



## Social investment tax relief

---

### Who is likely to be affected?

Social enterprises and individuals who invest in such organisations.

### General description of the measure

This measure will make available a range of tax reliefs for qualifying individuals who make qualifying investments in qualifying social enterprises.

Income tax relief will be available as a percentage of the amount invested, to be deducted from the individual's income tax liability for the year of investment. The measure will also allow capital gains tax on chargeable gains to be deferred in certain circumstances where the person liable to tax invests money in a social enterprise. Capital gains on these social enterprise investments will be free from capital gains tax subject to conditions being met.

### Policy objective

This measure will support social enterprises seeking external finance by providing incentives to private individuals who invest in them. Many social enterprises currently have difficulty raising capital from investors and commercial lenders; this measure aims to address this issue and thus increase investment into social enterprises in the UK.

### Background to the measure

The Government announced at Budget 2013 that it would consult on the introduction of a new tax relief to encourage investment into social enterprises.

A consultation document, *Consultation on Social Investment Tax Relief*, was published on the Treasury website on 6 June 2013 setting out in detail a number of design issues concerning the new scheme. The Government's consultation response document was published on 10 December 2013.

## Detailed proposal

### Operative date

The income tax relief will apply to qualifying investments made on or after 6 April 2014. The capital gains tax reliefs will apply to gains which accrue on or after 6 April 2014.

### Current law

Part 1 of the Taxation of Chargeable Gains Act 1992 (TCGA) charges capital gains tax on gains which accrue on disposals of assets by individuals. Tax is normally charged for the tax year in which a disposal is made.

## Proposed revisions

Legislation will be introduced in Finance Bill 2014 to insert a new Part in the Income and Corporation Tax Act 2007. This will:

- provide for an income tax relief to be available to qualifying individuals making qualifying investments in qualifying social enterprises, with details of the eligibility conditions;
- apply in respect of subscriptions for shares in the enterprises or certain types of loans to the enterprises;
- apply to a limited annual amount of investment per investor, but with investment able to be carried back to the previous year; and
- allow enterprises to raise a maximum amount of investment over a period of three years.

The rate of income tax relief will be announced at Budget 2014.

Legislation will also be introduced in Finance Bill 2014 to amend the TCGA so that:

- if a sum equal to the amount of a chargeable gain is invested in a social enterprise within a specified time then the individual making the gain and the investment may claim for the gain be treated as accruing (and taxed) when the investment is disposed of and not at an earlier time. This will be subject to conditions concerning *inter alia* the nature of the investment and the activity of the enterprise.
- TCGA will also be amended so that capital gains which are attributable to an increase in value of the social investment itself will not be taxed, providing the investment is held for a minimum period.

## Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2014.					
<b>Economic impact</b>	This measure increases the incentive to invest in social enterprise which should bring increased capital to the sector. This measure is not expected to have a significant broader economic impact.					
<b>Impact on individuals and households</b>	Individual investors will benefit from a range of tax reliefs when investing in qualifying social enterprises.					
<b>Equalities impacts</b>	Investors are expected to be similar to those investing in the Enterprise Investment Scheme (EIS) and Venture Capital Trusts (VCT). Compared to the self-assessment population, those investors tend to be male, located in the south of England and have higher overall income levels.  It is envisaged that the scheme will not have any impact on those groups affected by equality legislation.					
<b>Impact on business including civil society organisations</b>	The measure should increase the amount of investment available to social enterprises seeking finance.  Eligible social enterprises may face some one-off and ongoing administrative costs in order to qualify for this relief and to familiarise themselves with the new legislation, processes and requirements.					

<b>Operational impact (£m) (HMRC or other)</b>	It is estimated that the cost to HM Revenue and Customs of implementing these changes will be in the region of £500,000 - £1 million for system changes. There will also be operational costs in administering the relief but this impact will be dependent on the number of social enterprises who qualify for investment.
<b>Other impacts</b>	Other impacts have been considered and none have been identified.

### **Monitoring and evaluation**

The Government will be monitoring the uptake of the reliefs in terms of numbers of investors and investees, amounts of investment and the distribution of levels of investment. The Government is also committed to evaluating the impact of the scheme on social enterprises' performance and the associated social benefit.

### **Further advice**

If you have any questions about this change, please contact Kathryn Robertson on 03000 585729 (email: [kathryn.robertson@hmrc.gsi.gov.uk](mailto:kathryn.robertson@hmrc.gsi.gov.uk)) for general enquiries; or Rob Clay on 03000 570649 (email: [rob.clay@hmrc.gsi.gov.uk](mailto:rob.clay@hmrc.gsi.gov.uk)) for enquiries relating specifically to the capital gains tax aspects.

## **1 Relief for investments in social enterprises**

- (1) Schedule 1 makes provision for and in connection with income tax relief for investments in social enterprises.
- (2) Schedule 2 makes provision for relief under TCGA 1992 where gains are invested in social enterprises.

## SCHEDULES

### SCHEDULE 1

Section 1

#### TAX RELIEF FOR SOCIAL INVESTMENTS

#### PART 1

#### THE RELIEF

- 1 In ITA 2007, after Part 5A (seed enterprise investment scheme) insert –

#### **“PART 5B**

#### TAX RELIEF FOR SOCIAL INVESTMENTS

#### CHAPTER 1

#### INTRODUCTION

#### **257J Meaning of “SI relief” and “social enterprise”**

- (1) This Part provides for income tax relief for social investments (“SI relief”), that is, entitlement to tax reductions in respect of amounts invested in social enterprises by individuals.
- (2) In this Part “social enterprise” means –
  - (a) a community interest company,
  - (b) a community benefit society (see section 257JB) that is not a charity,
  - (c) a charity, or
  - (d) any other body prescribed, or of a description prescribed, by an order made by the Treasury.
- (3) An order under subsection (2)(d) may make provision as to the bodies which are social enterprises for the purposes of this Part at times before the order comes into force or FA 2014 is passed but, where a body is a social enterprise for the purposes of this Part as a result of an order under subsection (2)(d) that has come into force, no subsequent order under subsection (2)(d) may undo that result in respect of times before the subsequent order comes into force.

#### **257JA Form and amount of relief**

- (1) If an individual –
  - (a) is eligible for SI relief in respect of any amount, and
  - (b) makes a claim in respect of all or some of the amount,

the individual is entitled to a tax reduction for the tax year in which the amount was invested.

This is subject to the provisions of this Part.

- (2) The amount of the reduction to which an individual is entitled under this Part for any particular tax year is the amount equal to tax, at the SI rate for that year, on—
  - (a) the amount or, as the case may be, the sum of the amounts invested in that year in respect of which the individual is eligible for and claims SI relief, or
  - (b) if less, £1 million.
- (3) The tax reduction is given effect at Step 6 in section 23.
- (4) If an individual—
  - (a) is eligible for and claims SI relief in respect of an amount, and
  - (b) makes a claim for part of that amount to be treated for the purposes of subsections (1) and (2) as if it had been invested not in the tax year in which it was actually invested but in the preceding tax year,those subsections apply, and the individual's liability to tax for both tax years is determined, in accordance with the claim.
- (5) In this Part “the SI rate” means [X%].

#### **257JB Meaning of “community benefit society”**

- (1) In this Part “community benefit society” means a body that—
  - (a) is registered as a community benefit society under the 2014 Act,
  - (b) is a pre-commencement society (within the meaning of the 2014 Act) that meets the condition in section 2(2)(a)(ii) of the 2014 Act, or
  - (c) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act (Northern Ireland) 1969 in the case of which the condition in section 1(2)(b) of that Act is fulfilled,and in respect of which the condition in subsection (2) is met.
- (2) The condition is that—
  - (a) the body is of a kind prescribed by regulation 5 of, and
  - (b) the body's rules include a rule in the terms set out in Schedule 1 to, the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 (S.I. 2006/264) or the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 (S.R. 2006/258).
- (3) The Treasury may by order amend this section for the purpose of—
  - (a) replacing—
    - (i) the condition in subsection (2), or
    - (ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2), with one or more other conditions;
  - (b) varying—

- (i) the condition in subsection (2), or
- (ii) the condition, or any of the conditions, for the time being replacing the condition in subsection (2);
- (c) dispensing with—
  - (i) the condition in subsection (2), or
  - (ii) the condition, or all or any of the conditions, for the time being replacing the condition in subsection (2).
- (4) In this section—
  - “the 2014 Act” means the Co-operative and Community Benefit Societies Act 2014;
  - “the 2010 Act” means the Co-operative and Community Benefit Societies and Credit Unions Act 2010.
- (5) While neither the 2014 Act, nor section 1 of the 2010 Act, is in force, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
  - “(a) is a society registered, or treated as registered, under section 1 of the Industrial and Provident Societies Act 1965 in the case of which the condition in section 1(2)(b) of that Act is fulfilled, or”.
- (6) If section 1 of the 2010 Act (registration of societies) comes into force before the 2014 Act comes into force then, with effect from the coming into force of that section and until the coming into force of the 2014 Act, subsection (1) of this section has effect as if for paragraphs (a) and (b) of that subsection there were substituted—
  - “(a) is registered as a community benefit society under section 1 of the Industrial and Provident Societies Act 1965 (“the 1965 Act”),
  - (b) is a pre-2010 Act society (as defined by section 4A(1) of the 1965 Act) that meets the condition in section 1(3) of the 1965 Act, or”.
- (7) In the event that section 2 of the 2010 Act (renaming of the 1965 Act) is brought into force before its repeal by the 2014 Act takes effect then, with effect from the coming into force of that section, subsections (5) and (6) of this section have effect as if, in the provisions which they substitute, the references to the Industrial and Provident Societies Act 1965 were references to the Co-operative and Community Benefit Societies and Credit Unions Act 1965.

### **257JC Charities that are trusts**

In this Part, a reference to a company includes a reference to a charity that is a trust.

## **CHAPTER 2**

### ELIGIBILITY FOR RELIEF: BASIC RULE AND KEY DEFINITIONS

#### *Eligibility*

### **257K Eligibility for SI relief**

- (1) An individual (“the investor”) who invests in a social enterprise is eligible for SI relief in respect of the amount invested if—
  - (a) the investment is made—

- (i) by the investor on the investor’s own behalf,
    - (ii) on or after 6 April 2014, and
    - (iii) before 6 April 2019 (but see subsection (3)), and
  - (b) the conditions set out in Chapters 3 and 4 are met.
- (2) The investor is not eligible for SI relief in respect of the amount invested if –
  - (a) the investor has obtained in respect of that amount, or any part of it, relief under –
    - (i) Part 5 (enterprise investment scheme),
    - (ii) Part 5A (seed enterprise investment scheme), or
    - (iii) Part 7 (community investment tax relief), or
  - (b) that amount, or any part of it, has under Schedule 5B to TCGA 1992 (enterprise investment scheme: re-investment) been set against a chargeable gain.
- (3) Investments made by, subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as made by, subscribed for, issued to, held by or disposed of by the individual.
- (4) The Treasury may by order substitute a later date for the date for time being specified in subsection (1)(a)(iii).

#### *Key definitions*

#### **257KA Key to reading the rest of the Part**

In the following provisions of this Part (except section 257N), a reference to –

- “the amount invested”,
- “the investment”,
- “the investor”, or
- “the social enterprise”,

is to be read in accordance with section 257K(1).

#### **257KB When investment is made, and “investment date”**

- (1) In this Part “the investment date” means the date on which the investment is made.
- (2) For the purposes of this Part –
  - (a) so far as the investment is in shares, it is made when the shares are issued to the investor by the social enterprise, and
  - (b) so far as the investment is in qualifying debt investments (see section 257L), it is made –
    - (i) when the social enterprise issues the debenture or debentures concerned to the investor, or
    - (ii) in a case where there is to be no such issuing, when the debenture or debentures concerned, so far as relating to the amount invested, take effect between the social enterprise and the investor.



**257KC “Shorter applicable period” and “longer applicable period”**

- (1) In this Part “the shorter applicable period” and “the longer applicable period” have the meaning given by this section.
- (2) The shorter applicable period begins with the investment date.
- (3) The longer applicable period begins with—
  - (a) the day on which the social enterprise is—
    - (i) incorporated (if it is a body corporate), or
    - (ii) established (in any other case), or
  - (b) if later, the day whose first anniversary is the investment date.
- (4) Each of the periods ends with the third anniversary of the investment date.

**CHAPTER 3****ELIGIBILITY: CONDITIONS RELATING TO THE INVESTOR AND THE INVESTMENT****257L Investment to be in new shares or new qualifying debt investments**

- (1) At all times during the shorter applicable period, the investment must be in—
  - (a) shares that meet conditions A and B and are issued to the investor by the social enterprise in return for the amount invested, or
  - (b) qualifying debt investments of which the investor is the holder in return for advancing the amount invested to the social enterprise.
- (2) Condition A is that the shares must carry none of the following—
  - (a) a right to a return which, or any part of which, is a fixed amount;
  - (b) a right to a return which, or any part of which, is at a fixed rate;
  - (c) a right to a return which, or any part of which, is otherwise fixed by reference to the amount invested;
  - (d) a right to a return which, or any part of which, is fixed by reference to some other factor that is not contingent on successful financial performance by the social enterprise;
  - (e) a right to a return at a rate greater than a reasonable commercial rate.
- (3) Condition B is that, for the purpose of determining the amounts due in respect of the shares to their holder in the event of the winding-up of the social enterprise—
  - (a) those amounts rank after all debts of the social enterprise except any due to holders of qualifying debt investments in the social enterprise in respect of their qualifying debt investments, and
  - (b) the shares do not rank above any other shares in the social enterprise.

- (4) In this Part “qualifying debt investments”, in relation to the social enterprise, means any debentures of the social enterprise in respect of which the following conditions are met –
- (a) neither the principal of the debt concerned, nor any return on that, is charged on any assets,
  - (b) the rate of any such return is not greater than a reasonable commercial rate of return, and
  - (c) in the event of the winding-up of the social enterprise, any sums due in respect of the debt (whether principal or return) –
    - (i) are subordinated to all other debts of the social enterprise except sums due in the case of other unsecured debentures of the social enterprise which rank equally,
    - (ii) rank equally, if there are shares in the social enterprise and they all rank equally among themselves, with amounts due to share-holders in respect of their shares, and
    - (iii) rank equally, if there are shares in the social enterprise and they do not all rank equally, with amounts due in respect of their shares to the holders of shares that do not rank above any other shares.
- (5) The condition in subsection (3)(b) or (4)(c)(i) is met even if the sums concerned do not rank after debts which are postponed –
- (a) by rules under section 411 of the Insolvency Act 1986, or
  - (b) by or under any other enactment.

