
STATUTORY INSTRUMENTS

2003 No. 96

INCOME TAX

**The Community Investment Tax Relief
(Accreditation of Community Development
Finance Institutions) Regulations 2003**

Made - - - - 23rd January 2003
Laid before Parliament 23rd January 2003
Coming into force - - 13th February 2003

The Treasury, in exercise of the powers conferred upon them by paragraphs 4(2)(b), (4), (5), (6) and 5 of Schedule 16 to the Finance Act 2002(1) hereby make the following Regulations:

PART 1
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Community Investment Tax Relief (Accreditation of Community Development Finance Institutions) Regulations 2003 and shall come into force on 13th February 2003.

Interpretation

2. In these Regulations—

- “accreditation” means accreditation as a community development finance institution;
- “the Board” means the Commissioners of Inland Revenue;
- “CDFI” means a body accredited as a community development finance institution under Schedule 16 to the Finance Act 2002;
- “the five year period” has the meaning given in paragraph 3 of Schedule 16 to the Finance Act 2002;
- “the Investment Director” means the Investment Director of the Small Business Service;

“investment” has the meaning given in paragraph 2 of Schedule 16 to the Finance Act 2002;
“investment fund” has the meaning given in regulation 9;
“notice” means notice in writing;
“qualifying enterprise” has the meaning given in regulation 10;
“qualifying investment” has the meaning given in paragraph 8 of Schedule 16 to the Finance Act 2002;
“relevant investment” has the meaning given in regulation 11;
“residential property” has the meaning given in Annex D of the Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State;
“retail community development finance institution” shall be construed in accordance with paragraph 4(6) and (7) of Schedule 16 to the Finance Act 2002;
“the Small Business Service” means the entity so named being an executive agency of the Department of Trade and Industry;
“tax relief certificate” has the meaning given in paragraph 12(1) of Schedule 16 to the Finance Act 2002.

PART 2

APPLICATION AND CRITERIA FOR ACCREDITATION

Criteria for accreditation

3. For the purposes of paragraph 4(2)(b) of Part 2 of Schedule 16 to the Finance Act 2002 the criteria to be satisfied for accreditation are specified in Part 2 (Application and Criteria for Accreditation) of the Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State.

Notification of accreditation or refusal

4. The Secretary of State must give notice to a body of the grant of an accreditation specifying the date of the grant of accreditation and the date on which the period of accreditation begins.

5. The Secretary of State must give notice to a body of a refusal to grant accreditation specifying the date of the refusal and the reasons for the refusal.

PART 3

TERMS AND CONDITIONS OF ACCREDITATION

6. An accreditation is subject to the terms set out in this Part.

Publication of details

7.—(1) It is a term of accreditation that the CDFI agrees to the publication of the information specified in paragraph (2) in a list which the Secretary of State may publish from time to time.

(2) The information specified for the purpose of paragraph (1) is—

(a) the name of the CDFI;

- (b) the business address of the CDFI;
 - (c) the name of an individual who may be contacted at the CDFI;
 - (d) the date the CDFI was granted accreditation; and
 - (e) an outline of the aims and business operations of the CDFI.
- (3) The CDFI must give notice to the Secretary of State of—
- (a) any change to the information specified in subparagraphs (a) to (d) of paragraph (2), and
 - (b) any material change to the information specified in subparagraph (e) of paragraph (2),
- within 30 days of the relevant change.
- (4) The CDFI is liable to a penalty of £100 payable to the Small Business Service for each failure to notify a change to the specified information in accordance with paragraph (3) unless the Investment Director is satisfied that the CDFI had a reasonable excuse for failing to notify the change.

General CDFI investment terms

8. 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; and
 - (c) on or before the third anniversary of the accreditation date and at all times thereafter, at least 75% of the amount of the investment fund is invested in relevant investments in qualifying enterprises.

