STATUTORY INSTRUMENTS

2008 No. 1893

INCOME TAX

The Venture Capital Trust (Amendment) Regulations 2008

Made - - - -	*17th July 2008*
Laid before the House of Commons	*17th July 2008*
Coming into force - -	*1st September 2008*

The Treasury make the following Regulations in exercise of the powers conferred by sections 272(2) and (3) and 284 of the Income Tax Act 2007(**a**).

Citation and commencement

1. These Regulations may be cited as the Venture Capital Trust (Amendment) Regulations 2008 and shall come into force on 1st September 2008.

Amendments to the Venture Capital Trust Regulations 1995

2. The Venture Capital Trust Regulations 1995(**b**) are amended as follows.

Amendments to regulation 2

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

(2) In paragraph (1)—

(a) in the definition of "accounting date" at the end add "of the Income and Corporation Taxes Act 1988";

(b) in the definition of "the Board" for "of Inland Revenue" substitute "for Her Majesty's Revenue and Customs";

(c) in the definition of "eligible shares" for "paragraph 6(1) of Schedule 15B" substitute "section 273(1)";

(d) in the definition of "full approval" for "subsection (2) of section 842AA" substitute "section 274";

(e) omit the definition of "the Management Act";

(f) in the definition of "period of account" for "834(1)" substitute "989";

(g) in the definition of "provisional approval" for "subsection (4) of section 842AA" substitute "section 275(2)";

(h) in the definition of "qualifying holding" for "Schedule 28B" substitute "Chapter 4 of Part 6";

(i) in the definition of "trust company" for "842AA" substitute "259(1)"; and

(**a**) 2007 c. 3; section 284 was amended by paragraph 21 of Schedule 16 to the Finance Act 2007 (c. 11).
(**b**) S.I. 1995/1979, amended by S.I. 1999/819.

(j) at the appropriate places, insert—

""accounting period" shall be construed in accordance with section 12 of the Income and Corporation Taxes Act 1988;",

""director" means a person appointed as a director of the trust company;", and

""VCT approval" has the meaning it has in section 259(2);".

(3) For paragraph (2) substitute—

"(2) In these Regulations, a reference to a "section" or "Part" without more is a reference to a section or Part of the Income Tax Act 2007(**a**).".

Amendment to heading to Part II

4. In the heading to Part II for "section 842AA" substitute "Part 6".

Amendments to regulation 3

5. In regulation 3 (applications for approval)—

(a) in paragraphs (1) and (5) for "section 842AA" substitute "Part 6"; and

(b) in paragraph (4)(a) for "subsection (4) of section 842AA" substitute "section 275(3)".

Amendments to regulation 4

6. In regulation 4 (approval of a company)—

(a) in paragraph (1) for "section 842AA" substitute "Part 6"; and

(b) in paragraph (3) for "subsection (4) of section 842AA" substitute "section 274".

Amendment to regulation 5

7. In paragraph (1) of regulation 5 (refusal of approval of a company) for "section 842AA" substitute "Part 6".

Amendment to regulation 6

8. In paragraph (1) of regulation 6 (withdrawal of approval of a company) for "section 842AA" substitute "Part 6".

Amendments to regulation 8

9. For regulation 8 (breach of conditions for approval) substitute—

"**Notification of breach of conditions for approval**

8.—(1) Where a trust company has been given full approval and—

(a) any condition specified in section 274 has ceased to be met or is broken, or

(b) the company considers that it is likely that any such condition will cease to be met or will be broken,

the company shall as soon as reasonably possible give notice in writing to the Board of that fact.

(2) Where a trust company has been given provisional approval and—

(a) either—

(**a**) 2007 c. 3.

(i) any condition specified in section 274 has not been met in relation to the period specified in section 275(3) in respect of that condition, or

(ii) the company considers that it is likely that any such condition will not be met in relation to the period so specified;

(b) any condition included in a notice giving provisional approval and given under regulation 4(3) has not been met or has been broken, or the company considers that it is likely that any such condition will not be met or will be broken; or

(c) after meeting the conditions specified in section 274 within the periods specified in section 275(3) any condition has ceased to be met, or the company considers that it is likely that any such condition will cease to be met or will be broken;

the company shall as soon as reasonably possible give notice in writing to the Board of that fact.

(3) A notice required under this regulation to be given by a company must—

(a) specify the circumstances that caused or are likely to cause any condition to cease to be met or to be broken or not met,

(b) so far as possible, state the extent to which any condition—

(i) has ceased or will cease to be met, or

(ii) has been or will be broken or not met, and

(c) where the company considers that any condition is likely to cease to be met or to be broken or not met by or on a date occurring after the date of the notice, specify (if possible) that future date.

