



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 6

#### VENTURE CAPITAL TRUSTS

#### CHAPTER 1

#### INTRODUCTION

#### **258 Overview of Part**

In this Part—

- (a) Chapter 2 provides for VCT income tax relief (“VCT relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares issued to them by venture capital trusts,
- (b) Chapter 3 provides for VCT approvals,
- (c) Chapter 4 makes provision as to the meaning of “qualifying holding” for the purposes of Chapter 3,
- (d) Chapter 5 confers power for regulations to make provision in relation to the winding up and merger of venture capital trusts, and
- (e) Chapter 6 makes supplementary and general provision.

#### **259 Venture capital trusts and VCT approvals**

- (1) In this Part “venture capital trust” means a company which—
  - (a) is not a close company, and
  - (b) is for the time being approved for the purposes of this Part by the Commissioners for Her Majesty's Revenue and Customs (see Chapter 3),and “VCT” means a venture capital trust.
- (2) In this Part “VCT approval” means an approval of a company for the purposes of this Part.

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## 260 Other tax reliefs relating to VCTs

- (1) Chapter 5 of Part 6 of ITTOIA 2005 (venture capital trust dividends) provides that, if conditions are met, no liability to income tax arises in respect of dividends paid in respect of shares in a VCT.
- (2) Section 100 of TCGA 1992 (exemption for venture capital trusts etc) provides that gains accruing to a VCT are not to be chargeable gains.
- (3) Section 151A of TCGA 1992 (venture capital trusts: reliefs) provides that a gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—
  - (a) was a VCT at the time when the individual acquired the shares, and
  - (b) is still a VCT at the time of the disposal,
 is not to be a chargeable gain or, as the case may be, an allowable loss.
- (4) Schedule 5C to TCGA 1992 (venture capital trusts: deferred charge on re-investment, but only in relation to shares issued before 6 April 2004) provides that, if conditions are met, an individual's unused qualifying expenditure on shares in a VCT may be set against what would otherwise be chargeable gains.

## CHAPTER 2

### VCT RELIEF

#### *Entitlement to relief*

## 261 Eligibility for relief

- (1) An individual (“A”) is eligible for VCT relief for a tax year if—
  - (a) a VCT issues eligible shares to A in that year,
  - (b) the VCT issues the shares for raising money, and
  - (c) A subscribes for the shares on A's own behalf.
- (2) The amount in respect of which A is eligible for VCT relief for the tax year by reference to any shares is the amount subscribed by A for the shares.
- (3) A is eligible for VCT relief by reference to any shares only if—
  - [<sup>F1</sup>(za) the shares are issued before 6 April 2025,]
  - (a) the shares are both subscribed for and issued—
    - (i) for genuine commercial reasons, and
    - (ii) not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (b) A is at least 18 years old when the shares are issued.
- (4) A is not eligible for VCT relief by reference to any shares if they are treated as issued to A by virtue of section 195(8) of FA 2003 (tax treatment of disposal by company of its own shares).

See section 271(4) for provision requiring the giving of notices about the effect of this subsection.

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[<sup>F2</sup>(5) The Treasury may, by regulations, amend subsection (3)(za) to substitute a different date for the date for the time being specified there.]

#### Textual Amendments

- F1** S. 261(3)(za) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 2\(2\)](#)  
**F2** S. 261(5) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 2\(3\)](#)

### 262 Entitlement to claim relief

- (1) An individual (“A”) who is eligible for VCT relief by reference to shares issued in a tax year is entitled to claim VCT relief for that year.
- (2) A is entitled to claim VCT relief in respect of the amount on which A is eligible for VCT relief by reference to all or some of the shares.

This is subject to subsection (3).

- (3) A is not entitled to claim VCT relief for any tax year on an amount of more than £200,000.

### 263 Form and amount of relief

- (1) An individual who—
  - (a) is entitled to claim VCT relief for a tax year, and
  - (b) claims such relief for the year on any amount,is entitled to a tax reduction for the year.
- (2) The tax reduction is equal to 30% of the amount in respect of which the claim is made.
- (3) The tax reduction is given effect at Step 6 of the calculation in section 23.

### 264 No entitlement to relief if there is a linked loan

- (1) An individual is not entitled to VCT relief by reference to any shares (“the relevant shares”) if a linked loan is made by any person, at any time in the relevant period, to the individual or an associate of the individual.
- (2) References in this section to the making by any person of a loan to an individual or any associate of the individual include references—
  - (a) to the giving by that person of any credit to the individual or any associate of the individual, and
  - (b) to the assignment to that person of any debt due from the individual or any associate of the individual.
- (3) In this section—

“linked loan” means a loan which—

  - (a) would not have been made, or
  - (b) would not have been made on the same terms,

if the individual had not subscribed for the relevant shares or had not been proposing to do so,

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“the relevant period”, in relation to VCT relief in respect of any shares in a company which is a VCT, means the period—

- (a) beginning with—
  - (i) the incorporation of the company, or
  - (ii) if later, the date two years before the issue of the shares, and
- (b) ending immediately before the fifth anniversary of that issue.

### **[<sup>F3</sup>264A Restricting relief where there is a linked sale**

- (1) This section applies where—
  - (a) an individual subscribes for shares (“the relevant shares”) in a VCT (“the VCT”), and
  - (b) there is at least one linked sale of other shares by the individual.
- (2) For the purposes of this Part, the amount the individual subscribes for the shares is to be treated as reduced (but not below nil) by the total consideration given for the linked sales of other shares.

This is subject to subsection (3).

- (3) If a sale is linked in relation to more than one subscription for shares—
  - (a) the consideration for it is to be applied to reduce subscriptions under subsection (2) in the order in which the subscriptions are made, and
  - (b) accordingly, to the extent that any consideration has been used to reduce an earlier subscription, it is not available to reduce a later one.
- (4) A sale of shares (“the sold shares”) is “linked” if conditions A and B are met.
- (5) Condition A is that the sold shares are in—
  - (a) the VCT, or
  - (b) [<sup>F4</sup>if subsection (7A) applies,] a company which is (or later becomes) a successor or predecessor of the VCT.
- (6) Condition B is that—
  - (a) the individual subscribes for the relevant shares in circumstances where—
    - (i) the purchase of the sold shares from the individual was conditional upon the individual subscribing for shares in the VCT, or
    - (ii) the individual's subscription for shares in the VCT was conditional upon that purchase, or
  - (b) the subscription for the relevant shares and the sale of the sold shares are within 6 months of each other (irrespective of which came first).
- (7) A company (“company X”) is a “successor or predecessor of the VCT” if—
  - (a) there is a merger of two or more companies for the purposes of Chapter 5 (see section 323) and—
    - (i) the VCT is one of the merged companies and company X is “the successor company” (as defined by that section), or
    - (ii) the VCT is “the successor company” and company X is one of the merged companies, or
  - (b) section 327 (effect of restructuring of VCT) applies and—
    - (i) the VCT is “the old company” and company X is “the new company” for the purposes of that section, or

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(ii) company X is “the old company” and the VCT is “the new company” for those purposes.

[ This subsection applies if—

- <sup>F5</sup>(7A) (a) the date of the merger or restructuring referred to in subsection (7) (“D2”) is before, or the same as, the date when the individual subscribes for the relevant shares (“D1”), or
- (b) D2 is after D1 but no more than two years after, and either—
- (i) the individual could reasonably be expected to know at the time of subscribing for the relevant shares that the merger or restructuring referred to in subsection (7) was likely to take place, or
  - (ii) the main purpose of the merger or restructuring, or one of its main purposes, is to enable individuals to obtain a tax advantage in connection with VCT relief.

(7B) For the purposes of subsection (7A)—

- (a) the date of the merger or restructuring is the date of the issue of shares referred to in section 323(1)(a) or (2)(a) or section 326(2)(a) (or, if there is more than one such issue, the date of the first of them);
- (b) a “tax advantage” includes—
  - (i) relief or increased relief from tax,
  - (ii) repayment or increased repayment of tax,
  - (iii) avoidance or reduction of a charge to tax or an assessment to tax, and
  - (iv) avoidance of a possible assessment to tax.]

(8) This section does not apply if, or to the extent that, the subscription for the relevant shares is a result of the individual electing to reinvest dividends payable to the individual on shares in the VCT, in acquiring further shares in the VCT.]

#### Textual Amendments

- F3** S. 264A inserted (with effect in accordance with Sch. 10 para. 2(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 2\(1\)](#)
- F4** Words in s. 264A(5)(b) inserted (with effect in accordance with Sch. 5 para. 12 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 para. 1\(2\)](#), 12
- F5** S. 264A(7A)(7B) inserted (with effect in accordance with Sch. 5 para. 12 of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 para. 1\(3\)](#), 12

## 265 No entitlement to relief which would have been lost if it had already been obtained

An individual is not entitled to VCT relief by reference to any shares if circumstances have arisen which would have resulted in the withdrawal or reduction of the relief, if that relief had already been obtained.

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### *Loss of relief*

#### **266 Loss of relief if shares disposed of within 5 years**

- (1) This section applies, subject to section 267 (spouses or civil partners), if an individual—
  - (a) obtains VCT relief in respect of eligible shares in a VCT, and
  - (b) makes a disposal of those shares within 5 years of their issue to the individual.
- (2) In the case of a disposal that is made otherwise than by way of a bargain made at arm's length, any VCT relief obtained by reference to the shares which are disposed of is to be withdrawn.
- (3) In the case of a disposal that is made by way of a bargain made at arm's length, any VCT relief obtained by reference to the shares disposed of must—
  - (a) if it is greater than A, be reduced by A, and
  - (b) in any other case, be withdrawn.
- (4) A is 30% of the amount or value of the consideration which the individual receives for the shares.
- (5) The rules in subsections (6) and (7) are for determining which eligible shares of any class are treated as disposed of for the purposes of—
  - (a) this section, and
  - (b) section 267,
 if a person disposes of some but not all of the eligible shares of that class which the person holds in a company.
- (6) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (7) Shares acquired on the same day are treated as disposed of in the following order—
  - (a) shares by reference to which VCT relief has not been obtained, and
  - (b) shares by reference to which VCT relief has been obtained.

#### **267 Transfers of shares between spouses or civil partners**

- (1) Section 266 does not apply in the case of any disposal of shares made by an individual to the individual's spouse or civil partner, if it is made at a time when they are living together.
- (2) Subsection (3) applies if any eligible shares which—
  - (a) have been issued to any individual (“the transferor”), and
  - (b) are shares by reference to which any VCT relief has been obtained,
 are transferred to the transferor's spouse or civil partner (“the transferee”) by a disposal such as is mentioned in subsection (1).
- (3) If this subsection applies, section 266 and subsection (2) have effect, in relation to any subsequent disposal or other event, as if—
  - (a) the transferee were the person who had subscribed for the shares,
  - (b) the shares had been issued to the transferee at the time when they were issued to the transferor,

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- (c) there had been, in relation to the transferred shares, such a reduction by way of VCT relief in the transferee's liability to income tax as is equal to the actual reduction in respect of those shares of the transferor's liability, and
  - (d) that deemed reduction were (despite the transfer) to be treated for the purposes of section 266 as an amount of VCT relief obtained by reference to the shares transferred.
- (4) Any assessment for withdrawing or reducing VCT relief because of a disposal or other event falling within subsection (3) is to be made on the transferee.

## **268 Loss of relief if VCT approval withdrawn**

- (1) This section applies if—
- (a) the approval of any company as a VCT is withdrawn, and
  - (b) the withdrawal of the approval is not one to which section 281(3) (VCT approval treated as never having been given) applies.
- (2) Any person who, at the time when the withdrawal takes effect, is holding any shares issued by the company by reference to which VCT relief has been obtained is treated for the purposes of section 266 as having disposed of those shares—
- (a) immediately before that time, and
  - (b) otherwise than by way of a bargain made at arm's length.

## **269 Loss of relief which is subsequently found not to have been due**

Any VCT relief obtained which is subsequently found not to have been due is to be withdrawn.

## **270 Assessment on withdrawal or reduction of relief**

- (1) An assessment for withdrawing or reducing VCT relief under any of sections 266 to 269 must be made for the tax year for which the relief was obtained<sup>F6</sup>, and may be made at any time not more than 6 years after the end of that tax year].
- (2) No assessment for withdrawing or reducing VCT relief obtained by reference to shares issued to any individual may be made because of any event occurring after the individual's death.

### **Textual Amendments**

- F6** Words in s. 270(1) inserted (with effect in accordance with Sch. 10 para. 1(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 1\(1\)](#)

## *Supplementary*

## **271 Provision of information**

- (1) If an event occurs that results in any VCT relief falling to be withdrawn or reduced, the individual by whom the relief was obtained must, within 60 days of coming to know of the event, give notice to an officer of Revenue and Customs containing particulars of the event.

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F7(2) .....

F7(3) .....

- (4) If a company which is a VCT issues to any individual eligible shares to which section 261(4) applies, it must—
- (a) at the time of the issue of those shares, give the individual a notice stating that the individual is not eligible for VCT relief by reference to those shares, and
  - (b) not later than 3 months after the issue of those shares, give a copy of that notice to an officer of Revenue and Customs.
- (5) No obligation as to secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a VCT that VCT relief has been obtained by reference to a particular number or proportion of its shares.

#### Textual Amendments

**F7** S. 271(2)(3) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 47](#)

## 272 Regulations as to procedure etc

- (1) This section applies to VCT relief and relief for which the following provide—
- (a) section 151A of TCGA 1992 (VCTs: reliefs),
  - (b) Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment),
  - (c) Chapter 5 of Part 6 of ITTOIA 2005 (VCT dividends), and
  - (d) regulations under Chapter 5 of this Part.
- (2) The Treasury may by regulations make such provision as they consider appropriate for—
- (a) giving effect to relief to which this section applies, and
  - (b) preventing such relief from being given unless a claim is made in accordance with the regulations and such other requirements as may be imposed by the regulations have been met.
- (3) Regulations under this section may make provision as to the manner in which, and the persons by whom, relief to which this section applies is to be claimed.

## 273 Interpretation of Chapter

- (1) In this Chapter “eligible shares”, in relation to a company which is a VCT, means ordinary shares in the VCT which, throughout the period of 5 years beginning on the date on which they are issued, carry—
- (a) no present or future preferential right to dividends or to a company's assets on its winding up, and
  - (b) no present or future right to be redeemed.
- (2) In this Chapter references to a disposal of shares include references to a disposal of an interest or right in or over shares.



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## CHAPTER 3

### VCT APPROVALS

#### *Giving of approval*

#### **274 Requirements for the giving of approval**

- (1) Subject to section 275, the Commissioners for Her Majesty's Revenue and Customs must not approve a company for the purposes of this Part unless it is shown to their satisfaction that the conditions mentioned in subsection (2)—
- (a) are met in relation to the most recent complete accounting period of the company, and
  - (b) will be met in relation to the accounting period of the company which is current when the application for approval is made.
- (2) The conditions applied by subsection (1) (which are also applied by section 275(1) and other provisions of this Chapter) are set out in column 2 of the following table together with, in column 1 of the table, the descriptions by which they are referred to. In each of those conditions “the relevant period” means the accounting period that is relevant for the purposes of the particular provision by which the condition is applied.

<i>Description</i>	<i>Condition</i>
The listing condition	The shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) have been or will be [ <sup>F8</sup> ] <sup>F9</sup> admitted to trading on a regulated market] throughout the relevant period]
The nature of income condition	The company's income in the relevant period has been or will be derived wholly or mainly from shares or securities
The income retention condition	The company has not retained or will not retain an amount which is greater than 15% of the income it derived or will derive in the relevant period from shares or securities
The 15% holding limit condition	No holding in any company, other than a VCT or a company that would qualify as a VCT but for the listing condition, has represented or will represent at any time during the relevant period more than 15% by value of the company's investments
The [ <sup>F10</sup> 80%] qualifying holdings condition	At least 70% by value of the company's investments has been or will be represented throughout the relevant

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The [ <sup>F11</sup> 70%] eligible shares condition	period by shares or securities included in qualifying holdings of the company At least [ <sup>F11</sup> 70%] by value of the company's qualifying holdings has been or will be represented throughout the relevant period by holdings of eligible shares
<sup>F12</sup> The non-qualifying investments condition	The company has not made and will not make, in the relevant period, an investment which is neither of the following— (a) an investment that on the date it is made is included in the company's qualifying holdings; (b) an investment falling within subsection (3A)]
<sup>F13</sup> The investment limits condition	The company has not made and will not make an investment, in the relevant period, in a company which breaches the permitted investment limits]
<sup>F14</sup> The minimum investment on further issue condition	The company has not breached and will not breach, in the relevant period, the minimum investment on further issue condition]
<sup>F15</sup> The permitted maximum age condition	The company has not made and will not make an investment, in the relevant period, in a company which breaches the permitted maximum age limit.]
<sup>F15</sup> The no business acquisition condition	The company has not made and will not make an investment, in the relevant period, in a company which breaches the prohibition on business acquisitions.]

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- (3) The conditions mentioned in subsection (2) are supplemented as follows—
- (a) the nature of income condition and the income retention condition by section 276,
  - (b) the 15% holding limit condition by section 277,
  - (c) the 15% holding limit condition, the [<sup>F16</sup>80%] qualifying holdings condition and the [<sup>F17</sup>70%] eligible shares condition by sections 278 and 279, <sup>F18</sup>...
  - (d) the [<sup>F16</sup>80%] qualifying holdings condition and the [<sup>F19</sup>70%] eligible shares condition by section 280 [<sup>F20</sup>, <sup>F21</sup>...
  - (e) the [<sup>F22</sup>80%] qualifying holdings condition by section 280A, <sup>F23</sup>...
  - (f) the investment limits condition by [<sup>F24</sup>subsection [<sup>F25</sup>(3ZA)] and by] section 280B.
  - <sup>F26</sup>(fa) the minimum investment on further issue condition by section 280BA,]
  - <sup>F27</sup>(g) the permitted maximum age condition by subsection [<sup>F28</sup>(3ZA)] and by section 280C, and
  - (h) the no business acquisition condition by subsection [<sup>F29</sup>(3ZA)] and by section 280D.]

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[<sup>F30</sup>(3ZA) In the second column of the table in subsection (2), in the entries for the investment limits condition, the permitted maximum age condition and the no business acquisition condition, any reference to an investment made by the company in a company does not include an investment falling within subsection (3A).]

[<sup>F31</sup>(3A) [<sup>F32</sup>An investment made by a company (“the investor”) falls within this subsection if it is] any of the following investments—

- (a) shares or units in an AIF (within the meaning given by regulation 3 of the Alternative Investment Fund Managers Regulations 2013) which may be repurchased or redeemed on 7 days' notice given by the investor;
- (b) shares or units in a UCITS (within the meaning given by section 363A(4) of TIOPA 2010) which may be repurchased or redeemed on 7 days' notice given by the investor;
- (c) ordinary shares or securities in a company which are acquired by [<sup>F33</sup>the investor] on a regulated market.]

[<sup>F34</sup>(d) money in the investor's possession;

- (e) a sum owed to the investor which—
  - (i) under section 285(4)(b) (read with section 285(5) and (6)) is to be regarded as an investment of the investor, and
  - (ii) is such that the investor's right mentioned in section 285(5)(a) may be exercised on 7 days' notice given by the investor.]

[<sup>F35</sup>(3B) In subsection (3A), any reference to a thing which may be done on 7 days' notice includes a case where that thing may be done—

- (a) on less than 7 days' notice, or
- (b) without notice.]

[<sup>F36</sup>[<sup>F37</sup>(4) In this section “regulated market” means—

- (a) a UK regulated market within the meaning given by Article 2.1(13A) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments,
- (b) an EU regulated market within the meaning given by Article 2.1(13B) of that Regulation, and
- (c) [<sup>F38</sup>a Gibraltar regulated market within the meaning given by Article 26(11) (b)(i) of that Regulation.]]

