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STATUTORY INSTRUMENTS

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**2018 No. 109**

**INCOME TAX**

**The Venture Capital Trust (Exchange of Shares and Securities) (Amendment) Regulations 2018**

<i>Made</i>	- - - -	<i>30th January 2018</i>
<i>Laid before the House of Commons</i>	- - - -	<i>31st January 2018</i>
<i>Coming into force</i>	- -	<i>22nd February 2018</i>

The Treasury, in exercise of the powers conferred by section 330(1A) and (3A) of the Income Tax Act 2007(1), make the following Regulations.

**Citation and commencement**

1. These Regulations may be cited as the Venture Capital Trust (Exchange of Shares and Securities) (Amendment) Regulations 2018 and come into force on 22nd February 2018.

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

2. The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002(2) are amended as follows.

**Regulation 2 (interpretation)**

3. In regulation 2(1), at the appropriate place, insert—

““non-qualifying exchange of shares or securities” has the meaning given by regulation 12;”;

““regulation 3 exchange” means an exchange of shares or securities to which regulation 3 applies;”.

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(1) 2007 c. 3. Subsections (1A) and (3A) of section 330 were inserted by section 13 of the Finance (No. 2) Act 2017 (c. 32), which section also made further consequential amendments to section 330.  
(2) S.I. 2002/2661.

### **Regulation 3 (scope of Regulations)**

4. In regulation 3, for “These Regulations” substitute “Regulations 4 to 11” and amend the heading to “Scope of regulations 4 to 11”.

### **Regulation 11 (apportionment)**

5. In regulation 11(1), for “these Regulations” substitute “regulations 7 to 10”.

### **Non-qualifying exchange of shares or securities**

6. After regulation 11 (apportionment) insert—

#### **“Non-qualifying exchange of shares or securities**

**12.** An exchange of shares or securities held by a venture capital trust is a non-qualifying exchange where—

- (a) the exchange is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax;
- (b) the trust company receives, in respect of the old shares or old securities, new shares or new securities, with or without other consideration; and
- (c) neither the old nor the new shares or securities meet the requirements of Chapter 4 of Part 6 of the Income Tax Act 2007.

#### **Non-qualifying exchange of shares or securities for those in the same company**

**13.—**(1) Paragraphs (2) and (3) apply if the non-qualifying exchange of shares or securities would have fallen within the case described in regulation 4 had the exchange been a regulation 3 exchange.

(2) The following paragraphs of regulation 7 are to be treated as applying to the non-qualifying exchange—

- (a) paragraphs (2) to (4); and
- (b) paragraphs (9) and (10).

(3) After paragraph (10) of regulation 7, the following paragraph is to be treated as added and as applying to the non-qualifying exchange—

“(11) Any new shares or securities are to be treated for the purposes of satisfying the conditions referred to in section 274(1) of the Income Tax Act 2007 as if they were the old shares or old securities for which they were exchanged but only for the period of 12 months, commencing with the earlier of the date or day provided by paragraph (10)(b).”.

(4) For the purposes of paragraph (1), reference in regulation 4 to regulation 7 is to be treated as a reference only to the paragraphs of regulation 7 applied by paragraph (2).

#### **Non-qualifying exchange of shares or securities for those in another company**

**14.—**(1) Paragraphs (2) to (5) apply if the non-qualifying exchange of shares or securities would have fallen within the case described in regulation 5 had the exchange been a regulation 3 exchange.

(2) Subject to paragraphs (3) to (5), paragraphs (2), (3), (5) and (9) to (12) of regulation 8 are to be treated as applying to the non-qualifying exchange.

- (3) Paragraph (9) of regulation 8 is to be treated as modified as follows—
  - (a) “other than paragraph 2, 6 or 7” is omitted;
  - (b) “meeting those requirements” is substituted by “if they were investments falling with section 274(3A) of the Income Tax Act 2007”; and
  - (c) in sub-paragraph (b)(ii)—
    - (i) for “3 years” is substituted “12 months”; and
    - (ii) for “5 years” is substituted “18 months”.
- (4) Paragraph (10) of regulation 8 is to be treated as modified as follows—
  - (a) after “there mentioned” there is added “as modified by regulation 14(3)”; and
  - (b) in each case, for “second anniversary of” is substituted “date which is 3 months after”.
- (5) In paragraph (12) of regulation 8, after “this regulation and regulation 9” there is to be treated as added “,as applied and modified by virtue of regulation 14 or 15, as the case may be,”.
- (6) For the purposes of paragraph (1), reference in regulation 5 to regulation 8 is to be treated as a reference only to the paragraphs of regulation 8 applied by paragraph (2), subject to the modifications in paragraphs (3) to (5).

