

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 57 and Schedules 11 & 12: Tax Relief for Social Investment

Summary

1. [Section 57](#) and Schedules 11 and 12 introduce a range of income and capital gains tax reliefs to encourage individuals to invest in qualifying social enterprises. Investments may be in shares or by way of certain types of debt, and the reliefs will be available in respect of investments made on or after 6 April 2014.

Details of Schedule 11

Part 1

2. Paragraph 1 inserts new Part 5B into the Income Tax Act 2007 ('ITA'). Part 5B is subdivided into several Chapters.

Chapter 1

3. Chapter 1 contains sections 257J to 257JC which introduce the income tax relief available to individuals who invest in social enterprises.
4. New sections 257J(2) to (3) define "social enterprise" as: community interest company, community benefit society, charity or accredited social impact contractor, and provide that this definition may be further extended by Treasury order to include other types of body. Any such order may have retrospective effect. No definitions are provided for community interest company or charity, which are defined in other Acts: Part 2 of the Companies (Audit, Investigation and Community Enterprise Act 2004 in the case of Community Interest Companies and Schedule 6 to Finance Act 2010 in the case of charities. "Community benefit society" is explained further at new section 257B. Accredited social impact contractor is explained further at new sections 257JD – JG.
5. New section 257JA quantifies the amount of the income tax reduction to which an individual is entitled if a claim to relief is made for a tax year.
6. Subsection 257JA(1) provides that an individual may choose to claim relief in respect of some, but not all, of the investment in relation to which the individual is eligible for relief.
7. Subsections 257JA(2) and (3) are expressed in terms of the individual's entitlement to a reduction in tax liability, as a percentage of the amount invested. Relief is given effect in accordance with Chapter 3 of Part 2 ITA, with the reduction being included at Step 6 of section 23.
8. Subsection (2)(b) provides that there is an upper limit on the amount of an individual's entitlement to relief rather than an upper limit on the amount of investment in respect of which the relief can be claimed.

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9. Subsection 257JA(4) provides that an individual may elect to have some or all of the investment treated as though made in the tax year preceding that in which it was made, with relief being given accordingly.
10. Subsection 257JA(5) sets the rate of SI relief at 30%.
11. New section 257JB describes what is meant by a “community benefit society”. The Co-operative and Community Benefit Societies Acts are in the process of consolidation so section 257B ensures that that definition applies irrespective of which Act is in force at the relevant time.
12. New section 257JC provides that for the purposes of this Part, charitable trusts are to be treated in the same way as companies which are charities. This is qualified to make it clear that a charitable trust cannot be accredited as a social impact contractor.
13. New section 257JD contains the definition of ‘accredited social impact contractor’. Subsection (1) of new 257JD says that this term means a company which is limited by shares and which is accredited under this section as a social impact contractor. Subsection (2) of new section 257JD says that applications for accreditation must be made to a Minister of the Crown in the form and manner specified. Subsection (3) of new section 257JD says that the Minister can only accredit a company if satisfied that each of three conditions is satisfied.
14. The three conditions for accreditation are as follows. The first condition is that the Minister must be satisfied that the company has entered into a relevant contract (a ‘social impact contract’). The second condition is that the company must be, and must at all times since incorporation have remained, established for the propose of entering into and carrying out the terms of such a contract, or for that purpose and incidental purposes; it cannot at any time have another purpose (subsection (3)(b) of new section 257JD). The third condition is that the activities of the company in carrying out the social impact contract will not consist wholly or as to a substantial part in excluded activities (subsection (3)(c) of new section 257JD). Excluded activities are defined later in the part, in section 257MQ.
15. Subsection (4) of new section 257JD allows the Minister to withdraw accreditation from a company if he is satisfied that the second and third conditions described above cease to be met. The Minister has discretion to withdraw the accreditation either from the time the condition ceased to be met, or at a later time.
16. New section 257JE provides the Treasury with the authority to make regulations setting out the criteria which a social impact contract must demonstrate in order to be accredited for the purpose of the tax relief scheme. The section describes the extent of the Treasury power, and allows the regulations to include criteria relating to a party to the contract other than the company which is seeking accreditation. It also allows the regulations to be supplemented by guidance material published by the Government department responsible for administering the accreditation facility.
17. New section 257JF provides more detail about the requirements of accreditation. Accreditation must be made on terms required by regulations and any other terms considered appropriate by the Minister of the Crown who is accrediting the company concerned. An accreditation must be conditional on compliance with those requirements.
18. Subsection (2) of new section 257JF says that the requirements that may be imposed include requirements relating to the provision of information.
19. Subsection (3) of new section 257JF provides authority for the regulations to make provision for further specific matters, including: the possibility of an accreditation being varied; the consequences of a breach of any of the conditions of accreditation; the scope for the accrediting department to publish information about an accreditation or

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accredited contractor; the right for review of, or appeal against, various decisions or actions of the accrediting body.

20. New section 257JG sets out the period for which accreditation as a social impact contractor has effect.
21. Subsection (1) says that this period begins with the day specified in the accreditation and that its length is determined in accordance with the date specified in or determined in accordance with the accreditation.
22. Subsection (2) allows for retrospective accreditation, from a date earlier than either the day the application for accreditation is made or the day new section 257 JD comes into force. However, accreditation cannot be effective for a date before 6 April 2014.
23. Subsection (3) ensures that the section is subject to the power for withdrawal of accreditation. If accreditation is withdrawn the period of accreditation will come to an end on the date a withdrawal takes effect.
24. New section 257JH provides for delegation by a Minister of the Crown of any function given by new sections 257JD to 257JG. It also provides that the term Minister of the Crown has the meaning given by section 8(1) of the Ministers of Crown Act 1975.

Chapter 2

25. Chapter 2 sets out some key terms used in determining eligibility.
26. New section 257K(1) provides that the scheme applies in respect of qualifying investments (as defined in Chapters 3 and 4) made on or after 6 April 2014. It sets a limit of five years on the lifespan on the social investment tax relief scheme, but provides that this lifespan may be extended by Treasury order.
27. New subsection 257K(2) provides for the conditions for eligibility for SITR set out in Chapters 3 and 4 of the new Part 5B to differ where the social enterprise concerned is an accredited social impact contractor.
28. New section 257K(3) provides that the investor is not eligible for SI relief if the investor has otherwise obtained relief on the investment via the Enterprise Investment Scheme, Seed Enterprise Investment Scheme or the Community Investment tax relief scheme.
29. New section 257K(4) makes it clear that the conditions for relief apply equally whether individuals make the investment on their own behalf or whether the investment is made or held for them by a nominee.
30. Tax relief is contingent upon the individual making an investment, and the timing of the making of that investment determines the tax year for which relief will be due. New section 257KB explains when the investment is to be considered to be “made”.
31. In the case of an investment in shares, new section 257KB(2) explains that the investment is considered to be made when the shares are issued to the investor.
32. In the case of an investment in qualifying debt investments, when the investment is considered to be “made” will depend on the nature of the investment agreement. The legislation is intended to cater both for situations where the amount specified in the agreement is all paid over at the outset, as well as situations where an investor may commit to lend a sum of money to a social enterprise, but rather than drawing down the whole of that sum at the outset, the social enterprise is able to draw down smaller sums at intervals.
33. New subsection 257KB(3) and (4) deal with the situation where either the investment agreement involves only one advance of money being made to the social enterprise, or where an investment is the first of multiple cash advances to be provided to the social enterprise under the terms of the agreement. It provides that the investment is

to be regarded as “made” when the enterprise issues the debenture or debentures to the investor. In the case of an investment agreement which does not involve anything being issued to the investor, then the investment is to be regarded as “made” when the debenture or debentures take effect between the social enterprise and the investor.

