

2008 No. 383

INCOME TAX

CORPORATION TAX

**The Community Investment Tax Relief (Accreditation of
Community Development Finance Institutions) (Amendment)
Regulations 2008**

<i>Made</i> - - - -	<i>18th February 2008</i>
<i>Laid before the House of Commons</i>	<i>19th February 2008</i>
<i>Coming into force</i> - -	<i>11th March 2008</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 4(1) and (2) of Schedule 16 to the Finance Act 2002^(a) and sections 340(2)(b), (4), (5) and (6) and 341 of the Income Tax Act 2007^(b).

Citation and commencement

1. These Regulations may be cited as the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) (Amendment) Regulations 2008 and shall come into force on 11th March 2008.

Amendments to the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003

2. The Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003^(c) are amended as follows.

Amendment of regulation 2

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

(2) In the definition of “CDFI”, for “Schedule 16 to the Finance Act 2002” substitute “Chapter 2 of Part 7 of the Income Tax Act 2007”.

(3) Omit the definition of “the Board”.

(4) Insert at the appropriate place—

““the Director of Enterprise Environment” means the Director of Enterprise Environment of the Department for Business, Enterprise and Regulatory Reform;”.

(5) For the definition of “the five year period” substitute—

(a) 2002 c.23; paragraph 4 was substituted by paragraph 419(4) of Schedule 1 to the Income Tax Act 2007 (c. 3).
(b) 2007 c. 3.
(c) S.I. 2003/96.

““the five year period” means the period of five years beginning with the day the investment is made;”.

(6) Omit the definition of “the Investment Director”.

(7) For the definition of “investment” substitute—

““investment”—

(a) in relation to an individual, shall be construed in accordance with section 336 of the Income Tax Act 2007; and

(b) in relation to a company, has the meaning given in paragraph 2 of Schedule 16 to the Finance Act 2002;”.

(8) For the definition of “qualifying investment” substitute—

““qualifying investment”—

(a) in relation to an investment made by an individual, means an investment in respect of which the individual is eligible under section 334 of the Income Tax Act 2007 for community investment tax relief; and

(b) in relation to an investment made by a company, has the meaning given in paragraph 8 of Schedule 16 to the Finance Act 2002;”.

(9) In the definition of “retail community development finance institution”, for “paragraph 4(6) and (7) of Schedule 16 to the Finance Act 2002” substitute “section 340(6)(b), (7) and (8) of the Income Tax Act 2007”.

(10) Omit the definition of “the Small Business Service”.

(11) For the definition of “tax relief certificate” substitute—

““tax relief certificate” means a certificate issued by the CDFI in respect of the investment which is in the form specified by the Commissioners for Her Majesty’s Revenue and Customs;”.

Amendment of regulation 3

4. In regulation 3 (criteria for accreditation), for “paragraph 4(2)(b) of Part 2 of Schedule 16 to the Finance Act 2002” substitute “section 340(2)(b) of the Income Tax Act 2007”.

Amendment of regulations 7, 12, 13, 15 and 16 and Schedule 1

5.—(1) In the following places, for “Small Business Service” substitute “Department for Business, Enterprise and Regulatory Reform”—

(a) regulation 7(4) (publication of details, penalty);

(b) regulation 13(1) (twice) and (4) (reporting requirements);

(c) regulation 15(2)(b)(ii) (withdrawal of accreditation); and

(d) regulation 16(3)(b) (appeals against refusal to grant accreditation or withdrawal of accreditation).

(2) In the following places, for “Investment Director” substitute “Director of Enterprise Environment”—

(a) regulation 7(4);

(b) regulation 12(1), (2) and (3) (twice) (limits on qualifying investments);

(c) regulation 13(5);

(d) regulation 15(3);

(e) regulation 16(2) (c) and (3); and

(f) paragraphs 2(2) and 4(3) of Schedule 1 (investments which are not relevant investments).

