

*These notes refer to the Income Tax Act 2007 (c.3)  
which received Royal Assent on 20 March 2007*

# INCOME TAX ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7: Community investment tax relief**

##### **Overview**

957. This Part provides for community investment tax relief, that is income tax reductions to individuals for investments in community development finance institutions (CDFIs). It is based on Schedule 16 to FA 2002.
958. [Schedule 16](#) to FA 2002 continues in force so far as it relates to relief for companies by way of reduction of corporation tax.
959. [Schedule 1](#) to this Act inserts new sections 151BA, 151BB and 151BC in TCGA, which replace paragraphs 40 and 41 of Schedule 16 to FA 2002 and, so far as they apply for purposes of capital gains tax or corporation tax on chargeable gains, paragraphs 47 and 48(2) of that Schedule. Paragraphs 47(1) to (4), (7) and (8) and 48(2) of Schedule 16 to FA 2002 continue in force for the purposes of corporation tax relief under that Schedule. Sections 377 and 379(2) are based on those paragraphs for the purposes of income tax relief under this Part.

#### **Chapter 1: Introduction**

##### **Overview**

960. This Chapter quantifies the tax reduction potentially available to an individual, labels certain concepts and provides signposts to material contained elsewhere.

#### **Section 333: Meaning of “CITR”**

961. This section sets out a general description of the nature of the relief, an entitlement to tax reductions, and defines it as “CITR”. It is based on paragraph 51(1) of Schedule 16 to FA 2002.

#### **Section 334: Eligibility for CITR**

962. This section summarises the general conditions which need to be met for an individual (“the investor”) to be eligible for CITR. It is based on paragraph 1 of Schedule 16 to FA 2002.

#### **Section 335: Form and amount of CITR**

963. This section specifies the amount of the income tax reduction available and the tax years for which it may be claimed. It is based on paragraph 19 of Schedule 16 to FA 2002.
964. The provision in paragraph 19(2) of Schedule 16 to FA 2002 (limiting the tax reduction to the amount which reduces the investor’s tax liability to nil) has not been included in this section. *Subsection (2)* is expressed simply in terms that the investor is entitled to

a tax reduction for the relevant tax year of 5% of the amount invested. The provision limiting the tax reduction is included in section 29(2) (tax reductions: supplementary).

965. The provisions of paragraph 19(6) of Schedule 16 to FA 2002 are included in section 27(4) (order of deducting tax reductions: individuals). That section sets out the order of priority of all the tax reductions (including CITR) that may be available to an individual.

### ***Section 336: Meaning of “making an investment”***

966. This section provides that an investment in a CDFI may take the form of a loan or an issue of securities or shares. It is based on paragraph 2 of Schedule 16 to FA 2002.

### ***Section 337: Determination of “the invested amount”***

967. This section sets out rules for determining the amount invested for the purposes of section 335. In particular, it deals with the complications which arise where a loan may be drawn down in tranches, by requiring the average capital balance of the loan in relation to the tax year to be calculated. It is based on paragraph 21 of Schedule 16 to FA 2002.

### ***Section 338: Meaning of “the 5 year period” and “the investment date”***

968. This section provides the definitions of two significant terms. It is based on paragraph 3 of Schedule 16 to FA 2002. “The 5 year period”, which begins with “the investment date”, is the period during which conditions as to the repayment or redemption of the investment are imposed.

### ***Section 339: Overview of other Chapters of Part***

969. This section indicates the subject matter of the Chapters of this Part not previously mentioned in Chapter 1. It is new.

## ***Chapter 2: Accredited community development finance institutions***

### **Overview**

970. For an investment in a CDFI to qualify for relief, the CDFI must be accredited by the Secretary of State. Part 2 of Schedule 16 to FA 2002 sets out the criteria for accreditation. It also contains powers to determine the manner of making applications and the terms and conditions of accreditation, and authorises delegation of the Secretary of State’s functions. These functions have been assigned to the Secretary of State for Trade and Industry.
971. This Chapter is based on Part 2 of Schedule 16 to FA 2002. So that there is only one set of provisions relating to accreditation, Schedule 1 to this Act substitutes for paragraphs 4 to 7 of Schedule 16 to FA 2002 a new paragraph 4 applying Chapter 2 of this Part for the purposes of corporation tax relief for companies under that Schedule.

