



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XIX

SUPPLEMENTAL

Interpretation

[^{F1}842A] Venture capital trusts.

- (1) In the Tax Acts “venture capital trust” means a company which is not a close company and which is for the time being approved for the purposes of this section by the Board; and an approval for the purposes of this section shall have effect as from such time as may be specified in the approval, being a time which, if it falls before the time when the approval is given, is no earlier than—
 - (a) in the case of an approval given in the year 1995-96, 6th April 1995; or
 - (b) in any other case, the time when the application for approval was made.
- (2) Subject to the following provisions of this section, the Board shall not approve a company for the purposes of this section unless it is shown to their satisfaction in relation to the most recent complete accounting period of the company—
 - (a) that the company’s income in that period has been derived wholly or mainly from shares or securities;
 - (b) that at least 70 per cent. by value of the company’s investments has been represented throughout that period by shares or securities comprised in qualifying holdings of the company;
 - (c) that at least 30 per cent. by value of the company’s qualifying holdings has been represented throughout that period by holdings of eligible shares;
 - (d) that no holding in any company, other than a venture capital trust or a company which would qualify as a venture capital trust but for paragraph (e) below, has at any time during that period represented more than 15 per cent. by value of the company’s investments;

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- (e) that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) have throughout that period been [^{F2}listed in the Official List of] the Stock Exchange; and
 - (f) that the company has not retained [^{F3}an amount which is greater than] 15 per cent. of the income it derived in that period from shares and securities.
- (3) Where, in the case of any company, the Board are satisfied that the conditions specified in subsection (2) above are fulfilled in relation to the company's most recent complete accounting period, they shall not approve the company for the purposes of this section unless they are satisfied that the conditions will also be fulfilled in relation to the accounting period of the company which is current when the application for approval is made.
- (4) The Board may approve a company for the purposes of this section notwithstanding that conditions specified in subsection (2) above are not fulfilled with respect to that company in relation to its most recent complete accounting period if they are satisfied—
- (a) in the case of any of the conditions specified in paragraphs (a), (d), (e) and (f) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to the accounting period of the company which is current when the application for approval is made or in relation to its next accounting period;
 - (b) in the case of any of the conditions specified in paragraphs (b) and (c) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to an accounting period of the company beginning no more than three years after the time when they give their approval or, if earlier, when the approval takes effect; and
 - (c) in the case of every condition which is not fulfilled but with respect to which the Board are satisfied as mentioned in paragraph (a) or (b) above, that the condition will continue to be fulfilled in relation to accounting periods following the period in relation to which they are satisfied as so mentioned.
- (5) For the purposes of subsection (2)(b) to (d) above the value of any holding of investments of any description shall be taken—
- (a) unless—
 - (i) it is added to by a further holding of investments of the same description, or
 - (ii) any such payment is made in discharge, in whole or in part, of any obligation attached to the holding as (by discharging the whole or any part of that obligation) increases the value of the holding, to be its value when acquired, and
 - (b) where it is so added to or such a payment is made, to be its value immediately after the most recent addition or payment.
- [For the purposes of subsection (2)(b) to (d) above where—
- ^{F4}(5AA) (a) any shares ("new shares") are exchanged for other shares ("old shares") under arrangements in relation to which paragraph 10C of Schedule 28B applies, and
- (b) those arrangements have not ceased by virtue of sub-paragraph (13) of that paragraph to be arrangements by reference to which requirements of that Schedule are deemed to be satisfied,
- the value of the new shares, both at the time of their acquisition and immediately after any subsequent addition to a holding of the new shares that is made under

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those arrangements, shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the old shares for which they are exchanged.

(5AB) References in subsection (5AA) above to shares in a company include references to any securities of that company.

(5AC) For the purposes of subsection (2)(b) to (d) above, where—

- (a) shares (“new shares”) are issued to a company by virtue of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company (“convertibles”), and
- (b) paragraph 10D of Schedule 28B applies in relation to the issue of the new shares,

the value of the new shares at the time of their acquisition shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the convertibles for which they are exchanged.]

