

**2002 No. 2661**

**INCOME TAX**

**The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002**

*Made* - - - - - 22nd October 2002

*Laid before the House of Commons* 23rd October 2002

*Coming into force* - - 13th November 2002

The Treasury, in exercise of the powers conferred on them by section 842AA(5AD) of the Income and Corporation Taxes Act 1988(a) and paragraph 11B of Schedule 28B to that Act(b), hereby make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 and shall come into force on 13th November 2002.

(2) These Regulations have effect in relation to exchanges of shares or securities occurring on or after 21st March 2000.

**Interpretation**

2.—(1) In these Regulations unless the context otherwise requires—

“earn-out right” has the meaning in section 138A(1)(c) of the 1992 Act (references to “debentures” being read as references to “securities” as defined below);

the “issue” of any shares or securities has the meaning in section 135(d) of the 1992 Act, except for a security consisting in a liability in respect of an unsecured loan where it has effect as a reference to the making of the loan;

“market value” shall be construed in accordance with sections 272(e) and 273 of the 1992 Act;

“a monetary right” means a right under an agreement to receive a monetary amount at a future time in respect of shares or securities, whether or not the amount is ascertainable at the date of the agreement;

“original shares or securities” has the meaning in paragraph 11B(2) of Schedule 28B;

“recognised stock exchange” has the meaning given by section 841(f);

“Schedule 28B” means Schedule 28B to the Taxes Act;

- 
- (a) 1988 c. 1. Section 842AA was inserted by section 70(1) of the Finance Act 1995 (c. 4) and amended by paragraph 7(1) and (2)(c) of Schedule 38 to the Finance Act 1996 (c. 8), section 75(1) and (2) of the Finance Act 1997 (c. 16), section 73(1)(a) of the Finance Act 1998 (c. 36), section 69(4) of the Finance Act 1999 (c. 16) and paragraph 8(2) of Schedule 18 to the Finance Act 2000 (c. 17).
- (b) Schedule 28B was inserted by section 70(2) of, and Schedule 14 to, the Finance Act 1995, and paragraph 11B was inserted by paragraph 8(1) of Schedule 18 to the Finance Act 2000.
- (c) Section 138A was inserted by section 89 of the Finance Act 1997.
- (d) Section 135 was substituted by paragraph 1 of Schedule 9 to the Finance Act 2002 (c. 23).
- (e) Section 272 was amended by paragraph 12 of Schedule 38 to the Finance Act 1996.
- (f) Section 841 was amended by paragraph 4 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8).

- “securities” has the meaning given by section 842AA(12);
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992(a);
- “the Taxes Act” means the Income and Corporation Taxes Act 1988;
- “venture capital trust” has the meaning given by section 842AA(1).

(2) References in these Regulations (except regulation 5(1)(a), (b) and (d)) to an exchange of shares or securities shall be construed in accordance with paragraph 11B(2) of Schedule 28B, and “exchanged” has a corresponding meaning.

(3) For the purposes of these Regulations, old shares and new shares are matching shares in relation to each other if the old shares are the shares for which the new shares are exchanged under the arrangements, and the same provision shall apply, with any necessary modifications, as between old securities and new securities, and old securities and new shares.

(4) References in these Regulations to a section, without more, are to that section of the Taxes Act.

### **Scope of Regulations**

3. These Regulations apply to any exchange of shares or securities held by a venture capital trust—

- (a) which falls within the terms of paragraph 11B(1)(a) to (c) of Schedule 28B,
- (b) which falls within one of the cases described in regulations 4 to 6, and
- (c) where the trust company receives, in respect of the old shares or old securities, new shares or new securities, with or without other consideration.

### **Exchange of shares or securities for those in the same company**

4.—(1) The case described in this regulation is an exchange of shares or securities where—

- (a) persons are, whether for payment or not, issued shares in or securities of a company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in or securities of the company or of any class of shares in or securities of the company,
- (b) the person in question is a venture capital trust,
- (c) the new shares are issued in respect of old shares or old securities, and the new securities are issued solely in respect of old securities,
- (d) immediately after the exchange, the old shares and old securities are cancelled or otherwise extinguished, and
- (e) the exchange is not an exchange of convertibles for shares to which paragraph 10D of Schedule 28B(b) applies.

