

SCHEDULES

SCHEDULE 19

VENTURE CAPITAL TRUSTS

PART 3

MISCELLANEOUS

- 8 Schedule 28B to the Taxes Act 1988 (venture capital trusts: meaning of “qualifying holdings”) is amended as follows.
- 9 In paragraph 3 (requirement as to company’s business)—
- (a) in sub-paragraph (3)—
 - (i) for the words from “the relevant company” to “all times since,” substitute “when the relevant holding was issued and at all times since, a qualifying company (whether or not the same such company at every such time) must”,
 - (ii) in paragraph (b)—
 - (a) for “it intended to carry” substitute “was intended to be carried”,
 - (b) after “Kingdom” insert “by a qualifying company”,
 - (iii) omit the words from “and for the purposes” to the end,
 - (b) in sub-paragraph (4)—
 - (i) in paragraph (a), for the words from “the relevant company” to “intended trade” substitute “the intended trade was begun to be carried on by a qualifying company”,
 - (ii) in paragraph (b), for the words from “that company” to “that period,” substitute “at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has”,
 - (c) after sub-paragraph (5) insert—
 - “(5A) In sub-paragraphs (3) and (4) above, “qualifying company” means the relevant company or any relevant qualifying subsidiary of that company.
 - (5B) In determining for the purposes of sub-paragraph (4)(a) above when the intended trade was begun to be carried on by a qualifying company which is a relevant qualifying subsidiary of the relevant company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the relevant company.”.
- 10 After paragraph 5 insert—

Status: This is the original version (as it was originally enacted).

“Meaning of “relevant qualifying subsidiary”

- 5A (1) For the purposes of this Schedule, a company (“the subsidiary”) is a relevant qualifying subsidiary of the relevant company at any time when it falls within sub-paragraph (2) below.
- (2) The subsidiary falls within this sub-paragraph if—
- (a) the relevant company possesses not less than 90 per cent. of the issued share capital of, and not less than 90 per cent. of the voting power in, the subsidiary;
 - (b) the relevant company would—
 - (i) in the event of a winding up of the subsidiary, or
 - (ii) in any other circumstances,

be beneficially entitled to receive not less than 90 per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;
 - (c) the relevant company is beneficially entitled to not less than 90 per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;
 - (d) no person other than the relevant company has control of the 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.
- (3) Sub-paragraphs (4) to (4C) and (5) of paragraph 10 below apply in relation to sub-paragraph (2) of this paragraph as they apply in relation to sub-paragraph (3) of that paragraph, but with the following modification.
- (4) That modification is that sub-paragraph (5) of that paragraph is to be read as if the words “or (as the case may be) by another subsidiary of that company” were omitted.
- (5) For the purposes of this paragraph—
- (a) the persons who are equity holders of the subsidiary, and
 - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- shall be determined in accordance with paragraphs 1 and 3 of Schedule 18.
- (6) But in making that determination—
- (a) references in paragraph 3 of that Schedule 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 subsidiary are available for distribution to its equity holders.”.
- 11 In paragraph 6 (requirements as to the money raised by the investment in question)
-
- (a) in sub-paragraph (1)(a)(ii), for the words from “the relevant company” to “employ” substitute “is intended to be employed”,

Status: This is the original version (as it was originally enacted).

- (b) in sub-paragraph (2AA)(b), for the words from “the relevant company” to the end substitute “the condition in paragraph 3(4)(a) above was satisfied”,
- (c) for sub-paragraphs (2A) to (2C) substitute—

“(2AB) The requirements of this paragraph are not satisfied if either of the following, namely—

- (a) the trade by reference to which the requirements of paragraph 3(3) above are satisfied, and
- (b) any preparations for that trade falling within paragraph 3(3)(b) above,

are carried on, at any time after the issue of the relevant holding, by a person other than the relevant company or a relevant qualifying subsidiary of that company.

(2AC) Sub-paragraph (2AD) below applies where preparations mentioned in sub-paragraph (2AB)(b) above are carried on by the relevant company or a relevant qualifying subsidiary of that company at any time after the issue of the relevant holding.

(2AD) Where this sub-paragraph applies, the requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above by a person other than—

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

at any time after the issue of the relevant holding but before the relevant company or any relevant qualifying subsidiary of that company carries on that trade.

(2AE) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above—

- (a) by the partners in a partnership of which the relevant company, or a relevant qualifying subsidiary of that company, is a member, or
- (b) by the parties to a joint venture to which the relevant company, or a relevant qualifying subsidiary of that company, is a party.

(2AF) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied if—

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

the trade mentioned in sub-paragraph (2AB)(a) above ceases to be carried on by the relevant company or a relevant qualifying

Status: This is the original version (as it was originally enacted).

subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is one year before the issue of the relevant holding, with the relevant company.

(2AG) Sub-paragraph (2AF) 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.

(2AH) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (2AF) and (2AG) above as it applies for the purpose of that paragraph.”

- (d) omit sub-paragraph (5).

12 In paragraph 10 (meaning of “qualifying subsidiary”)—

- (a) omit sub-paragraph (3)(a) to (c),
- (b) before sub-paragraph (3)(d) insert—
 - “(ca) the subsidiary is a 51 per cent. subsidiary of the relevant company;”
- (c) in sub-paragraph (3)(e), for “the relevant company could cease to fall within this sub-paragraph” substitute “either of the conditions in paragraphs (ca) and (d) above would cease to be met”,
- (d) in sub-paragraph (4)—
 - (i) after “time when it” insert “or any other company”,
 - (ii) omit “it is shown”,
 - (iii) omit the first “that” in paragraph (a),
 - (iv) omit “that” in paragraph (b),
 - (v) for “and not” substitute “and is not”,
- (e) after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4B) below applies at a time when the subsidiary or any other company is in administration or receivership.

(4B) The subsidiary shall not be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company falling within sub-paragraph (3) above 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.

Status: This is the original version (as it was originally enacted).

- (4C) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (4A) and (4B) above as it applies for the purpose of that paragraph.”
- (f) in sub-paragraph (5)—
- (i) omit the words “it is shown that”,
- (ii) for “and not” substitute “and is not to be”,
- (g) omit sub-paragraph (6).
- 13 After paragraph 10 insert—
- “Requirement as to property managing subsidiaries*
- 10ZA (1) The requirement of this paragraph is that the relevant company must not have a property managing subsidiary which is not a relevant qualifying subsidiary of the relevant company.
- (2) “Property managing subsidiary” means a qualifying subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In sub-paragraph (2) above, “land” and “property deriving its value from land” have the same meaning as in section 776.”.
- 14 In paragraph 11 (winding up of the relevant company)—
- (a) omit “it is shown”,
- (b) omit the first “that” in paragraph (a),
- (c) omit “that” in paragraph (b),
- (d) in paragraph (b), for “and not” substitute “and is not”.
- 15 In paragraph 11A (company in administration or receivership) in sub-paragraph (1), after “by reason” insert “only”.
- 16 The amendments made by this Part have effect for the purpose of determining whether shares or securities issued on or after 17th March 2004 are, for the purposes of section 842AA of the Taxes Act 1988, to be regarded as comprised in a company’s qualifying holdings.