STATUTORY INSTRUMENTS

2006 No. 964

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Authorised Investment Funds (Tax) Regulations 2006

Approved by the House of Commons

Made - - - - -	*29th March 2006*
Coming into force - -	*1st April 2006*

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ARRANGEMENT OF REGULATIONS

The Treasury, in exercise of the powers conferred upon them by sections 17(3) and 18 of the Finance (No. 2) Act 2005(**a**) and section 152 of the Finance Act 1995(**b**) make the following Regulations:

PART 1

PRELIMINARY PROVISIONS AND INTERPRETATION

Preliminary provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) Regulations 2006, and shall come into force on 1st April 2006.

(2) These Regulations have effect—

(a) for the purposes of income tax—

(i) for the tax year 2006-07 and subsequent tax years, and

(ii) for distributions made on or after 6th April 2006;

(b) for the purposes of corporation tax—

(i) on income, for accounting periods beginning on or after 1st April 2006,

(ii) on chargeable gains, in relation to disposals made on or after 1st April 2006, and

(iii) for distributions made on or after 1st April 2006; and

(c) for the purposes of capital gains tax, in relation to disposals made on or after 6th April 2006.

(**a**) 2005 c. 22.
(**b**) 1995 c. 4; section 152 was amended by paragraph 13 of Schedule 19 to the Finance Act 1999 (c. 16) and Article 90 of S.I. 2001/3629.

(3) But regulation 26(4)(e) (the non-liability condition) has effect only in relation to distribution dates occurring on or after 6th April 2007.

Structure of these Regulations

2. The structure of these Regulations is as follows—

this Part contains preliminary provisions and provides for interpretation;

Part 2 deals with the tax treatment of authorised investment funds;

Part 3 deals with distributions made by authorised investment funds;

Part 4 deals with the treatment of participants in authorised investment funds;

Part 5 deals with compliance;

Part 6 contains further provisions relating to authorised investment funds;

Part 7 contains consequential amendments and modifications of enactments; and

Part 8 contains final provisions.

Interpretation

Definition of "authorised investment funds"

3. In these Regulations "authorised investment funds" means—

(a) open-ended investment companies, and

(b) authorised unit trust schemes.

Definition of "open-ended investment company"

4. In these Regulations "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of FISMA 2000(**a**) applies.

Interpretation of expressions relating to authorised unit trust schemes

5.—(1) In these Regulations "unit trust scheme" has the meaning given by section 237 of FISMA 2000.

(2) For the purposes of these Regulations a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of FISMA 2000 is in force in relation to that scheme during the whole or part of that accounting period.

(3) In these Regulations "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

Further definitions generally relevant for authorised investment funds

6.—(1) In these Regulations the "legal owner" means—

(a) in relation to an open-ended investment company, the open-ended investment company, and

(b) in relation to an authorised unit trust, the trustees of the trust.

(2) In these Regulations the "scheme property" means—

(a) in relation to an open-ended investment company, the property subject to the collective investment scheme constituted by the company, and

(b) in relation to an authorised unit trust, the property subject to the collective investment scheme constituted by the trust.

(**a**) 2000 c. 8.

(3) In these Regulations the "manager" means—

(a) in relation to an open-ended investment company, the authorised corporate director, and

(b) in relation to an authorised unit trust, the person who is the manager of the trust for the purposes of Chapter 3 of Part 17 of FISMA 2000 (authorised unit trust schemes).

(4) In these Regulations, unless a contrary intention appears, "units" means the rights or interests (however described) of the participants in the authorised investment fund.

(5) In these Regulations "accumulation unit" means—

(a) in relation to an open-ended investment company, a share in the company in respect of which income is credited periodically to the capital part of the scheme property of the company, and

(b) in relation to an authorised unit trust, a unit in the trust in respect of which income is credited periodically to the capital part of the scheme property of the trust.

(6) In these Regulations a "participant", in relation to an authorised investment fund, means a beneficial owner of units in the fund, except where the units are held on trust (other than a bare trust) or are comprised in the estate of a deceased person, and in such a case the participant, in relation to the fund, means the trustees of the trust, or, as the case may be, the deceased's personal representatives.

Umbrella companies and umbrella schemes: interpretation

7.—(1) In these Regulations "umbrella company" has the meaning given by section 468A(4) of ICTA(**a**), and a reference to a part of an umbrella company is to be construed in accordance with that provision.

(2) For the purposes of these Regulations each of the parts of an umbrella company is regarded as an open-ended investment company and the umbrella company as a whole shall not be so regarded.

(3) In relation to a part of an umbrella company, any reference—

(a) to investments or to scheme property of an open-ended investment company has effect as a reference to such of the investments or to such of the scheme property as under the arrangements form part of the separate pool to which that part of the umbrella company relates, and

(b) a person for the time being having rights in that part is regarded as the owner of shares in the open-ended investment company which that part is regarded as being by virtue of paragraph (2), and not as the owner of shares in the umbrella company itself.

(4) In relation to a part of an umbrella company, any references in these Regulations to the instrument of incorporation or the prospectus in issue for the time being (including any supplements to that prospectus) of an open-ended investment company have effect, for the purposes of these Regulations, as references to such parts of the instrument of incorporation or of that prospectus (including any supplements to that prospectus) as apply to that part of the umbrella company.

(5) In these Regulations "umbrella scheme" has the meaning given by section 468(8) of ICTA, and a reference to a part of an umbrella scheme is to be construed in accordance with that provision.

(6) For the purposes of these Regulations each of the parts of an umbrella scheme is regarded as an authorised unit trust and the umbrella scheme as a whole is not regarded as an authorised unit trust or as any other form of collective investment scheme.

(7) In relation to a part of an umbrella scheme, any reference—

(a) to investments or to scheme property subject to the trusts of an authorised unit trust has effect as a reference to such of the investments or to such of the scheme property as under

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(**a**) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22).

the arrangements form part of the separate pool to which that part of the umbrella scheme relates, and

(b) to a unit holder, has effect as a reference to a person for the time being having rights in that separate pool.

(8) In relation to a part of an umbrella scheme, any references in these Regulations to the prospectus in issue for the time being (including any supplements to that prospectus) of an authorised unit trust have effect, for the purposes of these Regulations, as references to such parts of that prospectus (including any supplements to that prospectus) as apply to that part of the umbrella scheme.

General interpretation

8. In these Regulations—

"authorised corporate director", in relation to an open-ended investment company, means a corporate director of the company acting in the capacity as the director having responsibility for the management of its scheme property, being an authorised person within the meaning given by section 31(2) of FISMA 2000, or if there is no such director, the person for the time being having responsibility for the management of the scheme property of the company and acting in that capacity;

"collective investment scheme" has the meaning given by section 235 of FISMA 2000;

the "Commissioners" means the Commissioners for Revenue and Customs;

"creditor relationship" has the meaning given by section 103(1) of FA 1996(**a**);

"derivative contract" means—

(a) a contract which is a derivative contract within the meaning of Schedule 26 to FA 2002(**b**), or

(b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule(**c**) (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);

"investments" do not include cash awaiting investment;

"net asset value" means the value of the assets of the authorised investment fund, after the deduction of specified liabilities;

"owner of shares", in relation to an open-ended investment company, means a beneficial owner of shares in the company, except where the shares are held on trust (other than a bare trust) or are comprised in the estate of a deceased person, and in such a case the owner of shares, in relation to the company, means the trustees of the trust, or, as the case may be, the deceased's personal representatives;

"reporting date" means the final day of each annual and each half-yearly accounting period of the authorised investment fund;

"residence declaration" is to be construed in accordance with regulation 31;

"tax year"—

(a) in relation to income tax, means a year of assessment within the meaning of ICTA (see section 832(1) of that Act), and

(b) in relation to capital gains tax, means a year of assessment within the meaning of TCGA 1992 (see section 288(1) of that Act).

(**a**) 1996 c. 8.
(**b**) 2002 c. 23.
(**c**) Paragraph 36 of Schedule 26 was amended by paragraph 62 of Schedule 10 to the Finance Act 2004 (c. 12).

Abbreviations and general index

9.—(1) The Schedule to these Regulations (which contains abbreviations and defined expressions that apply for the purposes of these Regulations) has effect.

(2) Part 1 of the Schedule gives the meaning of the abbreviated references to Acts used in these Regulations.

(3) Part 2 of the Schedule lists the places where expressions used in these Regulations are defined or otherwise explained—

(a) in these Regulations for the purposes of these Regulations, or

(b) in these Regulations for the purposes of a Part or Chapter of these Regulations.

PART 2

THE TAX TREATMENT OF AUTHORISED INVESTMENT FUNDS

Loan relationships and derivative contracts: exclusion of capital profits, gains or losses

General rule for loan relationships: exclusion of capital profits, gains or losses

10.—(1) This regulation applies if any profits, gains or losses arising to an authorised investment fund from a creditor relationship in an accounting period are capital profits, gains or losses.

(2) For the purposes of Chapter 2 of Part 4 of FA 1996(**a**) (loan relationships) those profits, gains or losses must not be brought into account as credits or debits.

(3) Regulation 12 explains what is meant by "capital profits, gains or losses" in the case of an authorised investment fund that prepares accounts in accordance with UK generally accepted accounting practice.

General rule for derivative contracts: exclusion of capital profits, gains or losses

11.—(1) This regulation applies if any profits, gains or losses arising to an authorised investment fund from a derivative contract in an accounting period are capital profits, gains or losses.

(2) For the purposes of Schedule 26 to FA 2002(**b**) (derivative contracts) those profits, gains or losses must not be brought into account as credits or debits.

(3) Regulation 12 explains what is meant by "capital profits, gains or losses" in the case of an authorised investment fund that prepares accounts in accordance with UK generally accepted accounting practice.

Accounts prepared in accordance with UK generally accepted accounting practice

12.—(1) In the case of an authorised investment fund that prepares accounts in accordance with UK generally accepted accounting practice, capital profits, gains or losses arising from a creditor relationship in an accounting period, or capital profits, gains or losses arising from a derivative contract in an accounting period, are such profits, gains or losses as fall to be dealt with under—

(a) the heading "net gains/losses on investments during the period", or

(b) the heading "other gains/losses",

in the statement of total return for the accounting period.

(**a**) 1996 c. 8.
(**b**) 2002 c. 23.

(2) For the purposes of paragraph (1), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised investment fund which deals with the accounting period.

(3) For the purposes of paragraph (2), "Statement of Recommended Practice" means—

(a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to authorised investment funds issued by the Investment Management Association on 21st November 2003, as from time to time modified, amended or revised; or

(b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to authorised investment funds, as from time to time modified, amended or revised.

Loan relationships: treatment of interest distributions and deficits

Treatment of interest distributions for purposes of loan relationships

13.—(1) Chapter 2 of Part 4 of FA 1996 (loan relationships) has effect in relation to an authorised investment fund and to an interest distribution paid by that fund as it would have effect if the interest distribution were interest payable on a loan to the authorised investment fund and were, accordingly, interest under a loan relationship to which the authorised investment fund were a party.

(2) For the purposes of these Regulations, an interest distribution is treated as paid if it is credited to the capital part of the scheme property of an authorised investment fund on behalf of a participant in respect of the participant's accumulation units.

(3) This regulation is subject to regulation 14.

Treatment of deficits on loan relationships

14. Section 83(2)(c) of FA 1996 (carrying back of non-trading deficit on loan relationships) shall not have effect in relation to the loan relationships of an authorised investment fund (so that, accordingly, if for any accounting period there is a deficit on the loan relationships of the authorised investment fund, the deficit may not be carried back to be set off against profits for earlier accounting periods).