[<sup>F39</sup>(5) The Treasury may by regulations—

- (a) amend the first entry in the table in subsection (2) (the listing condition),
- (b) add, remove or amend an entry in the list of investments in subsection (3A),
- [<sup>F40</sup>(ba) amend or repeal subsection (3B) in consequence of any provision made under paragraph (b),]
- (c) amend this section so as to make provision to restrict the period for which an investment [<sup>F41</sup>falling within subsection (3A) may be held by the company], or
- (d) amend subsection (4).]]

#### Textual Amendments

**F8** Words in s. 274(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(6\)](#)

**F9** Words in s. 274(2) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(2), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(2\)\(a\)](#); S.I. 2011/662, art. 2

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- F10** Word in s. 274(2) substituted (6.4.2019) by Finance Act 2018 (c. 3), **Sch. 5 paras. 2, 13**; S.I. 2018/931, reg. 4(a)
- F11** Word in s. 274(2) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 6, 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(2)(b)**; S.I. 2011/662, art. 2
- F12** Words in s. 274(2) inserted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(2)**
- F13** Words in s. 274(2) inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 18 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 8 para. 2(2)**
- F14** Words in s. 274(2) inserted (6.4.2018) by Finance Act 2018 (c. 3), **Sch. 5 paras. 5(2), 13**; S.I. 2018/931, reg. 4(c)
- F15** Words in s. 274(2) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(2)**
- F16** Word in s. 274(3)(c)(d) substituted (6.4.2019) by Finance Act 2018 (c. 3), **Sch. 5 paras. 3(a), 13**; S.I. 2018/931, reg. 4(a)
- F17** Word in s. 274(3)(c) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 6, 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(2)(c)**; S.I. 2011/662, art. 2
- F18** Word in s. 274(3)(c) repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(16)**
- F19** Word in s. 274(3)(d) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 6, 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(2)(c)**; S.I. 2011/662, art. 2
- F20** S. 274(3)(e) and word inserted (with effect in accordance with Sch. 16 para. 20(5) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 16 para. 20(2)(4)**
- F21** Word in s. 274(3)(d) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 18 of the amending Act) by virtue of Finance Act 2012 (c. 14), **Sch. 8 para. 2(3)**
- F22** Word in s. 274(3)(e) substituted (6.4.2019) by Finance Act 2018 (c. 3), **Sch. 5 paras. 3(a), 13**; S.I. 2018/931, reg. 4(a)
- F23** Word in s. 274(3)(e) omitted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by virtue of Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(3)(a)**
- F24** Words in s. 274(3)(f) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(3)(b)**
- F25** Word in s. 274(3)(f) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(3)**
- F26** S. 274(3)(fa) inserted (6.4.2018) by Finance Act 2018 (c. 3), **Sch. 5 paras. 5(3), 13**; S.I. 2018/931, reg. 4(c)
- F27** S. 274(3)(g)(h) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(3)(c)**
- F28** Word in s. 274(3)(g) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(3)**
- F29** Word in s. 274(3)(h) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(3)**
- F30** S. 274(3ZA) inserted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(4)**
- F31** S. 274(3A) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(4)**
- F32** Words in s. 274(3A) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(5)(a)**
- F33** Words in s. 274(3A)(c) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(5)(b)**
- F34** S. 274(3A)(d)(e) inserted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(5)(c)**
- F35** S. 274(3B) inserted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(6)**
- F36** S. 274(4) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **15(2)** (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)

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- F37** S. 274(4)(5) inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(2), 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(2)(d)**; S.I. 2011/662, art. 2
- F38** S. 274(4)(c) substituted (31.12.2020) by The Taxes (Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/818), regs. 1(3), **6(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F39** S. 274(5) substituted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **Sch. 6 para. 3(5)**
- F40** S. 274(5)(ba) inserted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(7)(a)**
- F41** Words in s. 274(5)(c) substituted (with effect in accordance with s. 31(8) of the amending Act) by Finance Act 2016 (c. 24), **s. 31(7)(b)**

## 275 Alternative requirements for the giving of approval

- (1) This section applies if one or more of the conditions mentioned in section 274(2) are not met with respect to a company in relation to its most recent complete accounting period.
- (2) The Commissioners for Her Majesty's Revenue and Customs may still approve the company for the purposes of this Part if they are satisfied that the condition or conditions in question—
- (a) will be met in relation to the period mentioned in subsection (3), and
  - (b) will continue to be met in relation to accounting periods following that period.
- (3) The period is—
- (a) in relation to the listing condition, the nature of income condition, the income retention condition and the 15% holding limit condition, the accounting period of the company which is current when the application for approval is made, or its next accounting period,
  - (b) in relation to the [<sup>F42</sup>80%] qualifying holdings condition and the [<sup>F43</sup>70%] eligible shares condition, an accounting period of the company beginning no more than 3 years after the time when the approval is given or, if earlier, when the approval takes effect.

### Textual Amendments

- F42** Word in s. 275(3)(b) substituted (6.4.2019) by Finance Act 2018 (c. 3), **Sch. 5 paras. 3(b), 13**; S.I. 2018/931, reg. 4(a)
- F43** Word in s. 275(3)(b) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 6, 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(3)**; S.I. 2011/662, art. 2

## 276 Conditions relating to income

- (1) Subsections (2) and (3) apply in determining for the purposes of the nature of income condition and the income retention condition—
- (a) the amount of a company's income, or
  - (b) the amount of income which a company derives from shares or securities.
- (2) The amounts to be brought into account under [<sup>F44</sup>Part 5 of CTA 2009] in respect of the company's loan relationships are to be determined without reference to any debtor relationship of the company.

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- (3) The excess of any relevant credits over any relevant debits is to be treated as income which the company derives from shares or securities.

In this subsection “relevant credits” and “relevant debits” are credits and debits brought into account by virtue of <sup>F45</sup>section 574 of CTA 2009 (non-trading credits and debits to be brought into account under Part 5 of that Act)].

- (4) The income retention condition does not apply as regards an accounting period if the amount which the company would be required to distribute in order to meet that condition is less than—
- (a) £10,000, or
  - (b) if the period is shorter than 12 months, a proportionately reduced amount.
- (5) The income retention condition does not apply as regards an accounting period if—
- (a) the company is required to retain income in respect of the period by virtue of a restriction imposed by law, and
  - (b) the amount of income which the company is so required to retain in respect of the period exceeds an amount equal to 15% of the income the company derives from shares or securities.
- (6) Subsection (5) does not apply if—
- (a) the amount of income the company retains in respect of the accounting period exceeds the amount of income it is required, by virtue of a restriction imposed by law, to retain in respect of the period, and
  - (b) the sum of the excess and any amount of income the company distributes in respect of the period is at least—
    - (i) £10,000, or
    - (ii) if the period is shorter than 12 months, a proportionately reduced amount.

#### Textual Amendments

**F44** Words in s. 276(2) substituted (retrospective to 1.4.2009) by [The Corporation Tax Act 2009 \(Amendment\) Order 2009 \(S.I. 2009/2860\)](#), arts. 1(2), 5

**F45** Words in s. 276(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 701](#) (with [Sch. 2 Pts. 1, 2](#))

## 277 The 15% holding limit condition

- (1) If the 15% holding limit condition was met when a holding in a company was acquired or last added to, the condition is treated as continuing to be met until an addition is next made to it.
- (2) “Holding in a company” means the shares or securities (whether of one class or more than one class) held in any one company.
- (3) An addition is made to a holding in a company whenever the company whose holding it is—
  - (a) acquires further shares or securities in the company, but
  - (b) does not do so by being allotted shares or securities without becoming liable to give any consideration.

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- (4) For the purposes of this section—
- (a) holdings in companies which—
    - (i) are members of a group, whether or not including the company whose holdings they are (“company A”), and
    - (ii) are not excluded from the 15% holding limit condition, are to be treated as holdings in a single company, and
  - (b) if company A is a member of a group, money owed to it by another member of the group is to be treated—
    - (i) as a security of the latter held by company A, and
    - (ii) accordingly as, or as part of, the holding of company A in the company owing the money.

For the purposes of this subsection “group” means a company and all companies which are its 51% subsidiaries.

- (5) Subsection (6) applies if, in connection with a scheme of reconstruction—
- (a) a company issues shares or securities,
  - (b) the shares or securities are issued to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, and
  - (c) those persons do not become liable to give any consideration for the shares or securities.

In this subsection “scheme of reconstruction” has the same meaning as in section 136 of TCGA 1992.

- (6) For the purposes of this section—
- (a) a holding of the shares or securities in the second company, and
  - (b) a corresponding holding of the shares or securities issued by the company,
- are to be regarded as the same holding.

## **278 Conditions relating to value of investments: general**

- (1) This section and section 279 apply for the purposes of the 15% holding limit condition, the [<sup>F46</sup>80%] qualifying holdings condition and the [<sup>F47</sup>70%] eligible shares condition (“the relevant conditions”).
- (2) The value of a holding of investments of any description is to be taken, unless subsection (3) applies, to be its value when acquired.
- (3) If, in the case of a holding of investments of any description—
- (a) the holding is added to by a further holding of investments of that description, or
  - (b) any payment is made in discharge, in whole or in part, of any obligation attached to the holding that (by discharging the whole or any part of the obligation) increases the value of the holding,
- the value of the holding is to be taken to be its value immediately after the most recent addition or payment.
- (4) For the purposes of this section an addition is made to a holding of investments of any description whenever the company whose holding it is—

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- (a) acquires further investments of that description, but
  - (b) does not do so by being allotted shares or securities in a company without becoming liable to give any consideration.
- (5) Subsection (6) applies if, in connection with a scheme of reconstruction—
- (a) a company issues shares or securities,
  - (b) the shares or securities are issued to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, and
  - (c) those persons do not become liable to give any consideration for the shares or securities.

In this subsection “scheme of reconstruction” has the same meaning as in section 136 of TCGA 1992.

- (6) For the purposes of this section—
- (a) a holding of the shares or securities of any description in the second company, and
  - (b) a corresponding holding of the shares or securities issued by the company,
- are to be regarded as the same holding.

#### Textual Amendments

- F46** Word in s. 278(1) substituted (6.4.2019) by Finance Act 2018 (c. 3), Sch. 5 paras. 3(c), 13; S.I. 2018/931, reg. 4(a)
- F47** Word in s. 278(1) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 6, 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), Sch. 2 para. 2(4); S.I. 2011/662, art. 2

### 279 Conditions relating to value of investments: qualifying holdings

- (1) If—
- (a) any shares (“new shares”) are exchanged for other shares (“old shares”) under arrangements in relation to which section 326 (restructuring arrangements) applies, and
  - (b) those arrangements have not ceased by virtue of section 326(5) to be arrangements by reference to which requirements of Chapter 4 are treated as met,

the value of the new shares is taken to be the same as the value, when last valued in accordance with subsection (2) or (3) of section 278, of the old shares for which they are exchanged.

- (2) In subsection (1)—
- (a) references to shares in a company include references to any securities of that company, and
  - (b) the reference to the value of the new shares includes references to the value of those shares both—
    - (i) at the time of their acquisition, and
    - (ii) immediately after any subsequent addition to a holding of the new shares that is made under the arrangements.

- (3) If—



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- (a) shares (“new shares”) are issued to a company as a result of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company (“convertibles”), and
- (b) section 329 (conversion of convertible shares and securities) applies in relation to the issue of the new shares,

the value of the new shares at the time of their acquisition is taken to be the same as the value, when last valued in accordance with subsection (2) or (3) of section 278, of the convertibles for which they are exchanged.

- (4) Regulations under section 330 may make provision for securing that if—
  - (a) there is an exchange of shares to which regulations under section 330 apply, and
  - (b) the new shares are treated by virtue of the regulations as meeting the requirements of Chapter 4,the value of the holding of the new shares, and of any original shares that are retained under the exchange, is taken to be an amount such that the requirements of the relevant conditions do not cease to be met because of the exchange.
- (5) In subsection (4)—
  - (a) “shares” includes securities, and
  - (b) “exchange of shares”, “new shares” and “original shares” have the same meaning as in section 330.

## **280 Conditions relating to qualifying holdings and eligible shares**

- (1) Subsection (2) applies, subject to any regulations under subsection (3), if—
  - (a) there has been an issue of ordinary share capital of a company (“the first issue”),
  - (b) a VCT approval of that company has taken effect on or before the day of the making of the first issue, and
  - (c) a further issue of ordinary share capital of that company has been made since the making of the first issue.
- (2) If this subsection applies, the use to which the money raised by the further issue is put, and the use of any money deriving from that use, are ignored in determining whether either or both of the [<sup>F48</sup>80%] qualifying holdings condition and the [<sup>F49</sup>70%] eligible shares condition are, have been or will be met in relation to—
  - (a) the accounting period in which the further issue is made, or
  - (b) any later accounting period ending no more than 3 years after the making of the further issue.
- (3) The Treasury may by regulations make provision for subsection (2)—
  - (a) not to apply, or to be treated as not having applied, in specified cases, or
  - (b) to apply, or to be treated as having applied, in specified cases—
    - (i) only to a specified extent, or
    - (ii) only if specified conditions (including conditions requiring approvals to be obtained) are met.
- (4) Provision made by regulations under subsection (3) may (but need not) be made so that, in any particular case, subsection (2)—

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- (a) does not apply, or is treated as not having applied, at prescribed times or with effect from a prescribed time, or
  - (b) applies, or is treated as having applied, in accordance with provision made under subsection (3)(b) at prescribed times or with effect from a prescribed time.
- (5) In subsection (3) “specified” means specified by regulations and in subsection (4) “prescribed” means specified by, or determined under, regulations.
- (6) Section 324 applies in relation to—
- (a) regulations under subsection (3), and
  - (b) any power conferred by that subsection,
- as it applies in relation to regulations under Chapter 5 and a power conferred by any provision of that Chapter.

#### Textual Amendments

- F48** Word in s. 280(2) substituted (6.4.2019) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 3\(d\), 13](#); [S.I. 2018/931](#), [reg. 4\(a\)](#)
- F49** Word in s. 280(2) substituted (6.4.2011) (with effect in accordance with [Sch. 2 paras. 6, 8](#) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(5\)](#); [S.I. 2011/662](#), [art. 2](#)

#### [<sup>F50</sup>280A] The [<sup>F51</sup>80%] qualifying holdings condition: disposal of holding

- (1) This section applies if—
- (a) a company which is a VCT disposes of shares or securities (“the holding”),
  - (b) the consideration for the disposal does not consist wholly of new qualifying holdings, and
  - (c) the holding was comprised in the company's qualifying holdings throughout the 6 months ending immediately before the disposal.
- (2) For the purpose of determining whether the [<sup>F52</sup>80%] qualifying holdings condition is, has been or will be met—
- (a) the company is to be treated as if it continued to hold the holding for the period of [<sup>F53</sup>12] months beginning with the disposal (but see subsection (4)), and
  - (b) the value of the company's investments in that period is to be treated as reduced by the amount of any monetary consideration for the disposal.
- (3) The value of the holding in the period mentioned in subsection (2)(a) is to be treated as equal to its value (determined in accordance with this Chapter) immediately before the disposal.
- (4) If the consideration for the disposal includes new qualifying holdings, subsection (2)
- (a) has effect as if the reference to the holding were to the appropriate proportion of the holding (the value of which is that proportion of the value of the holding, determined in accordance with subsection (3)).
- (5) The appropriate proportion is—

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$$\frac{\text{TC} - \text{NQH}}{\text{TC}}$$

where—

TC is the market value (at the time of the disposal) of the total consideration for the disposal, and

NQH is the market value (at that time) of the new qualifying holdings.

- (6) If at any time the value of the company's investments would by virtue of subsection (2) (b) be reduced to an amount less than the value of its qualifying holdings, the value of its investments at that time is to be treated as equal to the value of its qualifying holdings.
- (7) “New qualifying holdings” means shares or securities which (on transfer to the company) are comprised in the company's qualifying holdings.
- (8) If (and to the extent that) the holding was acquired with money the use of which is at any time ignored by virtue of section 280(2), subsections (2) to (6) do not apply in relation to that time.
- (9) Nothing in this section applies in relation to disposals between companies that are merging (within the meaning of section 323).]

#### Textual Amendments

- F50** S. 280A inserted (with effect in accordance with Sch. 16 para. 20(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 20\(3\)](#), (4)
- F51** Word in s. 280A heading substituted (6.4.2019) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 3\(e\)](#), 13; S.I. 2018/931, reg. 4(a)
- F52** Word in s. 280A(2) substituted (6.4.2019) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 3\(e\)](#), 13; S.I. 2018/931, reg. 4(a)
- F53** Word in s. 280A(2)(a) substituted (6.4.2019) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 4](#), 13; S.I. 2018/931, reg. 4(b)

### [<sup>F54</sup>280B The investment limits condition

- (1) This section applies for the purposes of the investment limits condition.
- (2) Where a company (“the investor”) makes an investment (“the current investment”) in another company (“the relevant company”), that investment breaches the permitted investment limits [<sup>F55</sup>if one or more of the following applies—
  - (a) the total annual investment in the relevant company exceeds the amount for the time being specified in section 292A(1);
  - (b) the total investment in the relevant company at the investment date exceeds the amount specified in—
    - (i) if the relevant company is a knowledge-intensive company (see section 331A) at the investment date, section 292AA(1)(a), and
    - (ii) in any other case, section 292AA(1)(b);

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- (c) condition A or B is met and the total investment in the relevant company at any time during the 5-year post-investment period exceeds the amount specified in—
  - (i) if the relevant company is a knowledge-intensive company at the investment date, section 292AB(4)(a), and
  - (ii) in any other case, section 292AB(4)(b).]

[ In this section—

<sup>F56</sup>(2A) “the investment date” means the date the current investment is made;  
 “the 5-year post-investment period” means the period of 5 years beginning with the day after the investment date.]

[<sup>F57</sup>(3) For the purposes of subsection (2)(a), the total annual investment in the relevant company is the sum of—

- (a) the amount of the current investment,
- (b) the total amount of other relevant investments made (whether or not by the investor), in the year ending with the day on which the current investment is made, in—
  - (i) the relevant company, or
  - (ii) a company that has at any time in that year been a 51% subsidiary of the relevant company,
 (including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the end of that year, not investments made in it after it last ceased to be such a subsidiary), and
- (c) the total amount of any other relevant investments (whether or not made by the investor) which are relevant imported investments.

(3A) For the purposes of subsection (2)(b), the total investment in the relevant company at the investment date is the sum of—

- (a) the amount of the current investment,
- (b) the total amount of other relevant investments made (whether or not by the investor), on or before the investment date, in—
  - (i) the relevant company, or
  - (ii) a company that is at the investment date, or has at any time before that date been, a 51% subsidiary of the relevant company,
 (including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the investment date, not investments made in it after it last ceased to be such a subsidiary), and
- (c) the total amount of any other relevant investments (whether or not made by the investor) which are relevant imported investments.

