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## SCHEDULES

### SCHEDULE 11 **U.K.**

Section 57

#### TAX RELIEF FOR SOCIAL INVESTMENTS

#### PART 1 **U.K.**

##### NEW PART 5B OF ITA 2007

1 In ITA 2007, after Part 5A (seed enterprise investment scheme) insert—

#### “PART 5B **U.K.**

##### TAX RELIEF FOR SOCIAL INVESTMENTS

#### CHAPTER 1 **U.K.**

##### INTRODUCTION

#### Meaning of “SI relief” and “social enterprise”

257J~~I~~**L**) This Part provides for income tax relief for social investments (“SI relief”), that is, entitlement to tax reductions in respect of amounts invested in social enterprises by individuals.

(2) In this Part “social enterprise” means—

- (a) a community interest company,
- (b) a community benefit society (see section 257JB) that is not a charity,
- (c) a charity,
- (d) an accredited social impact contractor (see section 257JD), or
- (e) any other body prescribed, or of a description prescribed, by an order made by the Treasury.

(3) An order under subsection (2)(e) may make provision as to the bodies which are social enterprises for the purposes of this Part at times before the order comes into force or FA 2014 is passed but, where a body is a social enterprise for the purposes of this Part as a result of an order under subsection (2)(e) that has come into force, no subsequent order under subsection (2)(e) may undo that result in respect of times before the subsequent order comes into force.

#### Form and amount of relief

257J~~A~~**L**) If an individual—

- (a) is eligible for SI relief in respect of any amount, and

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(b) makes a claim in respect of all or some of the amount,  
 the individual is entitled to a tax reduction for the tax year in which the amount was invested.

This is subject to the provisions of this Part.

- (2) The amount of the reduction to which an individual is entitled under this Part for any particular tax year is the amount equal to tax, at the SI rate for that year, on—
- (a) the amount or, as the case may be, the sum of the amounts invested in that year in respect of which the individual is eligible for and claims SI relief, or
  - (b) if less, £1 million.
- (3) The tax reduction is given effect at Step 6 in section 23.
- (4) If an individual—
- (a) is eligible for and claims SI relief in respect of an amount, and
  - (b) makes a claim for part of that amount to be treated for the purposes of subsections (1) and (2) as if it had been invested not in the tax year in which it was actually invested but in the preceding tax year,
- those subsections apply, and the individual's liability to tax for both tax years is determined, in accordance with the claim.
- (5) In this Part “the SI rate” means 30%.

**Meaning of “community benefit society”**

257J~~B~~) In this Part “community benefit society” means a body that—

- (a) is registered as a community benefit society under the 2014 Act,
  - (b) is a pre-commencement society (within the meaning of the 2014 Act) that meets the condition in section 2(2)(a)(ii) of the 2014 Act, or
  - (c) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of which the condition in section 1(2)(b) of that Act is fulfilled,
- and in respect of which the condition in subsection (2) is met.
- (2) The condition is that—
- (a) the body is of a kind prescribed by regulation 5 of, and
  - (b) the body's rules include a rule in the terms set out in Schedule 1 to, the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 (S.I. 2006/264) or the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 (S.R. 2006/258).
- (3) The Treasury may by order amend this section for the purpose of—
- (a) replacing—
    - (i) the condition in subsection (2), or
    - (ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2),
 with one or more other conditions;
  - (b) varying—

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- (i) the condition in subsection (2), or
    - (ii) the condition, or any of the conditions, for the time being replacing the condition in subsection (2);
  - (c) dispensing with—
    - (i) the condition in subsection (2), or
    - (ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2).
- (4) In this section—
  - “the 2014 Act” means the Co-operative and Community Benefit Societies Act 2014;
  - “the 2010 Act” means the Co-operative and Community Benefit Societies and Credit Unions Act 2010.
- (5) While neither the 2014 Act, nor section 1 of the 2010 Act, is in force, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
  - “(a) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act 1965 in the case of which the condition in section 1(2)(b) of that Act is fulfilled, or”.
- (6) If section 1 of the 2010 Act (registration of societies) comes into force before the 2014 Act comes into force then, with effect from the coming into force of that section and until the coming into force of the 2014 Act, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
  - “(a) is registered as a community benefit society under section 1 of the Industrial and Provident Societies Act 1965 (“the 1965 Act”),
  - (b) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) that meets the condition in section 1(3) of the 1965 Act, or”.
- (7) In the event that section 2 of the 2010 Act (renaming of the 1965 Act) is brought into force before its repeal by the 2014 Act takes effect then, with effect from the coming into force of that section, subsections (5) and (6) of this section have effect as if, in the provisions which they substitute, the references to the Industrial and Provident Societies Act 1965 were references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965.

#### **Charities that are trusts**

257JC In this Part (except section 257JD), a reference to a company includes a reference to a charity that is a trust.

#### **Accreditation as a social impact contractor**

257JD) In this Part “accredited social impact contractor” means a company limited by shares that is accredited under this section as a social impact contractor.

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- (2) Applications for accreditation as a social impact contractor must be made to a Minister of the Crown in the form and manner specified by a Minister of the Crown.
- (3) A Minister of the Crown is to accredit a company if, but only if, that Minister is satisfied that—
  - (a) the company has entered into a social impact contract (see section 257JE),
  - (b) the company is, and at all times since its incorporation has been, established—
    - (i) for the purpose of entering into and carrying out a social impact contract, or for that purpose and purposes incidental to it, but
    - (ii) for no other purpose, and
  - (c) the activities of the company in carrying out that contract will not consist wholly, or as to a substantial part, in excluded activities (see section 257MQ).
- (4) If a Minister of the Crown is satisfied that the condition in subsection (3)(b) or (c) has ceased to be met in relation to a company that is an accredited social impact contractor, that Minister is to withdraw the company's accreditation with effect from the time the condition ceased to be met or a later time.

#### **Meaning of “social impact contract”**

257JE(1) In this Part “social impact contract” means a contract that meets such criteria as may be specified in regulations made by the Treasury.

- (2) The criteria which may be specified under subsection (1) include, in particular, criteria as to a party to the contract other than the company seeking accreditation.
- (3) Criteria may be specified in regulations under subsection (1) by reference to material published by, or on behalf of, a Minister of the Crown after the making of the regulations (as well as by reference to material published before the making of the regulations).
- (4) Regulations under subsection (1) may make different provision for different cases or circumstances or in relation to different areas.

#### **Accreditations: supplementary provisions**

257JE(1) An accreditation must be made so as to be conditional on compliance with—

- (a) any requirements imposed by or under regulations, and
  - (b) any other requirements considered appropriate by the Minister of the Crown who is accrediting the company concerned.
- (2) The requirements that may be imposed by virtue of subsection (1) include requirements relating to the provision of information.
  - (3) Regulations may—
    - (a) make further provision about applications for accreditation,

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- (b) make provision for the variation of an accreditation (including its provisions as to its duration),
  - (c) make provision which, in a case where a company is or has been an accredited social impact contractor, imposes or authorises the imposition of requirements on the company, or on any other party to the social impact contract concerned, to provide information,
  - (d) make provision about the consequences of a failure to comply with any requirement of an accreditation imposed by virtue of subsection (1) or with any requirement imposed by virtue of paragraph (c), including in particular—
    - (i) provision for the withdrawal of the accreditation concerned with effect from the time of the failure or a later time, and
    - (ii) provision for the imposition of penalties,
  - (e) make provision for publication of information about an accreditation or accredited social impact contractor, and
  - (f) make provision for reviews of, or for appeals to the tribunal against, any of the following—
    - (i) a refusal to grant or vary an accreditation,
    - (ii) the imposition of a requirement under subsection (1)(b),
    - (iii) the withdrawal of an accreditation (whether under section 257JD(4) or by virtue of provision made under paragraph (d)(i)), and
    - (iv) the imposition or amount of a penalty imposed by virtue of provision made under paragraph (d)(ii).
- (4) Regulations under subsection (1) or (3) may—
- (a) make provision for the making of decisions by a Minister of the Crown as to any matter required to be decided for the purposes of the regulations,
  - (b) be framed by reference to material published by, or on behalf of, a Minister of the Crown after the making of the regulations (as well as by reference to material published before the making of the regulations),
  - (c) make different provision for different cases or circumstances or in relation to different areas, and
  - (d) contain incidental, supplemental, consequential and transitional provision and savings.
- (5) In this section—
- “accreditation” means accreditation under section 257JD, and
  - “regulations” means regulations made by the Treasury.

#### **Period of accreditation as a social impact contractor**

- 257J(1) An accreditation under section 257JD has effect for a period—
- (a) beginning with the day specified in the accreditation, and
  - (b) of a length specified in, or determined in accordance with, the accreditation.
- (2) The day specified under subsection (1)(a) in an accreditation may not be earlier than 6 April 2014 but subject to that—

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- (a) may be, or be earlier than, the day it is decided to grant the accreditation (and in particular may be, or be earlier than, the day the application for the accreditation is made), and
  - (b) may be earlier than the day section 257JD comes into force.
- (3) This section has effect subject to sections 257JD(4) and 257JF(3)(d)(i) (withdrawal of accreditations).

### **Functions of Ministers of the Crown under sections 257JD to 257JG**

- 257JH(1) A Minister of the Crown may delegate any function given to a Minister of the Crown by or under sections 257JD to 257JG other than a power of the Treasury to make regulations.
- (2) In those sections and this section “Minister of Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975.

## **CHAPTER 2 U.K.**

### ELIGIBILITY FOR RELIEF: BASIC RULE AND KEY DEFINITIONS

#### *Eligibility*

#### **Eligibility for SI relief**

- 257KI(1) An individual (“the investor”) who invests in a social enterprise is eligible for SI relief in respect of the amount invested if—
- (a) the investment is made—
    - (i) by the investor on the investor's own behalf,
    - (ii) on or after 6 April 2014, and
    - (iii) before 6 April 2019 (but see subsection (5)), and
  - (b) the conditions set out in Chapters 3 and 4 are met.
- (2) Subsection (1)(b) is subject to the provisions in sections 257LB and 257MJ to 257MN which provide for conditions set out in those sections not to apply where the social enterprise is an accredited social impact contractor.
- (3) The investor is not eligible for SI relief in respect of the amount invested if—
- (a) the investor has obtained in respect of that amount, or any part of it, relief under—
    - (i) Part 5 (enterprise investment scheme),
    - (ii) Part 5A (seed enterprise investment scheme), or
    - (iii) Part 7 (community investment tax relief), or
  - (b) that amount, or any part of it, has under Schedule 5B to TCGA 1992 (enterprise investment scheme: re-investment) been set against a chargeable gain.
- (4) Investments made by, subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as made by, subscribed for, issued to, held by or disposed of by the individual.

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- (5) The Treasury may by order substitute a later date for the date for time being specified in subsection (1)(a)(iii).

### *Key definitions*

#### **Key to reading the rest of the Part**

257KA In the following provisions of this Part (except section 257N), a reference to—

- “the amount invested”,
- “the investment”,
- “the investor”, or
- “the social enterprise”,

is to be read in accordance with section 257K(1).

#### **When investment is made, and “investment date”**

257KB) For the purposes of this Part “the investment date” means the date on which the investment is made.

