

SCHEDULES

SCHEDULE 7

Section 39

ENTERPRISE INVESTMENT SCHEME

PART 1

ENTERPRISE INVESTMENT SCHEME

Introduction

- 1 Part 5 of ITA 2007 (enterprise investment scheme) is amended as follows.

Minimum subscription

- 2 In section 157 (eligibility for EIS relief), omit subsections (2) and (3).

Increase in amount of relief

- 3 (1) In section 158 (form and amount of EIS relief), in subsection (2)(b) for “£500,000” substitute “£1 million”.
(2) Accordingly, section 31 of FA 2008 is repealed.

Loan capital

- 4 In section 170 (person interested in capital etc of company)—
(a) in subsection (1)(b), omit “loan capital and”, and
(b) omit subsections (8) and (10).

Overview of Chapter 3

- 5 In section 172 (overview of Chapter 3), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and
(g) no disqualifying arrangements (see section 178A).”

Relaxation of the shares requirement

- 6 (1) Section 173 (the shares requirement) is amended as follows.
(2) In subsection (2), for paragraph (a) (but not the “or” after it) substitute—
“(a) any present or future preferential right to dividends that is within subsection (2A),
(aa) any present or future preferential right to a company’s assets on its winding up,”

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(3) After that subsection insert—

- “(2A) 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.”

Increase in the maximum amount permitted to be raised annually

- 7 (1) Section 173A (the maximum amount raised annually through risk capital schemes requirement) is amended as follows.
- (2) In subsection (1) for “£2 million” substitute “£5 million”.
- (3) In subsection (3)—
- (a) in paragraph (b), omit sub-paragraph (ii), and
 - (b) after that paragraph insert “, 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 Community Guidelines on Risk Capital Investments in Small and Medium-sized Enterprises (as those guidelines may be amended or replaced from time to time).”

Acquisition of shares or stock

- 8 In section 175 (the use of the money raised requirement), after subsection (1) insert—
- “(1A) Employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of a qualifying business activity.”

No disqualifying arrangements requirement

9 After section 178 insert—

“178A The no disqualifying arrangements requirement

- (1) The relevant shares must not be 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—

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- (i) that a qualifying business activity is or will be carried on by the issuing company or a qualifying 90% subsidiary of that company, and
 - (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the issuing company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a VCT,
 - (b) that activity is the relevant qualifying business activity, 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 shares being employed as required by section 175, 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 business activity would have been carried on as part of another business by a relevant person or relevant persons.
- (5) For the purposes of this section it is immaterial whether the issuing company is a party to the arrangements.
- (6) In this section—
 - “component activities” means—
 - (a) if the relevant qualifying business activity is activity A (see section 179(2)), the carrying on of a qualifying trade or preparing to carry on such a trade, which constitutes that activity, and
 - (b) if the relevant qualifying business activity is activity B (see section 179(4)), the carrying on of research and development which constitutes that activity;
 - “qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 (VCTs: qualifying holdings);
 - “relevant person” means a person who is a party to the arrangements or a person connected with such a party;
 - “relevant qualifying business activity” means the activity for the purposes of which the issue of the relevant shares raised money;
 - “relevant tax relief”, in respect of shares, means one or more of the following—
 - (a) EIS relief in respect of the shares;
 - (b) SEIS relief under Part 5A in respect of the shares;
 - (c) relief under Chapter 6 of Part 4 (losses on disposal of shares) in respect of the shares;
 - (d) relief under section 150A or 150E of TCGA 1992 (enterprise investment scheme) in respect of the shares;
 - (e) relief under Schedule 5B to that Act (enterprise investment scheme: reinvestment) in consequence of which deferral relief

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is attributable to the shares (see paragraph 19(2) of that Schedule);

- (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).”

Meaning of “qualifying business activity”

- 10 In section 179 (meaning of “qualifying business activity”), in subsection (1) omit “This is subject to subsections (3) and (5).”

Increase in the gross assets limits

- 11 In section 186 (the gross assets requirement)—
- (a) in subsections (1)(a) and (2)(a), for “£7 million” substitute “£15 million”, and
 - (b) in subsections (1)(b) and (2)(b), for “£8 million” substitute “£16 million”.

Relaxation of restriction on number of employees

- 12 In section 186A (the number of employees requirement), in subsections (1) and (2), for “50” substitute “250”.

