
STATUTORY INSTRUMENTS

2004 No. 2199

**The Venture Capital Trust (Winding up
and Mergers) (Tax) Regulations 2004**

Mergers of Venture Capital Trusts

9.—(1) Regulations 11 to 13 shall apply to a merger of two or more companies, each of which was a venture capital trust immediately before the merger begins to be effected, in any case where, before the transactions for effecting the merger take place, the Board have notified their approval of the merger, subject to paragraph (2).

(2) In the case of a paragraph 10(2) merger, the approval of the merger (and the application of regulations 11 to 13) shall be conditional on the successor company having VCT approval, and on the VCT approval having taken effect, at any relevant time for the purposes of those regulations (excepting regulation 13(4)(a)).

(3) The Board shall not approve the merger unless, on the application of a merging company or a successor company, the Board are satisfied that –

- (a) the merger is effected for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax;
- (b) in the case of a paragraph 10(2) merger, that the shares issued to effect the merger will be issued only at times when there are no issued shares in the successor company, other than subscriber shares, such shares as may be required to obtain a trading certificate under section 117 of the Companies Act 1985(1) and shares previously issued to effect the merger;
- (c) where there is a share for share exchange, more than 50% of the issued share capital, immediately before the transactions for effecting the merger, of—
 - (i) each of the other merging companies (in a paragraph 10(1) merger), or
 - (ii) each of the merging companies (in a paragraph 10(2) merger),(or shares representing them) will be exchanged for shares issued to effect the merger;
- (d) where any consideration other than shares in the successor company is offered to—
 - (i) all or any members of another merging company (in a paragraph 10(1) merger), or
 - (ii) all or any members of a merging company (in a paragraph 10(2) merger),in exchange for their holdings in that company, the amount or value of such consideration does not exceed 10% of the aggregate amount or value of consideration offered to the members of that company;
- (e) where there is a share for business transfer, the shares are issued in respect of and in proportion to (or as nearly as may be in proportion to) the holdings of the persons to whom they are issued in the other merging company or companies (in a paragraph 10(1) merger) or merging companies (in a paragraph 10(2) merger);

- (f) where there is a transfer of part of the business of a merging company to the successor company as mentioned in paragraph 10(1)(b)(ii) or 10(2)(b)(ii) of Schedule 33, the market value of the part not so transferred is merely incidental in comparison with the market value of the part so transferred; and
- (g) the money raised by any shares issued for new consideration (or any assets directly or indirectly derived from that money) to be used for the purpose of the successor company purchasing its own shares, or those of any of the merging companies, shall not exceed the least of A, B and C,

where:

A equals 20% of the amount of money raised by the shares issued for new consideration (or of the aggregate of those amounts if there has been more than one such share issue);

B equals 5% of the aggregate of all amounts subscribed for eligible shares issued before the merger in—

- (i) the successor company, and
- (ii) the merging companies, or other merging companies, as the case may be; and

C equals £3,000,000.