

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

# INCOME TAX ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Overview**

523. This Part provides income tax reductions to individuals who subscribe for shares in smaller unquoted trading (and some other) companies with which they are not connected.
524. A tax reduction is available where an individual provides additional full risk equity finance by subscribing money for shares and holds those shares, in most cases, for at least three years and the other conditions of the scheme are met.
525. The structure of the Part is as follows:
- The tax reduction and an overview (Chapter 1);
  - Conditions relating to the investor (Chapter 2);
  - Conditions relating to money raised and other matters (Chapter 3);
  - Conditions relating to the issuing company (Chapter 4);
  - Claiming the tax reduction and attributing the reduction to shares (Chapter 5);
  - Withdrawing tax reductions that prove to be excessive (Chapter 6);
  - Method of withdrawing tax reduction and related matters (Chapter 7); and
  - Supplementary provisions (Chapter 8).
526. As set out in section 156(3), this Part has effect only in relation to shares issued on or after 6 April 2007 in accordance with section 1034(3). This is subject to provisions in Schedule 2, in particular the general provisions concerning the continuity of the law in Part 1 and the transitional provisions in Part 7 of that Schedule.
527. For example, the effect of Part 1 of Schedule 2 on section 218 (value received when there is more than one issue of shares) is that the section is read, in relation to shares issued before 6 April 2007, as a reference to the corresponding provision in the source legislation.
528. As a result of the commencement basis applying to Part 5, the minor changes in the law made by this Act will not affect shares issued before 6 April 2007, subject to one exception. This exception is the consequential amendment to section 312(2A) of ICTA, explained in the explanatory note on this section in Schedule 1.
529. [Section 1034\(3\)](#) also provides that consequential amendments and repeals associated with Part 5 have effect only in relation to shares issued on or after 6 April 2007. So

enterprise investment scheme (EIS) shares and BES shares (BES is the common name for the business expansion scheme) issued before that date are unaffected.

530. Sections 292, 294, 295, 296 and 395 of ICTA have not been rewritten since these provisions are spent.

## ***Chapter 1: Introduction***

### **Overview**

531. This Chapter sets out the conditions for an individual to be entitled to a tax reduction and quantifies the amount of the entitlement. It also gives an overview of the Part, labels certain concepts and provides signposts to other material related to EIS.

### ***Section 156: Meaning of “EIS relief” and commencement***

532. This section says the relief is a tax reduction and provides labels for the scheme and the relief. It is based on section 312(1) of ICTA.
533. *Subsection (3)* sets out the commencement basis for Part 5 in accordance with section 1034(3). See the notes in the general overview to this Part.

### ***Section 157: Eligibility for EIS relief***

534. This section states the conditions to be satisfied for the relief to be available and indicates where further detail can be found on certain conditions. It is based on sections 289(1), 290(1) and 291(1) of ICTA.

### ***Section 158: Form and amount of EIS relief***

535. This section quantifies the amount of the income tax reduction to which an individual is entitled if the individual claims EIS relief for a tax year. It is based on sections 289A(1) to (4) and 290(2) of ICTA.
536. *Subsection (1)* provides that an individual may, if that individual wishes, claim EIS relief in respect of some, but not all, of the shares in relation to which the individual is eligible for relief. See *Change 36* in Annex 1. There are consequential changes in later sections to deal with cases where an individual claims EIS relief in relation to some, but not all, of the shares in relation to which the individual is eligible for relief. The commentary on those later sections refers back to the commentary on this section.
537. *Subsection (1)* is expressed in terms of the individual's entitlement to a tax reduction. Sections 27 and 29 (within the calculation of income tax liability Chapter in Part 2) contain provisions about how effect is given to the entitlement to a reduction and how the actual reduction is quantified.
538. *Subsection (2)(a)* adds the words “and claims”, before “EIS relief”, to make explicit a requirement that is implied when sections 289A(1) and 289A(2)(a) of ICTA are considered together.
539. *Subsection (2)(b)* provides that there is an upper limit on the amount of an individual's entitlement to EIS relief rather than an upper limit on the subscriptions in respect of which the relief may be claimed. See *Change 37* in Annex 1.

### ***Section 159: Periods A, B and C***

540. This section labels and defines periods (relating to an issue of shares) that are referred to in other sections in this Part. It is based on section 312(1) and (1A) of ICTA.

***Section 160: Overview of other Chapters of Part***

541. This section indicates the content of Chapters that are not mentioned in section 157. It is new.

***Section 161: Other tax reliefs relating to EIS***

542. This section signposts other reliefs and material that may be relevant to EIS. It is new.

***Chapter 2: The investor***

**Overview**

543. This Chapter sets out the conditions which the investor must meet in order to be a “qualifying investor” in relation to the issue of shares in question.

***Section 162: Overview of Chapter***

544. This section states the three conditions that must be met by an investor in order to be a qualifying investor and indicates where further detail can be found about them. It is new.

***Section 163: The no connection with the issuing company requirement***

545. This section provides that the investor must not be connected with the issuing company during the period indicated. It is based on section 291(1) of ICTA.
546. There is a reference to connection before the issuing company is incorporated. This covers for example a former employee of a company which becomes a subsidiary or partner of the issuing company within the prescribed period, see section 167(1)(a).

***Section 164: The no linked loans requirement***

547. This section denies relief in the cases set out (loans connected with the subscription for the relevant shares). It is based on section 299A of ICTA.
548. The effect of the cross-reference in section 299A(2) of ICTA to section 307(6)(ca) of ICTA is achieved by making reference in section 239(1) of this Act (date from which interest is chargeable) to the meaning of “the making of the loan” in this section.
549. [Section 1008\(1\)](#) notes that “assignment” is the term used in Scotland for “assignment”. Both terms are used in section 299A(2)(b) of ICTA.

***Section 165: The no tax avoidance requirement***

550. This section stops the investor being a qualifying investor if the subscription was not for commercial reasons or if a main purpose was tax avoidance. It is based on section 289(6) of ICTA. There is a complementary requirement in respect of the issue of the shares in Chapter 3 of this Part.
551. Section 289(6) of ICTA has introductory wording about the investor “not being eligible for relief”. There is no need for similar introductory words in this section, because section 162 already provides that the investor is not a qualifying investor if the no tax avoidance requirement is not met, and is therefore not eligible for EIS relief (section 157(1)(b)).
552. To be consistent with related legislation, for example paragraph 14 of Schedule 15 to FA 2000 (corporate venturing scheme), this section refers to “commercial reasons” rather than “commercial purposes”.