### ***Section 340: Application and criteria for accreditation***

972. This section sets out the way in which an application for accreditation as a CDFI is to be made and the basis on which it is to be admitted. It is based on paragraph 4 of Schedule 16 to FA 2002.
973. *Subsection (2)(b)* contains powers for the Treasury to make regulations. Under the powers in paragraphs 4 and 5 of Schedule 16 to FA 2002, the Treasury have made the [Community Investment Tax Relief \(Accreditation of Community Development Finance Institutions\) Regulations 2003 \(SI 2003/96\)](#).

974. Regulations may make different provision for bodies whose principal objective in providing finance is to invest in enterprises whose business does not consist of financing other enterprises or does so only to the extent permitted by the regulations. If such a body is accredited, it is designated as a retail community development finance institution (a “retail CDFI”). See *subsections (6)(b) to (8)*.
975. The distinction between a retail CDFI and an accredited CDFI which is not a retail CDFI (a “wholesale CDFI”) is relevant to the limits on the total value of investments which a CDFI can make for an accreditation period and which are set out in section 348(4). [SI 2003/96](#) provides different limits on the value of investments which a retail CDFI and a wholesale CDFI may make in any enterprise.

### ***Section 341: Terms and conditions of accreditation***

976. This section provides that the terms and conditions for accreditation are to be those set out in regulations and any other terms or requirements the Secretary of State considers appropriate, and specifies what regulations may contain. It is based on paragraph 5 of Schedule 16 to FA 2002. [SI 2003/96](#) contains regulations made under that paragraph.

### ***Section 342: Period of accreditation***

977. This section sets out the period for which an accreditation has effect. It is based on paragraph 7 of Schedule 16 to FA 2002.
978. Paragraph 7(2) of Schedule 16 to FA 2002 (relating to applications for accreditation made before 6 April 2003) has been omitted, as it no longer has any relevance.

### ***Section 343: Delegation of Secretary of State’s functions***

979. This section is based on paragraph 6 of Schedule 16 to FA 2002.

## ***Chapter 3: Qualifying investments***

### **Overview**

980. This Chapter sets out the conditions which must be met if an investment is to be a qualifying investment.

### ***Section 344: Qualifying investments: introduction***

981. This section introduces:
- the respective conditions which apply to loans (section 345), to securities (section 346) and to shares (section 347); and
  - the provisions which apply to all kinds of investment (sections 348 and 349).

It is based on paragraph 8 of Schedule 16 to FA 2002.

### ***Section 345: Conditions to be met in relation to loans***

982. This section sets out the three conditions applicable to loans. It is based on paragraph 9 of Schedule 16 to FA 2002.

### ***Section 346: Conditions to be met in relation to securities***

983. This section sets out the two conditions applicable to securities. It is based on paragraph 10 of Schedule 16 to FA 2002.
984. Condition A (*subsection (1)*) requires that securities must be subscribed for wholly in cash and fully paid for on the investment date. It is in similar terms to section 347(1) which sets out identical requirements in relation to shares.

985. **Section 347(3)** (based on paragraph 11(1) of Schedule 16 to FA 2002) provides that shares are not fully paid up for the purposes of section 347(1) if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the shares. The effect of this is to distinguish the meaning of “paid up” for that purpose from the meaning of those words for the purposes of the Companies Act 1985. Section 738(2) of that Act provides that a share is deemed paid up in cash, or allotted for cash, if the consideration for the allotment or payment up is an undertaking to pay cash to the company at a future date.
986. There is no similar provision in the Companies Act 1985 applicable to the issue of securities, but the position in relation to securities has been made explicit by the inclusion of *subsection (3)*, equivalent to section 347(3). This clarification is not a change in either law or practice.

#### ***Section 347: Conditions to be met in relation to shares***

987. This section sets out the two conditions applicable to shares. It is based on paragraph 11 of Schedule 16 to FA 2002.

