

# INCOME TAX ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5: Enterprise investment scheme**

##### **Overview**

#### *Chapter 4: The issuing company*

##### **Overview**

#### *Section 181: The trading requirement*

600. This section sets out the trading requirement which the issuing company must meet throughout period B. It is based on section 293(2), (3A) to (3F) and (8A) of ICTA.
601. The nature of the requirement is set out in *subsection (2)*. The requirement can be met in one or other of two ways. Either the issuing company must exist essentially for the purpose of carrying on one or more *qualifying* trades during period B, or it can be a parent company of a group that carries on qualifying activities. It can alternate between these two conditions providing that at all times within period B it meets one or other of them.
602. The meaning of “qualifying trade” is explained in section 189. “Parent company”, “group” and “group company” are defined in section 257(1). Only part of section 293(3A) of ICTA appears in this section: it is in *subsection (4)*. The requirements in section 293(3A)(a) and (b) of ICTA are covered respectively by the definition of “parent company” in section 257(1) and by section 187.
603. *Subsections (3) and (7)* 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 42* in Annex 1.
604. The provision for property used for R&D in *subsection (6)(d)* has been extended. See *Change 41* in Annex 1.
605. The words “capable of” have been omitted in *subsection (8)*, rewriting the definitions of “incidental purposes” and of “mainly trading subsidiary” in sections 293(2)(a) and 293(3F)(a) of ICTA. The intention is to make the definitions simpler to interpret. In practice the test will not change.
606. The label “non-qualifying activities” in *subsection (2)(b)* is defined in subsection (8). Paragraph (a) of that definition refers to excluded activities. These are listed in section 192. Section 194 provides a let-out for certain leasing of ships from being treated as a non-qualifying activity.
607. The way that subsection (8) interprets non-qualifying activities means that no distinction is made between the let-out in section 194(4), derived from section 297(6) (a) to (d) of ICTA, and the let-out in section 194(7), derived from the final words of

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

section 297(6) of that Act. This contrasts with section 293(3C)(b) of ICTA. See *Change 43* in Annex 1.