

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Venture capital trusts

Overview

794. This Part provides income tax reductions to individuals who subscribe money for full risk shares in certain quoted companies that, in turn, mainly provide additional equity and loan finance to smaller unquoted trading (or certain other) companies with which the quoted company is not connected.
795. The structure of the Part is as follows:
- An overview and a definition of venture capital trust (“VCT”) (Chapter 1);
 - The tax reduction and related matters (Chapter 2);
 - Conditions for approving a company for the purposes of this Part and related matters (Chapter 3);
 - The meaning of “qualifying holding” (Chapter 4);
 - Powers to make regulations relating to VCT winding up or mergers (Chapter 5); and
 - Supplementary provisions (Chapter 6).
796. In contrast to the enterprise investment scheme (EIS), section 1034(1) (commencement) applies to the VCT scheme: see the overview to Part 5. The minor changes made to the law in this Part are the subject of transitional provisions in Part 8 of Schedule 2.

Chapter 1: Introduction

Overview

797. This Chapter gives an overview of the Part, labels certain concepts and gives signposts to material contained elsewhere.

Section 258: Overview of Part

798. This section says that the relief dealt with by this Part (“VCT relief”) is a tax reduction and it provides a navigational aid regarding the content of later Chapters. It is based on section 332A of ICTA.

Section 259: Venture capital trusts and VCT approvals

799. This section defines “venture capital trust”, “VCT” and “VCT approval”. It is based on section 842AA(1) of ICTA and paragraphs 7(4) and 17 of Schedule 33 to FA 2002.

Section 260: Other tax reliefs relating to VCTs

800. This section provides signposts to other tax reliefs relating to VCTs. It is new.

Chapter 2: VCT relief

Overview

801. This Chapter:

- identifies who is eligible for VCT relief and on what amounts;
- identifies the claims to VCT relief that may be made;
- quantifies the entitlement to the tax reduction;
- deals with cases in which VCT relief is not available or will be reduced or withdrawn; and
- deals with other matters (information and powers to make regulations).

Section 261: Eligibility for relief

802. This section identifies cases in which, and amounts in respect of which, an individual is eligible for VCT relief for a tax year. It is based on paragraph 1(1), (2), (4), (9) and (10) of Schedule 15B to ICTA.

Section 262: Entitlement to claim relief

803. This section provides for an individual to claim VCT relief for a tax year. It is based on paragraph 1(1) and (3) of Schedule 15B to ICTA.

804. *Subsection (2)* explicitly provides that a claim by the individual does not have to extend to all the shares by reference to which such eligibility exists for the tax year. This is implied by paragraph 1(3) of Schedule 15B to ICTA which simply sets a limit on a claim for relief.

Section 263: Form and amount of relief

805. This section specifies that a claim for VCT relief gives entitlement to a tax reduction and quantifies the amount of that entitlement. It is based on paragraph 1(5) of Schedule 15B to ICTA.

806. *Subsection (1)* is expressed in terms of the individual's entitlement to a tax reduction. Sections 27 and 29 contain provisions about how effect is given to the entitlement to a reduction and how the actual reduction is quantified.

Section 264: No entitlement to relief if there is a linked loan

807. This section removes an individual's entitlement to VCT relief by reference to shares if certain loans are made, as described in this section, to the individual or an associate of the individual. It is based on paragraph 2 of Schedule 15B to ICTA.

Section 265: No entitlement to relief which would have been lost if it had already been obtained

808. This section removes entitlement to VCT relief by reference to shares if, before the relief is obtained, circumstances have arisen that would cause the relief to be withdrawn or reduced. It is based on paragraph 1(8) of Schedule 15B to ICTA.

809. This and other sections follow the terminology used by other venture capital schemes and refer to relief being "obtained" where paragraph 1(8) refers, and other paragraphs in Schedule 15B to ICTA refer, to relief being "given".

Section 266: Loss of relief if shares disposed of within 5 years

810. This section reduces or withdraws any VCT relief obtained by reference to shares that are disposed of within five years of their issue. It is based on paragraph 3(1) to (4) and (8) of Schedule 15B to ICTA.

Section 267: Transfers of shares between spouses or civil partners

811. This section prevents loss of VCT relief occurring where the shares in question are disposed of between spouses or civil partners who are living together at the time of disposal. It also provides for step-in-shoes treatment, for VCT relief purposes, in respect of shares transferred between those spouses or civil partners. It is based on paragraph 3(5) to (7) of Schedule 15B to ICTA.

