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SCHEDULES

SCHEDULE 8

Section 74.

ENTERPRISE INVESTMENT SCHEME: QUALIFYING COMPANIES

Introductory

- 1 Chapter III of Part VII of the Taxes Act 1988 (the enterprise investment scheme)—
- (a) in its application in relation to shares issued after 26th November 1996, and
 - (b) in its application after 26th November 1996 in relation to shares which—
 - (i) were issued on or after 1st January 1994 but before 27th November 1996, and
 - (ii) immediately before 27th November 1996 were held by an individual and at that time were shares to which, within the meaning of that Chapter, any relief was attributable,
- shall have effect with the following amendments.

Requirements to be satisfied by the company for whose business activity money is raised

- 2 (1) In subsection (1) of section 289 (conditions for eligibility for relief), immediately before the word “and” at the end of paragraph (b) there shall be inserted the following paragraph—
- “(ba) the requirements of subsection (1A) below are satisfied in relation to the company.”.
- (2) After that subsection there shall be inserted the following subsections—
- “(1A) The requirements of this subsection are satisfied in relation to a qualifying company if throughout the relevant period the active company—
 - (a) is such a company as is mentioned in section 293(2)(a), or
 - (b) would be such a company if its purposes were disregarded to the extent that they consist in the carrying on of activities such as are mentioned in section 293(3D)(a) and (b) and (3E)(a), or
 - (c) is a subsidiary of the qualifying company and falls within subsection (1B) below.
 - (1B) A subsidiary of the qualifying company falls within this subsection if—
 - (a) apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, it exists wholly for the purpose of carrying on activities such as are mentioned in section 293(3D)(b); or
 - (b) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.
 - (1C) In subsection (1A) above “the active company” means the qualifying company or, where the qualifying business activity mentioned in

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subsection (1) above consists in a subsidiary of that company carrying on or preparing to carry on a qualifying trade, research and development or oil exploration, that subsidiary.

(1D) Subsection (6) of section 293 shall apply in relation to the requirements of subsection (1A) above as it applies in relation to subsection (2) of that section.”

Limit on relief for trading groups which let or operate ships

3 (1) In subsection (6) of section 290A (maximum sum eligible for relief in cases of trades involving the letting or operating of ships), for paragraphs (b) and (c) there shall be substituted “or

(aa) in the case of a company falling within subsection (2)(aa) of that section—

- (i) it satisfies the requirements of subsection (6A) below, and
- (ii) each of its subsidiaries is a shipping company,”.

(2) After that subsection there shall be inserted the following subsections—

“(6A) A company satisfies the requirements of this subsection if, apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, the company exists wholly

- (a) for the purpose of carrying on activities such as are mentioned in section 293(3D)(a) and (b); or
- (b) for the purpose of carrying on one or more qualifying trades which or each of which is a trade to which subsection (7) below applies; or
- (c) for any combination of the purposes mentioned in paragraphs (a) and (b) above.

(6B) For the purposes of subsection (6) above a subsidiary of a company falling within section 293(2)(aa) is a shipping company if—

- (a) that subsidiary satisfies the requirements of subsection (6A) above, or
- (b) it would satisfy those requirements if the reference in subsection (6A)(a) above to section 293(3D)(a) and (b) included a reference to section 293(3E)(a), or
- (c) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.”

Meaning of “qualifying company”

4 (1) In subsection (2) of section 293 (meaning of “qualifying company”), for paragraph (b) there shall be substituted the following paragraph—

“(aa) the parent company of a trading group.”

