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STATUTORY INSTRUMENTS

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**2011 No. 660**

**INCOME TAX**

**CORPORATION TAX**

The Venture Capital Trust (Winding up and Mergers) (Tax) (Amendment) Regulations 2011

<i>Made</i>	- - - -	<i>7th March 2011</i>
<i>Laid before the House of Commons</i>	- - - -	<i>8th March 2011</i>
<i>Coming into force</i>	- -	<i>6th April 2011</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 280(3) to (6), 314 to 317, 319, 321, 322 and 324 of the Income Tax Act 2007<sup>(1)</sup>:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Venture Capital Trust (Winding up and Mergers) (Tax) (Amendment) Regulations 2011 and shall come into force on 6th April 2011.

(2) These Regulations have effect as follows—

- (a) regulations 4 to 7 have effect in relation to any VCT-in-liquidation whose winding-up commences on or after 6th April 2011;
- (b) regulations 8 to 11 have effect in relation to any merger where the transactions bringing the merger into effect take place on or after 6th April 2011; and
- (c) regulation 12 has effect in relation to shares issued on or after 6th April 2011.

**Amendment of the Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004**

2. The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004<sup>(2)</sup> are amended in accordance with these Regulations.

**Amendment of regulation 2**

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) For paragraphs (1) to (4) substitute—

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(1) 2007 c. 3.

(2) S.I. 2004/2199 as amended by S.I. 2008/954 and 2009/56.

“(1) In these Regulations, references to provisions of an Act or to Parts of an Act are to provisions or Parts of the Income Tax Act 2007 unless otherwise stated.

(2) In these Regulations—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“market value” shall be construed in accordance with sections 272 and 273 of the Taxation of Chargeable Gains Act 1992(3);

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992;

“prescribed winding-up period”, in relation to a VCT-in-liquidation, means the period—

(a) beginning on the commencement of the company’s winding-up, and

(b) ending on the earliest of—

(i) the end of the company’s winding-up;

(ii) the company’s ceasing to be wound up;

(iii) the dissolution of the company;

(iv) the third anniversary of the commencement of the winding-up;

“qualifying holdings” shall be construed in accordance with Chapter 4 of Part 6;

“securities”, except in regulation 12, has the same meaning as in section 285(2);

“statement of affairs” means a statement as to the affairs of a company, in the form prescribed under and complying with section 99 or 131 of the Insolvency Act 1986(4);

“the 15% test” means the 15% holding limit condition specified in the table in section 274(2) and as provided for in sections 275 to 279;

“the 70% tests” means the conditions specified in the last two entries in the table in section 274(2) and as provided for in sections 275, 278, 280 and 280A(5);

“the 30% test” means the condition which was specified in the table at section 274(2) and as provided for in sections 275, 278 and 280, ignoring the amendments made to section 274(2) by paragraph 2(2)(b) and (c) of Schedule 2 to the Finance (No. 3) Act 2010(6).

(3) In regulations 9 to 14 and in this paragraph—

a “section 323(1) merger” means a merger described in section 323(1);

a “section 323(2) merger” means a merger described in section 323(2);

“share for business transfer” means an issue of shares as mentioned in section 323(1)(b)(ii) or 323(2)(b)(ii), as the case may be;

“share for share exchange” means an exchange of shares as mentioned in section 323(1)(b)(i) or 323(2)(b)(i), as the case may be;

“shares issued to effect the merger” means—

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(3) 1992 c. 12. Section 272 was amended by paragraph 12 of Schedule 38 to the Finance Act 1996 (c. 8), paragraph 6 of Schedule 9 to the Finance Act 2006 (c. 25) and paragraph 4(1) of Schedule 26 to the Finance Act 2007 (c. 11). Section 273 was amended by paragraph 8 of Schedule 26 to the Finance Act 2007.

(4) 1986 c. 45. Subsection (2) of section 99 was amended by, and subsection (2A) inserted by, S.I. 2010/18. Subsection (2) of section 131 was amended by, and subsection (2A) inserted by, S.I. 2010/18.

(5) Section 280A was inserted by paragraph 20(1) and (3) of Schedule 16 to the Finance Act 2007.

(6) 2010 c. 33. These amendments removed the 30% test in relation shares or securities issued on or after 6th April 2011 (the appointed day), unless the shares or securities are acquired with “protected money”. “Protected money” is defined in paragraph 6(3) of Schedule 2 to the Finance (No. 3) Act 2010. The 30% test still applies to shares that are acquired with protected money.

- (a) in the case of a section 323(1) merger, shares in the successor company issued as mentioned in section 323(1); and
- (b) in the case of a section 323(2) merger, shares in the successor company issued as mentioned in section 323(2);

“shares issued for new consideration” means shares in the successor company issued in the period during which the merger takes place for a consideration other than as mentioned in section 323(1)(b) or 323(2)(b).

(4) Section 319(3) (references in sections 314 to 318 to things done by a VCT-in-liquidation to include things done by the liquidator of a VCT-in-liquidation) shall apply for the purposes of regulations 3 to 8 as it applies to Chapter 5 of Part 6.”.

### **Amendment of regulation 3**

4. In paragraph (2)(a) of regulation 3 (winding-up of venture capital trusts), for “section 842AA(5A)(a) and (b)” substitute “section 280(1)(a) and (b)”.