Section 268: Loss of relief if VCT approval withdrawn

812. This section treats certain shares in a company as disposed of, for VCT relief purposes, at the time VCT approval is withdrawn from a company. It is based on paragraph 3(9) of Schedule 15B to ICTA.
813. *Subsection (1)* does not apply where section 281(3) treats VCT approval as never having been given to a company. In those cases there never was any entitlement to VCT relief in respect of the company's shares and any relief that was obtained is withdrawn under section 269.
814. *Subsection (2)* has provisions about the timing (immediately before loss of VCT approval) and nature (not arm's length) of any disposal of shares that is treated as taking place. These provisions ensure that any VCT relief recapture (where the shares were issued less than five years before loss of approval) covers all the VCT relief obtained in respect of the shares concerned.

Section 269: Loss of relief which is subsequently found not to have been due

815. This section withdraws any VCT relief that has been obtained but which should not have been obtained. It is based on paragraph 4(1) of Schedule 15B to ICTA.

Section 270: Assessment on withdrawal or reduction of relief

816. This section provides that withdrawal or reduction of VCT relief, under the preceding sections, is by way of assessment for the tax year for which the relief was obtained. It is based on paragraph 4 of Schedule 15B to ICTA.

Section 271: Provision of information

817. This section, in connection with VCT relief, provides for cases where information must be given to an officer of Revenue and Customs and cases where the officer may require information. It is based on paragraphs 1(11) and 5 of Schedule 15B to ICTA.
818. *Subsection (4)* requires a VCT to give notice to an individual if section 261(4) (issue of own shares) prevents the individual from being eligible for relief. Section 261(4) contains a signpost to this requirement.

Section 272: Regulations as to procedure etc

819. This section allows the Treasury to make regulations about certain aspects of VCT relief and other reliefs related to VCTs. It is based on section 73(1) and (2) of FA 1995.
820. This power has been used in relation to the [Venture Capital Trust Regulations 1995 \(SI 1995/1979\)](#).

Section 273: Interpretation of Chapter

821. This section provides definitions of certain terms used in the Chapter. It is based on paragraph 6(1) and (3) of Schedule 15B to ICTA.
822. The section removes a possible doubt as to the effectiveness of the amendment made by section 73(1)(b) of FA 1998 to the definition of “eligible shares” in paragraph 6(1) of Schedule 15B to ICTA. See *Change 58* in Annex 1. Part 8 of Schedule 2 to this Act contains a provision to preserve this possible doubt as to the meaning of eligible shares for shares issued before 6 April 2007.

Chapter 3: VCT approvals

Overview

823. This Chapter:
- lists the conditions relevant to VCT approval;
 - sets out alternative bases on which VCT approval may be given and the time from which VCT approval has effect;
 - deals with the withdrawal of VCT approval and the time from which withdrawal has effect; and
 - deals with related matters (including powers to make regulations for certain matters).

Section 274: Requirements for the giving of approval

824. This section sets out the conditions which must be met before the Commissioners for Her Majesty’s Revenue and Customs are able to approve a company as a VCT. It is based on section 842AA(2) and (3) of ICTA.
825. *Subsection (1)* specifies the accounting periods in relation to which the conditions have to be met.
826. *Subsection (2)* gives labels to each of the conditions in section 842AA(2) of ICTA, changes the order in which they appear and uses a tabular layout as an aid to navigation.
827. References in the conditions to qualifying holdings and eligible shares are explained in section 285(1) and (2).
828. *Subsection (3)* provides a signpost to the provisions that contain material supplementing some of the conditions listed in the table.

Section 275: Alternative requirements for the giving of approval

829. This section allows the Commissioners to approve a company as a VCT if they are satisfied that conditions, which are not met in relation to the company’s most recent accounting period, will be met in certain other accounting periods. It is based on section 842AA(4) of ICTA.
830. Most approvals are in practice given under this provision.

Section 276: Conditions relating to income

831. This section supplements the nature of income condition and the income retention condition. It is based on section 842(1AB) and (2A) to (2C), section 842AA(11) of ICTA and paragraph 40 of Schedule 26 to FA 2002.
832. Section 842AA(11)(za) and (b) of ICTA relies on the user adapting material that applies to similar conditions in section 842 (investment trusts). This section eliminates the need

to refer to section 842 of ICTA. In addition *subsections (1) and (2)* rewrite paragraph 40 of Schedule 26 to FA 2002 which deals with derivative contracts in relation to VCTs.