PART 3

DISTRIBUTIONS MADE BY AUTHORISED INVESTMENT FUNDS

Preliminary

Interpretation

15.—(1) In these Regulations a reference to a "distribution" includes crediting an amount to the capital part of the scheme property of an authorised investment fund on behalf of a participant in respect of the participant's accumulation units.

(2) In these Regulations "distribution period", in relation to an authorised investment fund, means a period by reference to which the total amount available for distribution to participants is ascertained.

(3) In these Regulations "distribution accounts", in relation to an authorised investment fund, means accounts showing—

(a) the total amount available for distribution to participants, and

(b) how that total amount is computed.

(4) In these Regulations the "distribution date" for a distribution period of an authorised investment fund means—

(a) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or

(b) if no date is specified, the last day of that distribution period.

Funds excluded from the ambit of this Part

16. This Part does not apply to an authorised investment fund if the fund—

(a) is a registered pension scheme within the meaning of Part 4 of the Finance Act 2004(**a**), or

(b) is treated, under paragraph 1(1) of Schedule 36 to that Act, as having become such a scheme.

Distribution accounts: general

Contents of distribution accounts

17.—(1) The total amount shown in the distribution accounts as available for distribution to participants must be shown as available for distribution in one of the following ways—

(a) it may be shown as available for distribution as yearly interest (see regulations 18 to 21 below); or

(b) it may be shown as available for distribution as dividends (see regulation 22 below).

(2) The following may not be included in any amount shown in the distribution accounts as available for distribution as yearly interest—

(a) amounts chargeable to corporation tax under Schedule A;

(b) amounts chargeable to corporation tax as income of an overseas property business (see section 70A(4) of ICTA(**b**)).

Interest distributions

Interest distributions: general

18.—(1) Paragraph (2) applies where the total amount shown in the distribution accounts as available for distribution to participants is shown as available for distribution as yearly interest.

(2) The Tax Acts shall have effect as if the total amount were payments of yearly interest made on the distribution date by the authorised investment fund to the participants in proportion to their rights.

(3) In these Regulations an "interest distribution" means a payment of yearly interest treated as made by virtue of paragraph (2) (including a payment of interest treated as made to a participant who is not chargeable to income tax).

(4) This regulation is subject to—

(a) regulation 19 (the qualifying investments test), and

(b) regulation 23 (treatment of de minimis amounts).

(**a**) 2004 c. 12.
(**b**) Section 70A was inserted by paragraph 25 of Schedule 5 to the Finance Act 1998 (c. 36).

The qualifying investments test

19.—(1) No amount may be shown as available for distribution as yearly interest unless the authorised investment fund in question satisfies the qualifying investments test throughout the distribution period.

(2) An authorised investment fund satisfies the qualifying investments test throughout a distribution period (the "relevant period") if, at all times in that period, the market value of the qualifying investments exceeds 60% of the market value of all the investments of the fund.

(3) Regulations 20 and 21 deal with the meaning of the expression "qualifying investments".

Meaning of "qualifying investments"

20. In these Regulations "qualifying investments", in relation to an authorised investment fund, means the investments of that fund which fall within any of the following categories (read, as appropriate, with any applicable provision in regulation 21)—

Category 1

Money placed at interest.

Category 2

Securities.

Category 3

Shares in a building society.

Category 4

Qualifying units in another authorised investment fund.

Category 5

Derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in categories 1 to 4 and currency.

Category 6

Contracts for differences whose underlying subject matter consists wholly of any one or more of interest rates, creditworthiness and currency.

Category 7

Derivative contracts not within categories 5 or 6 where there is a hedging relationship between the derivative contract and an asset within categories 1 to 4.

Category 8

Alternative finance arrangements.

Meaning of "qualifying investments": further provisions

21.—(1) This regulation applies for the purposes of regulation 20.

(2) For the purposes of category 2 "securities" do not include shares in a company.

(3) For the purposes of category 4 units in another authorised investment fund are qualifying units at any time in the relevant period if, and only if, the other authorised investment fund would itself (on the relevant assumption) satisfy the qualifying investments test throughout that period.

(4) For the purposes of paragraph (3) the relevant assumption is that the only investments of the other authorised investment fund which are to be regarded as qualifying investments are those falling within categories 1 to 3 and 5 to 8.

(5) In paragraph (4) references to investments of an authorised investment fund—

(a) in the case of an open-ended investment company are references to investments comprised in the scheme property of that company, but do not include references to cash awaiting investment, and

(b) in the case of an authorised unit trust are references to investments subject to the trusts of that authorised unit trust, but do not include references to cash awaiting investment.

(6) For the purposes of categories 5 and 6 "underlying subject matter" has the same meaning as in paragraph 11 of Schedule 26 to FA 2002(**a**).

(7) For the purposes of categories 5 and 6 underlying subject matter may consist of currency only if and to the extent that there is a hedging relationship between the contract and a qualifying investment falling within categories 1 to 4.

(8) In paragraph (7) "hedging relationship" has the meaning given by paragraph 12(14) of Schedule 26 to FA 2002(**b**).

(9) For the purposes of category 6 a "contract for differences" has the same meaning as in paragraph 12 of Schedule 26 to FA 2002(**c**).

(10) For the purposes of category 7 a fund has a hedging relationship between a derivative contract on the one hand ("the hedging instrument") and an asset on the other ("the hedged item") if and to the extent that—

(a) the hedging instrument and the hedged item are designated by the fund as a hedge, or

(b) in any other case the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of a hedged item which is a recognised asset or an identified portion of such an asset that is attributable to a particular risk and could affect the total net return of the fund.

(11) For the purposes of category 8 "alternative finance arrangements" has the meaning given by section 46(1) of the Finance Act 2005(**d**).

Dividend distributions

Dividend distributions: general

22.—(1) Paragraph (2) applies where the total amount shown in the distribution accounts as available for distribution to participants is shown as available for distribution as dividends.

(2) The Tax Acts shall have effect as if the total amount were dividends on shares paid on the distribution date by the authorised investment fund to the participants in proportion to their rights.

(3) In these Regulations a "dividend distribution" means a dividend treated as paid by virtue of paragraph (2) (including a dividend treated as paid to a participant who is not chargeable to corporation tax).

(4) This regulation is subject to regulation 23 (treatment of de minimis amounts).

De minimis amounts

Provisions applying if amounts available for distribution are de minimis

23.—(1) An authorised investment fund is not treated as making a distribution for a distribution period if conditions A to D are met.

(2) Condition A is that, in accordance with rules made by the Financial Services Authority, the authorised investment fund has an agreed de minimis limit.

(3) Condition B is that the authorised investment fund—

(a) has prepared distribution accounts in which the amount shown as available for distribution to participants is a de minimis amount, and

(b) chooses to waive the distribution of that de minimis amount.

(**a**) 2002 c. 23. Paragraph 11 of Schedule 26 was amended by Article 12 of S.I. 2004/2201.
(**b**) Paragraph 12(14) of Schedule 26 to the Finance Act 2002 was added by Article 9 of S.I. 2005/646.
(**c**) Paragraph 12 of Schedule 26 to the Finance Act 2002 was amended by Article 13 of S.I. 2004/2201 and Article 9 of S.I. 2005/646.
(**d**) 2005 c. 7.

(4) Condition C is that the de minimis amount is carried forward to the next distribution period as an amount available for distribution to participants.

(5) Condition D is that none of the units of the authorised investment fund in issue on the distribution date are in bearer form.

(6) If this regulation applies, the authorised investment fund is not required to comply with the requirements of section 234A of ICTA(**a**) (information relating to distributions) in respect of the de minimis amount for the distribution period in question.

(7) In this regulation—

the "de minimis limit", in relation to an authorised investment fund, means an amount in respect of which a distribution of income of the fund is not required if the total amount shown in the fund's distribution accounts as available for distribution to participants does not exceed that amount, and

"de minimis amount" means an amount falling within the de minimis limit.

PART 4

THE TREATMENT OF PARTICIPANTS IN AUTHORISED INVESTMENT FUNDS

CHAPTER 1

PRELIMINARY PROVISIONS

Structure of this Part

24. The structure of this Part of these Regulations is as follows—

this Chapter contains preliminary provisions;

Chapter 2 contains provisions relating to the tax treatment of participants chargeable to income tax;

Chapter 3 contains provisions relating to the tax treatment of participants chargeable to corporation tax;

Chapter 4 imposes a charge to tax on substantial QIS holdings in qualified investor schemes.

Funds excluded from the ambit of this Part

25. This Part does not apply to an authorised investment fund if the fund—

(a) is a registered pension scheme within the meaning of Part 4 of the Finance Act 2004(**b**), or

(b) is treated, under paragraph 1(1) of Schedule 36 to that Act, as having become such a scheme.

CHAPTER 2

PARTICIPANTS CHARGEABLE TO INCOME TAX

(**a**) Section 234A was inserted by section 32(1) of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(2) of Schedule 37 to the Finance Act 1996 (c. 8).
(**b**) 2004 c. 12.

Deduction of tax from interest distributions: general

Deduction of tax where interest distributions made

26.—(1) This regulation applies if an interest distribution is made for a distribution period to a participant chargeable to income tax.

(2) Any obligation to deduct a sum under section 349(2) of ICTA(**a**) is subject to the provisions of this regulation.

(3) In this Part the "deduction obligation" means the obligation specified in paragraph (2).

(4) The deduction obligation does not apply to the interest distribution if—

(a) the participant is a company;

(b) the participant consists of the trustees of a unit trust scheme;

(c) the reputable intermediary condition is met with respect to a participant on the distribution date (see regulation 27);

(d) the residence condition is met with respect to a participant on the distribution date (see regulation 30); or

(e) the non-liability condition is met with respect to a participant on the distribution date (see regulation 34).

(5) But if the participant is a company which is the trustee of the trust to which (or under which) the interest distribution is made (or received), the deduction obligation is not excluded by virtue of paragraph (4)(a).

(6) In its application to an interest distribution to a participant in respect of accumulation units, the deduction obligation is an obligation to deduct a sum out of the amount being credited to scheme capital on the participant's behalf.

The reputable intermediary condition

The reputable intermediary condition

27.—(1) The reputable intermediary condition is met with respect to a participant on the distribution date if conditions A to C are met.

(2) Condition A is that the interest distribution is paid on behalf of the participant to a company.

(3) Condition B is that the legal owner has reasonable grounds for believing that the participant is not ordinarily resident in the United Kingdom.

(4) Condition C is that the company mentioned in paragraph (2)—

(a) is subject to the EC Money Laundering Directive,

(b) is subject to equivalent non-EC provisions, or

(c) is a company which—

(i) is resident in a regulating country or territory, and

(ii) is an associated company of a company which is subject to paragraph (a) or (b).

The reputable intermediary condition: further provisions

28.—(1) This regulation applies for the purposes of Condition C in regulation 27.

(**a**) Section 349(2) was amended by paragraph 1(2) of Schedule 11 to the Finance Act 1991 (c. 31), paragraph 18 of Schedule 14 to the Finance Act 1996 (c. 8) and paragraph 148(2) of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(2) A company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive 91/308/EEC, as amended by Directive 2001/97/EC.

(3) A company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(4) A country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(5) A company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 of ICTA (close companies) (see section 416 of that Act).

Consequences of reasonable but incorrect belief

29.—(1) This regulation applies if conditions A to D are met.