34. New subsection 257KB(5) provides that if the investment agreement involves multiple advances of money, then for each second and subsequent advance, the investment is to be regarded as “made” at the time of each cash advance to the social enterprise. If the relevant debenture or debentures are issued, or otherwise take effect, at a date later than the date or dates each cash advance is made, the investment is to be regarded as made on the date of issue or the date the debenture becomes effective.
35. New subsection 257KB(6) explains that the term “debenture” in this context should be interpreted widely as including any instrument which creates or acknowledges indebtedness.
36. New section 257KC explains the terms “shorter applicable period” and “longer applicable period”. Many of the eligibility conditions relating to the investor, the investment and the investee enterprises have to be met for a continuous period of time rather than merely at the point of investment, for the tax relief to continue to be available. In the case of some conditions, that continuous period of time runs from the date of investment. In the case of other conditions, it runs from an earlier date – either the date of incorporation or, if later, twelve months before the date of investment. In all cases the continuous period ends with the third anniversary of the investment date. Investors are not required to wait until the end of the relevant applicable period before claiming tax relief (see new section 257PA) but if any of the conditions are breached before the end of the applicable period, relief which has been given may be withdrawn or reduced (see Chapter 7).

Chapter 3

37. Chapter 3, sections 257L to 257LH, sets out eligibility conditions relating to the investor and the investment.
38. New section 257L describes the types of investment which may qualify for relief. Investments may be in shares, or in debt instruments including simple loans. The section ensures that either type of investment must be the lowest-ranking of its type in the event of a winding up and therefore exposed to the greatest degree of risk for investors. In the case of qualifying debt investments, these must as far as possible rank equally in a winding up with those shares which rank lowest. Investments in shares may not carry any right to an amount of dividend which is fixed absolutely; or whose rate is fixed either by reference to the amount invested or by reference to some other factor which is not contingent upon the enterprise’s financial success. Irrespective of the nature of the investment, any right of return must not be greater than a reasonable commercial rate. No definition is provided for “reasonable commercial rate”.
39. New section 257LA ensures that income tax relief will only be available where the amount in respect of which relief may be claimed has been paid over in cash to the enterprise when the investment is considered to have been made. This means, for instance, that where an investor has undertaken to provide the enterprise with an amount but the enterprise has not drawn down some or all of the amount committed, then relief will be due only on the drawn down amount.
40. New section 257LB(1) ensures that the investor has no right to have the investment redeemed, repaid or repurchased during the shorter applicable period.
41. New section 257LB(2) to (4) ensures that the investment is not made with the benefit of any arrangement which might guarantee an exit from the investment.
42. New subsection 257LB(5) disapplies the requirements in section 257LB(2) to (4) in relation to accredited social impact contractors. This recognises the fact that an

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accredited social impact contract is likely to be time-limited and will therefore usually include an exit arrangement for investors.

43. New section 257LC(1) prevents the investment from qualifying if at any time in the shorter applicable period, there exist arrangements aimed at protecting the investor's capital, or otherwise protecting the investor from the risks attached to making the investment. This would include, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the investment artificially.
44. Subsection (2) provides an exception for ordinary commercial matters such as insurance by the enterprise against normal trading risks.
45. New section 257LD denies relief if in the longer applicable period, the investor, or any associate, receives a loan from any person which would not have been made, or would not have been made on the same terms, were it not for the making of the relevant investment. This includes cases where credit is given or a debt due from the investor or associate is assigned. This section mirrors the equivalent Enterprise Investment Scheme provision at section 164 ITA. HMRC has published an interpretation of that provision in Statement of Practice SP6/98 and it is anticipated that that interpretation is likely to apply equally here, providing that the Statement of Practice is still in existence.
46. New section 257LE prevents the investment from qualifying if it is made as part of a scheme or arrangement whose purpose is tax avoidance.
47. New section 257LF prevents individuals from qualifying for relief if they are, or their associates are, employees, partners, remunerated directors or trustees of the enterprise, or of other bodies which have certain relationships with the enterprise. Those restrictions apply throughout the longer applicable period described in section 257KC, and therefore exclude individuals who have had (or whose associates have had) one of the relationships mentioned with the enterprise before the date the investment is made, even if that relationship has ended by the time the investment is made. The term "associate" is defined in new section 257TC as including spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.
48. Subsection (3) provides definitions of some terms used in section 257LF. The definition of "related person" includes a person connected with the social enterprise or a linked company. In this context, "connected" is as defined by section 993 ITA, as provided by section 1021 ITA. This subsection also defines "subsidiary" as a 51% subsidiary, which is further explained in section 989 ITA.
49. Subsection (4) explains what is meant by a "remunerated director" in this context. A director is "remunerated" if during the longer applicable period he or a partnership of which he is a member receives, or is entitled to receive, a payment from a "related person" as defined in subsection (3). "Director", for the purpose of Part 5B, takes its meaning from section 452 Corporation Tax Act 2010, modified so that references to companies in that section are to be read as including charities which are trusts. See new section 257TE.
50. Subsection (5) provides that certain types of payment are not taken into account in determining whether the director is "remunerated". These are mostly payments of various types which do not constitute payments for services rendered as a director. However, reasonable payments which are for services rendered as a director may also be ignored, if one of two further conditions is met.
51. The first of these conditions is at subsection (6). This is that the investment was made at a time when the investor met the requirements of section 257LF, 257LG and 257LH, and also had never been involved in carrying on the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary.

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52. The second of the conditions is at subsection (7). This is that if the first condition is not met, the investment is made before the third anniversary of the last investment made by the director at a time when the investment met the first condition.
53. Subsection (8) provides that in cases where a director is also an employee of an enterprise, for the purposes of new section 257LF the employee relationship is to be disregarded.
54. New section 257LG prevents individuals from qualifying for relief if they, or their associates, have a certain level of interest in the capital of the enterprise or of a 51% subsidiary of the enterprise. This restriction applies throughout the longer applicable period, and it applies in respect of an interest in a company which is a 51% subsidiary at any time in that period, even if it is not such a subsidiary at the time of investment.
55. Subsection (3) prevents an individual from qualifying if that individual or an associate controls the enterprise or a 51% subsidiary. “Control” for this purpose is defined at new section 257TD and takes the meaning in section 450 and 451 of the Corporation Tax Act 2010, expanded so that references to company in those sections are to be read as including references to charitable trusts. Trustees who alone, or together with another person connected with them, have the power to exercise certain trustee functions, are regarded as controlling an enterprise in this context.
56. Subsection (4) prevents an individual from qualifying for relief if at any time in the longer applicable period, that individual or an associate has directly or indirectly more than 30% of any of the following:
- The issued share capital of an enterprise or its 51% subsidiary (as defined in section 989 ITA).
 - The loan capital of the social enterprise or its 51% subsidiary.
 - The voting power of an enterprise or its 51% subsidiary.
57. Subsection (5) disapplies subsection (3) and (4) in respect of any shareholdings at a time when the enterprise has issued only subscriber shares, and has not yet started its business or any preparations for its business. This prevents an individual from being disqualified merely by virtue of having taken shares in a company for the purpose of registering that company with Companies’ House but where it is intended that there will be other investors in due course.
58. Subsection (6) defines “loan capital” for the purpose of subsection (4) as including any debt incurred by the relevant enterprise for any money borrowed or capital asset acquired by it; for any right to receive income created in favour of it; or for consideration the value of which to the enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt). But loan capital is treated as excluding debts arising on a normal bank overdraft.
59. New section 257LH imposes a requirement that there must be no “reciprocal” arrangement allowing individuals to circumvent the restrictions in sections 257LF and LG by investing in each other’s social enterprises. This provision would apply, for example, where A, B and C are each directors of community interest companies A Ltd, B Ltd and C Ltd respectively, and A invests in B Ltd, B in C Ltd and C in A Ltd.

Chapter 4

60. Chapter 4, sections 257M to 257MV, describe the eligibility conditions relating to the social enterprises.
61. New section 257M requires an enterprise to be a social enterprise as defined in section 257J(2) throughout the shorter applicable period mentioned in section 257KC. There is no requirement for it to be the same type of social enterprise throughout.

