

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2001, Part 2. (See end of Document for details)*

SCHEDULES

SCHEDULE 15

ENTERPRISE INVESTMENT SCHEME: AMENDMENTS

PART 2

POSTPONEMENT OF CHARGEABLE GAIN ON REINVESTMENT

Introductory

- 25 Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) is amended in accordance with this Part.

Requirement as to the money raised

^{F1}26

Textual Amendments

- F1** Sch. 15 paras. 26-28 omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 8 para. 10(a)

^{F1}27

Textual Amendments

- F1** Sch. 15 paras. 26-28 omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 8 para. 10(a)

^{F1}28

Textual Amendments

- F1** Sch. 15 paras. 26-28 omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), Sch. 8 para. 10(a)

Designated period

- 29 In paragraph 3(1) (chargeable events) in both paragraph (c) and paragraph (d) for “within the designated period” substitute “ before the termination date relating to those shares ”.

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Value received by investor

30 (1) In paragraph 13 (value received by investor) in sub-paragraph (1) after “any value” insert “ (other than insignificant value) ”.

(2) In that sub-paragraph for “designated period” substitute “ period of restriction ”.

(3) After that sub-paragraph insert—

“(1A) This paragraph is subject to paragraph 13B below.

(1B) Where—

- (a) the individual who subscribes for the shares receives value (“the relevant receipt”) from the company during the period of restriction,
- (b) the individual has received from the company one or more receipts of insignificant value at a time or times—
 - (i) during that period, but
 - (ii) not later than the time of the relevant receipt, and
- (c) the aggregate amount of the value of the receipts within paragraphs (a) and (b) above is not an amount of insignificant value,

the individual shall be treated for the purposes of this Schedule as if the relevant receipt had been a receipt of an amount of value equal to the aggregate amount.

For this purpose a receipt does not fall within paragraph (b) above if it has previously been aggregated under this sub-paragraph.”.

(4) Omit sub-paragraph (4) of that paragraph (certain payments etc. received on a winding up or dissolution treated as receipts of value).

(5) In sub-paragraph (10) of that paragraph (interpretation of provisions applying to paragraph 13) after “this paragraph” insert “ and paragraph 13A(1) below ”.

(6) After sub-paragraph (11) of that paragraph insert—

“(12) In paragraphs 13A to 13C below (except paragraph 13C(4))—

- (a) references to “the shares” shall be construed in accordance with sub-paragraph (1) above, and
- (b) references to “the period of restriction” shall be construed as references to the period of restriction relating to the shares.”.

31 After paragraph 13 insert—

“Provision supplemental to paragraph 13

13A(1) For the purposes of paragraph 13 above, the value received by the individual in question is—

- (a) in a case within sub-paragraph (2)(a), (b) or (c) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital, securities or debt in question;
- (b) in a case within sub-paragraph (2)(d) of that paragraph, the amount of the liability;
- (c) in a case within sub-paragraph (2)(e) of that paragraph, the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares;

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- (d) in a case within sub-paragraph (2)(f) of that paragraph, the cost to the company of providing the benefit or facility less any consideration given for it by the individual;
 - (e) in a case within sub-paragraph (2)(g) or (h) of that paragraph, the difference between the market value of the asset and the consideration (if any) given for it;
 - (f) in a case within sub-paragraph (2)(i) of that paragraph, the amount of the payment;
 - (g) in a case within sub-paragraph (5) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital or securities in question.
- (2) In this paragraph and paragraph 13 above references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

This is subject to sub-paragraph (4) below.

- (3) For the purposes of this paragraph and paragraph 13 above “an amount of insignificant value” means an amount of value which—
- (a) does not exceed £1,000, or
 - (b) if it exceeds that amount, is insignificant in relation to the total amount of expenditure on the shares which is set under this Schedule against a corresponding total amount of the whole or any part of any chargeable gains.

- (4) For the purposes of paragraph 13 above, if, at any time in the period—
- (a) beginning one year before the shares are issued, and
 - (b) expiring at the end of the issue date,

arrangements are in existence which provide for the individual who subscribes for the shares to receive or to be entitled to receive, at any time in the period of restriction, any value from the company that issued the shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.

- (5) In sub-paragraph (4) above—
- (a) any reference to the individual includes a reference to any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time), and
 - (b) the reference to the company includes a reference to any person who, at any time in the period of restriction, is connected with the company (whether or not that person is so connected at the material time).