- (2) So far as the investment is in shares, for the purposes of this Part it is made when the shares are issued to the investor by the social enterprise.
- (3) If the investment, so far as it is in qualifying debt investments (see section 257L), involves making the only advance covered by the debenture or debentures concerned, for the purposes of this Part it is made—
- (a) when the social enterprise issues the debenture or debentures to the investor, or
  - (b) in a case where there is to be no such issuing, when the debenture or debentures, so far as relating to the advance, take effect between the social enterprise and the investor.
- (4) If the investment, so far as it is in qualifying debt investments, involves making the first of multiple advances covered by the debenture or debentures concerned, for the purposes of this Part it is made—
- (a) when the social enterprise issues the debenture or debentures to the investor, or
  - (b) in a case where there is to be no such issuing, when the debenture or debentures, so far as relating to all of those advances, take effect between the social enterprise and the investor.
- (5) If the investment, so far as it is in qualifying debt investments, involves making the second of multiple advances covered by the debenture or debentures concerned, or a subsequent one of those advances, for the purposes of this Part it is made—
- (a) when the amount of that advance is fully advanced in cash, or
  - (b) if later—
    - (i) when the social enterprise issues the debenture or debentures to the investor, or
    - (ii) in a case where there is to be no such issuing, when the debenture or debentures, so far as relating to all of those

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advances, takes effect between the social enterprise and the investor.

- (6) For the purposes of subsections (3) to (5) “debenture” includes any instrument creating or acknowledging indebtedness.

**“Shorter applicable period” and “longer applicable period”**

257K(1) In this Part “the shorter applicable period” and “the longer applicable period” have the meaning given by this section.

- (2) The shorter applicable period begins with the investment date.
- (3) The longer applicable period begins with—
- (a) the day on which the social enterprise is—
    - (i) incorporated (if it is a body corporate), or
    - (ii) established (in any other case), or
  - (b) if later, the day whose first anniversary is the investment date.
- (4) Each of the periods ends with the third anniversary of the investment date.

**CHAPTER 3 U.K.**

ELIGIBILITY: CONDITIONS RELATING TO THE INVESTOR AND THE INVESTMENT

**Investment to be in new shares or new qualifying debt investments**

- 257(1) At all times during the shorter applicable period, the investment must be in—
- (a) shares that meet conditions A and B and are issued to the investor by the social enterprise in return for the amount invested, or
  - (b) qualifying debt investments of which the investor is the holder in return for advancing the amount invested to the social enterprise.
- (2) Condition A is that the shares must carry none of the following—
- (a) a right to a return which, or any part of which, is a fixed amount;
  - (b) a right to a return which, or any part of which, is at a fixed rate;
  - (c) a right to a return which, or any part of which, is otherwise fixed by reference to the amount invested;
  - (d) a right to a return which, or any part of which, is fixed by reference to some other factor that is not contingent on successful financial performance by the social enterprise;
  - (e) a right to a return at a rate greater than a reasonable commercial rate.
- (3) Condition B is that, for the purpose of determining the amounts due in respect of the shares to their holder in the event of the winding-up of the social enterprise—
- (a) those amounts rank after all debts of the social enterprise except any due to holders of qualifying debt investments in the social enterprise in respect of their qualifying debt investments, and
  - (b) the shares do not rank above any other shares in the social enterprise.

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- (4) In this Part “qualifying debt investments”, in relation to the social enterprise, means any debentures of the social enterprise in respect of which the following conditions are met—
- (a) neither the principal of the debt concerned, nor any return on that, is charged on any assets,
  - (b) the rate of any such return is not greater than a reasonable commercial rate of return, and
  - (c) in the event of the winding-up of the social enterprise and so far as the law allows, any sums due in respect of the debt (whether principal or return)—
    - (i) are subordinated to all other debts of the social enterprise except sums due in the case of other unsecured debentures of the social enterprise which rank equally,
    - (ii) rank equally, if there are shares in the social enterprise and they all rank equally among themselves, with amounts due to share-holders in respect of their shares, and
    - (iii) rank equally, if there are shares in the social enterprise and they do not all rank equally, with amounts due in respect of their shares to the holders of shares that do not rank above any other shares.
- (5) The condition in subsection (3)(a) or (4)(c)(i) is met even if the sums concerned do not rank after debts which are postponed—
- (a) by rules under section 411 of the Insolvency Act 1986, or
  - (b) by or under any other enactment.
- (6) For the purposes of subsection (4) “debenture” includes any instrument creating or acknowledging indebtedness.

### **Condition that the amount invested must have been paid over**

- 257L(1) So far as the investment is in shares—
- (a) the shares must be subscribed for wholly in cash, and
  - (b) must be fully paid up at the time they are issued.
- (2) If the investment, so far as it is in qualifying debt investments, involves making—
- (a) the only advance covered by the debenture or debentures concerned, or
  - (b) one of multiple advances covered by the debenture or debentures concerned,
- the full amount of that advance must have been advanced wholly in cash by the time the investment is made.
- (3) For the purposes of this section—
- (a) shares are not fully paid up, or
  - (b) the full nominal amount of qualifying debt investments has not been advanced,
- if there is any undertaking to pay cash to any person at a future time in respect of the acquisition of the shares or investments.

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- (4) For the purposes of subsection (2) “debenture” includes any instrument creating or acknowledging indebtedness.

### **The no pre-arranged exits requirements**

- 257L(1) There must not at any time in the shorter applicable period be any arrangements in existence for the investment to be redeemed, repaid, repurchased, exchanged or otherwise disposed of in that period.
- (2) The issuing arrangements for the investment must not include—
- (a) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the social enterprise or a person connected with the social enterprise, or
  - (b) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the social enterprise or of a person connected with the social enterprise.
- (3) The arrangements referred to in subsection (2)(a) and (b) do not include any arrangements applicable only on the winding-up of a company except in a case where—
- (a) the issuing arrangements include arrangements for the company to be wound up, or
  - (b) the arrangements are applicable on the winding-up of the company otherwise than for genuine commercial reasons.
- (4) In this section “the issuing arrangements” means—
- (a) the arrangements under which the investor makes the investment, and
  - (b) any arrangements made before, and in relation to or in connection with, the making of the investment by the investor.
- (5) Subsections (2) to (4) do not apply if the social enterprise is an accredited social impact contractor.

### **The no risk avoidance requirement**

- 257L(1) There must not at any time in the shorter applicable period be any arrangements in existence the main purpose or one of the main purposes of which is (by means of any insurance, indemnity, guarantee, hedging of risk or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1) do not include any arrangements which are confined to the provision—
- (a) for the social enterprise itself, or
  - (b) if the social enterprise is a parent company that meets the trading requirement in section 257MJ(2)(c) or is a parent company that is an accredited social impact contractor—
    - (i) for the social enterprise itself,
    - (ii) for the social enterprise itself and one or more of its subsidiaries, or
    - (iii) for one or more of the subsidiaries of the social enterprise,

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of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.

### **The no linked loans requirement**

- 257LD) No linked loan is to be made by any person, at any time in the longer applicable period, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which—
- (a) would not have been made, or
  - (b) would not have been made on the same terms,
- if the investor had not made the investment, or had not been proposing to do so.
- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include—
- (a) references to the giving by that person of any credit to the investor or any associate of the investor, and
  - (b) references to the assignment to that person of a debt due from the investor or any associate of the investor.

### **The no tax avoidance requirement**

257LE The investment must not be made as part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.

### **Restrictions on being an employee, partner or paid director**

- 257LF) This section applies—
- (a) to the investor, and
  - (b) to any individual who is an associate of the investor.
- (2) An individual to whom this section applies must not at any time in the longer applicable period be—
- (a) an employee of—
    - (i) the social enterprise,
    - (ii) any subsidiary of the social enterprise,
    - (iii) a partner of the social enterprise, or
    - (iv) a partner of any subsidiary of the social enterprise,
  - (b) a partner of—
    - (i) the social enterprise, or
    - (ii) any subsidiary of the social enterprise,
  - (c) a trustee of—
    - (i) the social enterprise, or
    - (ii) any subsidiary of the social enterprise, or
  - (d) a remunerated director of—
    - (i) the social enterprise, or
    - (ii) a linked company.

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(3) In this section—

“linked company” means—

- (a) a subsidiary of the social enterprise,
- (b) a company which is a partner of the social enterprise, or
- (c) a company which is a partner of a subsidiary of the social enterprise;

“related person” means—

- (a) the social enterprise,
- (b) a person connected with the social enterprise,
- (c) a linked company of which the individual is a director, or
- (d) a person connected with such a company;

“subsidiary”, in relation to the social enterprise, means a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a subsidiary of the social enterprise for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).

(4) For the purposes of subsection (2)(d), an individual who is a director of the social enterprise or a linked company is “remunerated” if the individual (or a partnership of which the individual is a member)—

- (a) receives at any time in the longer applicable period a payment from a related person, or
- (b) is entitled to receive a payment from a related person in respect of any time in the longer applicable period.

(5) For the purposes of subsection (4) the following are ignored—

- (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the individual in the performance of the individual's duties as a director,
- (b) any interest which represents no more than a reasonable commercial return on money lent to a related person,
- (c) any dividend or other distribution which does not exceed a normal return on the investment,
- (d) any payment for the supply of goods which does not exceed their market value,
- (e) any payment of rent for any property occupied by a related person which does not exceed a reasonable and commercial rent for the property,
- (f) any necessary and reasonable remuneration which—
  - (i) is paid for services, rendered to a related person in the course of a trade or profession, that are not secretarial services and are not managerial services and are not services of a kind provided by the person to whom they are rendered, and
  - (ii) is taken into account in calculating for tax purposes the profits of that trade or profession, and
- (g) if condition A is met and (where applicable) condition B is also met, any other reasonable remuneration (including any benefit or facility) received by the individual, or to which the individual is entitled, for services rendered by the individual—

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- (i) to the company (whether the social enterprise or a linked company) of which the individual is a director, and
  - (ii) in the individual's capacity as a director of that company.
- (6) Condition A is that the investor made the investment, or previously made another investment meeting the requirement in section 257L(1), at a time (“the qualifying time”) when—
  - (a) the requirements of this section and sections 257LG and 257LH (even if the three sections were not then in force) would have been met even if each other reference in the three sections to any time in the longer applicable period were a reference to any time before the qualifying time, and
  - (b) the investor had never been involved in carrying on (whether on the investor's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary of the social enterprise.
- (7) Condition B is that—
  - (a) the investment did not meet condition A (but a previous investment did), and
  - (b) the investment was made before the third anniversary of the date when the investor last made an investment in the social enterprise which met condition A.
- (8) References in this section to an individual in the individual's capacity as a director of a company include, if the individual is both a director and an employee of the company, references to the individual in the individual's capacity as an employee of the company but, apart from that, an individual who is both a director and an employee of a company is treated for the purposes of this section as a director, and not an employee, of the company.
- (9) In subsections (2), (4) and (5) “director” does not include a trustee of a charity that is a trust.