(2) Condition A is that an interest distribution is made to a participant.

(3) Condition B is that the legal owner, in reliance on the reputable intermediary condition being met with respect to the participant, does not comply with the deduction obligation in relation to the interest distribution.

(4) Condition C is that the deduction obligation would apply but for the reputable intermediary condition being met.

(5) Condition D is that (contrary to the belief of the legal owner) the participant is in fact ordinarily resident in the United Kingdom.

(6) Section 350 of ICTA(**a**) (charge to tax where payments made under section 349) and Schedule 16 to that Act(**b**) (collection of income tax on company payments which are not distributions) have effect as if the deduction obligation applied.

The residence condition

The residence condition

30.—(1) The residence condition is met with respect to a participant on the distribution date if any of conditions A to E is met.

(2) Condition A is that, in relation to an interest distribution which is not made to or received under a trust, there is a valid declaration, made by the participant, that the participant is not ordinarily resident in the United Kingdom.

(3) Condition B is—

(a) that the participant holds the units as the personal representative of a deceased person, and

(b) that the deceased, before his death, made a declaration, valid at the time of his death, that he was not ordinarily resident in the United Kingdom.

(4) Condition C is—

(a) that the participant holds the units as the personal representative of a deceased person, and

(b) that the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.

(**a**) Section 350 was amended by paragraph 8 of Schedule 6 to the Finance Act 1996 and section 96(2) of the Finance Act 2002.
(**b**) Schedule 16 was amended by section 149(3)(d) of the Finance Act 1989 (c. 26), Part II of Schedule 23 to the Finance Act 1996, section 91 of the Finance Act 1999 (c. 16) and paragraph 19 of Part 1 of Schedule 3 to the Debt Arrangement and Attachment (Scotland) Act 2002 (asp. 17).

(5) Condition D is that, in the case of an interest distribution made to or received under a trust where the whole of the income is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the trustees of that trust, there is a valid declaration, made by the person in question that he is either not ordinarily resident or, in the case of a company, not resident in the United Kingdom.

(6) Condition E is that, in circumstances in which condition D does not apply and with respect to a participant in the case of an interest distribution made to or received under a trust, there is a valid declaration, made by the trustees of that trust that—

(a) the trustees are not resident in the United Kingdom, and

(b) each beneficiary of the trust is either not ordinarily resident or, in the case of a beneficiary which is a company, not resident in the United Kingdom.

Residence declarations

31.—(1) A declaration made for the purposes of regulation 30 must—

(a) be in such form as may be required or authorised by the Commissioners;

(b) be made in writing to the legal owner of the authorised investment fund in question; and

(c) contain any details or undertakings required by paragraphs (2) to (4) below.

(2) A declaration made for the purposes of condition A or B in regulation 30 must contain—

(a) the name and principal residential address of the person making it; and

(b) an undertaking that he will notify the legal owner if he becomes ordinarily resident in the United Kingdom.

(3) A declaration made for the purposes of condition C in regulation 30 must contain the name of the deceased and his principal residential address immediately before his death.

(4) A declaration made for the purposes of condition D or E in regulation 30 must contain—

(a) the names and principal residential addresses of the trustees of the trust or, in the case of a trustee which is a company, the name of the company and the address of its registered or principal office;

(b) the names and principal residential addresses of the beneficiaries of the trust or, in the case of a beneficiary which is a company, the name of the company and the address of its registered or principal office; and

(c) an undertaking that the trustees of the trust will notify the legal owner of the authorised investment fund in question if—

(i) they become resident in the United Kingdom,

(ii) any beneficiary of the trust named in the declaration becomes ordinarily resident or, in the case of a company, resident in the United Kingdom, or

(iii) any person who becomes a beneficiary of the trust after the making of the declaration either is at the time of becoming a beneficiary, or subsequently becomes, ordinarily resident or, in the case of a company, resident in the United Kingdom.

References to beneficiaries in regulations 30 and 31

32. In regulations 30 and 31 references to a beneficiary are references to any person who is known to the trustees of the trust to be either—

(a) a person who is or will or may become, entitled to any income of the trust, whether in the form of income or not, or

(b) a person to whom any such income may be paid, or for whose benefit any such income may be applied, whether in the form of income or not, in the exercise of a discretion by them.

Interest distributions: the position of the legal owner

33.—(1) For the purposes of determining whether an interest distribution should be made with or without any deduction, the legal owner is entitled to treat a declaration made for the purposes of regulation 30 as valid.

(2) But the legal owner may not treat a declaration as valid if condition A or B is met.

(3) Condition A is that the legal owner receives a notification in compliance with an undertaking under regulation 31 that a person in question has become resident or ordinarily resident in the United Kingdom.

(4) Condition B is that the legal owner comes into possession of information by some other means which indicates that such a person is or may be resident or ordinarily resident in the United Kingdom**.**

The non-liability condition

The non-liability condition

34.—(1) The non-liability condition is met with respect to a participant on the distribution date if conditions A and B are met.

(2) Condition A is that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(3) Condition B is that a qualifying certificate has been given to the legal owner of the authorised investment fund.

(4) A qualifying certificate must be signed by the person giving it.

Qualifying certificates

35. For the purposes of these Regulations a "qualifying certificate" means a certificate that meets the following conditions—

(a) the contents condition (see regulation 36);

(b) the supplier condition (see regulation 37);

(c) the time limit condition (see regulation 38);

(d) the continuing validity condition (see regulation 39);

(e) the qualifying circumstances condition (see regulation 40); and

(f) if applicable, the joint holding condition (see regulation 41).

The contents condition

36.—(1) The contents condition is met if conditions A to C are met.

(2) Condition A is that the certificate contains a statement to the effect that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the payment is made.

(3) Condition B is that the certificate contains an undertaking by the person giving it to notify the legal owner if the person beneficially entitled to the interest distribution becomes liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(4) Condition C is that the certificate contains the following further three items of information.

(5) Item 1 is the name, permanent residential address including postcode, and date of birth of the person beneficially entitled to the payment.

(6) Item 2 is the national insurance number of an individual within paragraph (5)—

(a) who is aged 16 or over at the beginning of the year in which the payment is made, and

(b) who, at any time within the period of three years ending with the date on which a certificate is signed, has been liable to pay Class 1 or Class 2 contributions within the meaning of—

(i) section 1(2) of the Social Security Contributions and Benefits Act 1992(**a**), or

(ii) section 1(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

The Commissioners may indicate in a particular case that this item of information is not required.

(7) Item 3 is the following details relating to the participant's holding of units in the authorised investment fund to which the certificate relates—

(a) the name of the authorised investment fund,

(b) the name of the fund manager, and

(c) the reference number relating to the participant (if any).

The supplier condition

37.—(1) The supplier condition is met if the person giving the certificate is a person within any of categories A to G below.

(2) Category A is an individual who is—

(a) aged 16 or over at the beginning of the tax year in which the interest distribution is made, and

(b) beneficially entitled to the interest distribution.

(3) Category B is the parent or guardian of a person beneficially entitled to the payment if that person is under the age of 16 at the beginning of the tax year in which the interest distribution is made.

(4) Category C is an individual beneficially entitled to the payment who is under the age of 16 at the beginning of the tax year in which the interest distribution is made, but will reach that age during that tax year.

(5) Category D is the donee of a power of attorney authorising that person to administer the financial affairs of a person beneficially entitled to the payment.

(6) Category E is a parent, guardian, spouse or son or daughter of a person suffering from mental disorder.

(7) Category F is a receiver or other person appointed by any court in the United Kingdom to act in relation to the property and affairs of a person incapable, by reason of mental disorder, of managing and administering his property and affairs.

(8) Category G is a person—

(a) appointed by the Secretary of State under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations 1987(**c**), whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation, or

(b) in Northern Ireland, appointed by the Department for Social Development under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**d**), whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation.

(**a**) 1992 c. 4.
(**b**) 1992 c. 7.
(**c**) S.I. 1987/1968.
(**d**) S.R. (NI) 1987 No. 465.

The time limit condition

38.—(1) The time limit condition is met if the certificate is given to the legal owner by the specified time.

(2) In the cases of all categories specified in regulation 37 except for category C, the specified time is the end of the tax year in which the interest distribution is made.

(3) In the case of category C in regulation 37, the specified time is the end of the tax year in which the individual beneficially entitled to the interest distribution reaches the age of 16.

The continuing validity condition

39.—(1) The continuing validity condition is met if the qualifying certificate continues in full force and effect and has not ceased to be valid.

(2) The qualifying certificate ceases to be valid in circumstances A to E.

(3) Circumstance A is the receipt, by the legal owner, of information that the person beneficially entitled to the interest distribution has become liable to pay an amount by way of income tax for the tax year in which the payment is made.

(4) Circumstance B is the ending of the tax year in which the person beneficially entitled to the payment reaches the age of 16 in a case where paragraph (3) of regulation 37 (the supplier condition) applies.

(5) Circumstance C is the failure by a person who has given a qualifying certificate under paragraph (4) of regulation 37, but is not the holder of the holding to which the certificate for units relates, to become the holder before the first interest distribution made after the end of the tax year in which he reaches the age of 16.

(6) Circumstance D is where the Commissioners, having reason to believe that a person beneficially entitled to an interest distribution is or has become liable to pay an amount by way of income tax, by notice require the legal owner to deduct tax under section 349(2) of ICTA from interest distributions which—

(a) are made in respect of a holding specified in the notice, and

(b) are made to or for the benefit of that person after the expiry of a period of 30 days beginning with the date on which the notice is issued.

(7) Circumstance E is where the legal owner receives notification that the person by whom or on whose behalf the certificate was given has died.

(8) If the Commissioners issue a notice under paragraph (6), they must, at the same time, send a copy to the person referred to in the notice.

The qualifying circumstances condition

40.—(1) The qualifying circumstances condition is met in all circumstances except those circumstances in which condition A or B applies.

(2) Condition A applies if section 629 of ITTOIA 2005 (income paid to unmarried minor children of settlor) applies to the payment.

(3) Condition B applies if the holding to which the qualifying certificate relates is specified in a notice which—

(a) has been issued under regulation 39(6), and

(b) has not been cancelled.

The joint holding condition

41.—(1) The joint holding condition is met if—

(a) more than one person is entitled to an interest distribution,

(b) paragraph (2) of regulation 44 (notice relating to payments made under deduction of tax) is not applicable, and

(c) either condition A or B is met.

(2) Condition A is that a qualifying certificate is given by or on behalf of each person beneficially entitled to the interest distribution.

(3) Condition B is that a qualifying certificate is given by or on behalf of one or more (but not all) of the persons beneficially entitled to the interest distribution.

Qualifying certificates valid for only part of jointly held accounts: introductory

42.—(1) Regulations 43 and 44 apply if—

(a) condition A in regulation 41 is met, and

(b) a qualifying certificate has ceased to be valid in one of circumstances A to D in regulation 39 (the continuing validity condition).

(2) Regulations 43 and 44 also apply if condition B in regulation 41 is met.

Qualifying certificates valid for only part of jointly held accounts: the general rule

43.—(1) The general rule is that it is to be assumed that each person is beneficially entitled in equal shares to the interest distribution, and accordingly—

(a) payment of so much of the interest distribution as corresponds to the share of any person by or on behalf of whom a qualifying certificate has given must be made without deduction of tax; and

(b) payment of the remainder of the interest distribution must be made under deduction of tax.