Receipt of replacement value

13B (1) Where—

- (a) by reason of a receipt of value within sub-paragraph (2) (other than paragraph (b)) or sub-paragraph (5) of paragraph 13 above (“the original value”), the shares would, in the absence of this paragraph, be treated as never having been eligible shares or as ceasing to be eligible shares on the date when the value is received,

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- (b) the original supplier receives value (“the replacement value”) from the original recipient by reason of a qualifying receipt, and
 - (c) the amount of the replacement value is not less than the amount of the original value,
- the receipt of the original value shall be disregarded for the purposes of paragraph 13 above.
- (2) This paragraph is subject to paragraph 13C below.
- (3) For the purposes of this paragraph and paragraph 13C below—
“the original recipient” means the person who receives the original value, and
“the original supplier” means the person from whom that value was received.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) above if it arises—
- (a) by reason of the original recipient doing one or more of the following—
 - (i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which sub-paragraph (5) below applies;
 - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset;
 - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset;
 - (b) where the receipt of the original value was within paragraph 13(2) (d) above, by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
 - (c) where the receipt of the original value was within paragraph 13(5) above, by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.
- (5) This sub-paragraph applies to—
- (a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—
 - (i) the original supplier, or
 - (ii) any other person who, at any time in the period of restriction, is an associate of, or connected with, that supplier (whether or not that person is such an associate, or so connected, at the material time),
which is reasonable in relation to the market value of those goods, services or facilities;
 - (b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—
 - (i) the original recipient, or

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- (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);
 - (c) any payment for the acquisition of an asset which does not exceed its market value;
 - (d) any payment, as rent for any property occupied by—
 - (i) the original recipient, or
 - (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),of an amount not exceeding a reasonable and commercial rent for the property;
 - (e) any payment in discharge of an ordinary trade debt (within the meaning of paragraph 13(11) above); and
 - (f) any payment for shares in or securities of any company in circumstances that do not fall within sub-paragraph (4)(a)(ii) above.
- (6) For the purposes of this paragraph, the amount of the replacement value is—
- (a) in a case within paragraph (a) of sub-paragraph (4) above, the aggregate of—
 - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
 - (ii) the difference between the market value of any asset within sub-paragraph (ii) or (iii) of that paragraph and the amount or value of the consideration (if any) received for it,
 - (b) in a case within sub-paragraph (4)(b) above, the same as the amount of the original value, and
 - (c) in a case within sub-paragraph (4)(c) above, the amount or value of the consideration received by the original supplier,
- and paragraph 13A(1) above applies for the purposes of determining the amount of the original value.
- (7) In this paragraph any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit.

Provision supplemental to paragraph 13B

- 13C (1) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of paragraph 13B above, as it applies in relation to the shares, to the extent to which that receipt has previously been set (under that paragraph) against any receipts of value which are, in consequence, disregarded for the purposes of paragraph 13 above as that paragraph applies in relation to those shares or any other shares subscribed for by the individual in question (“the individual”).
- (2) The receipt of the replacement value by the original supplier (“the event”) shall also be disregarded for the purposes of paragraph 13B above if—
- (a) the event occurs before the start of the period of restriction, or

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- (b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
- (c) where an appeal has been brought by the individual against an assessment made by virtue of paragraph 3(1)(e) above by reason of that receipt, the event occurs more than 60 days after the appeal has been finally determined.

But nothing in paragraph 13B above or this paragraph requires the replacement value to be received after the original value.

- (3) Sub-paragraph (4) below applies where—
 - (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of paragraph 13B(1) above, and
 - (b) the event which gives rise to the receipt is (or includes) a subscription for shares by—
 - (i) the individual, or
 - (ii) any person who, at any time in the period of restriction, is an associate of the individual, whether or not he is such an associate at the material time.

(4) Where this sub-paragraph applies, the person who subscribes for the shares shall not—

 - (a) be eligible for any relief under Chapter 3 of Part 7 of the Taxes Act (enterprise investment scheme: income tax relief) in relation to those shares or any other shares in the same issue, or
 - (b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of this Schedule.

(5) In this paragraph “the original value” and “the replacement value” shall be construed in accordance with paragraph 13B above.”.

Value received by persons other than the investor

- 32 (1) In paragraph 14 (value received by persons other than the investor), in sub-paragraph (1)—
- (a) for “designated period” substitute “ period of restriction ”, and
 - (b) for “paragraph 14A” substitute “ paragraphs 14AA and 14A ”.
- (2) In sub-paragraph (3) of that paragraph (repayments etc. excluded from the effects of paragraph 13(1))—
- (a) in paragraph (c) after “relief” insert “ attributable to shares held by that person ”, and
 - (b) after paragraph (c) insert—

“or it would have the effect mentioned in paragraph (a), (b) or (c) above were it not a receipt of insignificant value for the purposes of paragraph 13 above, section 300 of the Taxes Act or paragraph 47 of Schedule 15 to the Finance Act 2000, as the case may be”.
- (3) In sub-paragraph (7) of that paragraph (meaning of “subsidiary” in paragraph 14) after “this paragraph” insert “ and paragraph 14AA below ”.

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Certain receipts to be disregarded

33 After paragraph 14 insert—

“Insignificant repayments disregarded for purposes of paragraph 14

14A(1) Any repayment shall be disregarded for the purposes of paragraph 14 above if whichever is the greater of—

- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
- (b) the amount received by the member in question,

is insignificant in relation to the market value of the remaining issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.

