

## SCHEDULES

### SCHEDULE 16

#### COMMUNITY INVESTMENT TAX RELIEF

##### PART 6

##### WITHDRAWAL OF RELIEF

###### *Manner of withdrawal of relief*

- 27 (1) This paragraph applies where any relief has been obtained which—
- (a) is subsequently found not to have been due, or
  - (b) falls to be withdrawn or reduced under this Part.
- (2) Where the investor is an individual, the relief shall be withdrawn or reduced by making an assessment to income tax under Case VI of Schedule D for the tax year for which the relief was obtained.
- (3) No assessment shall be made under sub-paragraph (2) in respect of an individual by reason of any event occurring after his death.
- (4) Where the investor is a company, the relief shall be withdrawn or reduced by making an assessment to corporation tax under Case VI of Schedule D for the accounting period for which the relief was obtained.

###### *Disposal of loan during five year period*

- 28 (1) Where the investment consists of a loan, if within the five year period—
- (a) the investor disposes of the whole of the investment, otherwise than by way of a permitted disposal, or
  - (b) the investor disposes of a part of the investment,
- any relief attributable to the investment in respect of any tax year or accounting period must be withdrawn.
- (2) For the purposes of this paragraph—
- (a) a disposal is “permitted” if—
    - (i) it is by way of a distribution in the course of dissolving or winding up the CDFI,
    - (ii) it is a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset),
    - (iii) it is a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible), or
    - (iv) it is made after the CDFI has ceased to be accredited under this Schedule, and

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- (b) a full or partial repayment of the loan shall not be treated as giving rise to a disposal.

*Disposal of shares or securities during five year period*

- 29 (1) This paragraph applies where the investment consists of securities or shares and—
- (a) the investor disposes of the whole or any part of the investment (“the former investment”) within the five year period,
  - (b) the CDFI has not ceased to be accredited before the disposal, and
  - (c) the disposal does not arise by virtue of an event within paragraph 35(1)(a) (repayment, redemption or repurchase of securities or shares included in the investment).
- (2) If the disposal is not a qualifying disposal, any relief attributable to the former investment in respect of any tax year or accounting period must be withdrawn.
- (3) If the disposal is a qualifying disposal, any relief attributable to the former investment for a tax year or accounting period must—
- (a) if it is greater than an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment, be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (4) For the purposes of this paragraph “qualifying disposal” means a disposal that is—
- (a) by way of a bargain made at arm’s length for full consideration, or
  - (b) a permitted disposal (within the meaning of paragraph 28).
- (5) Where for any tax year or accounting period—
- (a) the amount of relief attributable to the former investment (“A”) is less than
  - (b) the amount (“B”) which is equal to 5% of the invested amount in respect of the former investment for that year or period,
- sub-paragraph (3)(a) shall have effect in relation to that year or period as if the amount or value referred to in that sub-paragraph were reduced by multiplying it by the fraction—
- $$\frac{A}{B}$$
- (6) Where the amount of relief attributable to the former investment in respect of a tax year or accounting period has been reduced before the relief was obtained, the amount of relief attributable to that investment shall be deemed for the purposes of sub-paragraph (5) to be the amount of the relief that would have been attributable had no such reduction been made before the relief was obtained.
- (7) Sub-paragraph (6) does not apply to a reduction by virtue of paragraph 26(5) (attribution of relief where there is a corresponding issue of bonus shares).