(2) For all the purposes of the Income Tax Acts, tax deducted from a payment within paragraph (1)(b) is treated as income tax paid by the persons to whom the payment is treated as made.

(3) If this regulation applies by virtue of regulation 42(2), it applies in relation to a payment of interest made at any time after the time when the qualifying certificate ceased to be valid.

This is subject to paragraph (4).

(4) In a case where circumstance D of regulation 39 applies, this regulation applies in relation to a payment of interest made at any time—

(a) after the expiry of a period of 30 days beginning with the date of issue of the notice referred to in that circumstance D, or

(b) after such date falling within that period as the legal owner may at its option determine.

(5) This regulation is subject to regulation 44.

Qualifying certificates valid for only part of jointly held accounts: further provisions

44.—(1) The legal owner of an authorised investment fund may give notice to the Commissioners of its intention that the whole of an interest distribution specified in the notice shall be made under deduction of tax.

(2) If notice is given under paragraph (1), regulation 43 does not apply; and, accordingly, tax must be deducted by the legal owner from any payment of an interest distribution which is made after the date of the notice, and to which the notice relates.

(3) The legal owner of an authorised investment fund may give notice to the Commissioners (a "cancellation notice") cancelling a notice given under paragraph (1).

(4) If a cancellation notice is given, regulation 43 applies to any payment of an interest distribution which is made after the date of the cancellation notice, and to which the notice given under paragraph (3) formerly related.

Consequences of notice under regulation 39(6)

45.—(1) This regulation applies if the Commissioners issue a notice under regulation 39(6).

(2) No further qualifying certificate may be given by or on behalf of the person referred to in the notice in respect of units specified in the notice.

This is subject to paragraphs (3) and (4).

(3) If the Commissioners are satisfied, as a result of information received following the issue of the notice, that the person referred to in the notice—

(a) was not liable at the date of the notice, and has not since become liable, to pay an amount by way of income tax, or

(b) is no longer liable to pay such an amount,

they must cancel the notice and give notice of the cancellation to the legal owner and the person referred to in the notice.

(4) If, under paragraph (3), the Commissioners cancel the notice, a further qualifying certificate may be given on behalf of the person referred to in the notice.

Qualifying certificate not in writing

46.—(1) If a qualifying certificate is not in writing, the legal owner concerned may—

(a) make a declaration in writing on behalf of the person giving the qualifying certificate ("the relevant person") that the particulars contained in the certificate are those recorded in the declaration, and

(b) send a copy of the declaration ("the copy declaration") to the relevant person.

(2) The declaration takes effect as from the date on which the copy declaration is sent to the relevant person in accordance with paragraph (1).

This is subject to paragraph (3).

(3) The relevant person may notify any corrections to the legal owner within the period of 30 days beginning with the date on which the copy declaration was sent to him; and the corrections may be incorporated in a revised declaration made by the legal owner.

(4) A qualifying certificate is regarded as being given in writing for the purposes of this regulation if it is given by electronic communication containing an electronic signature of the relevant person.

(5) For the purposes of this regulation a declaration made by the legal owner is regarded as made in writing if it is produced by electronic means; and the copy declaration may be sent to the relevant person by telephonic facsimile transmission or by electronic communication.

CHAPTER 3

PARTICIPANTS CHARGEABLE TO CORPORATION TAX

Interest distributions

The obligation to deduct tax

47.—(1) This regulation applies if an interest distribution is made for a distribution period to a participant chargeable to corporation tax.

(2) The deduction obligation does not apply to the interest distribution.

(3) But if the participant is a company which is the trustee of the trust to which (or under which) the interest distribution is made (or received), the deduction obligation is not excluded by virtue of paragraph (2).

(4) In its application to an interest distribution to a participant in respect of accumulation units, the deduction obligation is an obligation to deduct a sum out of the amount being invested on the participant's behalf.

Dividend distributions

General

48.—(1) Paragraph (2) applies if—

(a) a dividend distribution for a distribution period is made to a participant by the legal owner of an authorised investment fund, and

(b) on the distribution date for that distribution period the participant is within the charge to corporation tax.

(2) For the purpose of computing the corporation tax chargeable upon the participant, the unfranked part of the dividend distribution is treated—

(a) as an annual payment and not as a dividend distribution or an interest distribution; and

(b) as having been received by the participant after deduction of income tax at the lower rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.

(3) Regulation 49 explains how to calculate the unfranked part of the dividend distribution.

Calculation of unfranked part of dividend distribution

49.—(1) This is how to calculate the unfranked part of the dividend distribution—

$$U = \frac{A \times C}{D}$$

(2) In paragraph (1)—

U = the unfranked part of the dividend distribution to the participant;

A = the amount of the dividend distribution;

C = such amount of the gross income as does not derive from franked investment income, as reduced by an amount equal to the legal owner's net liability to corporation tax in respect of the gross income;

D = the amount of the gross income, as reduced by an amount equal to the legal owner's net liability to corporation tax in respect of the gross income.

(3) Any reference in this regulation to the legal owner's net liability to corporation tax in respect of the gross income is a reference to the amount of the liability of the legal owner to corporation tax in respect of that gross income less the amount (if any) of any reduction of that liability which is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 of ICTA (relief by agreement with other territories) or by way of a credit under section 790(1) of that Act (unilateral relief).

References to gross income

50. For the purposes of this Chapter the references to the gross income are references to the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to participants for the distribution period in question.

Cases where participant is the manager of the fund

51. If on the distribution date the participant is the manager of the authorised investment fund, regulation 48(2) shall not apply in so far as the rights in respect of which the dividend distribution is made are held by him in the ordinary course of his business as manager of the fund.

Repayments of tax

52.—(1) This regulation applies if, in relation to a dividend distribution, any tax is treated as having been deducted by virtue of regulation 48(2)(b).

(2) The amount to which the participant is entitled by way of repayment of that tax must not exceed the amount of the participant's portion of the legal owner's net liability to corporation tax in respect of the gross income.

(3) In calculating the amount to which the participant is entitled by way of repayment of that tax, tax treated as having been deducted by virtue of regulation 48(2)(b) is set off in priority to any other tax under section 7(2) of ICTA and under paragraph 5 of Schedule 16 to that Act.

(4) For the purposes of paragraph (2) the participant's portion shall be determined by reference to the proportions in which participants have rights in the authorised investment fund in the distribution period in question.

CHAPTER 4

CHARGE TO TAX ON SUBSTANTIAL QIS HOLDINGS IN QUALIFIED INVESTOR SCHEMES

General

Charge to tax under this Chapter

53.—(1) A participant is charged to tax under this Chapter if the participant owns a substantial QIS holding in a qualified investor scheme.

(2) But a participant is excepted from the charge to tax under this Chapter if the participant is—

(a) a charity within the meaning of section 506(1) of ICTA;

(b) a registered pension scheme within the meaning of Part 4 of the Finance Act 2004(**a**);

(c) a scheme which is treated, under paragraph 1(1) of Schedule 36 to the Finance Act 2004, as a registered pension scheme within the meaning of Part 4 of that Act;

(d) an insurance company within the meaning of section 431(2) of ICTA(**b**) holding the units in the qualified investor scheme as assets of its long-term insurance fund;

(e) a friendly society within the meaning of section 466(2) of ICTA(**c**);

(f) a person for whom any profit on a sale of the units in the qualified investor scheme would be treated as a trading profit of its trade; or

(g) a qualified investor scheme.

(3) In these Regulations a "qualified investor scheme" means a fund, authorised by the Financial Services Authority, in which a statement that the fund is a qualified investor scheme is included in the instrument constituting the scheme.

(4) In paragraph (2)(d) "long-term insurance fund" has the meaning given by section 431(2) of ICTA(**d**).

Meaning of "substantial QIS holding"

54.—(1) For the purposes of this Chapter a participant owns a substantial QIS holding in a qualified investor scheme if the participant, either alone or together with associates or connected

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(**a**) 2004 c. 12.
(**b**) The definition of "insurance company" in section 431(2) was substituted by Article 26(3) of S.I. 2001/3629.
(**c**) The definition of "friendly society" in section 466(2) was substituted by paragraph 14(4) of Schedule 9 to the Finance (No. 2) Act 1992 (c. 48).
(**d**) The definition of "long-term insurance fund" was inserted (as "long term business fund") by paragraph 1(2) of Schedule 6 to the Finance Act 1990 (c. 29), and amended by paragraphs 2(1)(b) and 2(2)(a) of Article 52 of S.I. 2001/3629.

persons, (and otherwise than as a nominee or a bare trustee) owns units which represent rights to 10% or more of the net asset value of the fund.

This is without prejudice to what is meant by "substantial" where the word appears in other contexts.

(2) Section 417 of ICTA(**a**) applies for the purposes of this regulation to determine whether persons are associates.

(3) Section 839 of ICTA(**b**) (connected persons) applies for the purposes of this regulation.

(4) A participant who owns a substantial QIS holding in a qualified investor scheme continues to own a substantial QIS holding in that scheme until the date on which the whole of that holding is disposed of (so that, accordingly, it does not matter that the holding no longer represents 10% or more of the net value of the qualified investor scheme).

(5) Paragraph (4) is subject to regulation 63 (cases where a participant's holding becomes substantial).

Amount charged to tax under this Chapter

55.—(1) A participant is charged to tax under this Chapter by reference to the difference in value of a substantial QIS holding between two measuring dates (the "difference in value").

(2) The difference in value is the amount given by the formula—

VLMD – VEMD

(3) In paragraph (2)—

VLMD is the market value of the substantial QIS holding at the beginning of a chargeable measuring date (the "later measuring date"), and

VEMD is the market value of the substantial QIS holding at the end of the previous measuring date (the "earlier measuring date").

(4) In the case of units in a qualified investor scheme where both the buying and selling prices of units are published regularly by the manager of the scheme, "market value" means an amount equal to the buying price (that is the lower price) so published on any particular date, or if none were published on that date, on the latest date before.

(5) In the case of units in a qualified investor scheme where a single price is published regularly by the manager of the scheme, "market value" means the price so published on any particular date, or if none were published on that date, on the latest date before.

Measuring dates and meaning of "chargeable measuring date"

56.—(1) Each of the following is a measuring date—

(a) the first measuring date (see regulation 64);

(b) in a case where a participant already owns a substantial QIS holding in a qualified investor scheme, the date on which the participant acquires additional units in the qualified investor scheme;

(c) any reporting date;

(d) the date on which there is a disposal of part of the substantial QIS holding (see regulation 67);

(e) the date on which there is a disposal of the whole of the substantial QIS holding (see regulation 68);

(**a**) Section 417 was amended by paragraph 173 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).
(**b**) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4) and by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005.

(f) the date of the participant's death.

(2) In this Chapter a "chargeable measuring date" means any measuring date other than the first measuring date.

How tax is charged under this Chapter: income tax

57.—(1) This regulation applies in the case of a participant chargeable to income tax.

(2) The following amounts must be calculated—

(a) the difference in value calculated by reference to each chargeable measuring date falling within a tax year; and

(b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to income tax under Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged) on that aggregate amount for that tax year.

(4) If the aggregate amount is a negative amount, the participant is treated as if—

(a) a loss of that aggregate amount had been sustained by the participant in a transaction, and

(b) this regulation were listed in Part 3 of the Table in section 836B(**a**) of ICTA.

How tax is charged under this Chapter: corporation tax

58.—(1) This regulation applies in the case of a participant chargeable to corporation tax.

(2) The following amounts must be calculated—

(a) the difference in value calculated by reference to each chargeable measuring date falling within an accounting period; and

(b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to corporation tax under Case VI of Schedule D on that aggregate amount for that accounting period.