Section 277: The 15% holding limit condition

833. This section effectively restricts the times at which the 15% holding limit condition is applied in relation to investments in a company and provides supplementary material relating to that condition. It is based on section 842(1A), (2), (3) and (4) and section 842AA(11) of ICTA.
834. Section 842AA(11)(a) and (c) of ICTA applies certain provisions in section 842 (investment trusts) to section 842AA(2)(d). This section eliminates the need to refer to section 842 of ICTA.
835. *Subsection (1)* is based on section 842(3)(b) of ICTA, which provides that if an addition is made to a holding, the holding is treated as acquired at that time. *Subsection (1)* is also based on section 842(2)(b). The effect is that the 15% holding condition only applies on the occasion or occasions when the holding is acquired or when it is added to.
836. The underlying approach is that the 15% holding limit condition is applied in relation to a company only at times when shares or securities are acquired in that company. This prevents the condition being breached solely as a result of fluctuations in the value of investments.

Section 278: Conditions relating to value of investments: general

837. This section provides rules about the values of holdings of investments of particular descriptions. Those rules are used in applying the 15% holding limit condition, the 70% qualifying holdings condition and the 30% eligible shares condition. It is based on section 842(3) and (4) and section 842AA(5) and (11) of ICTA.
838. The underlying approach is that there is a valuation (or revaluation) of investments of any particular description only when investments of that description are acquired. In that way the three conditions will not cease to be satisfied solely because of later fluctuations in the value of investments.
839. The section makes it clear that the rules about the valuation of a holding in this section apply equally to the 15% holding limit condition, the 70% qualifying holdings condition and the 30% eligible shares condition. See *Change 59* in Annex 1.

Section 279: Conditions relating to value of investments: qualifying holdings

840. This section provides what is to be taken as the value of shares or securities acquired on certain exchanges or conversions if those shares or securities are treated as meeting some of the conditions in Chapter 4 (qualifying holdings). It also provides power to make regulations about the value of shares or securities in certain cases. It is based on section 842AA(5AA) to (5AE) of ICTA.
841. An exchange has to meet the requirements of section 326 (restructuring arrangements) and a conversion has to meet the requirements of section 329 (conversion of convertible shares and securities).
842. The power to treat conditions in Chapter 4 as met under section 330 (power to facilitate company reorganisations etc involving exchange of shares) is extended to encompass the valuation of shares and securities involved in reorganisations.

Section 280: Conditions relating to qualifying holdings and eligible shares

843. This section provides a period of grace during which the proceeds from most further issues of ordinary shares by a VCT are disregarded in determining whether the VCT meets the 70% qualifying holdings condition and the 30% eligible shares condition. It

is based on section 842AA(5A) and (5B) of ICTA and paragraph 11(1), (2) and (4) of Schedule 33 to FA 2002.

844. The underlying rationale is to give the VCT a reasonable amount of time to invest the proceeds of the further share issue in qualifying holdings before taking those proceeds into account for the 70% qualifying holdings condition and the 30% eligible shares condition. Without any period of grace those conditions might deter VCTs from issuing further share capital to raise funds for investment in qualifying holdings.
845. The section also contains powers to make regulations varying the treatment that would otherwise apply under this section. These powers have been used in making the [Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(SI 2004/2199\)](#).

Section 281: Withdrawal of VCT approval of a company

846. This section sets out cases in which a company's approval as a VCT may be withdrawn and the time from which the withdrawal has effect, and contains supplementary material concerning the time limits for assessing tax consequent on the withdrawal. It is based on section 842AA(6) to (10) of ICTA.

Section 282: Withdrawal of VCT approval in cases for which provision made under section 280(3)

847. This section gives the Treasury power to make regulations that provide, in certain cases, for withdrawal of VCT approval to have effect before notice of withdrawal is given. It is based on paragraph 12 of Schedule 33 to FA 2002.
848. The cases are limited to those where, but for regulations under section 280(3), section 280(2) (disregard of money raised by further share issue) would have prevented withdrawal of approval.

Section 283: Time as from which VCT approval has effect

849. This section explains when a VCT approval takes effect. It is based on section 842AA(1) of ICTA.
850. Paragraph (a) of section 842AA(1) of ICTA, which refers to an approval given in 1995-96, has not been rewritten.
851. Section 842AA(1) and (4)(b) of ICTA, and regulation 4(2)(b) of [SI 1995/1979](#), make it clear that the date from which approval has effect is not necessarily the date on which approval is given. *Subsection (3)* notes that an approval can be forward-dated as well as back-dated.