#### ***Section 348: Tax relief certificates***

988. This section sets limits on the value of investments in respect of which a CDFI may issue tax relief certificates in an accreditation period (as defined in section 342). It is based on paragraph 12 of Schedule 16 to FA 2002. Without a tax relief certificate, an investor may not claim CITR (see section 335(5)(b)).
989. *Subsections (2) and (3)* provide that the limit applies to the total value of investments in the CDFI made in the accreditation period by individuals under this Part and by companies under Schedule 16 to FA 2002.
990. *Subsection (4)* provides different limits for retail and wholesale CDFIs. See the commentary on section 340.
991. In *subsection (8)*, the words “wholly or partly”, which appear before “in contravention” in paragraph 12(6) of Schedule 16 to FA 2002, have been omitted as being unnecessary.

#### ***Section 349: No pre-arranged protection against risks***

992. This section is an anti-avoidance provision concerned with ensuring that the investor is subject to all usual investment risks and is not protected from their effect by insurance, indemnity, guarantee or other means. It is based on paragraph 13 of Schedule 16 to FA 2002.

### ***Chapter 4: General conditions***

#### **Overview**

993. This Chapter contains various general conditions to be met by the investor. It is based on Part 4 of Schedule 16 to FA 2002, with the exception of paragraph 16 of that Schedule which applies only to investors that are companies.

#### ***Section 350: No control of CDFI by investor***

994. This section provides that the investor will not qualify for CITR in relation to an investment if the investor or a person connected with the investor controls the CDFI at any time in the 5 year period. It is based on paragraph 14 of Schedule 16 to FA 2002.
995. The legal structure of a CDFI may take a number of forms. It may be a company or some other form of body corporate or it may be a partnership or some other form of unincorporated association. The different meanings of control needed to deal with the possible different forms of a CDFI's constitution are set out in *subsections (3) to (6)*.

***Section 351: Investor must have beneficial ownership***

996. This section provides that the investor must be the sole beneficial owner of the investment. It is based on paragraph 15 of Schedule 16 to FA 2002. Trustees and joint investors are thus precluded from obtaining CITR. But see section 375 which enables investments to be made by a nominee or a bare trustee for an individual.

***Section 352: No acquisition of share in partnership***

997. This section provides that an investor cannot obtain CITR for capital contributed to a CDFI which is a partnership, including loan capital accounted for as partners' capital. It is based on paragraph 17 of Schedule 16 to FA 2002.

***Section 353: No tax avoidance purpose***

998. This section denies CITR if the investment is part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax. It is based on paragraph 18 of Schedule 16 to FA 2002.

999. Equivalent provisions are to be found in sections 165 and 178 (enterprise investment scheme) and 261 (venture capital trusts).

***Chapter 5: Claims for and attribution of CITR***

**Overview**

1000. This Chapter is based on those paragraphs of Part 5 of Schedule 16 to FA 2002 which apply to individual investors other than paragraphs 19 and 21. Sections 335 and 337 in Chapter 1 are based on those two paragraphs.

***Section 354: Loans: no claim after disposal or excessive repayments or receipts of value***

1001. This section prevents a claim being made for any tax year in respect of an investment by way of loan in certain circumstances. It is based on paragraph 22 of Schedule 16 to FA 2002. This section links to the provisions in sections 360, 362 and 363 which provide for a tax reduction already given to be recaptured in similar circumstances.

***Section 355: Securities or shares: no claim after disposal or excessive receipts of value***

1002. This section sets out two conditions to be met before a claim can be made for any tax year in respect of a subscription for securities or shares. It is based on paragraph 23 of Schedule 16 to FA 2002.

1003. The first condition (*subsection (1)*) is that the investor has not disposed of the securities or shares before the first anniversary of the investment date which occurs after the end of the tax year.

1004. The second condition (*subsection(2)*) is that the investor has not received or is not treated as having received value from the CDFI in excess of the limits allowed under section 364.

***Section 356: No claim after loss of accreditation by the CDFI***

1005. This section provides that no claim may be made if the CDFI ceases to be accredited. It is based on paragraph 24 of Schedule 16 to FA 2002. Depending on the investment date and the date upon which the CDFI ceased to be accredited, this section may prevent a claim being made for the tax year before that in which the CDFI ceased to be accredited (see *subsection (2)*).

