

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1997, SCHEDULE 17. (See end of Document for details)

SCHEDULES

SCHEDULE 17

Section 87.

CHARGEABLE GAINS: RE-INVESTMENT RELIEF

Introductory

- 1 The ^{M1}Taxation of Chargeable Gains Act 1992 shall be amended in accordance with the provisions of this Schedule.

Marginal Citations

M1 1992 c. 12.

Qualifying investments

- 2 (1) In subsection (8) of section 164A (cases where eligible shares are not a qualifying investment), after “in a qualifying company shall” there shall be inserted “, subject to subsection (8A) below, ”.
- (2) After that subsection there shall be inserted the following subsections—
- “(8A) Where the eligible shares acquired by any person in a qualifying company are shares which he acquires by their being issued to him, his acquisition of the shares shall not be regarded as the acquisition of a qualifying investment unless the qualifying company, or a qualifying subsidiary of that company, is intending to employ the money raised by the issue of the shares wholly for the purposes of a qualifying trade carried on by it.
- (8B) For the purposes of subsection (8A) above—
- (a) the purposes of a trade include the purpose of preparing for the carrying on of the trade; and
- (b) “qualifying subsidiary” has the same meaning as in section 164G.”

Loss of relief

- 3 (1) In subsection (1) of section 164F (failure of conditions of relief), after “or this section” there shall be inserted “ or section 164FA ”.
- (2) After that section there shall be inserted the following section—

“164FA Loss of relief in cases where shares acquired on being issued.

- (1) Subsection (5) below applies in any case falling within any of subsections (2) to (4) below which is a case where—
- (a) a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as

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- reduced, under section 164A or 164F or this section, by any amount (“the held-over gain”); and
- (b) that person acquired those shares by their being issued to him.
- (2) A case falls within this subsection if—
- (a) the money raised by the issue of the shares comprised in the acquired holding was, at the time when those shares were acquired, intended to be employed for the purposes of a qualifying trade then being carried on; and
- (b) that money has not been wholly employed for permissible purposes by the end of the initial utilisation period.
- (3) A case falls within this subsection if—
- (a) the money raised by the issue of the shares comprised in the acquired holding was, at the time when those shares were acquired, intended to be employed for the purposes of a qualifying trade not then being carried on;
- (b) that trade begins to be carried on before the end of the period of 2 years from that time; and
- (c) that money (apart from any part of it wholly employed for permissible purposes within the initial utilisation period) has not been wholly employed for the purposes of that trade by the end of the period of 1 year from the time when that trade begins to be carried on (“the first trading year”).
- (4) A case falls within this subsection if—
- (a) the money raised by the issue of the shares comprised in the acquired holding was, at the time when those shares were acquired, intended to be employed for the purposes of a qualifying trade not then being carried on;
- (b) that trade does not begin to be carried on before the end of the period of 2 years from that time; and
- (c) that money has not been wholly employed for permissible purposes by the end of the initial utilisation period.
- (5) In a case in which this subsection applies, but subject to the following provisions of this section, a chargeable gain equal to the appropriate portion of the held-over gain shall be treated as accruing to the person mentioned in subsection (1) above immediately before the utilisation time; and in this subsection “the utilisation time” means—
- (a) in relation to a case falling within subsection (2) above, the end of the initial utilisation period;
- (b) in relation to a case falling within subsection (3) above, the end of the first trading year; and
- (c) in relation to a case falling within subsection (4) above, the end of the period of 2 years mentioned in that subsection.
- (6) If, in a case in which subsection (5) above applies, part (but only part) of the money raised by the issue of the shares comprised in the acquired holding has been permissibly employed, this Chapter shall have effect in relation to that holding—
- (a) as if it were two separate holdings consisting of—

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- (i) a holding from which that part of the money was raised; and
 - (ii) a holding from which the remainder was raised;
 - and
 - (b) as if its value were to be apportioned accordingly between those two holdings;
- but nothing in this subsection shall require any money whose use is disregarded by virtue of subsection (8)(e) below to be treated as raised by a different holding.
- (7) For the purposes of subsection (6) above a part of the money raised by the issue of the shares comprised in the acquired holding shall be taken to have been permissibly employed if—
- (a) in a case falling within subsection (2) or (4) above, that part has been wholly employed for permissible purposes within the initial utilisation period; or
 - (b) in a case falling within subsection (3) above that part has been wholly employed—
 - (i) for permissible purposes within the initial utilisation period, or
 - (ii) for the purposes of the trade mentioned in that subsection before the end of the first trading year.
- (8) For the purposes of this section—
- (a) the appropriate portion of the held-over gain is so much, if any, of that gain as has not already been charged on any disposal or under section 164F or this section;
 - (b) “the initial utilisation period” means the period of 1 year from the time when the acquired holding was acquired;
 - (c) “permissible purposes”, in relation to a company, means the purposes of any qualifying trade carried on by it or by any of its qualifying subsidiaries;
 - (d) “qualifying subsidiary” has the same meaning as in section 164G;
 - (e) money shall not be treated as employed otherwise than wholly for particular purposes if the only amount employed for other purposes is an amount which is not a significant amount; and
 - (f) the purposes of a qualifying trade shall be taken to include the purpose of preparing for the carrying on of the trade.
- (9) Subsections (4) to (5) and (10A) to (11) of section 164F shall apply for the purposes of this section as they apply for the purposes of that section, but—
- (a) subsection (5) of that section shall so apply—
 - (i) with the omission of paragraphs (e) to (g), and
 - (ii) as if the reference in paragraph (d) to any charge under subsection (2) of that section were a reference to any charge under subsection (5) of this section;
- and
- (b) subsection (10A) of that section shall so apply as if the reference to subsection (2) of that section were a reference to subsection (5) of this section.”