Amendment of regulation 8

6.—(1) For regulation 8 (general CDFI investment terms) substitute—

“General CDFI investment terms

8.—(1) It is a term of accreditation that—

- (a) on or before the first anniversary of the date the CDFI was first granted accreditation (“the accreditation date”), at least 25% of the amount of the investment fund is invested in relevant investments in qualifying enterprises;
- (b) on or before the second anniversary of the accreditation date, at least 50% of the amount of the investment fund is invested in relevant investments in qualifying enterprises;
- (c) on or before the third anniversary of the accreditation date at least 75% of the amount of the investment fund is invested in relevant investments in qualifying enterprises; and
- (d) at the end of each year ending on a subsequent anniversary of the accreditation date, an average of at least 75% of the amount of the investment fund has been invested in relevant investments in qualifying enterprises.

(2) For the purpose of paragraph (1)(d), the average percentage of the investment fund invested in relevant investments in qualifying enterprises is to be found on the last day of the year in question by calculating—

- (a) the average of the percentages so invested as at close of business on each day of that year, or
- (b) the average of the percentages so invested as at close of business on the relevant dates.

(3) “The relevant dates”, in relation to a year, means—

- (a) a date falling within the first three months of the year,
- (b) a date falling within the second three months of the year,
- (c) a date falling within the third three months of the year, and
- (d) a date falling within the final three months of the year,

(4) A date falling within any of the time periods specified in paragraph (3)(b), (c) and (d) must be at least 87 days but not more than 95 days after the preceding date.

(5) If the percentage of the investment fund invested in relevant investments in qualifying enterprises at close of business on any day exceeds 100% of the investment fund, the excess shall be disregarded.”

Amendment of regulation 15

7. In regulation 15 (withdrawal of accreditation), at the beginning of paragraph (1)(a), insert “subject to regulations 15A to 15E,”.

Insertion of regulations 15A to 15E

8. After regulation 15 insert—

“Applications relating to failures to satisfy the conditions of regulation 8

15A.—(1) This regulation applies where after the end of a year ending upon the anniversary of the date that the CDFI was first granted accreditation a CDFI becomes aware of a failure to satisfy the conditions of regulation 8 in respect of that year.

(2) Where this regulation applies, the CDFI may apply in writing to the Secretary of State within 3 months after the end of that year for a determination that the accreditation shall not be withdrawn notwithstanding the failure to satisfy the conditions of regulation 8.

(3) An application under this regulation must specify—

- (a) the circumstances that have led to the failure to satisfy the conditions of regulation 8, and
- (b) the measures taken by the CDFI to avoid the failure.

(4) Where the failure relates to a condition specified in regulation 8(1)(a), (b) or (c), the application must state—

- (a) the maximum percentage of the investment fund that was suitably invested during that year, and
- (b) the maximum percentage that would have been so invested had it not been for the circumstances that led to the failure.

(5) Where the failure relates to the condition specified in regulation 8(1)(d), the application must state—

- (a) the average percentage of the investment fund suitably invested as calculated in accordance with regulation 8(2), and
- (b) the average percentage of the investment fund that would have been suitably invested as calculated in accordance with regulation 8(2) had it not been for the circumstances that led to the failure.

Applications relating to anticipated failures to satisfy conditions of regulation 8

15B.—(1) This regulation applies where during a year ending upon the anniversary of the date a CDFI was first granted accreditation the CDFI anticipates likely failure to satisfy the conditions of regulation 8 in respect of that year.

(2) Where this regulation applies the CDFI may apply in writing to the Secretary of State for a decision that, should the anticipated likely failure occur at the end of the year as a result of the circumstances specified in the application, the Secretary of State will determine after the end of the year in respect of which the application relates, that accreditation will not be withdrawn.

(3) An application under this regulation must specify—

- (a) the circumstances that are anticipated will lead to the failure to satisfy the conditions of regulation 8, and
- (b) any measures that have been taken or that will be taken by the CDFI in that year—
 - (i) to avoid that failure, and
 - (ii) to ensure that the maximum amount of the investment fund that is possible in all the circumstances will be suitably invested.

(4) Where the failure relates to a condition specified in regulation 8(1)(a), (b), or (c) the application must state—

- (a) the maximum percentage of the investment fund suitably invested at the time the application under this regulation is submitted to the Secretary of State,
- (b) the maximum percentage of the investment fund that would have been so invested had it not been for the circumstances that are anticipated to lead to the failure, and
- (c) as far as possible, the maximum possible percentage of the investment fund that the CDFI anticipates will be so invested as a result of the measures taken under paragraph (3)(b).

