
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 17

VENTURE CAPITAL TRUSTS: FURTHER AMENDMENTS

Relaxation of restriction where there is a linked sale

- 1 (1) Section 264A of ITA 2007 (restricting VCT relief where there is a linked sale) is amended as follows.
- (2) In subsection (5), at the beginning of paragraph (b) insert “ if subsection (7A) applies, ”.
- (3) After subsection (7) insert—
- “ (7A) This subsection applies if—
- (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.”

The 70% qualifying holdings condition

- 2 In section 274 of ITA 2007 (requirements for the giving of approval), in the fifth entry of the table in subsection (2) (the 70% qualifying holdings condition), for “70%” in the first and second columns substitute “ 80% ”.

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Commencement Information

- I1** Sch. 5 para. 2 in force at 6.4.2019 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(a)

- 3 In consequence of the amendment made by paragraph 2, in each of the following provisions of ITA 2007, for “70%”, where it appears before “qualifying”, substitute “80%” —
- (a) in section 274, subsection (3)(c), (d) and (e);
 - (b) in section 275 (alternative requirements for the giving of approval), subsection (3)(b);
 - (c) in section 278 (conditions relating to value of investments: general), subsection (1);
 - (d) in section 280 (conditions relating to qualifying holdings and eligible shares), subsection (2);
 - (e) in section 280A (the 70% qualifying holdings condition: disposal of holding), in the heading and in subsection (2);
 - (f) in Schedule 4 (index of defined expressions), the entry for the qualifying holdings condition.

Commencement Information

- I2** Sch. 5 para. 3 in force at 6.4.2019 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(a)

- 4 In section 280A of ITA 2007, in subsection (2)(a), for “6” substitute “ 12 ”.

Commencement Information

- I3** Sch. 5 para. 4 in force at 6.4.2019 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(b)

The minimum investment on further issue condition

- 5 (1) Section 274 of ITA 2007 is amended as follows.
- (2) In the table in subsection (2), after the entry for “the investment limits condition” insert—

“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”
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- (3) In subsection (3), after paragraph (f) insert—
- “(fa) the minimum investment on further issue condition by section 280BA,”

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Commencement Information

- I4** Sch. 5 para. 5 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(c)

6 After section 280B of ITA 2007 insert—

“280BA The minimum investment on further issue condition

- (1) A company breaches the minimum investment on further issue condition where—
- (a) there has been an issue of ordinary share capital of the company (“the first issue”),
 - (b) a VCT approval of the company has taken effect on or before the day of the making of the first issue,
 - (c) a further issue (“the further issue”) of ordinary share capital of the company has been made since the making of the first issue, and
 - (d) 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.”

Commencement Information

- I5** Sch. 5 para. 6 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(c)

Non-qualifying loans

7 (1) Section 285 of ITA 2007 (interpretation of Chapter 3 etc of Part 6) is amended as follows.

(2) In subsection (2)—

- (a) omit “(whether secured or not)”;
- (b) at the end of paragraph (b) insert “, or
- (c) any liability of the company in respect of a loan to which subsection (2A) applies that has been made to the company.”

(3) After that subsection insert—

“(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—

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(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).”

Commencement Information

I6 Sch. 5 para. 7 in force at 15.3.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(d) (with reg. 5)

Qualifying holdings: exclusions

8 (1) Part 8 of Schedule 2 to ITA 2007 (transitional provision: venture capital trusts) is amended as follows.

(2) In paragraph 69 (the no guaranteed loan requirement), after “acquired” insert “before 6 April 2018”.

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- (3) In paragraph 70 (the proportion of eligible shares requirement), in sub-paragraph (2), after “acquired” insert “ before 6 April 2018 ”.
- (4) In paragraph 81 (meaning of “excluded activities”), after “acquired” insert “ before 6 April 2018 ”.

Commencement Information

- I7** Sch. 5 para. 8 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(e)

- 9 In Part 1 of Schedule 16 to FA 2007 (venture capital trusts: limit on number of employees in company in which investment made), in paragraph 3(6)(b), after “(“the investing company”)” insert “ before 6 April 2018 ”.

Commencement Information

- I8** Sch. 5 para. 9 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(e)

- 10 In Schedule 11 to FA 2008 (venture capital trusts), in paragraph 12(b), after “(“the investing company”)” insert “ before 6 April 2018 ”.

Commencement Information

- I9** Sch. 5 para. 10 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(e)

- 11 (1) In Schedule 2 to F(No.3)A 2010 (venture capital trusts), in paragraph 6(2)(b), after “the investing company” insert “ before 6 April 2018 ”.
- (2) The 30% eligible shares condition does not apply in relation to an accounting period ending on or after 6 April 2018.
- (3) In sub-paragraph (2) “the 30% eligible shares condition” means the condition referred to as such in section 274(2) of ITA 2007 as originally enacted.

Commencement Information

- I10** Sch. 5 para. 11 in force at 6.4.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(e)

Commencement

- 12 The amendments made by paragraph 1 have effect in relation to claims for relief by reference to shares issued on or after 6 April 2014.
- 13 The other amendments made by this Schedule come into force in accordance with provision made by the Treasury by regulations.
- 14 Regulations under paragraph 13—
(a) may make different provision for different purposes;

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- (b) may provide for any of those amendments to come into force on or by reference to a day that is—
 - (i) earlier than the day on which the regulations are made, but
 - (ii) not earlier than the day on which this Act is passed.

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