### **The requirement not to be interested in capital etc of social enterprise**

257L(1) This section applies—

- (a) to the investor, and
  - (b) to any individual who is an associate of the investor.
- (2) In this section “related company” means—
  - (a) the social enterprise, or
  - (b) a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a related company for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).
- (3) There must not be any time in the longer applicable period when an individual to whom this section applies has control of a related company.
- (4) There must not be any time in the longer applicable period when an individual to whom this section applies directly or indirectly possesses or is entitled to acquire—

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- (a) more than 30% of the ordinary share capital of a related company,
  - (b) more than 30% of the loan capital of a related company, or
  - (c) more than 30% of the voting power in a related company.
- (5) For the purposes of subsections (3) and (4) ignore any shares in a related company held by the individual, or by an associate of the individual, at a time when that company—
- (a) has not issued any shares other than subscriber shares, and
  - (b) has not begun to carry on, or make preparations for carrying on, any trade or business.
- (6) For the purposes of this section, the loan capital of a company—
- (a) is treated as including any debt incurred by the company—
    - (i) for any money borrowed or capital assets acquired by the company,
    - (ii) for any right to receive income created in favour of the company, or
    - (iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it), and
  - (b) is treated as not including any debt incurred by the company by overdrawing an account with a person carrying on a business of banking if the debt arose in the ordinary course of that business.
- (7) For the purposes of this section—
- (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.

### **Requirement for no collusion with a non-qualifying investor**

- 257LH There must not at any time in the longer applicable period be any arrangements—
- (a) as part of which—
    - (i) the investor makes the investment, or
    - (ii) the investor, or an individual who is an associate of the investor, makes any other investment in the social enterprise,
  - (b) which provide for a person to make an investment in a company other than the social enterprise, where that person is not the individual (“A”) who invests as mentioned in paragraph (a), and
  - (c) to which there is a party (whether or not A) who is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if—
    - (i) references in those sections to the investor were read as references to that individual, and
    - (ii) references in those sections to the social enterprise were read as references to the company mentioned in paragraph (b).

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## CHAPTER 4 U.K.

### ELIGIBILITY: CONDITIONS RELATING TO THE SOCIAL ENTERPRISE

#### *Conditions relating to the social enterprise*

#### **The continuing to be a social enterprise requirement**

257M The social enterprise must be a social enterprise throughout the shorter applicable period.

#### **The amount raised from investments potentially eligible for relief**

257M(A) The amount invested must not be more than the amount given by—

$$\left( \frac{[\text{euro}]200,000 - M}{RCG + RSI} \right) - T$$

where—

T is the total of any scheme investments made in the aid period,

M is the total of any de minimis aid, other than scheme investments, that is granted during the aid period—

- (a) to the social enterprise, or
- (b) to a qualifying subsidiary of the social enterprise at a time when it is such a subsidiary,

RCG is the highest rate at which capital gains tax is charged in the aid period, and

RSI is the highest SI rate in the aid period.

- (2) In subsection (1) “the aid period” is the 3 years—
  - (a) ending with the day on which the investment is made, but
  - (b) in the case of that day, including only the part of the day before the investment is made.
- (3) In this section “de minimis aid” means de minimis aid which fulfils the conditions laid down—
  - (a) in [Commission Regulation \(EU\) No. 1407/2013](#) (de minimis aid) as amended from time to time, or
  - (b) in any EU instrument from time to time replacing the whole or any part of that Regulation.
- (4) For the purposes of subsection (1), the amount of any de minimis aid is the amount of the grant or, if the aid is not in the form of a grant, the gross grant

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equivalent amount within the meaning of that Regulation as amended from time to time.

- (5) For the purposes of this section—
- (a) a scheme investment is an investment in respect of which the social enterprise (at any time) provides a compliance statement, and
  - (b) section 257KB applies for the purpose of determining when a scheme investment is made, but as if references in that section to this Part, the investment and the investor were (respectively) to this section, the scheme investment and the person making the scheme investment.
- (6) For the purposes of subsection (1), if—
- (a) the investment or any scheme investment is made, or
  - (b) any aid is granted,
- in sterling or any other currency that is not the euro, its amount is to be converted into euros at an appropriate spot rate of exchange for the date on which the investment is made or the aid is paid.

#### **Power to amend limits on amounts raised**

- 257M(B) The Treasury may by order amend this Part for the purpose of—
- (a) altering any limit for the time being imposed by this Part on amounts that a social enterprise may raise through investments eligible for SI relief;
  - (b) complying with any undertakings given to the European Commission, or any conditions imposed by the Commission, in connection with an application for State aid approval.
- (2) In subsection (1) “State aid approval” means approval that the provision made by this Part, so far as it constitutes the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies, is or would be compatible with the internal market, within the meaning of Article 107 of that Treaty.
- (3) An order under this section may make incidental, supplemental, consequential, transitional or saving provision.
- (4) An order under this section may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, the House of Commons.

#### **The gross assets requirement**

- 257M(C) If the social enterprise is a single company, the value of its assets—
- (a) must not exceed £15 million immediately before the investment is made, and
  - (b) must not exceed £16 million immediately after the investment is made.
- (2) If the social enterprise is a parent company, the value of the group assets—
- (a) must not exceed £15 million immediately before the investment is made, and

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- (b) must not exceed £16 million immediately after the investment is made.
- (3) For the purposes of subsection (2), the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any assets that consist in rights against, or shares in or securities of, another member of the group.

### **The unquoted status requirement**

257M(1) At the beginning of the shorter applicable period—

- (a) the social enterprise must not be a quoted company,
  - (b) there must be no arrangements in existence for the social enterprise to become a quoted company, and
  - (c) there must be no arrangements in existence for the social enterprise to become a subsidiary of a company (“the new company”) by virtue of an exchange of shares, or shares and securities, if arrangements have been made with a view to the new company becoming a quoted company.
- (2) For the purpose of this section, a company is a “quoted company” if any shares, stocks, debentures or other securities of the company are—
- (a) listed on a recognised stock exchange,
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in outside the United Kingdom by such means as may be designated.
- (3) In subsection (2)(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.
- (4) An order made for the purposes of subsection (2)(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.
- (5) The arrangements referred to in subsection (1)(b), and the second arrangements referred to in subsection (1)(c), do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the social enterprise or the new company (as the case may be) are at any subsequent time—
- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order under section 1005(1)(b), or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (2)(b) or (c),
- if the order was made after the beginning of the shorter applicable period.

### **The control and independence requirements**

257M(1) The social enterprise must not at any time in the shorter applicable period control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the social enterprise.

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- (2) The social enterprise must not at any time in the shorter applicable period—
- (a) be a 51% subsidiary of a company, or
  - (b) be under the control of a company, or under the control of a company and a person connected with that company, without being a 51% subsidiary of the company.
- (3) No arrangements must be in existence at any time in the shorter applicable period by virtue of which the social enterprise could fail to meet either or both of subsections (1) and (2) (whether during that period or otherwise).

#### **The qualifying subsidiaries requirement**

257MF Any subsidiary that the social enterprise has at any time in the shorter applicable period must be a qualifying subsidiary of the social enterprise.

#### **The property-managing subsidiaries requirement**

257M(G) Any property-managing subsidiary that the social enterprise has at any time in the shorter applicable period must be a 90% social subsidiary of the social enterprise.

- (2) In subsection (1) “property-managing subsidiary” means a subsidiary of the social enterprise whose business consists wholly or mainly in the holding or managing of land or any property deriving its value (directly or indirectly) from land.

#### **The number of employees requirement**

257M(H) If the social enterprise is a single company, the full-time equivalent employee number for it must be less than 500 when the investment is made.

- (2) If the social enterprise is a parent company, the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee number for each of its qualifying subsidiaries,
- must be less than 500 when the investment is made.
- (3) The full-time equivalent employee number for a company is calculated by taking the number of full-time employees of the company and adding, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
- (4) In this section “employee”—
- (a) includes a director, but
  - (b) does not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.

#### **The no partnership requirement**

257M(I) The requirements in this section apply during the shorter applicable period.

- (2) The social enterprise must not be a member of any partnership.

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- (3) Each 90% social subsidiary of the social enterprise must not be a member of a partnership.

### **The trading requirement**

257M(1) The social enterprise must meet the trading requirement throughout the shorter applicable period, but this does not apply if the social enterprise is an accredited social impact contractor.

- (2) The trading requirement is that—
- (a) the social enterprise is a charity,
  - (b) the social enterprise is a single company that is not a charity, and its business—
    - (i) does not, if things done for incidental purposes are ignored, consist to any extent in the carrying-on of non-trade activities, and
    - (ii) does not consist wholly, or as to a substantial part, in the carrying-on of excluded activities, or
  - (c) the social enterprise is a parent company that is not a charity, and the business of the group does not consist wholly, or as to a substantial part, in the carrying-on of non-qualifying activities.
- (3) If the social enterprise intends that one or more companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
- (a) the social enterprise is treated as a parent company for the purposes of subsection (2)(b) and (c), and
  - (b) the reference in subsection (2)(c) to the group includes the social enterprise and any existing or future company that will be its qualifying subsidiary after the intention in question is carried out,
- but this subsection does not apply at any time after the abandonment of that intention.
- (4) For the purposes of subsection (2)(c) “the business of the group” means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company, 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.
- (7) In this section—

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“incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the body 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, other than activities carried on by a charity, that are carried on otherwise than in the course of a trade, and

“non-trade activities” means activities which are neither of the following—

- (a) activities carried on in the course of a trade, and
- (b) activities carried on in the course of preparing to carry on a trade.

#### **Ceasing to meet trading requirement: administration or receivership**

257M(1) The social enterprise is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the social enterprise or any of its subsidiaries being in administration or receivership, but this is subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

- (a) the entry into administration or receivership, and
- (b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.

(3) The social enterprise ceases to meet the trading requirement if before the end of the shorter applicable period—

- (a) a resolution is passed, or an order is made, for the winding-up of the social enterprise or any of its subsidiaries (or, in the case of a winding-up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or
- (b) the company or any of its subsidiaries is dissolved without winding-up,

but this is subject to subsection (4).

(4) Subsection (3) does not apply if the winding-up or dissolution is for genuine commercial reasons, and is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.

#### **The issue must be to raise money for chosen trade or preparing for it**

257M(1) The social enterprise must be a party to the making of the investment (so far as not in bonus shares) in order to raise money for the carrying-on, by the social enterprise or a 90% social subsidiary of the social enterprise, of—

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- (a) a qualifying trade which on the investment date is carried on by the social enterprise or a 90% social subsidiary of the social enterprise, or
  - (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade—
    - (i) which on the investment date is intended to be carried on by the social enterprise or a 90% social subsidiary of the social enterprise, and
    - (ii) which is begun to be carried by the social enterprise or such a subsidiary within 2 years after that date.
- (2) In this Chapter—
- (a) the purpose within subsection (1) for which money is raised is referred to as “the funded purpose”,
  - (b) the qualifying trade mentioned in subsection (1)(a) or (b) is referred to as “the chosen trade”, and
  - (c) if the funded purpose is the carrying-on of the activity mentioned in subsection (1)(b), “relevant preparation work” means preparations that form the whole or part of the activity.
- (3) In determining for the purposes of subsection (1)(b) when a qualifying trade is begun to be carried on by a 90% social subsidiary of the social enterprise, any carrying-on of the trade by it before it became such a subsidiary is ignored.
- (4) The reference in subsection (1)(b)(i) to a 90% social subsidiary of the social enterprise includes a reference to any existing or future body which will be such a subsidiary at any future time.
- (5) This section does not apply if the social enterprise is an accredited social impact contractor.