**Section 166: Connection with issuing company**

553. This section defines, for the purposes of this Chapter, the meaning of an individual being connected with the issuing company and provides signposts to the sections that provide further detail of the way in which such connection can occur. It is based on section 291(2) of ICTA.
554. This section clarifies the application of the definition of connected in section 291(2) of ICTA. See *Change 38* in Annex 1.

**Section 167: Employees, directors and partners**

555. This section defines how an individual can be connected with the issuing company as a result of a person being “an employee, director or partner”. It is based on section 291(2), (3) and (4) of ICTA.
556. *Subsection (3)* is based on section 291(4) of ICTA. It provides that an individual who is both a director and an employee of the issuing company is covered by *subsection (1)(c)* rather than *subsection (1)(a)* and so can benefit from the let-outs in sections 168 and 169. In such a case, references in sections 167 to 169 to an individual in his or her capacity as a director also includes the individual in his or her capacity as an employee. So, for example, in these cases any remuneration received as an employee is taken into account in section 169(2).

**Section 168: Directors excluded from connection**

557. This section provides that an individual will, in specific circumstances, not be connected with the issuing company. It is based on sections 291(5) and 291A(1), (2), (3) and (6) of ICTA.
558. This section allows, in limited cases, the investor to be eligible for EIS relief in relation to a share issue even if the investor (or an associate) is a director of the issuing company. Such limited cases *broadly* include those where:
- the sole reason for connection would have been the relationship as director; but
  - in relation to the period over which connection is tested;
    - there are no payments to the individual (or to certain other persons), and no entitlement to such payments, from the issuing company (or from certain other persons), or
    - any such payments fall to be disregarded by virtue of *subsection (2)*.
559. *Subsection (4)(a)(i)* narrows the definition of “related person”. See *Change 39* in Annex 1.
560. The meaning of “connected” in *subsection (4)(a)(ii)* is found in section 993. This differs from the other references to “connected” in this Chapter, which take their meaning from section 166.
561. The words “at any time in period A” in *subsection (5)* are needed to convey the full meaning of the expression “51% subsidiary” in section 291A(6) of ICTA. For the source legislation, this expression has a specific definition in section 312(1) of ICTA, but this is not reproduced in the rewritten EIS sections. Instead a “51% subsidiary” in this Part takes its meaning from section 838 of ICTA - see section 989.

**Section 169: Directors qualifying for relief despite connection**

562. This section provides an exception to the rule that a person is not a qualifying investor if that person is connected with the issuing company. It is based on section 291(5) and section 291A(4) and (5) of ICTA.

563. This exception might apply to certain, otherwise unconnected, business angel investors whose only connection with the issuing company will be as directors. (A business angel is the term used for investors who also make their business expertise available to a company by becoming a director.)
564. In *subsection (3)(a)* the reference to “connected” takes its meaning from section 166, see *Change 38* in Annex 1.
565. In section 291A(5) of ICTA there is a reference to the word “trade” including “any business, profession or vocation”. As an incorporated company cannot carry on a vocation there is now in *subsection (3)(b)* a reference to “the trade, business or profession” carried on by the company or its subsidiary.

### ***Section 170: Persons interested in capital etc of company***

566. This section sets out cases in which an individual is treated as connected with the issuing company because of certain interests in that company or a subsidiary of that company. It is based on section 291(5) and section 291B of ICTA other than section 291B(5).
567. In *subsection (1)(a)*, based on section 291B(1)(a) of ICTA, there is a reference to ordinary share capital without the word “issued”. This is because the definition of ordinary share capital in section 989 defines ordinary share capital in terms of issued share capital.
568. In *subsections (1)(a), (2)(a) and (10)*, it has been made clear that the subsidiary referred to is the subsidiary of the issuing company.
569. *Subsection (6)* refers to “the issuing company”. This replaces a reference to “a company” in section 291B(4) of ICTA, on which subsection (6) is based. The clarification is consistent with the context of section 291B of ICTA generally and with the reference in section 291B(5) of ICTA to “another company ... assuming it to be an issuing company” in particular.

### ***Section 171: Persons subscribing for shares under certain arrangements***

570. This section provides a further instance where an individual is treated as connected with the issuing company. It is based on section 291B(5) of ICTA.
571. The references to “connected” take their meaning from section 166, see *Change 38* in Annex 1.

## ***Chapter 3: General requirements***

### **Overview**

572. This Chapter sets out conditions for the general requirements that need to be met in relation to the relevant shares.

### ***Section 172: Overview of Chapter***

573. This section lists the various conditions that are contained in this Chapter and where further detail can be found. It is new.

### ***Section 173: The shares requirement***

574. This section sets out the conditions that the relevant shares must satisfy. It is based on section 289(1), (7), (8) and (8A) of ICTA.
575. The shares (apart from bonus shares) have to be fully paid up in cash at the time they are issued. Bonus shares are defined in section 257.

576. *Subsection (2)* provides in effect that the shares must also be full-risk ordinary shares throughout period B. The label “eligible shares” which appears in section 289(7) of ICTA is no longer used. Instead of references to “eligible shares”, there are now references elsewhere in this Part to shares which meet the requirements of this subsection.
577. There are several instances in ICTA where the reference to *eligible* shares adds nothing to the meaning. The word *eligible* has been omitted in the Part where this is the case, and if identification of the shares in question is needed, an alternative such as “the relevant shares” has been used.
578. Similarly the term “new ordinary shares” has not been reproduced. As EIS relief depends on subscribing for shares that are issued to the investor, it is not necessary to describe the shares as “new”. This approach mirrors that in paragraph 35 of Schedule 15 to FA 2000 (corporate venturing scheme).

***Section 174: The purpose of the issue requirement***

579. This section sets out the condition concerning the purpose for which the share issue raises money. It is based on section 289(1) of ICTA.

***Section 175: The use of the money raised requirement***

580. This section sets out the requirements for the employment of the money raised by the issue of relevant shares. It is based on section 289(1), (3) and (3A) of ICTA.
581. *Subsection (1)* contains a reference to bonus shares which are defined in section 257(1). Such shares do not need to meet the tests of this section. This enables for example section 201(4) (attribution of EIS relief to shares) to work. As a result, under section 201(4)(b) this Part applies as if the “original issue” of shares included “corresponding bonus shares”.
582. *Section 257(5)* explains when shares are treated as being of the same class.