(4) If the aggregate amount is a negative amount, the participant is treated as if a loss of that aggregate amount had been incurred by the participant in a transaction in respect of which the participant were within the charge to corporation tax under Case VI of Schedule D.

Further provisions

59.—(1) In this Chapter "disposal" is to be construed in accordance with TCGA 1992, and cognate expressions are to be construed accordingly.

(2) The provisions of TCGA 1992 that apply to determine—

(a) the time at which a disposal and acquisition is made, and

(b) how assets disposed of are to be identified,

apply for the purposes of this Chapter in the same way as they apply for the purposes of that Act.

The first measuring date

The general rule

60.—(1) The general rule is that on the first date on which a participant who is within the charge to tax under this Chapter owns a substantial QIS holding in a qualified investor scheme, the participant must value his own holding in that scheme as at that date.

(2) The general rule is modified if any of the following regulations apply—

(**a**) Section 836B was inserted by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(a) regulation 61 (cases affected by the coming into force of these Regulations);

(b) regulation 62 (cases involving the launch of qualified investor schemes);

(c) regulation 63 (cases where a participant's holding becomes substantial).

Cases affected by the coming into force of these Regulations

61.—(1) This regulation applies if—

(a) a participant chargeable to income tax owns a substantial QIS holding in a qualified investor scheme on 6th April 2006, or

(b) a participant chargeable to corporation tax owns a substantial QIS holding in a qualified investor scheme on 1st April 2006.

(2) If on the measuring date first occurring after 30th June 2006 the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at 1st or 6th April 2006 (as the case may be).

(3) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to income tax, the participant must value his own holding in that scheme as at 6th April 2006.

(4) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to corporation tax, the participant must value its own holding in that scheme as at 1st April 2006.

Cases involving the launch of qualified investor schemes

62.—(1) This regulation applies if a qualified investor scheme is launched.

(2) If on the date immediately following the expiry of a period of twelve months beginning with the date of issue of the first prospectus of the scheme ("the qualification date") the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at that date or any earlier date.

(3) If on the qualification date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date on which the participant first owned a substantial QIS holding in the scheme.

Cases where a participant's holding becomes substantial

63.—(1) This regulation applies if, on any date, a participant owns a substantial QIS holding in a qualified investor scheme otherwise than as a result of the acquisition of units in that scheme.

(2) If on the next reporting date and the reporting date following it ("the second reporting date") the participant does not own a substantial QIS holding in the qualified investor scheme, the participant—

(a) is not required to value his own holding in that scheme at any time, and

(b) is not treated as owning a substantial QIS holding in the scheme on the second reporting date or at any earlier time.

(3) If on the second reporting date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date mentioned in paragraph (1) and as at each subsequent measuring date.

Definition of the "first measuring date"

64. In this Chapter the "first measuring date" means the date on which, in accordance with regulation 60(1), 61(3) or (4), 62(3) or 63(3), the participant must value his own holding in the qualified investor scheme.

Calculation to be made on the first measuring date

65. On the first measuring date the participant must calculate the chargeable gain or loss that would have accrued for the purposes of tax in respect of chargeable gains if, on that date, the participant had disposed of the substantial QIS holding for a consideration equal to its market value at that time.

Disposals of holdings

Reorganisations etc.

66.—(1) For the purposes of this Chapter, sections 116(10) and 127 of TCGA 1992 (reorganisations) do not apply to a substantial QIS holding in a qualified investor scheme; and a transaction which would otherwise have fallen within either of those provisions is treated as involving a disposal and subsequent acquisition of that holding.

(2) The consideration for the subsequent acquisition is a consideration equal to the market value of the holding immediately before the acquisition.

Disposal of part of a substantial QIS holding

67.—(1) This regulation applies if a participant disposes of part of a substantial QIS holding.

(2) The date on which the participant disposes of the part of the substantial QIS holding is a chargeable measuring date.

(3) For the purposes of tax in respect of chargeable gains a corresponding part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.

(4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.

(5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the part of the substantial QIS holding of which there has been a disposal.

(6) This regulation is subject to regulation 69 (no gain/no loss disposals).

Disposal of the whole of a substantial QIS holding

68.—(1) This regulation applies if a participant disposes of the whole of a substantial QIS holding.

(2) The date on which the participant disposes of the substantial QIS holding is a chargeable measuring date.

(3) For the purposes of tax in respect of chargeable gains—

(a) in a case where regulation 67 has applied on any earlier disposal of part of the substantial QIS holding, the remaining part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal, and

(b) in any other case, the whole of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.

(4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.

(5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the substantial QIS holding.

(6) This regulation is subject to regulation 69 (no gain/no loss disposals).

No gain/no loss disposals

69.—(1) This regulation applies if, for the purposes of tax in respect of chargeable gains, any disposal of the whole or part of a substantial QIS holding falls within any of the following provisions of TCGA 1992—

(a) section 58(1) (transfers between spouses);

(b) section 62(4) (acquisition as legatee);

(c) section 139 (company reconstructions)(**a**);

(d) section 140A (transfers of a UK trade)(**b**);

(e) section 140E (merger leaving assets within the UK tax charge)(**c**);

(f) section 171(1) (transfers within a group)(**d**).

(2) Regulation 67(3) or 68(3) (as the case may be) does not apply in relation to the disposal.

(3) On and after the date of the transfer, the transferee's holding in the qualified investor scheme is a substantial QIS holding in that scheme (whether or not the transferee's holding in that scheme (if any) was a substantial QIS holding in that scheme before that date).

(4) If the transferee disposes of the whole, or part, of the substantial QIS holding, the held-over gain or, as the case may be, a corresponding part of the held-over gain, is treated as accruing to the transferee on the disposal.

(5) In paragraph (4) "the held-over gain" means the chargeable gain or loss that would have accrued to the transferor if the disposal falling within paragraph (1) had been a disposal to which regulation 68(3) had applied.

PART 5

COMPLIANCE

Information relating to distributions

Application of section 234A of ICTA

70.—(1) Section 234A of ICTA(**e**) (information relating to distributions) applies in relation to an authorised investment fund with any necessary modifications.

(2) In the appropriate statement sent under that section to a participant within the charge to corporation tax, the legal owner of the authorised investment fund must include a statement showing the legal owner's net liability to corporation tax in respect of the gross income.

(3) In paragraph (2)—

"gross income" has the same meaning as in regulation 50, and

"net liability to corporation tax" is to be construed in accordance with regulation 49(3).

(**a**) Section 139 was amended by section 251(5) of the Finance Act 1994 (c. 9), section 134(1) of the Finance Act 1998 (c. 36), paragraph 5 of Schedule 29 to the Finance Act 2000 (c. 17), Part 3(2) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 2(3) of Schedule 27 to the Finance Act 2003 (c. 14), and by Article 2(2)(d) of S.I. 1992/3066.

(**b**) Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(3) of Schedule 27 to the Finance Act 2003 and section 59(3) of the Finance (No. 2) Act 2005 (c. 22).

(**c**) Section 140E was inserted by section 51(1) of the Finance (No. 2) Act 2005.

(**d**) Section 171(1) was substituted by paragraph 2(2) of Schedule 29 to the Finance Act 2000 (c. 17).

(**e**) Section 234A was inserted by section 32(1) of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(2) of Schedule 37 to the Finance Act 1996 (c. 8).

Notification of interest distributions made without deduction of tax

71.—(1) If, during a tax year, an authorised investment fund has made interest distributions without deduction of tax, the legal owner must give notice of that fact to the Commissioners within 14 days of the end of that tax year.

(2) Notice given under paragraph (1)—

(a) must be in writing, and

(b) has effect for the tax year in which it is given and for subsequent tax years until the notice is withdrawn.

(3) An authorised investment fund that fails to comply with paragraph (1) is liable to a penalty not exceeding £3,000 determined in accordance with section 100 of TMA 1970(**a**).

(4) Sections 100A, 100B, 102, 103(4) and 118(2) of TMA 1970(**b**) apply to a penalty determined in accordance with paragraph (3).

Information about interest distributions made without deduction of tax

72.—(1) The Commissioners may by notice require a person specified in paragraph (2) to provide them with such information as they may reasonably require for the purpose of determining whether interest distributions were properly made by that person without deduction of tax.

(2) The persons specified are—

(a) an open-ended investment company;

(b) the authorised corporate director of an open-ended investment company;

(c) a trustee of an authorised unit trust.

(3) The information to be provided may include copies of any relevant books, documents or other records.

(4) The information must be provided within such time (not being less than 14 days) as may be specified in the notice.

Inspection of records

73.—(1) A person specified in regulation 72(2) must, whenever required to do so, make available for inspection by an officer of the Commissioners authorised for that purpose, at such time as that officer may reasonably require, all such copies of books, documents or other records in their possession or under their control as may be required by the Commissioners under regulation 72.

(2) Every qualifying certificate supplied to a legal owner under Chapter 2 of Part 4 (participants chargeable to income tax) must be preserved by the legal owner in such manner as may be approved by the Commissioners for two years after it has ceased to be otherwise required under the provisions of these Regulations.

Use of information

74.—(1) Information obtained by the Commissioners under regulation 72 or 73—

(a) must not be used for the purpose of ascertaining the tax liability (if any) of any person other than the persons specified in paragraph (2), and

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(**a**) 1970 c. 9. Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26). There are amendments to section 100 but none is relevant.

(**b**) Sections 100A and 100B were substituted by section 167 of the Finance Act 1989, and section 100B was amended by paragraph 31 of Schedule 19 to the Finance Act 1994 and section 115(7) of the Finance Act 1995 (c. 4) and by S.I. 1994/1813. Section 102 was amended by section 168(40 of the Finance Act 1989. Section 118(2) was amended by Part VII of Schedule 8 to the Finance Act 1970 (c. 24) and by section 94 of the Finance (No. 2) Act 1987 (c.51).

(b) must otherwise be used only for the purposes of these Regulations.

(2) The persons specified in this paragraph are—

(a) the open-ended investment company in question;

(b) the trustees of the authorised unit trust in question;

(c) a participant who is beneficially entitled to an interest distribution made without deduction of tax to whom the information obtained relates;

(d) where the whole of an interest distribution made to or received under a trust without deduction of tax is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the trustees of that trust, that person in so far as the information obtained relates to him; and

(e) where an interest distribution is made to or received under a trust without deduction of tax and sub-paragraph (d) does not apply, the trustees of that trust and any beneficiary of the trust to whom the information obtained relates.

(3) In paragraph (2)(e) "any beneficiary of the trust" means—

(a) any person who is, or will or may become, entitled to any income of the trust, whether in the form of income or not, and

(b) any person to whom any such income may be paid, or for whose benefit any such income may be applied, whether in the form of income or not, in the exercise of a discretion by the trustees of the trust.

(4) Paragraph (1) does not prevent any disclosure of information authorised under section 182(5) of the Finance Act 1989(**a**).

Residence declarations

Inspection of residence declarations

75.—(1) The legal owner of an authorised investment fund must, on being required to do so by a notice given by an officer of the Commissioners, make available for inspection by such an officer—

(a) any residence declarations made to the authorised investment fund under Chapter 2 of Part 4 (participants chargeable to income tax), or

(b) any specified declaration or description of declarations.

(2) If a notice has been given to the legal owner under paragraph (1), the declarations shall be made available within such time as may be specified in the notice and the person carrying out the inspection may take copies of or extracts from them.