(2) In paragraph (1) and regulation 7—

- (a) expressions have the same meanings as in section 126(2) of the 1992 Act;
- (b) the shares or securities issued to the trust company are referred to as the “new shares” and the “new securities” respectively, and the trust company’s former holding mentioned in paragraph (1)(a) is referred to, separately and as the case may be, as the “old shares” and the “old securities” respectively.

### **Exchange of shares or securities for those in another company**

5.—(1) The case described in this regulation is where—

- (a) a company (“company B”) issues shares or securities to a person in exchange for the shares in or securities of another company (“company A”),
- (b) either—
  - (i) in consequence of the exchange, company B will hold more than 50% of the ordinary share capital of company A, or
  - (ii) company B issues the shares or securities in exchange for shares in or securities of company A as the result of a general offer made to members of company A or

---

(a) 1992 c. 4.

(b) Paragraph 10D was inserted by section 69 of the Finance Act 1999.

- any class of them (with or without exceptions for persons connected with company B), and made in the first instance on a condition such that if it were satisfied company B would have control of company A,
- (c) the person in question is a venture capital trust,
  - (d) the new shares are issued in exchange for old shares or old securities, and the new securities are issued solely in exchange for old securities, and
  - (e) the arrangements under which the exchange takes place are not arrangements to which paragraph 10C of Schedule 28B(a) (acquisitions for restructuring purpose) applies.
- (2) In paragraph (1)(a), (b) and (d) and regulation 8—
- (a) expressions (other than “securities”) have the same meanings as in section 135 of the 1992 Act(b);
  - (b) the shares in or securities of company B issued to the trust company are referred to as the “new shares” and the “new securities” respectively, and the shares in or securities of company A held by the trust company and mentioned in paragraph (1)(a) are referred to as the “old shares” and the “old securities” respectively.

### **Scheme of reconstruction involving issue of shares or securities**

- 6.—(1) The case described in this regulation is where—
- (a) an arrangement between a company (“company A”) and—
    - (i) the persons holding shares in or securities of the company, or
    - (ii) where there are different classes of shares in or securities of the company, the persons holding any class of those shares or securities,
 is entered into for the purposes of, or in connection with, a scheme of reconstruction,
  - (b) under the arrangement—
    - (i) another company (“company B”) issues shares or securities to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their original holding, but
    - (ii) the shares in or securities of company A comprised in their original holding are either retained by those persons or cancelled, redeemed or otherwise extinguished,
  - (c) the person in question is a venture capital trust, and
  - (d) the new shares are issued in respect of old shares or old securities, and the new securities are issued solely in respect of old securities.
- (2) In paragraph (1) and regulation 9—
- (a) expressions (other than “securities”) have the same meanings as in section 136(1) and (3) to (5) of the 1992 Act(c) (references to “debentures” in those provisions being read as references to “securities” as defined above);
  - (b) the shares in or securities of company B issued to the trust company are referred to as the “new shares” and the “new securities” respectively, and the trust company’s original holding in company A is referred to, separately and as the case may be, as the “old shares” and the “old securities” respectively.

### **Provision where there is an exchange of shares or securities in the same company**

- 7.—(1) In relation to any case described in regulation 4 the following paragraphs have effect.
- (2) For the purposes of subsection (2)(b) to (d) of section 842AA(d), the aggregate value of the new shares and new securities shall be determined, immediately after the exchange and until such time as those shares or securities fall to be revalued in accordance with subsection (5) of that section, in accordance with the following formula:

---

(a) Paragraph 10C was inserted by section 69 of the Finance Act 1999 (c. 16).  
 (b) Section 135 was substituted by paragraph 1 of Schedule 9 to the Finance Act 2002.  
 (c) Section 136 was substituted by paragraph 2 of Schedule 9 to the Finance Act 2002.  
 (d) Section 842AA was inserted by section 70(1) of the Finance Act 1995 (c. 4) and amended by paragraph 7 of Schedule 38 to the Finance Act 1996 (c. 8), section 75 of the Finance Act 1997 (c. 16), section 73 of the Finance Act 1998 (c. 36), section 69(4) of the Finance Act 1999 (c. 16) and paragraph 8(2) of Schedule 18 to the Finance Act 2000 (c. 17).

