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Mr Stephen Timms

165, Schedule 16, page 205, line 39,

leave out from beginning to ‘for’ and insert-

‘(1) Paragraph 29 of Schedule 15 to FA 2000 is amended as follows.

(2) In sub-paragraph (3),’

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166, Schedule 16, page 206, line 2,

leave out from ‘company’ to end of line 3 and insert ‘throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.’

(3) After sub-paragraph (6) insert-

“(7) If-

(a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and

(b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,

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references in sub-paragraph (3) to the issuing company include the old company.”

9A In paragraph 86(2) (substitution of new shares for old shares), after “Schedule”, in the first place it occurs, insert “(except paragraph 29(7))”.

Mr Stephen Timms

167, Schedule 16, page 206, line 9,

leave out from ‘company’ to end of line 10 and insert ‘throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.’.

Mr Stephen Timms

168, Schedule 16, page 206, line 12,

at end insert ‘, and

(c) after subsection (5C) insert-

“(5D) If-

(a) the company mentioned in section 293(1) (“the issuing company”) acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and

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(b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,

references in subsection (5) above to the company mentioned in section 293(1) include the old company.”

(1A) In section 304A of that Act (acquisition of share capital by new company)-

(a) in subsection (3), after “Chapter” insert “(except section 297(5D))”, and

(b) in subsection (4), after “Chapter” insert “(except section 297(5D))”.

Mr Stephen Timms

169, Schedule 16, page 206, line 18,

at end insert-

“(2A) In section 576K of that Act (share loss relief: substitution of new shares for old), after subsection (3) insert-

“(4) Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied by section 576B(7) above for the purposes mentioned in section 576B(8).”.

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170, Schedule 16, page 206, line 23,

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at end insert-

‘(3A) In section 146 of that Act (share loss relief: substitution of new shares for old), after subsection (2) insert-

“(3) Nothing in subsection (2) applies in relation to section 195(7) as applied by section 137(7) for the purposes mentioned in section 137(8).”.

Mr Stephen Timms

171, Schedule 16, page 206, line 29,

leave out from ‘company’ to end of line 30 and insert ‘throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.’,’,

Mr Stephen Timms

172, Schedule 16, page 206, line 31,

at end insert ‘, and

(c) after that subsection insert-

“(7) If-

(a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and

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(b) the consideration for the old shares consisted wholly of
the issue of shares in the issuing company,

references in subsection (4) to the issuing company include the
old company.”

(5) In section 249 of that Act (substitution of new shares for old
shares)-

(a) in subsection (2), after “Part” insert “(except section 195(7))”, and

(b) in subsection (4), after “Part” insert “(except section 195(7))”.

Mr Stephen Timms

173, Schedule 16, page 206, line 37,

leave out from ‘company’ to end of line 38 and insert “throughout a
period during which it created the whole or greater part (in terms of
value) of the intangible asset.”.

Mr Stephen Timms

174, Schedule 16, page 206, line 39,

at end insert-

‘(4) After that subsection insert-

“(7) If-

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(a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and

(b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,

references in subsection (4) to the relevant company include the old company.”

EXPLANATORY NOTE

SUMMARY

1. Amendments 165 to 174 amend paragraphs 9 to 11 of Schedule 16 which modify the provisions in the Enterprise Investment Scheme (EIS), Venture Capital Trust (VCT) scheme and the Corporate Venturing Scheme (CVS) (‘the schemes’) relating to the receipt of royalties and licence fees arising from a relevant intangible asset.

DETAILS

2. Part 3 of Schedule 16 provides for a change to the definition of a relevant intangible asset for companies raising funds under the EIS, CVS and VCT schemes. Those provisions are designed to align the rules relating to the transfer of a trade

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involving the exploitation of intangible assets with those relating to other qualifying trades.

3. The amendments to Part 3 of Schedule 16 modify the definition of a relevant intangible asset to include an asset the whole or greater part of which (in terms of value) has been created by a qualifying subsidiary of the issuing company during a period in which it was a qualifying subsidiary.
4. The amendments also extend the definition to an asset the whole or greater part of which (in terms of value) was created by a company when it was not a qualifying subsidiary, provided that it became a qualifying subsidiary under a certain type of company reconstruction.
5. **Amendment 165** is necessary to provide for the substantive amendment 166.
6. **Amendment 166** amends paragraph 9 of Schedule 16. The effect is to further amend paragraph 29(3)(b) of Schedule 15 Finance Act 2000 (Corporate Venturing Scheme) so that an asset can be a relevant intangible asset if the whole or greater part of it (in terms of value) has been created by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset. Amendment 166 further inserts new paragraph 29(7) Schedule 15 FA2000.
7. **New Paragraph 29(7)** provides that, where an issuing company acquired all the shares (the “old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and the consideration for the old shares consisted wholly of the issue

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of shares in the issuing company, then references in paragraph 29(3) Schedule 15 FA2000 to the issuing company include “the old company”. The consequential amendment in new paragraph 9A of Schedule 16 ensures that paragraph 86(2) Schedule 15 FA 2000 does not prevent paragraph 29(7) applying.