Meaning of the “investment fund”

- 9.—(1) The amount of the investment fund at a given date (“the relevant date”) is the sum of—
- $$A-(B+C)$$

Here—

A is the amount of qualifying investments and investments by other CDFIs in the CDFI made on or before the relevant date and held continuously since the investment was made until the relevant date, but does not include any qualifying investments or investments by other CDFIs in the CDFI made at any time during the three months prior to the relevant date;

B is any amount payable by the CDFI at the relevant date or at any time during the three months following the relevant date to repay, redeem or buy-back the capital element of any qualifying investment;

C is the amount of any investment made by the CDFI from the investment fund which has been written-off in accordance with generally accepted accounting practice.

- (2) For the purpose of paragraph (1) where a qualifying investment is a loan which authorises the CDFI to draw down amounts of the loan over a period of time, the amount of the qualifying investment is the amount drawn down at the relevant date.

Meaning of “qualifying enterprise”

- 10.—(1) For the purposes of these Regulations an enterprise is a qualifying enterprise if—
- (a) the enterprise is a small or medium-sized enterprise;

- (b) the CDFI can demonstrate that at the time the investment in the enterprise was made the enterprise was unable to obtain finance from other sources; and
- (c) the enterprise falls within one of the following Cases.

Case 1

The enterprise is located in a geographic area identified in Annex A of the Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State.

Case 2

The enterprise is located in an area which the CDFI, by reference to Government-recognised measures of disadvantage relating to—

- (i) income;
- (ii) employment;
- (iii) health, deprivation and disability;
- (iv) education, skills and training;
- (v) geographical access to services, and
- (vi) housing,

can demonstrate has a level of disadvantage comparable to those identified in Annex A of the Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State.

Case 3

The enterprise is owned and operated by, or intended to serve, individuals recognised as being disadvantaged on account of their ethnicity, gender, age, disability or other similar defining characteristic.

(2) For the purpose of paragraph (1)(a), a “small or medium sized enterprise” shall be interpreted in accordance with paragraph 2 of Schedule 20 to the Finance Act 2000(2).

Meaning of “relevant investment”

11.—(1) Subject to paragraph (4), for the purposes of these Regulations a relevant investment is an investment made by the CDFI in an enterprise where—

- (a) it makes a loan (whether secured or unsecured) to the enterprise, or
- (b) an issue of securities of or shares in the enterprise, for which the CDFI has subscribed, is made to the CDFI.

(2) For the purposes of paragraph (1)(a)—

- (a) the CDFI does not make a loan to an enterprise where—
 - (i) the enterprise uses overdraft facilities provided by the CDFI, or
 - (ii) the CDFI subscribes for or otherwise acquires securities of the enterprise;
- (b) where the loan agreement authorises the enterprise to draw down amounts of the loan over a period of time the loan is treated as made at the time when the first amount is drawn down.

(3) For the purpose of these Regulations where a relevant investment is a loan within paragraph (2)(b) the amount of the relevant investment is the amount drawn down at a given date.

(4) The investments specified in Schedule 1 are not relevant investments.

Limits on qualifying investments

12.—(1) The CDFI must give notice to the Investment Director at least one month before entering into any arrangements or commitments with the aim of increasing qualifying investments in the CDFI to more than 125% of the amount stated in its application for accreditation (“the 125% limit).

(2) The Investment Director may approve the increase by notice to the CDFI.

(3) Where—

(a) the CDFI fails to give notice in accordance with paragraph (1), or

(b) the Investment Director does not approve the increase in accordance with paragraph (2),

the Investment Director may treat all or some of the investments made by the CDFI after the date on which the qualifying investments exceed the 125% limit as not being relevant investments for the purposes of regulation 8 up to an amount equal to the amount by which the qualifying investments exceed the 125% limit.

Reporting requirements

13.—(1) The CDFI must make an annual report to the Small Business Service—

(a) within three months of each anniversary of the date on which the CDFI was last granted accreditation, or

(b) subject to paragraph (2), on such other date coincident with the CDFI’s reporting cycle and agreed with the Small Business Service.

