

2022 No. 266

CORPORATION TAX

The Residential Property Developer Tax (Allocation of Allowance) Regulations 2022

<i>Made</i>	- - - -	<i>9th March 2022</i>
<i>Laid before the House of Commons</i>		<i>10th March 2022</i>
<i>Coming into force</i>	- -	<i>1st April 2022</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 43 and 44 of the Finance Act 2022(a), make the following Regulations:

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Residential Property Developer Tax (Allocation of Allowance) Regulations 2022 and come into force on 1st April 2022.

Interpretation

2. In these Regulations, “the appropriate person”, in relation to a company, means—
- (a) the proper officer of the company for the purposes of section 108 of the TMA 1970(b), or
 - (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of these Regulations.

PART 2

Allowance

Nomination of allocating member

3.—(1) A member of group G may be nominated to be the allocating member of the group by the ultimate parent of group G.

- (2) The nomination must—

(a) 2022 c. 3.
(b) Taxes Management Act 1970 (c. 9). Section 108 was amended by paragraph 7 of Schedule 14 to the Finance Act 1993 (c. 34), paragraph 2 of Schedule 41 to the Finance Act 2003 (c. 14) and S.I. 2009/890.

- (a) be made in writing to HMRC,
 - (b) be signed by the appropriate person in relation to the ultimate parent, and
 - (c) state the first accounting period for which the nomination is to have effect.
- (3) A nomination has effect until—
- (a) substituted by a new nomination made in accordance with paragraphs (1) and (2),
 - (b) revoked by notice in writing to HMRC by the appropriate person in relation to the ultimate parent of group G, or
 - (c) the allocating member ceases to be a member of group G.

Change of allocating member

4.—(1) For the purposes of this Part, if there is a change of allocating member or a company ceases to be the allocating member, that does not affect the duration of, or allowance for, the period A current immediately before the change or cessation.

(2) If there is a change of allocating member before the end of period A, that new allocating member may submit an allowance allocation statement in respect of the period A current immediately before the change.

(3) Period A in relation to the new allocating member begins immediately after the end of the period A current immediately before the change.

Allowance allocation statement

5.—(1) The company that is, for the time being, the allocating member may submit an allowance allocation statement.

- (2) An allowance allocation statement must—
- (a) be made in writing to HMRC;
 - (b) specify the start and end date of period A to which the statement relates;
 - (c) be received by HMRC on or before the date 12 months after the end of period A;
 - (d) specify the company that was the allocating member at the start of period A;
 - (e) be signed by the appropriate person in relation to the allocating member;
 - (f) identify the ultimate parent of group G;
 - (g) specify the amount of the allowance for period A to which the statement relates;
 - (h) specify the amount of any allowance allocated to the allocating member;
 - (i) specify the RP developers to which an allowance is allocated and in relation to each specify—
 - (i) the unique taxpayer reference,
 - (ii) the start and end date of period B, and
 - (iii) the amount of allowance allocated.

Amendment of the allowance allocation statement

6.—(1) The company that is, for the time being, the allocating member may by notice amend the allowance allocation statement to amend the allocation of allowance.

- (2) The notice must—
- (a) be made in writing to HMRC;
 - (b) be received by HMRC before whichever is the latest of the following dates—
 - (i) the date 24 months after the end of period A,

- (ii) if notice of enquiry (within the meaning of Part 4 of Schedule 18 to the Finance Act 1998^(a)) is given into a relevant tax return of the allocating member or an RP developer, 30 days after the enquiry is completed,
- (iii) if, after such enquiry is completed, an officer of Revenue and Customs amends the return under paragraph 34(2) of Schedule 18 to the Finance Act 1998, 30 days after the notice of amendment is issued, and
- (iv) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined;
- (c) be signed by the appropriate person in relation to the allocating member; and
- (d) amend the specifications required by regulation 5(2)(g) to (i) and specify any increase or decrease in the allowance allocated.

(3) In paragraph (2)(b)(iii), “relevant tax return” means a company tax return of an allocating member in respect of period A or RP developer in respect of period B to which allowance has been allocated for that period.

PART 3

Joint venture companies: allowance

Disapplication of section 44

7. Section 44 of the Finance Act 2022 does not apply to an excluded body for an accounting period where the application of that section would have no effect on the liability of the relevant joint venture company to residential property developer tax in relation to the accounting period.