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62. New section 257MA sets a limit on the amount of tax-advantaged investment which an enterprise or its qualifying subsidiary may receive in a rolling three year period. This limit is imposed by the need to comply with the European Commission's regulations on de minimis State aid, which restrict such aid to an amount not exceeding €200,000 in a three year period. The guidelines also require de minimis aid to be transparent (i.e. ascertainable) at the point at which it is given. As it is not possible to determine at the time of investment what tax reliefs may actually be claimed, the limit is therefore calculated by reference to the aggregate of the maximum amount of SI tax relief under Part 5B ITA and the maximum amount of capital gains tax relief under Schedule 8B Taxation of Chargeable Gains Act which an investment would be capable of attracting, rather than by reference to amounts of tax relief ultimately claimed.
63. New section 257MB grants a power for Treasury to amend by order the enterprise size and investment limits, or other matters needed in connection with an application for State aid approval.
64. New section 257MC sets out the limits that apply to the value of an enterprise's gross assets before and after an investment. The limits are £15m immediately before investment and £16m immediately after. The requirement differentiates between a singleton enterprise and one which is the parent of a group. Where the latter is the case, it is the value of the group assets which has to be taken into account.
65. Subsection (3) provides that for this purpose, no account is taken of any assets which consist in rights against another member of the group, or any shares in, or securities of, another such group member.
66. Section 257MC mirrors an equivalent provision in the Enterprise Investment Scheme legislation, at section 186 ITA. HMRC has published a Statement of Practice SP2/06 in relation to that provision, indicating that ordinarily the value of a company's assets will be determined by reference to the values shown on its balance sheets as explained in the Statement. It is anticipated that similar considerations are likely to apply for this new relief, subject to that Statement of Practice still being in existence.
67. New section 257MD provides that when the investment is made, none of the enterprise's shares, stocks, debentures or other securities may be listed on a recognised stock exchange or other designated exchange as defined, and there must be no arrangements in place for that to happen. This restriction applies in respect of all such instruments issued by the enterprise, not only those in respect of which tax relief may be claimed.
68. New section 257ME contains two tests, each of which must be met for the duration of the shorter applicable period. Both tests rely on the definition of "control" to be found at section 257T, which in turn relies on the definition at sections 450 and 451 of the Corporation Tax Act 2010, modified to take account of charitable trusts. Both tests also rely on the definition of "connection" in section 993 ITA, which applies by virtue of section 1021 ITA.
69. The first test, at subsection (1), prevents an enterprise from qualifying if it controls (either on its own or together with any person connected with it) any company which is not a qualifying subsidiary. "Qualifying subsidiary" for this purpose is as defined at section 257MU.
70. The second test, at subsection (2), prevents an enterprise from qualifying if it is either a 51% subsidiary of another company, or is under the control of another company (or another company and any person connected with that company) without being a 51% subsidiary of that company.
71. New section 257MF provides that any subsidiary which the enterprise has during the shorter applicable period, must be a qualifying subsidiary. The definition of "qualifying subsidiary" for this purpose is to be found at section 257MU.

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72. New section 257MG requires that if the enterprise has a subsidiary whose business consists wholly or mainly of holding or managing land, or property deriving its value directly or indirectly from land, that subsidiary (termed a ‘property managing subsidiary’) must be a qualifying 90% subsidiary of the company. The legislation does not define what is meant by “property deriving its value ...indirectly from land”, but examples might include the enterprise having shareholdings in a company deriving its value directly or indirectly from land; having any interest in settled property deriving its value directly or indirectly from land; or having any option, consent or embargo affecting the disposition of land. For the definition of ‘qualifying 90% subsidiary’ see section 257MV.
73. New section 257MH requires that at the time of investment, either the enterprise or the group of which it is a parent, as appropriate, must have fewer than 500 full-time equivalent employees. Part-time employees are to be included on any basis which is “just and reasonable”. For the purpose of this section, the term “employee” includes directors, but not employees who are on maternity or paternity leave or students who are on vocational training.
74. New section 257MI provides that neither the enterprise, nor any of its qualifying 90% social subsidiaries, may be a member of a partnership at any time during the shorter applicable period. “Partnership” for this purpose will include a limited liability partnership, by virtue of section 863(2) Income Tax (Trading and Other Income) Act 2005.
75. New section 257MJ describes what is termed the “trading requirement”. Despite the title, this is not a requirement that the enterprise must either be trading at time of investment or must trade for any specified period of time. Rather, it is a requirement as to the nature of the activities of the enterprise or of the group of which it is a parent. It must be met throughout the shorter applicable period.
76. The trading requirement does not apply to a social enterprise which is an accredited social impact contractor. It is anticipated that the social impact contract will constitute a trading contract, so that by the time a social impact contractor comes to apply for accreditation for such a contract, it will already be trading and the separate requirement at section 257MJ will not be needed.
77. Subsection (2) provides that the trading requirement can be met in one or other of three ways, depending on whether the enterprise is a single entity or whether it is the parent of a group. A social enterprise which is neither a parent company nor a charity will not qualify if it carries on any activities other in the course of a trade, or in the course of preparing to carry on a trade) The carrying on of investment activities would therefore disqualify a single social enterprise. A single entity will also not qualify if “excluded activities” (as listed in section 257MQ) form a substantial part of the trade. In this context, activities carried on for “incidental” purposes which would have no significant effect on the company’s activities as a whole, are ignored.
78. A single enterprise which is a charity is treated for the purpose of this section as fulfilling this condition, although charities will by their nature carry on a range of activities in order to fulfil their charitable purpose.
79. An enterprise which is the parent company of a group will fulfil the condition if the business of the group as a whole does not substantially involve non-qualifying activities. Subsection (7) defines “non-qualifying activities” for this purpose as excluded activities (see section 257MQ), or activities (other than carried on by a charity) which are carried on otherwise than in the course of a trade.
80. Subsection (3) treats an enterprise as a parent company if it intends that one or more companies will become its qualifying subsidiaries to carry on one or more trades which qualify for the purpose of Part 5B. Once it ceases to have this intention, however, it is no longer to be regarded as a parent company for the purpose of this section.

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81. To enable a determination of whether the parent company of a group meets the trading condition as outlined above, subsection (4) provides that it is the business of the whole group taken together which is to be considered.
82. Subsection (5) provides that incidental activities carried on by a subsidiary which otherwise exists wholly to carry on a qualifying trade, are to be ignored.
83. Subsection (6) provides that the following types of activity are ignored altogether:
 - Holding shares in a qualifying subsidiary.
 - Making loans to a subsidiary, and making loans to the parent company.
 - Holding and managing property used by any group company for the purpose of one or more qualifying trades.
84. A company which goes into administration or receivership may fail the trading requirement at section 257MJ. New section 257MK provides that that will not be the case because of anything done as a result of the company being in administration or receivership providing that the entry into administration or receivership, and any subsequent actions, are undertaken for genuine commercial purposes and not for reasons of tax avoidance. Section 257TB explains further what is meant by a company going into administration or receivership.
85. New section 257ML provides that the enterprise must be party to the relevant investment for the purpose of raising money for a “funded purpose”.
86. Subsection (1) provides that a funded purpose can be either a qualifying trade carried on at the time of investment by the enterprise or a qualifying 90% social subsidiary; or activities preparatory to a qualifying trade which the enterprise intends will be carried on either by the enterprise itself, or by a 90% social subsidiary. If it relates to the preparatory activities, then the relevant trade must begin within two years of the date of the investment.
87. This section is disapplied for enterprises which are accredited social impact contractors.
88. New section 257MM imposes requirements on the enterprise as to how it uses the monies raised by the investment, and as to a minimum period of trading.
89. Subsection (1) provides that the monies raised by the investment must be employed wholly for the funded purpose (see section 257ML) within 28 months of the date of the investment. Insignificant uses of the money for other purposes are ignored, by virtue of subsection (4). The period of 28 months is reduced to 24 months in the case of an accredited social impact contractor.
90. Subsection (2) provides that the relevant qualifying trade must have been carried on for a period of at least 4 months by either the investee enterprise, or a 90% social subsidiary. This subsection works in conjunction with section 257PB(3) to ensure that an enterprise is not eligible to submit a compliance statement to HMRC until it has completed at least 4 months of trading activity. Subsection (5) and (6) act to ensure that this requirement will still be regarded as having been met if either the enterprise or a qualifying subsidiary is wound up or dissolved, or put into administration or receivership before the end of the 4 month period, providing that such events occur for genuine commercial purposes and not for reasons of tax avoidance. These subsections are disapplied in the case of an accredited social impact contractor.
91. Subsection (3) provides that employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of the funded purpose. This restriction should not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90% social subsidiary (see section 257MV) and that subsidiary then goes on to use the money for a funded purpose carried on by it (which will exclude the

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acquisition of shares or stock in another company). This section is disapplied in the case of an accredited social impact contractor.

