



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 5

#### ENTERPRISE INVESTMENT SCHEME

### CHAPTER 8

#### SUPPLEMENTARY AND GENERAL

#### *Interpretation*

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

- (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 (c. 45) 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—
  - (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.

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

- C1** S. 252 applied (with modifications) (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 2 para. 50(2)-(5)** (with Sch. 2)

**[<sup>F1</sup>252A Meaning of “knowledge-intensive company”**

- (1) For the purposes of this Part, the issuing company is a “knowledge-intensive company” at the time the relevant shares are issued if the company meets—
  - (a) one or both of the operating costs conditions (see subsections (2) and (3)), and
  - (b) one or both of—
    - (i) the innovation condition (see subsection (5)), and
    - (ii) the skilled employee condition (see subsection (8)).
- (2) The first operating costs condition is that in at least one of the relevant three preceding years at least 15% of the relevant operating costs constituted expenditure on research and development or innovation.
- (3) The second operating costs condition is that in each of the relevant three preceding years at least 10% of the relevant operating costs constituted such expenditure.
- (4) In subsections (2) and (3)—
 

“relevant operating costs” means—

  - (a) if the issuing company is a single company at the time the relevant shares are issued, the operating costs of that company, and
  - (b) if the issuing company is a parent company at the time the relevant shares are issued, the sum of—
    - (i) the operating costs of the issuing company, and
    - (ii) the operating costs of each company which is a qualifying subsidiary of the issuing company at that time;

“the relevant three preceding years” [<sup>F2</sup>means, subject to subsection (4A), the three consecutive years the last of which ends immediately before the beginning of the last accounts filing period.]

[ If the last accounts filing period ends more than 12 months before the date on which the

<sup>F3</sup>(4A) relevant shares are issued, the relevant three preceding years are the three consecutive years the last of which ends 12 months before the date on which the relevant shares are issued.]
- (5) “The innovation condition” is—
  - (a) where the issuing company is a single company, that—
    - (i) the issuing company is engaged in intellectual property creation at the time the relevant shares are issued, and
    - (ii) it is reasonable to assume that, within 10 years of the issue of the relevant shares, one or a combination of—
      - (a) the exploitation of relevant intellectual property held by the company, and
      - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the company,

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- will form the greater part of its business;
- (b) where the issuing company is a parent company, that—
- (i) the parent company or one or more of its qualifying subsidiaries (or both that company and one or more of those subsidiaries) is or are engaged in intellectual property creation at the time the relevant shares are issued, and
  - (ii) it is reasonable to assume that, within 10 years of the issue of the relevant shares, one or a combination of—
    - (a) the exploitation of relevant intellectual property held by the parent company or any of its qualifying subsidiaries, and
    - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the parent company or any of its qualifying subsidiaries,
- will form the greater part of what would be the business of the group if the activities of the group companies taken together are regarded as one business.
- (6) For the purposes of subsection (5), a company is engaged in intellectual property creation if—
- (a) relevant intellectual property is being created by the company, or has been created by it within the previous three years,
  - (b) the company is taking, or preparing to take, steps in order that relevant intellectual property will be created by it, or
  - (c) the company is carrying on activity which is the subject of a written evaluation which—
    - (i) has been prepared by an independent expert, and
    - (ii) includes a statement to the effect that, in the opinion of the expert, it is reasonable to assume that relevant intellectual property will, in the foreseeable future, be created by the company.
- (7) For the purposes of this section—
- (a) intellectual property is “relevant” intellectual property, in relation to a company, if the whole or greater part (in terms of value) of it is created by the company, and
  - (b) intellectual property is created by a company if it is created in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (8) “The skilled employee condition” is that throughout period B—
- (a) if the issuing company is a single company, the FTE skilled employee number is at least 20% of the FTE employee number, and
  - (b) if the issuing company is a parent company, the FTE group skilled employee number is at least 20% of the FTE group employee number.
- (9) But, in subsection (8), the reference to period B does not include any period during which the issuing company, by virtue of section 182 (companies in administration or receivership), is not regarded as having ceased to meet the trading requirement.
- (10) In this section—

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“FTE employee number” for a company is the full-time equivalent employee number determined in accordance with section 186A(3);

“FTE group employee number” means the sum of—

- (a) the FTE employee number for the issuing company, and
- (b) the FTE employee number for each of its qualifying subsidiaries;

“FTE group skilled employee number” means the sum of—

- (a) the FTE skilled employee number for the issuing company, and
- (b) the FTE skilled employee number for each of its qualifying subsidiaries;