***Section 176: The minimum period requirement***

583. This section requires that the companies mentioned in *subsection (2)* must carry on the qualifying business activity for a certain period of time. It is based on section 289A(6) to (8A) of ICTA.
584. *Subsection (1)* makes the requirements of this section a condition of eligibility for EIS relief instead of, as in section 289A(6) of ICTA, a condition for claiming the relief. See *Change 40* in Annex 1.
585. *Subsections (2)* and *(3)* refer to “at or after the time of the issue” to make more obvious the fact that the period in question may end after the share issue has occurred.

***Section 177: The no pre-arranged exits requirement***

586. This section denies relief if certain arrangements exist in connection with the issue of shares. It is based on section 299B of ICTA.
587. The words in brackets in *subsection (1)(c)* “in terms of value” are not in section 299B(1) (c), although they do appear in paragraph 37(1) of Schedule 15 to FA 2000 (corporate venturing scheme). Introducing the words here is intended to clarify what is meant by “a substantial amount” in this context.

***Section 178: The no tax avoidance requirement***

588. This section requires that there be commercial reasons for the issue of the relevant shares and that a main purpose is not tax avoidance. It is based on section 289(6) of ICTA.



589. There is a complementary requirement in respect of the subscription for the shares in Chapter 2.
590. To be consistent with related legislation, for example, in paragraph 14 of Schedule 15 to FA 2000 (corporate venturing scheme), this section refers to “commercial reasons” rather than “commercial purposes”.

### ***Section 179: Meaning of “qualifying business activity”***

591. This section says what “qualifying business activity” means. It is based on section 289(2), (3A) and (8) of ICTA.
592. For EIS relief to be available, the share issue must raise money for the purpose of a qualifying business activity. (See section 174.)
593. In *subsection (1)* a qualifying business activity is explained by reference to activity A and activity B. The requirement is that these activities are carried out by the company or a qualifying 90% subsidiary.
594. The phrase “or preparing to carry on and then carrying on” in *subsection (2)(b)* is intended to be clearer than the phrase “preparing to carry on, or carrying on,” in section 289(2)(a)(ii) of ICTA. Each is concerned with money being raised *both* for the preparations for a trade *and* the subsequent carrying on of that trade.
595. *Subsections (4) and (5)* extend the cases in which R&D activities can be treated as a qualifying business activity. See *Change 41* in Annex 1.
596. *Subsection (7)* enables certain requirements to be met in relation to a company that is not a qualifying 90% subsidiary at the time the shares are issued. See *Change 42* in Annex 1.

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

### **Overview**

597. This Chapter sets out the conditions to be met if the issuing company is to be a qualifying company in relation to the relevant shares.

### ***Section 180: Overview of Chapter***

598. This section summarises the conditions to be met and indicates where further detail can be found. It is based on sections 289(1)(ba) and 293(1) of ICTA but there is no equivalent provision in ICTA that draws these conditions together.
599. Where there are shared provisions, the order matches Chapter 4 of Part 6, “qualifying holdings” in the venture capital trust scheme (VCT), as far as possible.

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

***Section 182: Ceasing to meet trading requirement because of administration or receivership***

608. This section provides an exception to section 181 in the cases specified. It is based on section 293(4A) to (6) and (8A) of ICTA.
609. The cases specified relate to administration or receivership carried out for commercial reasons and which do not have tax avoidance as a main purpose.
610. The meanings of “in administration” and “in receivership” are provided by section 252.

***Section 183: The issuing company to carry on the qualifying business activity requirement***

611. This section requires that, subject to the rules in the section, during period B it is only the issuing company or a qualifying 90% subsidiary of the issuing company that carries on the qualifying business activity for which money was raised by the share issue. It is based on section 289(1A) to (1E) and (8) and section 312(1) of ICTA.
612. Section 289(1)(ba) of ICTA, stating that the requirements of section 289(1A) of that Act must be met, is not reproduced explicitly. Instead it is implicit in section 180(b), as part of the list of the requirements in relation to the issuing company.

***Section 184: The unquoted status requirement***

613. This section requires that when the relevant shares are issued:
- the issuing company is unquoted; and
  - no arrangements as are mentioned in the section are in existence.

It is based on sections 293(1A), (1B) and (8A) and 312(1), (1B), (1C) and (1E) of ICTA.

614. The words in brackets in section 293(1) of ICTA “whether it is resident in the United Kingdom or elsewhere” have not been rewritten. The words do not add anything to the tests in section 179 (meaning of “qualifying business activity”).



615. The definition of unquoted company in section 312 of ICTA is set out in this section, rather than in Chapter 8, since this is the only mention of unquoted status in the EIS provisions.
616. Section 312(1D) of ICTA is not rewritten in this Part. It concerns orders made by the Commissioners for Her Majesty's Revenue and Customs and is covered by section 1014 which is based on section 828 of ICTA.
617. FA 2001 removed the requirement that the issuing company remain unquoted throughout the relevant period. Following that change, section 312(1E) of ICTA has little or no practical significance, but in exceptional circumstances this provision could still apply in relation to the "arrangements" in section 293(1B) of ICTA, (rewritten in *subsection (1)(b) and (c)*). Section 312(1E) has therefore been rewritten in *subsection (6)*.
618. "Arrangements" are defined in section 257(1).

***Section 185: The control and independence requirement***

619. This section is based on section 293(8) and (8A) of ICTA. It *broadly* requires that throughout period B:
- any company that the issuing company (on its own or together with connected persons) controls is a qualifying subsidiary of the issuing company
  - the issuing company is not a 51% subsidiary of or controlled by another company (on its own or together with connected persons); and
  - there are no arrangements which could lead the issuing company to fail either of these tests.
620. Section 293(3) of ICTA has not been rewritten. The definition of "a qualifying subsidiary of another company" is contained in section 191.
621. In *subsection (1)(a)* the words "of the issuing company" have been added after "a qualifying subsidiary". See *Change 44* in Annex 1.
622. "Control" in *subsection (2)(a)* is defined in section 995. The meaning of "control" in subsection (1)(a) is different and is given by section 257(3).