Section 284: Power to make regulations as to procedure

852. This section gives the Treasury powers to make regulations regarding VCT approvals, the obligations of VCTs in relation to certain matters and the persons liable to account for tax consequent on withdrawal of VCT approval. It is based on section 73(2) of FA 1995.
853. This power has been used in relation to the [Venture Capital Trust Regulations 1995 \(SI 1995/1979\)](#).

Section 285: Interpretation of Chapter

854. This section provides various definitions for this Chapter. It is based on section 842AA(11A) to (14) of ICTA.
855. *Subsections (4) to (6)*, based on section 842AA(11A) to (11C) of ICTA, provide an interpretation of references to a company's investments. Paragraph 8 of Schedule 14 to FA 2006 does not extend this interpretation explicitly to the definitions in section 842(3)

of ICTA. Subsection (4) of this section applies the interpretation to Chapter 3 as a whole. See *Change 59* in Annex 1.

Chapter 4: Qualifying holdings

Overview

856. One of the conditions relating to VCT approval is that the investing company holds at least 70% of its investments in qualifying holdings (the 70% qualifying holdings condition in section 274). This Chapter sets out the requirements that need to be met for an investment to be a qualifying holding.

Section 286: Qualifying holdings: introduction

857. This section describes the ground-rules for what is a qualifying holding. It is based on paragraph 1 of Schedule 28B to ICTA.

858. *Subsection (1)* introduces certain labels. The company invested in is described as “the relevant company”, the shares or securities are “the relevant holding” and in this Chapter the company that makes the investments is described as “the investing company”.

859. Where there are shared provisions, the order matches that in Part 5 Chapter 4 (EIS: the issuing company) as far as possible.

860. *Subsections (4)* and *(5)* provide that in this Chapter, if only part of the money raised by a relevant holding meets the requirements of section 287, section 293 and section 294, the holding is treated as two separate holdings.

Section 287: The maximum qualifying investment requirement

861. This section requires that the relevant holding does not represent an investment that exceeds “the maximum qualifying investment”. It is based on paragraph 7 of Schedule 28B to ICTA.

862. The maximum qualifying investment is £1m, see *subsection (2)*.

863. *Subsection (3)(a)* makes it explicit that if the maximum qualifying investment is exceeded, the £1m can be included as a qualifying holding and the shares or securities which represent the excess over the maximum qualifying investment are not regarded as part of the relevant holding.

864. *Subsection (3)(b)* ensures that there can be no double counting of an amount that represented such an excess. See *Change 60* in Annex 1.

865. *Subsections (4)* and *(5)* provide a rule for attributing shares or securities subsequently disposed of to the part of an investment that is in excess of the maximum qualifying investment.

866. *Subsections (6)* and *(7)* set out the consequences if the trade which meets the requirements of section 291(1) is carried on by the relevant company in a partnership or joint venture. The £1m is divided by the number of the members of the partnership or the parties to the joint venture. In subsection (6)(b) the words “as such” after “the joint venture” in paragraph 7(4)(b) of Schedule 28B to ICTA have not been reproduced, as they do not add anything.

867. In *subsection (8)*, which sets out what the relevant period is, it is made clear that the period ends with the issue of the relevant holding.

Section 288: The no guaranteed loan requirement

868. This section requires that the relevant holding does not include any securities that are backed up by a “guaranteed loan” and explains what is meant by this term. It is based on paragraph 10A of Schedule 28B to ICTA.

Section 289: The proportion of eligible shares requirement

869. This section requires a certain proportion of an investment in a relevant company to be in eligible shares. It is based on paragraph 10B of Schedule 28B to ICTA.
870. *Subsections (2) and (3)* set out rules about the value of shares in or securities of a company. The underlying approach is to value shares and securities at their value when acquired so that the requirement will not cease to be satisfied purely because of later fluctuations in the value of those investments.
871. *Subsection (4)* ensures that the value of the investment cannot be less than its initial cost price.