92. New section 257MN provides that at no time during the shorter applicable period must relevant preparation work or the relevant qualifying trade be carried on by someone other than the investee enterprise or one of its 90% social subsidiaries. This section is disapplied in the case of an accredited social impact contractor.
93. Subsection (2) provides that this rule does not act to deny relief where an existing trade is carried on by another company and making of the investment is preparatory to the carrying of a qualifying trade by the investee enterprise or one of its 90% social subsidiaries.
94. Subsections (3) to (5) further provide that this rule does not act to deny relief in cases in which the investee enterprise (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for genuine commercial reasons.
95. New section 257MP explains what is meant by “qualifying trade” for the purpose of Part 5B.
96. Subsection (1) says that for a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits. In addition, the trade must not consist wholly or as to a substantial part in the carrying on of ‘excluded activities’ as defined in section 257MQ.
97. Subsection (2) provides that what the company does must come within the ordinary meaning of ‘trade’; that is, it must not count as a trade merely because of the extension of the meaning of that word in section 989 ITA to include ‘any venture in the nature of trade’.
98. New section 257MQ provides a list of activities which are “excluded”. This list is needed to determine whether a trade is a qualifying trade and the extent to which the business of a group includes non-qualifying activities.
99. Some activities are necessarily excluded in order to comply with the European Commission’s regulations on de minimis State aid. These include fishery and aquacultural production activities as listed in Council Regulation (EC) No 104/2000; the primary production of agricultural products as listed at Annex 1 to the Treaty on the Functioning of the European Union (which includes both livestock and crops as well as the production of alcohol from plants and fruit); and road freight haulage.
100. In addition to the exclusions made for State aid purposes, the following are also listed in subsection (1) as excluded: dealing in certain types of assets and commodities; certain financial activities; property development; certain subsidised generation or export of electricity; and the provision of certain services to another enterprise in common ownership where that enterprise’s trade is excluded.
101. Subsection (2) provides that lending money to a social enterprise is not “excluded”. “Social enterprise” for this purpose bears the same meaning as in section 257J.
102. New section 257MR supplements section 257MQ(1)(c) by explaining what is meant by “property development”.
103. Subsection (1) explains that property development for this purpose is defined as the development of land in which the enterprise has, or has had, an interest, with the object of realising a gain from the disposal of the land when developed.
104. Subsection (2) provides that for this purpose, ‘interest in land’ is defined in the legislation as any estate, interest or right over land including any right affecting the use or disposition of land; or any right to obtain such an estate, interest or right from another person, which is conditional upon the other person’s ability to grant it.

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105. Subsection (3) makes it clear that references to an interest in land for this purpose do not include mortgage creditors or (in Scotland) the interest of a creditor in a charge or security of any kind over land.
106. New section 257MS supplements section 257MQ(1)(e) to exclude the generation or export of electricity in respect of which any person (whether the enterprise undertaking the generation or export or any other person) receives a feed-in tariff under a UK government scheme to encourage small-scale low-carbon generation of electricity or a financial incentive granted under a similar overseas scheme.
107. New section 257MT supplements section 257MQ(1)(h). Together these sections explain that providing services or facilities for any business comprising a trade, profession or vocation carried on by another person (other than the parent of the company) is an excluded activity, where that other business consists to a substantial extent of any activities listed in section 257MQ as excluded, and a controlling interest in that other business is held by a person who also has a controlling interest in the business carried on by the company.
108. Subsection (2) defines a controlling interest in a business as follows. A person has a controlling interest in a business if, in the case of a business carried on by a company, he controls the company, or the company is a close company and he (or an associate of his) is both a director of it and the beneficial owner of, or able directly or through the medium of other companies (or by any other indirect means) to control, more than 30% of its ordinary share capital, or he owns at least one-half of the business by reference to the tests of ownership set out in sections 941 and 942 CTA 2010.
109. Subsection (3) provides that in the case of a business carried on other than by a company, a person is regarded as having a controlling interest in that business if he is entitled to not less than half of the assets used for, or the income arising from, the business.
110. Subsection (4) provides that for these purposes, the rights or powers of any person's associate count as that person's rights and powers.
111. New section 257MU explains what is meant by a "qualifying subsidiary" of an enterprise for the purpose of the sections of Part 5B which use that term.
112. Subsection (1) provides that a company is a qualifying subsidiary if it is a 51% subsidiary of the investee company. The meaning of 51% subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50% of the ordinary share capital. In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary, and there must be no arrangements by virtue of which these requirements could cease to be met. 'Control' for this purpose has the meaning given at section 257TD.
113. Subsections (2) and (3) provide that these conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.
114. New section 257MV explains what is meant by a "90% social subsidiary" of an enterprise.
115. Subsection (1) provides that, for a subsidiary to be a 90% social subsidiary, the following must apply:
 - The subsidiary must be a social enterprise.
 - The parent enterprise must own at least 90% of the subsidiary's issued share capital and voting rights.

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which received Royal Assent on 17 July 2014*

- The parent enterprise must be beneficially entitled to at least 90% of the assets available for distribution to equity holders of the subsidiary.
 - The parent enterprise must be beneficially entitled to at least 90% of any profits of the subsidiary which would be available for distribution to equity holders. “Equity holder” is to be given the same meaning as in Chapter 6 of Part 5 of CTA 2010, as explained at subsection (8) and (9).
 - In addition, no person other than the parent enterprise must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions would cease to be met.
116. Subsections (2) to (4) provide that a company is still to be treated as a 90% social subsidiary if it is held indirectly via a company which is a qualifying 100% subsidiary of the relevant company, (based on similar considerations to those above).
117. Subsections (5) and (6) provide that the winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.
118. Subsection (7) provides that arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

Chapter 5

119. Chapter 5, section 257N deals with attribution of relief to investments.
120. New section 257N sets out how SI relief is to be attributed to investments where only one investment is made, or where several investments are made in the same tax year. This becomes significant if the investor later disposes of some but not all of the investment:
- For the purpose of determining what relief is to be withdrawn if the disposal takes place within the qualifying period for the investment.
 - For the purpose of determining whether the disposal takes place after the end of the qualifying period relevant to that particular investment, and is therefore exempt from capital gains tax by virtue of section 255B TCGA.

Chapter 6

121. Chapter 6, sections 257P to 257PD, explains the procedures for making claims.
122. New section 257P explains the time limits for making a claim to SI relief.
123. Subsection (1) says that the claim may not be made earlier than the end of the period of 4 months referred to in section 257MM(2). This requirement does not apply where the social enterprise is an accredited social impact contractor. No claims may be made later than the fifth anniversary of the filing date for the tax year in which the investment was made. Note: this overrides the normal claim period provided for in section 43 Taxes Management Act 1970. This is to take account of the fact that the individual’s eligibility to claim depends on the enterprise having met certain conditions which may take some time to fulfil.
124. Subsection (2) provides that if the individual has made an election under section 257JA(4) to have some or all of the investment treated as though made in an earlier tax year, then subsection (1) above applies separately to that part of the investment as though it had been made in the earlier tax year.

