
Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Cross Heading: “Knowledge-intensive companies”. (See end of Document for details)

SCHEDULES

SCHEDULE 5

ENTERPRISE INVESTMENT SCHEME

“Knowledge-intensive companies”

19 After section 252 insert—

“252A Meaning of “knowledge-intensive company”

- (1) For the purposes of this Part, the issuing company is a “knowledge-intensive company” at the time the relevant shares are issued if the company meets—
 - (a) one or both of the operating costs conditions (see subsections (2) and (3)), and
 - (b) one or both of—
 - (i) the innovation condition (see subsection (5)), and
 - (ii) the skilled employee condition (see subsection (8)).
- (2) The first operating costs condition is that in at least one of the relevant three preceding years at least 15% of the relevant operating costs constituted expenditure on research and development or innovation.
- (3) The second operating costs condition is that in each of the relevant three preceding years at least 10% of the relevant operating costs constituted such expenditure.
- (4) In subsections (2) and (3)—

“relevant operating costs” means—

 - (a) if the issuing company is a single company at the time the relevant shares are issued, the operating costs of that company, and
 - (b) if the issuing company is a parent company at the time the relevant shares are issued, the sum of—
 - (i) the operating costs of the issuing company, and
 - (ii) the operating costs of each company which is a qualifying subsidiary of the issuing company at that time;

“the relevant three preceding years” means the three consecutive years the last of which ends—

 - (a) immediately before the beginning of the last accounts filing period, or
 - (b) if later, 12 months before the date on which the relevant shares are issued.
- (5) “The innovation condition” is—

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- (a) where the issuing company is a single company, that—
 - (i) the issuing company is engaged in intellectual property creation at the time the relevant shares are issued, and
 - (ii) it is reasonable to assume that, within 10 years of the issue of the relevant shares, one or a combination of—
 - (a) the exploitation of relevant intellectual property held by the company, and
 - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the company,
 will form the greater part of its business;
 - (b) where the issuing company is a parent company, that—
 - (i) the parent company or one or more of its qualifying subsidiaries (or both that company and one or more of those subsidiaries) is or are engaged in intellectual property creation at the time the relevant shares are issued, and
 - (ii) it is reasonable to assume that, within 10 years of the issue of the relevant shares, one or a combination of—
 - (a) the exploitation of relevant intellectual property held by the parent company or any of its qualifying subsidiaries, and
 - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the parent company or any of its qualifying subsidiaries,
 will form the greater part of what would be the business of the group if the activities of the group companies taken together are regarded as one business.
- (6) For the purposes of subsection (5), a company is engaged in intellectual property creation if—
- (a) relevant intellectual property is being created by the company, or has been created by it within the previous three years,
 - (b) the company is taking, or preparing to take, steps in order that relevant intellectual property will be created by it, or
 - (c) the company is carrying on activity which is the subject of a written evaluation which—
 - (i) has been prepared by an independent expert, and
 - (ii) includes a statement to the effect that, in the opinion of the expert, it is reasonable to assume that relevant intellectual property will, in the foreseeable future, be created by the company.
- (7) For the purposes of this section—
- (a) intellectual property is “relevant” intellectual property, in relation to a company, if the whole or greater part (in terms of value) of it is created by the company, and
 - (b) intellectual property is created by a company if it is created in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

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- (8) “The skilled employee condition” is that throughout period B—
- (a) if the issuing company is a single company, the FTE skilled employee number is at least 20% of the FTE employee number, and
 - (b) if the issuing company is a parent company, the FTE group skilled employee number is at least 20% of the FTE group employee number.

(9) But, in subsection (8), the reference to period B does not include any period during which the issuing company, by virtue of section 182 (companies in administration or receivership), is not regarded as having ceased to meet the trading requirement.

(10) In this section—

“FTE employee number” for a company is the full-time equivalent employee number determined in accordance with section 186A(3);

“FTE group employee number” means the sum of—

- (a) the FTE employee number for the issuing company, and
- (b) the FTE employee number for each of its qualifying subsidiaries;

“FTE group skilled employee number” means the sum of—

- (a) the FTE skilled employee number for the issuing company, and
- (b) the FTE skilled employee number for each of its qualifying subsidiaries;

“FTE skilled employee number” for a company is determined in accordance with section 186A(3) in the same way as the full-time equivalent employee number except that only employees of the company who—

- (a) hold a relevant HE qualification, and
- (b) are engaged directly in research and development or innovation activities carried on—
 - (i) if the issuing company is a single company, by that company, or
 - (ii) if the issuing company is a parent company, by that company or any qualifying subsidiary of that company,

are to be taken into account;

“independent expert”, in relation to an evaluation of activity of a company, means an individual who—

- (a) is not connected with the issuing company,
- (b) holds a relevant HE qualification, and
- (c) is an expert in the area of research and development or innovation being or to be pursued by the company in question;

“intellectual property” has the meaning given by section 195(6);

“the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the issuing company which ends before the date on which the relevant shares were issued;

“operating costs”, of a company for a period of account, means expenses of the company which are recognised as expenses in the

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company's profit and loss account or income statement for that period, other than expenses relating to transactions between that company and another company at a time when both companies are members of the same group (but see also subsection (11));

“relevant HE qualification” means—

- (a) a qualification which is at level 7, or a higher level, of the framework for higher education qualifications in England, Wales and Northern Ireland (as that framework may be amended or replaced from time to time),
 - (b) a qualification which is at level 11, or a higher level, of the framework for qualifications of higher education institutions in Scotland (as that framework may be amended or replaced from time to time), or
 - (c) a comparable qualification to one within paragraph (a) or (b).
- (11) Such apportionments as are just and reasonable are to be made to amounts recognised in a company's profit and loss account or income statement for the purpose of determining the company's operating costs for a year.
- (12) When determining whether an individual is connected with the issuing company for the purposes of this section, section 168 is to be ignored.
- (13) The Treasury may by regulations amend this section for the purposes of adding, amending or removing a condition which must be met for a company to be a knowledge-intensive company.
- (14) A statutory instrument containing regulations under subsection (13) may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.”

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