(3B) For the purposes of subsection (2)(c)—

- (a) condition A is that—
  - (i) a company becomes a 51% subsidiary of the relevant company during the 5-year post-investment period,
  - (ii) all or part of the money raised by the current investment is employed for the purposes of an activity which consists wholly or in part of a trade carried on by that company, and
  - (iii) that trade (or a part of it) was carried on by that company before it became a 51% subsidiary as mentioned in sub-paragraph (i);

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- (b) condition B is that all or part of the money raised by the current investment is employed for the purposes of an activity which consists wholly or in part of a trade which, during the 5-year post-investment period, becomes a relevant transferred trade (see subsection (3F)).
- (3C) For the purposes of subsection (2)(c), the total investment in the relevant company at a time during the 5-year post-investment period (“the relevant time”) is the sum of—
- (a) the amount of the current investment,
  - (b) the total amount of other relevant investments made, before the relevant time (whether or not by the investor), in—
    - (i) the relevant company, or
    - (ii) a company that at the relevant time is, or before that time has been, a 51% subsidiary of the relevant company,(including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the relevant time, not investments made in it after it last ceased to be such a subsidiary), and
  - (c) the total amount of any other relevant investments (whether or not made by the investor) which are relevant imported investments.
- (3D) In this section “relevant imported investment” means—
- (a) a relevant investment
    - (i) which is made in a company at a qualifying time, and
    - (ii) the money raised by which is employed for the purposes of a trade carried on by another company that is, at a qualifying time, a 51% subsidiary of the relevant company (but, if at the latest possible qualifying time it has ceased to be such a subsidiary, ignoring any money so employed after it last ceased to be such a subsidiary), or
  - (b) a relevant investment—
    - (i) which is made in a company at a qualifying time, and
    - (ii) the money raised by which is employed for the purposes of a trade carried on by that company or another person,where, at a qualifying time but after that investment was made, that trade (or a part of it) became a relevant transferred trade (see subsection (3F)).
- (3E) In subsection (3D) “a qualifying time” means—
- (a) for the purposes of subsection (3), any time in the year mentioned in that subsection,
  - (b) for the purposes of subsection (3A), any time on or before the investment date,
  - (c) for the purposes of subsection (3C), any time before the relevant time.
- (3F) For the purposes of this section if—
- (a) a trade is transferred—
    - (i) to the relevant company,
    - (ii) to a company that is a 51% subsidiary of the relevant company, or
    - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, before the company became such a subsidiary), and

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- (b) the trade, or a part of it, was previously (at any time) carried on by another person,
- the trade or part mentioned in paragraph (b) becomes a “ relevant transferred trade ” at the time it is transferred as mentioned in paragraph (a).]
- (4) A “relevant investment” is made in a company if—
- (a) an investment (of any kind) in the company is made by a VCT,
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205 (enterprise investment scheme), or
    - (ii) a compliance statement under section 257ED (seed enterprise investment scheme),
 in respect of the shares,<sup>F58</sup> ...
- <sup>F59</sup>(ba) [ an investment is made in the company and (at any time) the company provides a compliance statement under section 257PB (tax relief for social investments) in respect of the investment, or]
- (c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the [<sup>F60</sup>European Commission's Guidelines on State aid to promote risk finance investment][<sup>F61</sup>(as those guidelines had effect at the time of the approval)].
- (5) For the purposes of subsections (2) [<sup>F62</sup>to (3E)], an investment within subsection (4) (b) is regarded as made when the shares are issued.]
- <sup>F63</sup>(6) Section 257KB applies in determining for those purposes when an investment within subsection (4)(ba) is made as it applies for the purposes of Part 5B (tax relief on social investments).
- (7) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which became a relevant transferred trade as mentioned in subsection (3D), only the corresponding proportion of the relevant investment falls within that subsection.
- (8) For the purposes of this section—
- (a) references to a trade include a part of a trade (and references to the carrying on of a trade are to be construed accordingly), and
  - (b) when determining the amount of money raised by a relevant investment which has been employed for the purposes of a trade such apportionments are to be made as are just and reasonable.
- (9) In this section “trade” includes—
- (a) any business or profession,
  - (b) so far as not within paragraph (a), the carrying on of research and development activities from which it is intended a trade will be derived or will benefit, and
  - (c) preparing to carry on a trade.]

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#### Textual Amendments

- F54** S. 280B inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 18 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 3](#)
- F55** Words in s. 280B(2) substituted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(2\)](#)
- F56** S. 280B(2A) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(3\)](#)
- F57** S. 280B(3)-(3F) substituted for s. 280B(3) (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(4\)](#)
- F58** Word in s. 280B(4)(b) omitted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(5\)\(a\)](#)
- F59** S. 280B(4)(ba) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(5\)\(a\)](#)
- F60** Words in s. 280B(4)(c) substituted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(5\)\(b\)](#)
- F61** Words in s. 280B(4)(c) substituted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, [4\(8\)](#)
- F62** Words in s. 280B(5) substituted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(6\)](#)
- F63** S. 280B(6)-(9) inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 4\(7\)](#)

#### [<sup>F64</sup>280BA] **The minimum investment on further issue condition**

- (1) A company breaches the minimum investment on further issue condition where—
- there has been an issue of ordinary share capital of the company (“the first issue”),
  - a VCT approval of the company has taken effect on or before the day of the making of the first issue,
  - a further issue (“the further issue”) of ordinary share capital of the company has been made since the making of the first issue, and
  - the company does not, on or before the relevant deadline, invest at least 30% of the money raised by the further issue in shares or securities which when held by the company are comprised in the company's qualifying holdings.
- (2) The relevant deadline is the last day of the period of 12 months immediately following the end of the accounting period in which the further issue is made.]

#### Textual Amendments

- F64** S. 280BA inserted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 6, 13](#); [S.I. 2018/931](#), reg. 4(c)

#### [<sup>F65</sup>280C] **The permitted maximum age condition**

- (1) This section applies for the purposes of the permitted maximum age condition.
- (2) Where a company makes an investment in another company (“the relevant company”), that investment (“the current investment”) breaches the permitted maximum age limits if—

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- (a) the investment is made after the initial investing period, and
  - (b) none of conditions A to C is met.
- (3) “The initial investing period” means—
- (a) where the relevant company is a knowledge-intensive company on the investment date, the period of 10 years [<sup>F66</sup>beginning with—
    - (i) the relevant first commercial sale, or
    - (ii) if the relevant company so elects, the date by reference to which that company is treated as reaching an annual turnover of £200,000 (see section 331B),] and
  - (b) in any other case, the period of 7 years beginning with that sale.
- (4) Condition A is that—
- (a) a relevant investment was made in the relevant company before the end of the initial investing period, and
  - (b) some or all of the money raised by that investment was employed for the purposes of the same activities as the money raised by the current investment (or some of those activities).
- (5) Condition B is that—
- (a) the sum of—
    - (i) the amount of the current investment, and
    - (ii) the total amount of any other relevant investments made in the relevant company in a period of 30 consecutive days which includes the investment date,is at least 50% of the average turnover amount, and
  - (b) the money raised by the current investment and the investments mentioned in paragraph (a)(ii) is employed for the purpose of entering a new product or geographical market.
- (6) Condition C is that—
- (a) condition B in subsection (5) or condition B in section 175A(4) (EIS: permitted company age requirement) was previously met in relation to one or more relevant investments made in the relevant company, and
  - (b) some or all of the money raised by those investments was employed for the purposes of the same activities as the money raised by the current investment.
- (7) “The relevant first commercial sale” means the earliest of the following—
- (a) the first commercial sale made by the relevant company,
  - (b) the first commercial sale made by a company that is at the investment date, or before that date has been, a 51% subsidiary of the relevant company (including a sale made by a company before it became such a subsidiary but, if it is not such a subsidiary at the investment date, not a sale made after it last ceased to be such a subsidiary),
  - (c) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on, on or before the investment date, by—
    - (i) the relevant company, or
    - (ii) a company that is at the investment date, or before that date has been, a 51% subsidiary of the relevant company,



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- (including a trade subsequently carried on by such a company before it became such a subsidiary but, if it is not such a subsidiary at the investment date, not a trade which it carried on only after it last ceased to be such a subsidiary);
- (d) the first commercial sale made by a company which becomes a 51% subsidiary of the relevant company after the investment date in circumstances where all or part of the money raised by the current investment is employed for the purposes of an activity carried on by that subsidiary (including a sale made by such a company before it became such a subsidiary);
- (e) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on by a company mentioned in paragraph (d) (including a trade carried on by such a company before it became such a subsidiary);
- (f) if the money raised by the current investment or any part of it is employed for the purposes of a trade which has been transferred after the investment date to the relevant company or a 51% subsidiary of that company (or to a partnership of which the relevant company or such a subsidiary is a member), having previously been carried on (at any time) by another person, the first commercial sale made by that other person.
- (8) “The average turnover amount” means one fifth of the total relevant turnover amount for the [<sup>F67</sup>relevant five year period.]
- [ Subject to subsection (8B), the relevant five year period is the five year period which <sup>F68</sup>(8A) ends immediately before the beginning of the last accounts filing period.
- (8B) If the last accounts filing period ends more than 12 months before the investment date, the relevant five year period is the five year period which ends 12 months before the investment date.]
- (9) In this section—
- “entering a new product or geographical market” has the same meaning as in Commission Regulation (EU) No 651/2014 (General block exemption Regulation) [<sup>F69</sup>as it had effect in the United Kingdom immediately before IP completion day];
- “first commercial sale” has the same meaning as in the European Commission's Guidelines on State aid to promote risk finance investments [<sup>F70</sup>(as those guidelines had effect in the United Kingdom immediately before IP completion day)];
- “the investment date” means the day on which the current investment is made;
- “the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the relevant company which ends before the date on which the current investment is made;
- “relevant investment” has the meaning given by section 280B(4) (and section 280B(5) and (6) apply for the purposes of this section as they apply for section 280B(2) to (3E));
- “the total relevant turnover amount” for a period is—
- (a) if the relevant company is a single company at the investment date, the sum of—
- (i) the relevant company's turnover for that period,
- (ii) if all or part of the money raised by the current investment is employed for the purposes of an activity carried on by a

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- company which becomes a 51% subsidiary of the relevant company after the investment date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
- (iii) if all or part of the money raised by the current investment is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within sub-paragraphs (i) and (ii));
- (b) if the relevant company is a parent company at the investment date, the sum of—
- (i) the relevant company's turnover for that period,
  - (ii) the turnover for that period of each company which at the investment date is a 51% subsidiary of the relevant company,
  - (iii) if all or part of the money raised by the issue of the current investment is employed for the purposes of an activity carried on by a company which becomes a 51% subsidiary of the relevant company after the investment date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
  - (iv) if all or part of the money raised by the current investment is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within sub-paragraphs (i) to (iii));

“transferred trade” means a trade which has been transferred to the company which is carrying on the trade at the time the money raised by the current investment is employed or to a partnership of which that company is a member;

“turnover”—

- (a) in relation to a company, has the meaning given by section 474(1) of the Companies Act 2006 and is to be determined by reference to the accounts of companies and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a company's turnover for a period);
- (b) in relation to any other person carrying on a trade, also has the meaning given by section 474(1) of that Act (reading references in that provision to a company as references to the person) and is to be determined by reference to the accounts of the person and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a person's turnover for a period);
- (c) in relation to a transferred trade carried on by a company or other person, means such proportion of the turnover of the company or other person as it is just and reasonable to attribute to the transferred trade;

and section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 280B.

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#### Textual Amendments

- F65** Ss. 280C, 280D inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 5](#)
- F66** Words in s. 280C(3)(a) substituted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 4 paras. 7, 10](#); [S.I. 2018/931](#), [reg. 3\(b\)](#)
- F67** Words in s. 280C(8) substituted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(3\)\(a\)\(6\)](#) (with s. 30)
- F68** S. 280C(8A)(8B) inserted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(3\)\(b\)\(6\)](#) (with s. 30)
- F69** Words in s. 280C(9) inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), [regs. 1, 4\(9\)\(a\)](#)
- F70** Words in s. 280C(9) substituted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), [regs. 1, 4\(9\)\(b\)](#)

### 280D The no business acquisition condition

- (1) This section applies for the purposes of the no business acquisition condition.
- (2) Where a company makes an investment in another company (“the relevant company”), that investment breaches the prohibition on business acquisitions if any of the money raised by it is employed (whether on its own or together with other money) on the acquisition, directly or indirectly, of—
  - (a) an interest in another company such that a company becomes a 51% subsidiary of the relevant company,
  - (b) a further interest in a company which is a 51% subsidiary of the relevant company,
  - (c) a trade,
  - (d) intangible assets employed for the purposes of a trade, or
  - (e) goodwill employed for the purposes of a trade.
- (3) The Treasury may by regulations provide that subsection (2) does not apply in relation to acquisitions of intangible assets which are of a description specified, or which occur in circumstances specified, in the regulations.
- (4) In this section—
  - “goodwill” has the same meaning as in Part 8 of CTA 2009 (see section 715(3));
  - “intangible assets” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice;and section 280B(8) and (9) apply for the purposes of this section as they apply for the purposes of section 280B.]

#### Textual Amendments

- F65** Ss. 280C, 280D inserted (with effect in accordance with Sch. 6 para. 23(1) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 5](#)

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### *Withdrawal of approval*

#### **281 Withdrawal of VCT approval of a company**

- (1) The Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) may withdraw the VCT approval of a company if at any time it appears to them that there are reasonable grounds for believing—
- (a) that the conditions for the approval of the company were not met at the time of the approval,
  - (b) in a case where the Commissioners were satisfied for the purposes of section 274(1)(b) or 275(2) that any of the conditions mentioned in section 274(2) would be met in relation to any period, that the condition is one which will not be, or has not been, met in relation to that period,
  - (c) in the case of a company approved under subsection (2) of section 275 (read with paragraph (b) of subsection (3) of that section), that the company has not met such other conditions as may be prescribed by regulations made by the Commissioners in relation to—
    - (i) the period of 3 years mentioned in that paragraph, or
    - (ii) any part of that period,
  - (d) in a case where the use of any money falls to be ignored for any accounting period in accordance with section 280(2), that—
    - (i) the first accounting period of the company for which the use of that money will not be ignored will be a period in relation to which any of the conditions mentioned in section 274(2) will fail to be met, or
    - (ii) the company has not met such other conditions as may be prescribed by regulations made by the Commissioners in relation to, or to any part of, an accounting period for which the use of that money falls to be ignored,<sup>F71</sup>...
  - (e) that—
    - (i) the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of any of the conditions mentioned in section 274(2) to be met, and
    - (ii) the failure was not or will not be one which, at the time of the approval, was allowed for in relation to that period by virtue of section 275(2).
  - <sup>F72</sup><sup>F73</sup>(f) that, while it has been a VCT, the company has issued shares and, before the end of the restricted period, the company, other than for the purpose of redeeming or repurchasing any of those shares, has—
    - (i) made a payment to all or any of its shareholders of an amount representing (directly or indirectly) a repayment of its share capital, whether that payment was made out of a reserve arising from a reduction of share capital or otherwise,
    - (ii) where the shares were issued at a premium, made a payment to all or any of its shareholders of an amount representing (directly or indirectly) that premium or any part of it, whether that payment was made out of a share premium reserve or otherwise, or
    - (iii) used an amount which represents (directly or indirectly) the company's share capital or an amount by which that share capital has been diminished, or, where the shares were issued at a premium, that

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premium (or any part of it), to pay up new shares to be allotted to all or any of its shareholders.]

[<sup>F74</sup>(1A) In subsection (1)(f)—

“payment”—

- (a) does not include any distribution of assets made in connection with the winding up of the company, but
- (b) does include every other description of distribution of the company's assets to its members,

and for this purpose “distribution” includes (but is not limited to) a distribution within the meaning of section 989,

“reduction of share capital” has the same meaning as in section 1027A(2) of CTA 2010, and

“the restricted period” means the period of 3 years beginning at the end of the accounting period of the company in which the shares were issued.]

(2) Subject to subsections (3) and (4), the withdrawal of the approval of a company for the purposes of this Part has effect as from the time when notice of the withdrawal is given to the company.

(3) If, in the case of a company approved as a VCT in the exercise of the power conferred by section 275(2), the approval is withdrawn at a time before all of the conditions mentioned in section 274(2) have been met with respect to the company concerned—

- (a) in relation to a complete accounting period of 12 months, or
- (b) in relation to successive complete accounting periods constituting a continuous period of at least 12 months,

the withdrawal of the approval has the effect that the approval is for all purposes treated as never having been given.

(4) A notice withdrawing the approval of a company for the purposes of this Part may specify a time falling before the time mentioned in subsection (2) as the time from which the withdrawal is to be treated as having effect for the purposes of section 100 of TCGA 1992 (exemption for venture capital trusts etc).

But the time so specified must be no earlier than the beginning of the accounting period in relation to which it appears to the Commissioners that the condition by reference to which the approval is withdrawn has not been, or will not be, met.

(5) Despite any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any VCT approval may be made at any time before the end of the period of 3 years beginning with the time when the notice of withdrawal is given.

#### Textual Amendments

- F71** Word in s. 281(1)(d) omitted (with effect in accordance with Sch. 10 para. 3(4) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 3\(2\)](#)
- F72** S. 281(1)(f) applied (with modifications) by SI 2004/2199 reg. 13(10) as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) \(Amendment\) Regulations 2015 \(S.I. 2015/361\)](#), regs. 1(1), 2(2)
- F73** S. 281(1)(f) inserted (with effect in accordance with Sch. 10 para. 3(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 3\(2\)](#)

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**F74** S. 281(1A) inserted (with effect in accordance with Sch. 10 para. 3(4) of the amending Act) by Finance Act 2014 (c. 26), **Sch. 10 para. 3(3)**

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

**C1** S. 281(f)(i) modified (with effect in accordance with Sch. 10 para. 3(4) of the amending Act) by Finance Act 2014 (c. 26), **Sch. 10 para. 3(5)**

**C2** S. 281(f)(iii) modified (with effect in accordance with Sch. 10 para. 3(4) of the amending Act) by Finance Act 2014 (c. 26), **Sch. 10 para. 3(5)**

**282 Withdrawal of VCT approval in cases for which provision made under section 280(3)**

- (1) The Treasury may by regulations make provision for withdrawal of VCT approval of a company to be treated—
  - (a) in a case where the withdrawal is by reference to a condition for approval that would have been, or would be, met but for provision made under section 280(3), and
  - (b) for the purposes of enactments specified by regulations,
 as having taken effect as from a time specified in the notice of withdrawal that is earlier than the time when the notice is given to the company.
- (2) Provision made under subsection (1) has effect subject to the provisions of section 281(4) (retrospective effect of notices of withdrawal of VCT approval) as to the earliest time that may be specified by such a notice.
- (3) Section 324 applies in relation to—
  - (a) regulations under subsection (1), and
  - (b) any power conferred by that subsection,
 as it applies in relation to regulations under Chapter 5 and a power conferred by any provision of that Chapter.

*Supplementary*

**283 Time as from which VCT approval has effect**

- (1) A VCT approval has effect as from the time specified in the approval.
- (2) That time, if it falls before the time when the VCT approval is given, must be no earlier than the time when the application was made.
- (3) If the Commissioners for Her Majesty's Revenue and Customs give a VCT approval, they may stipulate that the approval is to have effect as from the time when the application for the approval was made or any subsequent time.

**284 Power to make regulations as to procedure**

- [<sup>F75</sup>(1) Regulations under section 272 may make provision—
- (a) as to the making of applications for VCT approvals and otherwise as to the procedure to be followed in relation to any such applications and the giving of such approvals,

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- [<sup>F76</sup>(aa) for and in connection with the making by a company of an application to the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) for relief in respect of a breach (including a future breach) of the conditions for its VCT approval to continue in force,]
- (b) as to the procedure to be followed in connection with the withdrawal of VCT approvals,
- (c) as to the obligations of a company which is a VCT if it should appear to the company
- [<sup>F77</sup>(i) that the conditions for its VCT approval to continue in force are no longer met, or
- (ii) that it is likely that those conditions will cease to be met,]
- (d) as to the accounts, records, returns and other information to be kept, and provided or otherwise made available to the Commissioners <sup>F78</sup>..., by companies which are or have been VCTs and by persons [<sup>F79</sup>(including nominees)] who hold or have held shares in such companies, and
- (e) as to the persons liable to account for any tax becoming due where a VCT approval is withdrawn.]
- [<sup>F80</sup>(2) In subsection (1)(aa), the reference to relief in respect of a breach of the conditions mentioned there is to a determination by the Commissioners that they will not exercise their power to withdraw the company's VCT approval by reason of the breach for such period as they may determine (and subject to such conditions as they may determine).
- (3) The provision that may be made by virtue of subsection (1)(aa) includes—
- (a) provision as to the procedure to be followed in relation to applications and determinations,
- (b) provision as to the grounds on which applications may be made or determined, and
- (c) provision conferring a discretion to be exercised by the Commissioners.]

