
STATUTORY INSTRUMENTS

1992 No. 10

INCOME TAX

**The Income Tax (Building Societies)
(Audit Powers) Regulations 1992**

<i>Made</i>	- - - -	<i>8th January 1992</i>
<i>Laid before the House of Commons</i>	- - - -	<i>9th January 1992</i>
<i>Coming into force</i>	- -	<i>30th January 1992</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by sections 477A(1) and (2) and 482A of the Income and Corporation Taxes Act 1988⁽¹⁾, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Building Societies) (Audit Powers) Regulations 1992 and shall come into force on 30th January 1992.

Interpretation

2. In these Regulations unless the context otherwise requires—

“agreement” means agreement in writing and “agree” shall be construed accordingly;

“audit report” means a report made by an auditor in respect of an audit carried out pursuant to these Regulations;

“auditor” means an individual or firm whose name appears in the register of auditors kept pursuant to the Companies Act 1989 (Register of Auditors and Information about Audit Firms) Regulations 1991⁽²⁾;

“the Board” means the Commissioners of Inland Revenue;

“the Building Societies Regulations” means the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990⁽³⁾;

(1) 1988 c. 1; section 477A was inserted by paragraph 4 of Schedule 5 to the Finance Act 1990 (c. 29) and amended by section 52(2) and (3) of, and paragraph 2 of Schedule 11 to, the Finance Act 1991 (c. 31). Section 482A was inserted by section 75 of the Finance Act 1991.

(2) S.I. 1991/1566.

(3) S.I. 1990/2231, amended by S.I. 1992/11.

“deposit-taker” has the meaning given by section 481(2) of the Income and Corporation Taxes Act 1988(4);

“dividend” means any distribution in respect of an investment, including any qualifying distribution as defined for the purposes of the Corporation Tax Acts and whether described as a dividend or otherwise;

“excluded investment” has the meaning given by regulation 5;

“gross payment” means a payment made without deduction of tax by a building society of a dividend or interest in respect of an investment which at the time of payment falls within any of the descriptions in sub-paragraphs (a) to (l), (o) and (p) of regulation 4(1) of the Building Societies Regulations(5);

“investment” includes any shareholding, deposit or loan;

“notice” means notice in writing;

“payment” (except in relation to a payment to the Board) includes “credit” and “paid” shall be construed accordingly;

“Special Reports booklet” means the booklet entitled “Special Reports of Accountants” published by the Auditing Practices Committee of the Consultative Committee of Accountancy Bodies in 1984.

Information to be provided to the Board — gross payments

3.—(1) This regulation applies to gross payments made by building societies in respect of investments which are not excluded investments.

(2) Where this regulation applies, the Board may by notice require a building society to furnish them, within such time (not being less than 14 days) as may be provided by the notice, such information (including copies of any relevant books, documents or other records) as they may reasonably require for the purposes of determining whether payments made by that building society were properly made without deduction of tax.

Inspection of records

4. A building society shall, whenever required to do so, make available for inspection by an officer of the Board authorised for that purpose, at such time as that officer may reasonably require, all such copies of books, documents or other records in its possession or under its control as may be required by the Board under regulation 3.

Excluded investment

5. An investment held with a building society is an excluded investment if—

- (a) having regard to regulation 11(1) to (4) of the Building Societies Regulations(6), it falls within any of the descriptions in regulation 4(1)(a), (b) and (c) of those Regulations, and
- (b) the building society is approved by the Board for the purposes of these Regulations under regulation 6.

Approval of building society

6.—(1) A building society shall be approved by the Board for the purposes of these Regulations if the conditions specified in paragraphs (2) and (3) are satisfied with respect to that building society.

(4) Section 481(2) was amended by paragraph 8 of Schedule 5, and Part IV of Schedule 19, to the Finance Act 1990.

(5) Regulation 4 was amended by regulation 5 of S.I. 1992/11.

(6) Regulation 11 was amended by regulation 9 of S.I. 1992/11.

(2) The condition specified in this paragraph is that the Board are satisfied that the building society will observe such procedures as will enable it fully to comply with its obligations under regulation 11(4) of the Building Societies Regulations in relation to investments of the kind referred to in regulation 5(a) of these Regulations.

