
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2018, Cross Heading: Non-qualifying loans. (See end of Document for details)

SCHEDULES

SCHEDULE 5

VENTURE CAPITAL TRUSTS: FURTHER AMENDMENTS

Non-qualifying loans

- 7 (1) Section 285 of ITA 2007 (interpretation of Chapter 3 etc of Part 6) is amended as follows.
- (2) In subsection (2)—
- (a) omit “(whether secured or not)”;
 - (b) at the end of paragraph (b) insert “, or
 - (c) any liability of the company in respect of a loan to which subsection (2A) applies that has been made to the company.”
- (3) After that subsection insert—
- “(2A) This subsection applies to a loan if—
- (a) the return on the loan represents more than a commercial rate of return, or
 - (b) the loan is made on terms which grant to a person or allow a person to acquire—
 - (i) any security or preferential rights in relation to assets of the company, or
 - (ii) the ability to control the company.In sub-paragraph (ii) “control” has the meaning given by sections 450 and 451 of CTA 2010.
- (2B) The return on a loan is not to be treated as representing more than a commercial rate for the purposes of subsection (2A)(a) if—
- (a) the return on the loan during the period of 5 years from the making of the loan does not exceed 50% of the amount lent, and
 - (b) the total return on the loan does not exceed—

$$N \times A \times 10 \%$$

where—

N is the number of years (including any fraction) in the term of the loan;

A is the amount lent or, in a case where some of the loan is repaid during the term of the loan, the average amount outstanding during that term.

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- (2C) The Treasury may by regulations substitute a different figure for a figure that is at any time specified in subsection (2B)(a) or (b).
- (2D) In subsections (2A)(a) and (2B) “return” means interest, fees, charges and other amounts payable in respect of the loan.
- (2E) Where it is to any extent not known, before the end of the term of a loan, what amounts will be payable in respect of the loan—
- (a) subsections (2A)(a) and (2B) apply, until the relevant matters are ascertained, on the basis of what amounts can reasonably be expected to be payable;
 - (b) when those matters are ascertained, any necessary adjustments must be made by making or amending assessments or by repayment or discharge of tax (regardless of any limitation on the time within which assessments or amendments may be made).”

Commencement Information

- II** Sch. 5 para. 7 in force at 15.3.2018 for the purposes of the amendments made by that paragraph by S.I. 2018/931, reg. 4(d) (with reg. 5)

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