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Meaning of “qualifying company”

- 4 (1) For paragraphs (b) and (c) of subsection (2) of section 164G (company must be of one of the given descriptions) there shall be substituted “or
- (aa) an unquoted company which is the parent company of a trading group.”
- (2) For subsections (4) and (5) of that section (meaning of “qualifying subsidiary”) there shall be substituted the following subsections—
- “(4) In this section “qualifying subsidiary”, in relation to a company (“the holding company”), means any company which is a member of a group of companies of which the holding company is the principal company.
- (4A) For the purposes of this section a company is the parent company of a trading group if—
- (a) it is the principal company of a group of companies; and
- (b) the requirements of subsection (4B) below are fulfilled by what would be the business of the company and its qualifying subsidiaries if all the activities, taken together, of the company and its qualifying subsidiaries were regarded as one business.
- (4B) A business fulfils the requirements of this subsection if—
- (a) it is carried on wholly or mainly in the United Kingdom; and
- (b) neither the business nor a substantial part of it consists in, or in either of, the following, that is to say—
- (i) activities falling within section 164I(2) but not within subsection (4C) below; and
- (ii) activities carried on otherwise than in the course of a trade.
- (4C) The activities falling within this subsection are—
- (a) the receiving of royalties or licence fees in circumstances where the requirements mentioned in paragraphs (a) and (b) of section 164I(5) or (6) are satisfied in relation to the company receiving them;
- (b) the letting of ships, other than oil rigs or pleasure craft, on charter in circumstances where the requirements mentioned in paragraphs (a) to (d) of section 164I(7) are satisfied in relation to the company so letting them.
- (4D) Activities of a company or of any of its qualifying subsidiaries shall be disregarded for the purposes of subsections (4A) to (4C) above to the extent that they consist in—
- (a) the holding of shares in or securities of, or the making of loans to, one or more of the company’s qualifying subsidiaries; or
- (b) the holding and managing of property used by the company or any of its qualifying subsidiaries for the purposes of—
- (i) research and development from which it is intended that a qualifying trade to be carried on by the company or any of its qualifying subsidiaries will be derived; or
- (ii) one or more qualifying trades so carried on.

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(4E) Activities of a qualifying subsidiary of a company shall also be disregarded for the purposes of subsections (4A) to (4C) above to the extent that they consist in—

- (a) the making of loans to the company; or
- (b) in the case of a mainly trading subsidiary, activities carried on in pursuance of its insignificant purposes (within the meaning given by subsection (4F) below).

(4F) In subsection (4E) above “mainly trading subsidiary” means a qualifying subsidiary which, apart from purposes (“its insignificant purposes”) capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, exists wholly for the purpose of carrying on one or more qualifying trades.”

Meaning of “qualifying trade”

- 5 (1) In paragraph (a) of subsection (1) of section 164I (meaning of “qualifying trade”), after “complies with the requirements of this section” there shall be inserted “ and is carried on wholly or mainly in the United Kingdom ”.
- (2) In paragraph (b) of that subsection—
- (a) after the words “the carrying on” (where they first occur) there shall be inserted “ , wholly or mainly in the United Kingdom, ”; and
 - (b) after “complying with those requirements” there shall be inserted “ , and to be carried on wholly or mainly in the United Kingdom, ”.

Interpretation of Chapter IA of Part V

- 6 (1) For subsection (2) of section 164N (application of section 170 for the interpretation of sections 164G and 164I) there shall be substituted the following subsection—
- “(2) Section 170 shall apply for the interpretation of sections 164G and 164I as it would apply for the interpretation of sections 171 to 181 if section 170(2) (a) together with the words “(although resident in the United Kingdom)” in section 170(9)(b) were omitted.”
- (2) In section 164N (interpretation of Chapter IA), after subsection (4) there shall be inserted the following subsection—
- “(5) For the purposes of this Chapter, any allotment of shares before their issue shall be disregarded in determining whether and when a person acquires shares by their issue to him.”

Commencement

- 7 (1) This Schedule—
- (a) applies in relation to shares acquired after 26th November 1996; and
 - (b) subject to sub-paragraph (3) below, applies after 26th November 1996 in relation to shares that fall within sub-paragraph (2) below.
- (2) Shares fall within this sub-paragraph if—
- (a) they were acquired by a person at any time on or before 26th November 1996;

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- (b) they were held by him throughout the period beginning with that time and ending with 26th November 1996; and
 - (c) at all times in that period they were, for the purposes of Chapter IA of Part V of the ^{M2}Taxation of Chargeable Gains Act 1992, eligible shares in a qualifying company.
- (3) The application of the preceding provisions of this Schedule in relation to any shares falling within sub-paragraph (2) above shall not prevent those shares from being (or having been) shares in a qualifying company at any relevant time when those shares would have been shares in such a company if this Schedule had not been enacted.
- (4) For the purposes of sub-paragraph (3) above a time is a relevant time in relation to any shares falling within sub-paragraph (2) above if it is a time after 26th November 1996 and within the period of 3 years after the acquisition of the shares.

Marginal Citations

M2 1992 c. 12.

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