***Section 186: The gross assets requirement***

623. This section sets out the limits that apply to the value of a company's gross assets before and after a share issue. It is based on section 293(6A) to (6C) of ICTA.
624. The requirement differentiates between a "single company" and a "parent company". Both these terms are defined in section 257(1).
625. Section 293(6D) of ICTA has not been rewritten as a separate provision. The term the "company's group" and the reference to "in relation to any time" are not needed given the definitions in section 257(1) and the way in which this section as a whole is drafted.
626. *Subsection (3)(b)* sets out more clearly what is meant in relation to a group of companies by the words "aggregate value at that time of the gross assets" in section 293(6B)(b) of ICTA. Similar wording is used in paragraph 12(3) of Schedule 5 to ITEPA (enterprise management incentives).

***Section 187: The qualifying subsidiaries requirement***

627. This section requires that during period B any subsidiary of the issuing company must be a qualifying subsidiary. It is based on sections 293(3A) and 308(1) and (5A) of ICTA.

***Section 188: The property managing subsidiaries requirement***

628. This section requires that any property managing subsidiary of the issuing company must also be its qualifying 90% subsidiary. It is based on section 293(6ZA) to (6ZC) and (8A) of ICTA.
629. In section 293(6ZC) of ICTA “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 189: Meaning of “qualifying trade”***

630. This section gives the meaning of “qualifying trade”. It is based on sections 297(2) and (8) and 298(3) and (5) of ICTA.
631. The wording of *subsection (1)(b)* is more compact than section 297(2) of ICTA. The comparable wording is that the trade must not “consist of one or more of the following activities if that activity amounts, or those activities when taken together amount, to a substantial part of the trade”.
632. Excluded activities referred to in this subsection are set out in section 192.
633. *Subsection (2)* 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.

***Section 190: Meaning of “qualifying 90% subsidiary”***

634. This section gives the meaning of “qualifying 90% subsidiary”. It is based on section 289(9) to (13) of ICTA.

***Section 191: Meaning of “qualifying subsidiary”***

635. This section defines “qualifying subsidiary”. It is based on section 308(2) to (4) and (5B) of ICTA.
636. The term “51% subsidiary” in *subsection (2)(a)*, which is based on section 308(2) (ca) of ICTA, takes its meaning from the definition in section 989. The definition provides a signpost to section 838 of ICTA. Section 308(5B) of ICTA, which applies section 838(2) to (10) to section 308(2)(ca), has not been rewritten as it is unnecessary.

***Section 192: Meaning of “excluded activities”***

637. This section gives the meaning of “excluded activities”. It is based on section 297(2) of ICTA.
638. 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.
639. *Subsection (2)* indicates where further detail can be found on certain of the activities listed in *subsection (1)*.

***Section 193: Excluded activities: wholesale and retail distribution***

640. This section supplements section 192(1)(b). It is based on section 297(3) of ICTA.

641. *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.
642. 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.
643. *Subsection (5)(b)* refers to “the trader” rather than “the company” which is referred to in section 297(3)(c)(ii) of ICTA. See *Change 45* in Annex 1.

***Section 194: Excluded activities: leasing of ships***

644. This section supplements section 192(1)(d). It is based on sections 297(6) and (7) and 298(5) of ICTA.
645. *Subsection (2)* takes paragraph 18(2) of Schedule 5 to ITEPA (enterprise management incentives) as its model. 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.
646. *Change 43* applies for the purposes of *subsection (7)*. See the commentary on section 181.

***Section 195: Excluded activities: receipt of royalties and licence fees***

647. This section supplements section 192(1)(e). It is based on section 297(4) to (5C) of ICTA.

***Section 196: Excluded activities: property development***

648. This section supplements section 192(1)(g). It is based on section 298(5), (5B) and (5C) of ICTA.

***Section 197: Excluded activities: hotels and comparable establishments***

649. This section supplements section 192(1)(j). It is based on sections 297(3A) and 298(5A) of ICTA.

***Section 198: Excluded activities: nursing homes and residential care homes***

650. This section supplements section 192(1)(k). It is based on sections 297(3A) and 298(5) of ICTA.

***Section 199: Excluded activities: provision of services or facilities for another business***

651. 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 sections 297(2) and 298(1) to (3) of ICTA.

652. The section is written in terms of a business. As a consequence, the way in which the definition of a trade in section 298(3) of ICTA, governing sections 297 and 298, is applied within those sections has been simplified. See *Change 46* in Annex 1.

### ***Section 200: Power to amend by Treasury order***

653. This section allows the Treasury to make orders amending the provisions mentioned in the section. It is based on section 298(4) of ICTA.

### ***Chapter 5: Attribution of and claims for EIS relief***

#### **Overview**

654. This Chapter deals with attributing EIS relief to shares, claiming the relief and associated matters.

### ***Section 201: Attribution of EIS relief to shares***

655. This section attributes EIS relief for a tax year:
- first, to the issues of shares on which relief is claimed; and
  - second, to shares included in those issues.

It is based on section 289B(1) to (3A) and (5) and (6) of ICTA.

656. These attributions are needed because the investor may have subscribed to more than one share issue of a single company, or to share issues of more than one company, during the tax year. Each such share issue to the investor may have different periods associated with it for the purpose of recovery or withdrawal of relief. And the question of whether relief is attributable to shares disposed of is also relevant to relief for losses on shares and for capital gains tax purposes.
657. *Subsections (2) to (4)* cater for cases where an individual claims EIS relief in respect of all of the shares in relation to which the individual is eligible for relief. They also cater for cases where an individual claims EIS relief in respect of some, but not all, of the shares in relation to which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.

### ***Section 202: Time for making claims for EIS relief***

658. This section sets out the intervals during which claims for EIS relief can be made for a tax year. It is based on sections 289B(5) and 306(1) of ICTA.

### ***Section 203: Entitlement to claim***

659. This section requires the investor to hold a certificate (compliance certificate) from the issuing company before claiming EIS relief. It is based on section 306(2), (7), and (8) of ICTA.
660. *Subsection (2)* omits the words “and admitted” which are in section 306(7) of ICTA. Those words are not needed as there is no separate PAYE admittance procedure.

### ***Section 204: Compliance certificates***

661. This section says what compliance certificates are and deals with matters associated with their issue to investors (including the pre-condition that the issuing company gives a compliance statement to HMRC). It is based on section 306(2), (3) and (4) of ICTA.
662. The compliance certificate is commonly known as an EIS 3, the form provided by HMRC for the issuing company to issue to its investors.
663. The reference to requirements for EIS relief being “for the time being met” in *subsection (1)(b)* is new. There is an explanation in *Change 57* in Annex 1.