PART 6

FURTHER PROVISIONS RELATING TO AUTHORISED INVESTMENT FUNDS

CHAPTER 1

GENERAL

Ownership of shares of different denominations in open-ended investment companies

76.—(1) This regulation applies if conditions A and B are met.

(**a**) 1989 c. 26. Section 182(5) was amended by section 18(5) of the Child Trust Funds Act 2004 (c. 6).

(2) Condition A is that in respect of a given class of shares specified in the instrument of incorporation of an open-ended investment company, shares issued of that class consist of both smaller denomination shares and larger denomination shares.

(3) Condition B is that a participant owns both smaller denomination shares and larger denomination shares of that class.

(4) For the purposes of the provisions relating to ownership of shares in a company contained in the Tax Acts and TCGA 1992, the shares owned by the participant are treated as securities of the same class.

(5) Each larger denomination share is to be treated for those purposes as if it were comprised of the relevant number of smaller denomination shares.

(6) The market value of each smaller denomination share is to be taken for those purposes to be the relevant proportion of the market value of each larger denomination share.

(7) In this regulation—

"smaller denomination shares" means shares to which are attached rights specified in the company's instrument of incorporation that are expressed in the smaller of two denominations;

"larger denomination shares" means shares to which are attached rights so specified that are expressed in the larger of two denominations;

"relevant number" means the number calculated by reference to the relevant proportion; and

"relevant proportion" means the proportion, determined by the company's instrument of incorporation, which the rights attaching to each smaller denomination share bear to the rights attaching to each larger denomination share.

Non-discrimination in respect of different classes of shares

77.—(1) This regulation applies if the distribution accounts show an amount as available for distribution to participants.

(2) There must not be any discrimination between participants in respect of different classes of shares.

(3) There is no such discrimination if condition A and either condition B or C is met.

(4) Condition A is that the differences are wholly attributable to differences between the amounts or treatment for accounting purposes of the charges or expenses which—

(a) are permitted by the instrument of incorporation of the open-ended investment company concerned or the prospectus in issue for the time being of that company (including any supplements to that prospectus) or by the trust deed under which the authorised unit trust is constituted, and

(b) are payable out of the scheme property of that authorised investment fund in respect of the shares of those classes.

(5) Condition B is that the authorised investment fund is able to show that the differences between the amounts or treatment for accounting purposes of the charges or expenses referred to in condition A apply for bona fide commercial reasons.

(6) Condition C is that the differences are not such as to enable the participants in any one of those classes to obtain a tax advantage which they would not obtain if there were no differences between the amounts or treatment for accounting purposes of those charges or expenses.

(7) In paragraph (6) "tax advantage" has the same meaning as in Chapter 1 of Part 17 of ICTA (cancellation of tax advantages from transactions in securities).

CHAPTER 2

AMALGAMATION OF AN AUTHORISED UNIT TRUST WITH, AND CONVERSION OF AN AUTHORISED UNIT TRUST TO, AN OPEN-ENDED INVESTMENT COMPANY

Circumstances in which this Chapter applies

78.—(1) This Chapter applies if, in connection with a scheme of reorganisation, conditions A to E are met.

(2) Condition A is that the whole of the scheme property of an authorised unit trust that is available for transfer is transferred on a given date under an arrangement to an open-ended investment company.

(3) Condition B is that the consideration under the arrangement consists of or includes the issue, on the transfer date, of shares in the acquiring company to the holders of units in the target trust in exchange for those units.

(4) Condition C is that the consideration shares are issued to the holders of units in proportion to their holdings of the exchanged units.

(5) Condition D is that the consideration under the arrangement does not include anything else in addition to the issue of the consideration shares, other than (where applicable) the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(6) Condition E is that under the arrangement all the units in the target trust are extinguished.

(7) In this Chapter—

the "target trust" means the authorised unit trust mentioned in paragraph (2);

the "transfer date" means the given date mentioned in paragraph (2);

the "acquiring company" means the open-ended investment company mentioned in paragraph (2); and

"the whole of the scheme property of an authorised unit trust that is available for transfer" means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust;

the "consideration shares" means the shares in the acquiring company mentioned in paragraph (4); and

the "exchanged units" means the units in the target trust mentioned in paragraph (4).

Ending of accounting period of the target trust

79.—(1) An accounting period of the target trust (the "pre-transfer accounting period") ends immediately before the transfer date; and, for the purposes of the Corporation Tax Acts, the whole of the scheme property of the target trust that is available for transfer is treated as having been transferred immediately after the end of that accounting period.

(2) This regulation applies despite anything in section 12(1) to (7) of ICTA (periods of assessment for corporation tax).

Carrying forward of excess management expenses

80.—(1) This regulation applies if condition A or B is met.

(2) Condition A is that, in respect of the pre-transfer accounting period of the target trust, the trustees are entitled, under section 75(9) of ICTA(**a**) (carry forward of management expenses and sums treated as management expenses), to carry forward an excess amount to the next accounting period of the trust.

(3) Condition B is that—

(**a**) Section 75 was substituted by section 38(1) of the Finance Act 2004 (c. 12).

(a) the pre-transfer accounting period is the final accounting period of the target trust, and

(b) the trustees are entitled, under section 75(9) of ICTA, to carry forward an excess amount to what would have been the next accounting period of the trust were the trust to have an accounting period beginning on the transfer date.

(4) With effect from the transfer date, the entitlement is translated into a right in the acquiring company to treat the amount as if it had been carried forward under section 75(9) of ICTA to the first of its accounting periods to end on or after the transfer date.

Distributions by authorised unit trust after the end of its pre-transfer accounting period

81.—(1) This regulation applies if, in respect of any post-transfer distribution date of the target trust, there is an amount which falls to be treated, in accordance with regulation 3.1.4 (dividend distributions: general), as dividends on shares paid on that distribution date by the target trust to its participants in proportion to their rights.

(2) The amount shall instead be treated as dividends on shares paid on that date by the acquiring company to those persons in proportion to their rights.

(3) In this regulation "post-transfer distribution date" of a target trust means a distribution date of that trust which—

(a) occurs on or after the transfer date, and

(b) is the distribution date for a distribution period of the trust ending before the transfer date.

Continuing validity of residence declarations

82.—(1) This regulation applies if—

(a) before the transfer date, a unit holder has made a residence declaration to the trustees of the target trust, and

(b) immediately before the transfer date, the trustees of the target trust treated the residence declaration as valid.

(2) The acquiring company may treat the residence declaration as valid.

Powers of the acquiring company

83.—(1) On and after the transfer date, the acquiring company has the powers set out in paragraphs (2) and (3).

(2) The acquiring company may continue anything which—

(a) immediately before the transfer date was in the process of being done by the trustees of the target trust for the purposes of tax in relation to accounting periods of the target trust ending before that date, and

(b) is not continued by those trustees on or after the transfer date.

(3) The acquiring company may do anything which—

(a) immediately before the transfer date was not in the process of being done by the trustees of the target trust for the purposes of tax in relation to accounting periods of the target trust ending before that date and is not done by them for those purposes, and

(b) might reasonably have been expected to be done by those trustees for those purposes had the scheme of reorganisation not taken place.

Assessments made on discovery

84. The provisions of this Chapter do not affect any enactment in the Tax Acts which provides for assessments to be made where an officer of the Commissioners discovers that a set-off, matching, repayment of tax, or payment of tax credit or provision for relief in any other form ought not to have been made, given or otherwise allowed, or is or has become excessive.

Prevention of double relief

85. For the purposes of the Tax Acts, nothing in this Chapter has the effect of enabling—

(a) any set-off or matching of an amount to be made,

(b) any repayment of an amount of tax or payment of an amount of tax credit to be made, or

(c) any other relief to be given,

more than once in respect of the same amount or relief.

PART 7

CONSEQUENTIAL AMENDMENTS AND MODIFICATIONS OF ENACTMENTS

CHAPTER 1

AMENDMENTS OF REFERENCES TO REPEALED ENACTMENTS

Introduction

86. Regulations 87 to 92—

(a) amend references in enactments to provisions repealed by section 17(1) of the Finance (No. 2) Act 2005, and

(b) make incidental, consequential and supplemental provision.

Amendments of TMA 1970

87.—(1) TMA 1970(**a**) is amended as follows.

(2) In section 98 (penalties in relation to special returns)—

(a) in subsection (4E)(**b**) for "Chapter 3 of Part 12 of the principal Act" substitute "regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]))".

(b) in the first column of the Table—

(i) omit the entry relating to section 468P(6) of ICTA,

(ii) omit the entry relating to regulations under section 468PB(3) of ICTA(**c**), and

(iii) at the end insert—

"regulations under section 17(3) of the Finance (No. 2) Act 2005".

Amendment of ICTA

88.—(1) ICTA is amended as follows.

(2) In section 468(1)(**d**) (authorised unit trusts) for "section 468L" substitute "regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 18(3) of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]))".

(**a**) 1970 c. 9.
(**b**) Section 98(4E) was inserted by section 203(12) of the Finance Act 2003 (c. 14).
(**c**) The entries relating to section 468P(6) and to regulations under section 468PB(3) were inserted by section 203(13) of the Finance Act 2003.
(**d**) Section 468(1) was amended by paragraph 3(2) of Schedule 14 to the Finance Act 1994 (c. 9).

Amendment of TCGA 1992

89.—(1) TCGA 1992 is amended as follows.

(2) In section 99B(3)(**a**) (calculation of the disposal cost of accumulation units) for "section 468H of ICTA" substitute "regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 15 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]))".

Amendment of FA 1996

90.—(1) FA 1996(**b**) is amended as follows.

(2) In paragraph 4(4) of Schedule 10(**c**) (loan relationships: company holdings in unit trusts and offshore funds) for "section 468L(3) of the Taxes Act 1988" substitute "regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 18(3) of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]))".

Amendments of ITTOIA 2005

91.—(1) ITTOIA 2005 is amended as follows.

(2) In section 373(2) (open-ended investment company interest distributions) for "subsections (6) and (7)" substitute "subsection (7)".

(3) In section 376(2) (authorised unit trust interest distributions) for "subsections (6) and (7)" substitute "subsection (7)".

Amendment of the Finance Act 2005

92.—(1) The Finance Act 2005(**d**) is amended as follows.

(2) In Schedule 2 (alternative finance arrangements: further provisions), omit paragraph 4.

CHAPTER 2

MODIFICATIONS OF THE TAX ACTS

Introduction

93. In their application in relation to—

(a) authorised investment funds,

(b) shareholders or unit holders in authorised investment funds, and

(c) transactions involving authorised investment funds,

the Tax Acts have effect with the modifications specified in regulations 94 to 96.

Modifications of ICTA

94.—(1) ICTA is modified as follows.

(2) In section 402 (surrender of relief between members of groups and consortia) after subsection (3) the following subsection is treated as inserted—

"(3AA) For the purposes of this Chapter—

(**a**) Section 99B was inserted by section 21 of the Finance (No. 2) Act 2005 (c. 22).
(**b**) 1996 c. 8.
(**c**) Paragraph 4(4) of Schedule 10 was amended by paragraph 41(3) of Schedule 10 to the Finance Act 2004 (c. 12).
(**d**) 2005 c. 7.

(a) an open-ended investment company cannot be either the surrendering company or the claimant company, and

(b) an authorised unit trust shall not be regarded as a company.".

(3) In section 413 (interpretation of Chapter 4), in subsection (2), the following definitions are treated as inserted at the appropriate places—

""authorised unit trust" has the meaning given by section 468(6);

"open-ended investment company" has the meaning given by section 468A(2);".