(3) The condition specified in this paragraph is that the building society reaches agreement with the Board, on the terms and conditions specified in regulation 7, that it will instruct an auditor—

- (a) to carry out the audit specified in that regulation, and
- (b) to make a report in respect of that audit and furnish the report to the Board.

(4) The Board may, if a building society so requests, restrict their approval of that building society under paragraph (1) to either—

- (a) that part of its business which is carried on through its branches, or
- (b) the remainder of its business.

(5) If the Board determine to refuse approval of the building society under this regulation, they shall give the building society notice of their determination specifying the reason for their refusal to approve it.

Conditions of audit agreement referred to in regulation 6(3)

7.—(1) Paragraph (2) of this regulation specifies the audit, and paragraph (3) the terms and conditions, referred to in regulation 6(3).

(2) The audit specified by this paragraph is an audit consisting of—

- (a) (i) a review by the auditor of the procedures put in place by the building society for the purpose of enabling the building society to comply with its obligations under regulation 11(4) of the Building Societies Regulations in relation to investments of the kind referred to in regulation 5(a); and
- (ii) a check by the auditor of a sample of such investments in order to determine whether the procedures referred to in paragraph (i) have been observed in practice;
- (b) a check by the auditor of a sample of investments of the kind referred to in regulation 5(a) in order to determine whether—
 - (i) the building society is in possession of valid declarations made pursuant to regulation 11(1) and (2) of the Building Societies Regulations and, where required by that regulation, certificates in support of those declarations; and
 - (ii) there is information in the building society's possession which can reasonably be taken to indicate that the provisions of regulation 4(1)(a), (b) or (c) of the Building Societies Regulations are not or might not be applicable with respect to one or more of such investments.

(3) The terms and conditions specified by this paragraph are that—

- (a) the Board are satisfied that the auditor is experienced in carrying out audits of a building society's or a deposit-taker's business;
- (b) the auditor is instructed at the building society's expense;
- (c) the Board, the building society and the auditor reach agreement in relation to—
 - (i) the aspects of the procedures followed by the building society which are to form the subject of the audit;
 - (ii) the scope of the information which is to be provided in the audit report made to the Board; and
 - (iii) the scope of the sample checks referred to in paragraph (2)(a)(ii) and (b).

- (d) the building society makes available to the auditor all such books, documents, records and other information as the auditor may reasonably require for the purpose of carrying out the audit and making the audit report;
- (e) in carrying out the audit and making the audit report, the auditor has regard to the principles set out in the Special Reports booklet and, in particular, paragraphs 24 to 42 of that booklet;
- (f) the audit is carried out periodically, and the periods to be covered by the audit shall be—
 - (i) as regards the first audit, the period commencing on such date as the Board and the building society may agree, being not earlier than 6th April 1991, and ending on a date determined by the Board;
 - (ii) as regards each subsequent audit, the period of one year following the end of the last audit period, or such longer period as the Board and the building society may agree;
- (g) each audit is carried out, and the audit report furnished to the Board, not later than 180 days after the end of the period covered by that audit;
- (h) at the same time as he furnishes the audit report to the Board, the auditor sends a copy of the report to the building society;
- (i) on receipt of the audit report, the Board may require the auditor or the building society to furnish them with such further information as they may reasonably require for the purpose of clarifying any part of the report.

Termination of approval of building society

8.—(1) A building society may, by notice to the Board, terminate the approval given by the Board in its case under regulation 6.

(2) The Board and a building society may agree that the approval given by the Board in its case under regulation 6 shall be terminated.

(3) The Board may, by notice to a building society, terminate their approval of the building society in any of the circumstances specified in paragraph (4).

(4) The circumstances specified in this paragraph are where—

- (a) an auditor has failed to furnish an audit report to the Board in respect of the building society within 180 days after the end of the period covered by the audit;
- (b) the Board consider that the building society has failed to observe the procedures referred to in regulation 7(2)(a);
- (c) the Board consider that the building society has failed within a reasonable time—
 - (i) to correct errors and omissions of the building society discovered by the auditor when carrying out an audit, or
 - (ii) to implement any recommendation made by the auditor for the purpose of remedying a failure on the part of the building society to observe the procedures referred to in regulation 7(2)(a);
- (d) the building society has failed to make available to the auditor any books, documents, records or other information referred to in regulation 7(3)(d);
- (e) the Board consider that the auditor instructed by the building society has failed to discharge his responsibilities in relation to the carrying out of any audit or the making of any audit report pursuant to these Regulations, and the building society fails to instruct another auditor;
- (f) the Board have grounds for believing, whether in consequence of an audit report or otherwise, that there has been fraudulent conduct or collusion on the part of the building society in relation to any declaration or certificate referred to in regulation 11 of the

Building Societies Regulations, or otherwise in connection with any payment of a dividend or interest in respect of any investment.

