STATUTORY INSTRUMENTS

2015 No. 2002

INCOME TAX

The Qualifying Private Placement Regulations 2015

Made - - - -	*9th December 2015*
Laid before the House of Commons	*10th December 2015*
Coming into force - -	*1st January 2016*

The Treasury make the following Regulations in exercise of the powers conferred by section 888A of the Income Tax Act 2007(**a**).

Citation and commencement

1. These Regulations may be cited as the Qualifying Private Placement Regulations 2015 and come into force on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

"ITA 2007" means the Income Tax Act 2007;

"cancelled certificate" has the meaning given by regulation 7(7);

"creditor" means, in respect of a payment of interest on a relevant security, the person who is beneficially entitled to that interest;

"creditor certificate" has the meaning given by regulation 5(1);

"notification" means a notification in writing;

"relevant debtor" means the company which stands in the position of debtor in relation to a relevant security;

"relevant security" means a security or a loan relationship entered into before, on or after the date on which these Regulations come into force;

"scheme" includes any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

"tax advantage scheme" means a scheme the main purpose, or one of the main purposes, of which is to obtain a tax advantage within the meaning given by section 1139 of CTA 2010(**b**), other than a negligible tax advantage;

"withdrawn certificate" has the meaning given by regulation 6(4).

(2) Reference in these Regulations to a relevant security being entered into includes a relevant security being issued.

(**a**) 2007 c. 3. Section 888A was inserted by section 23 of the Finance Act 2015 (c. 11).
(**b**) 2010 c. 4. Section 1139 was amended by paragraph 48 of Schedule 19 to the Finance Act 2011 (c. 11) and paragraph 40 of Schedule 20 to the Finance Act 2012 (c. 14).

Relevant securities which are qualifying private placements

3.—(1) A relevant security which meets the debtor and listing conditions is a qualifying private placement if—

(a) the conditions specified in regulation 4 are met;

(b) subject to paragraph (2), the relevant debtor holds a creditor certificate for each creditor;

(c) the relevant security was entered into by the relevant debtor for genuine commercial reasons, and not as part of a tax advantage scheme; and

(d) the relevant debtor reasonably believes that the relevant debtor is not a connected person in respect of each creditor.

(2) Paragraph (1)(b) does not include a creditor certificate which is a cancelled or a withdrawn certificate.

(3) In this regulation—

(a) "connected person" is to be determined in accordance with section 993 of ITA 2007 but any rights that a person has as a loan creditor are to be disregarded for the purposes of section 450(3)(d) of CTA 2010(**a**); and

(b) "the debtor and listing conditions" are the conditions specified in paragraphs (a) and (b) of section 888A(2) of ITA 2007.

Conditions in relation to relevant securities

4.—(1) Conditions A and B are specified in relation to the relevant security.

(2) Condition A is that the term of the relevant security does not exceed 50 years.

(3) Condition B is that—

(a) at the time the relevant security was entered into, it had a minimum value of £10 million; or

(b) where the relevant security had a lower value at the time it was entered into but it was comprised in a single placement with other relevant securities to the same debtor, the placement had a minimum value of £10 million.

Creditor certificates

5.—(1) A "creditor certificate" means a written statement in which a confirmation is made by or on behalf of the creditor that conditions A and B are met in respect of the creditor.

(2) Condition A is that the creditor is a resident of a qualifying territory.

(3) Condition B is that the creditor is beneficially entitled to the interest on the relevant security for genuine commercial reasons, and not as part of a tax advantage scheme.

(4) For the purposes of condition A—

"qualifying territory" has the meaning given by section 173 of the Taxation (International and Other Provisions) Act 2010(**b**) ("TIOPA"); and

"resident" has the meaning given by section 167(5) of TIOPA, subject to paragraph (5).

(5) Where—

(a) the creditor ("C") is the State or any part of the State (including any local authority) of a qualifying territory; and

(b) C would not by virtue of section 167(5) of TIOPA be a resident of that territory,

C is to be treated as a resident of the qualifying territory.

(**a**) By section 994 of ITA 2007, in section 993 "control" is to be read in accordance with sections 450 and 451 of CTA 2010.
(**b**) 2010 c. 8.

Withdrawn certificates

6.—(1) This regulation applies to a creditor certificate other than a cancelled certificate.

(2) As soon as practicable after a creditor becomes aware that the confirmation given in a creditor certificate has ceased to apply, the creditor (or a person on the creditor's behalf) must give a notification to the relevant debtor to that effect.

(3) Where a notification is given under paragraph (2), the creditor certificate is of no effect on and from the day after the date on which the notification is received.

(4) A creditor certificate which is of no effect further to this regulation is a "withdrawn certificate".

Production of creditor certificates to HMRC and cancelled certificates

7.—(1) An officer of Her Majesty's Revenue and Customs ("a relevant officer") may by a notification given to a debtor ("D"), require D to produce a creditor certificate to the officer.

(2) A notification under paragraph (1) must—

(a) describe the certificate to be produced; and

(b) state the date ("the compliance date") required for compliance (being a date not earlier than 28 days after the date on which the notification is given).

(3) D must by the compliance date produce the certificate to the relevant officer.

(4) Paragraph (5) applies where—

(a) D fails to comply with paragraph (3); or

(b) the relevant officer reasonably believes that a certificate produced by D is inaccurate in a material particular.

(5) Where this paragraph applies, the relevant officer may by a notification given to D determine that a creditor certificate identified in the notification has no effect.

(6) Where a notification is given under paragraph (5), the creditor certificate is of no effect on and from the date the notification is received by D.

(7) A creditor certificate which is of no effect further to this regulation is a "cancelled certificate".

John Penrose
Mel Stride
9th December 2015 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations specify conditions in relation to securities further to section 888A of the Income Tax Act 2007 (c. 3) ("ITA 2007"). Section 888A of ITA 2007 was inserted by section 23 of the Finance Act 2015 (c. 11). Securities described in the Regulations ("relevant securities") which meet the specified conditions and the conditions in section 888A(2)(a) and (b) are qualifying private placements. The duty to deduct a sum representing income tax under section 874 of ITA 2007 does not apply to such placements.

Regulation 1 includes the date the Regulations come into force and regulation 2 sets out definitions, including "relevant security".

Regulation 3 sets out the conditions which must be met in relation to relevant securities, including the requirement for creditor certificates. Regulation 4 specifies restrictions on the term and value of relevant securities. Regulation 5 provides for the matters to be included in creditor certificates.

Regulation 6 provides for creditors to withdraw creditor certificates. Regulation 7 provides for an officer of Her Majesty's Revenue and Customs to require the production of creditor certificates and provides for the cancellation of certificates.

A Tax Information and Impact Note covering this instrument was published on 10th December 2014 alongside the Autumn Statement 2014 and is available on the website at https://www.gov.uk/government/publications/income-tax-deduction-at-source-from-interest-paid-on-private-placementshttps.It remains an accurate summary of the impacts that apply to this instrument.

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