(4) A notice required under this regulation must be signed by the secretary or a director of the company.

(5) Paragraph (6) below applies if a company has given notice under this regulation in respect of circumstances that are likely to cause any condition to cease to be met or to be broken or not met ("the notified circumstances").

(6) If this paragraph applies, no further notice under this regulation is required in relation to the notified circumstances where any condition ceases to be met or is broken or not met in, or as a result of, the notified circumstances.

(7) Paragraph (6) above does not prevent a company giving a further notice under this regulation in respect of the notified circumstances for the purpose of enabling an application under regulation 8A(1) to be made.

Breach of conditions for VCT approval: applications for approval to continue

8A.—(1) If a trust company has not met or is likely not to meet the conditions for its VCT approval to continue in force in, or as a result of, the circumstances notified under regulation 8 it may apply in writing to the Board for a determination that the Board will not exercise their power conferred by section 281(1) to withdraw the company's VCT approval.

This is subject to paragraph (3) below.

(2) An application under paragraph (1) above—

(a) may only be made by being included in or with a notice under regulation 8;

(b) must specify the measures, if any, the company has taken or intends to take to rectify or avoid the failure or likely failure to meet the conditions for its VCT approval to continue in force; and

(c) must specify—

(i) the date on which the failure to meet the conditions for its VCT approval to continue in force was rectified, or

(ii) the date by which it expects to meet the conditions for its VCT approval to continue in force where the conditions are not met at the time of the application or will cease to be met after the time of the application.

(3) In a case where a company considers that it is likely not to meet the conditions for its VCT approval to continue in force, an application under paragraph (1) above may only be made if the likely failure to meet the conditions is expected to arise or occur within the period of 90 days commencing on the date on which notice under regulation 8 is given by the company.

Rectifying a breach of a condition required to be met throughout a period

8B.—(1) This regulation applies where—

(a) a condition for a trust company's VCT approval to continue in force must be met throughout, or satisfied at all times during, a relevant period,

(b) the condition has not been so met or satisfied, and

(c) after the failure to so meet or satisfy the condition, the circumstances of the company become such that were they to exist, or had they existed, throughout the relevant period, the condition would be or would have been, so met or satisfied.

(2) The failure to meet or satisfy the condition is to be treated for the purposes of this Part of these Regulations as having been rectified on the date when the circumstances of the company became such as are mentioned in paragraph (1)(c) above.

(3) In this regulation a reference to "a relevant period", in relation to a condition, means—

(a) where the company has been given full approval, the relevant period as defined by section 274(2) in relation to the condition,

(b) where the company has been given provisional approval, the relevant period as defined by section 275(3) in relation to the condition, or

(c) where the condition is included in a notice giving provisional approval and given under regulation 4(3), the period specified in the notice in relation to the condition.

Determination of applications: breach of conditions rectified at time of application

8C.—(1) This regulation applies where—

(a) an application under regulation 8A(1) is in respect of the trust company's failure to meet the conditions for its VCT approval to continue in force, and

(b) the failure has been rectified at the date of the application.

(2) Where this regulation applies, the Board shall determine that they will not exercise their power under section 281(1) (power to withdraw VCT approval of a company) if the Board are satisfied that—

(a) the failure was as a result of circumstances outside the control of the company,

(b) those circumstances prevented the company from meeting the conditions for its VCT approval to continue in force,

(c) the company took all reasonable measures to continue to meet the conditions for its VCT approval to continue in force, and

(d) the failure was—

(i) rectified by the company as soon as reasonably possible after the circumstances causing the failure arose, or

(ii) rectified notwithstanding that no measures could be taken by the company to rectify it.

This is subject to regulation 8E (circumstances within the control of the company: investment managers).

Determination of applications: breach of conditions not rectified at time of application

8D.—(1) This regulation applies where—

(a) an application under regulation 8A(1) is in respect of the trust company's failure to meet the conditions for its VCT approval to continue in force, and

(b) the failure has not been rectified at the date of the application or the failure is likely to occur after the date of the application.

(2) Where this regulation applies, the Board shall determine that they will not exercise their power under section 281(1) (power to withdraw VCT approval of a company) if the they are satisfied that—

(a) the failure is or will be as a result of circumstances outside the control of the company,

(b) those circumstances prevent or will prevent the company from meeting the conditions for its VCT approval to continue,

(c) the company took and will take all reasonable measures to rectify or avoid the failure to meet the conditions for its VCT approval to continue, and

(d) either—

(i) measures were taken or will be taken to rectify or avoid the failure as soon as possible and in any event within a reasonable period from the date of the application, or

(ii) where no measures to rectify or avoid the failure can be taken, the failure will nevertheless become rectified or be avoided within a reasonable period from the date of the application.

This is subject to regulation 8E.