(5) Subject to paragraph (6), a termination of approval under paragraph (1), (2) or (3) shall have effect from—

- (a) the last day of the latest period in respect of which an audit report has been furnished to the Board within the time stipulated by regulation 7(3)(g); or
- (b) if the latest period in respect of which an audit report has been so furnished is a period in which the Board consider there to have been a failure on the part of the building society, or fraudulent conduct or collusion on the part of the building society, in one or more of the circumstances specified in paragraph (4)(b) to (f), the last day of the latest period in which the Board consider that none of those circumstances applies.

(6) If there is no period in which an audit report has been furnished to the Board within the time stipulated by regulation 7(3)(g) or the Board consider that there is no period in which one or more of the circumstances specified in paragraph (4)(b) to (f) does not apply, a termination of approval shall have the like effect as if the building society had not been approved under regulation 6.

Alteration of scope of approval of building society

9.—(1) The Board may, by notice to a building society, alter the scope of their approval of the building society under regulation 6 by withdrawing their approval in relation to one or more branches of the building society or an otherwise separately identifiable part of its business in the cases specified in paragraph (2).

(2) The cases specified in this paragraph are cases where the Board consider that one or more of the circumstances specified in regulation 8(4)(b) to (f) applies to the branch or branches of the building society or the part of its business referred to in paragraph (1), but not to the whole of its business or, as the case may be, the whole of that part of its business approved under regulation 6.

(3) Subject to paragraph (4), an alteration of approval under paragraph (1) shall have effect from—

- (a) the last day of the latest period in respect of which an audit report has been furnished to the Board within the time stipulated by regulation 7(3)(g); or
- (b) if the latest period in respect of which an audit report has been so furnished is a period in which the Board consider that one or more of the circumstances referred to in paragraph (2) applies to a branch of the building society or a part of its business, the last day of the latest period in which the Board consider that none of those circumstances applies.

(4) If there is no period in which an audit report has been furnished to the Board within the time stipulated by regulation 7(3)(g) or the Board consider that there is no period in which one or more of the circumstances referred to in paragraph (2) does not apply to a branch of the building society or a part of its business, an alteration of approval under paragraph (1) shall have the like effect as if, so far as concerns that part of its business from which approval is withdrawn, the building society had not been approved under regulation 6.

Appeals against Board's refusal to approve building society, or termination or alteration of approval

10.—(1) A building society to whom notice of the Board's determination to refuse approval under regulation 6(5), or of termination or alteration of approval under regulation 8(3) or 9(1), has been given, may appeal against such refusal, termination or alteration, as the case may be, by notice given to the Board within 30 days of the notice.

(2) The appeal shall be to the Special Commissioners.

(3) The like provisions as are contained in Part V of the Taxes Management Act 1970⁽⁷⁾ shall apply to an appeal under this regulation, and on such an appeal—

- (a) the jurisdiction of the Special Commissioners shall include jurisdiction to review any relevant decision taken by the Board under regulation 6, 7, 8 or 9, and
- (b) the Special Commissioners shall confirm the notice unless they are satisfied that the notice ought to be quashed.

Consequences of termination or alteration of approval of building society

11.—(1) Subject to paragraph (2), where approval is terminated under regulation 8 or altered under regulation 9—

- (a) investments of the kind referred to in regulation 5 which are held with the building society whose approval has been terminated or, as the case may be, with a branch or other part of the building society's business from which approval has been withdrawn either—
 - (i) shall cease to be excluded investments with effect from the appropriate date, or
 - (ii) where regulation 8(6) or regulation 9(4) applies, shall be treated as if they had never been excluded investments;
- (b) regulations 3 and 4 shall apply accordingly to such investments;
- (c) the audit agreement concluded between the Board and the building society pursuant to regulation 6(3) shall cease to have effect in relation to such investments, and accordingly, so far as concerns such investments, no audit shall be carried out by the auditor or audit report furnished to the Board following the termination or alteration of approval.

