

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Relationships treated as loan relationships etc

Overview

Chapter 3: OEICs, unit trusts and offshore funds

Overview

1356. This Chapter provides the rules for calculating debits and credits under Part 5 where a company holds an interest in an open-ended investment company (OEIC), unit trust scheme or offshore fund and the assets held by those entities are at least 60% “qualifying investments” by value. Qualifying investments are broadly assets that are or represent loan relationships. Such holdings are treated as rights under a creditor relationship.

Section 487: Overview of Chapter

1357. This section explains what the Chapter does. It is new.

Section 488: Meaning of “open-ended investment company” etc

1358. This section gives the definition of “open-ended investment company”. It is based on paragraph 8(7A), (7B) and (7D) of Schedule 10 to FA 1996 and regulation 95(2) of the Authorised Investment Funds (Tax) Regulations 2006.

1359. The definition is by reference to sections 468A(2) to (4) of ICTA because the definition in section 468A(2), read with section 468A(3) and (4), is in substance the same as that in paragraph 8(7A)(b), read with paragraph 8(7B) and (7D) of Schedule 10 to FA 1996 and any differences are negligible.

Section 489: Meaning of “offshore fund” etc

1360. This section gives a definition of “offshore fund” and also for “a material interest in such a fund” for this Chapter. It is based on paragraphs 7(1) and (2) and 8(7F) of Schedule 10 to FA 1996.

1361. The definition of “offshore fund” in paragraph 7 of Schedule 10 to FA 1996 has been applied throughout the Chapter. See *Change 60* in Annex 1.

Section 490: Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights

1362. This section provides the basic rule: if at any time in an accounting period an OEIC, unit trust scheme or offshore fund fails the qualifying investments test, a company’s holdings in such entities are treated as rights under a creditor relationship and the credits and debits are to be brought into account on the basis of fair value. It is based on

paragraphs 4(1) to (4) and 7(1) of Schedule 10 to FA 1996, section 48B(5) of FA 2005 and regulation 95(2) of the [Authorised Investment Funds \(Tax\) Regulations 2006 \(SI 2006/964\)](#).

1363. *Subsection (1)(a)(i)* refers to ownership of “shares” in an open-ended investment company. Paragraph 4(1) of Schedule 10 to FA 1996, as modified by regulation 95 of the above regulations, refers to a company holding “rights” in an open-ended investment company. The term “shares” has been used in this section because regulation 93 of those Regulations provides that the modification made by regulation 95 is in relation to “shareholders” in authorised investment funds. Referring to shares in an open-ended investment company also aligns this section with section 587.
1364. In *subsection (5)*, the meaning of “interest distributions” is provided by regulation 18(3) of the [Authorised Investment Funds \(Tax\) Regulations 2006 \(SI 2006/964\)](#).

Section 491: Holding coming within section 490: opening valuations

1365. This section provides the opening valuation for holdings of a company in an OEIC, unit trust scheme or offshore fund when section 490 first applies. It is based on paragraphs 5(1) and 6 of Schedule 10 to FA 1996.
1366. The words “the value of that asset” in paragraph 6 of Schedule 10 to FA 1996 have been rewritten as the “value of the holding” since the words in paragraph 6 refer directly back to “valuation of the holding” in sub-paragraph (b) of that paragraph.

Section 492: Disregard of investments made and liabilities incurred with avoidance intention etc

1367. This section provides that in determining credits and debits to be brought into account by any company in respect of its holding (“the relevant holding”) under the deemed creditor relationship, there shall be left out of account amounts relating to any investment or liability of the collective investment scheme or fund where the investment was made or the liability was incurred, or any transaction (or series of transactions) relating to the investment or liability was entered into, with a “relevant avoidance intention”. It is based on paragraph 4(5) and (6) of Schedule 10 to FA 1996 and regulation 95(2) of the [Authorised Investment Funds \(Tax\) Regulations 2006](#).