#### Textual Amendments

- F75** S. 284(1): s. 284 renumbered as s. 284(1) (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)](#)
- F76** S. 284(1)(aa) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(a\)](#)
- F77** Words in s. 284(1)(c) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(b\)](#)
- F78** Words in s. 284(1)(d) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(c\)](#), [Sch. 27 Pt. 2\(16\)](#)
- F79** Words in s. 284(1)(d) inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 5](#)
- F80** S. 284(2)(3) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(2\)](#)

## 285 Interpretation of Chapter

- (1) Chapter 4 has effect for interpreting references in this Chapter to a “qualifying holding”.
- (2) In this Chapter and the following Chapters of this Part “securities”, in relation to a company, includes any liability of the company in respect of a loan <sup>F81</sup>..., except that it does not include—
- (a) any liability of the company in respect of a loan which has been made to the company on terms which allow any person to require—

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- (i) the loan to be repaid, or
- (ii) any stock or security relating to the loan to be re-purchased or redeemed,  
 within the period of 5 years from the making of the loan or, as the case may be, the issue of the stock or security, or
- (b) any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period [<sup>F82</sup>, or
- (c) any liability of the company in respect of a loan to which subsection (2A) applies that has been made to the company.]

But see sections 317(4) and 328(2).

[<sup>F83</sup>(2A) This subsection applies to a loan if—

- (a) the return on the loan represents more than a commercial rate of return, or
- (b) the loan is made on terms which grant to a person or allow a person to acquire—
  - (i) any security or preferential rights in relation to assets of the company, or
  - (ii) the ability to control the company.

In sub-paragraph (ii) “control” has the meaning given by sections 450 and 451 of CTA 2010.

- (2B) The return on a loan is not to be treated as representing more than a commercial rate for the purposes of subsection (2A)(a) if—
- (a) the return on the loan during the period of 5 years from the making of the loan does not exceed 50% of the amount lent, and
  - (b) the total return on the loan does not exceed—

$$N \times A \times 10 \%$$

where—

N is the number of years (including any fraction) in the term of the loan;

A is the amount lent or, in a case where some of the loan is repaid during the term of the loan, the average amount outstanding during that term.

- (2C) The Treasury may by regulations substitute a different figure for a figure that is at any time specified in subsection (2B)(a) or (b).
- (2D) In subsections (2A)(a) and (2B) “return” means interest, fees, charges and other amounts payable in respect of the loan.
- (2E) Where it is to any extent not known, before the end of the term of a loan, what amounts will be payable in respect of the loan—
- (a) subsections (2A)(a) and (2B) apply, until the relevant matters are ascertained, on the basis of what amounts can reasonably be expected to be payable;
  - (b) when those matters are ascertained, any necessary adjustments must be made by making or amending assessments or by repayment or discharge of tax (regardless of any limitation on the time within which assessments or amendments may be made).]



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- [<sup>F84</sup>(3A) For the purposes of this Chapter, shares in a company are “eligible” unless they carry—
- (a) a present or future preferential right to dividends that is within subsection (3B),
  - (b) a present or future preferential right to the company's assets on its winding up, or
  - (c) a present or future right to be redeemed.
- (3B) A preferential right to dividends carried by a share in a company is within this subsection if—
- (a) the amount of any dividends payable pursuant to the right, or the date or dates on which they are payable, depend to any extent on a decision of the company, the holder of the share or any other person, or
  - (b) the amount of any dividends that become payable at any time pursuant to the right includes any amount that became payable at any earlier time pursuant to the right, but has not been paid.]
- (4) Any reference in this Chapter to a company's investments is taken to include, so far as it would not otherwise do so—
- (a) money in the company's possession, and
  - (b) any sum owed to the company by another person if the company has account-holder's rights over that sum.
- (5) For the purposes of subsection (4)(b) a company has “account-holder's rights” over a sum owed to the company if—
- (a) the company has a right (whether or not the exercise of the right is subject to conditions) to require the other person to pay out the sum, or amounts out of the sum, to the company or at the company's direction, and
  - (b) the sum is owed to the company—
    - (i) as a result of amounts having been paid to the other person by or for the company, or
    - (ii) as a result of the other person having identified a sum in respect of which the company may exercise such a right.
- (6) Subsection (5) does not have effect to cause a company's investments to be taken to include anything to which the company is not beneficially entitled, but for this purpose a company is taken to be beneficially entitled to—
- (a) sums subscribed for shares issued by it, and
  - (b) anything to which it is entitled that (directly or indirectly) represents such sums.

#### Textual Amendments

**F81** Words in s. 285(2) omitted (15.3.2018) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 7\(2\)\(a\)](#), 13; [S.I. 2018/931](#), [reg. 4\(d\)](#) (with [reg. 5](#))

**F82** S. 285(2)(c) and word inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 7\(2\)\(b\)](#), 13; [S.I. 2018/931](#), [reg. 4\(d\)](#) (with [reg. 5](#))

**F83** S. 285(2A)-(2E) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 5 paras. 7\(3\)](#), 13; [S.I. 2018/931](#), [reg. 4\(d\)](#) (with [reg. 5](#))

**F84** S. 285(3A)(3B) substituted (6.4.2011) for s. 285(3) (with effect in accordance with [Sch. 2 paras. 6, 8](#) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(6\)](#); [S.I. 2011/662](#), [art. 2](#)

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## CHAPTER 4

### QUALIFYING HOLDINGS

#### *Introduction*

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

- (1) If any shares in or securities of any company (“the relevant company”) are at any time held by another company (“the investing company”), this Chapter applies for determining whether and to what extent those shares or securities (“the relevant holding”) are, for the purposes of Chapter 3, to be regarded as at that time comprised in the investing company’s qualifying holdings.
- (2) The relevant holding is to be regarded as comprised in the investing company’s qualifying holding at any time if—
- (a) all the following requirements of this Chapter are met at that time in relation to the relevant company and the relevant holding, <sup>F85</sup> ...
  - (b) the relevant holding consists of shares or securities which were first issued by the relevant company to the investing company and have been held by the investing company ever since [<sup>F86</sup>, and
  - (c) those shares or securities were first issued by the relevant company in order to raise money for the purposes of promoting growth and development of—
    - (i) if the relevant company is a single company, the business of that company, and
    - (ii) if it is a parent company, what would be the business of the group if the activities of the group companies taken together were regarded as one business.]
- (3) The requirements are those imposed as to—
- [<sup>F87</sup>(1za) risk to capital (see section 286ZA),]
  - [<sup>F88</sup>(za) UK permanent establishment (see section 286A),
  - (zb) financial health (see section 286B),]
  - (a) maximum qualifying investment (see section 287),
  - (b) no guaranteed loan (see section 288),
  - (c) proportion of eligible shares (see section 289),
  - (d) trading (see section 290),
  - (e) the carrying on of a qualifying activity (see section 291),
  - [<sup>F89</sup>(ea) the maximum amount raised annually through risk [<sup>F90</sup>finance investments] (see section 292A),]
  - [<sup>F91</sup>(eaa) the maximum risk finance investments when the relevant holding is issued (see section 292AA),
  - (eab) the maximum risk finance investments during the 5-year post-investment period (see section 292AB),]
  - <sup>F92</sup>(eb) .....
  - (f) use of the money raised (see section 293),
  - (g) the relevant company carrying on the relevant qualifying activity (see section 294),
  - [<sup>F93</sup>(ga) the permitted company age requirement (see section 294A),]

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- (h) unquoted status (see section 295),
  - (i) control and independence (see section 296),
  - (j) gross assets (see section 297),
  - [<sup>F94</sup>(ja) number of employees (see section 297A),]
  - [<sup>F95</sup>(jb) the proportion of skilled employees (see section 297B),]
  - (k) qualifying subsidiaries (see section 298), <sup>F96</sup> ...
  - (l) property managing subsidiaries (see section 299) [<sup>F97</sup>, and
  - (m) no disqualifying arrangements (see section 299A)].
- (4) Subject to section 293(7), subsection (5) applies if—
- (a) the requirements of section 287, 293 or 294 would be met as to only part of the money raised by the issue of the relevant holding, and
  - (b) that holding is not otherwise capable of being treated as comprising separate holdings.
- (5) If this subsection applies, this Chapter has effect in relation to the relevant holding as if it were two separate holdings consisting of—
- (a) a holding from which the part of the money mentioned in subsection (4)(a) was raised, and
  - (b) a holding from which the remainder was raised.

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

#### Textual Amendments

- F85** Word in s. 286(2)(a) omitted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(2\)](#)
- F86** S. 286(2)(c) and preceding word inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(2\)](#)
- F87** [S. 286\(3\)\(1za\)](#) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [s. 14\(3\)\(a\)\(4\)](#); S.I. 2018/931, reg. 2(b)
- F88** [S. 286\(3\)\(za\)\(zb\)](#) inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(7\)](#); S.I. 2011/662, art. 2
- F89** [S. 286\(3\)\(ea\)](#) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 6\(2\)](#) (with [Sch. 16 para. 6\(5\)\(6\)](#))
- F90** Words in [s. 286\(3\)\(ea\)](#) substituted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(3\)\(a\)](#)
- F91** [S. 286\(3\)\(eaa\)\(eab\)](#) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(3\)\(b\)](#)
- F92** [S. 286\(3\)\(eb\)](#) omitted (with effect in accordance with Sch. 6 para. 23(2) of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(3\)\(c\)](#)
- F93** [S. 286\(3\)\(ga\)](#) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(3\)\(d\)](#)
- F94** [S. 286\(3\)\(ja\)](#) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(2\)\(5\)](#) (with [Sch. 16 para. 3\(6\)\(7\)](#))
- F95** [S. 286\(3\)\(jb\)](#) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 6\(3\)\(e\)](#)
- F96** Word in [s. 286\(3\)\(k\)](#) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 4](#)
- F97** [S. 286\(3\)\(m\)](#) and preceding word inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 4](#)

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### *The requirements*

#### **[<sup>F98</sup>286ZA] The risk-to-capital requirement**

- (1) The requirement of this section is that, having regard to all the circumstances existing at the time of the issue of the relevant holding, it would be reasonable to conclude that—
  - (a) the relevant company has objectives to grow and develop its trade in the long-term, and
  - (b) there is a significant risk that, for the investing company, there will be a loss of capital of an amount greater than its net investment return.
- (2) For the purposes of subsection (1)(b)—
  - (a) the reference to a loss of capital is to a loss of some or all of the amounts given in consideration for the relevant holding, and
  - (b) the reference to the net investment return is to the net investment return to the investing company irrespective of whether the return takes the form of income, capital growth, fees or other payments or anything else.
- (3) For the purposes of subsection (1) the circumstances to which regard may be had include—
  - (a) the extent to which the company's objectives include increasing the number of its employees or the turnover of its trade,
  - (b) the nature of the company's sources of income, including the extent to which there is a significant risk of the company not receiving some or all of the income,
  - (c) the extent to which the company has or is likely to have assets, or is or could become a party to arrangements for acquiring assets, that could be used to secure financing from any person,
  - (d) the extent to which the activities of the company are sub-contracted to persons who are not connected with it,
  - (e) the nature of the company's ownership structure or management structure, including the extent to which others participate in or devise the structure,
  - (f) how any opportunity for investment in the company is marketed, and
  - (g) the extent to which arrangements are in place under which opportunities for investments in the company are or may be marketed with, or otherwise associated with, opportunities for investments in other companies or entities.
- (4) If the relevant company is a parent company—
  - (a) any reference in this section to the company's trade is to what would be the trade of the group if the activities of the group companies taken together were regarded as one trade, and
  - (b) any reference in subsection (3)(a) to (e) to the company is to any group company.]

#### **Textual Amendments**

**F98** S. 286ZA inserted (15.3.2018) by [Finance Act 2018 \(c. 3\), s. 14\(3\)\(b\)\(4\)](#); S.I. 2018/931, reg. 2(b)

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## [<sup>F99</sup>286A] The UK permanent establishment requirement

The requirement of this section, at any time on or after the issue of the relevant holding, is that the relevant company has a permanent establishment in the United Kingdom at all times from the issue of the holding to the time in question.

### Textual Amendments

**F99** Ss. 286A, 286B inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(8\)](#); S.I. 2011/662, art. 2

## 286B The financial health requirement

- (1) The requirement of this section is that the relevant company is not, at the time of the issue of the relevant holding, in difficulty.
- (2) The relevant company is “in difficulty” if it is reasonable to assume that it would be regarded as a firm in difficulty for the purposes of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C 244/02) [<sup>F100</sup>as those guidelines had effect in the United Kingdom immediately before IP completion day].]

### Textual Amendments

**F99** Ss. 286A, 286B inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(8\)](#); S.I. 2011/662, art. 2

**F100** Words in s. 286B(2) inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, [4\(10\)](#)

## 287 The maximum qualifying investment requirement

- (1) The requirement of this section is that [<sup>F101</sup>, if the condition in subsection (1A) is met,] the relevant holding did not, when it was issued, represent an investment in excess of the maximum qualifying investment for the relevant period.

[<sup>F102</sup>(1A) The condition is that—

- (a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,
  - (b) the trade which meets the requirement of section 291 was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture, and
  - (c) the other partners or parties to the joint venture include at least one other company.]
- (2) [<sup>F103</sup>The] maximum qualifying investment for any period is exceeded so far as the total amount of money which—
    - (a) is raised in that period, and
    - (b) is so raised by the issue to the investing company during that period of shares in or securities of the relevant company,exceeds [<sup>F104</sup>the relevant fraction of] £1 million.

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[<sup>F105</sup>(2A) The relevant fraction is—

$$\frac{1}{N}$$

where “N” is the number of companies (including the relevant company) which, at the time when the relevant holding was issued were members of the partnership or, as the case may be, parties to the joint venture.]

- (3) If the relevant holding represented, when issued, an investment in excess of the maximum qualifying investment for the relevant period—
- (a) the shares or securities which represented the excess are not to be regarded as part of the relevant holding, and
  - (b) the amount of money raised by those shares or securities is to be ignored for the purposes of any subsequent application of subsection (2).
- (4) For the purposes of this section, if there is any question as to whether any shares in or securities of the relevant company which are for the time being held by the investing company represent an investment in excess of the maximum qualifying investment for any period, that question is determined on the following assumption in relation to disposals by the investing company.
- (5) The assumption is that, as between shares or securities of the same description, those which represent the whole or any part of the excess are disposed of before those which do not.
- <sup>F106</sup>(6) .....
- <sup>F107</sup>(7) .....
- (8) For the purposes of this section “the relevant period” is the period beginning with whichever is the earlier of—
- (a) the time 6 months before the issue of the relevant holding, and
  - (b) the beginning of the tax year in which the issue of that holding took place, and (in either case) ending with the issue of that holding.

#### Textual Amendments

- F101** Words in s. 287(1) inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(2\)](#)
- F102** S. 287(1A) inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(3\)](#)
- F103** Word in s. 287(2) substituted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(4\)\(a\)](#)
- F104** Words in s. 287(2) inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(4\)\(b\)](#)
- F105** S. 287(2A) inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(5\)](#)
- F106** S. 287(6) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(6\)](#)
- F107** S. 287(7) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 5\(6\)](#)

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

- (1) The requirement of this section is that there are no securities relating to a guaranteed loan in the relevant holding.
- (2) For the purposes of this section, a security relates to a guaranteed loan if (and only if) there are arrangements for the investing company to be or to become entitled to receive anything (whether directly or indirectly) from a third party in the event of the failure by any person to comply with—
  - (a) the terms of the loan to which the security relates, or
  - (b) the terms of the security.
- (3) For the purposes of subsection (2) it does not matter whether the arrangements apply in all cases of a failure to comply or only in some such cases.
- (4) For the purposes of this section “third party” means any person except—
  - (a) the relevant company, and
  - (b) if the relevant company is a parent company that meets the trading requirement in section 290(1)(b), the subsidiaries of that company.

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

- (1) The requirement of this section is that eligible shares represent at least 10% by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the investing company.
- (2) For the purposes of this section the value at any time of any shares in or securities of a company is taken (subject to subsection (4)) to be their value immediately after—
  - (a) any relevant event occurring at that time, or
  - (b) if no relevant event occurs at that time, the last relevant event to occur before that time.
- (3) In subsection (2) “the relevant event”, in relation to any shares in or securities of the relevant company, means—
  - (a) the acquisition by the investing company of those shares or securities,
  - (b) the acquisition by the investing company of any other shares in or securities of the relevant company which—
    - (i) are of the same description as those shares or securities, and
    - (ii) are acquired by the investing company otherwise than by being allotted to the investing company without its being liable to give any consideration, or
  - (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the investing company as (by discharging that obligation) increases the value of any such shares or securities.
- (4) If at any time the value of any shares or securities held by the investing company is less than the consideration given by the investing company for those shares or securities, it is to be assumed for the purposes of this section that the value of the shares or securities at that time is equal to the amount of that consideration.
- (5) In this section “eligible shares” has the same meaning as in Chapter 3 (see section <sup>F108</sup>285(3A) and (3B)).

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### Textual Amendments

**F108** Words in s. 289(5) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(4), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(9\)](#); S.I. 2011/662, art. 2

## 290 The trading requirement

- (1) The requirement of this section is that—
- (a) the relevant company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the relevant company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the relevant company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
- (a) the relevant company is treated as a parent company for the purposes of subsection (1)(b), and
  - (b) the reference in subsection (1)(b) to the group includes the relevant company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purposes of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purpose of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company, or
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or
    - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in sub-paragraph (i) or (ii) of subsection (5)(d) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—



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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 company in question,

“mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,

“non-qualifying activities” means—

- (a) excluded activities, and
- (b) activities carried on otherwise than in the course of a trade.

- (8) This section is supplemented by section 300 (meaning of “qualifying trade”) and sections 303 to 310 (excluded activities).

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

- (1) The requirement of this section, at any time on or after the issue of the relevant holding, is that a qualifying company (whether or not the same such company at every such time) must have been carrying on a qualifying activity at all times from the issue of the holding to the time in question.
- (2) [<sup>F109</sup>Carrying on a qualifying trade] is a qualifying activity.
- (3) Preparing to carry on a qualifying trade is a qualifying activity if, at the time when the relevant holding was issued, the trade was intended to be carried on <sup>F110</sup>... by a qualifying company.

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

- (4) The requirement of this section is not capable of being met by virtue of subsection (3) at any time after the end of the period of two years beginning with the issue of the relevant holding unless—
- (a) the intended trade was begun to be carried on by a qualifying company before the end of that period, and
  - (b) at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has been carrying on a qualifying trade <sup>F111</sup>....
- (5) The requirement of this section is also not capable of being met by virtue of subsection (3) at any time after the abandonment, within the period mentioned in subsection (4), of the intention in question.
- (6) In determining for the purposes of subsection (4)(a) when the intended trade was begun to be carried on by a qualifying company which is a qualifying 90% subsidiary of the relevant company, any carrying on by it of the trade before it became such a subsidiary of the relevant company is ignored.
- (7) In this section “qualifying company” means the relevant company or any qualifying 90% subsidiary of that company.
- (8) The reference in subsection (7) to a qualifying company which is a qualifying 90% subsidiary of the relevant company includes, in its application to subsection (3), a reference to any existing or future qualifying company which will be a qualifying 90% subsidiary of the relevant company at any future time.