664. *Subsection (5)* requires an officer of Revenue and Customs to notify the officer's decision on a request by the issuing company for permission to issue a compliance certificate. See *Change 47* in Annex 1.

### ***Section 205: Compliance statements***

665. This section says what compliance statements are and deals with associated matters (including the period during which they can be given). It is based on section 306(3), (3A), (5) and (11) of ICTA.
666. The compliance statement is commonly known as an EIS 1, the form provided by HMRC for completion by the issuing company.
667. The reference to requirements for EIS relief being "for the time being met" in *subsection (1)(a)* is new. There is an explanation in *Change 57* in Annex 1.

### ***Section 206: Appeal against refusal to authorise compliance certificate***

668. This section allows an issuing company to appeal, to an independent body, if the officer of Revenue and Customs refuses to authorise the issue of compliance certificates by the company. It is based on section 306(10) of ICTA.

### ***Section 207: Penalties for fraudulent certificate or statement etc***

669. This section provides for penalties in the circumstances set out. It is based on section 306(6) of ICTA.

## ***Chapter 6: Withdrawal or reduction of EIS relief***

### **Overview**

670. This Chapter deals with cases in which EIS relief, otherwise available to the investor in relation to a share issue, is reduced or withdrawn.

### ***Section 208: Overview of Chapter***

671. This section provides a signpost to the various ways in which EIS relief may be withdrawn or reduced. It is new.

### ***Section 209: Disposal of shares***

672. This section withdraws or reduces EIS relief if the investor disposes of relevant shares before the end of period A relating to those shares. It is based on sections 299(1), (2) and (8) and 304(1) of ICTA.
673. EIS relief is only reduced to the extent that the relief is attributable to the shares which are the subject of the disposal.
674. *Subsection (4)* provides an exception in the case of certain disposals between spouses or civil partners.
675. Section 299(3) of ICTA is not rewritten. It is not needed because other provisions identify the shares that are disposed of and calculate the appropriate proportion of the relief attributable to those shares.

### ***Section 210: Cases where maximum EIS relief not obtained***

676. This section deals with the case where EIS relief on a subscription for shares was effectively obtained for a tax year at a rate that is below the savings rate of tax for the tax year concerned. It is based on sections 289B(5) and 299(4) of ICTA.

677. *Subsection (1)* effectively reduces the rate at which section 209(3)(a) recovers EIS relief on the proceeds from a disposal of the shares concerned. The rate of recovery is reduced, from the savings rate of tax for the year in which the shares were issued, to the rate at which EIS relief was effectively obtained.
678. The subsection also caters for cases where an individual claims EIS relief in respect of some, but not all, of the shares in relation to which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.
679. *Subsection (2)* deals with the complication that arises where the investor has obtained relief on some of the shares as if they were issued in the previous tax year. Subsection (1) is then applied as if there were two separate issues. That is necessary because the investor may have obtained EIS relief at different effective rates in the two years concerned (and one or both of these effective rates could be less than the savings rate for the tax year concerned).
680. *Subsections (3) and (4)* are new and correspond to provisions in paragraph 46(5) and (6) of Schedule 15 to FA 2000 (corporate venturing scheme - disposal of shares). See *Change 48* in Annex 1.

### ***Section 211: Call options***

681. This section treats the grant of a call option by the investor as if it were a disposal of shares for the purpose of section 209 (disposal of shares). It is based on section 299(8) of ICTA.

### ***Section 212: Put options***

682. This section deals with put options granted to the investor during period A relating to the relevant shares concerned. It is based on section 299(5), (5A) and (8) of ICTA.
683. The grant of the put option to the investor leads to the withdrawal of any EIS relief attributable to the shares to which the put option relates.

### ***Section 213: Value received by the investor***

684. This section sets out what happens if the investor receives value from the issuing company at any time during period C relating to an issue of shares. It is based on sections 300(1) to (1B), 301(4A), 301A(5) and 312(1) of ICTA.
685. Any EIS relief attributable to the issue of shares is either withdrawn or reduced. The amount of value received by the investor is taken into account in determining whether there is a withdrawal or reduction of relief (and the size of any reduction).
686. Subsection (3) makes explicit the order in which to apply sections 218 to 220.

### ***Section 214: Value received: receipts of insignificant value***

687. This section prevents section 213 applying to insignificant amounts of value received by the investor. But such amounts are not ignored if, taken together with certain other receipts of value by the investor, the total amount received is not insignificant. It is based on section 300(1) and (1BC) and section 312(1) of ICTA.

### ***Section 215: Meaning of “receipts of insignificant value”***

688. This section gives the meaning of “receipts of insignificant value” for the purpose of section 214. It is based on section 301A(1) to (4) and section 312(1) of ICTA.



**Section 216: When value is received**

689. This section sets out the time at which, and circumstances in which, the investor is treated as receiving value from the issuing company. It is based on sections 300(1D) to (3), (5) and (6) and 301(3), (4) and (5) of ICTA.
690. *Subsection (3)* refers, for clarity, to “the issuing company” where the source legislation refers to “a company”.

**Section 217: The amount of value received**

691. This section contains a table which sets out the amount of value received by the investor in cases where section 216 treats value as received by the investor. It is based on section 300(4) and (5) of ICTA.

**Section 218: Value received where there is more than one issue of shares**

692. This section deals with cases where the investor receives value but there is more than one issue of shares from which section 213 reduces or withdraws EIS relief. It is based on section 300(1BA) and (1BB) and section 312(1) of ICTA.
693. *Subsection (2)* apportions the value received between the different share issues before the calculation in section 213(2) takes place. Without such a provision the value received might be counted two, or more, times for reducing or withdrawing EIS relief.
694. By referring to the amount on which the investor obtains relief the subsection also caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.

**Section 219: Value received where part of share issue treated as made in previous tax year**

695. This section deals with a complication that can arise where section 213(2) applies to an issue of shares. The complication occurs where the investor has obtained relief on part of that share issue as if that part of the share issue had taken place in the previous tax year. It is based on sections 289B(5), 299(4) and 300(1B) of ICTA.
696. If that complication occurs, *subsection (2)* sets out the steps by which to arrive at the amount referred to in section 213(2)(a). Setting out these steps is a change because the source legislation is not explicit on this aspect. See *Change 49* in Annex 1.
697. By referring to the amount on which the investor obtains relief Step 1 also caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.
698. Step 2 includes a deeming of two separate issues of shares and apportionment of the value received between those two deemed issues. That is necessary because there may be a different savings rate of tax in each of the tax years.
699. Step 2 also requires the application of section 220, where appropriate, to deal with cases where the investor has not obtained EIS relief at the savings rate for one or both of the two years concerned in Step 2.

