

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.”.
- 2 (1) Section 289A of the Taxes Act 1988 (form of relief) is amended as follows.
- (2) In subsection (6), for the words from “A claim” to “below is complied with” substitute “A claim for relief in respect of eligible shares issued by a company shall not be allowed unless subsection (7) below is complied with in relation to the issue of shares in question”.
- (3) In subsection (7)—
- (a) in paragraph (a)—
 - (i) for “the case of shares issued” substitute “a case where the money raised by an issue of eligible shares is raised wholly”,
 - (ii) for “company or subsidiary concerned has carried on the trade for four months” substitute “trade concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company”,
 - (b) in paragraph (b)—
 - (i) for “the case of shares issued” substitute “a case where the money raised by an issue of eligible shares is raised wholly or partly”,
 - (ii) for the words from “or within” to the end substitute “the research and development concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company”.

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- (4) In subsection (8)—
- (a) for paragraph (a) substitute—
 - “(a) by reason only of the qualifying company or any other company being wound up or dissolved without winding up—
 - (i) the trade concerned is carried on as mentioned in subsection (7)(a) above, or
 - (ii) the research and development concerned is carried on as mentioned in subsection (7)(b) above, for a period shorter than four months, and”,
 - (b) in paragraph (b)—
 - (i) omit “it is shown that”,
 - (ii) for “was for” substitute “is for”,
 - (iii) for “not as” substitute “is not”,
 - (iv) for “which was” substitute “which is”,
 - (c) in the full-out words at the end, after “(7)(a)” insert “or, as the case may be, (7)(b)”.
- (5) In subsection (8A)—
- (a) for the words from “Where” to “shorter period.” substitute—
 - “Where, by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership—
 - (a) the trade concerned is carried on as mentioned in subsection (7)(a) above for a period shorter than four months, or
 - (b) the research and development concerned is carried on as mentioned in subsection (7)(b) above for a period shorter than four months,

subsection (7)(a) or, as the case may be, (7)(b) above shall have effect as if it referred to that shorter period.”,
 - (b) in paragraph (b), after “company” insert “concerned”.
- 3 In section 289B of the Taxes Act 1988 (attribution of relief to shares) in subsection (4), for “same day” substitute “same day, but this subsection does not apply in relation to section 289A(6) and (7)”.
- 4 (1) In section 290(2) of the Taxes Act 1988 (maximum subscriptions) for “£150,000” substitute “£200,000”.
- (2) The amendment made by this paragraph has effect for the year 2004-2005 and subsequent years of assessment.
- 5 (1) Section 293 of the Taxes Act 1988 (qualifying companies) is amended as follows.
- (2) In subsection (4A)—
- (a) omit “which is in administration or receivership”,
 - (b) after “by reason” insert “only”,
 - (c) for “its” substitute “the company, or any of its subsidiaries,”.

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- (3) In subsection (4B)(b), after “company” insert “concerned”.
 - (4) In subsection (5)—
 - (a) after “winding up of the company” insert “or any of its subsidiaries”,
 - (b) after “or the company” insert “or any of its subsidiaries”.
 - (5) In subsection (6)—
 - (a) for “by reason of” substitute “by reason only of the company or any of its subsidiaries”,
 - (b) in paragraph (a), for “and not” substitute “and is not”.
 - (6) After subsection (6) insert—
 - “(6ZA) The company must not at any time in the relevant period have a property managing subsidiary which is not a qualifying 90% subsidiary of the company.
 - (6ZB) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
 - (6ZC) In subsection (6ZB) above, “land” and “property deriving its value from land” have the same meaning as in section 776.”.
- 6 (1) In section 300 of the Taxes Act 1988 (value received from company) for subsection (2)(b) substitute—
- “(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which the relief is claimed, any debt owed to the individual other than a debt which was incurred by the company—
 - (a) on or after the date of issue of those shares; and
 - (b) otherwise than in consideration of the extinguishment of a debt incurred before that date;”.
- (2) Subject to sub-paragraph (3), the amendment made by this paragraph has effect in relation to shares issued on or after 17th March 2004.
- (3) The amendment made by this paragraph does not have effect in relation to the repayment of a debt incurred before 17th March 2004 if—
- (a) the shares were subscribed for before that date, and
 - (b) the debt was incurred on or after the date on which the shares were subscribed for.
- 7 (1) In section 303 of the Taxes Act 1988 (value received by persons other than claimants) in subsection (9A), for “section 303AA” substitute “sections 303AA and 303A”.
- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of section 303A of the Taxes Act 1988) made on or after 17th March 2004.
- 8 (1) In section 303A of the Taxes Act 1988 (restriction on withdrawal of relief under section 303) in subsection (6), omit paragraph (a).

