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STATUTORY INSTRUMENTS

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**1995 No. 1979**

**The Venture Capital Trust Regulations 1995**

**PART III**

**RELIEF FROM INCOME TAX**

**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<sup>(1)</sup> 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.

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(1) 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).

(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<sup>(2)</sup> 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.

(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 appellants.

(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.

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(2) 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).