
STATUTORY INSTRUMENTS

1995 No. 1979

INCOME TAX

The Venture Capital Trust Regulations 1995

<i>Made</i>	- - - -	<i>26th July 1995</i>
<i>Laid before the House of Commons</i>	- - - -	<i>26th July 1995</i>
<i>Coming into force</i>	- -	<i>16th August 1995</i>

The Treasury, in exercise of the powers conferred on them by section 73(1) to (4) of the Finance Act 1995,⁽¹⁾ hereby make the following Regulations:

PART I
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Venture Capital Trust Regulations 1995 and shall come into force on 16th August 1995.

Interpretation

- 2.—(1) In these Regulations unless the context otherwise requires—
- “accounting date” has the meaning given by section 834(1);
 - “the Board” means the Commissioners of Inland Revenue;
 - “eligible shares” has the meaning given by paragraph 6(1) of Schedule 15B;⁽²⁾
 - “enduring declaration” shall be construed in accordance with regulation 12;
 - “full approval” means approval in pursuance of subsection (2) of section 842AA;⁽³⁾
 - “investor” means a person who holds shares in a company which is, or has been, a trust company;

(1) 1995 c. 4.
(2) Schedule 15 to the Finance Act 1995 was inserted, by section 71(2) of that Act, as Schedule 15B to the [Income and Corporation Taxes Act 1988 \(c.1\)](#).
(3) Section 842AA of the Income and Corporation Taxes Act 1988 was inserted by section 70(1) of the Finance Act 1995.

“the Management Act” means the Taxes Management Act 1970;(4)

“period of account” has the meaning given by section 834(1);

“permitted maximum” shall be construed in accordance with paragraph 8 of Schedule 15B;

“provisional approval” means approval in pursuance of subsection (4) of section 842AA;

“qualifying holding” shall be construed in accordance with Schedule 28B;(5)

“trust company” means a venture capital trust within the meaning given by section 842AA;

“year” means a year beginning with 6th April in any year and ending with 5th April in the following year.

(2) In these Regulations, any reference to a provision, without more, is a reference to that provision of the Income and Corporation Taxes Act 1988.(6)

PART II

APPROVAL OF A COMPANY FOR PURPOSES OF SECTION 842AA

Applications for approval

3.—(1) A company making an application for approval as a venture capital trust for the purposes of section 842AA shall apply to the Board in writing.

(2) The application shall be either for full approval or for provisional approval.

(3) An application for full approval shall contain a declaration—

(a) that the conditions for full approval were fulfilled in relation to the most recent complete accounting period of the company;

(b) that to the best of the company’s knowledge and belief, the conditions for full approval will also be fulfilled in relation to the accounting period of the company which is current when the application for full approval is made; and

(c) that to the best of the company’s knowledge and belief, the particulars given in the application are true and correct.

(4) An application for provisional approval shall contain a declaration that to the best of the company’s knowledge and belief—

(a) the conditions for full approval will be fulfilled within the periods specified in subsection (4) of section 842AA; and

(b) the particulars given in the application are true and correct.

(5) An application for approval for the purposes of section 842AA shall be signed by the secretary or by a director of the company.

Approval of a company

4.—(1) The Board’s approval of a company as a trust company for the purposes of section 842AA shall be given to the company by notice in writing.

(2) The notice shall specify—

(a) the date on which the Board’s approval is given, and

(4) 1970 c. 9.

(5) Schedule 14 to the Finance Act 1995 was inserted, by section 70(2) of that Act, as Schedule 28B to the Income and Corporation Taxes Act 1988.

(6) 1988 c.1.

(b) the date from which the approval shall have effect.

(3) A notice giving provisional approval may include conditions designed to ensure that the company will fulfil the conditions specified in subsection (4) of section 842AA.

(4) The company may appeal to the Special Commissioners against the inclusion of any of the conditions mentioned in paragraph (3) above.

Refusal of approval of a company

5.—(1) The Board's refusal of approval of a company as a trust company for the purposes of section 842AA shall be given to the company by notice in writing.

(2) The notice shall specify—

(a) the date on which the Board's refusal of approval is given, and

(b) the reasons for the Board's refusal of approval.