Subsidised generation or export of electricity

- 13 (1) Section 192 (meaning of “excluded activities”) is amended as follows.
- (2) In subsection (1), omit “and” at the end of paragraph (k) and after that paragraph insert—
- “(ka) the subsidised generation or export of electricity, and”.
- (3) In subsection (2), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and
- (g) section 198A (subsidised generation or export of electricity).”
- 14 After section 198 insert—

“198A Excluded activities: subsidised generation or export of electricity

- (1) This section supplements section 192(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).
- (3) The generation of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity generated.
- (4) The export of electricity is “subsidised” if a person receives a FIT subsidy in respect of the electricity exported.
- (5) But the generation or export of electricity is not to be taken to fall within section 192(1)(ka) if Condition A, B or C is met.

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- (6) Condition A is that the generation or export is carried on by—
- (a) a community interest company,
 - (b) a co-operative society,
 - (c) a community benefit society, or
 - (d) a NI industrial and provident society.
- (7) Condition B is that the plant used for the generation of the electricity relies wholly or mainly on anaerobic digestion.
- (8) Condition C is that the electricity is hydroelectric power.
- (9) For the purposes of this section—
- “anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen (excluding anaerobic digestion of sewage or material in a landfill);
- “community benefit society” means—
- (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a community benefit society, or
 - (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(3) of that Act;
- “co-operative society” means—
- (a) a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 as a co-operative society, or
 - (b) a pre-2010 Act society (as defined at section 4A(1) of that Act) which meets the condition in section 1(2) of that Act;
- “FIT subsidy” means—
- (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to encourage small-scale low-carbon generation of electricity, or
 - (b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;
- “NI industrial and provident society” means a society registered under the [Industrial and Provident Societies Act \(Northern Ireland\) 1969 \(c. 24 \(N.I.\)\)](#);
- “small-scale low-carbon generation” has the meaning given by section 41(4) of the Energy Act 2008.”

15 In section 199 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for “(k)” substitute “(ka)”.

Powers to amend

16 In section 200 (power to amend by Treasury order), the existing provision becomes subsection (1) and after that subsection insert—

- “(2) An order under this section may—
- (a) make different provision for different cases or purposes, or

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- (b) include such transitional provision as the Treasury consider appropriate.”

Disposal of shares

- 17 In section 209 (disposal of shares), after subsection (5) insert—
“(6) Nothing in this section applies to a disposal of shares occurring as a result of the investor’s death.”

Date from which interest is chargeable

- 18 In section 239 (date from which interest is chargeable), in subsection (2) for “sections 181 to 188” substitute “sections 180A to 188”.

Information

- 19 In section 243 (power to require information in other cases)—
(a) in subsection (1), omit the “or” at the end of paragraph (d) and after that paragraph insert—
“(da) section 178A (no disqualifying arrangements), or”, and”
(b) in subsection (4), at the appropriate place in the table, insert—

“Subsection (1)(da)

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| The claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question” |
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Approved investment fund as nominee

- 20 In section 251 (approved investment fund as nominee), omit subsection (3).

Interpretation

- 21 In section 257 (minor definitions etc), in subsection (1), for the definition of “arrangements” substitute—
““arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);”.

Commencement and transitional provision

- 22 (1) The amendments made by paragraphs 2 to 6, 7(1) and (3), 8, 9, 10 and 19 have effect in relation to shares issued on or after 6 April 2012.
(2) But—
(a) for the purposes of paragraphs 5, 9 and 19 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012, and
(b) nothing in sub-paragraph (1) prevents shares issued before that date constituting a “relevant investment” (by virtue of the amendment made by paragraph 7(3)(b) of this Schedule) for the purposes of determining whether

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- the requirement of section 173A(1) of ITA 2007 is met in relation to shares issued on or after that date.
- 23 (1) The amendments made by paragraphs 7(2), 11 and 12 come into force on such day as the Treasury may by order appoint.
- (2) Those amendments have effect in relation to shares issued on or after 6 April 2012.
- 24 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 13 to 15 have effect in relation to shares issued on or after 23 March 2011.
- (2) Those amendments do not have effect in relation to shares issued before 6 April 2012 if the issuing company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 192(1)(ka) of ITA 2007 before that day.
- (3) Until such time as section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into force, section 198A(6) of ITA 2007 (inserted by paragraph 12 of this Schedule) has effect as if for paragraphs (b) and (c) there were substituted—
- “(b) a society registered under the Industrial and Provident Societies Act 1965.”.
- 25 (1) The amendment made by paragraphs 18 and 21 are to be treated as having come into force on 6 April 2012.