8. Amendments 167 to 173 amend paragraph 10 of Schedule 16 which concerns the Enterprise Investment Scheme. **Amendment 167** amends paragraph 10(1) of Schedule 16 (which itself amends section 297 Income and Corporation Taxes Act 1988 (ICTA)). The effect of amendment 167 is that an asset can be a relevant intangible asset if the whole or greater part of it (in terms of value) has been created by a company which was a qualifying subsidiary of the company mentioned in section 293(1) throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.
9. **Amendment 168** inserts new sub-paragraph 10(1)(c) into Schedule 16 which adds new subsection 297(5D) into ICTA.
10. **New subsection 297(5D)** provides that, where an issuing company acquired all the shares (the “old shares”) in another company (“the old company”), at a time when the only shares issued in the issuing company were subscriber shares, and the consideration for the old shares consisted wholly of the issue of shares in the issuing company, then references in section 297 to the company mentioned in section 293(1) include “the old company”. The consequential amendments in new sub-paragraph 10(1A) of Schedule 16 ensure that section 304(3) and (4) ICTA do not prevent section 297(5D) ICTA applying.

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11. **Amendments 169 and 170** add new sub-paragraphs 2A and 3A to paragraph 10 of Schedule 16. These make the consequential amendments to section 576K ICTA 1988 and section 146 Income Tax Act 2007 (ITA) required as a result of the introduction of new section 195(7) ITA by Amendment 172 (see paragraphs 17 and 18 below). These consequential amendments ensure that, in the case of certain types of share exchange, section 576K(2) ICTA and section 146(2) ITA do not prevent section 195(7) ITA applying for the purposes of share loss relief.
12. **Amendment 171** amends paragraph 10(4) of Schedule 16 so that an asset can be a relevant intangible asset if the whole or greater part of it (in terms of value) has been created by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.
13. **Amendment 172** inserts new sub-paragraph 10(4)(c) into Schedule 16 which adds a new subsection 195(7) into ITA.
14. **New subsection 195(7)** provides that, where an issuing company acquired all the shares (the “old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and the consideration for the old shares consisted wholly of the issue of shares in the issuing company, then references in section 195(4) to the issuing company include “the old company”. The consequential amendments in new sub-paragraph 10(5) ensure that sections 249 (2) and (4) ITA do not prevent section 195(7) ITA applying.
15. Amendments 173 and 174 amend paragraph 11 of Schedule 16 which concerns Venture Capital Trusts. **Amendment 173**

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amends paragraph 11(2) of Schedule 16 so that an asset can be a relevant intangible asset if the whole or greater part of it (in terms of value) has been created by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.

16. **Amendment 174** inserts new sub-paragraph 11(4) into Schedule 16 which adds a new subsection 306(7) ITA.
17. **New subsection 306(7)** provides that, where the relevant company acquired all the shares (the “old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and the consideration for the old shares consisted wholly of the issue of shares in the relevant company, then references in section 306(4) to the relevant company include “the old company”.

BACKGROUND NOTE

1. These amendments originate in representations made by stakeholders.

The Enterprise Investment Scheme. (EIS)

2. Under the EIS individuals may obtain various income tax and capital gains tax reliefs in respect of shares issued to them:
 - income tax relief (at 20 per cent) on the amount subscribed of up to £400,000 per tax year, and relief from capital gains

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tax on disposal of the shares, provided that the shares are held for a specified minimum period;

- provided that the shares qualified for income tax relief, relief against income for most allowable losses on the disposal of shares on which income tax relief was obtained (net of any income tax relief remaining after the disposal) if they are not set off against chargeable gains; and
- deferral of capital gains tax on a chargeable gain from the disposal of any asset where the gain is reinvested in EIS shares that meet certain conditions (this relief is also available to trustees of certain trusts).

Venture Capital Trusts (VCTs)

3. VCTs are companies, listed on the Stock Exchange, that specialise in investing in small, higher-risk unquoted trading companies of the same kind that qualify under the EIS. By investing in a VCT, individuals are able to spread the risk of investment over a number of such qualifying companies. The investor is entitled to various income tax and capital gains tax reliefs, including:
 - income tax relief at 30 per cent on the amount invested in new ordinary shares up to an annual limit of £200,000 in any tax year;
 - exemption from income tax on dividends on ordinary shares on acquisitions of VCT shares up to £200,000 per tax year ("the permitted maximum"); and

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- exemption from capital gains tax for gains on the disposal of ordinary VCT shares that were within the permitted maximum when acquired.

The Corporate Venturing Scheme (CVS)

4. The CVS was introduced in FA 2000 for a ten-year period. It is designed to encourage established companies to invest in small, higher-risk, unquoted trading companies and, through this, to encourage mutually beneficial corporate venturing relationships. Under the CVS companies subscribing for shares may obtain various reliefs from corporation tax:
 - corporation tax relief (at 20 per cent) – investment relief - on the amount invested, provided the shares are held for a specified minimum period;
 - relief for most allowable losses on the disposal of shares on which investment relief was obtained (net of any investment relief remaining after the disposal) against either income or chargeable gains; and
 - deferral of chargeable gains arising from the disposal of shares on which investment relief has been obtained where that gain is subscribed for shares, on which investment relief is obtained, in another company.