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which received Royal Assent on 17 July 2014*

125. New section 257PA deals with an individual's entitlement to claim SI relief in respect of an investment in a social enterprise.
126. Subsection (1) provides that in order for an individual to be eligible to claim SI relief, the enterprise must provide the individual with a compliance certificate which can be provided to HMRC in support of a claim.
127. Subsections (2) and (3) provide that a claim to SI relief must have been made in order for the individual's PAYE coding to be amended to take account of the SI relief, or for the individual to make any application for tax to be postponed pending the outcome of an appeal made on the grounds that SI relief will be available.
128. New section 257PB provides more detail about the compliance statement referred to in section 257PC(2).
129. Subsection (1) provides that it is a statement to the effect that, in respect of an investment, the conditions for the relief to apply have so far been met (other than those which have to be met by the individual), and the enterprise's intention is that they will continue to be met for the duration of the relevant applicable period. It is therefore not possible for an enterprise to obtain authority to issue certificates under section 257PC once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible.
130. Subsection (2) gives HMRC the power to prescribe the form and content of the compliance statement. The statement must include a declaration to the effect that the statement is correct to the best of the enterprise's knowledge and belief, as well as any other declarations which HMRC may require. It is anticipated that a declaration as to the quantum of de minimis State aid received by the enterprise (see section 257MA) will be required under this section.
131. Subsection (3) provides that an enterprise cannot submit a statement more than two years after the end of the year of assessment in which the investment was made, or more than two years after the end of the period of four months referred to in section 257MM(2). That four month period does not apply to accredited social impact contractors.
132. New section 257PC explains in more detail the requirements for an individual to obtain the compliance certificate referred to in section 257PA(1).
133. Subsection (1) explains that a compliance certificate is a certificate issued by the investee enterprise to the individual. It must state that the requirements for SI relief have so far been met (other than those which have to be met by the individual), and it must be in a form prescribed by HMRC.
134. Subsection (2) and (3) provide that the enterprise may not issue a compliance certificate to an individual until it has provided HMRC with a compliance statement (see section 257PB), and before it has had authority to do so from HMRC.
135. Subsection (5) and (6) provides that HMRC must give a decision in respect of any application to it for authority to issue a compliance certificate, and that a refusal to give such authority is a matter against which the enterprise has the right of appeal as provided for in the Taxes Management Act 1970.
136. New section 257PE grants a power for the Treasury to amend by order the procedures relating to claims.

Chapter 7

137. Chapter 7, sections 257Q to 257RC describes the circumstances in which relief will be withdrawn or reduced.

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138. New section 257Q provides for SI relief to be reduced or withdrawn if the investor receives value from the enterprise during the longer applicable period. See also section 257QG which extends the effect of this provision. Whether the relief will fall to be reduced or withdrawn completely depends on the amount of the value received in relation to the amount of relief given, as determined by the formula in subsection (2).
139. Subsection (3) lists provisions which supplement section 257Q.
140. Subsection (6) provides that for the purpose of the value received provisions, a spouse or civil partner who has acquired any part of an investment in the course of a transaction to which section 257T applies is to be treated as the investor.
141. New section 257QA provides that where the amount of the value received is 'insignificant' it is ignored. An amount is insignificant for this purpose if it does not exceed £1000, or if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question. 'Insignificant' is not defined for this purpose.
142. To ensure that this relaxation is not used for tax avoidance purposes, subsection (3) provides that the amount of any value is not to be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the investment. Subsection (6) extends this to include receipts by an associate of the investor, or provision of value by any person connected with the social enterprise. "Arrangements" is as defined in section 257TE.
143. Subsections (4) and (5) provide that where there is more than one receipt which, on its own, would be regarded as insignificant, the rule must be applied to the total amount received within the longer applicable period.
144. New section 257QB modifies the calculation given at subsections 257Q(1) and (2) for cases where there has been more than one issue of investment attracting SI relief.
145. New section 257QC modifies the calculation given at subsections 257Q(1) and (2) for cases where part of the investment is treated as though made in the tax year preceding that in which it was made (see section 257JA(4)).
146. New section 257QD modifies the calculation given at subsections 257Q(1) and (2) for cases where the investor has not been able to obtain the maximum amount of SI relief available in respect of the investment. This would be the case where the maximum amount of relief available exceeded the investor's liability to income tax for the tax year in question.
147. New section 257QE explains when value is considered to have been received by an investor, for the purposes of sections 257Q and 257QB.
148. Subsections (2) to (6) list a wide range of types of payments, benefits and transactions which will give rise to a withdrawal or reduction of SI relief by virtue of the value received provisions. These will include any repayment or part repayment of the investment in respect of which SI relief has been obtained.
149. Subsection (7) provides that if SI relief is withdrawn because the investor has disposed of the investment within the relevant applicable period, the disposal proceeds are not treated as a receipt of value for the purposes of this section.
150. Subsection (8) provides that if the investor is a director of the enterprise, a payment of reasonable remuneration or the provision of a benefit for services provided in the capacity of director or employee, is not to be treated as value received for the purposes of this section.
151. New section 257QF contains a table setting out how the amount of any value received is to be calculated, depending on the nature of the value received.

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152. New section 257QG supplements those sections dealing with receipt of value. It provides that those sections apply equally in cases where the value has been provided indirectly as well as directly to the individual; or where the value has been provided to the individual's associate; or where the value has been provided by a person connected with the social enterprise at any time during the longer applicable period.
153. New section 257QH provides that an individual can avoid the consequences of receiving value by returning the whole of the value to the person that gave it. The value may be returned in a number of ways, depending on the circumstances in which value was received. These may include a cash payment, the reversal of the waiver or discharge of a liability, or the transfer in reverse of an asset at under or over value corresponding to that in the original transaction giving rise to the receipt of value.
154. Subsection (5) lists a number of types of cash payment which are not to be treated as providing replacement value for the purpose of section 257QH. These consist broadly of payments at normal arm's length rates for goods or services received, for assets transferred, or representing interest on money lent.
155. New section 257QI supplements section 257QH.
156. Subsection (1) provides that replacement value cannot be used to offset the receipt of value to the extent that it has already previously been used to do so.
157. Subsection (2) deals with the time within which the replacement value must be given in order for the individual to be able to avoid the consequences of receiving value. The replacement value must be given without unreasonable delay. If the amount of the value received was the subject of appeal proceedings it must be given within 60 days after the final determination of the appeal. A payment made before the value was received may be taken into account as replacement value, provided it was not made before the beginning of the longer applicable period referred to in section 257KC.
158. New section 257QJ acts to ensure that tax relief is not available to the extent that an amount equivalent to any part of an individual's investment is used by the enterprise or by one of its subsidiaries to repay, redeem or repurchase any of that entity's share capital. The restriction applies in respect of any such repayment, redemption or repurchase within the longer applicable period referred to in section 257KC. The aim is to prevent tax advantaged funds from being used to provide an exit for earlier shareholders, rather than being used for the activities of the enterprise.
159. New section 257QK provides that a repayment of share capital falling within section 257QJ is ignored if both it and the market value of the share capital repaid are insignificant compared with the market value of the remaining issued share capital of the company. Note that, unlike section 257QA, this provision does not provide for a specified amount to be treated as insignificant.
160. To ensure that this relaxation is not subject to abuse, subsection (3) provides that the amount of any value shall not be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the share issue.
161. New sections 257QL to 257QO supplement section 257QJ by explaining how the tax reduction is to be calculated where there is more than one issue of shares; where more than one individual is involved; where a single issue of shares has been treated partly as made in the previous tax year by virtue of a claim under section 257JA(4); or where the maximum amount of relief was not obtained for the share issue.
162. New section 257QP provides an exception from section 257QJ, to take account of the fact that it is not uncommon for a company to be established via the issue of redeemable shares, which are then redeemed when the company is acquired by its intended permanent owners. No reduction is to be made where share capital has been issued of a nominal value equal to the authorised minimum required by the Companies

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Act 2006 for a public company to do business, the Registrar of Companies having issued the company with a certificate under that Section, and any of it is redeemed within 12 months of the date of its issue.