**Section 220: Cases where maximum EIS relief not obtained**

700. This section deals with the case where EIS relief on a subscription for shares was obtained for a tax year at a rate which is less than the savings rate of tax for that tax year. It is based on sections 299(4) and 300(1B) of ICTA.

701. *Subsection (1)* effectively lowers the rate at which section 213(2) recovers EIS relief on value received by the investor. The rate of recovery is reduced to the rate at which EIS relief was effectively obtained. The subsection also caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.
702. *Subsections (2) and (3)* are new and correspond to provisions in paragraph 52(2) and (3) of Schedule 15 to FA 2000 (corporate venturing scheme - cases where maximum relief not obtained). See *Change 48* in Annex 1.

### ***Section 221: Receipts of value by and from connected persons etc***

703. This section extends the meaning of terms used in some of the preceding sections. It is based on sections 300(1C) and 301(6) and (6A) of ICTA.
704. Without this extension the rules in preceding sections about reduction or withdrawal of EIS relief might be avoided in various ways.

### ***Section 222: Receipt of replacement value***

705. This section prevents section 213 reducing or withdrawing EIS relief in certain cases. It is based on sections 300A(1) to (6) and (11), 301(5) and 312(1) of ICTA.
706. This section applies to certain cases where the person who received value effectively repays all of it to the person who gave that value.

### ***Section 223: Section 222: supplementary***

707. This section supplements section 222. It is based on section 300A(1), (2) and (7) to (11) and section 312(1) of ICTA.
708. *Subsections (1) and (2)* contain limitations on the application of section 222.
709. There is a new reference in *subsection (2)(c)* to “the day” on which the amount of relief is determined. This is in line with the interpretation that the provision disqualifies restitution if it happens on the 61<sup>st</sup> day after *the day* of the determination.
710. *Subsections (3) and (4)* set out, for one particular case, the consequences of section 222 applying. Subsection (4) combines part of the provision in section 300A(10) of ICTA with material from paragraph 13C(4) of Schedule 5B to TCGA. A consequential amendment to that paragraph completes the picture (see the commentary in Part 2 of Schedule 1 to this Act on paragraph 13C of Schedule 5B to TCGA).

### ***Section 224: Repayments etc of share capital to other persons***

711. This section reduces or withdraws EIS relief in certain cases where, broadly, the issuing company (group) repays some of its share capital within period C relating to the issue of shares in question. It is based on sections 303(1) to (1C), (9A) and (9B), 303AA(2), 303A(2) and 312(1) of ICTA.
712. *Subsection (2)* sets out the calculation of the withdrawal or reduction in the simplest case where the repayment affects only a single issue of shares and only a single subscriber to that issue.
713. *Subsection (3)* provides a signpost to other sections that, depending on the particular combination of circumstances present, may modify (or remove the need for) the calculation in subsection (2). Subsection (3) makes explicit the order in which to apply sections 226 to 229.
714. *Subsections (4) and (5)* prevent this section applying in two cases. First, where the repayment causes a withdrawal or reduction of EIS relief (under other sections) or of

relief under Schedule 15 to FA 2000 (the corporate venturing scheme) or precipitates a qualifying chargeable event for the purposes of Schedule 5B to TCGA (enterprise investment scheme: reinvestment). Second, where there would be a withdrawal etc in these cases if the repayment were not treated as insignificant.

715. The references in subsections (4)(b) and (c) to “that person’s shares in the issuing company” are more explicit than in the source legislation and are consistent with section 303(IB)(a) of ICTA.
716. *Subsection (6)* is new and corresponds to paragraph 58(1) of Schedule 15 to FA 2000 (corporate venturing scheme - supplementary to value received). See *Change 50* in Annex 1.

***Section 225: Insignificant repayments ignored for purposes of section 224***

717. This section provides an exception to section 224 in certain cases where the repayment is insignificant. It is based on section 303AA(1) to (5) and section 312(1) of ICTA.

***Section 226: Amount of repayments etc where there is more than one issue of shares***

718. This section apportions the repayment for cases where that repayment results in relief being reduced or withdrawn, under section 224(2), in relation to two or more issues of shares. It is based on section 303(2) and (2A) of ICTA.
719. By referring to the relief which the individuals obtain *subsection (2)* caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.

***Section 227: Single issue affecting more than one individual***

720. This section apportions the repayment for cases where, in relation to a single issue of shares affected by that repayment, there is more than one individual that has shares to which EIS relief is attributable. It is based on section 303(1C) and (1D) of ICTA.
721. By referring to the relief which the individual obtains, *subsection (2)* caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.

***Section 228: Single issue treated as made partly in previous tax year***

722. This section deals with a complication that can arise where section 224(2) applies to an issue of shares. The investor may obtain relief as if part of that share issue had taken place in the previous tax year; a different savings rate may apply in the previous tax year. It is based on sections 289B(5), 299(4) and 303(1C) of ICTA.
723. Setting out steps, involving apportionment of the repayment, in *subsection (2)* is a change because the source legislation is not explicit on how to deal with such a complication. See *Change 49* in Annex 1.
724. By referring to the amount on which the individual obtains relief the subsection also caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.

***Section 229: Maximum relief not obtained for share issue***

725. This section deals with the case where EIS relief on a subscription for shares was obtained for a tax year at a rate that is less than the savings rate for that tax year. It is based on sections 299(4) and 303(1C) of ICTA.
726. *Subsection (1)* caters for the case where an individual claims EIS relief on some, but not all, of the shares in respect of which the individual is eligible for relief. See the commentary on section 158 and *Change 36* in Annex 1.
727. *Subsection (2)* lowers the rate at which section 224(2) recovers EIS relief on the repayment. The rate of recovery is reduced to the rate at which EIS relief was effectively obtained.
728. *Subsections (3) and (4)* are new and correspond to provisions in paragraph 56(7) and (8) of Schedule 15 to FA 2000 (corporate venturing scheme - value received by other persons). See *Change 48* in Annex 1.