#### **Requirement to use money raised and to trade for minimum period**

- 257MM(1) All of the money raised by the social enterprise from the making of the investment must, no later than the end of 28 months beginning with the investment date, be employed wholly for the funded purpose.
- (2) The chosen trade must have been carried on for a period of at least 4 months ending at or after the time the investment is made and, throughout that period, the trade—
    - (a) must have been carried on by the social enterprise or a 90% social subsidiary of the social enterprise, and
    - (b) must not have been carried on by any other person.
  - (3) Employing money on the acquisition of shares or stock in a body does not of itself amount to employing the money for the funded purpose.
  - (4) Subsection (1) does not fail to be met merely because an amount of money which is not significant is employed for other purposes.
  - (5) If—
    - (a) merely because of the social enterprise or any other company being wound up, or dissolved without winding-up, the qualifying trade is

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- carried on as mentioned in subsection (2) for a period shorter than 4 months, and
- (b) the winding-up or dissolution—
- (i) is for genuine commercial reasons, and
  - (ii) is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
- subsection (2) has effect as if it referred to that shorter period.
- (6) If—
- (a) merely because of anything done as a result of the social enterprise or any other company being in administration or receivership, the chosen trade is carried on as mentioned in subsection (2) for a period shorter than 4 months, and
  - (b) the entry into administration or receivership, and everything done as a result of the company concerned being in administration or receivership—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
- subsection (2) has effect as if it referred to that shorter period.
- (7) If the social enterprise is an accredited social impact contractor, the preceding provisions of this section apply with the following modifications—
- (a) in subsection (1), for “28 months” substitute “ 24 months ”,
  - (b) in that subsection, for “the funded purpose” substitute “ the carrying out of the social impact contract concerned ”, and
  - (c) omit subsections (2), (3), (5) and (6).

### **The social enterprise must carry on the chosen trade**

- 257M(N) There must not be a time in the shorter applicable period when—
- (a) the chosen trade, or
  - (b) relevant preparation work,
- is carried on by a person who is neither the social enterprise nor a 90% social subsidiary of the social enterprise.
- (2) If relevant preparation work is carried out in the shorter applicable period by the social enterprise or a 90% social subsidiary of the social enterprise then, for the purposes of determining whether the requirement in subsection (1) is met, ignore any carrying-on of the chosen trade that takes place in that period before the trade begins to be carried on by a person who is the social enterprise or a 90% social subsidiary of the social enterprise.
- (3) The requirement in subsection (1) is not regarded as failing to be met if, merely because of any act or event within subsection (4), the chosen trade—
- (a) ceases to be carried on in the shorter applicable period by the social enterprise or any 90% social subsidiary of the social enterprise, and
  - (b) it is subsequently carried on in that period by a person who is not any time in the longer applicable period connected with the social enterprise.

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- (4) The acts and events within this subsection are—
- (a) anything done as a consequence of the social enterprise or any other company being in administration or receivership, and
  - (b) the social enterprise or any other company being wound up, or dissolved without being wound up.
- (5) Subsection (4) applies only if—
- (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
  - (b) the winding-up or dissolution,
- is for genuine commercial reasons, and is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (6) This section does not apply if the social enterprise is an accredited social impact contractor.

*Interpretation of conditions relating to the social enterprise*

**Meaning of “qualifying trade”**

- 257M(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 at any time in the shorter applicable period consist wholly or as to a substantial part in the carrying-on of excluded activities.
- (2) References in this section and sections 257MQ to 257MT (excluded activities) to a trade are to be read without regard to the definition of “trade” in section 989.

**Meaning of “excluded activity”**

- 257M(1) The following are excluded activities for the purposes of sections 257JD, 257MJ and 257MP—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities (but see subsection (2)),
  - (c) property development (see section 257MR),
  - (d) activities in the fishery and aquaculture sector that is covered by Council Regulation (EC) No. 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products,
  - (e) the primary production of products listed in Annex I to the Treaty on the Functioning of the European Union (agricultural etc products), with the exception of products covered by Council Regulation (EC) No. 104/2000 (fishery and aquaculture products),
  - (f) the subsidised generation or export of electricity (see section 257MS),

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- (g) road freight transport for hire or reward, and
  - (h) 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) if—
    - (i) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (g), and
    - (ii) a controlling interest (see section 257MT) 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) The activity of lending money to a social enterprise is not an excluded activity for the purposes of sections 257MJ and 257MP.

**Excluded activities: property development**

- 257MRI) For the purposes of section 257MQ(1)(c) “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.
- (2) For the purposes of subsection (1) “interest in land” means (subject to subsection (3))—
- (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.
- (3) 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.

**Excluded activity: subsidised generation or export of electricity**

- 257MS) This section supplements section 257MQ(1)(f).
- (2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).
  - (3) The generation of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity generated.
  - (4) The export of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity exported.
  - (5) In this section—
    - “FIT subsidy” means—

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- (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or
- (b) a financial incentive under a similar scheme established in Northern Ireland, or in a territory outside the United Kingdom, to encourage small-scale low-carbon generation of electricity; “small-scale low-carbon generation of electricity” has the meaning given by section 41(4) of the Energy Act 2008.

### **Excluded activity: providing services or facilities for another business**

257M(II) This section explains what is meant by a controlling interest in a business for the purposes of section 257MQ(1)(h).

- (2) 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, is a director of the company and 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 of the business could, in accordance with section 942 of CTA 2010, be regarded as belonging to A for the purposes of section 941 of CTA 2010 (company reconstructions without a change of ownership).
- (3) In any other case, a person has a controlling interest in a business if the person is entitled to at least half of the assets used for, or of the income arising from, the business.
- (4) 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.

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

257M(U) For the purposes of this Part, a company (“the subsidiary”) is a qualifying subsidiary of another company (“the parent”) if—

- (a) the subsidiary is a 51% subsidiary of the parent,
  - (b) no person other than the parent, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence as a result of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (2) The conditions in subsection (1)(a) to (c) do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding-up or dissolution—

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- (a) is for genuine commercial reasons, and
  - (b) is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) The conditions in subsection (1)(a) to (c) do not cease to be met merely because of anything done as a consequence of the subsidiary or another 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 any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions in subsection (1)(a) to (c) do not cease to be met merely because arrangements are in existence for the disposal by the parent or (as the case may be) by another subsidiary 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 any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.

#### **Meaning of “90% social subsidiary” of a social enterprise**

- 257M(1) For the purposes of this Chapter, a company (“the subsidiary”) is a 90% social subsidiary of another company (“the parent”) if—
- (a) the subsidiary is a social enterprise,
  - (b) the parent possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (c) the parent 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,
  - (d) the parent 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,
  - (e) no person other than the parent has control of the subsidiary, and
  - (f) no arrangements are in existence as a result of which any of the conditions in paragraphs (a) to (e) would cease to be met.
- (2) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of another company (“company B”) is a 90% social subsidiary of a third company (“company C”) if—
- (a) company A is a 90% social subsidiary of company B, and company B is a 100% social subsidiary of company C, or
  - (b) company A is a 100% social subsidiary of company B, and company B is a 90% social subsidiary of company C.
- (3) For the purposes of subsection (2) no account is to be taken of any control company C may have of company A.

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- (4) For the purposes of subsection (2), a company (“company X”) is a 100% social subsidiary of another company (“company Y”) at any time when the conditions in subsection (1)(a) to (f) would be met if—
- (a) company X were the subsidiary,
  - (b) company Y were the parent, and
  - (c) in subsection (1) for “at least 90%” there were substituted “ 100% ”.
- (5) The conditions in subsection (1)(a) to (f) do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being wound up, or dissolved without being wound up, if the winding-up or dissolution—
- (a) is for genuine commercial reasons, and
  - (b) is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (6) The conditions in subsection (1)(a) to (f) 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 any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (7) The conditions in subsection (1)(a) to (f) do not cease to be met merely because any arrangements are in existence for the disposal by the parent 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 any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (8) 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 Chapter 6 of Part 5 of CTA 2010.
- (9) In making that determination—
- (a) references in section 166 of that Act to company A are to be read as references to an equity holder, and
  - (b) references in that section to 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.

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## CHAPTER 5 **U.K.**

### ATTRIBUTION OF RELIEF

#### Attribution of SI relief to investments

257N) References in this Part, in relation to any individual, to the SI relief attributable to any investment are to be read as references to any reduction made in the individual's liability to income tax that is attributed to that investment in accordance with this section.

This is subject to the provisions of this Part providing for the withdrawal or reduction of SI relief.

- (2) If an individual's liability to income tax is reduced under this Part in any tax year, then—
  - (a) if the reduction is obtained because of a single distinct investment, the amount of the reduction is attributed to that investment, and
  - (b) if the reduction is obtained because of two or more distinct investments, the amount of the reduction—
    - (i) is apportioned between the distinct investments in the same proportions as the amounts claimed by the individual in respect of each of those investments, and
    - (ii) is attributed to those investments accordingly.
- (3) In this section “distinct investment” means an investment, made on a single day, in—
  - (a) a single share or single qualifying debt investment, or
  - (b) two or more shares, or two or more qualifying debt investments, where the shares or qualifying debt investments are in the same social enterprise and of the same class.
- (4) If under this section an amount of any reduction in income tax is attributed to a distinct investment—
  - (a) in the case of a distinct investment of the kind mentioned in subsection (3)(a), that amount is attributed to the share, or qualifying debt investment, concerned, and
  - (b) in the case of a distinct investment of the kind mentioned in subsection (3)(b), a proportionate part of that amount is attributed to each of the shares, or qualifying debt investments, concerned.
- (5) If corresponding bonus shares are issued to an individual in respect of any shares (“the original shares”) to which SI relief is attributed—
  - (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if those shares had been issued to the individual on the same day as the original shares.

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- (6) In subsection (5) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights, as the original shares.
- (7) If section 257JA(1) and (2) apply in the case of any investment as if part of the amount invested had been invested in a previous tax year, this section has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).
- (8) For the purposes of this section, shares or other investments in a company are not treated as being of the same class unless they would be so treated if dealt in on a recognised stock exchange.

## CHAPTER 6 **U.K.**

### CLAIMS FOR RELIEF

#### Time for making claims for SI relief

- 257P(1) A claim for SI relief in respect of the amount invested may be made—
- (a) not earlier than the time the requirement in section 257MM(2) (chosen trade must have been carried on for 4 months) is first met, and
  - (b) not later than the fifth anniversary of the normal self-assessment filing date for the tax year in which the investment is made.
- (2) If the social enterprise is an accredited social impact contractor, subsection (1) applies with the omission of its paragraph (a).
  - (3) If section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year, subsection (1) has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).

#### Entitlement to claim

- 257PA(1) The investor is entitled to make a claim for SI relief in respect of the amount invested if the investor has received from the social enterprise a compliance certificate in respect of that amount.
- (2) For the purposes of PAYE regulations, no regard is to be had to SI relief unless a claim for it has been duly made.
  - (3) No application may be under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is entitled to SI relief unless a claim for the relief has been duly made by the investor.