(3) The company may appeal to the Special Commissioners against the refusal of approval.

Withdrawal of approval of a company

6.—(1) The Board's withdrawal of approval of a company as a trust company for the purposes of section 842AA shall be given to the company by notice in writing.

(2) The notice shall specify—

(a) the date from which the Board's withdrawal of approval shall have effect, and

(b) the reasons for the Board's withdrawal of approval.

(3) The company may appeal to the Special Commissioners against the withdrawal of approval.

Appeals to the Special Commissioners

7.—(1) This regulation applies where a company appeals to the Special Commissioners pursuant to regulation 4(4), 5(3) or 6(3).

(2) The appeal shall be made by notice in writing given to the Board before the end of the period of 30 days beginning with the day on which the notice of provisional approval, refusal of approval or withdrawal of approval, as the case may be, was given to the company.

(3) Subject to paragraph (4) below, the Special Commissioners shall on appeal confirm the notice unless they are satisfied that the notice ought to be quashed.

(4) Where the appeal is against the inclusion of any of the conditions mentioned in regulation 4(3), the Special Commissioners may vary any of those conditions.

(5) If the Special Commissioners allow an appeal against a refusal of approval, they shall specify the date from which the approval is to have effect.

Breach of conditions for approval

8.—(1) Where—

(a) any of the conditions specified in subsection (2) of section 842AA has ceased to be fulfilled, or

(b) a resolution has been passed or a petition has been presented to wind up the company, a trust company which has been given full approval shall forthwith give notice in writing to the Board of that fact.

(2) Where—

- (a) any of the conditions specified in paragraph (a) or (b) of section 842AA(4) has not been fulfilled, or
 - (b) any of the conditions included in a notice giving provisional approval and given under regulation 4(3) has been broken, or
 - (c) after fulfilling the conditions specified in paragraphs (a) and (b) of section 842AA(4), any of the conditions specified in subsection (2) of section 842AA has ceased to be fulfilled, or
 - (d) a resolution has been passed or a petition has been presented to wind up the company,
- a trust company which has been given provisional approval shall forthwith give notice in writing to the Board of that fact.

PART III

RELIEF FROM INCOME TAX

CHAPTER I

RELIEF IN RESPECT OF INVESTMENTS IN TRUST COMPANIES

Certificate to be given to investor

9.—(1) If an individual to whom eligible shares have been issued so requires, a trust company shall, within 30 days, give him a certificate containing the particulars specified in paragraph (2) below and certifying as specified in paragraph (3) below.

(2) The particulars specified are—

- (a) the name of the investor,
- (b) his permanent address including postcode,
- (c) the date on which the eligible shares were issued to him,
- (d) the amount payable in respect of those shares and the date on which that amount will be payable, and
- (e) the amount paid in respect of those shares and the date on which that amount was paid.

(3) The certificate shall certify—

- (a) that eligible shares have been issued to the investor,
- (b) that to the best of the trust company's knowledge and belief the shares were both subscribed for and issued as mentioned in paragraph 1(9) of Schedule 15B, and
- (c) that to the best of the trust company's knowledge and belief the shares were not issued in a case where the investor is not entitled to relief under Part I of Schedule 15B because the case is one to which paragraph 2 of that Schedule applies.

(4) The trust company shall keep a record of the information contained in any certificate given under this regulation.

CHAPTER II

RELIEF IN RESPECT OF DISTRIBUTIONS BY TRUST COMPANIES

General

Scheme of relief in respect of distributions

10.—(1) Relief from income tax in respect of a distribution by a trust company shall not be given except where the trust company—

- (a) has complied with the requirements imposed by regulations 11 and 14, and
- (b) has made a claim in accordance with this Chapter.

(2) Where a trust company has complied with the requirements imposed by regulations 11 and 14 and has made a claim in accordance with this Chapter, a tax credit to which an investor is entitled in respect of a distribution by the trust company shall not be set against income tax but shall be claimed by and paid to the trust company.

