

2007 No.3426

CORPORATION TAX

The Scientific Research Organisations Regulations 2007

Made - - - - *5th December 2007*

Laid before the House of Commons *5th December 2007*

Coming into force - - *1st January 2008*

The Treasury make the following Regulations in exercise of the powers conferred by section 508(1A) and (1B) of the Income and Corporation Taxes Act 1988(a).

PART 1

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Scientific Research Organisations Regulations 2007 and shall come into force on 1st January 2008.

(2) These Regulations have effect in relation to accounting periods that begin on or after that date.

Interpretation

2.—(1) In these Regulations a reference to a section without more is a reference to that section of the Income and Corporation Taxes Act 1988.

(2) In these Regulations—

“constitutional document” means the memorandum of association, articles of association or other similar instrument regulating the functions of the Association;

“intellectual property” has the meaning it has in paragraph 2(2) of Schedule 29 to the Finance Act 2002(b);

“relevant income” means the amount determined in accordance with regulation 7 (relevant income of an accounting period); and

“100% subsidiary company” means a company—

(a) the entire ordinary share capital of which is beneficially owned directly or indirectly by the Association, or

(b) which is one limited by guarantee and of which the Association is the only member.

(a) 1988 c. 1; section 508 was relevantly amended by section 13 of the Finance (No. 2) Act 2005 (c. 22) and by paragraphs 1 and 100 of Schedule 1 to the Income Tax Act 2007 (c. 3).
(b) 2002 c. 23.

(3) Section 838 (subsidiaries)(a) shall apply for the purpose of determining whether a company is a 100% subsidiary company of an Association but construing references in section 838(1)(b) to 75 per cent as to 100%.

PART 2

Associations, object and profits

Associations for the purposes of section 508

3. The following shall be deemed to be an Association for the purposes of section 508(1)(a)—
- (a) a body formed by the combining of two or more persons for a purpose common to those persons, or
 - (b) a body corporate comprised of two or more members.

Association's object

4.—(1) In relation to an accounting period, an Association shall be deemed to have as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade if—

- (a) the Association's constitutional document states that the object of the Association is the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade;
- (b) the stated object is the only object of the Association;
- (c) the Association satisfies the income spending condition in regulation 5;
- (d) regulation 6 (breach of income spending condition) does not apply;
- (e) regulation 15 (breach of arrangements for disseminating the results of research and development) does not apply; and
- (f) regulation 17 (breach of intellectual property requirements) does not apply.

This paragraph is subject to paragraph (2).

(2) Where an Association's constitutional document does not satisfy sub-paragraph (b) of paragraph (1) that sub-paragraph shall be deemed to be satisfied if—

- (a) in relation to the accounting period immediately preceding the first accounting period in relation to which these Regulations have effect, an Association is approved by the Secretary of State for the purposes of section 508, and
- (b) the object or objects stated in the constitutional document in relation to the accounting period for which the approval was given has not or have not in any way been altered or replaced.

Income spending condition

5.—(1) The income spending condition in relation to an accounting period is that the Association must apply, or intend to apply, at least 75% of the amount of its relevant income of the accounting period to activities that are treated as research and development which may lead to or facilitate an extension of any class or classes of trade.

This is subject to paragraphs (2) and (3).

(2) Paragraph (3) applies in a case where an Association—

- (a) intends to apply an amount of its relevant income of an accounting period to activities that are treated as research and development, and

(a) Section 838(1) was amended by paragraphs 1 and 222 of Schedule 1 to the Income Tax Act 2007.

- (b) intends to so apply the amount after the accounting period in which the relevant income arose.
- (3) Where this paragraph applies—
 - (a) the activities, to which the amount referred to in paragraph (2) is to be applied, must be planned or programmed to be undertaken by or on behalf of the Association; and
 - (b) the plan or programme of activities must have been prepared on or before the last day of the accounting period.

Breach of income spending condition

6.—(1) This regulation applies where an Association fails to apply the amount (or any part of it) referred to in regulation 5(2) to the planned or programmed activities referred to in regulation 5(3) before the fifth anniversary of the last day of the accounting period in which the relevant income arose.

(2) Where this regulation applies the Association shall be deemed not to have complied with the condition in section 508(1)(a) in relation to any accounting period which falls in whole or in part in the calendar year that ends on the sixth anniversary of the last day of the accounting period in which the relevant income arose.