***Section 230: Repayment of authorised minimum within 12 months***

729. This section provides an exception to section 224 for certain repayments. It is based on section 303(9) of ICTA.
730. *Subsection (1)(b)* widens the exception in the source legislation and corresponds to paragraph 58(5)(b) of Schedule 15 to FA 2000 (corporate venturing scheme - repayment of authorised minimum within 12 months). See *Change 51* in Annex 1.

***Section 231: Restriction on withdrawal of relief under section 224***

731. This section provides for section 224 to apply as if the repayment were a reduced, or zero, amount in cases where the repayment has led to a reduction of relief under Schedule 15 to FA 2000 (corporate venturing scheme). It is based on section 303A(1), (3) to (7) and (9) of ICTA.

***Section 232: Acquisition of a trade or trading assets***

732. This section withdraws relief from an individual in the circumstances set out in the section. It is based on section 302(1), (2) and (4) to (5) of ICTA.
733. The definition of “subsidiary” in section 302(5) of ICTA is not needed in sections 232 and 233 because they refer to “any qualifying subsidiary” and apply to period A.
734. *Subsection (7)* differs from the source legislation by not referring to a vocation. That is on the footing that an incorporated company cannot carry on a vocation.

***Section 233: Acquisition of share capital***

735. This section withdraws relief from an individual in the circumstances set out in the section. It is based on section 302(3), (4A), (4B) and (5) of ICTA.

***Section 234: Relief subsequently found not to have been due***

736. This section withdraws EIS relief in cases where the conditions for EIS relief, having been satisfied at the time it was obtained, cease to be satisfied. It is based on section 307(1) and (1A) of ICTA.

## ***Chapter 7: Withdrawal or reduction of EIS relief: procedure***

### **Overview**

737. This Chapter deals with the withdrawal or reduction of EIS relief after it has been obtained along with related matters such as information requirements, interest and penalties.

### ***Section 235: Assessments for the withdrawal or reduction of EIS relief***

738. This section provides that an assessment must be made to withdraw or reduce EIS relief after it has been obtained. It is based on section 307(1) and (8A) of ICTA.

### ***Section 236: Appeals against section 234(3)(b) notices***

739. This section allows the issuing company to appeal to an independent tribunal in cases where the issuing company disagrees with a notice under section 234(3)(b). It is based on section 307(1B) and (1C) of ICTA.

### ***Section 237: Time limits for assessments***

740. This section sets out the time limits for making an assessment or giving a notice under section 234(3)(b). It is based on section 307(2), (5) and (8A) of ICTA.

### ***Section 238: Cases where assessment not to be made***

741. This section provides for two cases in which EIS relief will not be withdrawn or reduced. It is based on section 307(3), (4) and (8A) of ICTA.
742. *Subsections (2) and (3)* cover the case of events occurring after the individual has disposed of all the shares, on which reduction of relief is still possible, by way of bargains at arm's length. An assessment cannot be made in relation to such events unless the individual is connected with the issuing company.
743. Subsection (2) limits, compared to the source legislation, the shares that need consideration in deciding whether an assessment cannot be made. *See Change 52* in Annex 1.

### ***Section 239: Date from which interest is chargeable***

744. This section gives the date from which interest runs if EIS relief is withdrawn or reduced by an assessment. It is based on sections 299A(2) and 307(6) and (8A) of ICTA.
745. *Subsection (1)* contains a table setting out the dates that apply. Those dates depend on the provision on which the assessment is based.
746. The table does not include anything derived from section 307(6)(a) and (aa) and (7) of ICTA. Nor is there any material derived from 306(9) of ICTA. Those provisions do not fit with Self Assessment. *See Change 53* in Annex 1.
747. Section 307(8) of ICTA is redundant as it refers to spent legislation and has not been rewritten.

### ***Section 240: Information to be provided by the investor***

748. This section requires an investor to provide information to an officer of Revenue and Customs if certain events occur after the investor has obtained EIS relief. It is based on section 310(1), (2A) and (9A) of ICTA.

***Section 241: Information to be provided by the issuing company etc***

749. This section requires the issuing company, or certain other persons, to provide information to an officer of Revenue and Customs if certain events occur which could withdraw or reduce EIS relief. It is based on section 310(2), (2A) and (9A) of ICTA.
750. *Subsection (1)* differs from section 310 of ICTA as it links the provision of a compliance statement to the requirement to give notice of certain events and it refers to events having an effect “if EIS relief had been obtained”. This follows the approach in paragraph 65(1) of Schedule 15 to FA 2000 (corporate venturing scheme). See *Change 54* in Annex 1.
751. *Subsection (4)* also follows the corporate venturing scheme approach and differs from section 310 of ICTA. It allows the issuing company to provide notice of one particular event within 60 days of coming to know of that event. See *Change 54* in Annex 1.
752. Section 310(3) of ICTA is redundant as it refers to spent legislation and has not been rewritten.

***Section 242: Power to require information where section 240 or 241 applies or could have applied***

753. This section allows an officer to require information in certain cases. It is based on section 310(4) of ICTA.

***Section 243: Power to require information in other cases***

754. This section provides additional circumstances in which an officer can require information for the purposes of this Part. It is based on section 310(5) to (8) of ICTA.

***Section 244: Obligations of secrecy***

755. This section allows an officer of Revenue and Customs to give certain information to the issuing company. It is based on section 310(9) of ICTA.

***Chapter 8: Supplementary and general***

***Overview***

756. This Chapter deals with some special cases and definitions.

***Section 245: Transfers between spouses or civil partners***

757. This section provides for step in shoes treatment where shares are transferred between spouses or civil partners in specified circumstances. It is based on section 304(2) and (3) of ICTA.
758. *Subsection (2)(b)* and *(d)* and *subsection (3)* contain material, not in the source legislation, making clearer how the step in shoes treatment operates. See *Change 55* in Annex 1.

***Section 246: Identification of shares on a disposal***

759. This section gives rules identifying which shares are disposed of. It is based on sections 299 (6) to (6D) and 304(4) of ICTA.

***Section 247: Continuity of EIS relief where issuing company is acquired by new company***

760. This section allows, in limited circumstances, the issuing company to become a wholly-owned subsidiary of another company without jeopardising EIS relief attributable to shares in the issuing company. It is based on section 304A(1), (2) and (6) to (8) of ICTA.



761. When this section applies, the exchange of shares and the issuing company becoming a subsidiary do not cause a reduction or withdrawal of EIS relief.
762. There is effectively step in shoes treatment given to the shares in the new company (which the shareholder receives in exchange for shares in the issuing company). The following two sections deal with that “step in shoes” treatment.