(2) Where following the termination or alteration of approval of a building society the conditions of regulation 6(2) and (3) are again satisfied with respect to the whole of its business, the Board shall approve the building society under regulation 6 for the purposes of these Regulations.

(3) In this regulation “the appropriate date” means—

- (a) as regards a termination of approval under regulation 8, the date determined by regulation 8(5), and
- (b) as regards an alteration of approval under regulation 9, the date determined by regulation 9(3).

Use of information

12.—(1) Subject to paragraph (2) information obtained by the Board under regulation 3 or 4—

- (a) shall not be used for the purpose of ascertaining the tax liability (if any) of any person other than—
 - (i) a person beneficially entitled to a gross payment within regulation 3 to whom the information obtained relates, and
 - (ii) the building society; and
- (b) shall otherwise be used only for the purposes of these Regulations.

(2) Paragraph (1) shall not be construed as preventing any disclosure of information within section 182(5) of the Finance Act 1989⁽⁸⁾.

(7) 1970 c. 9.

(8) 1989 c. 26.

8th January 1992

A. M. W. Battishill
L. J. H. Beighton
Two of the Commissioners of Inland Revenue

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 477A(1) and (2) and 482A of the Income and Corporation Taxes Act 1988 and come into force on 30th January 1992. They provide firstly for the furnishing of information to, and inspection of documents by, the Board in connection with payments of dividends and interest made by building societies without deduction of tax (“gross payments”) pursuant to regulation 4 of the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990 (S.I.1990/2231) (“the Building Societies Regulations”), other than payments falling within regulation 4(1)(n) of those Regulations.

Secondly, the Regulations provide that the Board’s powers referred to above to require information to be furnished and documents to be inspected shall not apply to gross payments in respect of investments of persons not ordinarily resident in the United Kingdom if the building society is approved by the Board.

Thirdly, the Regulations provide for the conditions which are required to be satisfied in order for a building society to be approved by the Board. Essentially the conditions are that the Board are satisfied that the building society will observe certain procedures for monitoring whether payments in respect of investments of the kind referred to in the preceding paragraph may continue to be made without deduction of tax, and the building society undertakes to instruct an auditor to carry out a periodical audit in respect of those procedures and investments and to furnish a report on each audit to the Board.

Fourthly, the Regulations provide for the circumstances in which approval of a building society may be terminated or the scope of approval altered, for appeals against refusal, termination or alteration of approval, and for the consequences of such termination or alteration.

Regulation 1 provides for citation and commencement.

Regulation 2 contains definitions.

Regulation 3 provides for information, including copies of documents, to be furnished to the Board in connection with gross payments of dividends and interest made by building societies.

Regulation 4 provides for inspection by the Board of copies of documents which may be required to be furnished to the Board under regulation 3.

Regulation 5 provides that an “excluded investment” is an investment of a person not ordinarily resident in the United Kingdom in respect of which payments of dividends or interest may properly be made gross under the Building Societies Regulations and which is held with a building society approved by the Board.

Regulation 6 specifies conditions which are required to be satisfied in order for a building society to be approved by the Board, including an agreement by the building society to instruct an auditor to carry out an audit in respect of the excluded investments and to furnish a report in respect of that audit to the Board.

Regulation 7 specifies the nature of the audit, and the terms and conditions of the audit agreement, referred to in regulation 6.

Regulation 8 specifies the circumstances in which approval of a building society may be terminated by the Board or by the building society, and the date on which a termination takes effect.

Regulation 9 provides that the Board may alter the scope of their approval of a building society by withdrawing approval in certain circumstances from a branch of the building society or an otherwise

identifiable part of the building society's business, and provides for the date on which such alteration of approval takes effect.

Regulation 10 provides for a right of appeal against the Board's refusal, termination or alteration of approval.

Regulation 11 specifies the consequences of termination or restriction of approval.

Regulation 12 specifies the purposes for which information obtained by the Board under regulation 3 or 4 may be used.