This is subject to sub-paragraph (4) below.

- (2) For the purposes of this paragraph “repayment” means a repayment, redemption, repurchase or payment mentioned in paragraph 14(1) above.
- (3) For the purposes of sub-paragraph (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.
- (4) Where an individual subscribes for eligible shares in a company, sub-paragraph (1) above does not apply to prevent paragraph 14(2) above having effect in relation to the shares if, at a relevant time, arrangements are in existence that provide—
 - (a) for a repayment by the company or any subsidiary of the company (whether or not it is such a subsidiary at the time the arrangements are made), or
 - (b) for anyone to be entitled to such a repayment, at any time in the period of restriction.
- (5) For the purposes of sub-paragraph (4) above “a relevant time” means any time in the period—
 - (a) beginning one year before the eligible shares were issued, and
 - (b) expiring at the end of the issue date.”.

34 In paragraph 14A (certain receipts to be disregarded for purposes of paragraph 14)

- (a) for sub-paragraph (2) substitute—
 - “(2) For the purposes of this paragraph “repayment” has the meaning given in paragraph 14AA(2) above.”,
- (b) omit sub-paragraph (7) (repayments treated, for the purposes of the corporate venturing scheme, as causing insignificant changes to share capital to be disregarded), and
- (c) in sub-paragraph (8)(a) for “that Schedule” substitute “ Schedule 15 to the Finance Act 2000 (corporate venturing scheme) ”.

Information

35 (1) In paragraph 16 (information), in sub-paragraph (1)(a) for “in the designated period” substitute “ before the termination date relating to those shares ”.

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(2) After sub-paragraph (2) of that paragraph insert—

“(2A) In determining, for the purposes of sub-paragraph (1) or (2) above, whether a chargeable event falling within paragraph 3(1)(e) above has occurred by virtue of paragraph 13(1)(b) above, the effect of paragraph 13B above shall be disregarded.”.

(3) After sub-paragraph (3) of that paragraph insert—

“(3A) Where—

- (a) a person is required to give a notice under sub-paragraph (1) or (2) above in respect of a chargeable event which occurs by virtue of paragraph 13(1)(b) above or would occur by virtue of that paragraph but for the operation of paragraph 13B above, and
- (b) that person has knowledge of the replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,

the notice shall include particulars of that receipt of the replacement value (or expected receipt).

In this sub-paragraph “the replacement value”, “the original recipient”, “the original supplier” and “qualifying receipt” shall be construed in accordance with paragraph 13B above.”.

(4) In sub-paragraph (5) of that paragraph, for “If” to “particular case,” substitute—

“If the inspector has reason to believe—

- (a) that a person has not given a notice which he is required to give—
 - (i) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
 - (ii) under sub-paragraph (4) above in respect of any particular case, or
- (b) that a person has given or received value (within the meaning of paragraph 13(2) or (5) above) which, but for the fact that the amount given or received was an amount of insignificant value (within the meaning of paragraph 13A(3) above), would have triggered a requirement to give a notice under sub-paragraph (1) or (2) above, or
- (c) that a person has made or received any repayment (within the meaning of paragraph 14AA(2) above) which, but for the fact that it falls to be disregarded for the purposes of paragraph 14 above by virtue of paragraph 14AA(1) above, would have triggered a requirement to give a notice under sub-paragraph (2) above,”.

(5) The amendments made by this paragraph have effect in relation to events occurring on or after 7th March 2001.

Trustees: anti-avoidance

36 In paragraph 18 (trustees: anti-avoidance)—

- (a) in sub-paragraph (1) after “13” insert “ to 13C ”, and
- (b) in sub-paragraph (2)—
 - (i) in paragraph (a) for “paragraph 13 above applies” substitute “ sub-paragraph (1) of paragraph 13 above applies, or that sub-paragraph

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would apply were it not for the fact that the amount of value is an amount of insignificant value for the purposes of that sub-paragraph”, and

(ii) after that paragraph insert—

“(ab) in a case where paragraph 13(1) above would apply were it not for the operation of paragraph 13B above, the time when the original value (within the meaning of paragraph 13B above) in question is received;”.

Interpretation

37 In paragraph 19 (interpretation), in sub-paragraph (1)—

(a) after the definition of “ordinary shares” insert—

““the period of restriction”, in relation to any shares, means the period—

(a) beginning one year before the shares are issued, and

(b) ending immediately before the termination date relating to the shares;”.

(b) in the definition of “qualifying company” after “Act” insert “ (except that for the purposes of this Schedule the reference in section 293(1B)(b)(i) of that Act to section 304A of that Act shall be read as a reference to paragraph 8 above) ”, and

(c) at the end insert—

““termination date”, in relation to any shares, means the date found by applying the definition of “termination date” in section 312(1) of the Taxes Act by reference to the company that issued the shares and by reference to the shares.”.

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