Relevant income of an accounting period

7. For the purposes of regulation 5, the amount of an Association's relevant income of an accounting period is the amount of its gross income of the accounting period less any amount paid by the Association in the accounting period in respect of pension deficit funding.

Gross income of an accounting period

8.—(1) For the purposes of regulation 7, the gross income of an accounting period shall be determined in accordance with generally accepted accounting practice but subject to paragraphs (2) to (4).

- (2) The amount of the gross income of an accounting period is the amount of—
 - (a) the revenue of the period, and
 - (b) subject to paragraph (4), any chargeable gains arising to the Association in the period.
- (3) For the purposes of paragraph (2) the revenue of the period includes in particular—
 - (a) gross investment income;
 - (b) interest;
 - (c) dividends;
 - (d) royalties;
 - (e) grants of funding for the undertaking of research and development;
 - (f) grants from public funds;
 - (g) any payment of a sum of money received by the Association which, if the Association were a charity, would be a qualifying donation received by it within the meaning of—

- (i) section 339 (charges on income: donations to charity)(a), or
- (ii) section 25 of the Finance Act 1990 (donations to charity by individuals)(b), and
- (h) any other amounts received by the Association which, if the Association were a charity, would be treated for the purposes of the Tax Acts in relation to the Association as a donation to it.

(4) Where in an accounting period an Association sells or otherwise disposes of real property to a 100% subsidiary company of the Association any chargeable gain arising to the Association on the sale or disposal of the real property shall not be included in the determination of the gross income of the accounting period.

(5) In paragraph (1) “generally accepted accounting practice” has the meaning it has in section 50(1) of the Finance Act 2004(c).

Pension deficit funding

9.—(1) For the purposes of regulation 7, an amount is paid in respect of pension deficit funding if—

- (a) it is paid directly or indirectly to the trustees or managers of an occupational pension scheme to which Part 3 of the Pensions Act 2004(d) applies;
- (b) the amount paid—
 - (i) is recommended by an actuary, or
 - (ii) made in compliance with a direction, notice or order of the Pensions Regulator made under the Pensions Act 2004;
- (c) the amount paid discharges, in whole or part, an obligation of the Association to make good any deficiency in the assets of the scheme required to meet the scheme’s liabilities;
- (d) the obligation discharged by the amount paid is in respect of only those of the scheme’s liabilities which arise before the first day of the first accounting period in relation to which these Regulations have effect; and
- (e) the obligation discharged by the amount paid is in respect of only those of the scheme’s liabilities to beneficiaries who undertook scientific research the purpose of which was to facilitate an extension of any class or classes of trade.

(2) In paragraph (1) “scientific research” means any activities in the fields of natural or applied science for the extension of knowledge.

Relevant income of an earlier accounting period applied in a later accounting period

10. For the purposes of regulation 5, in determining the percentage of the amount of the relevant income of an accounting period (“the relevant period”) applied, or intended to be applied, to activities treated as research and development, any amount which—

- (a) arose in an earlier accounting period, and
- (b) is applied, or intended to be applied, in the relevant period,

shall not be taken into account.

(a) Section 339 was amended by section 60(2) and (4) of the Finance Act 1989 (c. 26); sections 26 and 27(2) and (4) of the Finance Act 1990 (c. 29); section 64 of the Finance Act 1997 (c. 16); section 40(1) to (8) of the Finance Act 2000 (c. 17) and sections 57 and 58 of the Finance Act 2006 (c. 25).

(b) Section 25 was amended by section 71(5) and (6) of the Finance Act 1991 (c. 31); section 39(1) to (7) and (10) of the Finance Act 2000; sections 57 of, and paragraph 4 of Schedule 17 to, the Finance Act 2002 (c. 23); paragraphs 165 and 166 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1); sections 83(6) to (7) and 284 of, and paragraph 5 of Schedule 17 and paragraph 37 of Schedule 35 to, the Finance Act 2004 (c. 12); paragraphs 414 and 415 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); regulation 104 of S.I. 2005/3229; section 11 of the Finance (No. 2) Act 2005 (c. 22) and paragraph 30 of Schedule 13 the Finance Act 2006.