#### Compliance statements

- 257PB(1) For the purposes of this Part, a “compliance statement” in respect of the investment is a statement by the social enterprise to the effect that, except so

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far as they fall to be met by or in relation to the individual, the requirements for SI relief—

- (a) are for the time being met in relation to the investment (or in relation to investments that include the investment), and
  - (b) have been so met at all times since the investment was made.
- (2) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs may direct and must contain—
- (a) such additional information as the Commissioners may reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
  - (b) a declaration that the statement is correct to the best of the social enterprise's knowledge and belief, and
  - (c) such other declarations as the Commissioners may reasonably require.
- (3) The social enterprise may not provide an officer of Revenue and Customs with a compliance statement in respect of the investment—
- (a) before the requirement in section 257MM(2) (trade must have been carried for 4 months) is met, or
  - (b) later than 2 years after the end of the tax year in which the investment is made or, if that requirement is first met after the end of that tax year, later than 2 years after the requirement is first met.
- (4) If the social enterprise is an accredited social impact contractor, subsection (3) applies with the omission of its paragraph (a).

### **Compliance certificates**

- 257P(1) For the purposes of this Chapter, a “compliance certificate” is a certificate which—
- (a) is issued by the social enterprise in respect of the investment,
  - (b) states that, except so far as they fall to be met by or in relation to the individual, the requirements for SI relief are for the time being met in relation to the investment, and
  - (c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.
- (2) Before issuing a compliance certificate, the social enterprise must provide an officer of Revenue and Customs with a compliance statement in respect of the investment.
- (3) The social enterprise must not issue a compliance certificate without the authority of an officer of Revenue and Customs.
- (4) If the social enterprise, or a person connected with the social enterprise, has under section 257SF given a notice to an officer of Revenue and Customs that relates (whether or not exclusively) to the investment, a compliance certificate must not be issued unless the authority mentioned in subsection (3) of this section is given or renewed after receipt of the notice.
- (5) If—

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- (a) an officer of Revenue and Customs has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) an officer of Revenue and Customs has decided whether or not to do so,
- an officer of Revenue and Customs must give notice of the decision to the social enterprise.
- (6) For the purposes of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the social enterprise.
  - (7) In the case of requirements that cannot be met until a future time, references in this section to requirements being met for the time being are to nothing having occurred to prevent their being met.

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

- 257PD The social enterprise is liable to a penalty not exceeding £3,000 if—
- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
  - (b) it issues a compliance certificate in contravention of section 257PC(3) or (4).

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

- 257PE) The Treasury may by order amend this Chapter.
- (2) An order under this section may include consequential, incidental or transitional provision or savings, including consequential amendments, repeals or revocations of provision made by or under an enactment (including this Act) whenever passed or made.
  - (3) An order under this section may make different provision for different cases or purposes.
  - (4) An order under this section may, in particular, make provision for persons to be liable to penalties whose amount, or maximum amount, does not exceed £3,000.

## **CHAPTER 7 U.K.**

### WITHDRAWAL OR REDUCTION OF SI RELIEF

#### *Value received by the investor*

#### **Effect of the investor receiving value from the social enterprise**

- 257Q) If the investor receives any value from the social enterprise at any time in the longer applicable period, any SI relief given in respect of the investment must—

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- (a) if it is greater than the amount given by the formula set out in subsection (2), be reduced by that amount, and
- (b) in any other case, be withdrawn.

(2) The formula is—

$$V \times R$$

where—

V is the amount of the value received, and

R is the SI rate for the tax year for which the SI relief was given.

- (3) Subsections (1) and (2) are subject to—
  - (a) section 257QA (value received: insignificant receipts),
  - (b) section 257QB (value received where there is more than one issue of investments),
  - (c) section 257QC (value received where part of investment treated as made in previous tax year),
  - (d) section 257QD (cases where maximum SI relief not obtained),
  - (e) section 257QG (receipts of value by and from connected persons etc), and
  - (f) section 257QH (receipt of replacement value).
- (4) Sections 257QB to 257QD are to be applied in the order in which they appear in this Part.
- (5) Value received is to be ignored, for the purposes of this section, so far as SI relief attributable to the investment has already been withdrawn or reduced on its account.
- (6) For the purposes of this section and sections 257QA to 257QI, an individual—
  - (a) who acquires any part of the investment, and
  - (b) who does so on such a transfer as is mentioned in section 257T (spouses or civil partners),
 is treated as the investor.

**Value received: insignificant receipts**

- 257QA(1) In this section “insignificant receipt” means a receipt whose amount—
- (a) is not more than £1,000, or
  - (b) is more than £1,000 but is insignificant in relation to the amount invested.
- (2) Section 257Q(1) does not apply to an insignificant receipt, subject as follows.
  - (3) Section 257Q(1) applies to all receipts within the longer applicable period if, at any time on the investment date or in the preceding 12 months, arrangements are in existence providing for the investor to receive, or to be

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entitled to receive, value from the social enterprise at any time in the longer applicable period.

- (4) Once section 257Q(1) has applied to a receipt, it applies also to all other receipts within the longer applicable period except any earlier insignificant receipts.
- (5) The amount of the first receipt to which section 257Q(1) applies is treated as increased by the total amount of any earlier insignificant receipts.
- (6) In subsection (3)—
  - (a) the reference to the investor includes any person who at any time in the longer applicable period is an associate of the investor (whether or not an associate at the material time), and
  - (b) the reference to the social enterprise includes any person who at any time in the longer applicable period is connected with the social enterprise (whether or not connected at the material time).

#### **Value received where there is more than one issue of investments**

257Q(1) Subsection (3) applies if—

- (a) a time in the longer applicable period when the investor receives value from the social enterprise is within the period that for the purposes of this Part is the longer applicable period in relation to another investment in the social enterprise, and
  - (b) that other investment is one for which the investor has SI relief.
- (2) That other investment is an “overlapping investment” for the purposes of subsection (3).
  - (3) Section 257Q(2) has effect in relation to the investment as if the amount V were reduced by multiplying it by—

$$\frac{I}{T}$$

where—

I is the amount on which the investor has SI relief in the case of the investment, and

T is the total of that amount and the corresponding amount for each overlapping investment.

#### **Value received where part of investment treated as made in previous tax year**

257Q(1) Subsection (2) applies if—

- (a) section 257Q(1) applies to a receipt, and
  - (b) section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year.
- (2) The calculation under section 257Q(2) in relation to that receipt is to be made as follows—

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*Step 1* Apportion the amount referred to as “V” between the tax year in which the investment was made and the preceding tax year by multiplying that amount by—

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

where—

A is the part of the amount invested on which the investor obtains SI relief for the tax year in question, and

B is the sum of—

- (a) that part, and
- (b) the part of the amount invested on which the investor obtains SI relief for the other tax year.

*Step 2* In relation to each of the amounts (“V1” and “V2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if separate investments had been made in those tax years. In calculating amounts X1 and X2, apply section 257QD if appropriate but do not apply section 257QB.

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

### Cases where maximum SI relief not obtained

257Q(1) If the investor's liability to income tax is reduced for any tax year in respect of the investment and—

- (a) the amount of the reduction (“A”), is less than
- (b) the amount (“B”) which is equal to income tax at the SI rate for that tax year on the amount on which the investor has SI relief in the case of the investment,

section 257Q(2) has effect in relation to any value received as if the amount referred to as “V” were reduced by multiplying it by—

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

- (2) If the amount of SI relief attributable to the investment has been reduced before the SI relief was obtained, the amount referred to in subsection (1) as “A” is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (3) Subsection (2) does not apply to a reduction of SI relief as a result of section 257N(5) (attribution of SI relief where there is a corresponding issue of bonus shares).

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### **When value is received**

257QE) This section applies for the purposes of sections 257Q and 257QB.

- (2) The investor receives value from the social enterprise at any time when the social enterprise—
  - (a) repays, redeems or repurchases any investments in the social enterprise which belong to the investor, or makes any payment to the investor for giving up the investor's right to investments in the social enterprise on their cancellation or extinguishment,
  - (b) repays, in pursuance of any arrangements for or in connection with the making of the investment, any debt owed to the investor other than a debt which was incurred by the social enterprise—
    - (i) on or after the investment date, and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
  - (c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than—
    - (i) a debt in respect of a repayment of the kind mentioned in section 257LF(5)(a) or (f), or
    - (ii) an ordinary trade debt,
  - (d) releases or waives any liability of the investor to the social enterprise or discharges or undertakes to discharge any liability of the investor to a third person,
  - (e) makes a loan or advance to the investor which has not been repaid in full before the investment is made,
  - (f) provides a benefit or facility for the investor by providing, at a price less than the arm's-length price or free of charge, goods or services for whose provision the social enterprise ordinarily makes a charge,
  - (g) otherwise provides any benefit or facility for the investor,
  - (h) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
  - (i) makes to the investor any other payment except—
    - (i) a payment of a kind mentioned in section 257LF(5), or
    - (ii) a payment in discharge of an ordinary trade debt.
- (3) For the purposes of subsection (2)(d), the social enterprise is treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (4) For the purposes of subsection (2)(e), each of the following is treated as a loan made by the social enterprise to the investor—
  - (a) the amount of any debt, other than an ordinary trade debt, incurred by the investor to the social enterprise, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the social enterprise.
- (5) The investor also receives value from the social enterprise if—

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- (a) in respect of ordinary shares, or qualifying debt investments, held by the investor any payment or asset is received in a winding-up or dissolution of the social enterprise, and
  - (b) the winding-up or dissolution is for genuine commercial reasons, and is not part of any arrangements the main purpose or one of the main purposes of which is the avoidance of tax.
- (6) The investor also receives value from the social enterprise if—
- (a) a person—
    - (i) purchases any investments in the social enterprise which belong to the investor, or
    - (ii) makes any payment to the investor for giving up any right in relation to any investments in the social enterprise, and
  - (b) that person is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if references in those sections to the investor were read as references to that person.
- (7) If, because of the investor's disposal of investments in the social enterprise, any SI relief attributable to those investments is withdrawn or reduced under section 257R, the investor is not to be treated as receiving value from the social enterprise in respect of the disposal.
- (8) If the investor is a director of the social enterprise, the investor is not to be treated as receiving value from the social enterprise merely because of the payment to the investor of reasonable remuneration (including any benefit or facility) for any services rendered to the social enterprise as a director or employee.
- (9) In this section “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
- (a) is for not more than 6 months, and
  - (b) is not for longer than that normally given to customers of the person carrying on the trade or business.

### **The amount of value received**

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

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

257QG In sections 257Q, 257QA, 257QB, 257QE and 257QF—

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor's order or for the investor's benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and
- (c) any reference to the social enterprise includes a reference to a person who at any time in the longer applicable period is connected with

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the social enterprise (whether or not that person is so connected at the material time).

### Receipt of replacement value

257QH) If—

- (a) any SI relief attributable to the investment would, in the absence of this section, be reduced or withdrawn under section 257Q because of a receipt of value within section 257QE(2) or (6) (“the original value”),
- (b) the original supplier receives value (“the replacement value”) from the original recipient and the receipt is a qualifying receipt, and
- (c) the amount of the replacement value is at least the amount of the original value,

section 257Q does not, because of the receipt of the original value, have effect to withdraw or reduce the SI relief.

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

(2) For the purposes of this section—

“the original recipient” means the person who receives the original value, and

“the original supplier” means the person from whom that value was received.

(3) If the amount of the original value is, by virtue of section 257QB, treated as reduced for the purposes of section 257Q(2) as it applies in relation to the investment, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—

- (a) because of the original recipient doing one or more of the following—
  - (i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,
  - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset, and
  - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,
- (b) if the receipt of the original value was within section 257QE(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or
- (c) if the receipt of the original value was within section 257QE(6), because of the original recipient repurchasing the investments in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.