$$N_v = O_v \times \frac{N_{mv}}{N_{mv} + C}$$

where—

- $N_v$  is the aggregate value of the new shares and new securities to be determined in accordance with this paragraph,
- $O_v$  is the aggregate value of the old shares and old securities when last valued in accordance with subsection (5) of section 842AA (“historic values”),
- $N_{mv}$  is the aggregate market value, immediately after the exchange, of the new shares and new securities,
- $C$  is the aggregate market value, immediately after the exchange, of—
  - (i) any monetary amount,
  - (ii) any monetary right (without any discount for postponement of the right to receive the payment or any part of it), and
  - (iii) any other consideration or receipt (except the new shares and new securities),
 received by the venture capital trust as consideration for, or in respect of, the old shares or old securities, and

“immediately after the exchange” in this regulation means immediately after the events mentioned in regulation 4(1)(d).

(3) For the purposes of subsection (2)(b) to (d) of section 842AA, where the venture capital trust retains original shares or securities in the company which are not included in the exchange of old shares or old securities for new shares or new securities, such original shares or securities shall, immediately after the exchange, continue to be valued at their value, or apportioned value, as the case may be, when last valued before the exchange in accordance with subsection (5) of section 842AA, until such time as they fall to be revalued in accordance with that subsection.

(4) For the purposes of paragraph 10B(a) of Schedule 28B the like provisions as are contained in paragraphs (2) and (3) shall apply (substituting references to valuations in accordance with paragraph 10B for references to valuations in accordance with subsection (5) of section 842AA).

(5) Where the company in which the venture capital trust holds the old shares or old securities is deemed to satisfy the requirements of paragraph 2 of Schedule 28B (unquoted company) by virtue of sub-paragraph (6) of that paragraph for a period of five years after ceasing to be an unquoted company, the company shall be deemed to satisfy those requirements in relation to the new shares or new securities for the same five year period.

(6) Subject to paragraph (7), where the old shares or old securities are shares or securities in relation to which the requirements of paragraphs 6 and 8(b) of Schedule 28B were (or were deemed to be satisfied to any extent immediately before the exchange, those requirements shall be deemed, at all times after that time, to be satisfied to the same extent in relation to the matching new shares or new securities.

(7) Where there is a time following the exchange when (apart from the exchange) the requirements of paragraph 6 of Schedule 28B would have ceased under—

- (a) sub-paragraph (2) of that paragraph, or
- (b) this paragraph,

to be satisfied in relation to the old shares or old securities, those requirements shall cease at that time to be satisfied in relation to the matching new shares or new securities.

(8) For the purposes of paragraph 7 of Schedule 28B any new shares or new securities shall be deemed—

- (a) to have been issued at the time when the matching old shares or old securities were issued (or, as the case may be, were deemed to have been issued), and

---

(a) Paragraph 10B of Schedule 28B was inserted by section 72(2) of the Finance Act 1998.

(b) Paragraph 6 of Schedule 28B was amended by paragraph 4 of Schedule 9 to the Finance Act 1997 and section 73(4) of the Finance Act 1998.

- (b) by virtue of that issue, to have raised the same amount of money as was raised (or, as the case may be, was deemed to be raised) by virtue of the issue of the matching old shares or old securities.

(9) In determining whether the requirements of paragraph 9(a) of Schedule 28B are satisfied in relation to the company at any time in the period for giving effect to the exchange, the exchange shall be disregarded.

(10) The reference in paragraph (9) to the period for giving effect to the exchange is to the period which—

- (a) begins on the day when a shareholder disposes of, redeems or otherwise ceases to possess shares or securities in consequence of the exchange or, where there is more than one exchange of shares or securities involved in a company reorganisation, the exchanges, and is the first shareholder to do so, and
- (b) ends on the earlier of—
  - (i) the date when the last of the shares or securities to be issued in consequence of the exchange or exchanges is issued, and
  - (ii) the day six months after the date in sub-paragraph (a) (or such later date as the Board may by notice in writing allow).