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### Textual Amendments

- F109** Words in s. 291(2) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(10\)\(a\)](#); S.I. 2011/662, art. 2
- F110** Words in s. 291(3) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(10\)\(b\)](#); S.I. 2011/662, art. 2
- F111** Words in s. 291(4)(b) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(10\)\(c\)](#); S.I. 2011/662, art. 2

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

- (1) A company is not regarded as ceasing to meet the requirement of section 290 or 291 merely because of anything done in consequence of its being in administration or receivership.
- (2) Subsection (1) applies only if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company being in administration or receivership,
- is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### [<sup>F112</sup>292A] The maximum amount raised annually through risk [<sup>F113</sup>finance investments] requirement

- (1) The total amount of relevant investments made in the relevant company in the year ending with the date the relevant holding is issued [<sup>F114</sup>must not exceed—
- (a) if the company is a knowledge-intensive company at that date (see section 331A and subsection (6A)), £10 million, and
  - (b) in any other case, £5 million.]
- [<sup>F115</sup>(2) In subsection (1), the reference to relevant investments made in the relevant company includes—
- (a) relevant investments made in any company that has at any time in the year mentioned there been a 51% subsidiary of the relevant company (including investments made in such a company before it became such a subsidiary but, if it was not a subsidiary at the end of that year, not those made after it last ceased to be such a subsidiary),
  - (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time in that year been a 51% subsidiary of the relevant company (but, if it is not such a subsidiary at the end of that year, ignoring any money so employed after it last ceased to be such a subsidiary), and
  - (c) any other relevant investment made in a company if—
    - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and

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(ii) in that year, after that investment was made, the trade (or a part of it) became a relevant transferred trade (see subsection (2B)).

(2A) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which becomes a relevant transferred trade, the reference in subsection (2)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.

(2B) Where—

- (a) in the year mentioned in subsection (1) a trade is transferred—
- (i) to the relevant company,
  - (ii) to a company that is, or has at any time during that year been, a 51% subsidiary of the relevant company, or
  - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,

(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, at a time in the year before the company became such a subsidiary but not where it is transferred to such a company or partnership in that year after the company last ceased to be such a subsidiary), and

- (b) that trade or a part of it was previously (at any time) carried on by another person,

the trade or part mentioned in paragraph (b) becomes a “ relevant transferred trade ” at the time it is transferred as mentioned in paragraph (a).]

(3) A “relevant investment” is made in a company if—

- (a) an investment (of any kind) in the company is made by a VCT, or
- (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
  - (i) a compliance statement under section 205 (enterprise investment scheme), or

[ a compliance statement under section 257ED (seed enterprise <sup>F116</sup>(ia) investment scheme).]

<sup>F117</sup>(ii) .....

in respect of the shares, or

<sup>F118</sup>(ba) [ an investment is made in the company and (at any time) the company provides a compliance statement under section 257PB (tax relief for social investments) in respect of the investment, or]

- (c) any other investment is made in the company which is aid received by it pursuant to a measure approved by the European Commission [<sup>F119</sup>before IP completion day] as compatible with Article 107 of the Treaty on the Functioning of the European Union in accordance with the principles laid down in the [<sup>F120</sup>European Commission's Guidelines on State aid to promote risk finance investment][<sup>F121</sup>(as those guidelines had effect at the time of the approval)].

(4) For the purposes of subsections (1) [<sup>F122</sup>to (2B)], an investment within subsection (3) (b) is regarded as made when the shares are issued.

[ Section 257KB applies in determining for those purposes when an investment within <sup>F123</sup>(4A) subsection (3)(ba) is made as it applies for the purposes of Part 5B (tax relief on social investments).]

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- (5) Subsection (6) applies if, by virtue of the provision of a compliance statement under section 205 [<sup>F124</sup>, 257ED or 257PB] above <sup>F125</sup>..., the requirement of this section is not met.
- (6) The requirement is to be treated as having been met throughout the period—
- (a) beginning with the time the relevant holding was issued, and
  - (b) ending with the time the compliance statement was provided.
- [ If the relevant company began to carry on a trade less than three years before the <sup>F126</sup>(6A) date the relevant holding is issued, section 331A as it applies for the purposes of this section has effect with the substitution of the following subsections for subsections (3) to (5A)—
- “(3) The first operating costs condition is that in at least one of the relevant three succeeding years at least 15% of the relevant operating costs constitute expenditure on research and development or innovation.
- (4) The second operating costs condition is that in each of the relevant three succeeding years at least 10% of the relevant operating costs constitute such expenditure.
- (5) In subsections (3) and (4)—
- “relevant operating costs” means—
- (a) if the relevant company is a single company at the applicable time, the operating costs of that company, and
  - (b) if the relevant company is a parent company at the applicable time, the sum of—
    - (i) the operating costs of the relevant company, and
    - (ii) the operating costs of each company which is a qualifying subsidiary of the relevant company at that time, excluding a company's operating costs for any of the relevant three succeeding years during any part of which the company is not a qualifying subsidiary of the relevant company;
- “the relevant three succeeding years” means the three consecutive years the first of which begins with the date the relevant holding is issued.”]
- [ Section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this <sup>F127</sup>(7) section as it applies for the purposes of section 280B.]]

#### Textual Amendments

- F112** S. 292A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 6\(3\)](#) (with [Sch. 16 paras. 6\(5\)\(6\), 8](#))
- F113** Words in s. 292A heading substituted (with effect in accordance with [Sch. 6 para. 23\(3\)](#) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(8\)](#)
- F114** Words in s. 292A(1) substituted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 4 paras. 3\(2\), 10](#); [S.I. 2018/931](#), [reg. 3\(b\)](#)
- F115** S. 292A(2)-(2B) substituted for s. 292A(2) (with effect in accordance with [Sch. 6 para. 23\(3\)](#) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(2\)](#)
- F116** S. 292A(3)(b)(ia) inserted (17.7.2012) (with effect in accordance with [Sch. 6 para. 24\(1\)\(2\)](#) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 6 para. 16](#)

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- F117** S. 292A(3)(b)(ii) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 6\(3\)\(a\)](#)
- F118** S. 292A(3)(ba) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(3\)\(a\)](#)
- F119** Words in s. 292A(3)(c) inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, [4\(11\)\(a\)](#)
- F120** Words in s. 292A(3)(c) substituted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(3\)\(b\)](#)
- F121** Words in s. 292A(3)(c) substituted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, [4\(11\)\(b\)](#)
- F122** Words in s. 292A(4) substituted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(4\)](#)
- F123** S. 292A(4A) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(5\)](#)
- F124** Words in s. 292A(5) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(6\)](#)
- F125** Words in s. 292A(5) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 6\(4\)](#)
- F126** S. 292A(6A) inserted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 4 paras. 3\(3\), 10](#); [S.I. 2018/931](#), reg. [3\(b\)](#)
- F127** S. 292A(7) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 7\(7\)](#)

## **[<sup>F128</sup>292A] Maximum risk finance investments when relevant holding is issued requirement**

- (1) The total amount of relevant investments made in the relevant company on or before the investment date must not exceed—
  - (a) if the relevant company is a knowledge-intensive company at the investment date (see section 331A), £20 million, and
  - (b) in any other case, £12 million.
- (2) In subsection (1), the reference to relevant investments made in the relevant company includes—
  - (a) relevant investments made in any company that is at the investment date, or has at any time before that date been, a 51% subsidiary of the relevant company (including investments made in such a company before it became such a subsidiary but, if it is not such a subsidiary at the investment date, not investments made in it after it last ceased to be such a subsidiary),
  - (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time on or before the investment date been a 51% subsidiary of the relevant company (but, if it is not such a subsidiary at the investment date, ignoring any money so employed after it last ceased to be such a subsidiary), and
  - (c) any other relevant investment made in a company if—
    - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and
    - (ii) after the investment was made, but on or before the investment date, that trade became a relevant transferred trade (see subsection (4)).
- (3) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which becomes a relevant transferred trade, the reference

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in subsection (2)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.

(4) Where—

- (a) at any time on or before the investment date, a trade is transferred—
  - (i) to the relevant company,
  - (ii) to a company that at the investment date is, or has at any time before that date been, a 51% subsidiary of the relevant company, or
  - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,

(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, before the company became such a subsidiary but, if the company is not such a subsidiary at the investment date, not where it is transferred to such a company or partnership after the company last ceased to be such a subsidiary), and

- (b) the trade or a part of it was previously (at any time) carried on by another person,

the trade or part mentioned in paragraph (b) becomes a “relevant transferred trade” at the time it is transferred as mentioned in paragraph (a).

(5) In this section—

“the investment date” means the date the relevant holding is issued;

“relevant investment” has the meaning given by section 292A(3), and section 292A(4) and (4A) (which determine when certain investments are made) applies for the purposes of this section;

and section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 280B.

(6) Subsection (7) applies if, by virtue of the provision of a compliance statement under section 205, 257ED or 257PB, the requirement of this section is not met.

(7) The requirement is to be treated as having been met throughout the period—

- (a) beginning with the investment date, and
- (b) ending with the time the compliance statement was provided.

#### Textual Amendments

**F128** Ss. 292AA, 292AB inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 8](#)

### **292AB Maximum risk finance investments during the 5-year post-investment period requirement**

(1) The requirement of this section applies if condition A or B is met.

(2) Condition A is that—

- (a) a company becomes a 51% subsidiary of the relevant company at any time during the 5-year post-investment period,
- (b) all or part of the money raised by the issue of the relevant holding is employed for the purposes of a relevant qualifying activity which consists wholly or in part of a trade carried on by that company, and

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- (c) that trade (or a part of it) was carried on by that company before it became a 51% subsidiary as mentioned in paragraph (a).
- (3) Condition B is that all or part of the money raised by the issue of the relevant holding is employed for the purposes of a relevant qualifying activity which consists wholly or in part of a trade which, during the 5-year post-investment period, becomes a relevant transferred trade (see subsection (7)).
- (4) The requirement of this section is that, at all times during the 5-year post-investment period, the total of the relevant investments made in the relevant company before the time in question (“the relevant time”) must not exceed—
- (a) if the relevant company is a knowledge-intensive company at the investment date (see section 331A), £20 million, and
  - (b) in any other case, £12 million.
- (5) In subsection (4) the reference to relevant investments made in the relevant company includes—
- (a) any relevant investment made in any company that has at any time before the relevant time been a 51% subsidiary of the relevant company (including investments made in that company before it became such a subsidiary but, if it is not such a subsidiary at the relevant time, not investments made in it after it last ceased to be such a subsidiary),
  - (b) any other relevant investment made in a company to the extent that the money raised by the investment has been employed for the purposes of a trade carried on by another company that has at any time before the relevant time been a 51% subsidiary of the relevant company (but, if it is not such a subsidiary at the relevant time, ignoring any money so employed after it last ceased to be such a subsidiary), and
  - (c) any other relevant investments made in a company where—
    - (i) the money raised by the investment has been employed for the purposes of a trade carried on by that company or another person, and
    - (ii) after that investment was made, but before the relevant time, that trade (or a part of it) became a relevant transferred trade (see subsection (7)).
- (6) If only a proportion of the money raised by a relevant investment is employed for the purposes of a trade which became a relevant transferred trade, the reference in subsection (5)(c) to the relevant investment is to be read as a reference to the corresponding proportion of that investment.
- (7) Where—
- (a) a trade is transferred—
    - (i) to the relevant company,
    - (ii) to a company that at the relevant time is, or has before that time been, a 51% subsidiary of the relevant company, or
    - (iii) to a partnership of which a company within sub-paragraph (i) or (ii) is a member,(including where it is transferred to a company within sub-paragraph (ii), or a partnership of which such a company is a member, before the company became such a subsidiary but, if the company is not such a subsidiary at the relevant time, not where it is transferred to such a company or partnership after the company last ceased to be such a subsidiary), and

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(b) the trade or a part of it was previously (at any time) carried on by another person,

the trade or part mentioned in paragraph (b) becomes a “relevant transferred trade” at the time it is transferred as mentioned in paragraph (a).

(8) In this section—

“5-year post-investment period” means the period of 5 years beginning with the day after the investment date;

“the investment date” means the date on which the relevant holding is issued;

“relevant investment” has the meaning given by section 292A(3), and section 292A(4) and (4A) (which determines when certain investments are made) applies for the purposes of this section;

and section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 280B.

(9) Subsection (10) applies if, by virtue of the provision of a compliance statement under section 205, 257ED or 257PB, the requirement of this section is not met.

(10) The requirement is to be treated as having been met throughout the period—

(a) beginning with the investment date, and

(b) ending with the time the compliance statement was provided.]

**Textual Amendments**

**F128** Ss. 292AA, 292AB inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 8](#)

**<sup>F129</sup>292B The spending of money raised by SEIS investment requirement**

.....

**Textual Amendments**

**F129** S. 292B omitted (with effect in accordance with Sch. 6 para. 23(2) of the amending Act) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 9](#)

**293 The use of the money raised requirement**

[<sup>F130</sup>(1) The requirement of this section is that—

(a) less than two years has passed since the trading time, or

(b) at least two years has passed since the trading time and all of the money raised by the issue of the relevant holding has been employed wholly for the purposes of a relevant qualifying activity.]

<sup>F131</sup>(2) .....

<sup>F131</sup>(3) .....

<sup>F131</sup>(4) .....



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- (5) In subsection (1) “the trading time” means whichever is applicable of the following—
- (a) in a case where the requirement of section 291 was met in relation to the time when the relevant holding was issued and the relevant qualifying activity falls within subsection (2) of that section, the time when the relevant holding was issued, and
  - (b) in a case where that requirement was met in relation to that time and the relevant qualifying activity falls within subsection (3) of that section, the time when the condition in subsection (4)(a) of that section was met by a qualifying company beginning to carry on the intended trade.
- [<sup>F132</sup>(5ZA) Employing money raised by the issue of the relevant holding (whether on its own or together with other money) on the acquisition, directly or indirectly, of—
- (a) an interest in another company such that a company becomes a 51% subsidiary of the relevant company,
  - (b) a further interest in a company which is a 51% subsidiary of the relevant company,
  - (c) a trade,
  - (d) intangible assets employed for the purposes of a trade, or
  - (e) goodwill employed for the purposes of a trade,
- does not amount to employing the money for the purposes of a relevant qualifying activity.
- (5ZB) The Treasury may by regulations provide that subsection (5ZA) does not apply in relation to acquisitions of intangible assets which are of a description specified, or which occur in circumstances specified, in the regulations.
- (5ZC) For the purposes of subsections (5ZA) and (5ZB)—
- “goodwill” has the same meaning as in Part 8 of CTA 2009 (see section 715(3));
  - “intangible assets” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice;
- and section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 280B.
- (5A) Also, otherwise employing money on the acquisition of shares in a company does not of itself amount to employing the money for the purposes of a relevant qualifying activity.]
- (6) For the purposes of this section money is not to be treated as employed otherwise than wholly for the purposes of a relevant qualifying activity if the only amount employed for other purposes is an amount which is not a significant amount.
- (7) Nothing in section 286(5) requires any money whose use is ignored by virtue of subsection (6) to be treated as raised by a different holding.
- (8) In this section—
- “qualifying activity” and “qualifying company” have the same meaning as in section 291, and
  - a qualifying activity is a “relevant qualifying activity” if—
- (a) it was also a qualifying activity at the time when the relevant holding was issued, or

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- (b) it is a qualifying trade and preparing to carry it on was a qualifying activity at that time.

#### Textual Amendments

- F130** S. 293(1) substituted (with effect in accordance with Sch. 8 para. 14 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 9\(2\)](#)
- F131** S. 293(2)-(4) omitted (with effect in accordance with Sch. 8 para. 14 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 8 para. 9\(3\)](#)
- F132** S. 293(5ZA)-(5A) substituted for s. 293(5A) (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 10](#)

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

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

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

- (2) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question by a person other than the relevant company, or a qualifying subsidiary of that company, at any time—
- (a) after the issue of the relevant holding, and
  - (b) before the relevant company, or any qualifying 90% subsidiary of that company, carries on that trade.
- (3) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question—
- (a) by the partners in a partnership of which the relevant company, or a qualifying 90% subsidiary of that company, is a member, or
  - (b) by the parties to a joint venture to which the relevant company, or a qualifying 90% subsidiary of that company, is a party.
- (4) The requirement of this section is not to be regarded as failing to be met if—
- (a) merely because of anything done as a consequence of the relevant company or any other company being in administration or receivership, or
  - (b) merely because of the relevant company or any other company being wound up or dissolved without winding up,

the trade in question ceases to be carried on by the relevant company or a qualifying 90% subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is 12 months before the issue of the relevant holding, with the relevant company.

- (5) Subsection (4) applies only if—
- (a) the entry into administration or receivership and everything done in consequence of the company concerned being in administration or receivership, or

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- (b) the winding up or dissolution,  
is for genuine commercial reasons and is not part of a scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax.
- (6) In this section “the trade in question” means so much of the relevant qualifying activity mentioned in subsection (1) as consists of—
  - (a) a trade which was being carried on at the time when the relevant holding was issued, or
  - (b) a trade for the carrying on of which preparations were being made at that time.
- (7) The definition of “relevant qualifying activity” in subsection (8) of section 293 applies for the purposes of this section as it applies for the purposes of that section.

### **[<sup>F133</sup>294A] The permitted company age requirement**

- (1) The requirement of this section is that, if the relevant holding is issued after the initial investing period, condition A, B or C must be met.
- (2) “The initial investing period” means—
  - (a) where the relevant company is a knowledge-intensive company at the investment date, the period of 10 years [<sup>F134</sup>beginning with—
    - (i) the relevant first commercial sale, or
    - (ii) if the relevant company so elects, the date by reference to which that company is treated as reaching an annual turnover of £200,000 (see section 331B),] and
  - (b) in any other case, the period of 7 years beginning with that sale.
- (3) Condition A is that—
  - (a) a relevant investment was made in the relevant company before the end of the initial investing period, and
  - (b) some or all of the money raised by that investment was employed for the purposes of the relevant qualifying activity (or a part of it).
- (4) Condition B is that—
  - (a) the total amount of relevant investments made in the relevant company in a period of 30 consecutive days which includes the investment date is at least 50% of the average turnover amount, and
  - (b) the money raised by those investments is employed for the purpose of entering a new product or geographical market.
- (5) Condition C is that—
  - (a) condition B in subsection (4) or condition B in section 175A(4) (EIS: permitted company age requirement) was previously met in relation to one or more relevant investments made in the relevant company, and
  - (b) some or all of the money raised by those investment was employed for the purposes of the relevant qualifying activity.
- (6) “The relevant first commercial sale” means the earliest of the following—
  - (a) the first commercial sale made by the relevant company,
  - (b) the first commercial sale made by a company that is at the investment date, or before that date has been, a 51% subsidiary of the relevant company (including a sale made by a company before it became such a subsidiary but, if it is not

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- such a subsidiary at the investment date, not a sale made after it last ceased to be such a subsidiary),
- (c) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on, on or before the investment date, by—
- (i) the relevant company, or
  - (ii) a company that is at the investment date, or before that date has been, a 51% subsidiary of the relevant company,
- (including a trade subsequently carried on by such a company before it became such a subsidiary but, if it not such a subsidiary at the investment date, not a trade which it carried on only after it last ceased to be such a subsidiary);
- (d) the first commercial sale made by a company which becomes a 51% subsidiary of the relevant company after the investment date in circumstances where all or part of the money raised by the issue of the relevant holding is employed for the purposes of an activity carried on by that subsidiary (including a sale made by such a company before it became such a subsidiary);
- (e) the first commercial sale made by any person who previously (at any time) carried on a trade which was subsequently carried on by a company mentioned in paragraph (d) (including a trade carried on by such a company before it became such a subsidiary);
- (f) if the money raised by the issue of the relevant holding (or any part of it) is employed for the purposes of a trade which has been transferred after the investment date to the relevant company or a 51% subsidiary of that company (or to a partnership of which the relevant company or such a subsidiary is a member), having previously (at any time) been carried on by another person, the first commercial sale made by that other person.
- (7) “The average turnover amount” means one fifth of the total relevant turnover amount for the [<sup>F135</sup>relevant five year period. ]
- [ Subject to subsection (7B), the relevant five year period is the five year period which <sup>F136</sup>(7A) ends immediately before the beginning of the last accounts filing period.
- (7B) If the last accounts filing period ends more than 12 months before the investment date, the relevant five year period is the five year period which ends 12 months before the investment date.]
- (8) In this section—
- “entering a new product or geographical market” has the same meaning as in Commission Regulation (EU) No 651/2014 (General block exemption Regulation) [<sup>F137</sup>as it had effect in the United Kingdom immediately before IP completion day];
- “first commercial sale” has the same meaning as in the European Commission's Guidelines on State aid to promote risk finance investments [<sup>F138</sup>(as those guidelines had effect in the United Kingdom immediately before IP completion day)];
- “the investment date” means the date the relevant holding is issued;
- “the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the relevant company which ends before the date on which the relevant holding is issued;

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“relevant investment” has the meaning given by section 292A(3), and section 292A(4) and (4A) (which determines when certain investments are made) applies for the purposes of this section;

“relevant qualifying activity” means the qualifying activity for which the money raised by the issue of the relevant holding is employed;

“the total relevant turnover amount” for a period is—

(a) if the relevant company is a single company at the investment date, the sum of—

- (i) the relevant company's turnover for that period,
- (ii) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of an activity carried on by a company which becomes a 51% subsidiary of the relevant company after the investment date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
- (iii) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within subparagraphs (i) and (ii));

(b) if the relevant company is a parent company at the investment date, the sum of—

- (i) the relevant company's turnover for that period,
- (ii) the turnover for that period of each company which at the investment date is a 51% subsidiary of the relevant company,
- (iii) if all or part of the money raised by the issue of the relevant holding is employed for the purposes of an activity carried on by a company which becomes a 51% subsidiary of the relevant company after the investment date, the turnover for that period of that subsidiary (or, if there is more than one, each of them), and
- (iv) if all or part of the money raised by the issue of the relevant shares is employed for the purposes of a transferred trade, the turnover of that trade for so much of that period as falls before the trade became a transferred trade (except to the extent that it is already included in calculating the amounts within subparagraphs (i) to (iii));

“transferred trade” means a trade which has been transferred to the company which is carrying on the trade at the time the money raised by the issue of the relevant holding is employed or to a partnership of which that company is a member;

“turnover”—

(a) in relation to a company, has the meaning given by section 474(1) of the Companies Act 2006 and is to be determined by reference to the accounts of companies and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a company's turnover for a period);

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(b) in relation to any other person carrying on a trade, also has the meaning given by section 474(1) of that Act (reading references in that provision to a company as references to the person) and is to be determined by reference to the accounts of the person and amounts recognised for accounting purposes (and such apportionments of those amounts as are just and reasonable are to be made for the purpose of determining a person's turnover for a period);

(c) in relation to a transferred trade carried on by a company or other person, means such proportion of the turnover of the company or other person as it is just and reasonable to attribute to the transferred trade;

and section 280B(8) and (9) (meaning of “trade” etc) applies for the purposes of this section as it applies for the purposes of section 280B.]

