
Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2015, Paragraph 20. (See end of Document for details)

SCHEDULES

SCHEDULE 6

VENTURE CAPITAL TRUSTS

Interpretation of Part 6

20 After section 331 insert—

“331A Meaning of “knowledge-intensive company”

- (1) For the purposes of this Part, the relevant company is a “knowledge-intensive company” at the applicable time if the company meets—
 - (a) one or both of the operating costs conditions (see subsections (3) and (4)), and
 - (b) one or both of—
 - (i) the innovation condition (see subsection (6)), and
 - (ii) the skilled employee condition (see subsection (9)).
- (2) “The applicable time” means—
 - (a) in relation to references to a knowledge-intensive company in section 280B or 280C, the date the current investment (within the meaning of the section in question) is made, and
 - (b) in relation to any other reference to a knowledge-intensive company, the date the relevant holding is issued.
- (3) The first operating costs condition is that in at least one of the relevant three preceding years at least 15% of the relevant operating costs constituted expenditure on research and development or innovation.
- (4) The second operating costs condition is that in each of the relevant three preceding years at least 10% of the relevant operating costs constituted such expenditure.
- (5) In subsections (3) and (4)—
 - “relevant operating costs” means—
 - (a) if the relevant company is a single company at the applicable time, the operating costs of that company, and
 - (b) if the relevant company is a parent company at the applicable time, the sum of—
 - (i) the operating costs of the relevant company, and
 - (ii) the operating costs of each company which is a qualifying subsidiary of the relevant company at that time;
 - “the relevant three preceding years” means the three consecutive years the last of which ends—

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- (a) immediately before the beginning of the last accounts filing period, or
 - (b) if later, 12 months before the applicable time.
- (6) “The innovation condition” is—
 - (a) where the relevant company is a single company, that—
 - (i) the relevant company is engaged in intellectual property creation at the applicable time, and
 - (ii) it is reasonable to assume that, within 10 years of the applicable time, one or a combination of—
 - (a) the exploitation of relevant intellectual property held by the company, and
 - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the company,
 will form the greater part of its business;
 - (b) where the relevant company is a parent company, that—
 - (i) the parent company or one or more of its qualifying subsidiaries (or both that company and one or more of those subsidiaries) is or are engaged in intellectual property creation at the applicable time, and
 - (ii) it is reasonable to assume that, within 10 years of the applicable time, one or a combination of—
 - (a) the exploitation of relevant intellectual property held by the parent company or any of its qualifying subsidiaries, and
 - (b) business which results from new or improved products, processes or services utilising relevant intellectual property held by the parent company or any of its qualifying subsidiaries,
 will form the greater part of the business of the group, if the activities of the group companies taken together are regarded as one business.
- (7) For the purposes of subsection (6), a company is engaged in intellectual property creation if—
 - (a) relevant intellectual property is being created by the company, or has been created by it within the previous three years,
 - (b) the company is taking, or preparing to take, steps in order that relevant intellectual property will be created by it, or
 - (c) the company is carrying on activity which is the subject of a written evaluation which—
 - (i) has been prepared by an independent expert, and
 - (ii) includes a statement to the effect that, in the opinion of the expert, it is reasonable to assume that relevant intellectual property will, in the foreseeable future, be created by the company.
- (8) For the purposes of this section—

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- (a) intellectual property is “relevant” intellectual property, in relation to a company, if the whole or greater part (in terms of value) of it is created by the company, and
 - (b) intellectual property is created by a company if it is created in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (9) “The skilled employee condition” is that at the applicable time—
 - (a) if the relevant company is a single company, the FTE skilled employee number is at least 20% of the FTE employee number, and
 - (b) if the relevant company is a parent company, the FTE group skilled employee number is at least 20% of the FTE group employee number.
- (10) In this section—
 - “FTE employee number” for a company is the full-time equivalent employee number determined in accordance with section 297A(3);
 - “FTE group employee number” means the sum of—
 - (a) the FTE employee number for the relevant company, and
 - (b) the FTE employee number for each of its qualifying subsidiaries;
 - “FTE group skilled employee number” means the sum of—
 - (a) the FTE skilled employee number for the relevant company, and
 - (b) the FTE skilled employee number for each of its qualifying subsidiaries;
 - “FTE skilled employee number” for a company is determined in accordance with section 297A(3) in the same way as the full-time equivalent employee number except that only employees of the company who—
 - (a) hold a relevant HE qualification, and
 - (b) are engaged directly in research and development or innovation activities carried on—
 - (i) if the relevant company is a single company, by that company, or
 - (ii) if the relevant company is a parent company, by that company or any qualifying subsidiary of that company,

are to be taken into account;

“independent expert”, in relation to an evaluation of activity of a company, means an individual who—
 - (a) is not connected with the relevant company,
 - (b) holds a relevant HE qualification, and
 - (c) is an expert in the area of research and development or innovation being or to be pursued by the company in question,

and, for the purposes of paragraph (a), sections 167, 170 and 171 (but not section 168) apply to determine if an individual is connected with the relevant company (with references in those sections to the issuing company read as references to the relevant company);

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“intellectual property” has the meaning given by section 306(6);

“the last accounts filing period” means the last period for filing (within the meaning of section 442 of the Companies Act 2006) for the relevant company which ends before the applicable time;

“operating costs”, of a company for a period, means expenses of the company which are recognised as expenses in the company's profit and loss account or income statement for that period, other than expenses relating to transactions between that company and another company at a time when both companies are members of the same group (but see also subsection (11));

“relevant HE qualification” means—

- (a) a qualification which is at level 7, or a higher level, of the framework for higher education qualifications in England, Wales and Northern Ireland (as that framework may be amended or replaced from time to time),
 - (b) a qualification which is at level 11, or a higher level, of the framework for qualifications of higher education institutions in Scotland (as that framework may be amended or replaced from time to time), or
 - (c) a comparable qualification to one within paragraph (a) or (b).
- (11) Such apportionments as are just and reasonable are to be made to amounts recognised in a company's profit and loss account or income statement for the purpose of determining the company's operating costs for a year.
- (12) The Treasury may by regulations amend this section for the purposes of adding, amending or removing a condition which must be met for a company to be a knowledge-intensive company.
- (13) A statutory instrument containing regulations under subsection (12) may not be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.”

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