
Changes to legislation: There are currently no known outstanding effects for the Finance (No. 3) Act 2010, Cross Heading: Venture capital trusts. (See end of Document for details)

SCHEDULES

SCHEDULE 2

VENTURE CAPITAL SCHEMES

Venture capital trusts

- 2 (1) Part 6 of ITA 2007 (venture capital trusts) is amended as follows.
- (2) In section 274 (requirements for the giving of approval)—
- (a) in the table in subsection (2), in the first entry, in column 2, for “included in the official UK list” substitute “admitted to trading on a regulated market”,
 - (b) in the last entry in the table, in columns 1 and 2, for “30%” substitute “70%”,
 - (c) in paragraphs (c) and (d) of subsection (3), for “30%” substitute “70%”, and
 - (d) at the end insert—
- “(4) In this section “regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14)).
- (5) The Treasury may by regulations amend—
- (a) the first entry in the table in subsection (2) (the listing condition), or
 - (b) subsection (4).”
- (3) In section 275(3)(b) (alternative requirements for the giving of approval), for “30%” substitute “70%”.
- (4) In section 278(1) (conditions relating to value of investments: general), for “30%” substitute “70%”.
- (5) In section 280(2) (conditions relating to qualifying holdings and eligible shares), for “30%” substitute “70%”.
- (6) In section 285 (interpretation of Chapter 3 of Part 6), for subsection (3) substitute—
- “(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

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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.”

- (7) In section 286 (qualifying holdings: introduction), in subsection (3), before paragraph (a) insert—

“(za) UK permanent establishment (see section 286A),

(zb) financial health (see section 286B),”.

- (8) Before section 287 insert—

The UK permanent establishment requirement

“286A 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.

The financial health requirement

286B) 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).”

- (9) In section 289(5) (the proportion of eligible shares requirement), for “285(3)” substitute “ 285(3A) and (3B) ”.

- (10) In section 291 (carrying on of qualifying activity requirement)—

- (a) in subsection (2), for “A qualifying trade carried on wholly or mainly in the United Kingdom” substitute “ Carrying on a qualifying trade ”,
(b) in subsection (3), omit “wholly or mainly in the United Kingdom”, and
(c) in subsection (4)(b), omit “wholly or mainly in the United Kingdom”.

- (11) In section 300(2) (meaning of “qualifying trade”), for paragraphs (a) and (b) substitute—

- “(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,”.

- (12) After section 302 (and before the italic heading “*Excluded activities*”) insert—

“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

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- (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,
 - (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.”
- (13) In section 313 (interpretation of Chapter 4 of Part 6)—
- (a) in subsection (6), omit the “and” at the end of paragraph (a) and after paragraph (b) insert “, and

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- (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.”, and
- (b) after subsection (7) insert—
 - “(8) In subsection (6) “eligible shares” has the same meaning as in Chapter 3 (see section 285(3A) and (3B)).”

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