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- (5) This subsection applies to—
- (a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—
    - (i) the original supplier, or
    - (ii) any other person who at any time in the longer applicable period is an associate of, or is connected with, the original supplier (whether or not the person is such an associate, or is so connected, at the material time),
 which is reasonable in relation to the market value of those goods, services or facilities,
  - (b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—
    - (i) the original recipient, or
    - (ii) any other person who at any time in the longer applicable period is an associate of the original recipient (whether or not the person is such an associate at the material time),
  - (c) any payment for the acquisition of an asset which does not exceed its market value,
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who at any time in the longer applicable period is an associate of the original recipient (whether or not the person is such an associate at the material time),
 of an amount not exceeding a reasonable and commercial rent for the property,
  - (e) any payment in discharge of an ordinary trade debt, and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4), the sum of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,
  - (b) in a case within subsection (4)(b), the same as the amount of the original value, and
  - (c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.
- Section 257QF applies for the purpose of determining the amount of the original value.
- (7) In this section—
- (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and
  - (b) “ordinary trade debt” has the meaning given by section 257QE(9).

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### **Section 257QH: supplementary**

257Q(1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 257QH(1) to the extent to which it has previously been set under section 257QH against a receipt of value to prevent any reduction or withdrawal of SI relief under section 257Q.

- (2) The receipt of the replacement value by the original supplier (“the event”) is ignored for the purposes of section 257QH if—
- (a) the event occurs before the longer applicable period,
  - (b) where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
  - (c) where an appeal has been brought by the investor against an assessment to withdraw or reduce any SI relief attributable to the investment because of the receipt of the original value, the event occurs more than 60 days after the day on which the amount of the relief which falls to be withdrawn has been finally determined.

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

- (3) This subsection applies if—
- (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 257QH(1), and
  - (b) in consequence of the receipt, any receipts of value are ignored for the purposes of section 257Q as that section applies in relation to the investment or any other investments made by the investor, and
  - (c) the event which gives rise to the receipt is (or includes) the making of an investment by—
    - (i) the investor, or
    - (ii) any person who at any time in the longer applicable period is an associate of the investor (whether or not the person is such an associate at the material time).
- (4) If subsection (3) applies, the person who makes the investment concerned is not to be eligible for SI relief in relation to the investment concerned or any other investments in the same issue.
- (5) In this section “the original recipient”, “the original supplier” and “replacement value” have the same meaning as in section 257QH.

#### *Repayments etc of investments to other persons*

### **Repayments etc of share capital to other persons**

257Q(1) This section applies if any SI relief is attributable to the whole or any part of the investment and, at any time in the longer applicable period, the social enterprise or any subsidiary—

- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than—

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- (i) the investor, or
  - (ii) a person who falls within subsection (5), or
  - (b) makes any payment to any such member for giving up the member's right to any of the share capital of the social enterprise or subsidiary on its cancellation or extinguishment.
- (2) The SI relief must—
- (a) if it is greater than the amount given by the formula set out in subsection (3), be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (3) The formula is—

$$A \times R$$

where—

A is the amount received by the member, and

R is the SI rate for the tax year for which the SI relief was given.

- (4) This section is subject to sections 257QK to 257QP; and sections 257QL to 257QO are to be applied in the order in which they appear in this Part.
- (5) A person falls within this subsection if the repayment causes any SI relief attributable to that person's shares in the social enterprise to be withdrawn or reduced by virtue of—
- (a) section 257QE(2)(a) (receipt of value by virtue of repayment of investments etc), or
  - (b) section 257R (disposal of whole or part of the investment).
- (6) A repayment is treated as having the effect mentioned in subsection (5)(a) if it would have that effect were it not an insignificant receipt; and here “insignificant receipt” is to be read in accordance with section 257QA(1).
- (7) A repayment is to be ignored, for the purposes of this section, to the extent to which SI relief attributable to any shares has already been withdrawn or reduced on its account.
- (8) In this section and sections 257QK to 257QP—
- (a) “repayment” means a repayment, redemption, repurchase or payment mentioned in subsection (1)(a) or (b), and
  - (b) references to a subsidiary of the social enterprise are references to a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (whether or not it is such a subsidiary at the time of the repayment).

#### **Insignificant payments ignored for the purposes of section 257QJ**

- 257QK) A repayment is ignored for the purposes of section 257QJ if both—
- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
  - (b) the amount received by the member in question,

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are insignificant in relation to the market value of the remaining issued share capital of the social enterprise, or (as the case may be) the subsidiary, immediately after the event occurs.

This is subject to subsection (3).

- (2) For the purposes of subsection (1) it is to be assumed that the target shares are cancelled at the time the repayment is made.
- (3) Subsection (1) does not apply if repayment arrangements are in existence at any time in the period—
  - (a) beginning 12 months before the investment date, and
  - (b) ending at the end of the investment date.
- (4) For this purpose “repayment arrangements” means arrangements which provide—
  - (a) for a repayment by the social enterprise or any subsidiary of the social enterprise (whether or not it is such a subsidiary at the time the arrangements are made), or
  - (b) for anyone to be entitled to such a repayment,at any time in the longer applicable period.

#### **Amount of repayments etc if there is more than one issue of shares**

- 257Q(1) This section applies if, in relation to the same repayment, section 257QJ(2) applies to SI relief attributable to two or more issues of shares.
- (2) Section 257QJ(3) has effect in relation to the shares included in each of those issues as if the amount referred to as A were reduced by multiplying it by the fraction—

$$\frac{I}{T}$$

where—

I is the amount on which SI relief was obtained by individuals in respect of shares which are included in the issue and to which SI relief is or, but for section 257QJ(2)(b), would be attributable, and

T is the total of that amount and the corresponding amount or amounts in respect of the other issue or issues.

#### **Single issue affecting more than one individual**

- 257QM(1) This section applies if, in relation to the same repayment, section 257QJ(2) applies to SI relief attributable to shares held by two or more individuals.
- (2) Section 257QJ(3) has effect in relation to each individual as if the amount referred to as A were reduced by multiplying it by the fraction—

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$$\frac{I}{T}$$

where—

I is the amount on which the individual obtains SI relief in respect of the shares to which SI relief is or, but for section 257QJ(2)(b), would be attributable, and

T is the total of that amount and the corresponding amount or amounts on which the other individual or individuals obtain SI relief in respect of such shares.

### Single issue treated as made partly in previous tax year

257QN) This section applies if—

- (a) section 257QJ(2) applies to SI relief attributable to shares held by an individual, and
  - (b) part of the issue of shares has been treated as issued to the individual in a previous tax year for the purposes of section 257JA(1) and (2).
- (2) This subsection explains how the calculation under section 257QJ(3) is to be made.

*Step 1* Apportion the amount referred to as A between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

$$\frac{I}{T}$$

where—

I is the amount on which the individual obtains SI relief in respect of the shares treated as issued in the tax year in question, and

T is the total of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

*Step 2* In relation to each of the amounts (“A1” and “A2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues of shares in those tax years. In calculating amounts X1 and X2, apply section 257QO if appropriate but do not apply section 257QL or 257QM.

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

### Maximum relief not obtained for share issue

257QQ) This section applies if section 257QJ(2) applies to SI relief attributable to shares held by the investor and—

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- (a) the amount of the reduction (“D”) in the investor's liability to income tax for any tax year in respect of the shares, is less than
- (b) the amount given by—

$$I \times R$$

where—

I is the amount on which the investor claims SI relief in respect of the investment, and

R is the SI rate for the tax year for which the SI relief was given.

- (2) Section 257QJ(3) has effect as if the amount referred to as A were reduced by multiplying it by the fraction—

$$\frac{D}{I \times R}$$

- (3) If the amount of SI relief attributable to any of the shares has been reduced before the SI relief was obtained, the amount referred to in subsections (1) and (2) as D is to be treated for the purposes of those subsections as the amount it would have been without that reduction.
- (4) Subsection (3) does not apply to a reduction of SI relief by virtue of section 257N(5) (attribution of SI relief where there is a corresponding issue of bonus shares).

### **Repayment of authorised minimum within 12 months**

257Q(P) This section applies if—

- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the Companies Act 2006) for the purposes of complying with section 761 of that Act (public company: requirement as to minimum share capital), and
  - (b) the registrar of companies issues the company with a certificate under that section.
- (2) Section 257QJ(2) does not apply in relation to any redemption of the original shares within 12 months of the date on which they were issued.

### *Miscellaneous*

### **Acquisition of a trade or trading assets**

257Q(Q) Any SI relief attributable to the investment is withdrawn if—

- (a) at any time in the longer applicable period, the social enterprise or any qualifying subsidiary—

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- (i) begins to carry on as its trade, or as part of its trade, a trade which was previously carried on at any time in that period otherwise than by the social enterprise or any qualifying subsidiary, or
    - (ii) acquires the whole, or the greater part, of the assets used for the purposes of a trade previously so carried on, and
  - (b) the investor is a person, or one of a group of persons, to whom subsection (2) or (3) applies.
- (2) This subsection applies to any person or group of persons—
  - (a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in the longer applicable period, and
  - (b) who is or are a person or group of persons to whom such an interest in the trade carried on by the social enterprise belongs or has, at any such time, belonged.
- (3) This subsection applies to any person or group of persons who—
  - (a) control or, at any time in the longer applicable period, have controlled the social enterprise, and
  - (b) is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—
  - (a) for the purpose of determining the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade—
    - (i) apply section 941(6) of CTA 2010, and
    - (ii) an interest in a trade belonging to a company may be treated in accordance with any of the options set out in section 942 of that Act, and
  - (b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.
- (5) If the investor—
  - (a) is a director of, or of a company which is a partner of, the social enterprise or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 257LF(5)(g) (reasonable remuneration for services),

then, in determining whether any SI relief attributable to the investment is to be withdrawn, the reference in subsection (3)(b), and (so far as relating to that provision) the reference in subsection (1)(a)(i), to any time in the longer applicable period are to be read as references to any time before the end of the longer applicable period.
- (6) Section 257LF(8) (director also an employee) applies for the purposes of subsection (5) as it applies for the purposes of section 257LF, and in subsection (5) “remuneration” includes any benefit or facility.
- (7) In this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

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### **Acquisition of share capital**

- 257QRI) Any SI relief attributable to the investment is withdrawn if—
- (a) the social enterprise comes to acquire all of the issued share capital of another company at any time in the longer applicable period, and
  - (b) the investor is a person, or one of a group of persons, to whom subsection (2) applies.
- (2) This subsection applies to any person or group of persons who—
- (a) control or have, at any time in the longer applicable period, controlled the social enterprise, and
  - (b) is or are a person or group of persons who, at any such time, controlled the other company.
- (3) If the investor—
- (a) is a director of, or of a company which is a partner of, the social enterprise or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 257LF(5)(g) (reasonable remuneration for services),
- then, in determining whether any SI relief attributable to the investment is to be withdrawn, the reference in subsection (2)(b) to any time in the longer applicable period is to be read as a reference to any time before the end of the longer applicable period.
- (4) Section 257LF(8) (director also an employee) applies for the purposes of subsection (3) as it applies for the purposes of section 257LF, and in subsection (3) “remuneration” includes any benefit or facility.