Section 290: The trading requirement

872. This section requires that the relevant company exists essentially for the purpose of carrying on qualifying trades or is a parent company of a group that carries on qualifying activities. It is based on paragraph 3(2) and (6) to (11) of Schedule 28B to ICTA.
873. A parent company, a group and a group company are defined in section 332.
874. Paragraph 3(6)(c) of Schedule 28B to ICTA is rewritten in *subsection (1)(b)* and *subsection (3)*. The requirements in paragraph 3(6)(b) and (c) are covered respectively by the definition of “parent company” in section 332 and by section 298.
875. *Subsections (2) and (6)* provide that certain requirements can be met in relation to a company that is not part of the group at the time the shares are issued. See *Change 61* in Annex 1. The provision for property used for R&D in *subsection (5)(d)* has been extended. See *Change 41* in Annex 1.
876. The words “capable of” have been omitted in *subsection (7)*, rewriting the definitions of “incidental purposes” and of “mainly trading subsidiary” in paragraph 3(2)(a) and (11) of Schedule 28B to ICTA. The intention is to make the definitions simpler to interpret: in practice the test will not change.
877. The label “non-qualifying activities” in *subsection (1)(b)* is defined in *subsection (7)*. Paragraph (a) in *subsection (7)* refers to excluded activities. These are listed in section 303. Section 305 provides a let-out for certain leasing of ships from being treated as a non-qualifying activity.
878. The way that *subsection (7)* interprets non-qualifying activities means that no distinction is made between the let-out in section 305(4), derived from paragraph 4(7) (a) to (d) of Schedule 28B to ICTA, and the let-out in section 305(7), derived from the final words of paragraph 4(7). This contrasts with paragraph 3(8)(b) of Schedule 28B to ICTA. See *Change 43* in Annex 1.
879. There is no reference to R&D in the definition of non-qualifying activities in *subsection (7)(b)*, in contrast to the definition in section 181(8)(b) in Part 5 (Enterprise investment scheme). This is because in VCT the carrying on of R&D is treated as the carrying on of a trade in section 300(2).

Section 291: The carrying on of a qualifying activity requirement

880. This section requires that the relevant company carries on, or certain of its subsidiaries carry on, a qualifying activity at all times from the issue of the relevant holding to the time in question. It is based on paragraph 3(3) to (5B) of Schedule 28B to ICTA.

881. *Subsection (1)* introduces the term “qualifying activity” to cover the activities in paragraph 3(3)(a) and (b) of Schedule 28B to ICTA and these activities are set out in *subsections (2) and (3)*. This should make it easier for persons, who are not relying on subsection (3) to meet any of the requirements in this Chapter, to disregard the material in subsections (3) to (6).
882. *Subsection (8)* is new. The change enables the requirement in subsection (3) to be met in relation to a company that is not a qualifying 90% subsidiary at the time the shares are issued. See *Change 61* in Annex 1.

Section 292: Ceasing to meet requirements because of administration or receivership

883. This section provides a disregard from sections 290(1) and 291(1) where a company is in administration or receivership and there is no tax avoidance purpose. It is based on paragraph 11A(1) and (3) of Schedule 28B to ICTA.
884. The meanings of “in administration” and “in receivership” are provided by section 331.

Section 293: The use of the money raised requirement

885. This section sets out the times when, and extent and purpose for which, the money raised by the issue of the relevant holding must be intended to be employed or actually employed. It is based on paragraph 6(1) to (2AA) and (3) of Schedule 28B to ICTA.

Section 294: The relevant company to carry on the relevant qualifying activity requirement

886. This section contains requirements as to the persons who may carry on the relevant qualifying activity by reference to which the conditions in the preceding section have been met. It is based on paragraph 6(2AB) to (2AG) of Schedule 28B to ICTA.
887. *Subsection (1)* links the relevant qualifying activity that it refers to with the use of the money raised from the issue of shares in question. See *Change 62* in Annex 1.

Section 295: The unquoted status requirement

888. This section requires the relevant company to be unquoted and defines an unquoted company. It is based on paragraph 2 of Schedule 28B to ICTA.
889. The words in brackets in paragraph 2(1), “whether or not it is resident in the United Kingdom” are not rewritten. The words do not add anything to the tests in section 291.
890. Paragraph 2(5) of Schedule 28B to ICTA which concerns orders made by the Board is not rewritten in this section. It is instead covered by section 1014 which is based on section 828 of ICTA.

Section 296: The control and independence requirement

891. This section requires that:
- any company that the relevant company controls (on its own or together with connected persons) is a qualifying subsidiary of the relevant company;
 - the relevant company is not controlled by another company (on its own or together with connected persons); and
 - there are no arrangements which could lead the relevant company to fail either of these tests.

It is based on paragraph 9 of Schedule 28B to ICTA.

Section 297: The gross assets requirement

892. This section sets out the limits that apply to the value of a relevant company's gross assets before and after a share issue. It is based on paragraph 8 of Schedule 28B to ICTA.
893. The requirement differentiates between a "single company" and a "parent company". Both these terms are defined in section 332.
894. *Subsection (3)* sets out more clearly what is meant in relation to a group of companies by the "aggregate value at that time of the gross assets" in paragraph 8(2)(b) of Schedule 28B to ICTA. A similar wording is used in paragraph 12(3) of Schedule 5 to ITEPA (enterprise management incentives).