Circumstances within the control of the company: investment managers

8E.—(1) For the purposes of regulations 8C and 8D, circumstances within the control of any investment manager of a company are to be treated as being within the control of the company.

(2) In paragraph (1) above "investment manager", in relation to a company, means a person appointed by, or acting for or on behalf of, the company who—

(a) manages investments in an account or portfolio on a discretionary basis under the terms of an agreement with the company which confers discretionary management of those investments on that person, or

(b) manages investments in an account or portfolio without exercising any discretion in relation to those investments under the terms of an agreement with the company.

Determinations: supplemental provisions

8F.—(1) A determination under regulation 8C(2) or 8D(2) shall be given by notice in writing to the company which applied for it.

(2) Where the Board make a determination under regulation 8D(2), the determination shall have effect for the period of 90 days commencing on the date on which they give notice to the company of it.

(3) A company given notice of a determination under regulation 8D(2) must give written notice to the Board when the failure or likely failure has been rectified or avoided.

(4) A notice under paragraph (3) above must—

(a) confirm that the failure or likely failure has been rectified or avoided,

(b) specify the date on which the failure or likely failure was rectified or avoided, and

(c) be given within 14 days of the date on which the failure or likely failure is rectified or avoided.

Determination in force: further circumstances causing breach of conditions

8G.—(1) This regulation applies where—

(a) the Board have made a determination under regulation 8D(2), and

(b) during the period in which that determination has effect further circumstances arise or occur which—

(i) have caused, cause or are likely to cause the company to fail to meet or to cease to meet any condition (including a condition imposed under regulation 4(3)) for its VCT approval to continue in force, or

(ii) in relation to a condition to which the determination relates, have caused, cause or are likely to cause that condition to be broken further or to increase the extent of the failure to meet the condition by the company.

(2) In relation to the further circumstances referred to in paragraph (1)(b) above, the company—

(a) must give notice in accordance with regulation 8, and

(b) may make an application in accordance with regulation 8A(1).

Further determinations in respect of same application

8H. After the expiry of a determination made under regulation 8D(2), the Board may make a further determination under that regulation in respect of the same application if—

(a) the company requests in writing that a further determination be made in respect of that application,

(b) a return made in accordance with regulation 8I accompanies the request for the further determination, and

(c) the Board continue to be satisfied in relation to the matters specified in regulation 8D(2).

Monitoring of breach of conditions: returns

8I.—(1) If a company requests under regulation 8H that a further determination be made in respect of an application under regulation 8A(1) a return must be made by the company in accordance with this regulation and must be included in or with that request.

(2) A return under this regulation must be made—

(a) in relation to a first request under regulation 8H, in respect of the period from the date of the application under regulation 8A(1) to the date on which the first determination under regulation 8D(2) ceases to have effect, and

(b) in relation to a subsequent request under regulation 8H, in respect of the period commencing on the day after the end of the period to which the last return under this regulation relates and ending on the date on which the most recent determination under regulation 8D(2) ceases to have effect.

This is subject to paragraph (5) below.

(3) The return must—

(a) so far as is possible, state the extent to which the conditions for the company's VCT approval to continue in force—

(i) have ceased or will cease to be met, or

(ii) have been or will be broken or not met,

(b) specify what measures, if any, have been taken during that period to rectify or avoid the failure, or the likely failure, to meet the conditions for the company's VCT approval to continue in force,

(c) specify any alterations to the measures specified in the application made under regulation 8A(1), or in the last return under this regulation if later, that the company intends to take to rectify or avoid the failure, or likely failure, to meet the conditions for its VCT approval to continue,

(d) specify the date by which the company expects to meet the conditions for its VCT approval to continue, and

(e) be signed by the secretary or a director of the company.

(4) A return under this regulation must be made within 7 days after the date on which the period to which it relates ends.

(5) If more than one determination of the Board is in effect at the same time in relation to the same company, the Board may direct that one return applicable to those determinations is made in relation to a specified period.

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

Withdrawal of VCT approval where determination has been made

8J.—(1) A determination under regulation 8C(2) or 8D(2) shall not prevent the Board from exercising their power under section 281(1) to withdraw the company's VCT approval where they have grounds for doing so in relation to other circumstances not the subject of an application under regulation 8A(1) to which the determination relates.

(2) A determination under regulation 8D(2) shall not prevent the Board from exercising their power under section 281(1) to withdraw the company's VCT approval where the failure or likely failure to which the determination relates has not been rectified or avoided within a reasonable period from the date of the application to which the determination relates.".