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

- 257QS) Any SI relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) SI relief obtained by the investor in respect of the investment may not be withdrawn on the ground that the requirements of Chapter 4 are not met unless the requirements of subsection (3) are met.
- (3) The requirements of this subsection are met if either—
- (a) the social enterprise has given notice under section 257SF in relation to the investment (information to be provided by the social enterprise etc), or
  - (b) an officer of Revenue and Customs has given notice to the social enterprise stating the officer's opinion that, because of the ground in question, the whole or any part of the SI relief attributable to the investment (whether alone or with other SI relief) was not due.

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## *Disposals*

### **Disposal of whole or part of the investment**

257R(1) This section applies if—

- (a) the investor disposes of the whole or part of the investment,
  - (b) the disposal takes place before the shorter applicable period ends,
  - (c) SI relief is attributable to the shares, or qualifying debt investments, disposed of,
  - (d) the disposal is not to an individual who—
    - (i) is the spouse, or civil partner, of the investor, and
    - (ii) is living together with the investor at the time of the disposal, and
  - (e) the disposal does not occur as a result of the investor's death.
- (2) If the disposal is not made by way of a bargain at arm's length, the SI relief attributable to those shares, or qualifying debt investments, must be withdrawn.
- (3) If the disposal is made by way of a bargain at arm's length, the SI relief attributable to those shares or qualifying debt investments must—
- (a) if it is greater than the amount given by the formula set out in subsection (4), be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (4) The formula is—

$$C \times R$$

where—

C is the amount or value of the consideration received by the investor for the shares or qualifying debt investments, and

R is the SI rate for the tax year for which the SI relief was given.

### **Cases where maximum relief not obtained**

257RA(1) Subsection (2) applies if the investor's liability to income tax for any tax year is reduced under this Part in respect of the investment and—

- (a) the amount of the reduction (“D”), is less than
- (b) the amount given by—

$$A \times R$$

where—

A is the amount on which the investor claims SI relief in respect of the investment, and

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R is the SI rate for that tax year.

- (2) Section 257R(3) and (4) have effect as if the amount or value referred to as C were reduced by multiplying it by the fraction—

$$\frac{D}{A \times R}$$

- (3) If section 257JA(1) and (2) apply in the case of the investment as if part of it had been made in a previous tax year, subsections (1) and (2) of this section have effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).
- (4) If the amount of SI relief attributable to the investment or any part of it has been reduced before SI relief was obtained, the amount referred to in subsections (1) and (2) as D is to be treated for the purposes of those subsections as the amount that it would have been without that reduction.
- (5) Subsection (4) does not apply to a reduction of SI relief by virtue of section 257N(5) (attribution of SI relief if there is a corresponding issue of bonus shares).

### Call options

- 257R(B) This section applies if the investor grants an option which, if exercised, would bind the investor to sell the whole or part of investment.
- (2) The grant of the option is treated for the purposes of section 257R as a disposal—
- (a) of the investment, or
  - (b) (as the case may be) of the part of the investment to which the option relates.
- (3) Nothing in this section prejudices section 257LB (no pre-arranged exits).

### Put options

- 257R(C) This section applies if, at any time in the longer applicable period, a person grants the investor an option which, if exercised, would bind the grantor to purchase the whole or part of the investment.
- (2) Any SI relief—
- (a) attributable to the investment, or
  - (b) (as the case may be) attributable to the part of the investment to which the option relates,
- must be withdrawn.
- (3) For the purposes of subsection (2)(b), the part of the investment to which an option relates is the part which, if—
- (a) the option were exercised immediately after the grant, and

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(b) any investments made in the social enterprise by the investor after the grant were disposed of immediately after being made, would be treated for the purposes of section 257R as disposed of in pursuance of the option.

## CHAPTER 8 U.K.

### WITHDRAWAL OR REDUCTION OF SI RELIEF: PROCEDURE

#### *Assessments and appeals*

#### **Assessments for the withdrawal or reduction of SI relief**

257S If any SI relief which has been obtained falls to be withdrawn or reduced under Chapter 7, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

#### **Appeals against section 257QS(3)(b) notices**

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

#### **Time limits for assessments**

- 257SB(1) An officer of Revenue and Customs may—
- (a) make an assessment for withdrawing or reducing the SI relief attributable to whole or any part of the investment, or
  - (b) give a notice under section 257QS(3)(b),
- at any time not more than 6 years after the end of the relevant tax year.
- (2) In subsection (1) “the relevant tax year” means—
- (a) the tax year containing the end of the 28 months beginning with the investment date, or
  - (b) if later, the tax year in which occurs the event which causes the SI relief to be withdrawn or reduced.
- (3) Subsection (1) is without prejudice to section 36(1A) of TMA 1970 (loss of tax brought about deliberately etc).

#### **Cases where assessment not to be made**

- 257SC(1) No assessment for withdrawing or reducing SI relief in respect of the investment may be made because of an event occurring after the investor's death.
- (2) Subsection (3) applies if the investor has, by a disposal or disposals to which section 257R(3) applies, disposed of all investments which—
- (a) have been made by the investor in the social enterprise, and
  - (b) are investments—

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- (i) to which SI relief is attributable, or
  - (ii) have not been held by the investor until the end of the third anniversary of the date on which they were made.
- (3) No assessment for withdrawing or reducing SI relief in respect of those investments may be made because of any subsequent event unless the event occurs at a time when the requirements of sections 257LF, 257LG and 257LH are not met in relation to the investor by reference to any of those investments.

### *Interest*

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

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

- (2) The provisions are—
- section 257LD,
  - any of sections 257LF to 257LH,
  - any of sections 257M to 257MJ,
  - section 257MN,
  - section 257Q,
  - section 257QJ,
  - section 257QQ,
  - section 257QR
  - section 257R, and
  - section 257RC.

### *Information*

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

257SE) This section applies if the investor has obtained SI relief in respect of the investment, and an event occurs as a result of which—

- (a) the SI relief falls to be withdrawn or reduced by virtue of any of sections 257LD, 257LF, 257LG and 257LH,
  - (b) the SI relief falls to be withdrawn or reduced under section 257Q (receipt of value), or would fall to be so withdrawn or reduced but for section 257QH (receipt of replacement value), or
  - (c) the SI relief falls to be withdrawn or reduced under any of sections 257R, 257RB and 257RC (disposals and options).
- (2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) If the investor—

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- (a) is required under this section to give notice of a receipt of value which is within section 257Q, or would be within that section but for section 257QH, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt (or expected receipt).
- (4) In subsection (3) “qualifying receipt” and “replacement value” are to be read in accordance with section 257QH.

### **Information to be provided by the social enterprise etc**

- 257S(F) This section applies if the social enterprise has provided an officer of Revenue and Customs with a compliance statement in respect of the investment and an event occurs as a result of which—
- (a) any of the requirements in sections 257M, 257MC to 257MK, 257MM(1) and 257MN is not met in respect of the investment, or
  - (b) any of sections 257Q, 257QJ, 257QQ and 257QR has effect to cause any SI relief attributable to the investment to be withdrawn or reduced, or—
    - (i) would have such an effect if SI relief had been obtained in respect of the investment, or
    - (ii) in the case of section 257Q, would have such an effect but for section 257QH (receipt of replacement value).
- (2) If this section applies—
- (a) the social enterprise, and
  - (b) any person connected with the social enterprise who has knowledge of the matters mentioned in subsection (1),
- must give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) Any notice required to be given by the social enterprise under subsection (2)
- (a) must be given—
    - (a) within 60 days of the event, or
    - (b) if the event is a receipt of value within section 257QE(2) from a person connected with the social enterprise (see section 257QG), within 60 days of the social enterprise coming to know of the event.
- (4) Any notice required to be given by a person under subsection (2)(b) must be given within 60 days of the person coming to know of the event.
- (5) If a person—
- (a) is required under this section to give notice of a receipt of value which is within section 257Q, or would be within that section but for section 257QH, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).

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- (6) In subsection (5) “qualifying receipt” and “replacement value” are to be read in accordance with section 257QH.
- (7) If the event mentioned in subsection (1) is one whose occurrence results in the requirement in section 257M not being met in respect of the investment, the references in subsections (2) and (3) to the social enterprise are to—
  - (a) the body concerned even though it has ceased to be a social enterprise, or
  - (b) the body into which the social enterprise has been converted.

#### **Power to require information in section 257SE or 257SF cases**

- 257S(G) This section applies if an officer of Revenue and Customs has reason to believe that a person—
- (a) has not given a notice which the person is required to give under section 257SE or 257SF in respect of any event,
  - (b) has given or received value within the meaning of section 257QE(2) or (6) which, but for the fact that the amount given or received was an insignificant receipt, would have triggered a requirement to give such a notice, or
  - (c) has made or received any repayment within the meaning given by section 257QJ(8) which, but for the fact that it falls to be ignored for the purposes of section 257QJ by virtue of section 257QK(1), would have triggered a requirement to give a notice under section 257SF.
- (2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.
  - (3) The period specified in a notice under subsection (2) must be at least 60 days.
  - (4) In subsection (1)(b) the reference to an insignificant receipt is to be read in accordance with section 257QA(1).

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

- 257S(H) Subsection (2) applies if SI relief is claimed in respect of the investment, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangements as are mentioned in section 257LB(1), 257LC, 257LE, 257LH, 257ME(3), 257MK(2) or (4), 257MM(5) or (6), 257MN(5), 257MU or 257MV(1), (5), (6) or (7).
- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
    - (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed, and
    - (b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
  - (3) The period specified in a notice under subsection (2) must be at least 60 days.

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- (4) For the purposes of subsection (2), in the case of a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The person concerned</i>
Section 257LB(1) or 257LC	The investor, the social enterprise and any person connected with the social enterprise
Section 257LE or 257MK(2) or (4)	The investor, the social enterprise and any person controlling the social enterprise
Section 257LH	The investor
Section 257ME(3), 257MU(1) or 257MV(1)	The social enterprise and any person controlling the social enterprise
Section 257MM(5) or (6), 257MN(5), 257MU(2), (3) or (4) or 257MV(5), (6) or (7)	The investor, the social enterprise, any other company in question, and any person controlling the social enterprise or any other company in question

References in the table to the investor include references to any person to whom the investor appears to have made such a transfer as is mentioned in section 257T (spouses or civil partners) of the whole or part of the investment.

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

### **Confidentiality**

257§1(1) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 does not prevent an officer of Revenue and Customs from disclosing to the social enterprise that SI relief has been obtained or claimed in respect of a particular number or proportion of any investments in it.

