

SCHEDULES

SCHEDULE 8

Section 40

VENTURE CAPITAL SCHEMES

Introduction

- 1 Part 6 of ITA 2007 (venture capital trusts) is amended in accordance with paragraphs 2 to 13.

VCT approvals

- 2 (1) Section 274 (requirements for the giving of approval) is amended as follows.

- (2) In subsection (2), in the list of conditions, at the end insert—

“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”

- (3) In subsection (3), omit the “and” at the end of paragraph (d), and after paragraph (e) insert “, and

- (f) the investment limits condition by section 280B.”

- 3 After section 280A insert—

“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 if the total annual investment in the relevant company exceeds the amount for the time being specified in section 292A(1).

- (3) The total annual investment in the relevant company is the sum of—

- (a) the amount of the current investment, and
- (b) the total amount of other relevant investments made in the relevant company (whether or not by the investor) in the year ending with the day on which the current investment is made.

- (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—

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- (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, 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).
- (5) For the purposes of subsections (2) and (3), an investment within subsection (4)(b) is regarded as made when the shares are issued.”

Qualifying holdings: introduction

- 4 In section 286 (qualifying holdings: introduction), in subsection (3), omit the “and” at the end of paragraph (k) and after paragraph (l) insert “, and
- (m) no disqualifying arrangements (see section 299A).”

Relaxation of maximum qualifying investment requirement

- 5 (1) Section 287 (maximum qualifying investment requirement) is amended as follows.
- (2) In subsection (1), after “that” insert “, if the condition in subsection (1A) is met,”.
- (3) After that subsection insert—
- “(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.”
- (4) In subsection (2)—
- (a) for “Subject to subsection (7), the” substitute “The”, and
 - (b) after “exceeds” insert “the relevant fraction of”.

- (5) After that subsection insert—

“(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.”

(6) Omit subsections (6) and (7).

Increase in the maximum amount permitted to be raised annually

6 (1) Section 292A (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).”

(4) In subsection (5) omit “or paragraph 42 of Schedule 15 to FA 2000”.

Acquisition of shares

7 In section 293 (the use of the money raised requirement), after subsection (5) insert—

“(5A) 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.”

Increase in the gross assets limits

8 In section 297 (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

9 In section 297A (the number of employees requirement), in subsections (1) and (2), for “50” substitute “250”.

No disqualifying arrangements requirement

10 After section 299 insert—

“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.

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- (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.
- (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;
- (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)."

Subsidised generation or export of electricity

- 11 (1) Section 303 (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 309A (subsidised generation or export of electricity).”
- 12 After section 309 insert—

“309A Excluded activities: subsidised generation or 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).
- (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 303(1)(ka) if Condition A, B or C is met.
- (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 to generate 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—

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“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.”

- 13 In section 310 (excluded activities: provision of services or facilities for another business), in subsection (1)(a), for “(k)” substitute “(ka)”.

Powers to amend

- 14 In section 311 (power to amend Chapter 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
- (b) include such transitional provision as the Treasury consider appropriate.”

Information

- 15 After section 312 insert—

“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

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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.”

16 In section 313 (interpretation of Chapter 4), in subsection (5), after “Chapter” insert “(other than section 312A)”.

Consequential amendment

17 In section 98 of TMA 1970 (special returns, etc), in the first column of the Table, before the entry for “regulations under Chapter 5 of Part 6 of ITA 2007” insert—

“section 312A of ITA 2007;”.

Commencement and transitional provision

18 (1) The amendments made by paragraphs 2 and 3 have effect in relation to investments made on or after the day on which this Act is passed.

(2) But nothing in sub-paragraph (1) prevents investments made before that day constituting a “relevant investment” for the purposes of section 280B of ITA 2007 (as inserted by paragraph 3) for the purposes of determining whether the investment limits condition in section 274 of that Act is breached by an investment made on or after that day.

19 (1) The amendments made by paragraphs 4, 5, 6(1) and (3), 10, 15 and 16 have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company’s qualifying holdings.

(2) But for the purposes of paragraphs 4, 10, 15 and 16 it does not matter whether the disqualifying arrangements were entered into before or on or after 6 April 2012.

20 (1) The amendments made by paragraphs 6(2), 8 and 9 come into force on such day as the Treasury may by order appoint.

(2) Those amendments have effect for the purpose of determining whether shares or securities issued on or after 6 April 2012 are to be regarded as comprised in a company’s qualifying holdings.

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- 21 (1) Paragraph 7 is to be treated as having come into force on 6 April 2012.
- (2) The amendments made by that paragraph do not have effect in relation to an investment made by a VCT of protected money.
- (3) “Protected money” means—
- (a) money raised by the issue before 6 April 2012 of shares in or securities of the VCT, and
 - (b) money derived from the investment of such money.
- 22 (1) Subject to sub-paragraph (2), the amendments made by paragraphs 11 to 13 have effect in relation to a relevant holding issued on or after 23 March 2011.
- (2) Those amendments do not have effect in relation to any relevant holding issued before 6 April 2012 if the relevant company, or a qualifying 90% subsidiary of that company, first began to carry on activities of the kind mentioned in section 303(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 309A(6) of ITA 2007 (as inserted by paragraph 10 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,”.