(2) The first annual report made by the CDFI must be made no later than 18 months after the date accreditation was granted.

(3) The annual report shall be in the form provided by the Secretary of State for this purpose.

(4) Subject to paragraph (5), the CDFI is liable to a penalty of £500 payable to the Small Business Service where the annual report is not made within three months of date on which it was due under paragraph (1).

(5) Paragraph (4) does not apply if in the opinion of the Investment Director the CDFI had reasonable excuse for failing to make an annual return.

Tax relief certificate

14.—(1) Subject to paragraph (2), the CDFI must issue a tax relief certificate to the investor or its nominee within 30 days of receiving an investment from an individual or a company.

(2) Where the investment is received before the grant of accreditation but an application for accreditation is made before 6th April 2003, the CDFI must issue a tax relief certificate within 30 days of the grant of accreditation.

PART 4

GENERAL PROVISIONS

Withdrawal of accreditation

15.—(1) The Secretary of State must withdraw the CDFI’s accreditation—

(a) with effect from the time of the failure, where the CDFI fails to satisfy the terms of regulation 8;

- (b) subject to paragraph (2), where the CDFI makes a direct or indirect investment in residential property from the investment fund; and
 - (c) subject to paragraph (3), where the CDFI fails to make an annual report within 12 months of the date on which it was due under paragraph (1) of regulation 13.
- (2) Paragraph (1)(b) does not apply where—
- (a) the CDFI can demonstrate that to the best of its knowledge and belief it had not invested in residential property, and
 - (b) the CDFI divested itself of the investment within three months of—
 - (i) the date it discovered that the investment was in residential property, or
 - (ii) the date of receipt of a notice from the Small Business Service that the investment is in residential property,whichever is the earlier.
- (3) Paragraph (1)(c) does not apply if in the opinion of the Investment Director the CDFI had reasonable excuse for failing to make an annual return.
- (4) A withdrawal of an accreditation must be given by notice by the Secretary of State specifying the date from which accreditation is withdrawn and the reasons for the withdrawal.
- (5) The CDFI must within 30 days of receiving notice under paragraph (4) of withdrawal of accreditation give notice to each of the investors to which it has issued a tax relief certificate in respect of investments made within the specified period stating that accreditation has been withdrawn and specifying the date from which accreditation is withdrawn.
- (6) For the purpose of paragraph (5) “specified period” means the five years immediately preceding the date from which accreditation is withdrawn.

Appeals against refusal to grant accreditation or withdrawal of accreditation

- 16.—**(1) An appeal to the Special Commissioners may be brought against a refusal to grant accreditation or a withdrawal of accreditation.
- (2) Notice of an appeal under this regulation must be given—
- (a) in writing,
 - (b) within 30 days of the date of the notification of the refusal under regulation 5 or the withdrawal under regulation 15(4), and
 - (c) to the Investment Director.
- (3) The notice of appeal must require the Investment Director to transmit to the Special Commissioners—
- (a) in an appeal against a refusal to grant accreditation, the application for accreditation, together with any information or particulars provided by the body to the Secretary of State in support of the application, or
 - (b) in an appeal against a withdrawal of accreditation, the notice under regulation 15(4) together with any information or particulars prepared by the Small Business Service leading to the issue of that notice.
- (4) The Special Commissioners may allow the appeal and—
- (a) in an appeal against a refusal to grant accreditation, direct that the Secretary of State accredit the body within 14 days of its decision, or
 - (b) in an appeal against a withdrawal of accreditation, direct that the withdrawal was ineffective.
- (5) The decision of the Special Commissioners shall be final.

23rd January 2003

Jim Fitzpatrick
Philip Woolas
Two of the Lords Commissioners of Her
Majesty's Treasury

SCHEDULE 1

regulation 11(4)

INVESTMENTS WHICH ARE NOT RELEVANT INVESTMENTS

General Investments

1. Any investment which benefits directly or indirectly from the security offered by a Phoenix Fund guarantee or by any similar publicly-funded underwriting or guarantee arrangement.