*Repayments of loan capital*

- 30 (1) Where the investment consists of a loan, if—
- (a) the average capital balance of the loan for the third, fourth or final year of the five year period is less than the permitted balance for the year in question, and

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- (b) the difference between those balances is not an amount of insignificant value, any relief attributable to the investment in respect of any tax year or accounting period must be withdrawn.
- (2) For the purposes of this paragraph—
- “the average capital balance” of the loan for a period is the mean of the daily balances of capital outstanding during that period, disregarding any non-standard repayments of the loan made in that period or at any earlier time;
- “the permitted balance” of the loan is—
- (a) for the third year of the five year period, 75% of the average capital balance for the period of six months beginning 18 months after the investment date,
- (b) for the fourth year of that period, 50% of that balance, and
- (c) for the final year of that period, 25% of that balance.
- (3) For the purposes of sub-paragraph (2), a repayment of the loan is a non-standard repayment if it is made—
- (a) at the choice or discretion of the CDFI and not as a direct or indirect consequence of any obligation provided for under the terms of the loan agreement, or
- (b) as a consequence of the failure of the CDFI to fulfil any obligation of the loan agreement which—
- (i) is imposed by reason only of the commercial risks to which the investor is exposed as lender under that agreement, and
- (ii) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Schedule.
- (4) For the purposes of this paragraph “an amount of insignificant value” means an amount which—
- (a) does not exceed £1,000, or
- (b) if it exceeds that amount, is insignificant in relation to the average capital balance of the loan for the year of the five year period in question.

*Value received treated as repayment of loan*

- 31 (1) This paragraph applies where the investment consists of a loan and the investor receives any value (other than insignificant value) from the CDFI during the period of restriction.
- (2) The investor shall be treated for the purposes of—
- (a) paragraph 21 (determination of “invested amount”), and
- (b) paragraph 30 (repayments of loan capital),
- as having received a repayment of the loan of an amount equal to the amount of the value received.
- (3) For those purposes the repayment shall be treated as made—
- (a) where the value was received in the first or second year of the period of restriction, at the beginning of that second year, and

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- (b) where the value was received in a later year of that period, at the beginning of the year in question.
- (4) For the purposes of paragraph 30 the repayment shall be treated as a repayment other than a non-standard repayment (within the meaning of that paragraph).
- (5) For the purposes of this paragraph the investor receives insignificant value where he receives an amount of insignificant value; and for this purpose “an amount of insignificant value” means an amount which—
  - (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the average capital balance of the loan for the year of the period of restriction in which the value is received.
- (6) For the purposes of sub-paragraph (5)(b)—
  - (a) “the average capital balance” of the loan for a year is the mean of the daily balances of capital outstanding during the year (disregarding the receipt of value in question), and
  - (b) any value received in the first year of the period of restriction shall be treated as received at the beginning of the second year of that period.
- (7) This paragraph is subject to paragraph 37 (value received where there is more than one investment).
- (8) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which relief attributable to any loan, securities or shares in respect of any one or more tax years or accounting periods has already been reduced or withdrawn on its account.

*Value received by investor where the investment consists of securities or shares*

- 32 (1) Where the investment consists of securities or shares and—
- (a) the investor receives any value (other than insignificant value) from the CDFI during the period of restriction,
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by him, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
  - (c) the receipt is wholly or partly in excess of the permitted level of receipts in respect of the continuing investment, and
  - (d) the amount of that excess (“the excess”) is not an amount of insignificant value,
- any relief attributable to the continuing investment in respect of any tax year or accounting period must be withdrawn.
- (2) For the purposes of sub-paragraph (1) the permitted level of receipts is exceeded where—
- (a) any amount of value is received by the investor (disregarding any amounts of insignificant value) in the first three years of the period of restriction, or
  - (b) the aggregate amount of value received by the investor (disregarding any amounts of insignificant value)—
    - (i) before the beginning of the fifth year of that period, exceeds 25% of the invested capital;

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- (ii) before the beginning of the final year of that period, exceeds 50% of the invested capital;
  - (iii) before the end of that period, exceeds 75% of the invested capital.
- (3) In this paragraph—
- “the invested capital”, in relation to the continuing investment, means the amount subscribed for the securities or shares concerned;
  - “an amount of insignificant value” means an amount of value which—
    - (a) does not exceed £1,000, or
    - (b) if it exceeds that amount, is insignificant in relation to the amount subscribed by the investor for the securities or shares comprising the continuing investment;
- and for the purposes of sub-paragraph (1) the investor receives insignificant value where he receives an amount of insignificant value.
- (4) This paragraph is subject to paragraph 37 (value received where there is more than one investment).
- (5) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which relief attributable to any loan, securities or shares in respect of any one or more tax years or accounting periods has already been reduced or withdrawn on its account.