“FTE skilled employee number” for a company is determined in accordance with section 186A(3) in the same way as the full-time equivalent employee number except that only employees of the company who—

- (a) hold a relevant HE qualification, and
- (b) are engaged directly in research and development or innovation activities carried on—
  - (i) if the issuing company is a single company, by that company, or
  - (ii) if the issuing company is a parent company, by that company or any qualifying subsidiary of that company,

are to be taken into account;

“independent expert”, in relation to an evaluation of activity of a company, means an individual who—

- (a) is not connected with the issuing company,
- (b) holds a relevant HE qualification, and
- (c) is an expert in the area of research and development or innovation being or to be pursued by the company in question;

“intellectual property” has the meaning given by section 195(6);

“the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the issuing company which ends before the date on which the relevant shares were issued;

“operating costs”, of a company for a period of account, means expenses of the company which are recognised as expenses in the company's profit and loss account or income statement for that period, other than expenses relating to transactions between that company and another company at a time when both companies are members of the same group (but see also subsection (11));

“relevant HE qualification” means—

- (a) a qualification which is at level 7, or a higher level, of the framework for higher education qualifications in England, Wales and Northern Ireland (as that framework may be amended or replaced from time to time),
- (b) a qualification which is at level 11, or a higher level, of the framework for qualifications of higher education institutions in Scotland (as that framework may be amended or replaced from time to time), or
- (c) a comparable qualification to one within paragraph (a) or (b).

(11) Such apportionments as are just and reasonable are to be made to amounts recognised in a company's profit and loss account or income statement for the purpose of determining the company's operating costs for a year.

(12) When determining whether an individual is connected with the issuing company for the purposes of this section, section 168 is to be ignored.

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- (13) The Treasury may by regulations amend this section for the purposes of adding, amending or removing a condition which must be met for a company to be a knowledge-intensive company.
- (14) A statutory instrument containing regulations under subsection (13) may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.]

#### Textual Amendments

- F1** S. 252A inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 5 para. 19
- F2** Words in s. 252A(4) substituted (retrospectively) by Finance Act 2016 (c. 24), s. 29(2)(a)(6) (with s. 30)
- F3** S. 252A(4A) inserted (retrospectively) by Finance Act 2016 (c. 24), s. 29(2)(b)(6) (with s. 30)

#### [<sup>F4</sup>252B Knowledge-intensive company reaching turnover of £200,000

- (1) This section has effect for the purposes of section 175A(2)(a)(ii) (alternative initial investing period in case of knowledge-intensive company).
- (2) Where—
- (a) the annual turnover of the issuing company in relation to an accounting period (see subsection (3)) is £200,000 or more, and
  - (b) the annual turnover for the company in relation to each previous accounting period is less than £200,000,
- the company is treated as reaching an annual turnover of £200,000 or more by reference to the specified date (see subsection (4)).
- (3) The annual turnover in relation to an accounting period is—
- (a) the turnover for that accounting period (if the accounting period is for 12 months), or
  - (b) the turnover for the period of 12 months ending when that accounting period ends (if not).
- (4) The specified date is—
- (a) in the case of an accounting period of 12 months or less, the last day of that accounting period;
  - (b) in the case of an accounting period of more than 12 months, the last day of the period of 12 months beginning when that accounting period begins.
- (5) The turnover of the issuing company for a period (“the period”) is treated for the purposes of this section as including the relevant turnover of any company that is a member of the same group as the issuing company during the whole or any part of the period (a “group company”).
- (6) The relevant turnover of a group company is—
- (a) its turnover for the period, if the group company is a member of the same group as the issuing company for the whole of the period;
  - (b) if the group company is a member of the same group as the issuing company for part of the period, its turnover for that part of the period.

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- (7) Any necessary apportionments of turnover are to be made, on a time basis according to the respective lengths of the periods in question, for the purposes of subsections (3)(b) and (6).
- (8) In this section “turnover” has the meaning given by section 474(1) of the Companies Act 2006 and is to be determined by reference to—
- (a) the accounts of the company, and
  - (b) amounts recognised for accounting purposes.]

#### Textual Amendments

**F4** S. 252B inserted (6.4.2018) by Finance Act 2018 (c. 3), Sch. 4 paras. 6, 10; S.I. 2018/931, reg. 3(a)

### 253 Meaning of “associate”

- (1) In this Part “associate”, in relation to a person, means—
- (a) any relative or partner of that person,
  - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of that person (living or dead), is or was a settlor, and
  - (c) if that 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 that person is a company, any other company which has an interest in those shares or obligations.
- (2) In subsection (1)(a) and (b) “relative” means spouse or civil partner, ancestor or lineal descendant.