(4) In section 413 after subsection (3) the following subsection is treated as inserted—

"(3A) For the purposes of paragraph (a) of subsection (3) above an open-ended investment company cannot be the third company mentioned in that paragraph.".

(5) In section 832 (interpretation of the Tax Acts) after subsection (2) he following subsection is treated as insert—

"(2A) The definition of "ordinary share capital" does not include the issued share capital of an open-ended investment company.".

(6) In section 834 (interpretation of the Corporation Tax Acts), in subsection (3), the words "except in so far as regulations made under section 17(3) of the Finance (No. 2) Act 2005 make other provision for dividends treated as paid by virtue of those Regulations" are treated as substituted for the words from "except in so far as" to the end.

(7) In Schedule 20 (charities: qualifying investments and loans) after paragraph 6 the following paragraph is treated as inserted—

"**6A.** Shares in an open-ended investment company.".

Modifications of FA 1996

95.—(1) FA 1996 is modified as follows.

(2) In paragraph 4 of Schedule 10 (loan relationships: collective investment schemes: company holdings in unit trusts and offshore funds)(**a**)—

(a) in sub-paragraph (1)(a) the words ", open-ended investment company" are treated as inserted after the words "unit trust scheme",

(b) in sub-paragraph (1)(b) the word ", company" is treated as inserted after the word "scheme", and

(c) in sub-paragraph (4) the words "or open-ended investment company" are treated as inserted after the words "authorised unit trust".

Modifications of ITTOIA 2005

96.—(1) ITTOIA 2005 is modified as follows.

(2) The words ", except in so far as regulations made under section 17(3) of the Finance (No. 2) Act 2005 make other provision for dividends treated as paid by virtue of those regulations" are treated as inserted at the end of each of the provisions specified in paragraph (3).

(3) The provisions specified are—

(a) section 374(1) (date when open-ended investment company interest distributions made),

(b) section 376(1) (date when authorised unit trust interest distributions made),

(c) section 387(1) (date when open-ended investment company dividend distributions made), and

(d) section 390(1) (date when authorised unit trust dividend distributions made).

(**a**) Paragraph 4 was amended by paragraph 41 of Schedule 10 to the Finance Act 2004 (c. 12).

(4) In sections 375(1) (interpretation of sections 373 and 374) and 388(1) (interpretation of sections 386 and 387) the definition of "the OEIC Regulations" is treated as omitted.

(5) In those provisions, the following definitions are treated as substituted for the definitions of "open-ended investment company", "owner of shares" and "umbrella company"—

> ""open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of FISMA 2000 applies,
>
> "owner of shares", in relation to an open-ended investment company, has the meaning given in regulations made under section 17(3) of the Finance (No. 2) Act 2005, and
>
> "umbrella company" has the meaning given by section 468A(**a**) of ICTA.".

(6) In sections 375(3) and 388(3) the words "regulations under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 6(2) of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]))" are treated as substituted for the words from "Chapter 3 of Part 12 of ICTA" to the end.

CHAPTER 3

MODIFICATIONS OF TCGA 1992

Preliminary

Introduction

97. In its application in relation to—

(a) authorised investment funds,

(b) shareholders or unit holders in authorised investment funds, and

(c) transactions involving authorised investment funds

TCGA 1992 has effect with the modifications specified in regulations 98 to 110.

General

Application of TCGA 1992: general

98.—(1) TCGA 1992 has effect in relation to—

(a) open-ended investment companies,

(b) holdings in, and the assets of, such companies, and

(c) transactions involving such companies,

in like manner as the manner in which it has effect in relation to authorised unit trusts, to rights under, and the assets subject to, such trusts and to transactions for purposes connected with such trusts.

(2) References in TCGA 1992 to companies, to holdings in, and the assets of, companies and to transactions involving companies accordingly have effect (or do not have effect as the case may be) in relation to open-ended investment companies, to holdings in, and the assets of, such companies, and to transactions involving such companies, in like manner as the manner in which they have effect (or do not have effect) in relation to authorised unit trusts, to rights under, and the assets subject to, such trusts, and to transactions for purposes connected with such trusts.

(3) This regulation has effect subject to the other modifications contained in this Chapter.

(**a**) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22).

General modifications: introduction

99. The modifications specified in regulations 100 to 104 have effect subject to the modifications specified in regulations 105 to 110.

General modification: authorised unit trust

100.—(1) The modifications specified in this regulation are that references, however expressed, in TCGA 1992 to—

(a) an authorised unit trust (other than references in a definition of an authorised unit trust, an unauthorised unit trust or a unit trust scheme),

(b) a unit trust scheme as denoting or including (whether expressly or by implication) an authorised unit trust (other than references in a definition of an authorised unit trust, an unauthorised unit trust or a unit trust scheme),

(c) the trustees of an authorised unit trust within sub-paragraph (a) or of a unit trust scheme within sub-paragraph (b),

have effect as if they included references to an open-ended investment company.

(2) Paragraph (1) does not apply—

(a) to references in any of the provisions specified in paragraph (3), or

(b) to references to provisions which include reference, whether made expressly or by implication, to an open-ended investment company.

(3) The provisions specified are—

(a) section 99(1) (application of Act to unit trust scheme),

(b) section 99A (authorised unit trusts: treatment of umbrella schemes),

(c) section 100(2) (exemption for units in unit trust scheme), and

(d) section 272(5) (valuation of rights of unit holders).

General modification: manager of authorised unit trust

101.—(1) The modifications specified in this regulation are that references, however expressed, in TCGA 1992 to the manager of an authorised unit trust or of a unit trust scheme within regulation 100(1)(b) have effect as if they included references to the authorised corporate director of the open-ended investment company concerned.

(2) Paragraph (1) does not apply—

(a) to section 272(5) (valuation of rights of unit holders), or

(b) to references in provisions which include reference, whether made expressly or by implication, to the authorised corporate director of an open-ended investment company.

General modification: unit in authorised unit trust

102.—(1) The modifications specified in this regulation are that references, however expressed, in TCGA 1992 to—

(a) a unit or an interest in, or rights under, an authorised unit trust,

(b) a unit or an interest in, or rights under, a unit trust scheme within regulation 100(1)(b), or

(c) an entitlement to a share of, or in, the investments subject to the trusts of an authorised unit trust or a unit trust scheme within regulation 100(1)(b),

have effect as if they included references to a share in the open-ended investment company concerned.

(2) Paragraph (1) does not apply—

(a) to section 99(1) (application of Act to unit trust scheme),

(b) to section 99A (authorised unit trusts: treatment of umbrella schemes),

(c) to section 272(5) (valuation of rights of unit holders), or

(d) to references in provisions which include reference, whether made expressly or by implication, to shares in, or an owner of shares in, an open-ended investment company.

General modification: accumulation units in authorised unit trusts

103.—(1) The modifications specified in this regulation are that references, however expressed, in TCGA 1992 to accumulation units in an authorised unit trust or in a unit trust scheme within regulation 100(1)(b) have effect as if they included references to accumulation shares in an open-ended investment company.

(2) In paragraph (1) "accumulation shares in an open-ended investment company" means shares in the company in respect of which income is credited periodically to the capital part of the scheme property of the company.

General modification: holder of unit in authorised unit trust

104.—(1) The modifications specified in this regulation are that references, however expressed, in TCGA 1992 to the holder of a unit within regulation 102(1) (other than references in a definition of a unit holder) have effect as if they included references to the owner of a share in the open-ended investment company concerned.

(2) Paragraph (1) does not apply—

(a) to section 99(1) (application of Act to unit trust scheme),

(b) to section 99A (authorised unit trusts: treatment of umbrella schemes),

(c) to section 272(5) (valuation of rights of unit holders), or

(d) to references in provisions which include reference, whether made expressly or by implication, to shares in, or an owner of shares in, an open-ended investment company.

Specific modifications of TCGA 1992

Modification of section 99 of TCGA 1992

105. In section 99 of TCGA 1992 (application of Act to unit trust schemes)(**a**), in subsection (2), the words "sections 99A and 99AA" are treated as substituted for "section 99A".

Insertion of section 99AA of TCGA 1992

106. After section 99A of TCGA 1992(**b**) the following section is treated as inserted—

"Open-ended investment companies: treatment of umbrella companies

99AA.—(1) In this section an "umbrella company" has the meaning given by section 468A(4) of the Taxes Act(**c**), and a reference to a part of an umbrella company is to be construed in accordance with that provision.

(2) For the purposes of this Act (except subsection (1))—

(a) each of the parts of an umbrella company shall be regarded as an open-ended investment company, and

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(**a**) Section 99 was relevantly amended by section 118(2) of the Finance Act 2004 (c. 12).
(**b**) Section 99A was inserted by section 118(3) of the Finance Act 2004.
(**c**) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22).

(b) the umbrella company as a whole shall not be so regarded (and shall not, unless express provision is made otherwise, be regarded as a company).

(3) In this Act, in relation to a part of an umbrella company, any reference, however expressed, to an owner of shares in an open-ended investment company is to a person for the time being having rights in the separate pool to which the part of the umbrella company relates.

(4) Nothing in subsection (2) or (3) shall prevent—

(a) gains accruing to an umbrella company being regarded as gains accruing to an open-ended investment company for the purposes of section 100(1) (exemption for authorised unit trusts etc);

(b) a transfer of business to an umbrella company being regarded as a transfer to an open-ended investment company for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc).".

Modification of section 170 of TCGA 1992

107. In section 170 of TCGA 1992 (groups of companies: interpretation), after subsection (4), the following subsection is treated as inserted—

"(4A) An open-ended investment company cannot be the principal company of a group.".

Modifications of section 272 of TCGA 1992

108.—(1) Section 272 of TCGA 1992 (valuation: general) is modified as follows.

(2) In subsection (3)(a) the words "where a single price is shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date, that price, or" are treated as inserted after "2 figures, or".

(3) After subsection (5) the following subsection is treated as inserted—

"(5AA) In this Act "market value" in relation to shares of a given class in an open-ended investment company the prices of which are published regularly by the authorised corporate director of that company (whether or not those shares are also quoted in The Stock Exchange Daily Official List) shall mean an amount equal to the price so published on the relevant date, or if no price was published on that date, on the latest date before that date.".

Modifications of section 288 of TCGA 1992

109.—(1) Section 288 of TCGA 1992 (interpretation)(**a**) is modified as follows.

(2) In subsection (1)—

(a) in the definition of "collective investment scheme", the words "sections 99A and 99AA" are treated as substituted for "section 99A", and

(b) the following definitions are treated as inserted at the appropriate places in alphabetical order—

""authorised corporate director" has the meaning given in regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 8 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]));"

""open-ended investment company" has the meaning given in regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 4 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]));"

""owner of shares" has the meaning given in regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 8 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/[abcd]));".

(**a**) Section 288 was relevantly amended by section 118(4) of the Finance Act 2004.

Modification of Schedule A1 to TCGA 1992

110. In Schedule A1 to TCGA 1992 (application of taper relief), in paragraph 16(2) (special rules for postponed gains)(**a**), at the end of paragraph (f) the word ", or" is treated as added and the following paragraph is then also treated as added—

"(g) regulations 67(4) and 68(4) of the Authorised Investment Funds (Tax) Regulations 2006.".