**257LA Condition that the amount invested must have been paid over**

- (1) So far as the investment is in shares –
  - (a) the shares must be subscribed for wholly in cash, and
  - (b) must be fully paid up at the time they are issued.
- (2) So far as the investment is in qualifying debt investments, their full nominal amount must have been advanced wholly in cash by the time the investment is made.
- (3) For the purposes of this section –
  - (a) shares are not fully paid up, or
  - (b) the full nominal amount of qualifying debt investments has not been advanced,if there is any undertaking to pay cash to any person at a future time in respect of the acquisition of the shares or investments.

**257LB The no pre-arranged exits requirements**

- (1) There must not at any time in the shorter applicable period be any arrangements in existence for the investment to be redeemed, repaid, repurchased, exchanged or otherwise disposed of in that period.
- (2) The issuing arrangements for the investment must not include –
  - (a) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the social enterprise or a person connected with the social enterprise, or

- (b) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the social enterprise or of a person connected with the social enterprise.
- (3) The arrangements referred to in subsection (2)(a) and (b) do not include any arrangements applicable only on the winding-up of a company except in a case where –
  - (a) the issuing arrangements include arrangements for the company to be wound up, or
  - (b) the arrangements are applicable on the winding-up of the company otherwise than for genuine commercial reasons.
- (4) In this section “the issuing arrangements” means –
  - (a) the arrangements under which the investor makes the investment, and
  - (b) any arrangements made before, and in relation to or in connection with, the making of the investment by the investor.

#### **257LC The no risk avoidance requirement**

- (1) There must not at any time in the shorter applicable period be any arrangements in existence the main purpose or one of the main purposes of which is (by means of any insurance, indemnity, guarantee, hedging of risk or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1) do not include any arrangements which are confined to the provision –
  - (a) for the social enterprise itself, or
  - (b) if the social enterprise is a parent company that meets the trading requirement in section 257MJ(2)(b) –
    - (i) for the social enterprise itself,
    - (ii) for the social enterprise itself and one or more of its subsidiaries, or
    - (iii) for one or more of the subsidiaries of the social enterprise,

of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.

#### **257LD The no linked loans requirement**

- (1) No linked loan is to be made by any person, at any time in the longer applicable period, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which –
  - (a) would not have been made, or
  - (b) would not have been made on the same terms,

if the investor had not made the investment, or had not been proposing to do so.
- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include –

- (a) references to the giving by that person of any credit to the investor or any associate of the investor, and
- (b) references to the assignment to that person of a debt due from the investor or any associate of the investor.

#### **257LE The no tax avoidance requirement**

The investment must be made for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### **257LF Restrictions on being an employee, partner or paid director**

- (1) This section applies –
  - (a) to the investor, and
  - (b) to any individual who is an associate of the investor.
- (2) An individual to whom this section applies must not at any time in the longer applicable period be –
  - (a) an employee of –
    - (i) the social enterprise,
    - (ii) any subsidiary of the social enterprise,
    - (iii) a partner of the social enterprise, or
    - (iv) a partner of any subsidiary of the social enterprise,
  - (b) a partner of –
    - (i) the social enterprise, or
    - (ii) any subsidiary of the social enterprise,
  - (c) a trustee of –
    - (i) the social enterprise, or
    - (ii) any subsidiary of the social enterprise, or
  - (d) a remunerated director of –
    - (i) the social enterprise, or
    - (ii) a linked company.
- (3) In this section –
  - “linked company” means –
    - (a) a subsidiary of the social enterprise,
    - (b) a company which is a partner of the social enterprise, or
    - (c) a company which is a partner of a subsidiary of the social enterprise;
  - “related person” means –
    - (a) the social enterprise,
    - (b) a person connected with the social enterprise,
    - (c) a linked company of which the individual is a director, or
    - (d) a person connected with such a company;
  - “subsidiary”, in relation to the social enterprise, means a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a subsidiary of the social enterprise for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).

- (4) For the purposes of subsection (2)(d), an individual who is a director of the social enterprise or a linked company is “remunerated” if the individual (or a partnership of which the individual is a member) –
- (a) receives during the longer applicable period a payment from a related person, or
  - (b) is entitled to receive a payment from a related person in respect of the longer applicable period or any part of that period.
- (5) For the purposes of subsection (4) the following are ignored –
- (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the individual in the performance of the individual’s duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to a related person,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by a related person which does not exceed a reasonable and commercial rent for the property,
  - (f) any necessary and reasonable remuneration which –
    - (i) is paid for services, rendered to a related person in the course of a trade or profession, that are not secretarial services and are not managerial services and are not services of a kind provided by the person to whom they are rendered, and
    - (ii) is taken into account in calculating for tax purposes the profits of that trade or profession, and
  - (g) if condition A or B is met, any other reasonable remuneration (including any benefit or facility) received by the individual, or to which the individual is entitled, for services rendered by the individual –
    - (i) to the company (whether the social enterprise or a linked company) of which the individual is a director, and
    - (ii) in the individual’s capacity as a director of that company.
- (6) Condition A is that the investor made the investment, or previously made another investment meeting the requirement in section 257L(1), at a time when the investor –
- (a) had never been connected [in a section 166 sense not a section 993 sense] with the social enterprise, and
  - (b) had never been involved in carrying on (whether on the investor’s own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the social enterprise or a subsidiary of the social enterprise.
- (7) Condition B is that –

- (a) condition A is not met, and
  - (b) the investment was made before the third anniversary of the date when the investor last made an investment in the social enterprise which met condition A.
- (8) References in this section to an individual in the individual's capacity as a director of a company include, if the individual is both a director and an employee of the company, references to the individual in the individual's capacity as an employee of the company but, apart from that, an individual who is both a director and an employee of a company is treated for the purposes of this section as a director, and not an employee, of the company.
- (9) In subsections (2), (4) and (5) "director" does not include a trustee of a charity that is a trust.

**257LG The requirement not to be interested in capital etc of social enterprise**

- (1) This section applies –
- (a) to the investor, and
  - (b) to any individual who is an associate of the investor.
- (2) In this section "related company" means –
- (a) the social enterprise, or
  - (b) a company which at any time in the longer applicable period is a 51% subsidiary of the social enterprise (and such a company is therefore a related company for the purposes of this section even at times when it is not a 51% subsidiary of the social enterprise).
- (3) There must not be a time in the longer applicable period when an individual to whom this section applies has control of a related company.
- (4) There must not be a time in the longer applicable period when an individual to whom this section applies directly or indirectly possesses or is entitled to acquire –
- (a) more than 30% of the ordinary share capital of a related company,
  - (b) more than 30% of the loan capital and issued share capital of a related company (the amount of the issued share capital being for this purpose the amount raised by its issue), or
  - (c) more than 30% of the voting power in a related company.
- (5) For the purposes of subsections (3) and (4) ignore any shares in a related company held by the individual, or by an associate of the individual, at a time when that company –
- (a) has not issued any shares other than subscriber shares, and
  - (b) has not begun to carry on, or make preparations for carrying on, any trade or business.
- (6) For the purposes of this section, the loan capital of a company –
- (a) is treated as including any debt incurred by the company –
    - (i) for any money borrowed or capital assets acquired by the company,

- (ii) for any right to receive income created in favour of the company, or
  - (iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it), and
  - (b) is treated as not including any debt incurred by the company by overdrawing an account with a person carrying on a business of banking if the debt arose in the ordinary course of that business.
- (7) For the purposes of this section –
- (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.

#### **257LH Requirement for no collusion with a non-qualifying investor**

There must not at any time in the longer applicable period be any scheme or arrangement –

- (a) as part of which –
  - (i) the investor makes the investment, or
  - (ii) the investor, or an individual who is an associate of the investor, makes any other investment in the social enterprise,
- (b) which provides for a person to make an investment in a company other than the social enterprise, where that person is not the individual (“A”) who invests as mentioned in paragraph (a), and
- (c) to which there is a party (whether or not A) who is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if –
  - (i) references in those sections to the investor were read as references to that individual, and
  - (ii) references in those sections to the social enterprise were read as references to the company mentioned in paragraph (b).

## **CHAPTER 4**

### ELIGIBILITY: CONDITIONS RELATING TO THE SOCIAL ENTERPRISE

#### *Conditions relating to the social enterprise*

#### **257M The financial health requirement**

- (1) The social enterprise must not be in difficulty when the investment is made.
- (2) The social enterprise is “in difficulty” if [it is reasonable to assume that it would be regarded as an enterprise in difficulty for the

purposes of any EU instrument from time to time relating to de minimis State aid].

**257MA The amount raised from investments potentially eligible for relief**

- (1) The amount invested must not be more than the amount given by –
- $$\frac{\text{€}200,000 - T - M}{RCG + RSI}$$

where –

T is the total of any scheme investments made in the aid period,  
M is the total of any de minimis aid, other than scheme investments, that is granted to the social enterprise during the aid period,

RCG is the highest rate at which capital gains tax is charged in the aid period, and

RSI is the highest SI rate in the aid period.

- (2) In subsection (1) “the aid period” is the 3 years –
- (a) ending with the day on which the investment is made, but
  - (b) in the case of that day, including only the part of the day before the investment is made.
- (3) In this section “de minimis aid” means de minimis aid within the meaning of –
- (a) Article 2 of Commission Regulation (EC) No. 1998/2006 (de minimis aid) as amended from time to time, or
  - (b) any provision of an EU instrument from time to time replacing that Article.
- (4) For the purposes of subsection (1), the amount of any de minimis aid is the amount of the grant or, if the aid is not in the form of a grant, the gross grant equivalent amount within the meaning of that Regulation as amended from time to time.
- (5) For the purposes of this section, a scheme investment is made if –
- (a) the social enterprise issues shares, or qualifying debt investments, to an individual (money having been subscribed or advanced for them), and
  - (b) (at any time) the social enterprise provides a compliance statement under section 257NC in respect of those shares or investments;

and a scheme investment is made on the day when the shares or qualifying debt investments are issued, and the amount of a scheme investment is the amount subscribed for the shares or (as the case may be) advanced for the qualifying debt investments.

- (6) For the purposes of subsection (1), if –
- (a) the investment or any scheme investments are made, or
  - (b) any aid is granted,

in sterling or any other currency that is not the euro, its amount is to be converted into euros at an appropriate spot rate of exchange for the date on which the investment is made or the aid is paid.



### **257MB Power to amend limits on amounts raised**

- (1) The Treasury may by order amend this Part for the purpose of—
  - (a) altering any limit for the time being imposed by this Part on amounts that a social enterprise may raise through investments eligible for SI relief;
  - (b) complying with any undertakings given to the European Commission, or any conditions imposed by the Commission, in connection with an application for State aid approval.
- (2) In subsection (1) “State aid approval” means approval that the provision made by this Part, so far as it constitutes the granting of aid to which any of the provisions of Article 107 or 108 of the Treaty on the Functioning of the European Union applies, is or would be compatible with the internal market, within the meaning of Article 107 of that Treaty.
- (3) An order under this section may make incidental, supplemental, consequential, transitional or saving provision.
- (4) A statutory instrument that contains (whether alone or with other provisions) an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

### **257MC The gross assets requirement**

- (1) If the social enterprise is a single company, the value of its assets—
  - (a) must not exceed £15 million immediately before the investment is made, and
  - (b) must not exceed £16 million immediately after the investment is made.
- (2) If the social enterprise is a parent company, the value of the group assets—
  - (a) must not exceed £15 million immediately before the investment is made, and
  - (b) must not exceed £16 million immediately after the investment is made.
- (3) For the purposes of subsection (2), the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any assets that consist in rights against, or shares in or securities of, another member of the group.

### **257MD The unquoted status requirement**

- (1) At the beginning of the shorter applicable period—
  - (a) the social enterprise must not be a quoted company,
  - (b) there must be no arrangements in existence for the social enterprise to become a quoted company, and
  - (c) there must be no arrangements in existence for the social enterprise to become a subsidiary of a company (“the new company”) by virtue of an exchange of shares, or shares and securities, if arrangements have been made with a view to the new company becoming a quoted company.

- (2) For the purpose of this section, a company is a “quoted company” if any shares, stocks, debentures or other securities of the company are—
  - (a) listed on a recognised stock exchange,
  - (b) listed on an exchange that is in a country outside the United Kingdom and is designated for the purposes of section 184(3)(b), or
  - (c) dealt in outside the United Kingdom by any means designated for the purposes of section 184(3)(c).
- (3) The arrangements referred to in subsection (1)(b), and the second arrangement referred to in subsection (1)(c), do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the social enterprise or the new company (as the case may be) are at any subsequent time—
  - (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order under section 1005(1)(b), or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c), if the order was made after the beginning of the shorter applicable period.

#### **257ME The control and independence requirements**

- (1) The social enterprise must not at any time in the shorter applicable period control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the social enterprise.
- (2) The social enterprise must not at any time in the shorter applicable period—
  - (a) be a 51% subsidiary of a company, or
  - (b) be under the control of a company, or under the control of a company and a person connected with that company, without being a 51% subsidiary of the company.
- (3) No arrangements must be in existence at any time in the shorter applicable period by virtue of which the social enterprise could fail to meet either or both of subsections (1) and (2) (whether during that period or otherwise).

#### **257MF The qualifying subsidiaries requirement**

Any subsidiary that the social enterprise has at any time in the shorter applicable period must be a qualifying subsidiary of the social enterprise.

#### **257MG The property-managing subsidiaries requirement**

- (1) Any property-managing subsidiary that the social enterprise has at any time in the shorter applicable period must be a qualifying 90% subsidiary of the social enterprise.
- (2) In subsection (1) “property-managing subsidiary” means a subsidiary of the social enterprise whose business consists wholly or mainly in the holding or managing of land or any property deriving its value (directly or indirectly) from land.