(5) Where the anticipated failure relates to a condition specified in regulation 8(1)(d), the application must state—

- (a) the average percentage of the investment fund suitably invested as calculated in accordance with regulation 8(2)(a) for each day of that year before the day on which the application is submitted to the Secretary of State, and
- (b) as far as possible the average percentage of the investment fund that will be suitably invested on the final day of that year as calculated in accordance with regulation 8(2) (a) or (b) further to the measures taken under paragraph (3)(b).

(6) Where a CDFI submits an application under this regulation further to which the Secretary of State decides under regulation 15D that after the end of the year to which the application relates accreditation will not be withdrawn and the CDFI thereafter anticipates that it will fail—

- (a) to take the measures as specified in the application, or
- (b) to ensure that the maximum or average amount of the investment fund as specified in the application will be suitably invested,

it may make a further application under this paragraph (2) in respect of that anticipated failure and this regulation will apply to that failure as it would apply to an application in respect of an anticipated failure to satisfy the conditions of regulation 8.

Applications under regulation 15A: failures that have occurred

15C.—(1) This regulation applies where an application under regulation 15A has been made in respect of a failure to meet the conditions of regulation 8.

- (2) Where the Secretary of State is satisfied that—
 - (a) the failure to satisfy the conditions of regulation 8 was as a result of the circumstances specified in the application,
 - (b) those circumstances were outside the control of the CDFI and, where applicable, any person connected with it, and
 - (c) the CDFI acted reasonably in its attempts to avoid failing to satisfy the conditions of regulation 8 and to minimise the extent of failure,

the Secretary of State must determine that accreditation shall not be withdrawn and shall notify the CDFI of the determination.

(3) Where the Secretary of State does not have sufficient information to make a determination under this regulation he may ask the CDFI to supply further information prior to making a determination.

Applications under regulation 15B: anticipated failures

15D.—(1) This regulation applies where an application under regulation 15B has been made in respect of an anticipated failure to meet the conditions of regulation 8.

- (2) Where the Secretary of State is satisfied that—
 - (a) the anticipated failure to satisfy the conditions of regulation 8 arises from the circumstances specified in the application,
 - (b) those circumstances are outside the control of the CDFI and, where applicable, any person connected with it, and
 - (c) the measures specified in the application that have been taken or that will be taken to prevent failure or to minimise the extent of failure are reasonable in all the circumstances,

he must, subject to paragraphs (4) and (5), decide that where such measures as are specified in the application are taken by the CDFI but the CDFI thereafter fails to meet the conditions of regulation 8 as a result of the circumstances specified in the application the accreditation shall not be withdrawn after the end of that year if failure occurs as a result of those circumstances.

(3) The Secretary of State must notify the CDFI of his decision made under paragraph (2).

(4) Where the Secretary of State does not have sufficient information to make a decision under this regulation he may request the CDFI to provide more information prior to making a decision.

(5) Where the Secretary of State decides under paragraph (2) that accreditation will not be withdrawn after the end of the year to which the application relates and the CDFI—

- (a) becomes aware that the measures specified in the application will not prevent the failure or minimise the extent of failure, or
- (b) becomes unable to implement such measures,

the CDFI may submit a further application under regulation 15B in respect of the same circumstances specifying further measures that will be taken to avoid or minimise the extent of failure.

(6) Where the Secretary of State notifies the CDFI under paragraph (3) that accreditation may be withdrawn the CDFI may submit a further application under regulation 15B.

Regulations 15A to 15D: supplementary

15E.—(1) Where a CDFI has submitted an application under regulation 15B but the Secretary of State does not make a decision under regulation 15D before the end of the year in question and the CDFI thereafter fails to satisfy the conditions of regulation 8 for that year it must submit an application under regulation 15A.

(2) Where the Secretary of State has received one or more applications under regulation 15B upon which no decision has yet been made, the Secretary of State must not make a decision that accreditation will not be withdrawn until he is satisfied that it should not be withdrawn in respect of each and every application.

(3) A determination under regulation 15C not to withdraw accreditation and a decision under regulation 15D that accreditation may not be withdrawn shall not prevent the Secretary of State from withdrawing accreditation where he has grounds for doing so as a result of other circumstances which are not the subject of an application under regulation 15A or 15B.

