trade are to be read without regard to the definition of “trade” in section 989 (see also section 300(4)).
- (4) For the purposes of sections 296 and 310(3) and (4), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA with the modification given by subsection (6).

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- (5) For the purposes of this Chapter, section 993 (meaning of “connected persons”) applies as if references to “control” in that section were to be read in accordance with section 416 of ICTA with the modification given by subsection (6).
- (6) The modification is that, in determining whether a person controls a company, the following are to be ignored—
- (a) any person's possession of, or entitlement to acquire, fixed-rate preference shares in the company that do not carry voting rights, and
  - (b) any person's possession of, or entitlement to acquire, rights as a loan creditor of the company.
- (7) In subsection (6) “fixed-rate preference shares” means shares which—
- (a) were issued wholly for new consideration,
  - (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and
  - (c) do not carry any right to dividends other than dividends which—
    - (i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
    - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued,

and in paragraph (a) “new consideration” has the meaning given by section 254 of ICTA.

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