***Section 357: Attribution: general***

1006. This section sets out the general rules dealing with the attribution to the loan, securities or shares included in the investment of the reduction in the investor's income tax liability for any tax year made as a result of the investor's entitlement to CITR. It is based on paragraph 26 of Schedule 16 to FA 2002.
1007. Attribution is required for the purpose of determining the amount of the tax reduction which must be withdrawn or reduced in accordance with Chapter 6 of this Part.

***Section 358: Attribution: bonus shares***

1008. This section sets out additional rules relating to attribution, to deal with the consequences of an issue of "corresponding bonus shares" (see *subsection (4)*) to the investor in respect of the original shares included in the investment. It is based on paragraph 26 of Schedule 16 to FA 2002.
1009. The CITR attributable to the original shares is to be re-attributed across the bonus shares and the original shares proportionately and the bonus shares are to be treated as having been issued at the time the original shares were issued and as having been held by the investor from that date.

***Chapter 6: Withdrawal or reduction of CITR***

**Overview**

1010. This Chapter sets out the circumstances in which CITR attributable to an investment for any tax year must be reduced to nil (withdrawn) or reduced proportionately. It is based on Part 6 of Schedule 16 to FA 2002, with the exception of paragraph 27(4) of that Schedule which applies only to investors that are companies.

***Section 359: Overview of Chapter***

1011. This section provides an overview of the Chapter and contains signposts to its principal provisions. It is new.
1012. *Subsection (3)* defines the term, "the 6 year period". This new term replaces the term "the period of restriction" defined in the same way in paragraph 33 of Schedule 16 to FA 2002. The 6 year period is relevant to sections 363 and 364 which deal with receipts of value. As an anti-avoidance measure, receipts of value in the year before the investment date are taken into account, as well as those in the 5 year period, which begins with the investment date. See the commentary on section 338 for the meaning of "the 5 year period" and "the investment date".

***Section 360: Disposal of loan during 5 year period***

1013. This section provides that the CITR attributable to a loan must be withdrawn if, within the 5 year period, the investor disposes (otherwise than by receiving repayment) of part of the loan or, unless it is by way of a permitted disposal, of the whole of the loan. It is based on paragraph 28 of Schedule 16 to FA 2002.
1014. A permitted disposal is defined in *subsection (2)*. If the disposal is a permitted disposal, any tax reduction already obtained is not withdrawn, but no further tax reduction may be claimed (see sections 335(6) and 354).

***Section 361: Disposal of securities or shares during 5 year period***

1015. This section provides for the withdrawal or reduction of CITR attributable to securities or shares, if the investor disposes of the whole or part of the investment in the securities or shares (except upon repayment, redemption or repurchase by the CDFI) within the

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5 year period and the CDFI is accredited at the time of the disposal. It is based on paragraph 29 of Schedule 16 to FA 2002.

1016. *Subsections (2) and (3)* provide for different consequences depending upon whether the disposal is a qualifying disposal.
1017. *Subsection (4)* defines what is a qualifying disposal. It is based on paragraph 29(4) of Schedule 16 to FA 2002 with the omission of the words “for full consideration” in paragraph (a). See *Change 20* in Annex 1.
1018. *Subsection (5)* provides for circumstances where 5% of the invested amount is greater than the income tax liability of the investor for the tax year.

***Section 362: Repayment of loan capital during 5 year period***

1019. This section provides for the circumstances in which the CITR attributable to a loan must be withdrawn as a consequence of a repayment other than a “non-standard” repayment (see *subsections (3) to (5)*). It is based on paragraph 30 of Schedule 16 to FA 2002.

***Section 363: Value received by investor during 6 year period: loans***

1020. This section applies if the investment consists of a loan and the investor or a person connected with the investor receives any value, other than an amount of insignificant value (as defined in *subsection (5)*), from the CDFI or a person connected with the CDFI in the 6 year period. It is based on paragraph 31 of Schedule 16 to FA 2002.
1021. *Subsection (2)* provides that, if value is so received, the invested amount (see section 337) is adjusted by the amount treated as repaid and the investor is treated as having received a repayment other than a non-standard repayment for the purposes of section 362 (see *subsection (4)*).