Section 298: The qualifying subsidiaries requirement

895. This section requires that any subsidiary of the relevant company must be a qualifying subsidiary. It is based on paragraphs 3(6) and 10(1) of Schedule 28B to ICTA.

Section 299: The property managing subsidiaries requirement

896. This section requires that any property managing subsidiary of the relevant company must also be its qualifying 90% subsidiary. It is based on paragraph 10ZA of Schedule 28B to ICTA.
897. In paragraph 10ZA(3) "land" and "property deriving its value from land" take the meaning in section 776 of ICTA. *Subsection (3)*, applying for the purposes of *subsection (2)* of the rewritten section, provides the definition of "property deriving its value from land". "Land" itself is not defined in this Act and instead relies on the definition in Schedule 1 to the Interpretation Act 1978. See the commentary on section 772.

Section 300: Meaning of "qualifying trade"

898. This section explains the term "qualifying trade". It is based on paragraph 4(1), (2) and (9) and on paragraph 5(4) of Schedule 28B to ICTA.
899. In *subsection (1)(b)* there is a reference to excluded activities. Excluded activities are set out in section 303.
900. *Subsection (2)* provides that the carrying on of any R&D activities is treated as the carrying on of a qualifying trade in certain circumstances. Paragraph (b) of *subsection (2)* now extends the cases in paragraph (a) in which this treatment occurs. See *Change 41* in Annex 1.
901. *Subsection (3)* provides that preparing to carry out R&D does not count as preparing to carry on a qualifying trade. See *Change 63* in Annex 1.

Section 301: Meaning of "qualifying 90% subsidiary"

902. This section gives the meaning of "qualifying 90% subsidiary". It is based on paragraph 5A of Schedule 28B to ICTA.
903. The label "qualifying 90% subsidiary" copies EIS section 190 and replaces "the relevant qualifying subsidiary".

Section 302: Meaning of "qualifying subsidiary"

904. This section says what "qualifying subsidiary" means. It is based on paragraph 10 of Schedule 28B to ICTA.
905. The term "51% subsidiary" in this paragraph and elsewhere takes its meaning from the definition in section 989. This provides a signpost to section 838 of ICTA.

Section 303: Meaning of “excluded activities”

906. This section gives the meaning of “excluded activities”. It is based on paragraph 4(2) of Schedule 28B to ICTA.
907. The meaning of excluded activities is needed to determine whether a trade is a qualifying trade and the extent to which the business of a group includes non-qualifying activities.
908. *Subsection (2)* indicates where further detail can be found on certain of the activities listed in *subsection (1)*.

Section 304: Excluded activities: wholesale and retail distribution

909. This section supplements section 303(1)(b). It is based on paragraph 4(3) and (4) of Schedule 28B to ICTA.
910. *Subsection (2)* makes it clear that there are two sets of determinants, one set establishing what is a trade of wholesale and retail distribution and the other what is an ordinary trade of wholesale and retail distribution.
911. The words “or exposed” before “for sale” have been added in *subsection (4)*. This is intended to reflect the normal description of a trade of retail distribution in United Kingdom statute law.
912. *Subsection (5)(b)* refers to “the trader” rather than “the company” which is referred to in paragraph 4(3)(c)(ii) of Schedule 28B to ICTA. See *Change 45* in Annex 1.

Section 305: Excluded activities: leasing of ships

913. This section supplements section 303(1)(d). It is based on paragraph 4(7) and (8) and paragraph 5(1) of Schedule 28B to ICTA.
914. *Subsection (2)* uses as its model paragraph 18(2) of Schedule 5 to ITEPA (enterprise management incentives). This additional material, which is not in the source legislation, makes it clear that the requirements of *subsection (4)* do not have to be met in relation to offshore installations and pleasure craft.
915. *Change 43* in Annex 1 applies for the purposes of *subsection (7)*. See the commentary on section 290(7).

Section 306: Excluded activities: receipt of royalties and licence fees

916. This section supplements section 303(1)(e). It is based on paragraph 4(5) to (6D) of Schedule 28B to ICTA.

Section 307: Excluded activities: property development

917. This section supplements section 303(1)(g). It is based on paragraph 5(1), (5) and (7) of Schedule 28B to ICTA.

Section 308: Excluded activities: hotels and comparable establishments

918. This section supplements section 303(1)(j). It is based on paragraph 4(3A) and paragraph 5(6) of Schedule 28B to ICTA.