### **Provision where exchange of shares or securities for those in another company**

8.—(1) In relation to a case described in regulation 5, the following paragraphs have effect.

(2) For the purposes of subsection (2)(b) to (d) of section 842AA, the aggregate value of the new shares and new securities issued to the venture capital trust shall be determined, immediately after the exchange and until such time as those shares or securities fall to be revalued in accordance with subsection (5) of that section, in accordance with the formula in regulation 7(2) (substituting references to the period for giving effect to the exchange for references to the events mentioned in regulation 4(1)(d)).

(3) For the purposes of paragraph 10B of Schedule 28B, the like provisions as are contained in paragraph (2) shall apply (substituting references to valuations in accordance with paragraph 10B for references to valuations in accordance with subsection (5) of section 842AA).

(4) The new shares and new securities held by the venture capital trust shall be treated, during the period for giving effect to the exchange, as meeting the requirements of Schedule 28B.

(5) The requirements of and arrangements referred to in paragraph 9 of Schedule 28B, to the extent that they are incidental to the exchange, shall be disregarded before and during that period.

(6) The new shares and new securities shall be treated at all times following the end of the period for giving effect to the exchange as having met the requirements of paragraphs 6 and 7 of Schedule 28B.

(7) Where, immediately after the end of the period for giving effect to the exchange, any of the new shares or new securities are found not to meet the requirements of paragraph 2 of Schedule 28B, or of that paragraph and any other paragraphs of that Schedule (other than paragraph 6 or 7), those shares or securities shall be treated as meeting those requirements until the end of the period specified in paragraph (8) or the disposal by the venture capital trust of those shares or securities, whichever is the earlier to occur.

(8) The period specified is the period that—

- (a) begins on the date when new shares or new securities are first issued to the venture capital trust or, if later, on the date on which all the new shares or new securities issued to the venture capital trust become fully tradeable, and
- (b) ends immediately before the second anniversary of that date.

---

(a) Paragraph 9 of Schedule 28B was amended by section 161(2) of, and Part V(22) of Schedule 41 to, the Finance Act 1996.

(9) Where, immediately after the end of the period for giving effect to the exchange, any of the new shares or new securities are found not to meet the requirements of any paragraph of Schedule 28B other than paragraph 2, 6 or 7, those shares or securities shall be treated as meeting those requirements until the end of the period —

- (a) beginning on the date when new shares or new securities are first issued to the venture capital trust (“the first issue date”), and
- (b) ending on the earlier of—
  - (i) the disposal by the venture capital trust of those shares or securities, or
  - (ii) subject to paragraph (10), in the case of shares, the day 3 years after the first issue date and, in the case of securities, the day 5 years after the first issue date.

(10) Where, in a case falling within the terms of paragraph (9)(b)(ii), before the relevant date there mentioned, the new shares or new securities become marketed to the general public (within the meaning of paragraph 2(3) of Schedule 28B), there shall be substituted for that date the second anniversary of the date on which the new shares or new securities became so marketed or, if later, the second anniversary of the date on which those shares or securities became fully tradeable.

(11) References in this regulation to the period for giving effect to the exchange are references to the period which—

- (a) begins when a shareholder or holder of securities ceases to possess shares in or securities of company A in consequence of the exchange, and is the first shareholder or holder of securities to do so, and
- (b) ends when the last of the shares in or securities of company B to be issued in consequence of the exchange (excluding shares or securities issued in pursuance of an earn-out right) is issued.

(12) Shares or securities become fully tradeable for the purposes of this regulation and regulation 9 when, in circumstances where they are offered for issue to the shareholders or holders of securities of company A, they cease to be subject to—

- (a) rules of the recognised stock exchange (or other exchange) governing the offer that prohibit or restrict the disposal of the shares or securities to any other person, and
- (b) conditions prohibiting or restricting the disposal of the shares or securities to any other person that are contained in any contract entered into by any of the following persons—
  - (i) company B, or a company disposing of the shares or securities,
  - (ii) the person or persons sponsoring, underwriting or organising the offer, and
  - (iii) the venture capital trust in question.