***Section 364: Value received by investor during 6 year period: securities or shares***

1022. This section applies if the investment consists of securities or shares and the investor or a person connected with the investor receives any value, other than an amount of insignificant value (as defined in *subsection (4)*), from the CDFI or a person connected with the CDFI in the 6 year period. It is based on paragraph 32 of Schedule 16 to FA 2002.
1023. *Subsection (2)* provides, that if value is so received and its amount wholly or partly exceeds the permitted level (see *subsection (3)*) by more than an amount of insignificant value, the CITR attributable to the investment must be withdrawn.

***Section 365: Receipts of insignificant value to be added together***

1024. This section applies at a time when the investor receives value, if the investor has also received value earlier in the 6 year period and the total amount of the value received earlier was of insignificant value. It is based on paragraph 34 of Schedule 16 to FA 2002.
1025. The amount of the receipt in question is to be added to the amounts of value previously received. If the total value of the amounts received is not an amount of insignificant value, the total value is treated as received at that time for the purposes of this Part, including in particular sections 362, 363 and 364.

***Section 366: When value is received***

1026. This section explains when value is received. It is based on paragraph 35 of Schedule 16 to FA 2002.

***Section 367: The amount of value received***

1027. This section, which determines the respective values received in relation to the respective transactions listed in section 366(1), is set out in tabular form for clarity. It is based on paragraph 36 of Schedule 16 to FA 2002.

***Section 368: Value received if there is more than one investment***

1028. This section provides that, if there is more than one investment, any value received is to be apportioned among the investments according to the respective amounts invested and sets out how those amounts are to be calculated. It is based on paragraph 37 of Schedule 16 to FA 2002.

***Section 369: Effect of receipt of value on future claims for CITR***

1029. This section applies if an investor holding securities or shares receives value (other than an amount of insignificant value) but, because that value is less than the permitted level, the CITR attributable to those securities or shares is not withdrawn under section 364. It is based on paragraph 38 of Schedule 16 to FA 2002.

1030. *Subsection (2)* reduces the amount invested (see section 337) in respect of which CITR may be claimed for the tax years specified in *subsection (3)*.

***Section 370: Receipts of value by or from connected persons***

1031. This section extends the meaning of “the investor” and “the CDFI” in sections 363 to 369. It is based on paragraph 39 of Schedule 16 to FA 2002.

1032. This section includes the words “if the context permits”, which do not appear in paragraph 39 of Schedule 16 to FA 2002. The inclusion of these words does not change the law but makes sections 363 to 369 clearer, by stating explicitly what is implicit in the source legislation.

***Section 371: CITR subsequently found not to have been due***

1033. This section provides the basis for making an assessment under section 372 in cases where a claim for a tax reduction has been incorrectly allowed. It is based on paragraph 27(1) of Schedule 16 to FA 2002.

***Section 372: Manner of withdrawal or reduction of CITR***

1034. This section authorises the making of assessments to recapture CITR attributable to an investment which has been withdrawn or reduced, except where the event giving rise to the withdrawal or reduction of the CITR occurs after the death of the investor. It is based on paragraph 27 of Schedule 16 to FA 2002.

***Chapter 7: Supplementary and general***

**Overview**

1035. This Chapter contains miscellaneous provisions and definitions applicable to Part 7.

***Section 373: Information to be provided by the investor***

1036. This section imposes obligations on the investor to notify an officer of Revenue and Customs of events giving rise to the withdrawal or reduction of any CITR attributable to a loan or any securities or shares. It is based on paragraph 42 of Schedule 16 to FA 2002.



***Section 374: Disclosure***

1037. This section authorises disclosure of information between HMRC and the Secretary of State for the purpose of discharging their respective functions under this Part. It is based on paragraph 43 of Schedule 16 to FA 2002.
1038. Reference to “the Income Tax Acts” has been substituted in *subsection (1)(a)* for the reference to “the Tax Acts” in paragraph 43(1)(a) of Schedule 16 to FA 2002. That paragraph will continue in force for the purposes of corporation tax relief with the substitution of “the Corporation Tax Acts” for “the Tax Acts”.

***Section 375: Nominees***

1039. This section allows for loans, securities or shares to be acquired, held and disposed of by nominees or bare trustees. It is based on paragraph 44 of Schedule 16 to FA 2002.