2.—(1) Any loan to a profit-distributing enterprise—

- (a) which is not made on terms that are equivalent to those offered by conventional sources of finance, or
- (b) as a consequence of which, and for so long as, the total amount of loans to that enterprise exceeds £100,000 (“the £100,000 limit”).

(2) Where the £100,000 limit is exceeded—

- (a) by two or more loans made on the same day, or
- (b) in any other circumstances where it is not possible to establish which loan caused the limit to be exceeded,

the Investment Director shall determine which of those loans shall not constitute relevant investments so that the amount of relevant investments in the enterprise approximates to but does not exceed the £100,000 limit.

3.—(1) Any loan to a profit-distributing enterprise which is not made at market rates or above, or, where interest is not charged on loans the fee structure is not at an equivalent level.

(2) In paragraph (1) “market rate” means the European Commission’s Hurdle Rate, which is the Reference Rate (as published at http://europa.eu.int/comm/competition/state_aid/others/reference_rates.html) plus four percentage points, or more.

4.—(1) Any loan to or equity investment in a non-profit-distributing enterprise for the purposes of undertaking community projects as a consequence of which, and for so long as, the total amount invested in that enterprise exceeds £250,000 (“the £250,000 limit”).

(2) For the purpose of paragraph (1) “community projects” means—

- (a) public sector projects,
- (b) projects which benefit charities and other non-profit distributing bodies which are engaged entirely in public functions, non-competitive and non-commercial activity, or
- (c) projects which are commercial in the sense that there is remuneration for the service provider and competition for their supply, but which are small-scale and purely local in nature.

(3) Where the £250,000 limit is exceeded—

- (a) by two or more loans or equity investments made on the same day, or
- (b) in any other circumstances where it is not possible to establish which loan or investment caused the limit to be exceeded,

the Investment Director shall determine which of those loans or investments shall not constitute relevant investments so that the amount of relevant investments in the enterprise approximates to but does not exceed the £250,000 limit.

5. Any investment in an enterprise as a consequence of which, and for so long as, the total amount invested by the CDFI in that enterprise exceeds 20% of the amount of the investment fund at—

- (a) for the first year following accreditation, the date the investment is made by the CDFI, and
- (b) thereafter, the immediately preceding anniversary of the accreditation date.

6.—(1) Any investment in an enterprise within Case 2 of regulation 10 as a consequence of which, and for so long as—

- (a) the total amount invested out of the investment fund by the CDFI in enterprises in Case 2 exceeds the amount invested in enterprises within Cases 1 and 3; or
- (b) the number of investments out of the investment fund by the CDFI in enterprises in Case 2 exceeds the number of investments in enterprises within Cases 1 and 3.

(2) For the purposes of paragraph (1) an investment in an enterprise which is within both Case 2 and Case 3 shall be treated as being only within Case 3.

Property investments, which are not relevant investments

7. Any investment which funds directly or indirectly the acquisition, construction or development of residential property.

8.—(1) Any investment which funds directly or indirectly the acquisition, construction or development of non-residential property where, on the next anniversary of the date on which the CDFI was granted accreditation, in consequence of that investment—

- (a) the total amount of investment within Case 1 below exceeds the amount of relevant investments other than those in Case 1, or
- (b) the total amount of investment within Case 2 below exceeds one half of the relevant investments within Case 1.

Case 1

- 1.1 Investment in a non profit-distributing enterprise, the main activity of which is to hold and invest in or to develop non-residential property.
- 1.2 Investment in a development trust or other social enterprise for the purpose of investment in or development of non-residential property, whether owned by the trust or by others.

Case 2

- 2.1 Investment in a profit-distributing enterprise, the main activity of which is holding land with the aim of benefiting from capital appreciation of that land, or with the aim of receiving income through the exploitation of an interest in it.
- 2.2 Investment in a profit-distributing enterprise, the main activity of which is non-residential property development.