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- (2) The amendment made by this paragraph has effect in relation to any repayment (within the meaning of section 303A of the Taxes Act 1988) made on or after 17th March 2004.
- 9 In section 308 of the Taxes Act 1988 (application to subsidiaries)—
- (a) in subsection (1)(a), omit the words from “and, except” to “relevant period”,
 - (b) in subsection (2)—
 - (i) omit paragraphs (a) to (c),
 - (ii) before paragraph (d) insert—
 - “(ca) that more than 50 per cent. of the ordinary share capital of the subsidiary is owned directly or indirectly by the qualifying company;”,
 - (iii) in paragraph (e), for “the conditions in paragraphs (a) to” substitute “either of the conditions in paragraphs (ca) and”, and for “could” substitute “would”,
 - (c) in the opening words of subsection (3), for “the qualifying company” substitute “any other company”,
 - (d) in subsection (3)(a)—
 - (i) omit “it is shown that”,
 - (ii) for “and not” substitute “and is not”,
 - (e) omit subsection (3)(b) and the word “and” immediately preceding it,
 - (f) after subsection (3) insert—
 - “(3A) The conditions shall not be regarded as ceasing to be satisfied by reason only of anything done as a consequence of the subsidiary or any other company being in administration or receivership if—
 - (a) the entry into administration or receivership, and
 - (b) everything done as a consequence of the company concerned being in administration or receivership,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.”,
 - (g) in subsection (4)—
 - (i) after “only of” insert “arrangements being in existence for”,
 - (ii) omit “within the relevant period”,
 - (iii) omit “it is shown that”,
 - (iv) after “disposal is” insert “to be”,
 - (v) for “and not” substitute “and is not to be”,
 - (h) omit subsection (5),
 - (i) after subsection (5A) insert—
 - “(5B) Subsections (2) to (10) of section 838 apply for the purposes of subsection (2)(ca) above as they apply for the purposes of subsection (1) of that section.”.
- 10 (1) In section 310 of the Taxes Act 1988 (information)—
- (a) in subsection (5)—
 - (i) for “289(6),” substitute “289(1D), (6) or (9)(e), 289A(8)(b) or (8A),”,

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- (ii) for “293(8),” substitute “293(4B), (6) or (8),”
 - (iii) for “or 308(2)(e)” substitute “or 308(2)(e), (3), (3A) or (4)”
 - (b) in subsection (6)—
 - (i) in paragraph (a), after “289(6)” insert “or 293(4B) or (6),”
 - (ii) after paragraph (a) insert—
 - “(aa) in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4), the claimant, the company, any other company in question and any person controlling the company or any other company in question;”
 - (iii) in paragraph (c), after “section” insert “289(9)(e),”
 - (c) after subsection (6) insert—
 - “(6A) The references in subsections (5) and (6) above to subsections (3), (3A) and (4) of section 308 are to be read as including those provisions as applied by section 289(10) and (11).”
- (2) The amendments made by this paragraph have effect in relation to any notice given after the passing of this Act in respect of shares issued on or after 17th March 2004.
- 11 (1) Section 312 of the Taxes Act 1988 (interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) before the definition of “control” insert—
 - ““bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);”
 - (b) in the definition of “control” after “sections” insert “289(9),”
 - (c) after the definition of “research and development” insert—
 - ““qualifying 90% subsidiary”, in relation to any company, is to be construed in accordance with section 289(9) to (13);”
 - (d) in the definition of “termination date”—
 - (i) in paragraph (a), for “the shares were issued wholly or mainly in order to raise money” substitute “the money raised by the issue was raised wholly or mainly”
 - (ii) in paragraph (a), for “subsidiary” substitute “qualifying 90% subsidiary of the company”
 - (iii) in paragraph (b), for “the company or subsidiary concerned had not” substitute “neither the company nor any of its qualifying 90% subsidiaries had”
 - (iv) in the full-out words at the end, for “it” substitute “the company or any qualifying 90% subsidiary of the company”
- (3) After subsection (1A) insert—
- “(1ZA) In determining, for the purposes of the definition of “termination date” in subsection (1) above, when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the company.”