163. New section 257QQ acts to ensure that the legislation serves to encourage genuinely new investment in social enterprises by denying relief to anyone who directly or indirectly owned the trade before it came to be owned by the company.
164. The restriction has effect if at any time within the longer applicable period mentioned in section 257KC, either the individual or any group of persons to which he or she belongs either: has more than a half share interest in the trade or part of the trade as carried on by the social enterprise or its qualifying subsidiary, or controls the social enterprise. In the first case, the provision will apply if the individual or group also had such an interest in the trade, or a part of the trade, at some previous time in the same period when it was carried on by some person other than the social enterprise. In the second case, the restriction will apply if the individual or group, at some previous time in the same period, controlled another company which was then carrying on the trade or part of the trade. The persons to whom a trade belongs, or the extent of their interests in it, are to be determined in accordance with section 941 CTA 2010.
165. New section 257QR similarly acts to ensure that relief goes only in respect of genuine new investment, by denying relief to anyone who alone or together with others, controlled a company which then carried on the trade and that company has come to be owned by the social enterprise in which the individual has now invested. For this purpose, section 257TF provides that 'control' has the meaning given in section 450 CTA 2010.
166. New section 257QS provides for relief obtained by an investor to be withdrawn if it is subsequently found by HMRC not to be due. Where the reason for this is because the social enterprise does not meet, or has ceased to meet, any of the conditions specified in Chapter 4 of Part 5B, HMRC must give notice to the social enterprise before relief can be withdrawn. The purpose of this procedure is to allow the party to any appeal proceedings to be the social enterprise itself in cases where most of the relevant evidence lies within its own power, and to simplify the withdrawal process in cases where there is a large number of investors. See new section 257SA for further information about appeals, and new section 257SB for information about time limits.
167. New section 257R explains that if the investment is wholly or partly disposed of during the shorter applicable period other than to a spouse or civil partner – see section 257T, then relief is to be reduced or withdrawn.
168. Subsection (2) and (3) treat the disposal differently depending on whether it has been made by way of an arms' length bargain or not. Where the disposal is other than at arms' length, the relief is withdrawn entirely. Where it is an arms' length bargain, relief is reduced (including withdrawn completely) by the application of the formula at subsection (4).
169. New section 257RA supplements section 257R by explaining how the reduction or withdrawal of relief is to be calculated in cases where the investor did not receive the maximum amount of relief for the investment.
170. New section 257RB provides that if the investor grants a call option over any part of the investment, that part is treated as though it had been disposed of with the result that the provisions of section 257R will apply. A call option is defined by the legislation as an option granted by the investor which, if exercised, would bind the investor to sell the whole or part of the investment.
171. New section 257RC has a similar effect where at any time in the longer applicable period referred to in section 257KC, a person grants a put option to the investor. A put option is defined as an option granted to the investor by any person which, if exercised, would bind the grantor to purchase any of the investment.

Chapter 8

172. Chapter 8, sections 257S to 257SJ, explains the procedures for withdrawing or reducing SI relief, and deals with various information obligations and powers.
173. New section 257S provides that where any SI relief is to be reduced or withdrawn, that must be done by HMRC making an assessment to recover the relief.
174. New section 257SA provides that where HMRC has given a notice under section 257QS(3), this is to be treated as a decision disallowing a claim by the social enterprise. This has the effect of allowing the social enterprise to appeal against the decision, and for the appeal then to be dealt with in accordance to the legislation dealing with appeals in Taxes Management Act 1970.
175. New section 257SB explains the time limits within which HMRC may make an assessment to recover relief, or issue a notice under section 257QS(3).
176. New section 257SC explains the circumstances in which assessments are not to be made to recover tax relief once it has been given. The first of these is when the investor has died. The second is when all the investments have been disposed of before the end of the qualifying period, and relief has been partially recovered under section 257R(3). Any balance of relief remaining will be recovered only if the investor subsequently fails the requirements at sections 257LF, 257LG or 257LH.
177. Where SI relief falls to be withdrawn, new section 257SD prescribes the relevant date from which interest starts to run. This date will always precede the date when the SA return is amended or the assessment withdrawing relief is made. Normally the relevant date from which interest starts to run will be 31 January next following the tax year in respect of which the assessment is made.
178. New section 257SE places an obligation on an investor to notify HMRC of certain events relating to the investor which would result in relief falling to be withdrawn or reduced. Events listed include: where there is a loan linked to the investment (section 257LD); where the investor ceases to be a qualifying investor by virtue of being an employee, partner or director (section 257LF) or of having more than a 30% interest in the enterprise (section 257LG); where there is a reciprocal arrangement of the type prohibited by section 257LH; where the shares are disposed of (section 257R); where there are put or call options (section 257RB and 257RC); or where the investor or an associate has received value (section 257Q). The investor must make the notification within 60 days of becoming aware of it.
179. New section 257SF similarly places an obligation on a social enterprise to notify HMRC within 60 days of becoming aware of an event relating to the enterprise which would result in relief falling to be withdrawn or reduced. Events which would trigger this obligation include the enterprise ceasing to be a qualifying enterprise by reference to the requirements included in Chapter 4 of Part 5B; providing value to the investor within section 257Q; repaying share capital to other investors within section 257QJ; or where a trade or company previously owned by an individual or group of individuals come to be owned by the social enterprise, within section 257QQ or 257QR.
180. Where HMRC has reason to believe that a notification should have been made under either section 257SE or 257SF, but no such notification has been made, new section 257SG gives HMRC a power to require a person to provide the information that HMRC believes is reasonably required. HMRC has to give the person at least 60 days in which to provide the information.
181. Where HMRC has reason to believe that certain prohibited arrangements exist, new section 257SH gives HMRC power to require a person to provide the information which it may reasonably require. Again, HMRC must give the person at least 60 days in which to provide the information. In the case of this section, the persons which HMRC

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may require to provide information will vary as specified, depending on which type of prohibited arrangement exists.

182. New section 257SI provides for some circumstances in which HM Revenue and Customs may disclose information to other parties, in relation to SI relief.
183. Subsection 257SI(1) permits HM Revenue and Customs to disclose to a social enterprise that SI relief has been obtained or claimed, in respect of a particular number or proportion of any investments in it. A social enterprise may require this information, for instance, in the context of a later calculation for de minimis State aid purposes (see section 257MA above).
184. Subsection 257SI(2) permits HM Revenue and Customs to disclose information to the Regulator of Community Interest Companies for the purposes of the Regulator's functions, or to a Minister of the Crown for the purposes of accrediting a social impact contractor. Similar legal information gateways already exist between HM Revenue and Customs and the Financial Conduct Authority (the body responsible for the accreditation of Community Benefit Societies); and the Charities Commission.
185. Subsection 257SI(3) prohibits onward disclosure of information obtained under subsection 257SI(2), unless HM Revenue and Customs has either consented to that onward disclosure for the purposes of the Regulator's or Minister's functions, or the disclosure is required by an enactment. Subsection 257SI(6) applies the provisions of section 19 of CRCA to any wrongful disclosure of revenue and customs information relating to a person.
186. Subsection 257SI(8) provides that HMRC's confidentiality obligations do not prevent the disclosure of relevant information to a Minister of the Crown or his authorised delegate for the purpose of exercising functions under sections 257JD to 257JG. Similarly, relevant information may be provided to HMRC for the purpose of exercising its functions under Part 5B. 'Relevant information' is defined as information obtained by a Minister of the Crown or delegate in the course of discharging functions under new sections 257JD to 257JG.