(c) 2004 c. 12; section 50(1) was amended by paragraphs 456 and 457 of Schedule 1 to the Income Tax Act 2007.

(d) 2004 c. 35.

Non-distribution of profits

11.—(1) In relation to an accounting period, an Association shall be deemed not to have complied with the condition in section 508(1)(b) if in the accounting period the Association directly or indirectly distributes, or intends to so distribute, in any manner or form any of its profits of that accounting period or any other accounting period to any of its members, subscribers or shareholders.

This is subject to paragraph (2).

(2) Payments made by an Association to a member, subscriber or shareholder—

- (a) of reasonable remuneration for goods, labour, power supplied or services rendered,
- (b) of reasonable interest for money lent, or
- (c) of reasonable rent for any premises,

shall be treated as not being a distribution of profits for the purposes of paragraph (1) if such payments are not prohibited by the Association's constitutional document.

PART 3

Research and development capable of extending trade

Undertaking of research and development leading to or facilitating an extension of a class of trade

12. In relation to an accounting period, the undertaking of research and development is deemed to be capable of leading to or facilitating an extension of a class of trade if—

- (a) the research and development is undertaken in accordance with regulation 13;
- (b) the results of any research and development are or will be disseminated in accordance with regulation 14; and
- (c) the intellectual property requirements in regulation 16 are satisfied.

Manner of undertaking research and development

13. Research and development is undertaken in accordance with this regulation if—

- (a) the Association directly undertakes by using its own facilities activities that are treated as research and development;
- (b) a person under the terms of a contract with the Association undertakes on behalf of the Association activities that are treated as research and development; or
- (c) a 100% subsidiary company of the Association undertakes on behalf of the Association activities that are treated as research and development.

Arrangements for disseminating the results of research and development

14.—(1) For the purposes of regulation 12, the Association must disseminate the results of any research and development in accordance with the arrangements referred to in paragraph (2).

(2) The arrangements for the dissemination of the results of any research and development must be made, on or before the last day of the accounting period, and must ensure that the results of any research and development undertaken in the accounting period are to be—

- (a) made available upon request and without charge, subject to paragraph (3);
- (b) made available, subject to paragraph (4)—
 - (i) to all the members and shareholders of, and all the subscribers to, the Association who undertake the class of trade that may be facilitated or extended by the research and development; or

- (ii) to all the members and shareholders of, and all the subscribers to, the Association; or
- (iii) generally to the public; and
- (c) made available not later than one year after the completion of the research and development.

(3) Paragraph (2)(a) does not prevent an Association from recovering from a recipient of the results of any research and development the reasonable costs of publishing or distributing the results to the recipient.

(4) Where any member or shareholder of, or subscriber to, the Association is connected with the Association paragraph (2)(b) does not apply and instead the arrangements must ensure that the results of any research and development undertaken in the accounting period are made available—

- (a) generally to the public, or
- (b) to any person who undertakes the class of trade that may be facilitated or extended by the research and development whether or not the person is or is not a member or shareholder of, or subscriber to, the Association.

Section 839 (connected persons)(a) shall apply for the purpose of determining whether a member, shareholder or subscriber is connected with the Association.

Breach of arrangements for disseminating the results of research and development

15.—(1) This regulation applies where—

- (a) the arrangements referred to in paragraph (2) of regulation 14 are altered or replaced after the end of an accounting period in respect of which a claim under section 508 is made with the effect that the requirements of that paragraph cease to met in relation to research and development undertaken in that accounting period; or
- (b) any results of any research and development undertaken in an accounting period in respect of which a claim under section 508 is made are disseminated other than in accordance with the arrangements referred to in that paragraph.

(2) Where this regulation applies the Association shall be deemed not to have satisfied the condition in section 508(1)(a) in relation to the accounting period in which the alteration or replacement occurs or in which the dissemination occurs.