**257MH The number of employees requirement**

- (1) If the social enterprise is a single company, the full-time equivalent employee number for it must be less than 500 when the investment is made.
- (2) If the social enterprise is a parent company, the sum of –
  - (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee number for each of its qualifying subsidiaries,must be less than 500 when the investment is made.
- (3) The full-time equivalent number employee number for a company is calculated by taking the number of full-time employees of the company and adding, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
- (4) In this section “employee” –
  - (a) includes a director, but
  - (b) does not include –
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.

**257MI The no partnership requirement**

- (1) The requirements in this section apply during the shorter applicable period.
- (2) The social enterprise must not be a member of any partnership.
- (3) Each qualifying 90% subsidiary of the social enterprise must not be a member of a partnership.

**257MJ The trading requirement**

- (1) The social enterprise must meet the trading requirement throughout the shorter applicable period.
- (2) The trading requirement is that –
  - (a) the social enterprise is a charity or, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the social enterprise is a parent company and the business of the group does not consist wholly, or as to a substantial part, in the carrying-on of non-qualifying activities.
- (3) If the social enterprise intends that one or more companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades –
  - (a) the social enterprise is treated as a parent company for the purposes of subsection (2)(b), and
  - (b) the reference in subsection (2)(b) to the group includes the social enterprise and any existing or future company that will be its qualifying subsidiary after the intention in question is carried out,but this subsection does not apply at any time after the abandonment of that intention.

- (4) For the purposes of subsection (2)(b) “the business of the group” means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
  - (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company, or
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company.
- (7) In this section—

“incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the body in question,

“mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly, and

“non-qualifying activities” means—

  - (a) excluded activities, and
  - (b) activities, other than activities carried on by a charity, that are carried on otherwise than in the course of a trade.

#### **257MK Ceasing to meet trading requirement: administration or receivership**

- (1) The social enterprise is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the enterprise or any of its subsidiaries being in administration or receivership, but this is subject to subsections (2) and (3).
- (2) Subsection (1) applies only if—
  - (a) the entry into administration or receivership, and
  - (b) everything done as a result of the company concerned being in administration or receivership,is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) The social enterprise ceases to meet trading requirement if before the end of the shorter applicable period—
  - (a) a resolution is passed, or an order is made, for the winding-up of the social enterprise or any of its subsidiaries (or, in the case of a winding-up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or

- (b) the company or any of its subsidiaries is dissolved without winding-up,  
 but this is subject to subsection (4).
- (4) Subsection (3) does not apply if the winding-up or dissolution is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

**257ML The issue must be to raise money for chosen trade or preparing for it**

- (1) The social enterprise must be a party to the making of the investment (so far as not in bonus shares) in order to raise money for the carrying-on, by the social enterprise or a qualifying 90% subsidiary of the social enterprise, of –
- (a) a qualifying trade which on the investment date is carried on by the social enterprise or qualifying 90% subsidiary of the social enterprise, or
  - (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade –
    - (i) which on the investment date is intended to be carried on by the social enterprise or a 90% subsidiary of the social enterprise, and
    - (ii) which is begun to be carried by the social enterprise or such a subsidiary within 2 years after that date.
- (2) In this Chapter –
- (a) the purpose within subsection (1) for which money is raised is referred to as “the funded purpose”,
  - (b) the qualifying trade mentioned in subsection (1)(a) or (b) is referred to as “the chosen trade”, and
  - (c) if the funded purpose is the carrying-on of the activity mentioned in subsection (1)(b), “relevant preparation work” means preparations that form the whole or part of the activity.
- (3) In determining for the purposes of subsection (1)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of the social enterprise, any carrying-on of the trade by it before it became such a subsidiary is ignored.
- (4) The reference in subsection (1)(b)(i) to a qualifying 90% subsidiary of the social enterprise includes a reference to any existing or future body which will be such a subsidiary at any future time.

**257MM Requirement to use money raised and to trade for minimum period**

- (1) All of the money raised by the social enterprise from the making of the investment must, no later than the end of 28 months beginning with the investment date, be employed wholly for the funded purpose.
- (2) The chosen trade must have been carried on for a period of at least 4 months ending at or after the time the investment is made and, throughout that period, the trade –
- (a) must have been carried on by the social enterprise or a qualifying 90% subsidiary of the social enterprise, and

- (b) must not have been carried on by any other person.
- (3) Employing money on the acquisition of shares or stock in a body does not of itself amount to employing the money for the funded purpose.
- (4) Subsection (1) does not fail to be met merely because an amount of money which is not significant is employed for other purposes.
- (5) If—
  - (a) merely because of the social enterprise or any other company being wound up, or dissolved without winding-up, the qualifying trade is carried on as mentioned in subsection (2) for a period shorter than 4 months, and
  - (b) the winding-up or dissolution—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,subsection (2) has effect as if it referred to that shorter period.
- (6) If—
  - (a) merely because of anything done as a result of the social enterprise or any other company being in administration, or receivership, the chosen trade is carried on as mentioned in subsection (2) for a period shorter than 4 months, and
  - (b) the entry into administration or receivership, and everything done as a result of the company concerned being in administration or receivership—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,subsection (2) has effect as if it referred to that shorter period.

**257MN The social enterprise must carry on the chosen trade**

- (1) There must not be a time in the shorter applicable period when—
  - (a) the chosen trade, or
  - (b) relevant preparation work,is carried on by a person who is neither the social enterprise nor a qualifying 90% subsidiary of the social enterprise.
- (2) If relevant preparation work is carried out in the shorter applicable period by the social enterprise or a qualifying 90% subsidiary of the social enterprise then, for the purposes of determining whether the requirement in subsection (1) is met, ignore any carrying-on of the chosen trade that takes place in that period before the trade begins to be carried on by a person who is the social enterprise or a qualifying 90% subsidiary of the social enterprise.
- (3) The requirement in subsection (1) is not regarded as failing to be met if, merely because of any act or event within subsection (4), the chosen trade—

- (a) ceases to be carried on in the shorter applicable period by the social enterprise or any qualifying 90% subsidiary of the social enterprise, and
  - (b) it is subsequently carried on in that period by a person who is not any time in the longer applicable period connected with the social enterprise.
- (4) The acts and events within this subsection are –
- (a) anything done as a consequence of the social enterprise or any other company being in administration or receivership, and
  - (b) the social enterprise or any other company being wound up, or dissolved without being wound up.
- (5) Subsection (4) applies only if –
- (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
  - (b) the winding-up or dissolution,
- is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

*Interpretation of conditions relating to the social enterprise*

**257MP Meaning of “qualifying trade”**

- (1) For the purposes of this Chapter, a trade is a qualifying trade if –
- (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not at any time in the shorter applicable period consist wholly or as to a substantial part in the carrying-on of excluded activities.
- (2) References in this section and sections 257MQ to 257MT (excluded activities) are to be read without regard to the definition of “trade” in section 989.

**257MQ Meaning of “excluded activity”**

- (1) The following are excluded activities for the purposes of sections 257MJ and 257MP –
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities (but see subsection (2)),
  - (c) property development (see section 257MR),
  - (d) [all or some of the activities excluded from the scope of the Commission Regulation, on de minimis State aid, which is expected to be made early in 2014],
  - (e) the subsidised generation or export of electricity (see section 257MS), and

- (f) providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) if—
  - (i) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (e), and
  - (ii) a controlling interest (see section 257MT) in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) The activity of lending money to a social enterprise is not an excluded activity for the purposes of sections 257MJ and 257MP.

**257MR Excluded activities: property development**

- (1) For the purpose of section 257MQ(1)(c) “property development” means the development of land—
  - (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (2) For the purposes of subsection (1) “interest in land” means (subject to subsection (3))—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other’s ability to grant it.
- (3) References in this section to an interest in land do not include—
  - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

**257MS Excluded activity: subsidised generation or export of electricity**

- (1) This section supplements section 257MQ(1)(e).
- (2) Electricity is exported if it is exported onto a distribution system or transmission system (within the meaning of section 4 of the Electricity Act 1989).
- (3) The generation of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity generated.
- (4) The export of electricity is subsidised if a person receives a FIT subsidy in respect of the electricity exported.
- (5) In this section—
  - “FIT subsidy” means—
    - (a) a financial incentive under a scheme established by virtue of section 41 of the Energy Act 2008 (powers to amend licence conditions etc: feed-in tariffs) to



encourage small-scale low-carbon generation of electricity, or

- (b) a financial incentive under a similar scheme established in a territory outside the United Kingdom to encourage small-scale low-carbon generation of electricity;

“small-scale low-carbon generation of electricity” has the meaning given by section 41(4) of the Energy Act 2008.

**257MT Excluded activity: providing services or facilities for another business**

- (1) This section explains what is meant by a controlling interest in a business for the purposes of section 257MQ(1)(f).
- (2) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if –
  - (a) A controls the company,
  - (b) the company is a close company and A, or an associate of A, is a director of the company and either –
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half of the business could, in accordance with section 942 of CTA 2010, be regarded as belonging to A for the purposes of section 941 of CTA 2010 (company reconstructions without a change of ownership).
- (3) In any other case, a person has a controlling interest in a business if the person is entitled to at least half of the assets used for, or of the income arising from, the business.
- (4) For the purposes of this section –
  - (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.

**257MU Meaning of “qualifying subsidiary”**

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying subsidiary of another company (“the parent”) if –
  - (a) the subsidiary is a 51% subsidiary of the parent,
  - (b) no person other than the parent, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence as a result of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (2) The conditions in subsection (1)(a) to (c) do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding-up or dissolution –
  - (a) is for genuine commercial reasons, and

- (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (3) The conditions in subsection (1)(a) to (c) do not cease to be met merely because of anything done as a consequence of the subsidiary or another company being in administration, or receivership, if –
  - (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions in subsection (1)(a) to (c) do not cease to be met merely because arrangements are in existence for the disposal by the parent or (as the case may be) by another subsidiary of all its interest in the subsidiary if the disposal –
  - (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### **257MV Meaning of “qualifying 90% subsidiary” of a social enterprise**

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying 90% subsidiary of another company (“the parent”) if –
  - (a) the parent possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the parent would –
    - (i) in the event of a winding-up of the subsidiary, or
    - (ii) in any other circumstances,be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the parent is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the parent has control of the subsidiary, and
  - (e) no arrangements are in existence as a result of which any of the conditions in paragraphs (a) to (d) would cease to be met.
- (2) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of another company (“company B”) is a qualifying 90% subsidiary of a third company (“company C”) if –
  - (a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or
  - (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.
- (3) For the purposes of subsection (2) no account is to be taken of any control company C may have of company A.
- (4) For the purposes of subsection (2), a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) as

any time when the conditions in subsection (1)(a) to (e) would be met if –

- (a) company X were the subsidiary,
  - (b) company Y were the parent, and
  - (c) in subsection (1) for “at least 90%” there were substituted “100%”.
- (5) The conditions in subsection (1)(a) to (e) do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being wound up, or dissolved without being wound up, if the winding-up or dissolution –
- (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (6) The conditions in subsection (1)(a) to (e) do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration, or receivership, if –
- (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company concerned being in administration or receivership,
- is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (7) The conditions in subsection (1)(a) to (e) do not cease to be met merely because any arrangements are in existence for the disposal by the parent of all its interest in the subsidiary if the disposal –
- (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (8) For the purposes of subsection (1) –
- (a) the persons who are equity holders of the subsidiary, and
  - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with Chapter 6 of Part 5 of CTA 2010.
- (9) In making that determination –
- (a) references in section 166 of that Act to company A are to be read as references to an equity holder,
  - (b) references in that section to winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

## CHAPTER 5

### ATTRIBUTION OF, AND CLAIMS FOR, RELIEF

#### *Attribution*

#### **257N Attribution of SI relief to investments**

- (1) References in this Part, in relation to any individual, to the SI relief attributable to any investment are to be read as references to any reduction made in the individual's liability to income tax that is attributed to that investment in accordance with this section.  
This is subject to the provisions of this Part providing for the withdrawal or reduction of SI relief.
- (2) If an individual's liability to income tax is reduced under this Part in any tax year, then—
  - (a) if the reduction is obtained because of a single distinct investment, the amount of the reduction is attributed to that investment, and
  - (b) if the reduction is obtained because of two or more distinct investments, the amount of the reduction—
    - (i) is apportioned between the distinct investments in the same proportions as the amounts claimed by the individual in respect of each of those investments, and
    - (ii) is attributed to those investments accordingly.
- (3) In this section “distinct investment” means an investment, made on a single day, in—
  - (a) a single share or single qualifying debt investment, or
  - (b) two or more shares, or two or more qualifying debt investments, where the shares or qualifying debt investments are in the same social enterprise and of the same class.
- (4) If under this section an amount of any reduction in income tax is attributed to a distinct investment—
  - (a) in the case of a distinct investment of the kind mentioned in subsection (3)(a), that amount is attributed to the share, or qualifying debt investment, concerned, and
  - (b) in the case of a distinct investment of the kind mentioned in subsection (3)(b), a proportionate part of that amount is attributed to each of the shares, or qualifying debt investments, concerned.
- (5) If corresponding bonus shares are issued to an individual in respect of any shares (“the original shares”) to which SI relief is attributed—
  - (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if those shares had been issued to the individual on the same day as the original shares.

- (6) In subsection (5) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights, as the original shares.
- (7) If section 257JA(1) and (2) apply in the case of any investment as if part of the amount invested had been invested in a previous tax year, this section has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).
- (8) For the purposes of this section, shares or other investments in a company are not treated as being of the same class unless they would be so treated if dealt in on a recognised stock exchange.

### *Claims*

#### **257NA Time for making claims for SI relief**

- (1) A claim for SI relief in respect of the amount invested may be made –
  - (a) not earlier than the time the requirement in section 257MM(2) (chosen trade must have been carried on for 4 months) is first met, and
  - (b) not later than the fifth anniversary of the normal self-assessment filing date for the tax year in which the investment is made.
- (2) If section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year, subsection (1) has effect as if that part and the remainder had been invested by separate investments (and that part had been invested by an investment made on a day in the previous tax year).

#### **257NB Entitlement to claim**

- (1) The investor is entitled to make a claim for SI relief in respect of the amount invested if the investor has received from the social enterprise a compliance statement in respect of that amount.
- (2) For the purposes of PAYE regulations, no regard is to be had to SI relief unless a claim for it has been duly made.
- (3) No application may be under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is entitled to SI relief unless a claim for the relief has been duly made by the investor.

