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STATUTORY INSTRUMENTS

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**1992 No. 12**

**INCOME TAX**

**The Income Tax (Deposit-takers)  
(Audit Powers) Regulations 1992**

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| <i>Made</i>                                 | - - - - | <i>8th January 1992</i>  |
| <i>Laid before the House of<br/>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 482(11)(aa) and (12) 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 (Deposit-takers) (Audit Powers) Regulations 1992 and shall come into force on 30th January 1992.

**Interpretation**

2. In these Regulations unless the context otherwise requires—

“the Act” means the Income and Corporation Taxes Act 1988;

“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;

“deposit”, “deposit-taker” and “relevant deposit” have the meanings given by section 481 of the Act(3);

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(1) 1988 c. 1; section 482(11)(aa) was inserted by paragraph 9(4) of Schedule 5 to the Finance Act 1990 (c. 29) and section 482A was inserted by section 75 of the Finance Act 1991 (c. 31).

(2) S.I. 1991/1566.

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

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

“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 payments of interest made without deduction of tax by deposit-takers in respect of deposits which are neither relevant deposits nor excluded deposits.

(2) Where this regulation applies, the Board may by notice require a deposit-taker 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, having regard to sections 481 and 482(4) of the Act, payments of interest were properly made without deduction of tax.

### **Inspection of records**

**4.** A deposit-taker 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 his possession or under his control as may be required by the Board under regulation 3.

### **Excluded deposit**

**5.** A deposit held by a deposit-taker is an excluded deposit if—

- (a) it is not a relevant deposit by reason of a declaration made to the deposit-taker pursuant to section 481(5) (k) of the Act which—
  - (i) is in the form and contains the information and, where applicable, the undertaking required by section 482(2) of the Act, and
  - (ii) is supported by a certificate where required by the Income Tax (Deposit-takers) (Non-residents) Regulations 1992(5), and
- (b) the deposit-taker is approved by the Board for the purposes of these Regulations under regulation 6.

### **Approval of deposit-taker**

**6.—**(1) A deposit-taker 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 deposit-taker.

(2) The condition specified in this paragraph is that the Board are satisfied that the deposit-taker will observe such procedures as will enable him fully to comply with his obligations under section 482(5) of the Act in relation to deposits of the kind referred to in regulation 5(a) of these Regulations.

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

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(4) Section 482 was amended by paragraph 9 of Schedule 5 and Part IV of Schedule 19 to the Finance Act 1990.

(5) [S.I. 1992/14](#).

- (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 deposit-taker so requests, restrict their approval of that deposit-taker under paragraph (1) to either—
- (a) that part of his business which is carried on through branches, or
  - (b) the remainder of his business.
- (5) If the Board determine to refuse approval of the deposit-taker under this regulation, they shall give him notice of their determination specifying the reason for their refusal to approve him.

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

7.—(1) Paragraph (2) 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 deposit-taker for the purpose of enabling him to comply with his obligations under section 482(5) of the Act in relation to deposits of the kind referred to in regulation 5(a), and
  - (ii) a check by the auditor of a sample of such deposits 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 deposits of the kind referred to in regulation 5(a) in order to determine whether—
- (i) the deposit-taker is in possession of valid declarations and, where required, certificates in support of those declarations, and
  - (ii) there is information in the deposit-taker's possession which can reasonably be taken to indicate that one or more of such deposits is or may be a relevant deposit.
- (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 deposit-taker's business;
  - (b) the auditor is instructed at the deposit-taker's expense;
  - (c) the Board, the deposit-taker and the auditor reach agreement in relation to—
    - (i) the aspects of the procedures followed by the deposit-taker 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 deposit-taker 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 deposit-taker 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 deposit-taker 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 deposit-taker;
- (i) on receipt of the audit report, the Board may require the auditor or the deposit-taker 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 deposit-taker**

**8.—(1)** A deposit-taker may, by notice to the Board, terminate the approval given by the Board in his case under regulation 6.

(2) The Board and a deposit-taker may agree that the approval given by the Board in his case under regulation 6 shall be terminated.