#### Textual Amendments

**F133** S. 294A inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 11](#)

**F134** Words in s. 294A(2)(a) substituted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 4 paras. 8, 10](#); S.I. 2018/931, [reg. 3\(b\)](#)

**F135** Words in s. 294A(7) substituted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(4\)\(a\)\(6\)](#) (with s. 30)

**F136** S. 294A(7A)(7B) inserted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(4\)\(b\)\(6\)](#) (with s. 30)

**F137** Words in s. 294A(8) inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), [regs. 1, 4\(12\)\(a\)](#)

**F138** Words in s. 294A(8) substituted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), [regs. 1, 4\(12\)\(b\)](#)

## 295 The unquoted status requirement

- (1) The requirement of this section is that the relevant company must be an unquoted company.
- (2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.
- (3) For the purposes of subsection (2), shares, stocks, debentures or other securities are marketed to the general public if they are—
  - (a) listed on [<sup>F139</sup>a recognised stock exchange, ]
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in <sup>F140</sup>... outside the United Kingdom by such means as may be designated.
- (4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that provision.
- (5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (6) If—

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

#### Textual Amendments

**F139** Words in s. 295(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(a\)](#)

**F140** Words in s. 295(3)(c) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(b\)](#), [Sch. 27 Pt. 6\(5\)](#)

### 296 The control and independence requirement

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

### 297 The gross assets requirement

- (1) The requirement of this section in the case of a relevant company that is a single company is that the value of the company's gross assets—
  - (a) did not exceed [<sup>F141</sup>£15 million] immediately before the issue of the relevant holding, and
  - (b) did not exceed [<sup>F142</sup>£16 million] immediately afterwards.
- (2) The requirement of this section in the case of a relevant company that is a parent company is that the value of the group assets—
  - (a) did not exceed [<sup>F143</sup>£15 million] immediately before the issue of the relevant holding, and
  - (b) did not exceed [<sup>F144</sup>£16 million] immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

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### Textual Amendments

- F141** Words in s. 297(1)(a) substituted (19.7.2012) (with effect in accordance with Sch. 8 para. 20(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 paras. 8\(a\), 20\(2\)](#); S.I. 2012/1901, art. 2(b)
- F142** Words in s. 297(1)(b) substituted (19.7.2012) (with effect in accordance with Sch. 8 para. 20(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 paras. 8\(b\), 20\(2\)](#); S.I. 2012/1901, art. 2(b)
- F143** Words in s. 297(2)(a) substituted (19.7.2012) (with effect in accordance with Sch. 8 para. 20(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 paras. 8\(a\), 20\(2\)](#); S.I. 2012/1901, art. 2(b)
- F144** Words in s. 297(2)(b) substituted (19.7.2012) (with effect in accordance with Sch. 8 para. 20(2) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 paras. 8\(b\), 20\(2\)](#); S.I. 2012/1901, art. 2(b)

### [<sup>F145</sup>297A] The number of employees requirement

- (1) If the relevant company is a single company, the full-time equivalent employee number for it must be less than [<sup>F146</sup>the permitted limit] when the relevant holding is issued.
- (2) If the relevant company is a parent company, the sum of—
  - (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
 must be less than [<sup>F147</sup>the permitted limit] when the relevant holding is issued.

- (3) The full-time equivalent employee number for a company is calculated as follows—

#### *Step 1*

Find the number of full-time employees of the company.

#### *Step 2*

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

[ The permitted limit’ means—

- <sup>F148</sup>(3A) (a) if the relevant company is a knowledge-intensive company at the time the relevant holding is issued (see section 331A), 500, and
- (b) in any other case, 250.

- (3B) The Treasury may by regulations amend subsection (3A)(a) or (b) by substituting a different number for the number for the time being specified there.]

- (4) In this section references to an employee—

- (a) include a director, but
- (b) do not include—
  - (i) an employee on maternity [<sup>F149</sup>, paternity [<sup>F150</sup>, shared parental or parental bereavement]] leave, or
  - (ii) a student on vocational training.]



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#### Textual Amendments

- F145** S. 297A inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(3\)\(5\)](#) (with [Sch. 16 para. 3\(6\), \(7\)](#))
- F146** Words in s. 297A(1) substituted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 12\(a\)](#)
- F147** Words in s. 297A(2) substituted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 12\(a\)](#)
- F148** S. 297A(3A)(3B) inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 12\(b\)](#)
- F149** Words in s. 297A(4)(b)(i) substituted (1.12.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 7 para. 72](#); S.I. 2014/1640, art. 5(2)(cc)
- F150** Words in s. 297A(4)(b)(i) substituted (18.1.2020) by [Parental Bereavement \(Leave and Pay\) Act 2018 \(c. 24\)](#), s. 2(2), [Sch. para. 54](#); S.I. 2020/45, reg. 2

#### [<sup>F151</sup>297B] The proportion of skilled employees requirement

- (1) The requirement of this section is that, where the conditions in subsection (2) are met, at all times in the period of 3 years beginning with the issue of the relevant holding—
- if the relevant company is a single company, the FTE skilled employee number must be at least 20% of the FTE employee number, and
  - if the relevant company is a parent company, the FTE group skilled employee number must be at least 20% of the FTE group employee number.
- (2) The conditions are that—
- the requirements one or more of sections [<sup>F152</sup>292A,] 292AA, 294A and 297A (the maximum risk finance investments when relevant holding is issued requirement and the number of employees requirement) is or are met only by reason of the relevant company being a knowledge-intensive company at the time the relevant holding was issued, and
  - the innovation condition in section 331A(6) was not met by the relevant company at that time.
- (3) The requirement of this section is not to be regarded as failing to be met at a time when the relevant company, by virtue of section 292 (companies in administration or receivership), is not regarded as having ceased to meet the trading requirement.
- (4) In this section “FTE employee number”, “FTE group employee number”, “FTE skilled employee number” and “FTE group skilled employee number” have the meaning given by section 331A(10) (meaning of “knowledge-intensive company”).]

#### Textual Amendments

- F151** S. 297B inserted (with effect in accordance with Sch. 6 para. 23(3) of the amending Act) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 13](#)
- F152** Word in s. 297B(2)(a) inserted (6.4.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 4 paras. 4, 10](#); S.I. 2018/931, reg. 3(b)

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## 298 The qualifying subsidiaries requirement

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

## 299 The property managing subsidiaries requirement

- (1) Any property managing subsidiary that the relevant company has must be a qualifying 90% subsidiary of the company.
- (2) “Property managing subsidiary” means a subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

## <sup>F153</sup>299A The no disqualifying arrangements requirement

- (1) The relevant holding must not have been issued, nor any money raised by the issue employed, in consequence or anticipation of, or otherwise in connection with, disqualifying arrangements.
- (2) Arrangements are “disqualifying arrangements” if—
  - (a) the main purpose, or one of the main purposes, of the arrangements is to secure—
    - (i) that a qualifying activity is or will be carried on by the relevant company or a qualifying 90% subsidiary of that company, and
    - (ii) that shares or securities issued by the relevant company may be comprised in any company's qualifying holdings or that one or more persons may obtain relevant tax relief in respect of such shares which raise money for the purposes of that qualifying activity,
  - (b) that qualifying activity is the relevant qualifying activity by reference to which the requirement in section 293(1)(b) (money raised to be employed within two years for relevant qualifying activity) is met in relation to the relevant holding, and
  - (c) one or both of conditions A and B are met.
- (3) Condition A is that, as a (direct or indirect) result of the money raised by the issue of the relevant holding being employed as required by section 293(1)(b), an amount representing the whole or the majority of the amount raised is, in the course of the arrangements, paid to or for the benefit of a relevant person or relevant persons.
- (4) Condition B is that, in the absence of the arrangements, it would have been reasonable to expect that the whole or greater part of the component activities of the relevant qualifying activity would have been carried on as part of another business by a relevant person or relevant persons.

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- (5) For the purposes of this section it is immaterial whether the relevant company is a party to the arrangements.
- (6) In this section—
- “component activities” means—
    - (a) if the relevant qualifying activity is within section 291(2), the carrying on of a qualifying trade which constitutes that activity, and
    - (b) if the relevant qualifying activity is within section 291(3), the preparations to carry on a qualifying trade which constitute that activity;
  - “arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);
  - “relevant person” means a person who is a party to the arrangements or a person connected with such a party;
  - “qualifying activity” has the same meaning as in section 291;
  - “relevant tax relief”, in respect of shares, means one or more of the following—
    - (a) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
    - (b) EIS relief (within the meaning of Part 5) in respect of the shares;
    - (c) SEIS relief (within the meaning of Part 5A) in respect of the shares;
    - (ca) [<sup>F154</sup>SI relief (within the meaning of Part 5B) in respect of the shares;]
    - (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme and seed enterprise investment scheme) in respect of the shares;
    - (e) relief under Schedule 5B to that Act in consequence of which deferral relief is attributable to the shares;
    - (f) relief under Schedule 5BB to that Act (seed enterprise investment scheme: re-investment) in consequence of which SEIS re-investment relief is attributable to the shares (see paragraph 4 of that Schedule).]

#### Textual Amendments

**F153** S. 299A inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 10](#)

**F154** Words in s. 299A(6) inserted (with effect in accordance with Sch. 1 para. 16 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 1 para. 11\(4\)](#)

### Definitions

#### 300 Meaning of “qualifying trade”

- (1) For the purposes of this Chapter, a trade is a qualifying trade if—
- (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not consist wholly or as to a substantial part in the carrying on of excluded activities (see sections 303 to 310).
- (2) The carrying on of any activities of research and development from which it is intended—

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- [<sup>F155</sup>(a) that a trade will be derived which will be a qualifying trade, or  
 (b) that a trade will benefit which is or will be a qualifying trade.]  
 is to be treated as the carrying on of a qualifying trade.

- (3) But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (4) References in this section to a trade are to be read without regard to the definition of “trade” in section 989.

#### Textual Amendments

**F155** S. 300(2)(a)(b) substituted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 2 para. 2\(11\)](#); S.I. 2011/662, art. 2

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

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying 90% subsidiary of the relevant company at any time when the following conditions are met—
- (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,
 be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- [<sup>F156</sup>(1A) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of a company that is not the relevant company (“company B”) is a qualifying 90% subsidiary of the relevant company if—
- (a) company A would be a qualifying 90% subsidiary of company B (if company B were the relevant company), and company B is a qualifying 100% subsidiary of the relevant company, or
  - (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the relevant company.
- (1B) For the purposes of subsection (1A), no account is to be taken of any control the relevant company may have of company A.
- (1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1) (a) to (e) would be met if—
- (a) company X were the subsidiary,

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- (b) company Y were the relevant company, and
  - (c) in subsection (1) for “at least 90%” in each place there were substituted “100%”.]
- (2) Subsections (3), (4) and (5) of section 302 apply in relation to the conditions in subsection (1)—
- (a) as they apply in relation to the conditions in subsection (2) of that section, but
  - (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary of that company”.
- (3) For the purposes of subsection (1)—
- (a) the persons who are equity holders of the subsidiary, and
  - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with [<sup>F157</sup> Chapter 6 of Part 5 of CTA 2010].
- (4) In making that determination—
- (a) references in [<sup>F158</sup>section 166 of that Act to company A] are to be read as references to an equity holder, and
  - (b) references in that [<sup>F159</sup>section] to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

#### Textual Amendments

- F156** S. 301(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 17, 18](#)
- F157** Words in s. 301(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. 504\(a\)](#) (with [Sch. 2](#))
- F158** Words in s. 301(4)(a) 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. 504\(b\)](#) (with [Sch. 2](#))
- F159** Word in s. 301(4)(b) 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. 504\(c\)](#) (with [Sch. 2](#))

### 302 Meaning of “qualifying subsidiary”

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying subsidiary of the relevant company if the following conditions are met.
- (2) The conditions are that—
- (a) the subsidiary is a 51% subsidiary of the relevant company,
  - (b) no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, if the winding up—
- (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

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- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, if—
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (5) The conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of that company of all its interest in the subsidiary, if the disposal—
- (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### <sup>F160</sup>302A Meaning of “permanent establishment”

- (1) This section applies for the purposes of this Chapter.
- (2) A company has a “permanent establishment” in the United Kingdom if (and only if)—
  - (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to enter into contracts on behalf of the company.
- (3) For the purposes of this section “fixed place of business” includes (without prejudice to the generality of that expression)—
  - (a) a place of management,
  - (b) a branch,
  - (c) an office,
  - (d) a factory,
  - (e) a workshop,
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
  - (g) a building site or construction or installation project.
- (4) If the condition in subsection (5) is met, a company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that—
  - (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company.
- (5) The condition is that, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (6) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
  - (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company,

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- (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery,
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person, and
  - (d) purchasing goods or merchandise, or collecting information, for the company.
- (7) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it carries on business there through an agent of independent status (including a broker or a general commission agent) acting in the ordinary course of the agent's business.
- (8) A company is not regarded as having a permanent establishment in the United Kingdom by reason of the fact that it controls a company that—
- (a) is resident there, or
  - (b) carries on business there (whether through a permanent establishment or otherwise).
- (9) The Treasury may by regulations amend this section.]

#### Textual Amendments

**F160** S. 302A inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(3), 8 of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 2 para. 2(12)**; S.I. 2011/662, art. 2

#### *Excluded activities*

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

- (1) The following are excluded activities for the purposes of sections 290 and 300—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
  - [<sup>F161</sup>(ia) shipbuilding,
  - (ib) producing coal,
  - (ic) producing steel,]
  - (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, <sup>F162</sup>...

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- [<sup>F163</sup>(ka) generating or exporting electricity or making electricity generating capacity available,
  - (kb) generating heat,
  - (kc) generating any form of energy not within paragraph (ka) or (kb),
  - (kd) producing gas or fuel, and]
  - (l) any activities which are excluded activities under section 310 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
- (a) section 304 (wholesale and retail distribution),
  - (b) section 305 (leasing of ships),
  - (c) section 306 (receipt of royalties and licence fees),
  - (d) section 307 (property development),
  - [<sup>F164</sup>(da) section 307A (shipbuilding),
  - (db) section 307B (producing coal),
  - (dc) section 307C (producing steel),]
  - (e) section 308 (hotels and comparable establishments), <sup>F165</sup> ...
  - (f) section 309 (nursing homes and residential care homes), <sup>F166</sup> ... [<sup>F167</sup> and
  - (g) section 309A (export of electricity).]
  - <sup>F168</sup>(h) .....

#### Textual Amendments

- F161** S. 303(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(a\), 10](#) (with [Sch. 11 paras. 12, 13](#))
- F162** Word in s. 303(1)(k) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 11\(2\)](#)
- F163** S. 303(1)(ka)-(kd) substituted for s. 303(1)(ka)-(kc) (with effect in accordance with s. 28(6) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 28\(2\)](#)
- F164** S. 303(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(b\), 10](#) (with [Sch. 11 paras. 12, 13](#))
- F165** Word in s. 303(2)(e) omitted (17.7.2012) (with effect in accordance with Sch. 8 para. 22 of the amending Act) by virtue of [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 11\(3\)](#)
- F166** Word in s. 303(2)(f) omitted (with effect in accordance with s. 56(9) of the amending Act) by virtue of [Finance Act 2014 \(c. 26\)](#), [s. 56\(5\)\(b\)](#)
- F167** S. 303(2)(g) and word substituted for s. 303(2)(g) (with effect in accordance with s. 28(6) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [s. 28\(4\)\(a\)\(i\)](#)
- F168** S. 303(2)(h) omitted (with effect in accordance with s. 28(6) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [s. 28\(4\)\(a\)\(ii\)](#)

### 304 Excluded activities: wholesale and retail distribution

- (1) This section supplements section 303(1)(b).
- (2) In this section—
- (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and
  - (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.



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

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

- (1) This section supplements section 303(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(d) as a result only of its consisting in letting ships on charter.

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

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

- (1) This section supplements section 303(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—
  - [<sup>F169</sup>(a) by the relevant company, or]
  - [<sup>F169</sup>(b) by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset that is intellectual property, references to the creation of an asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (6) In this section—
  - <sup>F170</sup> ...
  - “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice, and
  - “intellectual property” means—
    - (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
    - (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).
- [<sup>F171</sup>(7) If—
  - (a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and
  - (b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,references in subsection (4) to the relevant company include the old company.]

#### Textual Amendments

**F169** S. 306(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(2\), 13](#)

**F170** Words in s. 306(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(3\), 13](#), [Sch. 27 Pt. 2\(16\)](#)

**F171** S. 306(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(4\), 13](#)

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### 307 Excluded activities: property development

- (1) This section supplements section 303(1)(g).
- (2) “Property development” means the development of land—
  - (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to subsection (4)—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.
- (4) References in this section to an interest in land do not include—
  - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

### [<sup>F172</sup>307A] Excluded activities: shipbuilding

In section 303(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003 [<sup>F173</sup>], except that references in that Framework to building in the Union are to be read as including building in the United Kingdom].

#### Textual Amendments

**F172** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

**F173** Words in s. 307A inserted (31.12.2020) by [The Taxes \(State Aid\) \(Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1499\)](#), regs. 1, [4\(13\)](#)

### 307B Excluded activities: producing coal

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

#### Textual Amendments

**F172** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

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### 307C Excluded activities: producing steel

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

#### Textual Amendments

**F172** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### 308 Excluded activities: hotels and comparable establishments

- (1) This section supplements section 303(1)(j).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).
- (3) The activities of a person are not to be taken to fall within section 303(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

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

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

### [<sup>F174</sup>309A Excluded activities: <sup>F175</sup>... export of electricity

- (1) This section supplements section 303(1)(ka).
- (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).