#### **Provision where scheme of reconstruction involving issue of shares or securities**

9.—(1) In relation to a case described in regulation 6 the following paragraphs have effect as regards—

- (a) any shares in or securities of company A that are retained by the venture capital trust after the scheme of reconstruction, whether old shares or old securities or original shares or securities, not included in the scheme of reconstruction (the “company A shares or securities”), and
- (b) the shares in or securities of company B issued to the venture capital trust as mentioned in regulation 6(2)(b) (the “new shares” and the “new securities” respectively).

(2) For the purposes of subsection (2)(b) to (d) of section 842AA(a), the aggregate value of the new shares and new securities and any company A shares or securities shall be determined, immediately after the reorganisation period and until such time as those shares or securities fall to be revalued in accordance with subsection (5) of that section, in accordance with the formula in regulation 7(2) but where—

- Nv is the aggregate value of the new shares and new securities, and of the company A shares or securities, to be determined in accordance with that paragraph,
- Nmv is the aggregate market value, immediately after the reorganisation period, of the new shares and new securities and the company A shares or securities, and

---

(a) Section 842AA was inserted by section 70(1) of the Finance Act 1995 (c. 4).

any reference to events mentioned in regulation 4(1)(d) is replaced with a reference to the reorganisation period.

(3) For the purposes of paragraph 10B of Schedule 28B(a), the like provisions as are contained in paragraph (2) shall apply (substituting references to valuations in accordance with paragraph 10B for references to valuations in accordance with subsection (5) of section 842AA).

(4) The new shares and new securities held by the venture capital trust shall be treated, during the reorganisation period, as meeting the requirements of Schedule 28B.

(5) The requirements of and arrangements referred to in paragraph 9 of Schedule 28B, to the extent that they are incidental to the scheme of reconstruction, shall be disregarded before and during the reorganisation period.

(6) The new shares or new securities held by the venture capital trust shall be treated at all times following the date on which they were issued to the trust company as having met the requirements of paragraphs 6 and 7 of Schedule 28B.

(7) Where, immediately after the date on which the new shares or new securities were issued to the venture capital trust, those shares or securities are found not to meet the requirements of paragraph 2 of that Schedule, or of that paragraph and any other paragraph of that Schedule excepting paragraph 6 or 7, those shares or securities shall be treated as meeting those requirements until the end of the period specified in paragraph (8) or the disposal by the venture capital trust of those shares or securities, whichever is the earlier to occur.

(8) The period specified is the period that—

- (a) begins on the date on which the new shares or new securities were issued to the venture capital trust or, if later, on the date on which all those shares or securities become fully tradeable, and
- (b) ends immediately before the second anniversary of that date.

(9) Where, immediately after the date on which the new shares or new securities were issued to the venture capital trust, those shares or securities are found not to meet the requirements of any paragraph of Schedule 28B other than paragraph 2, 6 or 7, those shares or securities shall be treated as meeting the requirements of that Schedule until the end of the period—

- (a) beginning on the date when new shares or new securities are first issued to the venture capital trust (“the first issue date”), and
- (b) ending on the earlier of—
  - (i) the disposal by the venture capital trust of those shares or securities, or
  - (ii) subject to paragraph (10), in the case of shares, the day 3 years after the first issue date and, in the case of securities, the day 5 years after the first issue date.

(10) Where, in a case falling within the terms of paragraph (9)(b)(ii), before the relevant date there mentioned, the new shares or new securities become marketed to the general public (within the meaning of paragraph 2(3) of Schedule 28B), there shall be substituted for that date the second anniversary of the date on which the new shares or new securities became so marketed or, if later, the second anniversary of the date on which those shares or securities became fully tradeable.

(11) In this regulation references to the reorganisation period are to the period which—

- (a) begins when a shareholder or holder of securities receives shares in or securities of company B in consequence of the scheme of reconstruction, and is the first person to do so, and
- (b) ends when the last of the shares in or securities of company B to be issued in consequence of the scheme of reconstruction (excluding shares or securities issued in pursuance of an earn-out right) is issued.

---

(a) Schedule 28B was inserted by section 70(2) of the Finance Act 1995. Paragraph 10B was inserted by section 72(2) of the Finance Act 1998 (c. 36).