#### *Meaning of “period of restriction”*

- 33 In this Part “the period of restriction” in relation to the investment is the period of six years beginning one year before the investment date.

#### *Aggregation of receipts of insignificant value*

- 34 (1) Where—
- (a) value is received (“the relevant receipt”) by the investor from the CDFI at any time during the period of restriction relating to the investment,
  - (b) the investor has received from the CDFI one or more receipts of insignificant value at a time or times during that period but not later than the time of the relevant receipt, and
  - (c) the aggregate amount of the value of the receipts within paragraphs (a) and (b) is not an amount of insignificant value,
- the investor shall be treated for the purposes of this Schedule as if the relevant receipt had been a receipt of an amount of value equal to that aggregate amount.
- For this purpose a receipt does not fall within paragraph (b) if the whole or any part of it has previously been aggregated under this sub-paragraph.
- (2) For the purposes of this paragraph “an amount of insignificant value” means an amount of value which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the relevant amount.
- (3) Where the investment consists of a loan, the relevant amount for the purposes of sub-paragraph (2) is—

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- (a) if the relevant receipt is received in the first or second year of the period of restriction, the average capital balance of the loan for the second year of that period, and
  - (b) if the relevant receipt is received in a later year, the average capital balance of the loan for the year in question.
- (4) For the purposes of sub-paragraph (3)—
- (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the relevant receipt and any receipts within sub-paragraph (1)(b) shall be disregarded when calculating the average capital balance for the year in question.
- (5) Where the investment consists of securities or shares, the relevant amount for the purposes of sub-paragraph (2) is—
- (a) if the relevant receipt is received in the first year of the period of restriction, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the relevant receipt is received, and
    - (ii) have been held by him, as sole beneficial owner, continuously since the investment was made.

*When value is received*

- 35 (1) For the purposes of this Part the investor receives value from the CDFI at any time when the CDFI—
- (a) repays, redeems or repurchases any securities or shares included in the investment;
  - (b) releases or waives any liability of the investor to the CDFI or discharges, or undertakes to discharge, any liability of the investor to a third person;
  - (c) makes a loan or advance to the investor which has not been repaid in full before the investment is made;
  - (d) provides a benefit or facility for—
    - (i) the investor or any associates of the investor, or
    - (ii) if the investor is a company, directors or employees of the investor or any of their associates;
  - (e) disposes of an asset to the investor for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
  - (f) acquires an asset from the investor for a consideration which is or the value of which is more than the market value of the asset; or
  - (g) makes a payment to the investor other than a qualifying payment.
- (2) For the purposes of sub-paragraph (1)(b) the CDFI shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (3) For the purposes of sub-paragraph (1)(c) there shall be treated as if it were a loan made by the CDFI to the investor—

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- (a) the amount of any debt incurred by the investor to the CDFI (other than an ordinary trade debt), and
- (b) the amount of any debt due from the investor to a third person which has been assigned to the CDFI.

(4) For the purposes of this paragraph—

- (a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment;
- (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would have been a qualifying payment; and
- (c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to his order or for his benefit.

In paragraphs (a) to (c) references to “a person” include references to any person who, at any time in the period of restriction in question, is connected with that person, whether or not he is so connected at the material time.