(3) Where a tax credit has been claimed by and paid to a trust company pursuant to paragraph (2) above, an amount equal to the tax credit shall be paid by the trust company to the person who is entitled to receive the distribution.

Enduring declarations

Requirement as to obtaining of enduring declaration

11. Relief from income tax in respect of a distribution by a trust company shall not be given except where the trust company has obtained an enduring declaration in respect of the shares to which the distribution relates.

Enduring declaration

12.—(1) An enduring declaration shall be in writing and shall be given to the trust company by an individual beneficially entitled to shares in that trust company.

(2) The enduring declaration shall contain the particulars relating to the individual specified in paragraph (3) below, the particulars relating to the shares in the trust company specified in paragraph (4) below and the declaration by the individual specified in paragraph (5) below.

(3) The particulars relating to the beneficial owner are—

- (a) his full name,
- (b) his permanent address including postcode,
- (c) his date of birth, and
- (d) if he has one, his national insurance number.

(4) The particulars relating to the shares in the trust company are—

- (a) the identity of the shares acquired,
- (b) the date on which those shares were acquired,
- (c) the market value of those shares at the time of their acquisition, and
- (d) the extent to which those shares were acquired in excess of the permitted maximum for the year in which the acquisition was made.

(5) The declaration by the individual is—

- (a) that he is beneficially entitled to the shares in the trust company, and
- (b) that to the best of his knowledge and belief the particulars given in the declaration are correct.

Return containing particulars of enduring declarations

13.—(1) A company which is, or has been, a trust company shall deliver to the Board, in respect of the period specified in paragraph (2) below (“the specified period”), and within the time limit specified in paragraph (3) below, a return containing, in respect of each enduring declaration received by the trust company during the specified period, the particulars specified in paragraph (4) below.

(2) The specified period is—

- (a) a year, or
- (b) a period beginning on 6th April and ending on the day on which that company ceased to be approved as a trust company,

whichever is the shorter.

(3) The time limit specified is—

- (a) six months after the end of the year, or
- (b) six months after the day on which the company ceased to be approved as a trust company,

whichever is the shorter.

(4) The particulars specified in respect of each enduring declaration are—

- (a) the full name of the investor,
- (b) his permanent address, including postcode,
- (c) his date of birth,
- (d) if he has one, his national insurance number,
- (e) the acquisition value of the shares to which the enduring declaration relates, and
- (f) the date on which those shares were acquired.

(5) A return under this regulation shall be in such form as the Board may specify or authorise.

Requirement for trust company to be satisfied that enduring declaration correct

14. Relief from income tax in respect of a distribution by a trust company shall not be given except where the trust company has no reason to believe, by reference to the information in its possession, that the enduring declaration relating to the shares in the trust company in respect of which the distribution is made is or has become incorrect.

Position where trust company ceases to be satisfied that enduring declaration correct

15.—(1) This regulation applies where a trust company has reason to believe, by reference to the information in its possession, that an enduring declaration is or has become incorrect.

(2) The company shall deliver to the Board, within three months of having reason so to believe, a statement containing the particulars specified in paragraph (3) below.

(3) The particulars are—

- (a) a copy of the enduring declaration,
- (b) the reason why the trust company believes that the enduring declaration is or has become incorrect,

- (c) the tax credits claimed by the trust company in respect of distributions made in respect of the shares to which the enduring declaration relates, and
- (d) the amounts equal to the tax credits referred to in sub-paragraph (c) above which have been paid to the person who is entitled to the distribution.

(4) Section 252 shall have effect with the modification specified in paragraph (5) below in relation to any tax credit claimed as mentioned in paragraph (3)(c) above as it has effect in relation to any set-off or payment of tax credit mentioned in subsection (1)(b) of that section which ought not to have been made.

(5) Subsection (1) of section 252 shall be modified so as to apply only where a trust company has been fraudulent, reckless or negligent in claiming tax credits in respect of distributions made in respect of the shares to which the enduring declaration relates.

Claims

Introductory

16.—(1) A claim made by a trust company in accordance with this Chapter shall be made to the Board in writing, and shall be in such form and contain such particulars as the Board may require or authorise.

(2) A claim shall be either an interim claim or an annual claim.