- (2) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 does not prevent—

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- (a) disclosure to the Regulator of Community Interest Companies for the purposes of the Regulator's functions,
  - (b) disclosure to a Minister of the Crown for the purposes of functions of a Minister of the Crown under sections 257JD to 257JG, or
  - (c) disclosure to a person for the purposes of functions delegated to the person under section 257JH(1).
- (3) Information disclosed in reliance on subsection (2) may not be further disclosed except—
  - (a) with the consent of the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) if the disclosure is required by an enactment.
- (4) Information originally disclosed in reliance on subsection (2)(a) may be disclosed in reliance on subsection (3)(a) only for the purposes of the Regulator's functions.
- (5) Information originally disclosed in reliance on subsection (2)(b) or (c) may be disclosed in reliance on subsection (3)(a) only for the purposes of—
  - (a) functions of a Minister of the Crown under sections 257JD to 257JG, or
  - (b) functions delegated to a person under section 257JH(1).
- (6) If, in contravention of subsections (3) to (5), any revenue and customs information relating to a person is disclosed and the identity of the person—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.
- (7) In subsection (6) “revenue and customs information relating to a person” has the meaning given by section 19(2) of that Act.
- (8) Subject to subsections (3) and (5), no obligation as to confidentiality or other restriction on disclosure, whether imposed by an enactment or otherwise, prevents disclosure of relevant information—
  - (a) to a Minister of the Crown for the purposes of functions of a Minister of the Crown under sections 257JD to 257JG,
  - (b) to a person for the purposes of functions delegated to the person under section 257JH(1), or
  - (c) to an officer of Revenue and Customs for the purpose of assisting Her Majesty's Revenue and Customs to discharge their functions under the Income Tax Acts so far as relating to matters arising under this Part.
- (9) In subsection (8) “relevant information” means information obtained—
  - (a) by a Minister of the Crown, or
  - (b) by a person to whom functions have been delegated under section 257JH(1),in the course of discharging functions under sections 257JD to 257JG.

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- (10) In this section “Minister of the Crown” has the meaning given by section 8(1) of the Ministers of the Crown Act 1975.

## CHAPTER 9 U.K.

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### Transfers between spouses or civil partners

257(I) This section applies if—

- (a) the investor transfers the whole or part of the investment to another individual (“B”) during their lives,
  - (b) the investor was married to, or was the civil partner of, B at the time of the transfer, and
  - (c) section 257R does not apply to the transfer.
- (2) This Part (including subsection (1)) has effect, in relation to any subsequent disposal or other event, as if—
- (a) B were the investor as respects the transferred stake,
  - (b) B's liability to income tax had been reduced in respect of the transferred stake for the same tax year as that for which the investor's was so reduced,
  - (c) the amount by which B's liability to income tax had been reduced in respect of the transferred stake were the same as that by which the investor's liability had been so reduced, and
  - (d) the same amount of SI relief had continued to be attributable to the transferred stake despite the transfer.
- (3) If the amount of SI relief attributable to the transferred stake had been reduced before the relief was obtained by the investor—
- (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of SI relief attributable to the transferred stake had been correspondingly reduced before the relief was obtained by B, and
  - (b) section 257QD(2), 257QO(3) and 257RA(4) apply in relation to B as they would have applied in relation to the investor.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing SI relief is to be made, the assessment is to be made on B.

#### Identification of investments on a disposal

257(TA) The rules in subsections (2) and (3) are for determining which investments of any class are treated as disposed of for the purposes of—

- (a) section 257R (disposal of the investment), or
- (b) section 257T (spouses or civil partners),

if the investor disposes of some but not all of the investments of that class which the investor holds in the social enterprise.

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- (2) Investments made on an earlier day are treated as disposed of before investments made on a later day.
- (3) Investments made on the same day are treated as disposed of in the following order—
  - (a) first, any to which neither SI relief nor hold-over relief is attributable,
  - (b) next, any to which hold-over relief, but not SI relief, is attributable,
  - (c) next, any to which SI relief, but not hold-over relief, is attributable, and
  - (d) finally, any to which both SI relief and hold-over relief are attributable.
- (4) Any investments within paragraph (c) or (d) of subsection (3) which are treated by section 257N(7) as issued on an earlier day are treated as disposed of before any other investments falling within that paragraph of subsection (3).
- (5) The following—
  - (a) any investments to which SI relief is attributable and which were transferred to an individual as mentioned in section 257T, and
  - (b) any investments to which hold-over relief, but not SI relief, is attributable and which were acquired by an individual on a disposal to which section 58 of TCGA 1992 applies,are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were made.
- (6) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (7) In this section—

“hold-over relief” means relief under Schedule 8B to TCGA 1992;

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

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

- 257T(1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.
- (2) A company is “in administration” if—
    - (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
    - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
  - (3) A company is “in receivership” if there is in force in relation to it—

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- (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or
- (b) any corresponding order under the law of a country or territory outside the United Kingdom.

### **Meaning of “associate”**

257T(1) In this Part “associate”, in relation to a person, means—

- (a) any relative or partner of the person,
- (b) the trustee or trustees of any settlement in relation to which the person, or any relative of the person (living or dead), is or was a settlor, and
- (c) if the person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—
  - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
  - (ii) if the person is a company, any other company which has an interest in those shares or obligations.

(2) In this section “relative” means spouse, civil partner, ancestor or lineal descendant.

### **Meaning of “control”**

257T(1) In this Part “control” is to be read in accordance with sections 450 and 451 of CTA 2010 but as if “company” in those sections included a charity that is a trust.

(2) For the purposes of this Part, a charity that is a trust has “control” of another person if, as a result of the operation of subsection (1), the trustees (in their capacity as trustees of the trust) have, or any of them has, control of the person.

(3) A person has “control” of a charity that is a trust if—

- (a) the person is a trustee of the charity and some or all of the powers of the trustees of the charity could be exercised by—
  - (i) the person acting alone, or
  - (ii) by the person acting together with any other persons who are trustees of the charity and who are connected with the person,
- (b) the person, alone or together with other persons, has power to appoint or remove a trustee of the charity, or
- (c) the person, alone or together with other persons, has any power of approval or direction in relation to the carrying-out by the trustees of any of their functions.

(4) Subsection (3) is in addition to, and does not limit, subsection (1); and both of those subsections are subject to subsection (5).

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(5) For the purposes of this Part, a regulator is to be treated as not having control of any company regulated by the regulator.

(6) Section 995 of this Act (control) does not apply for the purposes of this Part.

### Minor definitions etc

257T(1) In this Part—

“arrangements” (except as used, in sections 257LB and 257QK, in the expressions “issuing arrangements” and “repayment arrangements”) includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions,

“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),

“compliance statement” has the meaning given by section 257PB,

“director”—

(a) is read in accordance with section 452 of CTA 2010 but as if “company” in that section included a charity that is a trust, and

(b) in relation to a charity that is a trust (but subject to section 257LF(9)), includes (in particular) each trustee of the trust,

“disposal”, in relation to any shares or other investments, includes disposal of an interest or right in or over them,

“group” means a parent company and its qualifying subsidiaries,

“group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,

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

“parent company” means a company that has one or more qualifying subsidiaries,

“qualifying subsidiary” has the meaning given by section 257MU, and

“single company” means a company that does not have any qualifying subsidiaries.

(2) For the purposes of this Part, the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.”

## PART 2 U.K.

### CONSEQUENTIAL AMENDMENTS

2 (1) Section 98 of TMA 1970 (penalties) is amended as follows.

(2) In column 1 of the Table, after the entry for sections 257GG and 257GH(1) and (2) of ITA 2007, insert—

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“sections 257SG and 257SH(1) and (2) of ITA 2007;”

(3) In column 2 of the Table, after the entry for sections 257GE and 257GF of ITA 2007, insert—

“sections 257SE and 257SF of ITA 2007;”

- 3 ITA 2007 is amended as follows.
- 4 In section 2 (overview of Act) after subsection (5A) insert—
- “(5B) Part 5B is about relief for social investments.”
- 5 In section 24A(7)(d) (share loss relief on the disposal of certain investments not subject to the limit on deductions imposed by section 24A) after sub-paragraph (ii) insert “, or
- (iii) where SI relief is attributable to the shares in question as determined in accordance with Part 5B (income tax relief for social investments).”
- 6 In section 26(1)(a) (provisions giving rise to deductions at Step 6 of the calculation in section 23) after the entry for Chapter 1 of Part 5A of ITA 2007 insert— “ Chapter 1 of Part 5B (relief for social investments), ”.
- 7 In section 27(5) (order in which certain tax reductions are to be made) after the entry for Chapter 1 of Part 5A of ITA 2007 insert— “ Chapter 1 of Part 5B (relief for social investments), ”.
- 8 In section 29(4B) (limit on certain tax reductions) after the entry for Chapter 1 of Part 5 of ITA 2007 insert— “ Chapter 1 of Part 5B (relief for social investments), ”.
- 9 In section 32 (liabilities to income tax not dealt with in the calculation under Chapter 3 of Part 2) after the entry for section 257G of ITA 2007 insert— “ under section 257S (withdrawal or reduction of relief for social investments), ”.
- 10 In section 392 (loan to buy interest in close company) after subsection (3) insert—
- “(3A) Subsection (2) does not apply if at any time the individual by whom the shares are acquired or the money is lent, or that individual's spouse or civil partner, makes—
- (a) a claim under Part 5B of this Act for relief in respect of the amount invested in acquiring the shares or (as the case may be) in return for the debentures in respect of the money lent, or
- (b) a claim in respect of the amount under Schedule 8B to TCGA 1992 (hold-over relief for gains re-invested in social enterprises).
- (3B) For the purposes of subsection (3A)(a) “debenture” includes any instrument creating or acknowledging indebtedness.”
- 11 In section 416 (gift aid: meaning of “qualifying donation”) after subsection (6) insert—
- “(6A) Condition EA is that the payment is not by way of, and does not amount in substance to, waiver by the individual of entitlement to sums (whether of

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principal or return) due to the individual from the charity in respect of an amount—

- (a) advanced to the charity, and
- (b) in respect of which a person, whether or not the individual, has obtained relief under Part 5B (relief for social investments).”

12 In section 1014(5)(b) (orders and regulations not subject to negative procedure) after sub-paragraph (iii) insert—

“(iiiia) section 257MB (amendment of Part 5B: amounts that may be raised from social investments; and State aid),”.

13 In section 1022 (meaning of “debenture”) after subsection (1) insert—

“(1A) For the meaning of “debenture” in sections 257KB(3) to (5), 257L(4), 257LA(2) and 392(3A)(a), see also sections 257KB(6), 257L(6), 257LA(4) and 392(3B).”

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 31 para. 2(3)(b) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(iii\)](#)
- Sch. 31 para. 2(4A) inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(c\)](#)
- Sch. 31 para. 3(1A) inserted by [2017 c. 32 Sch. 14 para. 45\(3\)\(b\)](#)
- Sch. 31 para. 5(b) inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(c\)](#)
- Sch. 31 para. 2(3)(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(ii\)](#)
- Sch. 31 para. 5(a) words inserted by [2017 c. 32 Sch. 14 para. 45\(4\)\(b\)](#)
- Sch. 31 para. 2(3)(a) words renumbered as Sch. 31 para. 2(3)(a) by [2017 c. 32 Sch. 14 para. 45\(2\)\(a\)\(i\)](#)
- Sch. 31 para. 5(a) words renumbered as Sch. 31 para. 5(a) by [2017 c. 32 Sch. 14 para. 45\(4\)\(a\)](#)
- Sch. 32 para. 1(2)(b) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(iii\)](#)
- Sch. 32 para. 1(3A) inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(c\)](#)
- Sch. 32 para. 1(2)(a) words inserted by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(ii\)](#)
- Sch. 32 para. 1(2)(a) words renumbered as Sch. 32 para. 1(2)(a) by [2017 c. 32 Sch. 14 para. 46\(2\)\(a\)\(i\)](#)