

SCHEDULES

SCHEDULE 18

ENTERPRISE INVESTMENT SCHEME

PART 1

INCOME TAX RELIEF

- 1 (1) Section 289 of the Taxes Act 1988 (eligibility for income tax relief) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit “wholly in cash”,
 - (b) after that paragraph insert—
 - “(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash,”
 - (c) in paragraph (aa), for the words from “are fully” to “future date)” substitute “(other than any of them which are bonus shares) are fully paid up”,
 - (d) in paragraph (b), for “and all other shares comprised in the same issue” substitute “(other than any of them which are bonus shares)”,
 - (e) for paragraph (c) substitute—
 - “(c) at least 80 per cent. of the money raised by the issue of—
 - (i) the shares, and
 - (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day, is employed wholly for the purpose of the activity mentioned in paragraph (b) above not later than the time mentioned in subsection (3) below, and”.
- (3) For subsections (1A) to (1D) substitute—
- “(1A) The requirements of this subsection are satisfied in relation to the qualifying company if at no time in the relevant period is any of the following, namely—
- (a) the relevant qualifying trade,
 - (b) relevant preparation work (if any), and
 - (c) relevant research and development (if any),
- being carried on by a person other than the qualifying company or a qualifying 90% subsidiary of that company.
- (1B) In a case where relevant preparation work is carried on by the qualifying company or a qualifying 90% subsidiary of that company, there is to be disregarded, for the purpose of determining whether the requirements of

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subsection (1A) above are satisfied in relation to the qualifying company, the carrying on of the relevant qualifying trade by a company other than—

- (a) the qualifying company, or
- (b) a subsidiary of that company,

at any time in the relevant period before the qualifying company or any qualifying 90% subsidiary of that company carries on that trade.

(1C) The requirements of subsection (1A) above are not to be regarded as failing to be satisfied in relation to the qualifying company if—

- (a) by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership, or
- (b) by reason only of the qualifying company or any other company being wound up or dissolved without winding up,

the relevant qualifying trade ceases to be carried on in the relevant period by the qualifying company or any qualifying 90% subsidiary of that company and is subsequently carried on in that period by a person who is not at any time in the period of restriction connected with the qualifying company.

(1D) Subsection (1C) above applies only if (as the case may be)—

- (a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(1E) In this section—

“relevant preparation work” means preparations falling within subsection (2)(a)(ii) below which are the subject of the qualifying business activity mentioned in subsection (1) above,

“the relevant qualifying trade” means the qualifying trade which is the subject of that qualifying business activity,

“relevant research and development” means—

- (a) research and development falling within subsection (2)(b) below which is the subject of that qualifying business activity, and
- (b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.”.

(4) In subsection (2)—

- (a) in paragraph (a), for “subsidiary” substitute “qualifying 90% subsidiary of that company”,
- (b) in paragraph (a)(i), for “it” substitute “the company or any such subsidiary”,
- (c) in paragraph (a)(ii)—
 - (i) for “preparing to carry on” substitute “preparing to carry on, or carrying on,”,
 - (ii) for “it intends to carry” substitute “is intended to be carried”,

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- (iii) for “and which it begins to carry on” substitute “by the company or any such subsidiary and which is begun to be carried on by the company or any such subsidiary”,
 - (d) in the full-out words at the end of paragraph (a), for “trade is” substitute “trade is so”,
 - (e) in paragraph (b)—
 - (i) for “subsidiary”, in the first place, substitute “qualifying 90% subsidiary of that company”,
 - (ii) in sub-paragraph (i), for “it is carrying on or which it” substitute “the company or any such subsidiary is carrying on or which the company or any such subsidiary”,
 - (iii) in sub-paragraph (ii), for “subsidiary” substitute “such subsidiary”.
- (5) In subsection (3)(b), for “subsidiary concerned” substitute “a qualifying 90% subsidiary of that company”.
- (6) After subsection (3) insert—
 - “(3A) In determining—
 - (a) for the purposes of subsection (2)(a)(ii) or (3)(b) above when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, or
 - (b) for the purposes of subsection (2)(b)(i) above when research and development is begun to be carried on by such a subsidiary of a company,
there shall be disregarded any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary of the company.”.
- (7) After subsection (8) insert—
 - “(8A) Shares are not fully paid up for the purposes of subsection (1)(aa) above if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.”.
- (8) For subsection (9) substitute—
 - “(9) For the purposes of this Chapter, a company (“the relevant subsidiary”) is a qualifying 90% subsidiary of another company (“the holding company”) if the following conditions are met—
 - (a) the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the relevant subsidiary;
 - (b) the holding company would—
 - (i) in the event of a winding up of the relevant subsidiary, or
 - (ii) in any other circumstances,
be beneficially entitled to receive not less than 90% of the assets of the relevant subsidiary which would then be available for distribution to the equity holders of the subsidiary;
 - (c) the holding company is beneficially entitled to not less than 90% of any profits of the relevant subsidiary which are available for distribution to the equity holders of the subsidiary;

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- (d) no person other than the holding company has control of the relevant subsidiary within the meaning of section 840; and
 - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.
- (10) Subsections (3), (3A) and (4) of section 308 apply in relation to the conditions in subsection (9) above as they apply in relation to the conditions in subsection (2) of that section, but with the following modifications.
- (11) Those modifications are—
 - (a) that references in subsections (3), (3A) and (4) of that section to the subsidiary are to be read as references to the relevant subsidiary, and
 - (b) that subsection (4) of that section is to be read as if the words “the holding company” were substituted for the words “the qualifying company or (as the case may be) by another subsidiary”.
- (12) For the purposes of subsection (9) above—
 - (a) the persons who are equity holders of the relevant subsidiary, and
 - (b) the percentage of the assets of the relevant subsidiary to which an equity holder would be entitled,are to be determined in accordance with paragraphs 1 and 3 of Schedule 18.
- (13) But in making that determination—
 - (a) references in paragraph 3 of Schedule 18 to the first company are to be read as references to an equity holder, and
 - (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the relevant subsidiary are available for distribution to its equity holders.”.