[Regulations under paragraph 11B of Schedule 28B may make provision for the ^{F5}(5AD) purposes of subsection (2)(b) to (d) above for securing that where—

- (a) there is an exchange of shares to which regulations under that paragraph apply, and
- (b) the new shares are treated by virtue of the regulations as meeting the requirements of that Schedule,

the value of the holding of new shares, and of any original shares that are retained under the exchange, shall be taken to be an amount such that the requirements of subsection (2)(b) to (d) above do not cease to be met by reason of the exchange.

(5AE) In subsection (5AD) above—

- (a) “shares” includes securities; and
- (b) “exchange of shares”, “new shares” and “original shares” have the same meaning as in paragraph 11B of Schedule 28B.]

[Subsection (5B) below applies [^{F7}, subject to any regulations under paragraph 11 of ^{F6}(5A) Schedule 33 to the Finance Act 2002,] where—

- (a) there has been an issue of ordinary share capital of a company (“the first issue”),
- (b) an approval of that company for the purposes of this section has taken effect on or before the day of the making of the first issue, and
- (c) a further issue of ordinary share capital of that company has been made since the making of the first issue.

(5B) Where this subsection applies, the use to which the money raised by the further issue is put, and the use of any money deriving from that use, shall be disregarded in determining whether any of the conditions specified in subsection (2)(b) and (c) above are, have been or will be fulfilled in relation to—

- (a) the accounting period in which the further issue is made; or
- (b) any later accounting period ending no more than three years after the making of the further issue.]

(6) The Board may withdraw their approval of a company for the purposes of this section wherever it at any time appears to them that there are reasonable grounds for believing—

- (a) that the conditions for the approval of the company were not fulfilled at the time of the approval;

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- (b) in a case where the Board were satisfied for the purposes of subsection (3) or (4) above that a condition would be fulfilled in relation to any period, that that condition is one which will not be or, as the case may be, has not been fulfilled in relation to that period;
- (c) in the case of a company approved in pursuance of subsection (4) above, that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, the period of three years mentioned in subsection (4)(b) above;
- ^{F8}(ca) [in a case where the use of any money falls to be disregarded for any accounting period in accordance with subsection (5B) above—
- (i) that the first accounting period of the company for which the use of that money will not be disregarded will be a period in relation to which a condition specified in subsection (2) above will fail to be fulfilled; or
- (ii) that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, an accounting period for which the use of that money falls to be disregarded;] or
- (d) that the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of a condition specified in subsection (2) above to be fulfilled, not being a failure which, at the time of the approval, was allowed for in relation to that period by virtue of subsection (4) above.
- (7) Subject to subsections (8) and (9) below, the withdrawal of the approval of any company for the purposes of this section shall have effect as from the time when the notice of the withdrawal is given to the company.
- (8) If, in the case of a company approved for the purposes of this section in exercise of the power conferred by subsection (4) above, the approval is withdrawn at a time before all the conditions specified in subsection (2) above have been fulfilled with respect to that company in relation either—
- (a) to a complete accounting period of twelve months, or
- (b) to successive complete accounting periods constituting a continuous period of twelve months or more,
- the withdrawal of the approval shall have the effect that the approval shall, for all purposes, be deemed never to have been given.
- (9) A notice withdrawing the approval of a company for the purposes of this section may specify a time falling before the time mentioned in subsection (7) above as the time as from which the withdrawal is to be treated as having taken effect for the purposes of section 100 of the 1992 Act; but the time so specified shall be no earlier than the beginning of the accounting period in relation to which it appears to the Board that the condition by reference to which the approval is withdrawn has not been, or will not be, fulfilled.
- (10) Notwithstanding any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any approval given for the purposes of this section may be made at any time before the end of the period of three years beginning with the time when the notice of withdrawal is given.
- (11) The following provisions of section 842 shall apply as follows for the purposes of this section as they apply for the purposes of that section, that is to say—