### **Amendment of regulation 4**

5. In regulation 4, for “paragraph 3(9) of Schedule 15B” substitute “section 268”.

### **Amendment of regulation 6**

6. In paragraphs (2)(a) and (3)(b) of regulation 6, for “section 842AA(2)” substitute “section 274”.

### **Amendment of regulation 8**

7. In paragraph (3) of regulation 8 (transfer of investments in specie from a VCT-in-liquidation to a venture capital trust), for “paragraphs 1(2)(b) and 6 to 8 of Schedule 28B” substitute “sections 286(2)(b), 287, 293, 294, 297 and 331(2) and (3)”.

### **Amendment of regulation 9**

8. In regulation 9 (mergers of venture capital trusts)—

(1) in each place where it appears—

- (a) for “paragraph 10(1) merger” substitute “section 323(1) merger”, and
- (b) for “paragraph 10(2) merger” substitute “section 323(2) merger”.

(2) In paragraph(3)(f) for “paragraph 10(1)(b)(ii) or 10(2)(b)(ii) of Schedule 33” substitute “section 323(1)(b)(ii) or section 323(2)(b)(ii)”.

### **Amendment of regulation 11**

9. In regulation 11, for “Part 1 of Schedule 15B” substitute “Chapter 2 of Part 6” and for “that Schedule” substitute “that Chapter”.

### **Amendment of regulation 12**

10. In paragraph (1) of regulation 12—

- (a) for “70% test” substitute “70% tests”,
- (b) for “section 842AA(2)(a)” substitute “section 274(2)”,

- (c) for “Schedule 28B” substitute “Chapter 4 of Part 6”, and
- (d) for “section 842AA(5B)” substitute “section 280(2)”.

### **Amendment of regulation 13**

- 11.**—(1) Regulation 13 is amended as follows.
- (2) In paragraph (3)—
    - (a) for “Schedule 15B”, the first time it appears, substitute “Chapter 2 of Part 6”; and
    - (b) for “Part 1 of Schedule 15B” in sub-paragraph (b), substitute “Chapter 2 of Part 6”.
  - (3) In paragraph (5), for “any of the paragraphs of Schedule 28B (except paragraph 9)” substitute “Chapter 4 of Part 6 (except section 296(1) and (2))”.
  - (4) In paragraph (6)—
    - (a) for “paragraph 9 of Schedule 28B” substitute “section 296(1) and (2)”; and
    - (b) in sub-paragraph (b) for “that paragraph” substitute “that section”.
  - (5) In paragraph (7), for “section 842AA(2)(b) to (d)” substitute “section 274(2)” and for “in accordance with subsection (5) of that section” substitute “in accordance with that section”.
  - (6) In paragraph (8)—
    - (a) for “paragraph 10B of Schedule 28B” and (in the parentheses) “paragraph 10B” substitute “section 289”, and
    - (b) for “section 842AA(5)” substitute “section 278(1) to (3)”.
  - (7) In paragraph (9)—
    - (a) for “section 842AA(4)” substitute “section 275(1) to (3)”,
    - (b) for “section 842AA” substitute “section 281”,
    - (c) for “subsection (7)” substitute “subsection (2)”, and
    - (d) for “subsections (8) and (9)”, in both places where it occurs, substitute “subsections (3) and (4)”.

### **Amendment of regulation 14**

- 12.**—(1) Regulation 14 (limiting the operation of section 842AA(5B)) is amended as follows.
- (2) For the heading before the regulation substitute “Limiting the operation of section 280”.
  - (3) In paragraph (1), for “section 842AA(5B)” substitute “section 280(2)” and for “(5A)” substitute “(1)”.
  - (4) In paragraph (4), for “section 842AA(5B)” substitute “section 280(2)”.
  - (5) In paragraph (5), for “section 842AA(2)(b) and (c)” substitute “section 274”.
  - (6) In paragraphs (1) and (5), for “70% test” substitute “70% tests”.

### **Substitution of references to “Board” for references to “Commissioners”**

- 13.**—(1) Substitute “Commissioners” for “Board” in each place in which the word appears in the following.
- (2) Regulation 3(1), 9(1), 9(3) (twice), 10(1) (four times), 10(2), 10(3) (three times), 10(4) (twice), 10(5), 14(2)(b)(i) and in the heading immediately before regulation 10.

7th March 2011

*Michael Fabricant*  
*Brooks Newmark*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (“the 2004 Regulations”) consequent upon the coming into force of amendments made to the Income Tax Act 2007 (“the 2007 Act”) by the Finance (No. 3) Act 2010 (“the 2010 Act”).

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the 2004 Regulations.

Regulation 3 amends regulation 2 of the 2004 Regulations by making new interpretative provisions consequent on the amendments to the 2007 Act by the 2010 Act. In particular, the amendment to the definition of the 30% test reflects the fact that this requirement now applies only to either a) shares purchased with money raised before the commencement of the amendments made by the 2010 Act to section 274 of the 2007 Act or b) shares purchased before the commencement of the amendments made by the 2010 Act.

Regulations 4 to 12 amend regulations 3, 4, 6, 8, 9, 11, 12, 13 and 14 of the 2004 Regulations by substituting references to the 2007 Act for references to provisions in the Income and Corporation Taxes Act 1988.

Regulation 13 substitutes references to “Commissioners” for references to “Board” in regulations 3, 9, 10 and 14 of the 2004 Regulations.

The impact on business, charities or voluntary bodies and the public sector were recorded in an Impact Assessment covering the primary legislation which these Regulations help to implement. The Impact Assessment can be found at: <http://www.hmrc.gov.uk/budget2010/vent-cap-ent-man-ia-2540.htm>.