(3) A claim shall contain a declaration by the trust company that it has continued to satisfy the conditions for approval for the purposes of section 842AA since the date on which approval for the purposes of section 842AA was given or, if later, since the date it last delivered a return under regulation 22.

(4) The Board shall not be under an obligation to make a payment to a trust company earlier than the end of the month following that in which the claim was received.

Interim claims

17.—(1) An interim claim may be made for a period which—

- (a) consists of one month or a number of months (not exceeding six) beginning on the 6th day of a month and ending on the 5th day of the relevant following month, and
- (b) does not fall within more than one year.

(2) No interim claim may be made for the month ending 5th July or any subsequent month until the return under regulation 13 due in respect of the preceding year has been duly made and received by the Board.

(3) No interim claim may be made for the month ending 5th October or any subsequent month until the annual claim due in respect of the preceding year has been duly made and received by the Board.

(4) A claim under this regulation may not be based on an estimate but may only be made to claim tax credits in respect of distributions made during the period covered by the claim.

(5) If the Board are satisfied that the trust company may claim the amount specified in a claim under paragraph (4) above in relation to the period for which the claim is made, they shall pay that amount to the trust company and, if they are not so satisfied, they shall pay any lesser amount which they are satisfied may be claimed.

Annual claims

18.—(1) An annual claim in respect of a year shall be made within six months after the end of that year.

(2) No payment shall be made by the Board under an annual claim which is made more than six years after the end of the year for which it is made.

(3) A claim under this regulation—

- (a) may not be based on an estimate but may only be made to claim tax credits in respect of distributions made during the year, and
- (b) shall bring into account aggregate interim payments made for the year, and for the purposes of this regulation “aggregate interim payments” means the aggregate of payments made (and not repaid) on interim claims.

(4) If the Board are satisfied that the trust company may claim the amount specified in a claim under paragraph (3) above in relation to the year for which the claim is made, they shall pay the amount to the trust company and, if they are not so satisfied, they shall pay any lesser amount which they are satisfied may be claimed.

(5) If the aggregate interim payments shown by an annual claim exceeds the aggregate tax credits which the trust company may claim by virtue of regulation 10(2) in respect of distributions made during the year, the trust company shall repay the amount of the excess to the Board with the claim.

(6) If a trust company fails to make an annual claim within six months following the end of the year, the Board may issue a notice to the trust company showing the aggregate interim payments made to the trust company for the year, and stating that the Board are not satisfied that the amount due to the trust company for that year exceeds the lower amount stated in the notice.

(7) If an annual claim for the year is not delivered to the Board within 14 days after the issue of a notice under paragraph (6) above, the amount of the difference between the aggregate interim payments and the lower amount stated in the notice shall immediately be recoverable by the Board in the same manner as tax charged by an assessment on the trust company which has become final and conclusive; and section 88 of the Management Act(7) shall apply from the 6th October following the end of the year.

(8) Where an annual claim has been made and the trust company which made it subsequently discovers that an error or mistake has been made in the claim, the trust company may make a supplementary annual claim within six years after the end of the year for which the annual claim was made.

(9) If the Board so wish, forms required or authorised for annual claims may require a report to be given by a person qualified for appointment as auditor of a company.

Supplementary provisions

19.—(1) Section 42 of the Management Act(8) shall not apply to a claim under this Chapter of these Regulations.

(2) No appeal shall lie from the Board’s decision on an interim claim.

(3) An appeal from the Board’s decision on an annual claim may be made to the Special Commissioners; and the appeal shall be made by notice in writing given to the Board before the end of the period of 30 days beginning with the day of receipt of the Board’s decision.

(7) Section 88 was amended by section 46(4) of the Finance (No. 2) Act 1975 (c. 45), section 61(4) of the Finance Act 1980 (c. 48), section 86(4) of the Finance (No. 2) Act 1987 (c. 51), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988, and sections 159, 160(1), 161 and 179(1)(b)(i) of the Finance Act 1989 (c. 26).

(8) Section 42 was amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988 and by section 97 of the Finance Act 1990 (c. 29).