(3) The Board may, by notice to a deposit-taker, terminate their approval of the deposit-taker 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 deposit-taker within 180 days after the end of the period covered by the audit;
- (b) the Board consider that the deposit-taker has failed to observe the procedures referred to in regulation 7(2) (a);
- (c) the Board consider that the deposit-taker has failed within a reasonable time—
  - (i) to correct errors and omissions of the deposit-taker 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 deposit-taker to observe the procedures referred to in regulation 7(2) (a);
- (d) the deposit-taker 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 deposit-taker 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 deposit-taker 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 deposit-taker in relation to any declaration or certificate referred to in regulation 5(a), or otherwise in connection with any payment of interest in respect of any deposit.

(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 deposit-taker, or fraudulent conduct or collusion on the part of the deposit-taker, 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 referred to in paragraph (5) (b) does not apply, a termination of approval shall have the like effect as if the deposit-taker had not been approved under regulation 6.

#### **Alteration of scope of approval of deposit-taker**

9.—(1) The Board may, by notice to the deposit-taker, alter the scope of their approval of the deposit-taker under regulation 6 by withdrawing their approval in relation to one or more branches of the deposit-taker or an otherwise separately identifiable part of his 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 deposit-taker or the part of his business referred to in paragraph (1), but not to the whole of his business or, as the case may be, the whole of that part of his 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 deposit-taker or a part of his 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 deposit-taker or a part of his business, an alteration of approval under paragraph (1) shall have the like effect as if, so far as concerns that part of his business from which approval is withdrawn, the deposit-taker had not been approved under regulation 6.

#### **Appeals against Board's refusal to approve deposit-taker, or termination or alteration of approval**

10.—(1) A deposit-taker 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(6) 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 deposit-taker**

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

- (a) deposits of the kind referred to in regulation 5(a) which are held by the deposit-taker whose approval has been terminated or, as the case may be, by a branch or other part of the deposit-taker's business from which approval has been withdrawn either—
  - (i) shall cease to be excluded deposits 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 deposits;
- (b) regulations 3 and 4 shall apply accordingly to such deposits;
- (c) the audit agreement concluded between the Board and the deposit-taker pursuant to regulation 6(3) shall cease to have effect in relation to such deposits, and accordingly, so far as concerns such deposits, 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 deposit-taker the conditions of regulation 6(2) and (3) are again satisfied with respect to the whole of his business, the Board shall approve the deposit-taker 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 payment of interest within regulation 3 to whom the information obtained relates, and
  - (ii) the deposit-taker; 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(7).

8th January 1992

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under sections 482(11) and 482A of the Income and Corporation Taxes Act 1988 (“the 1988 Act”) 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 interest made by deposit-takers without deduction of tax in respect of deposits which are not relevant deposits by reason of section 481(5) of the 1988 Act.

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 a payment of interest made in respect of a deposit which is not a relevant deposit by reason of a declaration made to a deposit-taker under section 481(5) (k) of the 1988 Act and which is held by a deposit-taker who is approved by the Board. A declaration under section 481(5) (k) of the 1988 Act is to the effect that the person beneficially entitled to the interest in respect of the deposit is not ordinarily resident in the United Kingdom.

Thirdly, the Regulations provide for the conditions which are required to be satisfied in order for a deposit-taker to be approved by the Board. Essentially the conditions are that the Board are satisfied that the deposit-taker will observe certain procedures for monitoring whether deposits of the kind referred to in the preceding paragraph continue not to be relevant deposits, and the deposit-taker undertakes to instruct an auditor to carry out a periodical audit in respect of those procedures and deposits and to furnish a report on each audit to the Board.

Fourthly, the Regulations provide for the circumstances in which approval of a deposit-taker 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 payments of interest made by deposit-takers without deduction of tax in respect of deposits which are not relevant deposits and are not excluded deposits within the meaning given by regulation 5.

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 deposit” is a deposit which is not a relevant deposit by reason of a declaration made pursuant to section 481(5)(k) of the 1988 Act (supported by a certificate where required) and which is held by a deposit-taker approved by the Board.

Regulation 6 specifies conditions which are required to be satisfied in order for a deposit-taker to be approved by the Board, including an agreement by the deposit-taker to instruct an auditor to carry out an audit in respect of the excluded deposits 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 deposit-taker may be terminated by the Board or by the deposit-taker, and the date on which a termination takes effect.

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

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identifiable part of the deposit-taker'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.