(2) For the purposes of paragraph (1) where a investment is a loan which authorises the CDFI to draw down amounts of the loan over a period of time, the amount of the investment is the amount drawn down at the relevant date.

Investments by retail community investment finance institutions

9. Where the CDFI has been accredited as a retail community investment finance institution, any investment in another CDFI or in any other body whose objective is to provide finance for enterprises in or for disadvantaged communities where, as a consequence of that investment, and for so long as, for more than three months the total amount invested in such bodies exceeds 10% of the amount of the investment fund at—

- (a) for the first year following accreditation, the date the investment is made by the CDFI, and
- (b) thereafter, the immediately preceding anniversary of the accreditation date.

Status: This is the original version (as it was originally made).

10. Any investment by a retail community investment finance institution in a body other than a CDFI whose objective is to provide finance for enterprises in or for disadvantaged communities as a consequence of which, and for so long as, the total amount of investment in such enterprises exceeds £250,000.

Investments by wholesale CDFIs

11.—(1) Any investment made by a wholesale CDFI in an enterprise where as a consequence of which, and for so long as, the total amount of investment in that enterprise exceeds—

- (a) 20% of the amount of the investment fund at—
 - (i) for the first year following accreditation, the date the investment is made by the CDFI, and
 - (ii) thereafter, the immediately preceding anniversary of the accreditation date, or
- (b) £2,500,000

whichever is the lesser amount.

(2) Any investment made by a wholesale CDFI in a body other than a CDFI whose objective is to provide finance for enterprises in or for disadvantaged communities as a consequence of which, and for so long as, the total amount invested in that body exceeds £250,000.

(3) A “wholesale CDFI” means a CDFI which is not accredited as a retail community investment finance institution.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedules 16 and 17 of the Finance Act 2002 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 make provision for the accreditation of such bodies.

Part 1 contains regulation 1 and 2. Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Part 2 contains regulations 3 to 5 which provide for applications and criteria for accreditation.

Regulation 3 provides for criteria to be satisfied for accreditation by reference to the Community Investment Tax Relief, Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State for Trade and Industry on 15th January 2003, which can be found at www.sbs.gov.uk/finance/citr.php.

Regulations 4 and 5 provide for notification of the grant of accreditation and refusal to grant accreditation.

Part 3 contains regulations 6 to 14 and set out the terms and conditions of accreditation.

Regulation 7 provides for the publication by the Secretary of State of specified information in relation to the CDFI.

Regulation 8 sets out the amount of the investment fund to be invested by the CDFI in relevant investments in qualifying enterprises at the first, second and third anniversaries of accreditation and at all times thereafter. Regulation 9 gives the meaning of the “investment fund”. Regulation 10 gives the meaning of “qualifying enterprise”; the geographic areas referred to in Case 1 are identified in Annex A of the Material Concerning the Accreditation of Community Development Finance Institutions published by the Secretary of State for Trade and Industry. The Government recognised measures of disadvantage referred to in Case 2 are set out in Annex A of the Material Concerning the Accreditation of Community Development Finance Institutions. Regulation 11 gives the meaning of “relevant investment” and provides that the investments specified in Schedule 1 are not relevant investments.

Regulation 12 provides for instances where the qualifying investments in the CDFI will exceed 125% of the amount of qualifying investments stated in the CDFI’s application for accreditation.

Regulation 13 sets out the reporting requirements. The form of the annual report provided by the Secretary of State for this purpose can be found at Annex C of the Material Concerning the Accreditation of Community Development Finance Institutions.

Regulation 14 sets out the requirements for the CDFI to issue a tax relief certificate.

Part 4 contains regulations 15 and 16.

Regulation 15 provides for the withdrawal of accreditation.

Regulation 16 provides for appeals against refusals to grant accreditation and withdrawals of accreditation.

Schedule 1 sets out investments which are not relevant investments.