(4) No payment or repayment made or other thing done on or in relation to an interim claim or a notice under regulation 18(6) shall prejudice the Board's decision on an annual claim.

(5) On appeal the Special Commissioners may vary the decision appealed against whether or not the variation is to the advantage of the appellant.

(6) All such assessments, payments and repayments shall be made as are necessary to give effect to the Board's decision on an annual claim or to any variation of that decision on appeal.

Supplementary provisions

Liability for tax where provisional approval withdrawn

20. Where the provisional approval of a company as a trust company is withdrawn, section 252 shall have effect in relation to any tax credit paid under this Chapter as it has effect in relation to any set-off or payment of tax credit mentioned in subsection (1)(b) of that section which ought not to have been made.

Issue of tax credit vouchers in certain circumstances

21.—(1) This regulation applies where—

- (a) a trust company makes a distribution which is not included in a claim, or
 - (b) a trust company makes a distribution which is the subject of a claim which is refused, or
 - (c) a tax credit in respect of a distribution made by a trust company is recovered pursuant to regulation 15(3) or 20.
- (2) Section 234 shall have effect in relation to the distribution.

PART IV

RETURN OF PARTICULARS OF INVESTMENTS, KEEPING OF RECORDS AND PROVISION OF INFORMATION

Return containing particulars of investments

22.—(1) A company which is, or has been, a trust company shall deliver to the Board, in respect of the period specified in paragraph (2) below ("the specified period"), and within the time limit specified in paragraph (3) below, a return containing the particulars specified in paragraph (4) below, the certificate specified in paragraph (5) below and the declaration specified in paragraph (6) below.

(2) The specified period is—

- (a) an accounting period of a trust company,
- (b) a period beginning on the date from which the Board's approval of a company for the purposes of section 842AA has effect and ending on an accounting date of the company, or
- (c) a period beginning at the commencement of an accounting period of a company and ending on the day on which that company ceased to be approved for the purposes of section 842AA,

whichever is the shortest.

(3) The time limit specified is—

- (a) twelve months after the end of the accounting period of the trust company, or

- (b) twelve months after the day on which the company ceased to be approved for the purposes of section 842AA,
whichever is the shorter.
- (4) The particulars specified are—
- (a) in respect of each investment held by the company at the beginning of the specified period, the value of that investment computed in accordance with subsections (5) and (11) of section 842AA;
 - (b) in respect of any new investment made by the company during the specified period—
 - (i) the date on which that investment was made, and
 - (ii) the value of that investment together with any revaluation of investments, computed in accordance with subsections (5) and (11) of section 842AA, which is required as a result of the making of that investment;
 - (c) in relation to each investment, whether or not it is a qualifying holding; and
 - (d) in relation to each qualifying holding—
 - (i) the name of the company in which the investment has been made, and
 - (ii) the address of that company's registered or principal office.
- (5) The certificate specified is—
- (a) where the trust company has been given full approval or has been given provisional approval three years or more before the beginning of the specified period, that the trust company satisfied all the conditions in subsection (2) of section 842AA throughout the specified period; or
 - (b) where the trust company has been given provisional approval less than three years before the beginning of the specified period, that the trust company satisfied all the conditions of subsection (4) of section 842AA and any other conditions attached to the provisional approval throughout the specified period; or
 - (c) that the company has ceased to be approved for the purposes of section 842AA.
- (6) The declaration specified is a declaration that the particulars contained in the return are, to the best of the company's knowledge and belief, true and correct.
- (7) The declaration specified in paragraph (6) above shall be signed by the secretary or by a director of the company.
- (8) A return under this regulation shall be in such form as the Board may specify or authorise.

Records to be kept by trust company

23.—(1) A company which is or has been a trust company shall at all times during the relevant period keep sufficient accounts, records and other information to enable the requirements of section 842AA, Schedule 15B and these Regulations to be satisfied.

- (2) In paragraph (1) above, the "relevant period" means—
- (a) in the case of a company which has ceased to be approved for the purposes of section 842AA, the period of six years from the date on which the company ceased to be so approved, and
 - (b) in any other case, the period of six years from the end of the period of account or the year to which the accounts, records and information relate, whichever is the longer.