Chapter 9

187. Chapter 9, sections 257T to 257TE contain miscellaneous and supplementary provisions, including definitions of key terms used in Part 5B.
188. New section 257T ensures continuity of tax treatment where shares are transferred between spouses or civil partners in the circumstances specified. No relief is withdrawn where one spouse or civil partner disposes of shares to which relief is attributable to the other. Following such a disposal, for the purposes of any subsequent disposal or other event, the shares are treated as if they had always been owned by the spouse or civil partner to whom they have been transferred.
189. An individual who owns investments to which relief is attributable (see section 257N) may also possess other investments in the same company of the same class. Also, investments to which relief is attributable may have been acquired at various times and at various prices. Consequently, new section 257TA explains how to identify which investments have been disposed of, where only part of an individual's holding is disposed of.
190. New section 257TB explains what is meant by a company being in administration or receivership, by reference to the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and any corresponding legislation in a country or territory outside of the United Kingdom.
191. New section 257TC explains what is meant by an "associate" of a person in the context of Part 5B. It includes spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

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192. New section 257TD explains the term “control” as used in Part 5B.
193. Subsection (1) provides that “control” should be defined in accordance with sections 450 and 451 Corporation Tax Act 2010, but with the modification that “company” in those sections should be read as though including a charitable trust.
194. Subsection (2) explains that if the trustees of a charitable trust (acting in their capacity as trustees) either individually or together control another person as defined by sections 450 and 451 CTA 2010, then the charitable trust of which they are trustees is to be regarded as controlling the other person for the purpose of Part 5B.
195. Subsection (3) describes the circumstances in which a person is to be regarded as controlling a charity which is a trust, whether or not a trustee. A trustee who, alone or together with other trustees who are connected with him, can exercise some or all of the powers of the trustees, is to be regarded as controlling the charity. A person who is not a trustee but who either alone or with others has the power to appoint or remove trustees, or to approve or direct the trustees’ functions, is to be regarded as controlling the charity.
196. Subsection (4) explains that subsection (3) should be read as expanding upon subsection (1), rather than limiting it.
197. Subsection (5) provides that for the purposes of Part 5B, a regulator is to be treated as not having control of any company merely by virtue of the fact that that company is regulated by that regulator.
198. Subsection (6) disapplies the definition of “control” at section 995 for the purposes of Part 5B. That definition would otherwise apply by virtue of section 1021. Note: this is a departure from the Enterprise Investment Scheme legislation at Part 5 ITA which has been used as a broad model. The EIS legislation uses both the section 995 definition, and that at sections 450 and 451 CTA 2010, at different places.
199. New section 257TE provides minor definitions for various terms used in Part 5B, including what is meant by the term “market value” in relation to an asset.

Part 2

200. [Part 2](#) contains various consequential amendments to the Income Tax Act 2007.

Details of Schedule 12

201. Paragraphs 1 and 2 insert new sections 255A to 255E into the Taxation of Chargeable Gains Act 1992 (‘TCGA’). Section 255A directs the reader to new Schedule 8B TCGA where the details of the capital gains tax relief are found.
202. New section 255B provides for special treatment of capital gains and losses which accrue on disposals of assets to which SI relief is attributable.
203. Subsection (1) applies where there would be a loss on a disposal of an asset to which SI relief is attributable. The consideration given for the asset is treated as reduced by the amount of SI relief, so the loss is reduced or eliminated, or becomes a gain.
204. Subsection (2) provides that where an asset to which SI relief is attributable is disposed of three years or more after acquisition, any gain which accrues on the disposal is not a chargeable gain for TCGA purposes. This rule is subject to the effect of section 255C.
205. Subsection (3) disapplies the rule in TCGA which means that a loss is not an allowable loss if, in similar circumstances, a gain would not be a chargeable gain. So although a gain on an asset to which SI relief is attributable is not a chargeable gain, a loss may still be an allowable loss for capital gains tax purposes.

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206. Subsection (4) applies the asset identification rules contained in the SI relief provisions for the purposes of deciding which assets have been disposed of from within a holding of social investments, and whether relief is attributable to the assets disposed of.
207. Subsection (5) gives priority to the identification rules in subsection (4) over the normal rules in TCGA.
208. Subsection (6) disapplies the normal asset ‘pooling’ and identification rules in the TCGA from assets to which SI relief is attributable.
209. Subsection (7) allows HMRC to adjust the capital gains tax due or repayable as necessary when SI relief has been allowed or withdrawn.
210. Subsection (8) defines ‘SI relief’ as the income tax relief for investments in social enterprises.
211. Subsection (9) states that Part 5B of the Income Tax Act 2007 (income tax relief for investments in social enterprises) applies to determine whether SI relief is attributable to any asset, and the amount of relief so attributable.
212. New section 255C modifies the tax exemption conferred by section 255B(2) in some circumstances. Where the maximum possible SI relief has not been given in respect of the investment in the assets disposed of (other than because the claimant did not have sufficient income tax payable to absorb the maximum relief), the total gain is apportioned and only an amount attributable to the assets on which SI relief was given is exempt from capital gains tax.
213. New section 255D modifies the tax exemption conferred by section 255B(2) where the SI relief originally given has been reduced eg because the investor has received value from the social enterprise or because the investment has been repaid, redeemed or repurchased.
214. Subsection (2) applies where the SI relief has been reduced but the maximum available relief was originally allowed. In these cases, the exemption only applies to a fraction of the total gain corresponding to the fraction of the original relief which has not been withdrawn by reduction.
215. Subsection (3) applies where the SI relief has been reduced and the relief originally given was less than the maximum available, that is to say where section 255C applies. In these cases, the restriction at subsection (2) applies to the reduced gain determined under section 255C.
216. Subsection (4) requires that the reduction in SI relief used in subsection (2) is the total of all reductions which have applied to SI relief in respect of the assets disposed of.
217. Subsection (5) requires that, when apportioning the total gain under subsection (2), the original SI relief is the relief allowed before any reductions.
218. Section 255E contains special rules which apply when shares to which SI relief is attributable are involved in transactions such as reorganisations of the issuer’s share capital, share-for-share takeovers and company reconstructions.
219. Subsections (1) and (2) mean that where a person has a holding of shares the normal TCGA rules which apply eg on a reorganisation of share capital will apply to shares in that holding which have:
 - Both SI relief and hold-over relief under Schedule 8B attributed to them.
 - Have SI relief but not hold-over relief attributed to them.
 - Have neither relief attributed to them.as if those shares were in separate holdings.

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which received Royal Assent on 17 July 2014*

220. Subsection (4) is a rule which applies when shares which are involved in a rights issue by the company which issued the shares. If after the rights issue SI relief is attributable either to the existing shares or to the new shares allotted then the normal TCGA treatment of the existing holding and the new shares will not apply: they will not be treated as the same asset, but rather actual disposals and acquisitions will be recognised for tax purposes.
221. Subsection (5) means that, except in the circumstances described by subsection (6), the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will not apply when SI relief is attributable to those shares. The new holding and the original shares they correspond to will not be treated as the same asset, but rather the actual disposals and acquisitions will be recognised for tax purposes.
222. Subsection (6) specifies the circumstances in which, exceptionally, the normal TCGA rules which apply when shares are involved in a share-for-share takeover or a company reconstruction will apply, notwithstanding subsection (5). Broadly,
- The company which issues new shares must have previously issued shares which met the conditions for SI relief to be attributable to them.
 - That company must have issued compliance certificates to subscribers for those shares.
 - The takeover or reconstruction must occur more than three years after the investor acquired the original shares, and
 - the shares which represent the original shares after the transaction must be new shares which meet the conditions for SI relief to be attributable to them.
223. Paragraph 3 of Schedule 12 inserts new Schedule 8B into the TCGA. Paragraph 1(1) of Schedule 8B applies the Schedule if an individual (the investor) has a chargeable gain and acquires specific assets known as ‘the social holding’, providing the investor is eligible for SI relief on the consideration paid for those assets. Five further conditions (A, B, C, D and E) must also be met. Where the Schedule applies, the individual may claim for the gain to be reduced as provided for in paragraph (4).
224. Paragraph 1(2) of Schedule 8B sets out the first of the five further conditions: condition A. This is that the gain must either accrue either
- On the disposal of an asset, or
 - under the entrepreneurs’ relief provisions in section 169N TCGA, or
 - when a chargeable event occurs in relation to an asset which is, or forms part of, a social holding (see new paragraph (6)(1), paragraph 228 below).
- But if entrepreneurs’ relief is claimed then only so much of the gain which exceeds the ‘lifetime limit’ for that relief is eligible for hold-over relief.
225. Paragraph 1(3) of Schedule 8B sets out the second of the five further conditions: condition B. This is that the gain must accrue on or after 6 April 2014 and before 6 April 2019. The Treasury may substitute a later date for the end of this period by means of a Treasury order (paragraph (1)(7)).
226. Paragraph 1(4) of Schedule 8B sets out the third of the five further conditions: condition C. This is that the investor must be resident in the United Kingdom both when the gain accrues and when the social holding is acquired.
227. Paragraph 1(5) of Schedule 8B sets out the fourth of the five further conditions: condition D. This is that the investor must be acting on his or her own behalf and not in any other capacity in making the investment. For instance, condition D will not be met if the individual makes the investment as a partner for the purposes of the Partnership

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which received Royal Assent on 17 July 2014*

Act 1890 or the Limited Partnership Act 1907, as a member of a Limited Liability Partnership, as a trustee or as a personal representative of a deceased person.