#### **257NC Compliance statements**

- (1) For the purposes of this Chapter, a “compliance statement” in respect of the investment is a statement by the social enterprise to the effect that, except so far as they fall to be met by or in relation to the individual, the requirements for SI relief –
  - (a) are for the time being met in relation to the investment (or in relation to investments that include the investment), and
  - (b) have been so met at all times since the investment was made.

- (2) A compliance statement must be in such form as the Commissioners for Her Majesty’s Revenue and Customs may direct and must contain—
  - (a) such additional information as the Commissioners may reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
  - (b) a declaration that the statement is correct to the best of the social enterprise’s knowledge and belief, and
  - (c) such other declarations as the Commissioners may reasonably require.
- (3) The social enterprise may not provide an officer of Revenue and Customs with a compliance statement in respect of the investment—
  - (a) before the requirement in section 257MM(2) (trade must have been carried for 4 months) is met, or
  - (b) later than 2 years after the end of the tax year in which the investment is made or, if that requirement is first met after the end of that tax year, later than 2 years after the requirement is first met.

#### **257ND Compliance certificates**

- (1) For the purposes of this Chapter, a “compliance certificate” is a certificate which—
  - (a) is issued by the social enterprise in respect of the investment,
  - (b) states that, except so far as they fall to be met by or in relation to the individual, the requirements for SI relief are for the time being met in relation to the investment, and
  - (c) is in such form as the Commissioners for Her Majesty’s Revenue and Customs may direct.
- (2) Before issuing a compliance certificate, the social enterprise must provide an officer of Revenue and Customs with a compliance statement in respect of the investment.
- (3) The social enterprise must not issue a compliance certificate without the authority of an officer of Revenue and Customs.
- (4) If the social enterprise, or a person connected with the social enterprise, has under [provision corresponding to section 241 of this Act or to paragraph 16(2) or (4) of Schedule 5B to TCGA 1992] given a notice to an officer of Revenue and Customs that relates (whether or not exclusively) to the investment, a compliance certificate must not be issued unless the authority mentioned in subsection (3) of this section is given or renewed after receipt of the notice.
- (5) If—
  - (a) an officer of Revenue and Customs has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) an officer of Revenue and Customs has decided whether or not to do so,an officer of Revenue and Customs must give notice of the decision to the social enterprise.

- (6) For the purposes of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the social enterprise.
- (7) In the case of requirements that cannot be met until a future time, references in this section to requirements being met for the time being are to nothing having occurred to prevent their being met.

## CHAPTER 6

### WITHDRAWAL OR REDUCTION OF SI RELIEF

#### *Value received by the investor*

#### **257P Effect of the investor receiving value from the social enterprise**

- (1) If the investor receives any value from the social enterprise at any time in the longer applicable period, any SI relief given in respect of the investment must –
  - (a) if it is greater than the amount given by the formula set out in subsection (2), be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (2) The formula is –
 
$$V \times R$$
 where –
  - V is the amount of the value received, and
  - R is the SI rate for the tax year for which the SI relief was given.
- (3) Subsection (1) is subject to –
  - (a) section 257PA (value received: receipts of insignificant value),
  - (b) section 257PB (value received where there is more than one issue of investments),
  - (c) section 257PC (value received where part of investment treated as made in previous tax year),
  - (d) section 257PD (cases where maximum SI relief not obtained),
  - (e) section 257PG (receipts of value by and from connected persons etc), and
  - (f) section 257PH (receipt of replacement value).
- (4) Sections 257PB to 257PD are to be applied in the order in which they appear in this Part.
- (5) Value received is to be ignored, for the purposes of this section, so far as SI relief attributable to the investment has already been withdrawn or reduced on its account.
- (6) For the purposes of this section and sections 257PA to 257PH, an individual –
  - (a) who acquires any part of the investment, and

(b) who does so on such a transfer as is mentioned in section 257Q (spouses or civil partners),  
is treated as the investor.

**257PA Value received: insignificant receipts**

- (1) In this section “insignificant receipt” means a receipt whose amount –
  - (a) is not more than £1,000, or
  - (b) is more than £1,000 but is insignificant in relation to the amount invested.
- (2) Section 257P(1) does not apply to an insignificant receipt, subject as follows.
- (3) Section 257P(1) applies to all receipts within the longer applicable period if, at any time on the investment date or in the preceding 12 months, arrangements are in existence providing for the investor to receive, or to be entitled to receive, value from the social enterprise at any time in the longer applicable period.
- (4) Once section 257P(1) has applied to a receipt, it applies also to all other receipts within the longer applicable period except any earlier insignificant receipts.
- (5) The amount of the first receipt to which section 257P(1) applies is treated as increased by the total amount of any earlier insignificant receipts.
- (6) In subsection (3) –
  - (a) the reference to the investor includes any person who at any time in the longer applicable period is an associate of the investor (whether or not an associate at the material time), and
  - (b) the reference to the social enterprise includes any person who at any time in the longer applicable period is connected with the social enterprise (whether or not connected at the material time).

**257PB Value received where there is more than one issue of investments**

- (1) Subsection (3) applies if –
  - (a) a time in the longer applicable period when the investor receives value from the social enterprise is within the period that for the purposes of this Part is the longer applicable period in relation to another investment in the social enterprise, and
  - (b) that other investment is one for which the investor has SI relief.
- (2) That other investment is an “overlapping investment” for the purposes of subsection (3).
- (3) Section 257P(2) has effect in relation to the investment as if the amount V were reduced by multiplying it by –

$$\frac{I}{T}$$



where –

I is the amount on which the investor has SI relief in the case of the investment, and

T is the total of that amount and the corresponding amount for each overlapping investment.

**257PC Value received where part of investment treated as made in previous tax year**

- (1) Subsection (2) applies if –
  - (a) section 257P(1) applies to a receipt, and
  - (b) section 257JA(1) and (2) apply as if part of the amount invested had been invested in a previous tax year.
- (2) The calculation under section 257P(2) in relation to that receipt is to be made as follows –

*Step 1*

Apportion the amount referred to as “V” between the tax year in which the investment was made and the preceding tax year by multiplying that amount by –

$$\frac{A}{B}$$

where –

A is the part of the amount invested on which the investor obtains SI relief for the tax year in question, and

B is the sum of –

- (a) that part, and
- (b) the part of the amount invested on which the investor obtains SI relief for other tax year.

*Step 2*

In relation to each of the amounts (“V1” and “V2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if separate investments had been made in those tax years.

In calculating amounts X1 and X2, apply section 257PD if appropriate but do not apply section 257PB.

*Step 3*

Add amounts X1 and X2 together.

The result is the required amount.

**257PD Cases where maximum SI relief not obtained**

- (1) If the investor’s liability to income tax is reduced for any tax year in respect of the investment and –
  - (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to income tax at the SI original rate on the amount on which the investor has SI relief in the case of the investment,

section 257P(2) has effect in relation to any value received as if the amount referred to as “V” were reduced by multiplying it by –

$$\frac{A}{B}$$

- (2) If the amount of SI relief attributable to the investment has been reduced before the SI relief was obtained, the amount referred to in subsection (1) as “A” is to be treated for the purposes of that subsection as the amount that it would have been without that subsection.
- (3) Subsection (2) does not apply to a reduction of SI relief as a result of section 257N(5) (attribution of SI relief where there is a corresponding issue of bonus shares).

#### **257PE When value is received**

- (1) This section applies for the purposes of sections 257P and 257PB.
- (2) The investor receives value from the social enterprise at any time when the social enterprise –
  - (a) repays, redeems or repurchases any investments in the social enterprise which belong to the investor, or makes any payment to the investor for giving up the investor’s right to investments in the social enterprise on their cancellation or extinguishment,
  - (b) repays, in pursuance of any arrangements for or in connection with the making of the investment, any debt owed to the investor other than a debt which was incurred by the social enterprise –
    - (i) on or after the investment date, and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
  - (c) makes to the investor any payment for giving up on its extinguishment the investor’s right to any debt, other than –
    - (i) a debt in respect of a repayment of the kind mentioned in section 257LF(5)(a) or (f), or
    - (ii) an ordinary trade debt,
  - (d) releases or waives any liability of the investor to the social enterprise or discharges or undertakes to discharge any liability of the investor to a third person,
  - (e) makes a loan or advance to the investor which has not been repaid in full before the investment is made,
  - (f) provides a benefit or facility for the investor,
  - (g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
  - (h) makes to the investor any other payment except –
    - (i) a payment of a kind mentioned in section 257LF(5), or
    - (ii) a payment in discharge of an ordinary trade debt.
- (3) For the purposes of subsection (2)(d), the social enterprise is treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (4) For the purposes of subsection (2)(e), each of the following is treated as a loan made by the social enterprise to the investor –

- 
- (a) the amount of any debt, other than an ordinary trade debt, incurred by the investor to the social enterprise, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the social enterprise.
- (5) The investor also receives value from the social enterprise if –
- (a) in respect of ordinary shares, or qualifying debt investments, held by the investor any payment or asset is received in a winding-up or dissolution of the social enterprise, and
  - (b) the winding-up or dissolution is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (6) The investor also receives value from the social enterprise if –
- (a) a person –
    - (i) purchases any investments in the social enterprise which belong to the investor, or
    - (ii) makes any payment to the investor for giving up any right in relation to any investments in the social enterprise, and
  - (b) that person is an individual in relation to whom not all of the requirements in sections 257LF and 257LG would be met if references in those sections to the investor were read as references to that person.
- (7) If, because of the investor’s disposal of investments in the social enterprise, any SI relief attributable to those investments is withdrawn or reduced under section 257PL, the investor is not to be treated as receiving value from the social enterprise in respect of the disposal.
- (8) If the investor is a director of the social enterprise, the investor is not to be treated as receiving value from the social enterprise merely because of the payment to the investor of reasonable remuneration (including any benefit or facility) for any services rendered to the social enterprise as a director or employee.
- (9) In this section “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given –
- (a) is for not more than 6 months, and
  - (b) is not for longer than that normally given to customers of the person carrying on the trade or business.

### **257PF The amount of value received**

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 257P and 257PB is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The amount of value received</i>
Section 257PE(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the investments or debt
Section 257PE(2)(d)	The amount of the liability
Section 257PE(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the investment is made
Section 257PE(2)(f)	The cost to the social enterprise of providing the benefit or facility, less any consideration given for it by the investor
Section 257PE(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 257PE(2)(h)	The amount of the payment
Section 257PE(5)	The amount of the payment or the market value of the asset
Section 257PE(6)	The amount received by the investor or, if greater, the market value of the investments

### **257PG Receipts of value by and from connected persons etc**

In sections 257P, 257PA, 257PB, 257PE and 257PF –

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or the investor’s order or for the investor’s benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and
- (c) any reference to the social enterprise includes a reference to a person who at any time in the longer applicable period is connected with the social enterprise (whether or not that person is so connected at the material time).

### **257PH Receipt of replacement value**

[Provision corresponding to sections 222 and 223].

### **257PI Repayments etc of capital to other persons**

[Provision corresponding to sections 224 to 230].

### **257PJ Withdrawal of relief: miscellaneous**

[Provision corresponding to sections 232 to 234].

## **257PK Procedure**

[Provision corresponding to sections 235 to 244].

### *Disposals*

## **257PL Disposal of whole or part of the investment**

- (1) This section applies if –
  - (a) the investor disposes of the whole or part of the investment,
  - (b) the disposal takes place before the shorter applicable period ends,
  - (c) SI relief is attributable to the shares, or qualifying debt investments, disposed of,
  - (d) the disposal is not to an individual who –
    - (i) is the spouse, or civil partner, of the investor, and
    - (ii) is living together with the investor at the time of the disposal, and
  - (e) the disposal does not occur as a result of the investor’s death.
- (2) If the disposal is not made by way of a bargain at arm’s length, the SI relief attributable to those shares, or qualifying debt investments, must be withdrawn.
- (3) If the disposal is made by way of a bargain at arm’s length, the SI relief attributable to those shares or qualifying debt investments must –
  - (a) if it is greater than the amount given by the formula set out in subsection (4), be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (4) The formula is –
 
$$C \times R$$
 where –
  - C is the amount of the consideration received by the investor for the shares or qualifying debt investments, and
  - R is the SI rate for the tax year for which the SI relief was given.
- (5) [Provision corresponding to section 246 (identification of shares on a disposal) will apply for the purposes of this section].

## **257PM Disposals: further provisions**

[Provision corresponding to sections 210, 211 and 212 (disposals: cases where maximum relief not obtained, call options, and put options)].

## **CHAPTER 7**

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

## **257Q Transfers between spouses or civil partners**

- (1) This section applies if –

- (a) the investor transfers the whole or part of the investment to another individual (“B”) during their lives,
  - (b) the investor was married to, or was the civil partner of, B at the time of the transfer, and
  - (c) section 257PH does not apply to the transfer.
- (2) This Part (including subsection (1)) has effect, in relation to any subsequent disposal or other event, as if –
  - (a) B were the investor as respects the transferred stake,
  - (b) B’s liability to income tax had been reduced in respect of the transferred stake for the same tax year as that for which the investor’s was so reduced,
  - (c) the amount by which B’s liability to income tax had been reduced in respect of the transferred stake were the same as that by which the investor’s liability had been so reduced, and
  - (d) the same amount of SI relief had continued to be attributable to the transferred stake despite the transfer.
- (3) If the amount of SI relief attributable to the transferred stake had been reduced before the relief was obtained by the investor –
  - (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of SI relief attributable to the transferred stake had been correspondingly reduced before the relief was obtained by B, and
  - (b) [the provisions corresponding to sections 210(3), 220(2) and 229(3)] apply in relation to B as they would have applied in relation to the investor.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing SI relief is to be made, the assessment is to be made on B.
- (5) [Provision corresponding to section 246 will apply for the purposes of this section].

**257R Meaning of a company being “in administration” or “in receivership”**

- (1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.
- (2) A company is “in administration” if –
  - (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
- (3) A company is “in receivership” if there is in force in relation to it –
  - (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or

- (b) any corresponding order under the law of a country or territory outside the United Kingdom.

**257S Meaning of “associate”**

- (1) In this Part “associate”, in relation to a person, means –
- (a) any relative or partner of the person,
  - (b) the trustee or trustees of any settlement in relation to which the person, or any relative of the person (living or dead), is or was a settlor, and
  - (c) if the person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person –
    - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
    - (ii) if the person is a company, any other company which has an interest in those shares or obligations.
- (2) In this section “relative” means spouse, civil partner, ancestor or lineal descendant.