PART 2

ENTERPRISE INVESTMENT SCHEME: CHARGEABLE GAINS

Introduction

- 26 TCGA 1992 is amended as follows.

Disposal of shares to which EIS relief is attributable

- 27 In section 150A (disposal of shares to which EIS relief is attributable)—
- (a) in subsection (3), in paragraph (b) for “basic rate” substitute “EIS original rate”, and
- (b) after that subsection insert—
- “(3A) In subsection (3) “EIS original rate” has the meaning given by section 256A of ITA 2007, except that where the year mentioned in subsection (3)(b) is the tax year 2007-08 or an earlier year, it means 20%.”
- 28 Accordingly, in Schedule 1 to FA 2008, paragraph 48 is repealed.

Maximum annual investment

- 29 In paragraph 1 of Schedule 5B to the TCGA 1992 (EIS re-investment relief: application of Schedule), in sub-paragraph (2)(da), for “£2 million” substitute “£5 million”.

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No disqualifying arrangements

30 After paragraph 11 insert—

“Disqualifying arrangements

- 11A (1) Where an individual subscribes for eligible shares (“the shares”) in a company (“the company”), the shares are to be treated as not being eligible shares for the purposes of this Schedule if the shares are 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 business activity is or will be carried on by the company or a qualifying 90% subsidiary of the company, and
 - (ii) that one or more persons (whether or not including any party to the arrangements) may obtain relevant tax relief in respect of shares issued by the company which raise money for the purposes of that activity or that such shares may comprise part of the qualifying holdings of a venture capital trust,
 - (aa) that activity is the relevant qualifying business activity, and
 - (b) 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 shares being employed as required by paragraph 1(2)(g), 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 business activity would have been carried on as part of another business by a relevant person or relevant persons.
 - (5) For the purposes of this paragraph, it is immaterial whether the company is a party to the arrangements.
 - (6) In this paragraph—

“component activities” means—

 - (a) if the relevant qualifying business activity is activity A (see section 179(2) of ITA 2007), the carrying on of a qualifying trade, or preparing to carry on such a trade, which constitutes that activity, and
 - (b) if the relevant qualifying business activity is activity B (see section 179(4) of that Act), the carrying on of research and development which constitutes that activity;

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“qualifying holdings”, in relation to the issuing company, is to be construed in accordance with section 286 of ITA 2007 (VCTs: qualifying holdings);

“qualifying 90% subsidiary” has the meaning given by section 190 of ITA 2007;

“relevant person” means a person who is a party to the arrangements or a person connected with such a party;

“relevant qualifying business activity” means the activity for the purposes of which the issue of the shares raised money;

“relevant tax relief”, in respect of shares, means one or more of the following—

- (a) relief under this Schedule in consequence of which deferral relief is attributable to the shares;
- (b) relief under section 150A or 150E (enterprise investment scheme or seed enterprise investment scheme) in respect of the shares;
- (c) relief under Schedule 5BB (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);
- (d) relief under Chapter 6 of Part 4 of ITA 2007 (losses on disposal of shares) in respect of the shares;
- (e) EIS relief (within the meaning of Part 5 of that Act) in respect of the shares;
- (f) SEIS relief (within the meaning of Part 5A of that Act) in respect of the shares.”

Information

31 In paragraph 16 (information)—

- (a) in sub-paragraph (6), for “or 11(1)” substitute “, 11(1) or 11A”,
- (b) in sub-paragraph (7), omit the “and” at the end of paragraph (b) and after that paragraph insert—
 - “(ba) in relation to paragraph 11A, the claimant, the company, any person controlling the company and any person whom an officer of Revenue and Customs has reason to believe may be a party to the arrangements in question; and”, and
- (c) in that sub-paragraph, for “and (b)” substitute “, (b) and (ba)”.

Meaning of “arrangements”

32 In paragraph 19 (interpretation), in sub-paragraph (1) for the definition of “arrangements” substitute—

““arrangements” includes any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable);”.

Commencement

33 (1) The amendment made by paragraph 29 comes into force on such day as the Treasury may by order appoint.

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- (2) That amendment has effect in relation to shares issued on or after 6 April 2012.
- 34 (1) The amendments made by paragraphs 27, 28, 30 and 31 have effect in relation to shares issued on or after 6 April 2012.
- (2) For the purposes of those paragraphs it does not matter whether the disqualifying arrangements were entered into before or on or after that date.
- 35 The amendment made by paragraph 32 is treated as having come into force on 6 April 2012.