**Non-qualifying exchange of shares or securities where there is a scheme of reconstruction**

- 15.**—(1) Paragraphs (2) to (5) apply if the non-qualifying exchange of shares or securities would have fallen within the case described in regulation 6 had the exchange been a regulation 3 exchange.
- (2) Subject to paragraphs (3) to (5), paragraphs (1) to (3), (5) and (9) to (11) of regulation 9 are to be treated as applying to the non-qualifying exchange.
  - (3) In paragraph (1) of regulation 9, for “a case described in regulation 6” there is to be treated as substituted “a non-qualifying exchange of shares or securities described in regulation 15(1)”.
  - (4) Paragraph (9) of regulation 9 is to be treated as modified as follows—
    - (a) “other than paragraph 2, 6 or 7” is omitted;
    - (b) “meeting those requirements” is substituted by “if they were investments falling with section 274(3A) of the Income Tax Act 2007”; and
    - (c) in sub-paragraph (b)(ii)—
      - (i) for “3 years” is substituted “12 months”; and
      - (ii) for “5 years” is substituted “18 months”.
  - (5) Paragraph (10) of regulation 9 is to be treated as modified as follows—
    - (a) after “there mentioned” there is added “as modified by regulation 15(3)”; and
    - (b) in each case, for “second anniversary of” is substituted “date which is 3 months after”.
  - (6) For the purposes of paragraph (1), reference in regulation 6 to regulation 9 is to be treated as a reference only to the paragraphs of regulation 9 as applied by paragraph (2), subject to the modifications in paragraphs (3) to (5).

**Non-qualifying exchange of shares or securities: earn-outs**

16.—(1) Paragraphs (2) and (3) apply to a non-qualifying exchange of shares or securities described in regulation 14(1) or 15(1).

(2) Subject to paragraph (3), regulation 10 is to be treated as applying to such a non-qualifying exchange.

(3) Paragraphs of regulation 8 or 9 referred to in regulation 10—

- (a) which are not applied by virtue of regulation 14(2) or 15(2), as the case may be, are to be treated as omitted; and
- (b) which are applied by virtue of regulation 14(2) or 15(2), as the case may be, are to be treated as applied subject to the modifications in regulation 14(3) to (5) or 15(3) to (5), as the case may be.

**Non-qualifying exchange of shares or securities: apportionment**

17.—(1) Paragraphs (2) and (3) apply to a non-qualifying exchange of shares or securities described in regulation 13(1), 14(1) or 15(1).

(2) Subject to paragraphs (3) and (4), regulation 11 is to be treated as applying to such a non-qualifying exchange.

(3) Reference to regulations 7, 8 and 9 in regulation 11 is to be treated as a reference only to the paragraphs of those regulations which are applied by virtue of regulation 13(2), 14(2) or 15(2), as the case may be.

(4) The applied paragraphs of regulations 8 and 9, are to be treated as applied subject to the modifications in regulation 14(3) to (5) or 15(3) to (5), as the case may be.

(5) Reference to regulation 10 in regulation 11(1) is to be treated as a reference to that regulation as applied, with modifications, by regulation 16.”.

*Mark Spencer*  
*David Rutley*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

30th January 2018

## EXPLANATORY NOTE

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

The Regulations amend the Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661) (“the Existing Regulations”).

The Existing Regulations apply to exchanges of holdings of shares or securities made by a venture capital trust. In specified cases, where a holding which meets the requirements for qualifying investments for the purposes of Chapter 4 to Part 6 of the Income Tax Act 2007 (c. 3) is exchanged for a new holding which does not meet those requirements, the non-qualifying holding is permitted to be held by the trust.

The Regulations amend the Existing Regulations to apply where a venture capital trust exchanges a holding of permitted non-qualifying investments for another holding of non-qualifying investments. In the cases specified, the new holding is permitted to be held by the trust for a period set out in the Regulations.

Regulation 3 inserts new definitions in regulation 2 of the Existing Regulations, including a “non-qualifying exchange of shares or securities” defined in regulation 12 which is inserted by regulation 6 of the Regulations. Regulation 4 amends regulation 3 of the Existing Regulations such that regulations 4 to 11 of the Existing Regulations apply to an exchange of shares or securities defined in regulation 3 (“a regulation 3 exchange”). Regulation 5 amends regulation 11 of the Existing Regulations such that regulation 11 applies to regulations 7 to 10 of the Existing Regulations.

Regulation 6 inserts regulations 12 to 17 into the Existing Regulations. Regulation 12 defines a “non-qualifying exchange of shares or securities” which is an exchange to which regulations 13 to 17 apply.

Inserted regulation 13 provides that regulation 7 (exchange of shares or securities in the same company) of the Existing Regulations applies with modifications to a non-qualifying exchange of shares or securities, if that exchange would have fallen within regulation 4 had the exchange been a regulation 3 exchange. The new shares or securities are treated as satisfying the conditions in section 274(1) of the Income Tax Act 2007 only for the period of 12 months.

Inserted regulation 14 provides that regulation 8 (exchange of shares or securities for those in another company) of the Existing Regulations applies with modifications to a non-qualifying exchange of shares or securities, if that exchange would have fallen within regulation 5 had the exchange been a regulation 3 exchange. The new shares or securities are treated as falling within section 274(3A) of the Income Tax Act 2007 only for the period of 12 months (in the case of shares) or 18 months (in the case of securities).

Inserted regulation 15 provides that regulation 9 (reconstruction involving issue of shares or securities) of the Existing Regulations applies with modifications to a non-qualifying exchange of shares or securities, if that exchange would have fallen within regulation 6 had the exchange been a regulation 3 exchange. The new shares or securities are treated as falling within section 274(3A) of the Income Tax Act 2007 only for the period of 12 months (in the case of shares) or 18 months (in the case of securities).

Inserted regulation 16 provides that regulation 10 (earn-outs) applies with modifications to an exchange of shares or securities to which inserted regulation 14 or 15 applies.

Inserted regulation 17 provides that regulation 11 (apportionment) applies with modifications to an exchange of shares or securities to which inserted regulation 13, 14 or 15 applies.

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

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A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.