**257T Meaning of “control”**

- (1) In this Part “control” is to be read in accordance with sections 450 and 451 of CTA 2010 but as if “company” in those sections included a charity that is a trust.
- (2) For the purposes of this Part, a charity that is a trust has “control” of another person if, as a result of the operation of subsection (1), the trustees (in their capacity as trustees of the trust) have, or any of them has, control of the person.
- (3) A person has “control” of a charity that is a trust if –
- (a) the person is a trustee of the charity and some or all of the powers of the trustees of the charity could be exercised by –
    - (i) the person acting alone, or
    - (ii) by the person acting together with any other persons who are trustees of the charity and who are connected with the person,
  - (b) the person, alone or together with other persons, has power to appoint or remove a trustee of the charity, or
  - (c) the person, alone or together with other persons, has any power of approval or direction in relation to the carrying-out by the trustees of any of their functions.
- (4) Subsection (3) is in addition to, and does not limit, subsection (1); and both of those subsections are subject to subsection (4).
- (5) For the purposes of this Part, a regulator is to be treated as not having control of any company regulated by the regulator.
- (6) Section 995 of this Act (control) does not apply for the purposes of this Part.

## 257U Minor definitions etc

- (1) In this Part –
- “arrangements” means any scheme, agreement, understanding, transaction or series of transactions (whether or not legally enforceable,
  - “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),
  - “director” –
    - (a) is read in accordance with section 452 of CTA 2010 but as if “company” in that section included a charity that is a trust, and
    - (b) in relation to a charity that is a trust (but subject to section 257LF(9)), includes (in particular) each trustee of the trust,
  - “disposal”, in relation to any shares or other investments, includes disposal of an interest or right in or over them,
  - “group” means a parent company and its qualifying subsidiaries,
  - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
  - “ordinary shares” means shares forming part of a company’s ordinary share capital,
  - “parent company” means a company that has one or more qualifying subsidiaries, and
  - “single company” means a company that does not have any qualifying subsidiaries.
- (2) For the purposes of this Part, the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.”

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 2 ITA 2007 is amended as follows.
- 3 In section 2 (overview of Act) after subsection (5A) insert –
- “(5B) Part 5B is about relief for social investments.”
- 4 In section 24A(7)(d) (share loss relief on the disposal of certain investments not subject to the limit on deductions imposed by section 24A) after subparagraph (ii) insert “, or
- (iii) where SI relief is attributable to the shares in question as determined in accordance with Part 5B (income tax relief for social investments).”
- 5 In section 26(1)(a) (provisions giving rise to deductions at Step 6 of the calculation in section 23) after the entry for Chapter 1 of Part 5A of ITA 2007 insert –
- “Chapter 1 of Part 5B (relief for social investments).”



- 6 In section 27(5) (order in which certain tax reductions are to be made) after the entry for Chapter 1 of Part 5A of ITA 2007 insert –  
 “Chapter 1 of Part 5B (relief for social investments).”
- 7 In section 29(4B) (limit on certain tax reductions) after the entry for Chapter 1 of Part 5 of ITA 2007 insert –  
 “Chapter 1 of Part 5B (relief for social investments).”
- 8 In section 32 (liabilities to income tax not dealt with in the calculation under Chapter 3 of Part 2) after the entry for section 257G of ITA 2007 insert –  
 “under [the section in Part 5B that corresponds to section 235] (withdrawal or reduction of relief for social investments).”
- 9 In section 392 (loan to buy interest in close company) after subsection (3) insert –  
 “(3A) Subsection (2) does not apply if at any time the individual by whom the shares are acquired or the money is lent, or that individual’s spouse or civil partner, makes –  
 (a) a claim under Part 5B of this Act for relief in respect of the amount invested in acquiring the shares or (as the case may be) in return for the debentures in respect of the money lent, or  
 (b) a claim in respect of the amount under Schedule 8B to TCGA 1992 (hold-over relief for gains re-invested in social enterprises).”
- 10 In section 416 (gift aid: meaning of “qualifying donation”) after subsection (6) insert –  
 “(6A) Condition EA is that the payment is by way of, or amounts in substance to, waiver by the individual of entitlement to sums (whether of principal or return) due to the individual from the charity in respect of an amount –  
 (a) advanced to the charity, and  
 (b) in respect of which a person, whether or not the individual, has obtained relief under Part 5B (relief for social investments).”

## SCHEDULE 2

Section 1

### RELIEF FOR GAINS INVESTED IN SOCIAL ENTERPRISES

- 1 TCGA 1992 is amended as follows.  
 2 After section 255 insert –

#### *“Investments in social enterprises*

#### **255A Hold-over relief for gains re-invested in social enterprises**

Schedule 8B to this Act (which provides relief in respect of gains re-invested in social enterprises) has effect.

### **255B Gains and losses on investments in social enterprises**

- (1) For the purpose of determining the gain or loss on any disposal of an asset by an individual where –
  - (a) an amount of SI relief is attributable to the asset, and
  - (b) apart from this subsection there would be a loss,treat the consideration given by the individual for the acquisition of the asset as reduced by the amount of the SI relief.
- (2) If –
  - (a) an individual disposes of an asset,
  - (b) an amount of SI relief is attributable to the asset,
  - (c) the disposal takes place after the end of the 3 years beginning with the day when the individual acquired the asset, and
  - (d) apart from this subsection, there would be a gain on the disposal,the gain is not a chargeable gain, subject to [provision corresponding to section 150A(3) of this Act].
- (3) Despite section 16(2), subsection (2) above does not apply to a disposal on which a loss accrues.
- (4) [Provision corresponding to sections 150A(3) to (4) and (10) and 150B].
- (5) Sections 104, 105 and 106A do not apply to assets to which SI relief is attributable.
- (6) In this section “SI relief” means relief under Part 5B of ITA 2007 (income tax relief for investments in social enterprises).
- (7) That Part applies for the purposes of this section to determine whether SI relief is attributable to any asset and, if so, the amount of SI relief so attributable.”

3 Before Schedule 9 insert –

#### “SCHEDULE 8B

Section 255A

#### HOLD-OVER RELIEF FOR GAINS RE-INVESTED IN SOCIAL ENTERPRISES

*When does the Schedule apply?*

- 1 (1) This Schedule applies if –
  - (a) a chargeable gain accrues to an individual (“the investor”),
  - (b) the investor acquires one or more assets (“the social holding”),
  - (c) the investor is eligible for SI relief under Part 5B of ITA 2007 in respect of the consideration given for the social holding (“the amount invested”), and
  - (d) conditions A, B, C, D and E are met.
- (2) Condition A is that the gain is one that accrues –
  - (a) on the disposal by the investor of an asset, or
  - (b) as a result of the operation of paragraph 3 in connection with a chargeable event within paragraph 4(1)(c) or (d).

- (3) Condition B is that the gain is one that accrues –
  - (a) on or after 6 April 2014, and
  - (b) before 6 April 2019 (but see sub-paragraph (7)).
- (4) Condition C is that the investor is resident in the United Kingdom –
  - (a) when the gain accrues, and
  - (b) when the social holding is acquired.
- (5) Condition D is that the social holding is acquired by the investor on the investor’s own behalf.
- (6) Condition E is that the social holding is acquired –
  - (a) in the 3 years beginning with the day when the gain accrues, or
  - (b) in the year that ends at the beginning of that day.
- (7) The Treasury may by order substitute a later date for the date for the time being specified in sub-paragraph (3)(b).

*Claim to hold gain over while invested in a social enterprise*

- 2 (1) The investor may make a claim for the gain to be reduced by the amount invested, or by a part of that amount specified in the claim, subject as follows.
  - (2) The reduction may not be more than the gain or, if the gain has already been reduced under one or more of the listed provisions, the reduction may not be more than the reduced gain.
  - (3) The claim may not relate to any part of the amount invested that under any of the listed provisions has already been set against a chargeable gain.
  - (4) The “listed provisions” are –
    - (a) sub-paragraph (1),
    - (b) Schedule 5B, and
    - (c) paragraph 1(5) of Schedule 5BB.
  - (5) The total of all reductions claimed by the investor under sub-paragraph (1) in any tax year must not be more than £1,000,000.
  - (6) If there is relief by way of a reduction under sub-paragraph (1) then, for the purposes of this Schedule, that relief –
    - (a) is attributable to the asset or assets that form the social holding, but
    - (b) ceases to be attributable to any particular asset when –
      - (i) a chargeable event occurs in relation to it, or
      - (ii) the person holding it dies.

*Held-over gain treated as accruing on disposal etc of the qualifying investment*

- 3 (1) This paragraph applies if there has been a reduction under paragraph 2(1).

- (2) A gain equal to the amount of the reduction is treated as accruing when a chargeable event occurs in relation to the social holding without any chargeable event having previously occurred in relation to any of the holding.
- (3) When a chargeable event occurs in relation to part only of the social holding without any chargeable event having previously occurred in relation to any of that part, a gain calculated in accordance with sub-paragraph (4) is treated as accruing.
- (4) The calculation is –
  - Step 1*  
Subtract from the amount of the reduction any gains previously treated as accruing as a result of the operation of sub-paragraph (3).
  - Step 2*  
Attribute a proportionate part of the amount calculated at Step 1 to each part of the social holding held, immediately before the occurrence of the chargeable event in question, by the investor or a person who has acquired any part of the holding from the investor on a disposal within marriage or civil partnership.
  - Step 3*  
The amount attributed at Step 2 to the part of the social holding in relation to which that chargeable event occurs is the gain treated as accruing as a result of the operation of sub-paragraph (3) on the occurrence of that event.

#### *Chargeable events*

- 4 (1) A chargeable event occurs in relation to an asset that forms the whole or any part of the social holding if (after the acquisition of the holding) –
  - (a) the investor disposes of the asset otherwise than by way of a disposal within marriage or civil partnership,
  - (b) the asset is disposed of, otherwise than by way of a disposal to the investor, by a person who acquired the asset on a disposal made within marriage or civil partnership,
  - (c) the asset is cancelled, redeemed or repaid, or
  - (d) any of the conditions in Chapters 3 and 4 of Part 5B of ITA 2007 for the investor’s eligibility for relief under that Part in respect of the amount invested fails to be met.
- (2) In the event of the death of –
  - (a) the investor, or
  - (b) a person who, on a disposal within marriage or civil partnership, has acquired the whole or any part of the social holding,nothing which occurs at or after the time of death is a chargeable event in relation to any part of the holding held by the deceased person immediately before the time of death.
- (3) If a person makes a disposal of assets of a particular class while retaining other assets of that class –

- (a) assets of that class acquired by the person on an earlier day are treated for the purposes of this Schedule as disposed of before assets of that class acquired by the person on a later day, and
  - (b) assets of that class acquired by the person on the same day are treated for the purposes of this Schedule as disposed of in the following order –
    - (i) first, any to which neither relief under this Schedule, nor relief under Part 5B of ITA 2007, is attributable,
    - (ii) next, any to which relief under this Schedule, but not relief under that Part, is attributable,
    - (iii) next, any to which relief under that Part, but not relief under this Schedule, is attributable, and
    - (iv) finally, any to which both relief under that Part, and relief under this Schedule, are attributable.
- (4) For the purposes of sub-paragraph (3), assets –
- (a) to which relief under this Schedule is attributable, and
  - (b) which have not been held continuously by the investor since the social holding was acquired,
- are treated as having been acquired when the social holding was acquired if relief under Part 5B of ITA 2007 is not also attributable to them.
- (5) For the purposes of sub-paragraph (3), assets –
- (a) to which relief under Part 5B of ITA 2007 is attributable, and
  - (b) which were transferred to an individual as mentioned in section 257Q of ITA 2007 (transfers between spouses or civil partners),
- are treated as having been acquired when the social holding was acquired.
- (6) Chapter 1 of Part 4 of this Act has effect subject to sub-paragraphs (3) to (5).
- (7) Sections 104, 105 and 106A do not apply to assets to which relief under this Schedule is attributable if relief under Part 5B of ITA 2007 is not also attributable to them.
- (8) [Provision corresponding to paragraph 4(5) of Schedule 5B].

*Person to whom held-over gain is treated as accruing*

- 5 (1) This paragraph applies where a gain is treated as accruing as a result of the operation of paragraph 3.
- (2) If the chargeable event is a disposal, the gain is treated as accruing to the person who makes the disposal.
- (3) If the chargeable event occurs –
- (a) when an asset is cancelled, redeemed or repaid, or

- (b) when a condition, for eligibility for relief in respect of the consideration given for the acquisition of an asset, fails to be met,  
the gain is treated as accruing to the person who holds the asset when the chargeable event occurs.

*Dispensing with requirement for cash consideration in certain cases*

- 6 [Provision for a deferred gain to be further deferred in certain cases where that would be allowed by this Schedule but for the fact that the acquisition of assets in the social enterprise concerned is not in return for cash but, in substance, is in exchange for existing assets in the enterprise].

*Interpretation of Schedule*

- 7 In this Schedule, a “disposal within marriage or civil partnership” is a disposal to which section 58 (certain disposals between spouses or civil partners) applies.”

## EXPLANATORY NOTE

### TAX RELIEF FOR SOCIAL INVESTMENT

#### SUMMARY

1. Clause X, and Schedules Y and Z introduce a range of income and capital gains tax reliefs to encourage individuals to invest in qualifying social enterprises. Investments may be in shares or by way of certain types of debt, and the reliefs will be available in respect of investments made on or after 6 April 2014.

#### DETAILS OF THE SCHEDULES

##### *Schedule 1 Part 1*

2. Paragraph 1 inserts new Part 5B into the Income Tax Act 2007 ('ITA'). Part 5B is subdivided into several Chapters.

##### Chapter 1

3. Chapter 1 contains sections 257J to 257JC which introduce the income tax relief available to individuals who invest in social enterprises.

4. New sections 257J(2) to (3) define "social enterprise" as a community interest company, a community benefit society, or charity, and provide that this definition may be further extended by Treasury order to include other types of body. Any such order may have retrospective effect. No definitions are provided for community interest company or charity, which are defined in other Acts: Part 2 of the Companies (Audit, Investigation and Community Enterprise Act 2004 in the case of Community Interest Companies and Schedule 6 to Finance Act 2010 in the case of charities. "Community benefit society" is explained further at new section 257B.