<sup>F176</sup>(3) .....

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F176(4) . . . . .

F177(5) . . . . .

F177(6) . . . . .

F178(7) . . . . .

F178(8) . . . . .

F176(9) . . . . .]

**Textual Amendments**

- F174** S. 309A inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), **Sch. 8 para. 12**
- F175** Words in s. 309A heading omitted (with effect in accordance with s. 28(6) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **s. 28(4)(b)(i)**
- F176** S. 309A(3)-(9) omitted (with effect in accordance with s. 28(6) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **s. 28(4)(b)(ii)**
- F177** S. 309A(5)(6) omitted (with effect in accordance with Sch. 6 para. 14 of the amending Act) by virtue of [Finance Act 2015 \(c. 11\)](#), **Sch. 6 para. 11(2)(a)**; S.I. 2015/1836, **reg. 2(b)**
- F178** S. 309A(7)(8) omitted (with effect in accordance with Sch. 6 para. 9 of the amending Act) by virtue of [Finance Act 2015 \(c. 11\)](#), **Sch. 6 para. 8(1)(b)**

**F179 309BE Excluded activities: subsidised generation of heat and subsidised production of gas or fuel**

. . . . .

**Textual Amendments**

- F179** S. 309B omitted (with effect in accordance with s. 28(6) of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **s. 28(4)(c)**

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

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
  - (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to [F180(ka)] of section 303(1), and
  - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
  - (a) A controls the company,

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- (b) the company is a close company and A or an associate of A, being a director of the company, either—
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half the business could, in accordance with <sup>F181</sup>section 942 of CTA 2010 (options for purposes of ownership condition)], be regarded as belonging to A for the purposes of <sup>F181</sup>section 941 of that Act (trade transfers without change of ownership: ownership condition)].
- (4) In any other case, a person has a controlling interest in a business if the person is entitled to at least half the assets used for, or of the income arising from, the business.
- (5) For the purposes of this section—
- (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.

**Textual Amendments**

**F180** Word in s. 310(1)(a) substituted (17.7.2012) (with effect in accordance with Sch. 8 para. 22 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 13](#)

**F181** Words in s. 310(3)(c) 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. 505](#) (with [Sch. 2](#))

*Supplementary*

<sup>F182</sup>**311 Power to amend Chapter**

**Textual Amendments**

**F182** [S. 311](#) omitted (18.11.2015) by virtue of [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 14](#)

**312 Winding up of the relevant company**

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

- (a) the requirements of this Chapter would be met in relation to that company apart from the winding up, and
- (b) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

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### **[<sup>F183</sup>312A] Power to require information relating to disqualifying arrangements**

- (1) Subsection (2) applies if an officer of Revenue and Customs has reason to believe that the relevant company has issued the relevant holding to the investing company in consequence of or, or otherwise in connection with, disqualifying arrangements (within the meaning of section 299A(2)).
- (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, such arrangements exist or have existed, and
  - (b) such other information as the officer may reasonably require for the purposes of section 299A 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.
- (4) A “person concerned” means—
  - (a) the relevant company,
  - (b) the investing company,
  - (c) any person connected with either of those companies, and
  - (d) any person whom the officer has reason to believe is or was a party to the arrangements in question.]

#### **Textual Amendments**

**F183** S. 312A inserted (17.7.2012) (with effect in accordance with Sch. 8 para. 19 of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [Sch. 8 para. 15](#)

### **313 Interpretation of Chapter**

- (1) In this Chapter —
  - “the investing company” has the meaning given by section 286(1),
  - “the relevant company” has the meaning given by section 286(1), and
  - “the relevant holding” has the meaning given by section 286(1).
- (2) References in this Chapter to the issue of any securities, in relation to any security consisting in a liability in respect of an unsecured loan, have effect as references to the making of the loan.
- (3) References in sections 303 to 309 to a trade are to be read without regard to the definition of “trade” in section 989 (see also section 300(4)).
- (4) For the purposes of sections 296 and 310(3) and (4), the question whether a person controls a company is to be determined in accordance with [<sup>F184</sup>sections 450 and 451 of CTA 2010] with the modification given by subsection (6).
- (5) For the purposes of this Chapter [<sup>F185</sup>(other than section 312A)], section 993 (meaning of “connected persons”) applies as if references to “control” in that section were to be read in accordance with [<sup>F186</sup>sections 450 and 451 of CTA 2010] with the modification given by subsection (6).



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[<sup>F187</sup>But section 993 does not apply for the purposes of the definition of “independent expert” in section 331A(10).]

(6) The modification is that, in determining whether a person controls a company, the following are to be ignored—

- (a) any person's possession of, or entitlement to acquire, fixed-rate preference shares in the company that do not carry voting rights,<sup>F188</sup> ...
- (b) any person's possession of, or entitlement to acquire, rights as a loan creditor of the company<sup>F189</sup>, and
- (c) any right to dividends carried by shares in the company where the shares—
  - (i) are eligible shares, and
  - (ii) are held by the investing company.]

(7) In subsection (6) “fixed-rate preference shares” means shares which—

- (a) were issued wholly for new consideration,
- (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and
- (c) do not carry any right to dividends other than dividends which—
  - (i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
  - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued,

and in paragraph (a) “new consideration” has the meaning given by [<sup>F190</sup>section 1115 of CTA 2010].

[<sup>F191</sup>(8) In subsection (6) “eligible shares” has the same meaning as in Chapter 3 (see section 285(3A) and (3B)).]

#### Textual Amendments

**F184** Words in s. 313(4) 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. 506(a)** (with Sch. 2)

**F185** Words in s. 313(5) inserted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 8 para. 16**

**F186** Words in s. 313(5) 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. 506(b)** (with Sch. 2)

**F187** Words in s. 313(5) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), **Sch. 6 para. 15**

**F188** Word in s. 313(6)(a) omitted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(4), 8 of the amending Act) by virtue of [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 2(13)(a)**; S.I. 2011/662, art. 2

**F189** S. 313(6)(c) and word inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(4), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 2(13)(a)**; S.I. 2011/662, art. 2

**F190** Words in s. 313(7) 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. 506(c)** (with Sch. 2)

**F191** S. 313(8) inserted (6.4.2011) (with effect in accordance with Sch. 2 paras. 7(4), 8 of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), **Sch. 2 para. 2(13)(b)**; S.I. 2011/662, art. 2

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## CHAPTER 5

### POWERS: WINDING UP AND MERGERS OF VCTS

#### *Winding up*

#### **314 Power to treat VCT-in-liquidation as VCT**

- (1) Regulations may make provision for tax enactments specified by the regulations to have effect as if—
  - (a) a VCT-in-liquidation that is not a VCT were, or were during any prescribed period of its winding up, a VCT,
  - (b) VCT approval withdrawn from a company—
    - (i) at any time during the period when it is a VCT-in-liquidation, or
    - (ii) at any time during a prescribed part of that period,
 were withdrawn at a prescribed time (and not at the time when it is actually withdrawn).
- (2) In this section “prescribed” means specified by, or determined under, regulations.

#### **315 Power to treat conditions for VCT approval as met with respect to VCT-in-liquidation**

- (1) Regulations may make provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated for the purposes of section 274(1) as met, or as conditions that will be met, with respect to a VCT-in-liquidation.
- (2) Provision under subsection (1) may be made so as to apply in relation to a VCT-in-liquidation—
  - (a) throughout its winding up, or
  - (b) during prescribed periods of its winding up.
- (3) Regulations may, for purposes of tax enactments specified by the regulations, make provision for VCT approval to be treated as having been withdrawn, with effect from a time specified by or determined under the regulations, from a VCT-in-liquidation from which the Commissioners for Her Majesty's Revenue and Customs would have power to withdraw such approval but for provision made under subsection (1).

#### **316 Power to make provision about distributions by VCT-in-liquidation**

- (1) Regulations may make provision for tax enactments specified by the regulations—
  - (a) to apply in relation to distributions from a VCT-in-liquidation (including, in particular, distributions in the course of dissolving it or winding it up),
  - (b) not to apply in relation to such distributions,
  - (c) to apply in relation to such distributions with modifications specified by the regulations.
- (2) Provision under subsection (1) may be made so as to apply in relation to distributions from a VCT-in-liquidation made—
  - (a) at any time during its winding up, or

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- (b) during periods of its winding up specified by, or determined under, regulations.

### **317 Power to facilitate disposal to VCT by VCT-in-liquidation**

- (1) Regulations may make provision authorised by subsection (2) for cases where shares in or securities of a company are acquired by a VCT from a VCT-in-liquidation.
- (2) The provision that may be made under subsection (1) for such a case is—
  - (a) provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated for the purposes of section 274(1) as met, or as conditions that will be met, with respect to the VCT in relation to periods ending after the acquisition,
  - (b) provision for the shares or securities acquired to be treated, at times after the acquisition when they are held by the VCT, as meeting the requirements of Chapter 4 (provisions for determining whether shares or securities form part of qualifying holdings), and
  - (c) provision for shares in the VCT issued in connection with the acquisition of the shares or securities from the VCT-in-liquidation and either—
    - (i) issued to a person who is a member of the VCT-in-liquidation, or
    - (ii) issued to the VCT-in-liquidation and distributed by it in the course of its winding up or dissolution to a person who is one of its members,to be treated, for the purposes of Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment), as representing shares in the VCT-in-liquidation held by that person.
- (3) Provision under subsection (1) may be made so as to apply in relation to shares or securities acquired from a VCT-in-liquidation—
  - (a) at any time during its winding up, or
  - (b) during periods of its winding up specified by, or determined under, regulations.
- (4) In this section “securities” means any securities and includes any liability that is a security in relation to a company because of section 285(2) (securities).

### **318 Power in respect of periods before and after winding up**

- (1) Any power under sections 314 to 317 to make provision in relation to a VCT-in-liquidation includes power to make corresponding or similar provision in relation to—
  - (a) a company for whose winding up an application has been made to a court and which is not a VCT-in-liquidation but would be if, at the time that the application was made, the court had ordered the company's winding up to commence at that time, or
  - (b) a company that has been a VCT-in-liquidation but no longer is a VCT-in-liquidation because it has been wound up.
- (2) For the purposes of making provision in reliance on subsection (1), references in sections 314 to 317 (however expressed) to a VCT-in-liquidation's winding up, or the commencement or ending of its winding up, may be taken to be references to, or to the commencement or ending of, the extension period for a company to which subsection (1) applies.

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(3) In this section—

“the extension period”—

- (a) in relation to a company to which subsection (1)(a) applies, means the period beginning with the making of the application and ending with the earlier of its final determination and the company becoming a company that is being wound up, and
- (b) in relation to a company to which subsection (1)(b) applies, means the period between the end of the company's winding up and the company's dissolution, and

“prescribed” means specified by, or determined under, regulations.

### **319 Sections 314 to 318: supplementary**

- (1) Provision made by regulations under sections 314 to 318 applies in cases, and subject to conditions, specified by regulations.
- (2) Such provision may (but need not) be made so as to have effect in a particular case only for such period as may be specified by, or determined under, regulations.
- (3) References in sections 314 to 318 to things done by a VCT-in-liquidation include things done by a liquidator of a VCT-in-liquidation.

### **320 Meaning of “VCT-in-liquidation”**

- (1) In this Chapter “VCT-in-liquidation” means a company—
  - (a) that is being wound up (whether or not under the law of a part of the United Kingdom and whether under the law of one, or more than one, territory),
  - (b) that was a VCT immediately before the commencement of its winding up, and
  - (c) whose winding up is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (2) Regulations may, for purposes of this Chapter, make provision as to when a company's winding up is to be treated as commencing or ending in a case where it is wound up otherwise than under the law of a part of the United Kingdom or otherwise than under the law of a single territory.

## *Mergers*

### **321 Power to facilitate mergers of VCTs**

- (1) Regulations may make provision authorised by section 322 for cases where—
  - (a) there is a merger of two or more companies each of which is a VCT immediately before the merger begins to be effected, and
  - (b) the merger is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (2) Provision made by regulations under subsection (1) applies—
  - (a) in cases, and

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(b) subject to conditions (including conditions requiring approvals to be obtained),  
specified by the regulations.

### **322 Provision that may be made by regulations under section 321**

- (1) The provision that may be made under section 321(1) for a case where there is a merger of two or more companies (“the merging companies”) is as follows.
- (2) Provision for the successor company, or any of the merging companies, to be treated (whether at times before, during or after the merger) as a VCT for purposes of tax enactments specified by regulations.
- (3) Provision for section 266 (loss of relief on disposal of VCT shares within 5 years of their issue) not to apply in the case of disposals of shares in a merging company made in the course of effecting the merger.
- (4) Provision for such disposals not to be chargeable events for the purposes of Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment).
- (5) Provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated (whether at times before, during or after the merger) for purposes of section 274(1) as met, or as conditions that will be met, with respect to the successor company or any of the merging companies.
- [<sup>F192</sup>(5A) Provision for section 281(1)(f) (withdrawal of VCT approval where company has made a repayment of share capital etc) not to apply, or to apply subject to modifications, to the successor company or any of the merging companies, in relation to payments made, or amounts used to pay up new shares, in connection with or after the merger.]
- (6) Provision for shares in or securities of a company that are acquired (whether at times before, during or after the merger) by the successor company from a merging company to be treated, at times after the acquisition when they are held by the successor company, as meeting requirements of Chapter 4 (provisions for determining whether shares or securities held by a VCT form part of its qualifying holdings).
- (7) Provision for tax enactments specified by regulations to apply, with or without adaptations, in relation to the merger or transactions taking place (whether before, during or after the merger) in connection with the merger.
- (8) Provision authorising disclosure for tax purposes connected with the merger—
  - (a) by Her Majesty's Revenue and Customs,
  - (b) to any of the merging companies or the successor company,
  - (c) of any information provided to Her Majesty's Revenue and Customs by or on behalf of any of the merging companies or the successor company.

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#### **Textual Amendments**

**F192** S. 322(5A) inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 4](#)

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### **323 Meaning of “merger” and “successor company”**

- (1) For the purposes of this Chapter there is a merger of two or more companies (“the merging companies”) if—
  - (a) shares in one of the merging companies (“company A”) are issued to members of the other merging company or companies, and
  - (b) the shares issued to members of the other merging company or, in the case of each of the other merging companies, the shares issued to members of that other company, are issued—
    - (i) in exchange for their shares in that other company, or
    - (ii) by way of consideration for a transfer to company A of the whole or part of the business of that other company.
- (2) For the purposes of this Chapter there is also a merger of two or more companies (“the merging companies”) if—
  - (a) shares in a company (“company B”) that is not one of the merging companies are issued to members of the merging companies, and
  - (b) in the case of each of the merging companies, the shares issued to members of that company are issued—
    - (i) in exchange for their shares in that company, or
    - (ii) by way of consideration for a transfer to company B of the whole or part of the business of that company.
- (3) In this Chapter “the successor company”—
  - (a) in relation to a merger such as is described in subsection (1), means the company that performs the role of company A, and
  - (b) in relation to a merger such as is described in subsection (2), means the company that performs the role of company B.

#### *Supplementary*

### **324 Regulations under Chapter**

- (1) Regulations under this Chapter may—
  - (a) contain such administrative provisions (including provision for advance clearance and provision for the withdrawal of clearances) as appear to the Treasury to be necessary or appropriate,
  - (b) authorise the Commissioners for Her Majesty's Revenue and Customs to give notice to any person requiring that person to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by regulations under this Chapter are met,
  - (c) make different provision for different cases,
  - (d) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (e) include provision having retrospective effect.
- (2) Without prejudice to any specific provision of this Chapter, a power conferred by any provision of this Chapter to make regulations includes power to provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter.

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## 325 Interpretation of Chapter

In this Chapter—

“regulations” means regulations made by the Treasury, and

“tax enactments” means provisions of or made under—

- (a) the Tax Acts,
- (b) TCGA 1992 or any other enactment relating to capital gains tax, or
- (c) TMA 1970.

## CHAPTER 6

### SUPPLEMENTARY AND GENERAL

#### *Acquisitions for restructuring purposes*

## 326 Restructuring to which <sup>F193</sup>sections 326A, 327 and 327A apply

- (1) <sup>F194</sup>Sections 326A, 327 and 327A apply] if—
  - (a) arrangements are made for a company (“the new company”) to acquire all the shares (“old shares”) in another company (“the old company”),
  - (b) the acquisition provided for by the arrangements falls within subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs have, before any exchange of shares takes place under the arrangements, given an approval notification.
- (2) An acquisition of shares falls within this subsection if—
  - (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than subscriber shares and new shares previously issued in consideration of old shares,
  - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description, and
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.
- (3) For the purposes of subsection (1)(c) an approval notification is one which, on the application of either the old company or the new company, is given to the applicant company and states that the Commissioners for Her Majesty's Revenue and Customs are satisfied that the exchange of shares under the arrangements—
  - (a) will be effected for genuine commercial reasons, and
  - (b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).
- (4) <sup>F195</sup>Nothing in section 326A treats any of the requirements of Chapter 3 as being met, and nothing in section 327 treats any of the requirement of Chapter 4 as being met] in relation to any new shares unless the matching old shares were first issued to the company holding them and have been held by that company from the time when they were issued until they are acquired by the new company.

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- (5) If, at any time after the arrangements first came into existence and before the new company acquired all the old shares, the arrangements—
- (a) cease to be arrangements for the acquisition of all the old shares by the new company, or
  - (b) cease to be arrangements for an acquisition falling within subsection (2),
- section <sup>F196</sup>326A does not treat any requirement of Chapter 3 as being met and section] 327 does not treat any requirement of Chapter 4 as being met, and subsection (8) of that section does not apply, in the case of any new shares at any time after the arrangements have so ceased.

#### Textual Amendments

- F193** Words in s. 326 heading substituted (with effect in accordance with s. 12(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 12\(2\)\(a\)](#)
- F194** Words in s. 326(1) substituted (with effect in accordance with s. 12(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 12\(2\)\(b\)](#)
- F195** Words in s. 326(4) substituted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 6 para. 16\(3\)](#)
- F196** Words in s. 326(5) inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\), Sch. 6 para. 16\(4\)](#)

#### <sup>F197</sup>326A Certain requirements of Chapter 3 to be treated as met

- (1) If this section applies, subsections (2) to (6) have effect to determine the extent to which, and the time for which, the following conditions in Chapter 3 are met in relation to the old shares and the new shares—
- the investment limits condition (see section 280B);
  - the permitted maximum age condition (see section 280C);
  - the no business acquisition condition (see section 280D).
- (2) If—
- (a) there is an exchange under the arrangements of any new shares for any old shares, and
  - (b) those old shares are an investment in relation to which the investment limits condition, the permitted maximum age condition or the no business acquisition condition is (or is treated as being) met to any extent,
- those conditions are to be treated as met to the same extent in relation to the matching new shares.
- See subsections (3) to (6) for further provision about when those conditions are treated as met in relation to the old shares.
- (3) If—
- (a) the exchange occurs during the period of 5 years beginning with the day after the day on which the old shares were issued, and
  - (b) those old shares are shares in relation to which section 280B(2)(c) applies,
- section 280B(2)(c) is to be treated as applying in relation to the matching new shares.
- (4) In determining whether section 280B(2)(c) applies in relation to the old shares—
- (a) condition A is treated as met if it would be met if the reference in section 280B(3B)(a)(i) to a company which becomes a 51% subsidiary of the relevant company during the 5-year post-investment period included a



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- reference to a company which becomes a 51% subsidiary of the new company during that period otherwise than as a result of the exchange, and
- (b) in relation to investments made or trades transferred at or after the time of the exchange, references to the relevant company in section 280B(3C)(b) and (3F)(a) are to be read as references to the new company.
- (5) The permitted maximum age condition is met in relation to the old shares if (and only if) it would be met if—
- (a) in section 280C(5)(a)(ii) and (6)(a) the references to relevant investments made in the relevant company included a reference to the relevant investments made in the new company,
- (b) in section 280C(7)(d) and (f) the references to the relevant company included a reference to the new company,
- (c) in paragraphs (a)(ii) and (b)(iii) of the definition of “the total relevant turnover amount” in section 280C(9) the reference to a company which becomes a 51% subsidiary of the relevant company after the investment date included a reference to a company which becomes a 51% subsidiary of the new company after that date otherwise than as a result of the exchange.
- (6) The no business acquisition condition is met in relation to the old shares if (and only if) it would be met if, in section 280D(2), references to the relevant company were read as including a reference to the new company.]