## **Earn-outs**

- 10.**—(1) Where, in a case described in either regulation 5 or 6—
- (a) shares in or securities of company B (“earn-out shares or securities”) are issued to a venture capital trust in pursuance of an earn-out right, which was conferred on the trust company in exchange for old shares or old securities, and
  - (b) the requirements of regulation 5(1)(d) or 6(1)(d), as the case may be, would be satisfied if the earn-out right were treated as replaced by the earn-out shares or securities that are issued in pursuance of it—
    - (i) regulation 8(4) to (12) or regulation 9(4) to (11), as the case may be, shall apply to the earn-out shares and securities as they apply to new shares and new securities; and
    - (ii) the trust company may elect to recalculate the formula in regulation 7(2) (as applied by regulation 8(2) or (3) or 9(2) or (3)).
- (2) The recalculation shall be made—
- (a) including the earn-out shares and securities in the calculation of  $N_v$  and  $N_{mv}$  (but at their market value immediately after they were issued), and
  - (b) omitting the earn-out right from the calculation of  $C$ .
- (3) An election under this regulation in respect of any right—
- (a) must be made, by a notice given to an officer of the Board, within the period of one year from the end of the accounting period in which the relevant earn-out shares and securities are issued, and
  - (b) shall be irrevocable.

## **Apportionment**

**11.**—(1) For the purposes of these Regulations (and of subsection (2)(b) to (d) of section 842AA and paragraph 10B of Schedule 28B), where it is necessary to apportion any value between the new shares or new securities issued to the venture capital trust (or one or more classes thereof), such apportionment shall be carried out—

- (a) in the first instance, having regard to the historic values of any old shares or old securities in relation to which the new shares or new securities are matching shares or securities,
- (b) otherwise according to such method as is just and reasonable, and
- (c) in any event, with a view to securing that the requirements of section 842AA(2)(b) to (d), or paragraph 10B of Schedule 28B, as the case may be, do not cease to be met.

(2) In the application of paragraph (1) to regulation 9, references to new shares and new securities shall be construed as extending to company A shares or securities (as defined in that regulation) with any necessary modifications.

*John Heppell*  
*Jim Fitzpatrick*

22nd October 2002

Two of the Lords Commissioners of Her Majesty's Treasury



## EXPLANATORY NOTE

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

These Regulations make provision for ensuring that a venture capital trust continues to be approved by the Board of Inland Revenue for tax relief purposes in cases where shares or securities held by the venture capital trust are exchanged for other shares and securities and not for cash. The Regulations specify cases and conditions where the new holding of shares and securities arising from the exchange is treated as meeting the requirements of section 842AA(2)(b) to (d) of, and Schedule 28B (“Schedule 28B”) to, the Income and Corporation Taxes Act 1988 relating to qualifying holdings in venture capital trusts. (Schedule 28B was inserted by section 70(2) of the Finance Act 1995 (c. 4)).

Regulation 1 provides for citation and commencement, and stipulates that the Regulations have effect in relation to exchanges of shares and securities occurring on or after 21st March 2000. Authority for the retrospective effect of these Regulations is conferred by paragraph 11B(6)(c) of Schedule 28B (inserted by paragraph 8(1) of Schedule 18 to the Finance Act 2000 (c. 17)).

Regulation 2 provides definitions for the purposes of the Regulations, and regulation 3 sets out the scope of the Regulations.

Regulations 4 to 6 specify the cases involving exchanges of shares and securities to which the Regulations apply (whether an exchange of shares and securities in the same company or for those in another company).

Regulations 7 to 9 make provision for treating the requirements of section 842AA(2)(b) to (d) and Schedule 28B as met in relation to each of the cases specified in regulations 4 to 6.

Regulation 10 makes provision for earn-out rights, and shares and securities issued in pursuance of such rights.

Regulation 11 provides an apportionment rule covering new shares and new securities.





**2002 No. 2661**

**INCOME TAX**

**The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002**

£2.50

© Crown copyright 2002

Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E1591 11/2002 121591 19585

ISBN 0-11-042961-3



9 780110 429618