Section 309: Excluded activities: nursing homes and residential care homes

919. This section supplements section 303(1)(k). It is based on paragraph 4(3A) and paragraph 5(1) of Schedule 28B to ICTA.

Section 310: Excluded activities: provision of services or facilities for another business

920. This section treats the provision of services or facilities as excluded activities if:
- the services or facilities are provided to businesses which themselves consist largely of excluded activities; and
 - the specified control requirements exist.

It is based on paragraph 4(2) and paragraph 5(2) to (4) of Schedule 28B to ICTA.

921. The section is written in terms of a business. The way the definition of a trade in paragraph 5(4), governing paragraph 4 and 5 of Schedule 28B, is applied within those paragraphs has been simplified. See *Change 64* in Annex 1.

Section 311: Power to amend Chapter

922. This section allows the Treasury to make orders amending the provisions mentioned in the section. It is based on paragraph 12 of Schedule 28B to ICTA.

Section 312: Winding up of the relevant company

923. This section provides that if the requirements of this Chapter would be met but for the winding up of the relevant company, they are treated as met. The winding up must be commercial and not entered into for tax avoidance purposes. It is based on paragraph 11 of Schedule 28B to ICTA.
924. This supplements the provisions on winding up in section 294(4) and (5) in relation to the relevant company or any other company (in this case this extends to a dissolution too) and in section 302(3) in relation to a qualifying subsidiary or any other company.

Section 313: Interpretation of Chapter

925. This section provides an interpretation for certain terms used in this Chapter. It is based on paragraphs 1(1), 5(4) and 13 of Schedule 28B to ICTA.
926. *Subsection (3)* excepts references to a trade in certain sections in this Chapter from the extended meaning of “trade” in section 989, based on the definition in section 832(1) of ICTA. See the commentary on section 310 and *Change 64* in Annex 1.

Chapter 5: Powers: winding up and mergers of VCTs

Overview

927. This Chapter gives the Treasury power to make regulations for cases where a VCT is liquidated or two or more VCTs merge. Any such regulations will mainly ensure that reliefs available to shareholders in a VCT are “protected” in the cases that they cover.
928. These powers have been used in making the [Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(SI 2004/2199\)](#).

Section 314: Power to treat VCT-in-liquidation as VCT

929. This section allows regulations to treat a VCT-in-liquidation as if it remained a VCT and withdrawal of its VCT approval as taking place at a time different to when withdrawal actually takes place. It is based on paragraph 2 of Schedule 33 to FA 2002.

Section 315: Power to treat conditions for VCT approval as met with respect to VCT-in-liquidation

930. This section allows regulations to treat a VCT-in-liquidation as if it met conditions in section 274(2). It is based on paragraph 3 of Schedule 33 to FA 2002.

Section 316: Power to make provision about distributions by VCT-in-liquidation

931. This section allows regulations to apply, disapply or modify the way in which tax enactments affect distributions by a VCT-in-liquidation. It is based on paragraph 4 of Schedule 33 to FA 2002.

Section 317: Power to facilitate disposal to VCT by VCT-in-liquidation

932. This section allows regulations to be made that have the effect of treating certain holdings acquired by a VCT, from a VCT-in-liquidation, as if those holdings were qualifying holdings of the acquiring VCT. It is based on paragraph 5 of Schedule 33 to FA 2002.

Section 318: Power in respect of periods before and after winding up

933. This section extends the powers in the preceding sections to periods before and after a company becomes a VCT-in-liquidation. It is based on paragraph 6 of Schedule 33 to FA 2002.

Section 319: Sections 314 to 318: supplementary

934. This section supplements the preceding sections. It is based on paragraph 7(1), (2) and (5) of Schedule 33 to FA 2002.

Section 320: Meaning of “VCT-in-liquidation”

935. This section provides a definition and allows regulations to specify when winding up starts or ends in certain cases. It is based on paragraph 1 of Schedule 33 to FA 2002.

Section 321: Power to facilitate mergers of VCTs

936. This section, in the case of certain mergers of VCTs, allows regulations to be made covering matters set out in section 322. It is based on paragraph 8(1) and (2) of Schedule 33 to FA 2002.

Section 322: Provision that may be made by regulations under section 321

937. This section sets out what regulations under section 321 may provide. It is based on paragraph 9 of Schedule 33 to FA 2002.

Section 323: Meaning of “merger” and “successor company”

938. This section defines certain terms for the purposes of the Chapter. It is based on paragraph 10 of Schedule 33 to FA 2002.