***Section 376: Application for postponement of tax pending appeal***

1040. This section ensures that the investor cannot claim to postpone any payment of tax under section 55 of TMA on the grounds that the investor is eligible for CITR unless a claim has actually been made. It is based on paragraph 45 of Schedule 16 to FA 2002.

***Section 377: Identification of securities or shares on a disposal***

1041. This section provides rules for the identification of the securities or shares disposed of for the purposes of this Part. It is based on paragraph 47(1) to (4), (7) and (8) of Schedule 16 to FA 2002.
1042. Paragraph 47(1) to (4) of Schedule 16 to FA 2002 provide identification rules not only for the purposes of that Schedule but also for the purposes of capital gains tax and corporation tax on chargeable gains. Paragraph 47(7) and (8) supplement paragraph 47(3) and (4) of that Schedule.
1043. This section is based on paragraph 47(1) to (4), (7) and (8) of Schedule 16 to FA 2002 so far as they apply for the purposes of income tax relief. Paragraph 47(1) to (4), (7) and (8) continue in force so far as they apply for the purposes of corporation tax relief.
1044. Paragraph 47(5) and (6) of Schedule 16 to FA 2002 apply only for the purposes of capital gains tax or corporation tax on chargeable gains. Section 151BA of TCGA, introduced by Schedule 1 to this Act, is based on paragraph 47(5) and (6) and, so far as they apply for those purposes, paragraph 47(1) to (4), (7) and (8) of Schedule 16 to FA 2002.

***Section 378: Meaning of “issue of securities or shares”***

1045. This section provides definitions, in relation to a body, of an issue of securities or shares by that body and, in relation to a person, of an issue of securities or shares to that person. It is based on paragraph 46 of Schedule 16 to FA 2002.

***Section 379: Meaning of “disposal”***

1046. This section defines “disposal”. It is based on paragraph 48 of Schedule 16 to FA 2002.
1047. Paragraph 48(1) of Schedule 16 to FA 2002 provides that “disposal” and related expressions have the same meanings in that Schedule as in TCGA. This is subject to sub-paragraph (2) which makes modifications, both for the purposes of that Schedule and for the purposes of capital gains tax or corporation tax on chargeable gains, to take account of paragraph 41 of that Schedule.
1048. Section 151BC(5) of TCGA, introduced by Schedule 1 to this Act, is based on paragraph 48(2) of Schedule 16 to FA 2002 so far as that paragraph applies for the purposes of capital gains tax or corporation tax on chargeable gains.

1049. *Subsection (2)* is based on paragraph 48(2) of Schedule 16 to FA 2002 so far as that paragraph applies for the purposes of income tax relief. That paragraph continues in force so far as it applies for the purposes of corporation tax relief.

***Section 380: Construction of references to being “held continuously”***

1050. This section explains what is meant by “held continuously”, for the purposes of those sections of this Part which require the investment to have been “held continuously” by the investor during a specified period (see for example sections 364 and 369). It is based on paragraph 49 of Schedule 16 to FA 2002.

***Section 381: Meaning of “associate”***

1051. This section provides a definition of associate which is relevant to sections 366 and 367. It is based on paragraph 50 of Schedule 16 to FA 2002.

***Section 382: Minor definitions etc***

1052. This section explains various terms used in this Part. It is based on paragraph 51 of Schedule 16 to FA 2002.
1053. With the exception of “body”, the terms defined in paragraph 51(1) of Schedule 16 to FA 2002 have been omitted, as they are either no longer required or are defined generally for the purposes of this Act.
1054. A definition of “bonus shares” has been added in *subsection (1)*. This term is used in section 358. Section 358 deals with similar issues relating to corresponding bonus shares to those dealt with, for the purposes of the EIS legislation in Part 5, by section 201(4). A definition of “bonus shares” has been in place since 2004 for those purposes (see section 257(1)). Inclusion of the same definition, which does no more than state the normal meaning of the term, ensures consistency between this Part and Part 5.
1055. Paragraph 51(3) of Schedule 16 to FA 2002, which applies section 839 of ICTA (connected persons) for the purposes of that Schedule, has been omitted. Section 993 (connected persons), based on section 839 of ICTA, is applied generally for the purposes of this Act by section 1021(1).