(4) For the purposes of regulations 15A and 15B “suitably invested” means invested in relevant investments in qualifying enterprises.

(5) For the purposes of regulations 15C and 15D—

- (a) a person who acts on behalf of a CDFI to manage its investment is treated as a CDFI, and
- (b) section 993 of the Income Tax Act 2007 shall apply for determining whether a person is connected with a CDFI.”

Amendment of regulation 10

9. In regulation 10 (meaning of “qualifying enterprise”), for paragraph (2) substitute—

“(2) For the purpose of paragraph (1)(a), a “small or medium-sized enterprise” means a micro, small or medium-sized enterprise as defined in Commission Recommendation 2003/361/EC of 6th May 2003^(a) (“the Recommendation”, references to the Annex being references to the Annex to the Recommendation), subject to the qualification set out in paragraph (3).

(a) OJ L124, 20.5.2003, p.36.

(3) If a company (“C”) is a micro, small or medium-sized enterprise, disregarding any partner enterprise or linked enterprise, and, taken alone, it would satisfy the employee limit and a least one of the financial limits, but—

- (a) the number of employees, annual turnover or annual balance sheet total (as the case may be) of a partner enterprise or linked enterprise to which it is related has been taken into account in determining whether the employee limit or the financial limits have been exceeded, and
- (b) a partner enterprise or linked enterprise to which C is related would, disregarding the number of employees, and the annual turnover and balance sheet totals of C, exceed the employee limit or both of the financial limits,

Article 4(2) of the Annex shall be disregarded in determining whether C is a small or medium-sized enterprise for an accounting period in which it exceeds the employee or financial limits.

(4) For the purpose of paragraph (3), references to the employee limit and the financial limits are to the limits respectively on the number of employees, and the annual turnover and balance sheet totals, contained in Article 2(1) of the Annex.”

Amendment of Schedule 1

10. In Schedule 1 (investments which are not relevant investments), after paragraph 3 insert—

“**3A.** Any equity investment in a profit-distributing enterprise.”

Frank Roy

Dave Watts

18th February 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedules 16 and 17 to the Finance Act 2002 (c. 23) and sections 340 and 341 of the Income Tax Act 2007 (c. 3: “ITA”) provide for tax relief for investments made by individuals and companies in bodies which are accredited as community development finance institutions (“CDFIs”). The relief is called community investment tax relief. CDFIs are bodies which invest in enterprises for disadvantaged communities.

These Regulations amend the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003 (S.I. 2003/96), which make provision for the accreditation of CDFIs. The amendments are introduced by regulation 2.

Regulation 3 amends regulation 2 (interpretation) in order to reflect recent restructuring within the newly formed Department for Business, Enterprise and Regulatory Reform (which takes over the functions of the Department of Trade and Industry and which shares the administration of community investment tax relief with Her Majesty’s Revenue and Customs) and to take into account the enactment of ITA.

Regulation 4 amends regulation 3 (criteria for accreditation) so as to take into account the enactment of ITA.

Regulation 5 makes a number of amendments in consequence of the amendments to regulation 2.

Regulation 6 amends regulation 8 (general CDFI investment terms). The amendment removes the existing requirement that at all times after the third anniversary of accreditation the amount invested by the CDFI in relevant investments in qualifying enterprises must be at least 75% of the investment fund. Instead, for each year following that anniversary, the amount so invested must be maintained at an average percentage of at least 75% of the investment fund to be calculated either in respect of each day of that year or on four selected dates within that year.

Regulation 7 amends regulation 15 (withdrawal of accreditation) so as to reflect the insertion by regulation 8 of new regulations 15A to 15E. The new regulations provide that where the conditions of regulation 8 are not satisfied or are likely not to be satisfied, the CDFI may apply for a determination that accreditation is not to be withdrawn.

Regulation 9 amends regulation 10 (meaning of “qualifying enterprise”) so as to set out the definition of “small or medium enterprise” for the purposes of that regulation.

Regulation 10 amends Schedule 1 (investments which are not relevant investments) so as to ensure that equity investments in a profit-making enterprise are not relevant investments.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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