(5) In this paragraph—

“qualifying payment” means—

- (a) any payment by any person for any goods, services or facilities provided by the investor (in the course of his trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities;
- (b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person;
- (c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or securities of that company;
- (d) any payment for the acquisition of an asset which does not exceed its market value;
- (e) the payment by any person, as rent for any property occupied by the person, of an amount not exceeding a reasonable and commercial rent for the property; and
- (f) a payment in discharge of an ordinary trade debt; and

“ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—

- (a) does not exceed six months, and
- (b) is not longer than that normally given to customers of the person carrying on the trade or business.

### *The amount of value received*

36 For the purposes of this Part the amount of the value received is—

- (a) in a case within paragraph 35(1)(a), the amount received by the investor;
- (b) in a case within paragraph 35(1)(b), the amount of the liability;
- (c) in a case within paragraph 35(1)(c)—
  - (i) the amount of the loan or advance, less

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- (ii) the amount of any repayment made before the investment is made;
- (d) in a case within paragraph 35(1)(d)—
  - (i) the cost to the CDFI of providing the benefit or facility, less
  - (ii) any consideration given for it by the investor or any associate of his;
- (e) in a case within paragraph 35(1)(e) or (f), the difference between the market value of the asset and the consideration (if any) received for it; and
- (f) in a case within paragraph 35(1)(g), the amount of the payment.

*Value received where there is more than one investment*

- 37 (1) This paragraph applies where—
- (a) the investor makes two or more investments in the CDFI (being investments in relation to which the investor is eligible for and claims relief), and
  - (b) the investor receives value (other than value within paragraph 35(1)(a)) which falls within the periods of restriction relating to two or more of those investments.
- (2) Where this paragraph applies, paragraphs 31, 32, 34 and 38 have effect in relation to each investment referred to in sub-paragraph (1)(b) as if the amount of the value received were reduced by multiplying it by the fraction—
- $$\frac{A}{B}$$
- (3) For this purpose—
- (a) A is the appropriate amount in respect of the investment in question, and
  - (b) B is the aggregate of that amount and the appropriate amount or amounts in respect of the other investment or investments.
- (4) Where the investment consists of a loan, the appropriate amount for the purposes of sub-paragraph (3) is—
- (a) if the value is received in the first or second year of the period of restriction, the average capital balance of the loan for the second year of that period, and
  - (b) if the value is received in a later year, the average capital balance of the loan for the year in question.
- (5) For the purposes of sub-paragraph (4)—
- (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the receipt of value shall be disregarded when calculating the average capital balance for the year in question.
- (6) Where the investment consists of securities or shares, the appropriate amount for the purposes of sub-paragraph (3) is—
- (a) if the value is received in the first year of the period of restriction, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the value is received, and
    - (ii) have been held by him, as sole beneficial owner, continuously since the investment was made.



*Effect of receipt of value on future claims for relief*

- 38 (1) This paragraph applies where the investment consists of securities or shares and—
- (a) the investor receives any value (other than insignificant value) from the CDFI during the period of restriction, and
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by him, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
- but no relief attributable to the continuing investment is withdrawn under paragraph 32 as a result of the receipt.
- (2) For the purposes of calculating any relief in respect of any securities or shares included in the continuing investment for any relevant tax year or accounting period, the amount subscribed for the securities or shares comprising the continuing investment shall be treated as reduced by the amount of the value received.
- (3) For this purpose the “relevant” tax years or accounting periods are—
- (a) any tax year or accounting period ending on or after the anniversary of the investment date immediately preceding the receipt of value, or
  - (b) if the value was received on an anniversary of the investment date, any tax year or accounting period ending on or after that anniversary.
- (4) For the purposes of this paragraph the investor receives insignificant value where he receives an amount of insignificant value; and for these purposes “an amount of insignificant value” means an amount of value which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the amount subscribed by the investor for the securities or shares comprising the continuing investment.

*Receipts of value by and from connected persons*

- 39 In paragraphs 31 to 38 references to the investor or the CDFI include references to any person who at any time in the period of restriction relating to the investment is connected with the investor or, as the case may be, CDFI, whether or not he is connected at the material time.