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- [subsection (1AB) of that section shall apply in relation to subsection (2)(a)
F⁹(za) above as it applies in relation to subsection (1)(a) of that section;]
- (a) subsections (1A) and (2) of that section shall apply in relation to subsection (2)(d) above (but with the omission of subsection (2)(a) of that section) as they apply in relation to subsection (1)(b) of that section;
- (b) subsections [F¹⁰(1AB) and] (2A) to (2C) of that section shall apply in relation to subsection (2)(f) above as they apply in relation to subsection (1)(e) of that section; and
- (c) without prejudice to their application in relation to provisions applied by paragraph (a) or (b) above, subsections (3) and (4) of that section shall apply in relation to any reference in this section to a holding or an addition to a holding as they apply in relation to any such reference in that section.
- [A reference in this section, or in section 842(2)(b) as applied by subsection (11)(a)
F¹¹(11A) above, to a company's investments shall be taken to include, so far as it would not otherwise do so,—
- (a) money in the company's possession, and
- (b) any sum owed to the company by another person if the company has account-holder's rights over that sum.
- (11B) For the purposes of subsection (11A)(b) above, a company has “account-holder's rights” over a sum owed to the company if—
- (a) the company has a right (whether or not the exercise of the right is subject to conditions) to require the other person to pay out the sum, or amounts out of the sum, to the company or at the company's direction, and
- (b) the sum is owed to the company—
- (i) as a result of amounts having been paid to the other person by or for the company, or
- (ii) as a result of the other person having identified a sum in respect of which the company may exercise such a right.
- (11C) Subsection (11A) above does not have effect to cause a company's investments to be taken to include anything to which the company is not beneficially entitled, but for this purpose a company shall be taken to be beneficially entitled to—
- (a) sums subscribed for shares issued by it, and
- (b) anything to which it is entitled that (directly or indirectly) represents any such sums.]
- (12) In this section, and in the provisions of section 842 as applied for the purposes of this section, “securities”, in relation to any company—
- (a) includes any liability of the company in respect of a loan (whether secured or not) which has been made to the company on terms that do not allow any person to require the loan to be repaid, or any stock or security relating to that loan to be re-purchased or redeemed, within the period of five years from the making of the loan or, as the case may be, the issue of the stock or security; but
- (b) does not include any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period.
- (13) Schedule 28B shall have effect for construing the references in this section to a qualifying holding.

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- (14) In this section “eligible shares” means shares in a company which are comprised in the ordinary share capital of the company and carry no present or future preferential right to dividends or to the company’s assets on its winding up and no present or future ^{F12} . . . right to be redeemed.]

Textual Amendments

- F1** S. 842AA inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), **s. 70(1)**
- F2** Words in s. 842AA(2)(e) substituted (with effect in accordance with [Sch. 38 para. 7\(3\)\(4\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 38 para. 7(1)(2)(c)**
- F3** Words in s. 842AA(2)(f) substituted (with effect in accordance with [s. 82\(2\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 25 para. 57(2)**
- F4** S. 842AA(5AA)-(5AC) inserted (16.6.1999 with effect in accordance with [s. 69\(5\)\(a\)](#) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 69(4)(5)**
- F5** S. 842AA(5AD)(5AE) inserted (with effect in accordance with [Sch. 18 para. 8\(4\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 18 para. 8(2)**
- F6** S. 842AA(5A)(5B) inserted (retrospectively) by [Finance Act 1997 \(c. 16\)](#), **s. 75(1)**
- F7** Words in s. 842AA(5A) inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 33 para. 13**
- F8** S. 842AA(6)(ca) inserted (retrospectively) by [Finance Act 1997 \(c. 16\)](#), **s. 75(2)**
- F9** S. 842AA(11)(za) inserted (with effect in accordance with [s. 82\(2\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 25 para. 57(3)(a)**
- F10** Words in s. 842AA(11)(b) inserted (with effect in accordance with [s. 82\(2\)](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 25 para. 57(3)(b)**
- F11** S. 842AA(11A)-(11C) inserted (with effect in accordance with [Sch. 14 para. 8\(2\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 14 para. 8(1)**
- F12** Word in s. 842AA(14) repealed (with effect in accordance with [s. 73\(6\)](#) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [s. 73\(1\)\(a\)](#), **Sch. 27 Pt. 3(13)**, Note 1

Modifications etc. (not altering text)

- C1** S. 842AA: power to modify conferred (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 33 paras. 3-12**
- C2** S. 842AA modified (17.9.2004 with effect in accordance with [reg. 1\(2\)](#) of the affecting S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\)](#), **regs. 1(1), 12(1), 13(7)(9), 14(1)**

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