### 254 Meaning of “disposal of shares”

- (1) In this Part references to a disposal of shares include references to a disposal of an interest or right in or over shares.
- (2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

### 255 Meaning of “issue of shares”

- (1) In this Part—
- (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and are issued on the same day, and
  - (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual on the same day.
- (2) Subsection (1)(b) has effect subject to sections 201(6), 202(2), 210(2), 219(1) and 228(1).

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## 256 Meaning of “the termination date”

- (1) In this Part “the termination date”, in relation to any shares issued by a company, means—
- (a) the third anniversary of the issue date, or
  - (b) if—
    - (i) the money raised by the issue was raised wholly or mainly for the purpose of a qualifying business activity within section 179(2) (the issuing company or a qualifying 90% subsidiary of that company carrying on or preparing to carry on a qualifying trade), and
    - (ii) neither the issuing company nor any of its qualifying 90% subsidiaries had begun to carry on the trade in question on the issue date,the third anniversary of the date on which the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (2) In determining for the purposes of subsection (1) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on of the trade by it before it became such a subsidiary is to be ignored.

## [<sup>F5</sup>256A Meaning of “the EIS original rate”

In this Part “the EIS original rate”, in relation to EIS relief, means the EIS rate for the tax year for which the EIS relief was obtained.]

### Textual Amendments

- F5** S. 256A inserted (13.10.2011) (with effect in accordance with s. 42(7)(8) of the amending Act) by [Finance Act 2011 \(c. 11\), s. 42\(4\)\(6\); S.I. 2011/2459, art. 2](#)

## 257 Minor definitions etc

- (1) In this Part—
- [<sup>F6</sup>“arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);]
  - “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),
  - “director” is read in accordance with [<sup>F7</sup>section 452 of CTA 2010],
  - “group” means a parent company and its qualifying subsidiaries,
  - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
  - “ordinary shares” means shares forming part of a company's ordinary share capital,
  - “parent company” means a company that has one or more qualifying subsidiaries and “single company” means a company that does not,
  - “period A”, “period B” and “period C” have the meaning given by section 159, and
  - “research and development” has the meaning given by section 1006.
- (2) Section 993 (connected persons) does not apply for the purposes of Chapter 2 (other than section 168(4)).

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- (3) Section 995 (control) does not apply for the purposes of the following provisions—  
 section 185(1)(a),  
 section 199(3)(a) and (b)(ii),  
 section 232(3),  
 section 233(2), and  
 section 243(4),  
 and in those provisions “control” is to be read in accordance with [<sup>F8</sup>sections 450 and 451 of CTA 2010].
- (4) In this Part—  
 (a) references in any provision to the reduction of any EIS relief attributable to any shares include a reference—  
 (i) to the reduction of the relief to nil, and  
 (ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the EIS relief, and  
 (b) references to the withdrawal of EIS relief in respect of any shares are—  
 (i) to the withdrawal of the EIS relief attributable to those shares, or  
 (ii) if no relief has yet been obtained, to ceasing to be eligible for EIS relief in respect of those shares.
- (5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on [<sup>F9</sup>a recognised stock exchange].
- (6) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (7) In this Part—  
 (a) references to EIS relief obtained by an individual in respect of any shares include references to EIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and  
 (b) references to the withdrawal or reduction of EIS relief obtained by an individual in respect of any shares include references to the withdrawal or reduction of EIS relief obtained by the individual in respect of those shares at any such time.
- (8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met.

#### Textual Amendments

- F6** Words in s. 257(1) substituted (retrospective to 6.4.2012) by [Finance Act 2012 \(c. 14\)](#), [Sch. 7 paras. 21, 25](#)
- F7** Words in s. 257(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 503\(a\)](#) (with [Sch. 2](#))
- F8** Words in s. 257(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [s. 1184\(1\)](#), [Sch. 1 para. 503\(b\)](#) (with [Sch. 2](#))
- F9** Words in s. 257(5) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(5\)](#)



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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):

- s. 24B inserted by [2023 c. 30 Sch. 2 para. 10\(3\)](#)
- s. 788(7) inserted by [2007 c. 29 Sch. 21 para. 161\(b\)](#) (The amending provision was repealed before coming into force.)