**Section 248: Carry over of obligations etc where EIS relief attributed to new shares**

763. This section gives the new company the rights and obligations, in relation to EIS relief, of the issuing company that has been acquired. It is based on section 304A(5) of ICTA.

**Section 249: Substitution of new shares for old shares**

764. This section treats the shareholder in the new company broadly as if actions etc taken in relation to the issuing company had been taken in relation to the new company. It is based on section 304A(3) and (4) of ICTA.

**Section 250: Nominees and bare trustees**

765. This section deals with the actions of nominees or bare trustees. It is based on section 311(1) to (2A), (4) and (5) of ICTA.
766. *Subsection (2)* adopts a different approach from that in section 311 of ICTA. Section 311 begins with the words “where eligible shares are held on a bare trust” and section 289(7) of ICTA defines “eligible shares” in terms of “new” shares. *Subsection (2)* begins with the words “if shares have been issued to a bare trust” and thereby makes it clear that these “new” shares are *issued* to bare trustees.
767. Elsewhere in this Part the concept of eligible shares being “new” has been dropped as redundant in the context of a subscription for shares. *Subsection (3)* reproduces the other conditions of “eligible” shares by applying section 173(2).

**Section 251: Approved investment fund as nominee**

768. This section removes the minimum subscription requirement for shares in a company and allows the investment to be treated as made earlier than was in fact the case where investment is made through an approved investment fund. It is based on section 311(2A) to (6) of ICTA.
769. The use in *subsection (1)* of “at a time when” makes it clear that the conditions in paragraphs (a) to (c) all have to be met but not in any prescribed order.
770. The certificate issued to the investor in an approved fund by the manager (see *subsection (5)*) is commonly known as an EIS 5, the form provided for this purpose by HMRC.

**Section 252: Meaning of a company being “in administration” or “in receivership”**

771. This section gives the meaning of a company being in administration (or receivership). It is based on section 312(2A) of ICTA.
772. 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 253: Meaning of “associate”**

773. This section gives the meaning of “associate” in relation to a person. It is based on sections 312(1) and 417(3) and (4) of ICTA.

**Section 254: Meaning of “disposal of shares”**

774. This section extends references to a disposal of shares and treats some matters as if they were disposals of shares. It is based on section 312(3) of ICTA.
775. Section 136 of TCGA may treat the investor, in the case of certain reorganisations, as having exchanged “old shares” even though the investor continues to hold the same “old shares” as were held before the reorganisation (together with some “new shares”). This section treats that reorganisation as a disposal of the “old shares”.

**Section 255: Meaning of “issue of shares”**

776. This section gives a meaning to (a) an issue of shares and (b) an issue of shares to an individual. It is based on sections 289B(4) and 312(4A) of ICTA.
777. Section 289B(4) of ICTA, on which *subsection (1)(b)* is based, is subject to the rule in section 289B(5).
778. Section 289B(5) of ICTA has been rewritten in section 201(6) for the purposes of that section and in other sections where that rule is relevant. So *subsection (2)* makes subsection (1)(b) subject to section 201(6) and also to the other sections where that rule is applied.
779. The exception for section 289A(6) and (7) of ICTA was inserted into section 289B(4) of ICTA by FA 2004 to ensure that the wording of those subsections did not invoke the interpretation in section 289B(4) and instead was linked clearly to the interpretation in section 312(4A) of ICTA. To achieve the same end the formulation in section 176(1) is directly linked to the interpretation in section 255(1)(a), (based on section 312(4A) of ICTA).

**Section 256: Meaning of “the termination date”**

780. This section gives the meaning of “the termination date”. It is based on section 312(1) and (1ZA) of ICTA.

**Section 257: Minor definitions etc**

781. This section contains more definitions. It is based on sections 289(9), 291B(10), 293(3A), (6D) and (8AA), 297(5A), 308(2) and 312(1), (2), (4), (4B), (5) and (6) of ICTA.
782. The definitions of “group”, “group company”, “parent company” and “single company” are new.
783. These new labels rely on the way “qualifying subsidiary” is defined in this Part. The definitions of “subsidiary” and “51% subsidiary” in section 312(1) of ICTA have not been reproduced. Instead “qualifying subsidiary” is explained in section 191 and “51% subsidiary” in section 989.
784. The definition of “51% subsidiary” in section 312(1) of ICTA adds a condition that the definition applies for a particular period (period A in the sections). The aim has been to reproduce the same effect of this definition without carrying over the same level of complication. (See the commentary on section 168(5).)
785. In some cases the definition of a term included in the Act-wide index of defined expressions in Schedule 4 is distinguished from the particular use of the term in this Part.
786. For example, the definition of “control” in *subsection (3)* sets out the references to control which are explained by section 416(2) to (6) of ICTA. The entry in Schedule 4, which refers to the meaning in section 995 has a signpost to the exceptions in this subsection.

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

787. The two references to the “reduction” of relief in *subsection (7)(b)* are new: section 312(6) of ICTA refers only to the withdrawal of relief.
788. The word “withdrawal” in EIS is used both for the occasions for a clawback of relief (in particular in the provisions in Chapter 6) and for the procedure for withdrawing relief which is set out in Chapter 7.
789. Although the word “withdrawal” can cover both a full and a partial withdrawal of relief, this is made explicit in sections 307 and 310 of ICTA by section 307(8A) and section 310(9A). These subsections note that “references in this section to the withdrawal of relief include its reduction”. This has been handled in this Part by spelling out, wherever relevant, that the rules encompass both the reduction and withdrawal of relief.
790. Making reference to the reduction as well as the withdrawal of relief in subsection (7) ensures that there is consistency with the language used for the occasion of a clawback and with sections 307 and 310 of ICTA, which are concerned with the procedure for withdrawing relief.
791. *Subsection (8)* is new. Paragraph 102(7)(a) of Schedule 15 to FA 2000 (corporate venturing scheme) contains a similar provision.
792. The subsection interprets the reference to requirements being met “for the time being” in section 204(1) (compliance certificates) and section 205(1) (compliance statements), derived from section 306 of ICTA. At the time the compliance certificate is issued by the issuing company it cannot be known if all the EIS requirements will be met in the relevant period.
793. The interpretation addresses this by treating conditions that must be met over a period of time as met at times before that period has ended (provided the condition then remains capable of being met). See *Change 57* in Annex 1.