

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Venture capital trusts

Overview

Chapter 4: Qualifying holdings

Overview

Section 290: The trading requirement

872. This section requires that the relevant company exists essentially for the purpose of carrying on qualifying trades or is a parent company of a group that carries on qualifying activities. It is based on paragraph 3(2) and (6) to (11) of Schedule 28B to ICTA.
873. A parent company, a group and a group company are defined in section 332.
874. Paragraph 3(6)(c) of Schedule 28B to ICTA is rewritten in *subsection (1)(b)* and *subsection (3)*. The requirements in paragraph 3(6)(b) and (c) are covered respectively by the definition of “parent company” in section 332 and by section 298.
875. *Subsections (2) and (6)* 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 61* in Annex 1. The provision for property used for R&D in *subsection (5)(d)* has been extended. See *Change 41* in Annex 1.
876. The words “capable of” have been omitted in *subsection (7)*, rewriting the definitions of “incidental purposes” and of “mainly trading subsidiary” in paragraph 3(2)(a) and (11) of Schedule 28B to ICTA. The intention is to make the definitions simpler to interpret: in practice the test will not change.
877. The label “non-qualifying activities” in subsection (1)(b) is defined in subsection (7). Paragraph (a) in subsection (7) refers to excluded activities. These are listed in section 303. Section 305 provides a let-out for certain leasing of ships from being treated as a non-qualifying activity.
878. The way that subsection (7) interprets non-qualifying activities means that no distinction is made between the let-out in section 305(4), derived from paragraph 4(7) (a) to (d) of Schedule 28B to ICTA, and the let-out in section 305(7), derived from the final words of paragraph 4(7). This contrasts with paragraph 3(8)(b) of Schedule 28B to ICTA. See *Change 43* in Annex 1.
879. There is no reference to R&D in the definition of non-qualifying activities in subsection (7)(b), in contrast to the definition in section 181(8)(b) in Part 5 (Enterprise investment scheme). This is because in VCT the carrying on of R&D is treated as the carrying on of a trade in section 300(2).