5. New section 257JA quantifies the amount of the income tax reduction to which an individual is entitled if a claim to relief is made for a tax year.

6. Subsection 257JA(1) provides that an individual may choose to claim relief in respect of some, but not all, of the investment in relation to which the individual is eligible for relief.

7. Subsections 257JA(2) and (3) are expressed in terms of the individual's entitlement to a reduction in tax liability, as a percentage of the amount invested. Relief is given effect in accordance with Chapter 3 of Part 2 ITA, with the reduction being included at Step 6 of section 23.

8. Subsection (2)(b) provides that there is an upper limit on the amount of an individual's entitlement to relief rather than an upper limit on the amount of investment in respect of which the relief can be claimed.

9. Subsection 257JA(4) provides that an individual may elect to have some or all of the investment treated as though made in the tax year preceding that in which it was made, with relief being given accordingly.

10. New section 257JB describes what is meant by a "community benefit society". The Co-operative and Community Benefit Societies Acts are in the process of consolidation so section 257B ensures that that definition applies irrespective of which Act is in force at the relevant time.

11. New section 257JC provides that for the purposes of this Part, charitable trusts are to be treated in the same way as companies which are charities.

## Chapter 2

12. Chapter 2 sets out some key terms used in determining eligibility.

13. New section 257K(1) sets a limit of five years on the lifespan on the social investment tax relief scheme, but provides that this lifespan may be extended by Treasury order.

14. New section 257K(2) provides that the investor is not eligible for SI relief if the investor has otherwise obtained relief on the investment via the Enterprise Investment Scheme, Seed Enterprise Investment Scheme or the Community Investment tax relief scheme.

15. New section 257K(3) makes it clear that the conditions for relief apply equally whether individuals make the investment on their own behalf or whether the investment is made or held for them by a nominee.

16. Tax relief is contingent upon the individual making an investment, and the timing of the making of that investment determines the tax year for which relief will be due. New section 257KB explains when the investment is to be considered to be "made". In the case of an investment in shares or loan stock where the enterprise makes an issue to the investor, the investment will be considered to be made at the point of issue.

17. New section 257KC explains the terms "shorter applicable period" and "longer applicable period". Many of the eligibility conditions relating to the investor, the investment and the investee enterprises have to be met for a continuous period of time rather than merely at the point of investment, for the tax relief to continue to be available. In the case of some conditions, that continuous period of time runs from the date of investment. In the case of other conditions, it runs from an earlier date – either the date of incorporation or, if later, twelve months before the date of investment. In all cases the continuous period ends with the third anniversary of the investment date. Investors are not required to wait until the end of the relevant applicable period before claiming tax relief (see new section 257NA) but if any of



the conditions are breached before the end of the applicable period, relief which has been given may be withdrawn or reduced (see Chapter 6).

Chapter 3

18. Chapter 3, sections 257L to 257LH, sets out eligibility conditions relating to the investor and the investment.
19. New section 257L describes the types of investment which may qualify for relief. Investments may be in shares, or in debt instruments including simple loans. The section ensures that either type of investment must be the lowest-ranking of its type in the event of a winding up and therefore exposed to the greatest degree of risk for investors. Investments in shares may not carry any right to an amount of dividend which is fixed absolutely; or whose rate is fixed either by reference to the amount invested or by reference to some other factor which is not contingent upon the enterprise's financial success. Irrespective of the nature of the investment, any right of return must not be greater than a reasonable commercial rate. No definition is provided for "reasonable commercial rate".
20. New section 257LA ensures that income tax relief will only be available where the amount in respect of which relief may be claimed has been paid over in cash to the enterprise when the investment is considered to have been made. This means, for instance, that where an investor has undertaken to provide the enterprise with an amount but the enterprise has not drawn down some or all of the amount committed, then relief will be due only on the drawn down amount.
21. New section 257LB ensures both that the investor has no right to have the investment redeemed, repaid or repurchased during the shorter applicable period; and that the investment is not made with the benefit of any arrangement which might guarantee an exit from the investment.
22. New section 257LC(1) prevents the investment from qualifying if at any time in the shorter applicable period, there exist arrangements aimed at protecting the investor's capital, or otherwise protecting the investor from the risks attached to making the investment. This would include, for example, schemes which insure investors against making a loss, and schemes to maintain the value of the investment artificially.
23. Subsection (2) provides an exception for ordinary commercial matters such as insurance by the enterprise against normal trading risks.
24. New section 257LD denies relief if in the longer applicable period, the investor, or any associate, receives a loan from any person which would not have been made, or would not have been made on the same terms, were it not for the making of the relevant investment. This includes cases where credit is given or a debt due from the investor or associate is assigned. This section mirrors the equivalent Enterprise Investment Scheme provision at section 164 ITA. HMRC has published an interpretation of that provision in Statement of Practice SP6/98 and it is anticipated that that interpretation is likely to apply equally here, providing that the Statement of Practice is still in existence.,

25. New section 257LE prevents the investment from qualifying unless it is made for a genuine commercial reason and not as part of a scheme or arrangement whose purpose is tax avoidance.
26. New section 257LF prevents individuals from qualifying for relief if they are, or their associates are, employees, partners, remunerated directors or trustees of the enterprise, or of other bodies which have certain relationships with the enterprise. Those restrictions apply throughout the longer applicable period described in section 257KC, and therefore exclude individuals who have had (or whose associates have had) one of the relationships mentioned with the enterprise before the date the investment is made, even if that relationship has ended by the time the investment is made. The term “associates” is defined in new section 257[S] as including spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships. Subsection (8) provides that for the purposes of this subsection and subsections (4) and (5), “director” does not include trustee.
27. Subsection (3) defines “subsidiary” as a 51% subsidiary. That term is further explained in section 989 ITA.
28. Subsection (4) explains what is meant by a “remunerated director” in this context. A director is “remunerated” if during the longer applicable period he or a partnership of which he is a member receives, or is entitled to receive, a payment from the social enterprise or any person connected with the social enterprise. “Connected” in this context takes its meaning from section 993 ITA. “Director”, for the purpose of Part 5B, takes its meaning from section 452 Corporation Tax Act 2010, modified so that references to companies in that section are to be read as including charities which are trusts. See new section 257U.
29. Subsection (5) provides that certain types of payment are not taken into account in determining whether the director is “remunerated”. These are mostly payments of various types which do not constitute payments for services rendered as a director. However, reasonable payments which are for services rendered as a director may also be ignored, if one of two further conditions is met.
30. The first of these conditions is at subsection (6). This is that the investment was made at a time when the director was not connected with the enterprise.
31. The second of the conditions is at subsection (7). This is that if the director was so connected, that the investment is made before the third anniversary of the last investment made by the director at a time when he was not so connected.
32. Subsection (8) provides that in cases where a director is also an employee of an enterprise, for the purposes of new section 257LF the employee relationship is to be disregarded.
33. New section 257LG prevents individuals from qualifying for relief if they, or their associates, have a certain level of interest in the capital of the enterprise or of a 51% subsidiary of the enterprise. This restriction applies throughout the longer applicable period, and it applies in respect of an interest in a company which is a 51% subsidiary at any time in that period, even if it is not such a subsidiary at the time of investment.

34. Subsection (3) prevents an individual from qualifying if that individual or an associate controls the enterprise or a 51% subsidiary. “Control” for this purpose is defined at new section 257[T] and takes the meaning in section 450 and 451 of the Corporation Tax Act 2010, expanded so that references to company in those sections are to be read as including references to charitable trusts. Trustees who alone, or together with another person connected with them, have the power to exercise certain trustee functions, are regarded as controlling an enterprise in this context.

35. Subsection (4) prevents an individual from qualifying for relief if at any time in the longer applicable period, that individual or an associate has directly or indirectly more than 30% of any of the following:

- a. the issued share capital of an enterprise or its 51% subsidiary (as defined in section 989 ITA);
- b. the aggregate of the loan capital and the issued share capital of the enterprise or its 51% subsidiary (and for the purpose of this sub-subsection, “issued share capital” means the amount raised by the issue - including any share premium - rather than the nominal value of the shares); or
- c. the voting power of an enterprise or its 51% subsidiary.

36. Subsection (5) disapplies subsection (3) and (4) in respect of any shareholdings at a time when the enterprise has issued only subscriber shares, and has not yet started its business or any preparations for its business. This prevents an individual from being disqualified merely by virtue of having taken shares in a company for the purpose of registering that company with Companies’ House but where it is intended that there will be other investors in due course.

37. Subsection (6) defines “loan capital” for the purpose of subsection (4) as including any debt incurred by the relevant enterprise for any money borrowed or capital asset acquired by it; for any right to receive income created in favour of it; or for consideration the value of which to the enterprise was (at the time the debt was incurred) substantially less than the amount of the debt (including any premium on the debt). But loan capital is treated as excluding debts arising on a normal bank overdraft.

38. New section 257LH imposes a requirement that there must be no “reciprocal” arrangement allowing individuals to circumvent the restrictions in sections 257LF and LG by investing in each other’s social enterprises. This provision would apply, for example, where A, B and C are each directors of community interest companies A Ltd, B Ltd and C Ltd respectively, and A invests in B Ltd, B in C Ltd and C in A Ltd.

#### Chapter 4

39. Chapter 4, sections 257M to 257MV, describe the eligibility conditions relating to the social enterprises.

40. New section 257M(1) stipulates that when the investment is made, the enterprise must not be an “enterprise in difficulty”.

41. The concept of an “enterprise in difficulty” is used in the context of European Commission regulations relating to State aid. Subsection (2) explains that an enterprise will be considered to be “in difficulty” for the purpose of section 257M if it is reasonable to assume that it would be regarded as such by the relevant European Commission regulations. At the time of publication of this draft Explanatory Note, the relevant European Commission instruments are in the process of being redrafted. It is anticipated that the definition which will be relevant when Finance Bill 2014 is enacted will be in the Commission’s revised Guidelines on de minimis State aid, due to be adopted in early 2014; and that the definition will include various tests to be met as to an enterprise’s financial health.

42. New section 257MA sets a limit on the amount of tax-advantaged investment which an enterprise may receive in a rolling three year period. This limit is imposed by the need to comply with the European Commission’s guidelines on de minimis State aid, which restrict such aid to an amount not exceeding €200,000 in a three year period. The guidelines also require de minimis aid to be transparent (i.e. ascertainable) at the point at which it is given. As it is not possible to determine at the time of investment what tax reliefs may actually be claimed, the limit is therefore calculated by reference to the maximum amount of tax relief which an investment would be capable of attracting, rather than by reference to amounts of tax relief ultimately claimed.

43. New section 257MB grants a power for Treasury to amend by order the enterprise size and investment limits, or other matters needed in connection with an application for State aid approval.

44. New section 257MC sets out the limits that apply to the value of an enterprise’s gross assets before and after an investment. The limits are £15 million immediately before investment and £16m immediately after. The requirement differentiates between a singleton enterprise and one which is the parent of a group. Where the latter is the case, it is the value of the group assets which has to be taken into account.

45. Subsection (3) provides that for this purpose, no account is taken of any assets which consist in rights against another member of the group, or any shares in, or securities of, another such group member.

46. Section 257MC mirrors an equivalent provision in the Enterprise Investment Scheme legislation, at section 186 ITA. HMRC has published a Statement of Practice SP2/06 in relation to that provision, indicating that ordinarily the value of a company's assets will be determined by reference to the values shown on its balance sheets as explained in the Statement. It is anticipated that similar considerations are likely to apply for this new relief, subject to that Statement of Practice still being in existence.

47. New section 257MD provides that when the investment is made, none of the enterprise’s shares, stocks, debentures or other securities may be listed on a recognised stock exchange or other designated exchange as defined, and there must be no arrangements in

place for that to happen. This restriction applies in respect of all such instruments issued by the enterprise, not only those in respect of which tax relief may be claimed.

48. New section 257ME contains two tests, each of which must be met for the duration of the shorter applicable period. Both tests rely on the definition of “control” to be found at section 257T, which in turn relies on the definition at sections 450 and 451 of the Corporation Tax Act 2010, modified to take account of charitable trusts. Both tests also rely on the definition of “connection” in section 993 ITA, which applies by virtue of section 1021 ITA.

49. The first test, at subsection (1), prevents an enterprise from qualifying if it controls (either on its own or together with any person connected with it) any company which is not a qualifying subsidiary. “Qualifying subsidiary” for this purpose is as defined at section 257MU.

50. The second test, at subsection (2), prevents an enterprise from qualifying if it is either a 51% subsidiary of another company, or is under the control of another company (or another company and any person connected with that company) without being a 51% subsidiary of that company.

51. New section 257MF provides that any subsidiary which the enterprise has during the shorter applicable period, must be a qualifying subsidiary. The definition of “qualifying subsidiary” for this purpose is to be found at section 257MU.

52. New section 257MG requires that if the enterprise has a subsidiary whose business consists wholly or mainly of holding or managing land, or property deriving its value directly or indirectly from land, that subsidiary (termed a ‘property managing subsidiary’) must be a qualifying 90% subsidiary of the company. The legislation does not define what is meant by “property deriving its value ...indirectly from land”, but examples might include the enterprise having shareholdings in a company deriving its value directly or indirectly from land; having any interest in settled property deriving its value directly or indirectly from land; or having any option, consent or embargo affecting the disposition of land. For the definition of ‘qualifying 90% subsidiary’ see section 257MV.

53. New section 257MH requires that at the time of investment, either the enterprise or the group of which it is a parent, as appropriate, must have fewer than 500 full-time equivalent employees. Part-time employees are to be included on any basis which is “just and reasonable”. For the purpose of this section, the term “employee” includes directors, but not employees who are on maternity or paternity leave or students who are on vocational training.

54. New section 257MI provides that neither the enterprise, nor any of its qualifying 90% subsidiaries, may be a member of a partnership at any time during the shorter applicable period. “Partnership” for this purpose will include a limited liability partnership, by virtue of section 863(2) Income Tax (Trading and Other Income) Act 2005.

55. New section 257MJ describes what is termed the “trading requirement”. This is not a requirement that the enterprise must either be trading at time of investment or must trade for

any specified period of time. Rather, it is a requirement as to the primary purpose of the enterprise or of the group of which it is a parent. It must be met throughout the shorter applicable period.