Amendments to regulation 9

10. In regulation 9 (certificate to be given to investor)—

(a) in paragraph (3)(b) for "paragraph 1(9) of Schedule 15B" substitute "section 261(3)"; and

(b) in paragraph (3)(c)—

(i) for "Part I of Schedule 15B" substitute "Chapter 2 of Part 6", and

(ii) for "paragraph 2 of that Schedule" substitute "section 264".

Amendments to regulation 22

11. In regulation 22 (return containing particulars of investments)—

(a) in paragraph (2)(b) and (c), (3)(b) and (5)(c) for "section 842AA" substitute "Part 6";

(b) in paragraph (4)(a), (b)(ii) and (e)(iv) for "subsections (5) and (11) of section 842AA" substitute "section 278";

(c) in paragraph (5)—

(i) in sub-paragraph (a) for "subsection (2) of section 842AA" substitute "section 274"; and

(ii) in sub-paragraph (b) for "subsection (4) of section 842AA" substitute "section 274".

Amendments to regulation 23

12. In regulation 23 (records to be kept by trust company)—

(a) in paragraph (1) for "section 842AA, Schedule 15B" substitute "Part 6", and

(b) in paragraph (2)(a) for "section 842AA" substitute "Part 6".

Amendments to regulation 24

13. In paragraph (1) of regulation 24 (information to be provided to the Board) for "section 842AA, Schedule 15B" substitute "Part 6".

Amendments to regulation 25

14. In paragraph (1) of regulation 25 (inspection of records by officer of the Board) for "section 842AA, Schedule 15B" substitute "Part 6".

Alan Campbell
Dave Watts

17th July 2008 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Venture Capital Trust Regulations 1995 (S.I. 1995/1979 as amended by S.I. 1999/819) ("the principal Regulations").

The Income Tax Act 2007 (c. 3) ("ITA 2007") restates provisions that relate to income tax, including those of the Income and Corporation Taxes Act 1988 (c. 1) ("ICTA 1988"). Part 6 of ITA 2007 contains restated provisions of ICTA 1988 relating to venture capital trust companies. These Regulations substitute references to terms and provisions of Part 6 of ITA 2007 for references contained in the principal Regulations to corresponding terms and provisions of ICTA 1988.

These Regulations also insert into the principal Regulations new provisions that deal with breaches of the conditions contained in Part 6 of ITA 2007 which a company is required to satisfy to continue to be approved as a trust company for the purposes of Part 6 ("VCT approval").

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 2 of the principal Regulations (interpretation).

Regulations 4 to 8 and 10 to 14 substitute references to terms and provisions of ITA 2007 for references to corresponding terms and provisions of ICTA 1988 contained in the principal Regulations.

Regulation 9 substitutes new regulations 8 to 8J for regulation 8.

New regulation 8 requires a trust company to give written notice to the Board if it has ceased to meet or is likely to cease to meet the conditions for VCT approval to continue in force.

New regulation 8A makes provision for cases where the Board may have grounds for withdrawing the VCT approval of a company. It provides that a company may apply to the Board for a determination that its VCT approval will not be withdrawn. The regulation also provides how and when the application is to be made and the content of the application.

New regulation 8B deals with breaches of conditions that must be continuously met during a period in order for VCT approval to continue in force. Where such a condition is broken the company is treated as rectifying the breach when its circumstances change so that the breach would not have occurred if those circumstances had existed throughout the period.

New regulation 8C deals with the case where there has been a breach of the conditions for VCT approval to continue in force which has been rectified at the time of application. If the Board are satisfied that the matters set out in the regulation apply in the case of the company they shall make a determination that the company's approval as a trust company is not withdrawn.

New regulation 8D deals with the case where there has been a breach of the conditions for VCT approval to continue in force which has not been rectified at the time of application. If the Board are satisfied that the matters set out in the regulation apply in the case of the company they shall make a determination that the company's approval as a trust company is not withdrawn.

New regulation 8E provides that matters within the control of an investment manager acting on behalf of a trust company are treated as being matters within the control of the company.

New regulation 8F specifies how the Board are to notify the company of their determination and how long a determination lasts where this relates to breaches that have not been rectified at the time of the determination. It also provides that the company must notify the Board when a breach has been rectified.

New regulation 8G makes provision for cases where after a determination has been made further circumstances arise that also cause or may cause the trust company to breach the conditions for its VCT approval to continue in force or which worsen an existing breach.

New regulation 8H provides for the making of further determinations in respect of an existing application for VCT approval not to be withdrawn.

New regulation 8I provides that if a company requests the Board to make a further determination in respect of an existing application for VCT approval not to be withdrawn a return must accompany the request and specifies the period the return must cover and its content.

New regulation 8J provides that where the Board have made a determination not to withdraw VCT approval they are not prevented from withdrawing VCT approval if other grounds for doing so exist or if the failure to meet the conditions for VCT approval to continue in force is not rectified.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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