Groups

8. Where B is a member of a group, the references to “B” in this Part are to be read as references to the ultimate parent of the group.

Nominated company

9.—(1) B may nominate any other member of the group of which it is a member to submit a notional allowance statement.

(2) The nomination must be—

- (a) made in writing to HMRC,
- (b) signed by the appropriate person on behalf of B, and
- (c) state the first financial year for which the nomination is to have effect.

(3) A nomination has effect until—

- (a) substituted by a new nomination made by B,
- (b) revoked by notice in writing to HMRC by the appropriate person on behalf of B, or
- (c) the nominated company ceases to be a member of the group of which B is a member.

(4) In this Part, “nominated company” means the company that is for the time being nominated in accordance with this regulation.

Notional allowance statement

10.—(1) B or the nominated company may submit a notional allowance statement.

(a) 1998 c. 36.

- (2) A notional allowance statement must—
- (a) be made in writing to HMRC;
 - (b) be received by HMRC before whichever is the latest of the following dates—
 - (i) 12 months after the end of the financial year to which the statement relates,
 - (ii) if a notice of enquiry (within the meaning of Part 4 of Schedule 18 to the Finance Act 1998) is given into a tax return for an accounting period of a relevant joint venture company that is the same as or overlaps with year X, 30 days after the enquiry is completed,
 - (iii) if, after such enquiry is completed, an officer of Revenue and Customs amends the return under paragraph 34(2) of Schedule 18 to the Finance Act 1998, 30 days after the notice of amendment is issued, and
 - (iv) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined;
 - (c) specify the financial year to which the notional allowance statement relates;
 - (d) be signed by the appropriate person in relation to B or the nominated company as the case may be;
 - (e) identify the ultimate parent of the group;
 - (f) in relation to each relevant joint venture company to which a notional allowance is allocated, specify—
 - (i) the unique taxpayer reference,
 - (ii) the date on which the company's accounting period in relation to that allocation ends,
 - (iii) the amount of notional allowance allocated, and
 - (iv) the members of the group of which B is a member that are members of the relevant joint venture company.

Amendment of the notional allowance statement

11.—(1) B or the nominated company may by notice amend the notional allowance statement to amend the allocation of notional allowance.

- (2) The notice must—
- (a) be made in writing to HMRC;
 - (b) be received by HMRC before whichever is the latest of—
 - (i) 12 months after date in regulation 10(2)(b)(i), and
 - (ii) the latest of the dates in regulation 10(2)(b)(ii) to (iv);
 - (c) be signed by the appropriate person in relation to B or the nominated company, as the case may be; and
 - (d) specify the amendment to the specification required by regulation 10(2)(f) and specify any increase or decrease in the notional allowance allocated.

PART 4

General

Tax returns

12. Where a company tax return must be amended in consequence of the allocation of an allowance or notional allowance by an allowance allocation statement, a notional allowance statement or an amendment to such a statement—

- (a) the amendment of the company tax return must be made within 30 days of the date on which the statement or amendment is made, and
- (b) the time limits otherwise applicable to the amendment of a company tax return do not apply to any amendment to the extent that it is made in consequence of such a statement or amendment.

*Sophie Dean
Katherine Green*

9th March 2022

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the allocation of the allowance that is deducted from profits chargeable to the residential property developer tax.

Part 1 is introductory and provides for commencement, citation and interpretation.

Part 2 makes provision for and about the nomination of a company in a group to be the allocating member in a group, changing the allocating member of a group, the submission of an allowance allocation statement and amending such a statement.

Part 3 makes provision in relation to the notional allowance that a joint venture company which is not chargeable to corporation tax can allocate to its joint venture interests. Provision is made for the disapplication of section 44 of the Finance Act 2022 in certain cases, the nomination of another group company to submit a notional allowance statement, the submission of a statement and amending a statement.

Part 4 makes provision in relation to the amendment of company tax returns in consequence of an allowance allocation statement, a notional allowance statement or an amendment to such a statement.

A Tax Information and Impact Note covering this instrument was published on 27 October 2021 alongside the draft legislation for the Finance (No. 2) Bill and is available on the website at: <https://www.gov.uk/government/publications/residential-property-developer-tax>. It remains an accurate summary of the impacts that apply to this instrument.

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