Intellectual property requirements

16. For the purposes of regulation 12, the intellectual property requirements are that any intellectual property from any research and development undertaken by or on behalf of an Association in an accounting period—

- (a) must be solely and beneficially owned by the Association for a period of not less than one year from the date on which the accounting period ends;
- (b) in a case where the intellectual property is sold, transferred, assigned, licensed or otherwise made available by an Association to any person—
 - (i) in the accounting period, or
 - (ii) in the period that ends one year from the date on which the accounting period ends, the intellectual property must also be made available by the Association to all the members and shareholders of, and all the subscribers to, the Association; or
- (c) in a case where the funding of the research and development is—
 - (i) shared by the Association and another person or body (“shared funding”), and

(a) Section 839 was amended by section 74 of, and paragraph 20 of Schedule 17 to, the Finance Act 1995 (c. 4); regulations 47 and 100 of SI 2005/3229; paragraphs 7 and 25 of Schedule 13 to the Finance Act 2006 (c. 25) and paragraphs 1 and 223 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(ii) as a consequence of the shared funding the Association is unable to secure sole beneficial ownership of any intellectual property from the research and development, the Association must secure in the accounting period a right to use or exploit any intellectual property from the research and development for a period of not less than one year from the date on which the accounting period ends.

Breach of intellectual property requirements

17.—(1) This regulation applies where in respect of any intellectual property from research and development undertaken by or on behalf of an Association in an accounting period in respect of which a claim under section 508 is made the circumstances are such that none of the requirements in regulation 16(a), (b) or (c) is satisfied in relation to the intellectual property.

(2) Where this regulation applies at any time in an accounting period, the Association shall be deemed not to have satisfied the condition in section 508(1)(a) in relation to that accounting period (whether or not the intellectual property involved arose in or existed in that accounting period or in an earlier accounting period).

*Dave Watts
Alan Campbell*

5th December 2007

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under section 508 (scientific research organisations) of the Income and Corporation Taxes Act 1988 (c. 1), an Association may claim exemption from tax to the same extent available to a charity that applies the whole of its income to charitable purposes. Prior to the amendments made by section 13 of the Finance (No. 2) Act 2005 (c. 22) to section 508, the Secretary of State (for Trade and Industry) approved Associations for the purposes of section 508. Following the amendments, the Secretary of State will no longer approve Associations. Instead, Associations will be required to assess for themselves whether the exemption from tax is available for an accounting period. The exemption is available if an Association has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade (the “correct object”) and if it does not distribute its profits to its members.

These Regulations specify what is an Association for the purposes of section 508(1)(a) and the circumstances in which an Association is deemed, or deemed not, to have the correct object. These Regulations also specify the circumstances in which the undertaking of research and development is deemed to be capable of leading to or facilitating an extension of a class of trade.

Part 1 (Introduction) contains regulation 1 which provides for the citation, commencement and effect of these regulations and regulation 2 which provides for interpretation of certain terms used in them.

Part 2 (Associations, objects and profits) contains regulations 3 to 10.

Regulation 3 specifies what is deemed to be an Association for the purposes of section 508(1)(a).

Regulation 4 specifies the circumstances in which an Association is deemed to have the correct object.

Regulation 5 specifies how much of an Association's income for an accounting period (referred to as the relevant income) must be applied to research and development.

Regulation 6 provides that if the Association fails to apply its relevant income in accordance with regulation 5 within a five year period the Association is deemed not to have the correct object in any accounting period that falls in the sixth year after the period in which that income arose.

Regulation 7 provides that the relevant income of the accounting period is the gross income of the period less amounts paid to pension funds.

Regulations 8 and 9 supplement regulation 7. Regulation 8 provides how the gross income of the accounting period is determined and regulation 9 provides how amounts paid to pension funds are determined.

Regulation 10 provides that amounts arising from earlier accounting periods and applied to research and development in the accounting period do not count in the determination of the amount of the relevant income of the accounting period applied to research and development.

Regulation 11 provides that an Association must not distribute any of its profits.

Part 3 (research and development capable of extending trade) contains regulations 12 to 17.

Regulation 12 specifies the circumstances in which the undertaking of research and development is deemed capable of leading to or facilitating an extension of a class of trade.

Regulation 13 specifies the manner in which research and development may be undertaken.

Regulation 14 provides that the Association must distribute the results of its research and development in specified ways.

Regulation 15 provides that if the Association distributes the results of its research and development in breach of regulation 14 it is deemed not to have the correct object for the accounting period in which the breach occurs.

Regulation 16 provides that the Association must deal with any intellectual property generated by its research and development in specified ways.

Regulation 17 provides that if the intellectual property requirements in regulation 16 are breached the Association is deemed not to have the correct object for the accounting period in which the breach occurs.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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