56. Subsection (2) provides that the trading requirement can be met in one or other of two ways, depending on whether the enterprise is a single entity or whether it is the parent of a group. A single enterprise must exist essentially for the purpose of carrying on one or more qualifying trades. A single enterprise which is a charity is treated for the purpose of this section as fulfilling this condition, although charities will by their nature exist for a charitable purpose rather than for a trading purpose. An enterprise which is the parent company of a group will fulfil the condition if the business of the group as a whole does not substantially involve non-qualifying activities. Subsection (7) defines “non-qualifying activities” for this purpose as excluded activities (see section 257MQ), or activities (other than carried on by a charity) which are carried on otherwise than in the course of a trade.

57. Subsection (3) treats an enterprise as a parent company if it intends that one or more companies will become its qualifying subsidiaries to carry on one or more trades which qualify for the purpose of Part 5B. Once it ceases to have this intention, however, it is no longer to be regarded as a parent company for the purpose of this section.

58. To enable a determination of whether the parent company of a group meets the trading condition as outlined above, subsection (4) provides that it is the business of the whole group taken together which is to be considered.

59. Subsection (5) provides that incidental activities carried on by a subsidiary which otherwise exists wholly to carry on a qualifying trade, are to be ignored.

60. Subsection (6) provides that the following types of activity are ignored altogether:

- a. holding shares in a qualifying subsidiary,
- b. making loans to a subsidiary, and making loans to the parent company,
- c. holding and managing property used by any group company for the purpose of one or more qualifying trades

61. A company which goes into administration or receivership will tend to fail the trading requirement at section 257MJ. New section 257MK provides that that will not be the case because of anything done as a result of the company being in administration or receivership providing that the entry into administration or receivership, and any subsequent actions, are undertaken for genuine commercial purposes and not for reasons of tax avoidance. Section 257R explains further what is meant by a company going into administration or receivership.

62. New section 257ML provides that the enterprise must be party to the relevant investment for the purpose of raising money for a “funded purpose”.

63. Subsection (1) provides that a funded purpose can be either a qualifying trade carried on at the time of investment by the enterprise or a qualifying 90% subsidiary; or activities preparatory to a qualifying trade which the enterprise intends will be carried on either by the enterprise itself, or by a qualifying 90% subsidiary. If it relates to the preparatory activities, then the relevant trade must begin within two years of the date of the investment.

64. New section 257MM imposes requirements on the enterprise as to how it uses the monies raised by the investment, and as to a minimum period of trading.

65. Subsection (1) provides that the monies raised by the investment must be employed wholly for the funded purpose (see section 257ML) within 28 months of the date of the investment. Insignificant uses of the money for other purposes are ignored, by virtue of subsection (4).

66. Subsection (2) provides that the relevant qualifying trade must have been carried on for a period of at least 4 months by either the investee enterprise, or a 90% qualifying subsidiary. This subsection works in conjunction with section 257NC(3) to ensure that an enterprise is not eligible to submit a compliance statement to HMRC until it has completed at least 4 months of trading activity. Subsection (5) and (6) act to ensure that this requirement will still be regarded as having been met if either the enterprise or a qualifying subsidiary is wound up or dissolved, or put into administration or receivership before the end of the 4 month period, providing that such events occur for genuine commercial purposes and not for reasons of tax avoidance.

67. Subsection (3) provides that employing money on the acquisition of shares or stock in a company does not of itself amount to employing the money for the purposes of the funded purpose. This restriction should not prevent the money being used to acquire shares in a subsidiary company, providing that after the share issue the subsidiary is a qualifying 90% subsidiary (see section 257MV) and that subsidiary then goes on to use the money for a funded purpose carried on by it (which will exclude the acquisition of shares or stock in another company).

68. New section 257MN provides that at no time during the shorter applicable period must relevant preparation work or the relevant qualifying trade be carried on by someone other than the investee enterprise or one of its qualifying 90% subsidiaries.

69. Subsection (2) provides that this rule does not act to deny relief where an existing trade is carried on by another company and making of the investment is preparatory to the carrying of a qualifying trade by the investee enterprise or one of its qualifying 90% subsidiaries.

70. Subsections (3) to (5) further provide that this rule does not act to deny relief in cases in which the investee enterprise (or any other company) goes into liquidation, administration or receivership provided that these actions are entered into and carried out for genuine commercial reasons.

71. New section 257MP explains what is meant by “qualifying trade” for the purpose of Part 5B.

72. Subsection (1) says that for a trade to be a qualifying trade, it must be conducted on a commercial basis and with a view to the realisation of profits. In addition, the trade must not consist wholly or as to a substantial part in the carrying on of ‘excluded activities’ as defined in section 257MQ.

73. Subsection (2) provides that what the company does must come within the ordinary meaning of ‘trade’; that is, it must not count as a trade merely because of the extension of the meaning of that word in section 989 ITA to include ‘any venture in the nature of trade’.

74. New section 257MQ provides a list of activities which are “excluded”. This list 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. Some activities are necessarily excluded in order to comply with the European Commission’s regulations on de minimis State aid. At the time of publication of this draft Explanatory Note, the relevant European Commission regulations are in the process of being redrafted and it is anticipated that by the time Finance Bill 2014 comes to be enacted, the revised regulations will be in force. The list of activities likely to be excluded in order to comply with the revised regulations include agriculture and fisheries, coal and steel production, and road freight transport.

75. In addition to the exclusions made for State aid purposes, the following are also listed in subsection (1) as excluded: dealing in certain types of assets and commodities; certain financial activities; property development; certain subsidised generation or export of electricity; and the provision of certain services to another enterprise in common ownership where that enterprise’s trade is excluded.

76. Subsection (2) provides that lending money to a social enterprise is not “excluded”. “Social enterprise” for this purpose bears the same meaning as in section 257J.

77. New section 257MR supplements section 257MQ(1)(c) by explaining what is meant by “property development”.

78. Subsection (1) explains that property development for this purpose is defined as the development of land in which the enterprise has, or has had, an interest, with the object of realising a gain from the disposal of the land when developed.

79. Subsection (2) provides that for this purpose, ‘interest in land’ is defined in the legislation as any estate, interest or right over land including any right affecting the use or disposition of land; or any right to obtain such an estate, interest or right from another person, which is conditional upon the other person’s ability to grant it.

80. Subsection (3) makes it clear that references to an interest in land for this purpose do not include mortgage creditors or (in Scotland) the interest of a creditor in a charge or security of any kind over land.

81. New section 257MS supplements section 257MQ(1)(e) to exclude the generation or export of electricity in respect of which any person (whether the enterprise undertaking the generation or export or any other person) receives a feed-in tariff under a UK government scheme to encourage small-scale low-carbon generation of electricity or a financial incentive granted under a similar overseas scheme.



82. New section 257MT supplements section 257MQ(1)(f). Together these sections explain that providing services or facilities for any business comprising a trade, profession or vocation carried on by another person (other than the parent of the company) is an excluded activity, where that other business consists to a substantial extent of any activities listed in section 257MQ as excluded, and a controlling interest in that other business is held by a person who also has a controlling interest in the business carried on by the company.

83. Subsection (2) defines a controlling interest in a business as follows. A person has a controlling interest in a business if, in the case of a business carried on by a company, he controls the company, or the company is a close company and he (or an associate of his) is both a director of it and the beneficial owner of, or able directly or through the medium of other companies (or by any other indirect means) to control, more than 30% of its ordinary share capital, or he owns at least one-half of the business by reference to the tests of ownership set out in sections 941 and 942 CTA 2010.

84. Subsection (3) provides that in the case of a business carried on other than by a company, a person is regarded as having a controlling interest in that business if he is entitled to not less than half of the assets used for, or the income arising from, the business.

85. Subsection (4) provides that for these purposes, the rights or powers of any person's associate count as that person's rights and powers.

86. New section 257MU explains what is meant by a "qualifying subsidiary" of an enterprise for the purpose of the sections of Part 5B which use that term.

87. Subsection (1) provides that a company is a qualifying subsidiary if it is a 51% subsidiary of the investee company. The meaning of 51% subsidiary is the same as that given in CTA10/S1154. That is, the investee company must directly or indirectly hold more than 50% of the ordinary share capital. In addition in order to be a qualifying subsidiary, no other person other than the company issuing the shares, or one of its subsidiaries, must control the subsidiary, and there must be no arrangements by virtue of which these requirements could cease to be met. 'Control' for this purpose has the meaning given at section 257T.

88. Subsections (2) and (3) provide that these conditions are not to be regarded as ceasing to be satisfied by reason only of a winding-up or dissolution of the subsidiary or its parent, or of the subsidiary or its parent going into receivership, or of a disposal of the shares in the subsidiary, provided in all cases that this occurs for genuine commercial reasons and not as part of a scheme or arrangement for the avoidance of tax.

89. New section 257MV explains what is meant by a "qualifying 90% subsidiary" of an enterprise.

90. Subsection (1) provides that, for a subsidiary to be a qualifying 90% subsidiary, the relevant enterprise must:

- a. own at least 90% of the subsidiary's issued share capital and voting rights.

b. be beneficially entitled to at least 90% of the assets available for distribution to equity holders of the subsidiary

c. be beneficially entitled to at least 90% of any profits of the subsidiary which would be available for distribution to equity holders. “Equity holder” is to be given the same meaning as in Chapter 6 of Part 5 of CTA 2010, as explained at subsection (8) and (9).

d. In addition, no person other than the relevant enterprise must have control of the subsidiary, and there must be no arrangements by virtue of which any of the above conditions could cease to be met.

91. Subsections (2) to (4) provide that a company is still to be treated as a qualifying 90% subsidiary if it is held indirectly via a company which is a qualifying 100% subsidiary of the relevant company, (based on similar considerations to those above).

92. Subsections (5) and (6) provide that the winding up of a subsidiary, or the subsidiary entering into or being in administration or receivership, do not prevent this test from being regarded as met providing that those events take place for genuine commercial reasons and not for the purposes of tax avoidance.

93. Subsection (7) provides that arrangements for the disposal of the subsidiary do not prevent this test from being regarded as met, providing that the disposal is for genuine commercial reasons and not for the purposes of tax avoidance.

### Chapter 5

94. Chapter 5, sections 257N to 257ND, deal with attribution of relief to investments, and the procedures for making claims.

95. New section 257N how SI relief is to be attributed to investments where only one investment is made, or where several investments are made in the same tax year. This becomes significant if the investor later disposes of some but not all of the investment:

a. for the purpose of determining what relief is to be withdrawn if the disposal takes place within the qualifying period for the investment;

b. for the purpose of determining whether the disposal takes place after the end of the qualifying period relevant to those particular shares, and is therefore exempt from capital gains tax by virtue of section 255B TCGA

96. New section 257NA explains the time limits for making a claim to SI relief.

97. Subsection (1) says that the claim may not be made earlier than the end of the period of 4 months referred to in section 257MM(2), and not later than the fifth anniversary of the filing date for the tax year in which the investment was made. Note: this overrides the normal claim period provided for in section 43 Taxes Management Act 1970. This is to take account

of the fact that the individual's eligibility to claim depends on the enterprise having met certain conditions which may take some time to fulfil.

98. Subsection (2) provides that if the individual has made an election under section 257JA(4) to have some or all of the investment treated as though made in an earlier tax year, then subsection (1) above applies separately to that part of the investment as though it had been made in the earlier tax year.

99. New section 257NB deals with an individual's entitlement to claim SI relief in respect of an investment in a social enterprise.

100. Subsection (1) provides that in order for an individual to be eligible to claim SI relief, the enterprise must provide the individual with a compliance certificate which can be provided to HMRC in support of a claim.

101. Subsections (2) and (3) provide that a claim to SI relief must have been made in order for the individual's PAYE coding to be amended to take account of the SI relief, or for the individual to make any application for tax to be postponed pending the outcome of an appeal made on the grounds that SI relief will be available.

102. New section 257NC provides more detail about the compliance statement referred to in section 257ND(2).

103. Subsection (1) provides that it is a statement to the effect that, in respect of an investment, the conditions for the relief to apply have so far been met (other than those which have to be met by the individual), and the enterprise's intention is that they will continue to be met for the duration of the relevant applicable period. It is therefore not possible for an enterprise to obtain authority to issue certificates under section 257ND once it has ceased to satisfy any condition. So for instance, coming under the control of another company would make the issue of certificates impossible.

104. Subsection (2) gives HMRC the power to prescribe the form and content of the compliance statement. The statement must include a declaration to the effect that the statement is correct to the best of the enterprise's knowledge and belief, as well as any other declarations which HMRC may require. It is anticipated that a declaration as to the quantum of de minimis State aid received by the enterprise (see section 257MA) will be required under this section.

105. Subsection (3) provides that an enterprise cannot submit a statement more than two years after the end of the year of assessment in which the investment was made, or more than two years after the end of the period of four months referred to in section 257MM(2).

106. New section 257ND explains in more detail the requirements for an individual to obtain the compliance certificate referred to in section 257NB(1).

107. Subsection (1) explains that a compliance certificate is a certificate issued by the investee enterprise to the individual. It must state that the requirements for SI relief have so

far been met (other than those which have to be met by the individual), and it must be in a form prescribed by HMRC.

108. Subsection (2) and (3) provide that the enterprise may not issue a compliance certificate to an individual until it has provided HMRC with a compliance statement (see section 257NC), and before it has had authority to do so from HMRC.

109. Subsection (5) and (6) provides that HMRC must give a decision in respect of any application to it for authority to issue a compliance certificate, and that a refusal to give such authority is a matter against which the enterprise has the right of appeal as provided for in the Taxes Management Act 1970.

### Chapter 6

110 Chapter 6, sections 257P to 257PM describe the circumstances in which relief will be withdrawn or reduced.

111 New section 257P provides for SI relief to be reduced or withdrawn if the investor receives value from the enterprise during the longer applicable period. See also section 257PG which extends the effect of this provision. Whether the relief will fall to be reduced or withdrawn completely depends on the amount of the value received in relation to the amount of relief given, as determined by the formula in subsection (2).

112. Subsection (3) lists provisions which supplement section 257P.

113. Subsection (6) provides that for the purpose of the value received provisions, a spouse or civil partner who has acquired any part of an investment in the course of a transaction to which section 257Q applies is to be treated as the investor.