Section 493: The qualifying investments test

1368. This section explains what is meant by the qualifying investment test and how “qualifying investment” is to be interpreted when applied to OEICs, unit trust schemes or offshore funds. It is based on paragraph 8(1), (5), (5A), (7A), and (7C) of Schedule 10 to FA 1996 and regulation 95(3) of the [Authorised Investment Funds \(Tax\) Regulations 2006](#).
1369. *Subsection (2)(b)* explains the meaning of references to investments of OEICs for cases where under section 468A(3) of ICTA parts of umbrella companies are themselves regarded as separate OEICs. This involves rewriting the reference in paragraph 8(5A) of Schedule 10 to FA 1996 to “investments comprised in the scheme property of that company” with the changes made by paragraph 8(7B) to (7D) for such parts. Paragraph 8(7C)(a) converts these words to a reference to such of the investments of the umbrella company as form part of the separate pool in question. But for paragraph 8(7C)(a), paragraph 8(7C)(b) would operate on the reference in paragraph 8(5A) to scheme property in the case of such parts, but once paragraph 8(7C)(a) has applied, there are no references to scheme property on which paragraph 8(7C)(b) can operate and so it is otiose and has not been rewritten.

Section 494: Meaning of “qualifying investments”

1370. This section lists the investments which constitute “qualifying investments”. It is based on paragraph 8(2), (7) and (7E) of Schedule 10 to FA 1996, paragraph 1 of Schedule 2 to FA 2005 and regulation 95(3) of the Authorised Investment Funds (Tax) Regulations 2006.
1371. Paragraphs 1 and 9 of Schedule 2 to FA 2005 require the reference to “money placed at interest” in paragraph 8(2)(a) of Schedule 10 to FA 1996 to include a reference to arrangements falling within section 47, 48A, 49 or 49A of FA 2005 (rewritten in Chapter 6 of this Part). It does not include diminishing shared ownership arrangements under section 47A of FA 2005.
1372. The [Unit Trust Schemes and Offshore Funds \(Non-qualifying Investments Test\) Order, SI 2006/981](#) also added a new paragraph 8(2)(h) to the list of qualifying investments in Schedule 10 to FA 1996 to cover “alternative finance arrangements”. They are defined in paragraph 8(7I) of that Schedule by reference to section 46(1) of FA 2005 as arrangements within section 47, 47A, 48A, 49 or 49A of FA 2005.
1373. Therefore, diminishing shared ownership arrangements (section 47A of FA 2005) are included as qualifying investments. However, paragraph 8(2)(e) of Schedule 10 to FA 1996 provides that derivative contracts are only included where the underlying subject matter consists of investments within paragraph 8(2)(a) to (d) of that Schedule. Therefore derivative contracts that consist mainly of diminishing shared ownership arrangements (section 47A) are not included, and hence the exclusion of these arrangements under *subsection (1)(f)(i)*.
1374. The definition of “derivative contract” in paragraph 8(7E) of Schedule 10 to FA 1996 has not been rewritten. If a contract is treated as a derivative contract in Part 7 then it is also treated as a derivative contract for the purposes of this section because the definition of “derivative contract” in section 834(1) of ICTA (which refers to Schedule 26 to FA 2002 and is consequentially amended to refer to Part 7) applies for the purposes of the Corporation Tax Acts.

Section 495: Qualifying holdings

1375. This section explains what is meant by “qualifying holdings” in an OEIC, unit trust scheme or offshore fund within the qualifying investments list in the preceding section. It is based on paragraph 8(3), (3A), (4), (6) and (7C) of Schedule 10 to FA 1996.
1376. Paragraph 8(3)(b) of Schedule 10 to FA 1996 has been rewritten to make it clear that “the same accounting period” refers to the accounting period of the company holding the investment in the unit trust scheme etc and not the accounting period of the unit trust scheme etc.
1377. Paragraphs 8(6A) and (6B) of that Schedule have not been rewritten because they are considered unnecessary and add nothing to the operation of paragraph 8(6)(c). It does not matter for the purposes of paragraph 8(6)(c) whether the shares are of different denominations; all that matters is their value.

Section 496: Meaning of “hedging relationship”

1378. This section provides the meaning of “hedging relationship”. It is based on paragraph 8(7G) and (7H) of Schedule 10 to FA 1996.

Section 497: Power to change investments that are qualifying investments

1379. This section gives the Treasury power to amend this Chapter. It is based on paragraphs 8(8) and 9 of Schedule 10 to FA 1996.

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

1380. *Subsection (1)* includes a change that allows the Treasury to amend the descriptions of qualifying investments of an open-ended investment company. See *Change 61* in Annex 1.
1381. *Subsection (2)* allows orders to be made for such “incidental, supplemental, consequential and transitional provision and savings”. This is a standard formulation for this Act for the extra things that can be done under an order and regulation-making powers. It is not considered a change in the law.