Section 324: Regulations under Chapter

939. This section sets out further matters that may be dealt with by regulations under this Chapter. It is based on paragraph 16 of Schedule 33 to FA 2002.

Section 325: Interpretation of Chapter

940. This section defines some terms used in this Chapter. It is based on paragraph 17 of Schedule 33 to FA 2002.

Chapter 6: Supplementary and general

Overview

941. This Chapter:

- deals with two cases in which a company's holding may be treated as a qualifying holding (where it would not otherwise be);
- gives power to make regulations having a similar effect in other cases; and
- contains supplementary material.

Section 326: Restructuring to which section 327 applies

942. This section sets out the conditions for section 327 to apply (treating some requirements in Chapter 4 (qualifying holdings) as met) where a company is issued with a holding in a new company (Newco) in exchange for a qualifying holding in another company (Oldco). The section also sets out limitations on such application of section 327. It is based on paragraph 10C(1) to (3), (11) and (13) of Schedule 28B to ICTA.

943. These provisions are similar to provisions in Part 5 (Enterprise investment scheme) under which, assuming that EIS relief is attributable to shares in Oldco held by an individual, the EIS relief would carry over to the shares in Newco received by the individual in exchange (see section 247). Companies do not get EIS relief or VCT relief for a holding in Oldco. But the company's holding in Oldco may represent a "qualifying holding" and thus influence the VCT approval of that company. This section may permit the company's holding in Newco (received in exchange for the holding in Oldco) to be treated as a qualifying holding.

Section 327: Certain requirements of Chapter 4 to be treated as met

944. This section sets out the requirements of Chapter 4 (qualifying holdings) that are treated as met, and the periods for which they are so treated, in cases to which this section applies. It is based on paragraph 10C(4) to (10) of Schedule 28B to ICTA.

945. If this section applies, a holding in Newco may be treated as a qualifying holding of a company where that holding has been received in exchange for a qualifying holding in Oldco.

Section 328: Supplementary

946. This section extends the previous two sections so that they apply to securities as well as shares and defines certain terms. It is based on paragraph 10C(12) and (14) to (17) of Schedule 28B to ICTA.

Section 329: Conversion of convertible shares and securities

947. This section sets out cases in which shares in company A, acquired by company B on the conversion of other shares or securities in company A, can be treated as meeting certain requirements in Chapter 4 (qualifying holdings). It is based on paragraph 10D of Schedule 28B to ICTA.

948. If this section applies, the shares in company A acquired on the conversion may be treated as part of company B's qualifying holdings.

Section 330: Power to facilitate company reorganisations etc involving exchange of shares

949. This section allows regulations to be made which treat certain requirements in Chapter 4 (qualifying holdings) as met where company reorganisations involve the replacement

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

of shares or securities that meet those requirements with shares or securities that do not. It is based on paragraph 11B of Schedule 28B to ICTA.

950. This power has been used in making the [Venture Capital Trust \(Exchange of Shares and Securities\) Regulations 2002 \(SI 2002/2661\)](#).

Section 331: Meaning of a company being “in administration” or “in receivership”

951. This section explains references to a company being in administration or in receivership. It is based on paragraphs 6(2AH), 10(4C) and 11A(2) of Schedule 28B to ICTA.
952. Paragraph 11A(1) and (3) of Schedule 28B to ICTA is rewritten in section 292.
953. The reference to Northern Ireland legislation in *subsection (2)(a)* takes into account amendments to the Insolvency (Northern Ireland) Order 1989 by the Insolvency (Northern Ireland) Order 2005. The reference in *subsection (2)(b)* to the law of a country or territory outside the United Kingdom accords with the insolvency law in force in Great Britain and in Northern Ireland. See *Change 56* in Appendix 1.

Section 332: Minor definitions etc

954. This section contains various definitions that apply to the whole Part. It is based on sections 842(4) and 842AA(11) of, and paragraph 6(2) of Schedule 15B and paragraph 5(1) and (5) of Schedule 28B to, ICTA and paragraph 17 of Schedule 33 to FA 2002. Other definitions are new.
955. A single definition of “company” and “shares” is applied for the whole Part. That follows their usage for investment trusts (section 842 of ICTA) from which various provisions are applied to VCTs (section 842AA(11) of ICTA). As the general application of these two definitions is not explicit this might represent a change in the law. See *Change 65* in Appendix 1.
956. The definitions of “group”, “group company”, “parent company” and “single company” are new.