114. New section 257PA provides that where the amount of the value received is 'insignificant' it is ignored. An amount is insignificant for this purpose if it does not exceed £1000, or if it exceeds £1000 it is insignificant in relation to the amount subscribed by the individual for the shares in question. 'Insignificant' is not defined for this purpose.

115. To ensure that this relaxation is not used for tax avoidance purposes, subsection (3) provides that the amount of any value is not to be regarded as insignificant if it is received under arrangements which exist at any time in the 12 months ending on the date of the investment. Subsection (6) extends this to include receipts by an associate of the investor, or provision of value by any person connected with the social enterprise. "Arrangements" is as defined in section 257U.

116. Subsections (4) and (5) provide that where there is more than one receipt which, on its own, would be regarded as insignificant, the rule must be applied to the total amount received within the longer applicable period.

117. New section 257PB modifies the calculation given at subsections 257P(1) and (2) for cases where there has been more than one issue of investment attracting SI relief.

118. New section 257PC modifies the calculation given at subsections 257P(1) and (2) for cases where part of the investment is treated as though made in the tax year preceding that in which it was made (see section 257JA(4)).

119. New section 257PD modifies the calculation given at subsections 257P(1) and (2) for cases where the investor has not been able to obtain the maximum amount of SI relief available in respect of the investment. This would be the case where the maximum amount of relief available exceeded the investor's liability to income tax for the tax year in question.

120. New section 257PE explains when value is considered to have been received by an investor, for the purposes of sections 257P and 257PB.

121. Subsections (2) to (6) list a wide range of types of payments, benefits and transactions which will give rise to a withdrawal or reduction of SI relief by virtue of the value received provisions. These will include any repayment or part repayment of the investment in respect of which SI relief has been obtained.

122. Subsection (7) provides that if SI relief is withdrawn because the investor has disposed of the investment within the relevant applicable period, the disposal proceeds are not treated as a receipt of value for the purposes of this section.

123. Subsection (8) provides that if the investor is a director of the enterprise, a payment of reasonable remuneration or the provision of a benefit for services provided in the capacity of director or employee, is not to be treated as value received for the purposes of this section.

124. New section 257PF contains a table setting out how the amount of any value received is to be calculated, depending on the nature of the value received.

125. New section 257PG supplements those sections dealing with receipt of value. It provides that those sections apply equally in cases where the value has been provided indirectly as well as directly to the individual; or where the value has been provided to the individual's associate; or where the value has been provided by a person connected with the social enterprise at any time during the longer applicable period.

126. New sections 257PH to PK are not complete as at time of publication of this draft Explanatory Note. It is envisaged that they will correspond broadly to the provisions contained in sections 222 to 244 ITA, relating to the Enterprise Investment Scheme.

127. New section 257PL explains that if the investment is wholly or partly disposed of during the shorter applicable period other than to a spouse or civil partner – see section 257Q, then relief is to be reduced or withdrawn.

128. Subsection (2) and (3) treat the disposal differently depending on whether it has been made by way of an arms' length bargain or not. Where the disposal is other than at arms' length, the relief is withdrawn entirely. Where it is an arms' length bargain, relief is reduced (including withdrawn completely) by the application of the formula at subsection (4).

129. New section 257PM is not complete as at time of publication of this draft Explanatory Note. It is envisaged that it will correspond broadly to the provisions contained in sections 210, 211 and 212 ITA, relating to the Enterprise Investment Scheme.

### Chapter 7

130. Chapter 7, sections 257Q to 257U, deal with miscellaneous and supplementary matters including definitions of key terms used in Part 5B.

131. New section 257Q ensures continuity of tax treatment where shares are transferred between spouses or civil partners in the circumstances specified. No relief is withdrawn where one spouse or civil partner disposes of shares to which relief is attributable to the other. Following such a disposal, for the purposes of any subsequent disposal or other event, the shares are treated as if they had always been owned by the spouse or civil partner to whom they have been transferred.

132. Subsection (5) is not complete at time of drafting of this Explanatory Note, but will include details about the identification of shares on a disposal.

133. New section 257R explains what is meant by a company being in administration or receivership, by reference to the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and any corresponding legislation in a country or territory outside of the United Kingdom.

134. New section 257S explains what is meant by an “associate” of a person in the context of Part 5B. It includes spouse, civil partner, ancestor or lineal descendant, business partner and certain trustee relationships.

135. New section 257T explains the term “control” as used in Part 5B.

136. Subsection (1) provides that “control” should be defined in accordance with sections 450 and 451 Corporation Tax Act 2010, but with the modification that “company” in those sections should be read as though including a charitable trust.

137. Subsection (2) explains that if the trustees of a charitable trust (acting in their capacity as trustees) either individually or together control another person as defined by sections 450 and 451 CTA 2010, then the charitable trust of which they are trustees is to be regarded as controlling the other person for the purpose of Part 5B.

138. Subsection (3) describes the circumstances in which a person is to be regarded as controlling a charity which is a trust, whether or not a trustee. A trustee who, alone or together with other trustees who are connected with him, can exercise some or all of the powers of the trustees, is to be regarded as controlling the charity. A person who is not a trustee but who either alone or with others has the power to appoint or remove trustees, or to approve or direct the trustees’ functions, is to be regarded as controlling the charity.

139. Subsection (4) explains that subsection (3) should be read as expanding upon subsection (1), rather than limiting it.

140. Subsection (5) provides that for the purposes of Part 5B, a regulator is to be treated as not having control of any company merely by virtue of the fact that that company is regulated by that regulator.

141. Subsection (6) disapplies the definition of “control” at section 995 for the purposes of Part 5B. That definition would otherwise apply by virtue of section 1021. Note: this is a departure from the Enterprise Investment Scheme legislation at Part 5 ITA which has been used as a broad model. The EIS legislation uses both the section 995 definition, and that at sections 450 and 451 CTA 2010, at different places.

142. New section 257U provides minor definitions for various terms used in Part 5B, including what is meant by the term “market value” in relation to an asset.

### ***Schedule 1, Part 2***

143. Part 2 contains various consequential amendments to the Income Tax Act 2007.

### ***Schedule 2***

144. Paragraphs 1 and 2 insert new sections 255A and 255B into the Taxation of Chargeable Gains Act 1992 (‘TCGA’). Section 255A directs the reader to new Schedule 8B TCGA where the details of the capital gains tax relief are found.

145. New section 255B provides for special treatment of capital gains and losses which accrue on disposals of assets to which SI relief is attributable.

146. Subsection (1) applies where there would be a loss on a disposal of an asset to which SI relief is attributable. The consideration given for the asset is treated as reduced by the amount of SI relief, so the loss is reduced or eliminated, or becomes a gain.

147. Subsection (2) provides that where an asset to which SI relief is attributable is disposed of three years or more after acquisition, any gain which accrues on the disposal is not a chargeable gain for TCGA purposes.

148. Subsection (3) disapplies the rule in TCGA which means that a loss is not an allowable loss if, in similar circumstances, a gain would not be a chargeable gain.

149. Subsection (5) disapplies the normal asset ‘pooling’ and identification rules in the TCGA from assets to which SI relief is attributable.

150. Subsections (6) and (7) state that Part 5B of the Income Tax Act 2007 (income tax relief for investments in social enterprises) applies to determine whether SI relief is attributable to any asset, and the amount of relief so attributable.

151. Paragraph 3 of Schedule 2 inserts new Schedule 8B into the TCGA. Paragraph 1(1) of Schedule 8B applies the Schedule if an individual (the investor) has a chargeable gain and acquires specific assets known as ‘the social holding’, providing the investor is eligible for SI relief on the consideration paid for those assets. Five further conditions must also be met. Where the Schedule applies, the individual may claim for the gain to be reduced as provided for in paragraph (2).

152. Paragraph 1(2) of Schedule 8B sets down the first of the five further conditions: condition A. This is that the gain must either be a gain on an asset which is disposed of, or it must be a previously deferred gain which accrues when a chargeable event occurs in relation to an asset which is, or forms part of, a social holding (see new paragraph (4)(1), paragraph 163 below).

153. Paragraph 1(3) of Schedule 8B sets down the second of the five further conditions: condition B. This is that the gain must accrue between 5 April 2014 and 6 April 2019 (but excluding those dates). The Treasury may substitute a later date for the end of this period by means of a Treasury order (paragraph (1)(6)).

154. Paragraph 1(4) of Schedule 8B sets down the third of the five further conditions: condition C. This is that the investor must be resident in the United Kingdom both when the gain accrues and when the social holding is acquired.

155. Paragraph 1(5) of Schedule 8B sets down the fourth of the five further conditions: condition D. This is that the investor must be acting on his or her own behalf and not in any other capacity in making the investment. For instance, condition D will not be met if the individual makes the investment as a partner for the purposes of the Partnership Act 1890 or the Limited Partnership Act 1907, as a member of a Limited Liability Partnership, as a trustee or as a personal representative of a deceased person.

156. Paragraph 1(6) of Schedule 8B sets down the last of the five further conditions: condition E. This is that the investment must be made either in the three years beginning on the day the gain accrues or in the year ending at the beginning of that day.

157. Paragraph 2(1) and 2(2) of Schedule 8B permit the investor to make a claim for the gain to be reduced by an amount up to a sum equal to the amount invested in the social holding, but not by any excess over the amount of the gain (or over the gain net of reductions allowed under the provisions listed at paragraph 2(4)).

158. Paragraph 2(3) of Schedule 8B prevents the amount invested or any part of it being used more than once to generate relief under any of the provisions listed at paragraph 2(4).

159. Paragraph 2(4) of Schedule 8B lists the provisions in TCGA which involve an amount invested being set against a gain and which are therefore mutually exclusive under subparagraphs (2) and (3). These are the hold-over relief under this Schedule 8B, enterprise investment scheme (EIS) deferral relief under Schedule 5B TCGA and seed enterprise investment scheme (SEIS) deferral relief under Schedule 5BB TCGA.



160. Paragraph 2(5) of Schedule 8B imposes an upper limit of £1 million on the gains which may be relieved under this Schedule by an individual in any tax year. This not the same as the limit which applies to the total amount which a single enterprise may receive under EU State aid rules (see paragraph 42 of this Note).

161. Paragraph 2(6) of Schedule 8B explains that when a gain is reduced in this way, the relief represented by the amount of the reduction is 'attributable to' the asset or assets which form the social holding. It also provides that when the person holding an asset dies, or a chargeable event occurs in relation to that asset, the relief ceases to be attributable to it. Paragraph (4)(1) explains what is meant by a 'chargeable event'.

162. Paragraph 3 of Schedule 8B provides for a gain equal to all or part of the reduction made under paragraph 2(1) to accrue and be taxable when a chargeable event occurs in relation to the social holding. If the chargeable event relates only to part of the social holding then a corresponding part of the gain accrues. The total gains which can accrue in relation to a social holding cannot exceed the total amount of the reduction.

163. Paragraph 4(1) of Schedule 8B lists the chargeable events which cause a relieved gain to accrue when they occur. These are:

- the investor disposing of an asset forming all or part of his social holding (but this does not include disposals to their spouse or civil partner)
- the disposal of an asset forming all or part of a social holding by a person who acquired it from their spouse or civil partner (but this does not include disposals back to the investor)
- an asset forming all or part of the investment being cancelled, redeemed or repaid
- any of the conditions for eligibility to SI relief in Chapters 3 and 4 of Part 5B of the Income Tax Act 2007 failing to be met

164. Paragraph 4(2) of Schedule 8B means that the death of the investor, or of a person who acquired the social holding or any part of it from the investor as their spouse or civil partner, will not cause a deferred gain to accrue in relation to the assets in the social holding. Furthermore, nothing which happens at or after the time of death will be a chargeable event, so deferred gains will not accrue.

165. Paragraph 4(3) of Schedule 8B gives rules for identifying assets disposed of out of a holding of fungible assets (such as shares) some of which have one or more reliefs attributable to them. These rules are necessary because in many cases the TCGA 'pools' holdings of assets of the same class and treats them collectively as a single asset. Where some of those assets have relief attributable to them, and their disposal would have particular tax consequences, special rules are needed to identify which assets are disposed of from out of a 'pool'. Under paragraph 4(3)(a) the assets disposed of are identified with assets of the same class on a 'first-in, first-out' basis, taking the acquisitions on a daily basis. Assets acquired on the same day are treated as being disposed of in the following order:

- firstly, assets to which neither hold-over relief under this Schedule 8B nor SI relief under Part 5B of the Income Tax Act 2007 is attributable;
- secondly, assets to which hold-over relief but not SI relief is attributable;
- thirdly, assets to which SI relief but not hold-over relief is attributable

- finally, assets to which both hold-over relief and SI relief are attributable.

Paragraph 2(6) explains what is meant by relief being attributable to an asset

166. Paragraph 4(4) of Schedule 8B ensures that when an asset to which hold-over relief under this Schedule (and not SI relief) is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 4(3) apply as though he or she acquired the assets when the investor acquired them.

167. Paragraph 4(5) of Schedule 8B ensures that an asset to which SI relief is attributable is held by a person who received it as the spouse or civil partner of the investor, the identification rules in paragraph 4(3) apply as though he or she acquired the assets when the investor acquired them.

168. Paragraph 4(6) and 4(7) of Schedule 8B provides for the main asset identification rules in the TCGA to be subject to the special rules in paragraph 4, and for the asset pooling and identification rules in sections 104, 105 and 106A not to apply to assets to which hold-over relief and not SI relief is attributable.

169. Paragraph 5 of Schedule 8B specifies to whom gains are treated as accruing when there is a chargeable event of one of the types given in paragraph 4(1).

## **BACKGROUND NOTE**

170. These tax reliefs have been introduced to incentivise investment by individuals in social enterprises, to support the Government's aim of stimulating the social enterprise sector.

171. If you have any questions or comments on the legislation generally, please contact Kathryn Robertson on 03000 585729 (email: [kathryn.robertson@hmrc.gsi.gov.uk](mailto:kathryn.robertson@hmrc.gsi.gov.uk)).

172. If you have any questions or comments relating to the capital gains tax aspects of the legislation, please contact Rob Clay on 03000 570649 (email: [rob.clay@hmrc.gsi.gov.uk](mailto:rob.clay@hmrc.gsi.gov.uk)).