(2) After subsection (3) of that section there shall be inserted the following subsections—

“(3A) For the purposes of this section a company is the parent company of a trading group if—

- (a) it has one or more subsidiaries;

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- (b) each of its subsidiaries is a qualifying subsidiary of the company;
and
 - (c) the requirements of subsection (3B) below are fulfilled by what would be the business of the company and its subsidiaries if all the activities, taken together, of the company and its subsidiaries were regarded as one business.
- (3B) A business fulfils the requirements of this subsection if neither the business nor a substantial part of it consists in, or in either of, the following, that is to say—
- (a) activities falling within section 297(2)(a) to (g) but not within subsection (3C) below; and
 - (b) activities carried on otherwise than in the course of a trade.
- (3C) 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 297(4) or (5) 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 297(6) are satisfied in relation to the company so letting them.
- (3D) Activities of a company or of any of its subsidiaries shall be disregarded for the purposes of subsections (3A) to (3C) 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 subsidiaries; or
 - (b) the holding and managing of property used by the company or any of its 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 subsidiaries will be derived; or
 - (ii) one or more qualifying trades so carried on.
- (3E) Activities of a subsidiary of a company shall also be disregarded for the purposes of subsections (3A) to (3C) 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 otherwise than in pursuance of its main purpose.
- (3F) For the purposes of subsection (3E) above—
- (a) “mainly trading subsidiary” means a subsidiary which, apart from 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; and
 - (b) that purpose shall be taken to be its main purpose.”

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Consequential amendments of section 297

- 5 In section 297(3)(c)(i), and in the words after paragraph (d) in section 297(6) (which refer to the activities falling within section 297(2)), for “(2)” there shall be substituted “ (2)(a) to (g) ”.

Consequential repeals of provisions about subsidiaries

- 6 In section 308 (subsidiaries)—
- (a) paragraph (b) of subsection (1), and the word “and” immediately preceding that paragraph, and
 - (b) paragraphs (a) and (b) of subsection (5),
- shall be omitted.

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Changes and effects yet to be applied to :

- Sch. 8 repealed by 2007 c. 3 Sch. 3 Pt. 2

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by S.I. 2011/1043 art. 3 4
- Blanket amendment words substituted by S.I. 2011/1043 art. 3 6

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(3A)-(3C) inserted by 2007 c. 11 Sch. 25 para. 17(3)
- s. 10(3A) omitted by 2012 c. 14 Sch. 24 para. 56
- s. 10(3C)(a) words inserted by 2009 c. 10 s. 114(6)
- s. 10(3AA) inserted by 2009 c. 10 s. 114(5)
- s. 10(3AA) substituted by 2012 c. 14 Sch. 24 para. 48
- s. 11(10A) inserted by 2007 c. 11 Sch. 25 para. 18(3)
- s. 14(4) inserted by 2009 c. 10 s. 114(12)
- s. 51(A1) inserted by 2007 c. 15 Sch. 13 para. 126(2)
- s. 51(A1) omitted by 2008 c. 9 Sch. 43 para. 6
- s. 52(2)(aa) inserted by 2007 asp 3 Sch. 5 para. 24(a)
- Sch. 12 para. 2(1A) inserted by 2006 c. 25 Sch. 9 para. 7(2)
- Sch. 12 para. 16(1A) inserted by 2006 c. 25 Sch. 9 para. 7(3)
- Sch. 18 Pt. 6(3) Note 3(b) repealed by 2003 c. 1 Sch. 8 Pt. 1

Commencement Orders yet to be applied to the Finance Act 1997

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2003/392 art. 2 commences (2002 c. 21)
- S.I. 2003/766 art. 2 Sch. commences (2002 c. 40)
- S.I. 2003/962 art. 2 Sch. 1 2 commences (2002 c. 21)
- S.I. 2003/1397 art. 2(1) Sch. commences (2002 c. 40)
- S.I. 2003/2093 art. 2 Sch. 1 2 commences (2002 c. 40)
- S.I. 2007/2532 art. 2 commences (2007 c. 11)
- S.I. 2009/403 art. 2 commences (2008 c. 9)
- S.I. 2009/511 art. 2 commences (2008 c. 9)
- S.I. 2009/3024 art. 3 commences (2008 c. 9)
- S.I. 2010/128 art. 2 commences (2006 c. 18)
- S.I. 2010/495 art. 4(d) commences (2006 c. 18)
- S.I. 2010/867 art. 2 commences (2009 c. 10)
- S.S.I. 2009/369 art. 3 Sch. commences (2007 asp 3)