#### Textual Amendments

F197 S. 326A inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 17](#)

### 327 Certain requirements of Chapter 4 to be treated as met

- (1) If this section applies, subsections (2) to (8) have effect to determine the extent to which, and the times for which, the requirements of the following provisions of Chapter 4 are met in relation to the new shares—
- section 287 (the maximum qualifying investment requirement),
- section 289 (the proportion of eligible shares requirement),
- section 290 (the trading requirement),
- section 291 (the carrying on of a qualifying activity requirement),
- [<sup>F198</sup>section 292A (the maximum amount raised annually through risk finance investments requirement),
- section 292AA (the maximum amount raised through risk finance investments when relevant holding is issued requirement),
- section 292AB (the maximum risk finance investments during the 5-year post-investment period requirement),]
- section 293 (the use of the money raised requirement),
- section 294 (the relevant company to carry on the relevant qualifying activity requirement),
- [<sup>F199</sup>section 294A (the permitted company age requirement),]
- section 296 (the control and independence requirement), <sup>F200</sup> ...
- section 297 (the gross assets requirement), <sup>F201</sup> ...
- section 297A (the number of employees requirement) [<sup>F202</sup>, and

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section 297B (the proportion of skilled employees requirement).]

- (2) If the requirements of sections 290 and 291 were met in relation to the old company and any old shares immediately before the beginning of the period for giving effect to the arrangements, then (so far as it would not otherwise be the case) those requirements are treated as being met in relation to the new company and the matching new shares at all times which—
- (a) fall in that period, and
  - (b) do not fall after a time when (apart from the arrangements) those requirements would have ceased by virtue of—
    - (i) section 291(4) or (5), or
    - (ii) any cessation of a trade by any company,
 to be met in relation to the old company and the matching old shares.
- (3) For the purposes of section 291, the period of two years mentioned in subsection (4) of that section is treated, in the case of any new shares, as expiring at the same time as it would have expired (or by virtue of this subsection would have been treated as expiring) in the case of the matching old shares.
- (4) Subject to subsection (5), if—
- (a) there is an exchange under the arrangements of any new shares for any old shares, and
  - (b) those old shares are shares in relation to which the requirements of sections [F203 292A, 292AA, 292AB], 293, 294 [F204, 294A], 297 [F205, 297A and 297B] were (or were treated as being) met to any extent immediately before the exchange,

those requirements are to be treated, at all times after that time, as met to the same extent in relation to the matching new shares.

[F206(4A) If—

- (a) there is an exchange under the arrangements of any new shares for any old shares,
- (b) that exchange occurs during the period of 5 years beginning with the day after the day on which the old shares were issued, and
- (c) those old shares are shares in relation to which the requirement of section 292AB (maximum risk finance investments during 5-year post-investment period) applies and is met,

that requirement is to be treated as applying and met in relation to the matching new shares.

- (4B) But, where that requirement applies in relation to the old shares, it is met in relation to those shares if (and only if) it would be met were—
- (a) the first reference to the relevant company in section 292AB(4), and
  - (b) the references to the relevant company in section 292AB(5) and (7)(a)(i),
- read, in relation to times in that 5 year period which fall at or after the time of the exchange, as references to the new company.
- (4C) For the purposes of subsections (4A) and (4B), the requirement in section 292AB is treated as applying in relation to the old shares if condition A or B in that section would be met if references in section 292AB(5) and (7)(a)(i) to the relevant company were read as references to the new company.

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- (4D) The requirement in section 293 (the use of money raised) is met in relation to the old shares if (and only if) it would be met if references to the relevant company in section 293(5ZA) were read as including a reference to the new company.
- (4E) The requirement of section 294A (permitted company age) is met in relation to the old shares if (and only if) it would be met if—
- (a) in section 294A(4) the reference to relevant investments made in the relevant company included a reference to relevant investments made in the new company,
  - (b) in section 294A(6)(d) and (f) the references to the relevant company included a reference to the new company,
  - (c) in paragraphs (a)(ii) and (b)(iii) of the definition of “the total relevant turnover amount” in section 294A(8) the reference to a company which becomes a 51% subsidiary of the relevant company after the investment date included a reference to a company which becomes a 51% subsidiary of the new company after that date otherwise than as a result of the exchange.
- (4F) If—
- (a) there is an exchange under the arrangements of any new shares for any old shares,
  - (b) that exchange occurs during the period of 3 years beginning with the issue of the old shares, and
  - (c) those old shares are shares in relation to which the requirement of section 297B (proportion of skilled employees requirement) is met,
- that requirement is to be treated as met in relation to the matching new shares.
- (4G) The requirement of section 297B is met in relation to the old shares if (and only if) it would be met in relation to those shares were references to the relevant company, in subsections (1) and (3) of that section (and, in the definitions of the terms mentioned in subsection (4) as they apply for the purposes of those subsections), read as references to the new company in relation to times in that 3 year period which fall at or after the exchange.]
- (5) If there is a time following any exchange under the arrangements of any new shares for any old shares when (apart from the arrangements) the requirement of section 293 would have ceased under—
- (a) subsection (1) of that section, or
  - (b) this subsection,
- to be met in relation to those old shares, that requirement ceases at that time to be met in relation to the matching new shares.
- (6) For the purposes of section 287, any new shares acquired under the arrangements are to be treated as representing an investment which—
- (a) raised the same amount of money as was raised (or, by virtue of this subsection, is treated as having been raised) by the issue of the matching old shares, and
  - (b) raised that amount by an issue of shares in the new company made at the time when the issue of the matching old shares took place (or, as the case may be, is treated as having taken place).

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- (7) In determining whether the requirements of section 296 are met in relation to the old company or the new company at a time in the period for giving effect to the arrangements, ignore both—
- (a) the arrangements themselves, and
  - (b) any exchange of new shares for old shares that has already taken place under the arrangements.
- (8) For the purposes of section 289, the value of the new shares, both—
- (a) immediately after the time of their acquisition, and
  - (b) immediately after the time of any subsequent relevant event occurring by virtue of the arrangements,
- is to be taken to be the same as the value, when last valued in accordance with that section, of the old shares for which they are exchanged.

#### Textual Amendments

- F198** Words in s. 327(1) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(2)(a)
- F199** Words in s. 327(1) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(2)(b)
- F200** Word in s. 327(1) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 27 Pt. 2(16)
- F201** Word in s. 327(1) omitted (18.11.2015) by virtue of Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(2)(c)
- F202** Words in s. 327(1) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(2)(c)
- F203** Words in s. 327(4) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(3)(a)
- F204** Words in s. 327(4) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(3)(b)
- F205** Words in s. 327(4) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(3)(c)
- F206** S. 327(4A)-(4G) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 6 para. 18(4)

#### [<sup>F207</sup>327A] Follow-on funding

- (1) Subsections (2) and (3) apply where—
- (a) this section applies (see section 326(1)),
  - (b) the acquisition by the new company of all the old shares, which is provided for by the arrangements mentioned in section 326(1), takes place, and
  - (c) the acquisition falls within section 326(2).
- (2) If, after the acquisition, another company makes an investment in the new company, section 280C (the permitted maximum age condition) has effect in relation to that investment as if—
- (a) in subsection (4)(a) the reference to a relevant investment having been made in the relevant company before the end of the initial investing period included a reference to a relevant investment having been made in the old company before the acquisition and before the end of the initial investing period, and
  - (b) in subsection (6)(a) the reference to relevant investments made in the relevant company included a reference to relevant investments made in the old company before the acquisition.
- (3) In relation to any relevant holding issued by the new company after the acquisition, section 294A (the permitted company age requirement) has effect as if—
- (a) in subsection (3)(a) the reference to a relevant investment having been made in the relevant company before the end of the initial investing period included

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- a reference to a relevant investment having been made in the old company before the acquisition and before the end of the initial investing period, and
- (b) in subsection (5)(a) the reference to relevant investments made in the relevant company included a reference to relevant investments made in the old company before the acquisition.

(4) In subsection (3) “relevant holding” has the same meaning as in Chapter 4.]

#### Textual Amendments

**F207** S. 327A inserted (with effect in accordance with s. 12(4) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 12\(3\)](#)

### 328 Supplementary

- (1) Subject to subsection (2), references in sections 326 and 327 and this section, except in the expression “subscriber shares”, to shares in a company include references to any securities of that company.
- (2) For the purposes of subsection (1) a relevant security of the old company is not to be treated as a security of the old company if—
- (a) the arrangements do not provide for the acquisition of the security by the new company, or
- (b) such treatment prevents section 326(1)(b) from being met in connection with the arrangements.
- (3) In subsection (2) “relevant security” means an instrument which is a security for the purposes of Chapter 4 merely because of section 285(2).
- (4) References in section 327 to the period for giving effect to the arrangements are references to the period which—
- (a) begins with the time when the arrangements first came into existence, and
- (b) ends with the time when the new company completes its acquisition under the arrangements of all the old shares.
- (5) For the purposes of sections 326 and 327 and this section—
- (a) old shares and new shares are of a corresponding description if, were they shares in the same company, they would be of the same description, and
- (b) old shares and new shares are matching shares in relation to each other if the old shares are the shares for which the new shares are exchanged under the arrangements.

#### *Conversion of shares etc and company reorganisations*

### 329 Conversion of convertible shares and securities

- (1) This section applies if—
- (a) shares have been issued to a company (“the investing company”) by the exercise by it of any right of conversion attached to other shares or securities held by it (“the convertibles”),

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- (b) the shares so issued are in the same company as the convertibles to which the right was attached,
  - (c) the convertibles to which the right was attached were first issued to the investing company and were held by it from the time they were issued until converted, and
  - (d) the right was attached to the convertibles when they were first so issued and was not varied before it was exercised.
- (2) If this section applies, subsections (3) and (4) have effect to determine the extent to which, and the times for which, the requirements of the following provisions of Chapter 4 are met in relation to the shares issued to the investing company by the exercise by it of the right of conversion—
- section 287 (the maximum qualifying investment requirement),
  - section 289 (the proportion of eligible shares requirement),
  - section 291 (the carrying on of a qualifying activity requirement),
  - section 293 (the use of the money raised requirement),
  - section 294 (the relevant company to carry on the relevant qualifying activity requirement), and
  - section 297 (the gross assets requirement).
- (3) Subsections (3) to (6) of section 327 apply in relation to the exchange of convertibles for shares by virtue of the exercise of the right of conversion as if—
- (a) that exchange were an exchange, under any arrangements to which that section applies, of new shares for old shares, and
  - (b) the references in those subsections and section 328(5)(b) to the arrangements were references to the provision conferring the right of conversion.
- (4) For the purposes of section 289 the value of the new shares immediately after the time of their acquisition by the investing company is to be taken as the same as the value, when last valued in accordance with that section, of the convertibles for which they are exchanged.

### **330 Power to facilitate company reorganisations etc involving exchange of shares**

- (1) The Treasury may by regulations make provision for cases where—
- (a) a holding of shares or securities that meets the requirements of Chapter 4 is exchanged for other shares or securities,
  - (b) the exchange is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (c) the new shares or securities do not meet some or all of the requirements of Chapter 4,
- providing that the new shares or securities are to be treated as meeting those requirements.

- [<sup>F208</sup>(1A) The Treasury may by regulations make provision for the purposes of this Part for cases where—
- (a) a holding of shares or securities that does not meet the requirements of Chapter 4 is exchanged for other shares or securities not meeting those requirements, and

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- (b) the exchange is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.]
- (2) The references in [<sup>F209</sup>subsections (1) and (1A)] to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares in or securities of a company receiving other shares or securities—
  - (a) whether the original shares or securities are transferred, cancelled or retained, and
  - (b) whether the new shares or securities are in or of the same or another company.
- (3) [<sup>F210</sup>Regulations under subsection (1)] must specify—
  - (a) the cases in which, and conditions subject to which, they apply,
  - (b) which requirements of Chapter 4 are to be treated as met, and
  - (c) the period for which those requirements are to be treated as met.
- [<sup>F211</sup>(3A) Regulations under subsection (1A) may, among other things, make provision—
  - (a) for the new shares or securities to be treated in any respect in the same way as the original shares and securities for any period;
  - (b) as to when the new shares or securities are to be regarded as having been acquired;
  - (c) as to the valuation of the original or the new shares or securities.]
- (4) [<sup>F212</sup>Regulations under this section] may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or appropriate.
- <sup>F213</sup>(5) .....
- (6) Regulations under this section —
  - (a) may make different provision for different cases,
  - (b) may contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) [<sup>F214</sup>in the case of regulations under subsection (1)] may include provision having retrospective effect.

#### Textual Amendments

- F208** S. 330(1A) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(2\)](#)
- F209** Words in s. 330(2) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(3\)](#)
- F210** Words in s. 330(3) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(4\)](#)
- F211** S. 330(3A) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(5\)](#)
- F212** Words in s. 330(4) substituted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(6\)](#)
- F213** S. 330(5) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\), art. 1, Sch. para. 48](#)
- F214** Words in s. 330(6)(c) inserted (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 13\(7\)](#)

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### *[<sup>F215</sup>Nominees*

#### **Textual Amendments**

**F215** S. 330A and cross-heading inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 10 para. 5](#)

### **330A Nominees**

Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.]

### *[<sup>F216</sup>Power to amend Part*

#### **Textual Amendments**

**F216** S. 330B and cross-heading inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 19](#)

### **330B Powers to amend Chapters 3 and 4 by Treasury regulations**

- (1) The Treasury may by regulations add to, repeal or otherwise amend any provision of Chapter 3 or 4.
- (2) Regulations under this section may—
  - (a) make different provision for different cases or purposes;
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (3) The provision which may be made as a result of subsection (2)(b) includes provision amending any provision of this or any other Act (including an Act passed after this Act).
- (4) Regulations under this section may, so long as they do not increase any person's liability to any tax, be made to have retrospective effect in relation to any time in the tax year in which they are made or the previous tax year.
- (5) This section is without prejudice to any other power to amend any provision of this Part.
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.]

### *Supplementary*

### **331 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—



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- (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.

### [<sup>F217</sup>331] **Meaning of “knowledge-intensive company”**

- (1) For the purposes of this Part, the relevant company is a “knowledge-intensive company” at the applicable time if the company meets—
- (a) one or both of the operating costs conditions (see subsections (3) and (4)), and
  - (b) one or both of—
    - (i) the innovation condition (see subsection (6)), and
    - (ii) the skilled employee condition (see subsection (9)).
- (2) “The applicable time” means—
- (a) in relation to references to a knowledge-intensive company in section 280B or 280C, the date the current investment (within the meaning of the section in question) is made, and
  - (b) in relation to any other reference to a knowledge-intensive company, the date the relevant holding is issued.
- (3) 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.
- (4) 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.
- (5) In subsections (3) and (4)—
- “relevant operating costs” means—
- (a) if the relevant company is a single company at the applicable time, the operating costs of that company, and
  - (b) if the relevant company is a parent company at the applicable time, the sum of—
    - (i) the operating costs of the relevant company, and
    - (ii) the operating costs of each company which is a qualifying subsidiary of the relevant company at that time;
- “the relevant three preceding years” [<sup>F218</sup> means, subject to subsection (5A), the three consecutive years the last of which ends immediately before the beginning of the last accounts filing period.]

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[ If the last accounts filing period ends more than 12 months before the applicable time, <sup>F219</sup>(5A) the relevant three preceding years are the three consecutive years the last of which ends 12 months before the applicable time.]

- (6) “The innovation condition” is—
- (a) where the relevant company is a single company, that—
    - (i) the relevant company is engaged in intellectual property creation at the applicable time, and
    - (ii) it is reasonable to assume that, within 10 years of the applicable time, 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,
 will form the greater part of its business;
  - (b) where the relevant 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 applicable time, and
    - (ii) it is reasonable to assume that, within 10 years of the applicable time, 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 the business of the group, if the activities of the group companies taken together are regarded as one business.
- (7) For the purposes of subsection (6), 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.
- (8) 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

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- (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).
- (9) “The skilled employee condition” is that at the applicable time—
- (a) if the relevant company is a single company, the FTE skilled employee number is at least 20% of the FTE employee number, and
  - (b) if the relevant company is a parent company, the FTE group skilled employee number is at least 20% of the FTE group employee number.
- (10) In this section—
- “FTE employee number” for a company is the full-time equivalent employee number determined in accordance with section 297A(3);
- “FTE group employee number” means the sum of—
- (a) the FTE employee number for the relevant 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 relevant 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 297A(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 relevant company is a single company, by that company, or
    - (ii) if the relevant 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 relevant 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,

and, for the purposes of paragraph (a), sections 167, 170 and 171 (but not section 168) apply to determine if an individual is connected with the relevant company (with references in those sections to the issuing company read as references to the relevant company);

“intellectual property” has the meaning given by section 306(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 relevant company which ends before the applicable time;

“operating costs”, of a company for a period, 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));

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“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) 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.
- (13) A statutory instrument containing regulations under subsection (12) 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

**F217** S. 331A inserted (18.11.2015) by [Finance \(No. 2\) Act 2015 \(c. 33\)](#), [Sch. 6 para. 20](#)

**F218** Words in s. 331A(5) substituted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(5\)\(a\)\(6\)](#) (with s. 30)

**F219** S. 331A(5A) inserted (retrospectively) by [Finance Act 2016 \(c. 24\)](#), [s. 29\(5\)\(b\)\(6\)](#) (with s. 30)

#### [<sup>F220</sup>~~331A~~ **Knowledge-intensive company reaching turnover of £200,000**

- (1) This section has effect for the purposes of sections 280C(3)(a)(ii) and 294A(2)(a)(ii) (alternative initial investing period in case of knowledge-intensive company).
- (2) Where—
- (a) the annual turnover of the relevant 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.

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- (5) The turnover of the relevant 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 relevant 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 relevant company for the whole of the period;
  - (b) if the group company is a member of the same group as the relevant company for part of the period, its turnover for that part of the period.
- (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.]

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#### Textual Amendments

**F220** S. 331B inserted (6.4.2018) by Finance Act 2018 (c. 3), Sch. 4 paras. 9, 10; S.I. 2018/931, reg. 3(b)

### 332 Minor definitions etc

In this Part—

- “associate” has the meaning given by section 253,
- “company” includes any body corporate or unincorporated association but does not include a partnership, and is to be read in accordance with [F221section 99] of TCGA 1992 (unit trust schemes),
- “director” is read in accordance with [F222section 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,
- “research and development” has the meaning given by section 1006, and
- “shares” includes stock.

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#### Textual Amendments

**F221** Words in s. 332 substituted (1.1.2018) by The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 (S.I. 2017/1204), regs. 1(1), 12(a) (with reg. 1(2)(3)) and words in s. 332 omitted (1.1.2018) by virtue of The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 (S.I. 2017/1204), regs. 1(1), 12(b) (with reg. 1(2)(3)) which amendments fall due to the omission of Finance Act, Sch. 22 para. 11(5) (with effect in accordance with reg. 1(2) of the

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**Changes to legislation:** *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax Act 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

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amending S.I.) by virtue of The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 (S.I. 2017/1204), regs. 1(1), 13

**F222** Words in s. 332 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. 507** (with **Sch. 2**)

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income Tax Act 2007. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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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.)