228. Paragraph 1(6) of Schedule 8B sets out the last of the five further conditions: condition E. This is that the investment must be made either in the three years beginning on the day the gain accrues or in the year ending at the beginning of that day.
229. Paragraph 1(7) of Schedule 8B ensures that entrepreneurs' relief and hold-over relief may not both be claimed in respect of the same gain.
230. Paragraph 2 of Schedule 8B specifies a second, alternative set of conditions, under which the Schedule applies. The effect is that a claim may be made for a chargeable gain which has been deferred, and is attributed to an asset within a social holding, to be further deferred if the asset is replaced by a second social holding issued by the same enterprise, even if no cash is given for the second holding. Without this paragraph the investor could not further defer the gain because he would not be eligible for SI relief on the amount invested in the second holding - section 257LA ITA 2007 and paragraph 1(1)(c) of Schedule 8B TCGA.
231. Paragraph 2(1) of Schedule 8B sets down the circumstances in which this continuing deferral is allowed. They are that:
- The social enterprise which issued the first asset must reacquire it from the investor, or must cancel, redeem, extinguish or repay it, so that the deferred gain accrues.
 - The investor must receive from the social enterprise assets in respect of which he would be eligible for SI relief but for the 'cash investment rule' at section 257LA ITA 2007.
 - The investor gives nothing for his new assets other than the first asset, or suffers no loss other than the value of the first asset.
- This subparagraph also applies four conditions which correspond to conditions B - E in paragraph 1 (see above).
232. Paragraph 2(2) to 2(5) of Schedule 8B specify the four conditions F, G, H and J which must be met for the Schedule to apply by virtue of paragraph 2. These correspond to conditions B, C, D and E in paragraph 1 (see paragraphs 213 - 216 of this Note).
233. Paragraph 3 of Schedule 8B defines certain terms used in the Schedule.
234. Paragraph 4(1) and 4(2) of Schedule 8B permit the investor to make a claim for the original chargeable gain to be reduced. Where paragraph 1 applies, the gain may be reduced by an amount specified in the claim, up to a sum equal to the amount invested in the social holding, but not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4)). Where paragraph 2 applies, the gain is reduced by the amount specified in the claim, regardless of the amount 'invested' in the second social holding, but again not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 4(4)).
235. Where paragraph 1 applies, paragraph 4(3) of Schedule 8B prevents the amount invested or any part of it being used more than once to generate relief under any of the provisions listed at paragraph 4(4).
236. Paragraph 4(4) of Schedule 8B lists the provisions mentioned in paragraph 4(3). These are the hold-over relief under this Schedule 8B, enterprise investment scheme (EIS) deferral relief under Schedule 5B TCGA and seed enterprise investment scheme (SEIS) deferral relief under Schedule 5BB TCGA.
237. Paragraph 4(5) of Schedule 8B imposes an upper limit of £1 million on the gains which may be relieved under this Schedule by an individual in any tax year. This is not the

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same as the limit which applies to the total amount which a single enterprise may receive under EU State aid rules (see paragraph 40 of this Note).

238. Paragraph 4(6) of Schedule 8B explains that when a gain is reduced in this way, the relief represented by the amount of the reduction is 'attributable to' the asset or assets which form the social holding. It also provides that when the person holding an asset dies, or a chargeable event occurs in relation to that asset, the relief ceases to be attributable to it. Paragraph (6)(1) explains what is meant by a 'chargeable event'.
239. Paragraph 5 of Schedule 8B provides for a gain equal to all or part of the reduction made under paragraph 4(1) to accrue and be taxable when a chargeable event occurs in relation to the social holding. If the chargeable event relates only to part of the social holding then a corresponding part of the gain accrues. The total gains which can accrue in relation to a social holding cannot exceed the total amount of the reduction.
240. Paragraph 6(1) of Schedule 8B lists the chargeable events which cause a relieved gain to accrue when they occur. These are:
- The investor disposing of an asset forming all or part of his social holding (but this does not include disposals to their spouse or civil partner).
 - The disposal of an asset forming all or part of a social holding by a person who acquired it from their spouse or civil partner (but this does not include disposals back to the investor).
 - An asset forming all or part of the holding being cancelled, extinguished, redeemed or repaid.
 - Any of the conditions for eligibility to SI relief in Chapters 3 and 4 of Part 5B of the Income Tax Act 2007 failing to be met.
241. Paragraph 6(2) of Schedule 8B means that the death of the investor, or of a person who acquired the social holding or any part of it from the investor as their spouse or civil partner, will not cause a deferred gain to accrue in relation to the assets in the social holding. Furthermore, nothing which happens at or after the time of death will be a chargeable event, so deferred gains will not accrue.
242. Paragraph 6(3) of Schedule 8B gives rules for identifying assets disposed of out of a holding of fungible assets (such as shares) some of which have one or more reliefs attributable to them. These rules are necessary because in many cases the TCGA 'pools' holdings of assets of the same class and treats them collectively as a single asset. Where some of those assets have relief attributable to them, and their disposal would have particular tax consequences, special rules are needed to identify which assets are disposed of from out of a 'pool'. Under paragraph 4(3)(a) the assets disposed of are identified with assets of the same class on a 'first-in, first-out' basis, taking the acquisitions on a daily basis. Assets acquired on the same day are treated as being disposed of in the following order:
- Firstly, assets to which neither hold-over relief under this Schedule 8B nor SI relief under Part 5B of the Income Tax Act 2007 is attributable.
 - Secondly, assets to which hold-over relief but not SI relief is attributable.
 - Thirdly, assets to which SI relief but not hold-over relief is attributable.
 - Finally, assets to which both hold-over relief and SI relief are attributable.
- Paragraph 6(4) explains what is meant by relief being attributable to an asset
243. Paragraph 6(4) of Schedule 8B ensures that when an asset to which hold-over relief under this Schedule (and not SI relief) is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.

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which received Royal Assent on 17 July 2014*

- 244. Paragraph 6(5) of Schedule 8B ensures that an asset to which SI relief is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 6(3) apply as though he or she acquired the assets when the investor acquired them.
- 245. Paragraph 6(6) and 6(7) of Schedule 8B provides for the main asset identification rules in the TCGA to be subject to the special rules in paragraph 6, and for the asset pooling and identification rules in sections 104, 105 and 106A not to apply to assets to which hold-over relief and not SI relief is attributable.
- 246. Paragraph 6(8), 6(9) and 6(10) of Schedule 8B provide rules for attributing the held-over chargeable gain to assets which are treated for tax purposes as representing, or being the same asset as, an asset in a social holding. The original gain, less any gains treated as accruing under paragraph 5, is to be apportioned between the assets which represent the social holding on a just and reasonable basis, and the asset identification rules in paragraph 6 apply to the latter assets as they would apply to the assets which comprised the social holding.
- 247. Paragraph 7 of Schedule 8B specifies to whom gains are treated as accruing when there is a chargeable event of one of the types given in paragraph 6(1).
- 248. Paragraph 8 of Schedule 8B specifies the procedure for making claims to hold-over relief under the Schedule. The procedure and requirements for claiming SI relief in ITA 2007 will apply, with the necessary adaptations, to claims to hold-over relief also. If the SI relief procedure is amended (as permitted by the ITA) by secondary legislation, the procedure for hold-over relief claims will be amended in the same way.

Background Note

- 249. These tax reliefs have been introduced to incentivise investment by individuals in social enterprises, to support the Government's aim of stimulating the social enterprise sector.