Information to be provided to the Board

24.—(1) The Board may by notice require any company which is or has been a trust company or any person who holds or has held shares in such a company, within such period as may be specified in the notice, to furnish them with such information as they may reasonably require for the purposes of section 842AA, Schedule 15B or these Regulations.

(2) The period specified in a notice given under paragraph (1) above shall be not less than 14 days.

Inspection of records by officer of the Board

25.—(1) The Board may by notice require any company which is or has been a trust company or any person who holds or has held shares in such a company, within such period as may be specified in the notice, to make available for inspection by an officer of the Board authorised for that purpose such accounts, records and other information as are in that person's possession or under that person's control as the Board may reasonably require for the purposes of section 842AA, Schedule 15B or these Regulations.

(2) The period specified in a notice given under paragraph (1) above shall be not less than 14 days.

(3) Where records are maintained by computer the person required to make them available for inspection shall provide the officer making the inspection with all the facilities necessary for obtaining information from them.

26th July 1995

David Willetts
Simon Burns
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 70 to 73 of, and Schedules 14 to 16 to, the Finance Act 1995 (“the 1995 Act”), make provision in relation to venture capital trusts. These Regulations, made by the Commissioners of Inland Revenue (“the Board”) under section 73 of the 1995 Act, make further provision in relation to such trusts.

The Regulations are in four parts of which Part I is introductory. Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Part II of the Regulations is concerned with approval of a company as a venture capital trust for the purposes of section 842AA of the Income and Corporation Taxes Act 1988 (“section 842AA” and “the 1988 Act” respectively). (Section 842AA was inserted by section 70(1) of the 1995 Act.) Regulation 3 makes provision for applications for approval. Regulation 4 makes provision for the Board’s approval of a company (which may be either provisional approval or full approval) for the purposes of section 842AA, regulation 5 for the Board’s refusal of approval, and regulation 6 for the Board’s withdrawal of approval. Regulation 7 provides for a company to appeal to the Special Commissioners against decisions of the Board, and regulation 8 makes provision for the position where the conditions for approval are no longer satisfied.

Part III of the Regulations, which has two Chapters, makes provision for the reliefs from income tax in respect of investments in venture capital trusts and distributions by such trusts.

Chapter I of Part III is concerned with the relief from income tax in respect of investments in venture capital trusts; and regulation 9 provides for a certificate to be given to an investor if that investor so requires.

Chapter II of Part III is concerned with the relief from income tax in respect of the distributions by venture capital trusts.

Regulation 10 provides that relief from income tax shall not be given except where the venture capital trust has complied with the requirements imposed by regulations 11 and 14 and has made a claim in accordance with the Chapter. This regulation also provides that a tax credit to which an investor is entitled shall be paid to the venture capital trust, and that an amount equal to that tax credit shall be paid to the investor.

Regulation 11 imposes a requirement that relief from income tax shall not be given except where the venture capital trust has obtained an enduring declaration. Regulation 12 makes provision relating to the enduring declaration and regulation 13 for a venture capital trust to deliver a return containing particulars of enduring declarations to the Board.

Regulation 14 imposes a requirement that relief from income tax shall not be given except where the venture capital trust has no reason to believe that the enduring declaration is incorrect. Regulation 15 makes provision for the position arising where a venture capital trust has reason to believe that the declaration is incorrect: the venture capital trust is to deliver a statement to the Board, and may, in certain circumstances, be assessed to tax under section 252 of the 1988 Act.

Regulations 16 to 19 make provision for claims. Regulation 16 is introductory, regulations 17 and 18 make provision for interim and annual claims respectively, and regulation 19 contains supplementary provisions.

Regulations 20 and 21 contain additional provisions. Regulation 20 makes provision for the situation arising where provisional approval is withdrawn, and regulation 21 provides for tax credit vouchers to be issued in certain circumstances.

Part IV of the Regulations contains further administrative provisions. Regulation 22 makes provision for a return containing particulars of investments to be delivered to the Board; and regulations 23 to 25 for records to be kept, and for the Board to be provided with information and to inspect records.