PART 8

FINAL PROVISIONS

Instruments revoked

111. The following statutory instruments are revoked—

The Open-ended Investment Companies (Tax) Regulations 1997(**b**);

The Open-ended Investment Companies (Tax) (Amendment) Regulations 1997(**c**);

The Open-ended Investment Companies (Tax) (Amendment) Regulations 2002(**d**);

The Open-ended Investment Companies (Tax) (Amendment) Regulations 2003(**e**).

Gillian Merron
Joan Ryan
29th March 2006 Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Abbreviations and Defined Expressions

PART 1

Abbreviations of Acts

TMA 1970	The Taxes Management Act 1970 (c. 9).
ICTA	The Income and Corporation Taxes Act 1988 (c. 1)
TCGA 1992	The Taxation of Chargeable Gains Act 1992 (c. 12)
FA 1996	The Finance Act 1996 (c. 8)
FISMA 2000	The Financial Services and Markets Act 2000 (c. 8)
FA 2002	The Finance Act 2002 (c. 23).
ITEPA 2003	The Income Tax (Earnings and Pensions) Act

(**a**) Schedule A1 was inserted by Schedule 20 to the Finance Act 1998 (c. 36).
(**b**) S.I. 1997/1154.
(**c**) S.I. 1997/1715.
(**d**) S.I. 2002/1973.
(**e**) S.I. 2003/1831.

	2003 (c. 1)
ITTOIA 2005	The Income Tax (Trading and Other Income) Act 2005 (c. 5)

PART 2

Index of expressions defined or otherwise explained in these Regulations

Accumulation unit	Regulation 6(5)
Acquiring company (in Chapter 2 of Part 6)	Regulation 78(7)
Alternative finance arrangements (in Part 3)	Regulation 21(11)
Authorised (in relation to unit trust schemes)	Regulation 5(2)
Authorised corporate director	Regulation 8
Authorised investment funds	Regulation 3
Capital profits, gains or losses (in Part 2)	Regulation 12
Chargeable measuring date (in Chapter 4 of Part 4)	Regulation 56(2)
Collective investment scheme	Regulation 8
Commissioners	Regulation 8
Consideration shares (in Chapter 2 of Part 6)	Regulation 78(7)
Contract for differences (in Part 3)	Regulation 21(9)
Creditor relationship	Regulation 8
Deduction obligation (in Part 4)	Regulation 26(3)
Derivative contract	Regulation 8
Difference in value (in Chapter 4 of Part 4)	Regulation 55(2)
Disposal (in Chapter 4 of Part 4)	Regulation 59
Distribution	Regulation 15(1)
Distribution accounts	Regulation 15(3)
Distribution date	Regulation 15(4)
Distribution period	Regulation 15(2)
Dividend distribution	Regulation 22(3)
Earlier measuring date (in Chapter 4 of Part 4)	Regulation 55(2)
Exchanged units (in Chapter 2 of Part 6)	Regulation 78(7)
First measuring date (in Chapter 4 of Part 4)	Regulation 64
Interest distribution	Regulation 18(3)
Investments	Regulation 8
Later measuring date (in Chapter 4 of Part 4)	Regulation 55(2)
Legal owner	Regulation 6(1)
Manager	Regulation 6(3)
Market value (in Chapter 4 of Part 4)	Regulation 55(4) and (5)
Measuring date (in Chapter 4 of Part 4)	Regulation 55
Net asset value	Regulation 8
Open-ended investment company	Regulation 4
Owner of shares	Regulation 8
Participant	Regulation 6(6)
Pre-transfer accounting period (in Chapter 2 of Part 6)	Regulation 79(1)
Qualifying certificate	Regulation 35
Qualified investor scheme	Regulation 53(3)
Qualifying investments	Regulation 20

Qualifying units (in another authorised investment fund) (in Part 3)	Regulation 21(3)
Relevant period (in Part 3)	Regulation 19(2)
Reporting date	Regulation 8
Residence declaration	Regulation 8
Scheme property	Regulation 6(2)
Securities (in Part 3)	Regulation 21(2)
Substantial QIS holding (in Chapter 4 of Part 4)	Regulation 54
Target trust (in Chapter 2 of Part 6)	Regulation 78(7)
Tax year	Regulation 8
Transfer date (in Chapter 2 of Part 6)	Regulation 78(7)
Umbrella company	Regulation 7(1)
Umbrella scheme	Regulation 7(4)
Underlying subject matter (in Part 3)	Regulation 21(6)
Unit holder	Regulation 5(3)
Unit trust scheme	Regulation 5(1)
Units	Regulation 6(4)
The whole of the scheme property of an authorised unit trust that is available for transfer (in Chapter 2 of Part 6)	Regulation 78(7)

EXPLANATORY NOTE

(This note is not part of the Regulations)

In the Finance (No. 2) Act 2005 (c. 22) ("the 2005 Act"), Chapter 3 of Part 2 makes provision relating to authorised investment funds. Existing statutory provisions dealing with authorised investment funds cease to have effect on such day as the Treasury may appoint by order (see sections 17(1) and 19(1) of the 2005 Act). Arrangements are being made for the enactments specified in section 17(1) of the 2005 Act to be repealed.

Sections 17(3) and 18 of the 2005 Act then confer powers to make provisions about the treatment of authorised investment funds for taxation purposes. These Regulations exercise those powers. In doing so, these Regulations contain material dealing with the same matters as those dealt with in the enactments specified in section 17(1) of the 2005 Act, and in various statutory instruments; but these Regulations make some changes in dealing with those matters. These Regulations also contain new provisions.

Part 1 of these Regulations contains preliminary provisions and provides for interpretation. As regards the preliminary provisions, regulation 1 provides for citation, commencement and effect; and regulation 2 sets out the structure of these Regulations, indicating the nature of each of the eight parts into which these Regulations are divided. Regulations 3 to 8 then deal with matters of interpretation. Regulation 3 defines "authorised investment funds" as "open-ended investment companies" and as "authorised unit trust schemes". The definition of an open-ended investment company is dealt with in regulation 4 and definitions relating to authorised unit trust schemes are set out in regulation 5. Regulations 6 to 8 contain further definitions. The final regulation in this Part is regulation 9, which introduces the Schedule to these Regulations.

Part 2 of these Regulations deals with the tax treatment of authorised investment funds; and this Part contains the special detailed rules that apply to this subject. Capital profits, gains or losses arising to an authorised investment fund must not be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) (see regulation 10), or for the purposes of Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts) (see regulation 11). Regulation 12 contains further provisions supplementing these basic rules. Further provision is then made for the purposes of an authorised investment fund's loan relationships. Regulation 13 is concerned with the treatment of interest distributions, and regulation 14 prevents the carrying-back of deficits on loan relationships to earlier periods.

Part 3 of these Regulations deals with distributions made by authorised investment funds. Regulation 15 is concerned with interpretation, and regulation 16 specifies the funds excluded from the ambit of this Part. Regulation 17 deals with the contents of distribution accounts: amounts shown as available for distribution must be shown as available for distribution as yearly interest or as dividends. Regulations 18 to 21 are concerned with interest distributions. Regulation 18 sets out the general rule that applies. But before an interest distribution may be made, an amount must satisfy the qualifying investments test. The test is set out in regulation 19 and further explained in regulations 20 and 21. Regulation 22 deals with dividend distributions; and regulation 23, which applies both to interest distributions and to dividend distributions, contains provisions which apply if the amounts available for distribution are de minimis only.

Part 4 of these Regulations deals with the treatment of participants in authorised investment funds; and this Part is divided into four Chapters.

Chapter 1 of Part 4 contains preliminary provisions. Regulation 24 sets out the structure of this Part, indicating the nature of each of the four Chapters, and regulation 25 specifies funds excluded from the ambit of this Part.

Chapter 2 of Part 4 deals with participants chargeable to income tax. Regulation 26 provides for the general obligation to deduct a sum representing tax when any yearly interest is paid ("the deduction obligation") to be relaxed in a number of cases. The cases in question include those where the reputable intermediary condition is met, the residence condition is met or the non-liability condition is met. Regulations 27 to 29 then deal in detail with the reputable intermediary

condition; regulations 30 to 33 with the residence condition; and regulations 34 to 46 with the non-liability condition.

Chapter 3 of Part 4 deals with participants chargeable to corporation tax. Regulation 47 provides that the deduction obligation does not apply to interest distributions. So far as dividend distributions are concerned, regulation 48 provides for the unfranked part of the dividend distribution to be treated as an annual payment and not as a dividend distribution or an interest distribution. Regulation 49 specifies how the unfranked part of the dividend distribution is to be calculated, and regulations 50 to 52 contain supplemental provisions.

Chapter 4 of Part 4, which does not derive in any way from earlier legislation, imposes a charge to tax on substantial QIS holdings in qualified investor schemes. The first group of provisions in this Chapter is of a general nature. Regulation 53 provides for the charge to tax under this Chapter, and specifies those participants who are excepted from that charge. Regulation 54 explains what is meant by the expression "substantial QIS holding". Regulation 55 is concerned with the amount charged to tax under this Chapter: that amount is calculated by reference to the difference in value of the substantial QIS holding between two measuring dates. Regulation 56 specifies the dates that are measuring dates, and regulations 57 and 58 contain additional provisions relating (respectively) to the charges to income tax and corporation tax. Regulation 59 contains further provisions. The next group of provisions in this Chapter is concerned with the first measuring date. The general rule that a participant must value his holding on the first measuring date is set out in regulation 60; but that general rule is modified in the cases dealt with in regulations 61 to 63. Regulation 64 contains the definition of the first measuring date, and regulation 65 specifies a calculation that must then be made. The final group of regulations in this Chapter is concerned with disposals of holdings. Separate provision is made for reorganisations (regulation 66), for the disposal of part of a holding (regulation 67), for the disposal of the whole of a holding (regulation 68) and for no gain/no loss disposals (regulation 69).

Part 5 of these Regulations deals with compliance. Regulation 70 provides for section 234A of the Income and Corporation Taxes Act 1988 (c. 1) (information relating to distributions) to apply in a modified form. Regulation 71 provides that an authorised investment fund making interest distributions without deduction of tax must report this information to the Commissioners for Revenue and Customs. The Commissioners may require information to be given about interest distributions made without deduction of tax (regulation 72) and may inspect records (regulation 73), but the information so obtained by the Commissioners may only be used in limited contexts (see regulation 74). The Commissioners may also inspect residence declarations given under Chapter 2 of Part 4 of these Regulations (regulation 75).

Part 6 of these Regulations contains further provisions relating to authorised investment funds; and this Part is divided into two Chapters.

Chapter 1 of Part 6 is of a general nature. Regulation 76 deals with the case where an open-ended investment company issues shares of different denominations. Regulation 77 provides that there must not be discrimination in respect of different classes of shares.

Chapter 2 of Part 6 is concerned with the amalgamation of an authorised unit trust with, and the conversion of an authorised unit trust into, an open-ended investment company. The circumstances in which this Chapter applies are set out in regulation 78; and regulations 79 to 85 are concerned with the tax consequences of the scheme undertaken.

Part 7 of these Regulations contains consequential amendments and modifications of enactments; and this Part is divided into three Chapters.

Chapter 1 of Part 7 contains amendments of references to enactments repealed by section 17(1) of the 2005 Act (regulations 86 to 92).

Chapter 2 of Part 7 contains modifications of the Tax Acts (regulations 93 to 96).

Chapter 3 of Part 7 contains modifications of the Taxation of Chargeable Gains Act 1992 (c. 12) (regulations 97 to 110).

Part 8 of these of these Regulations contains final provisions. Regulation 111 provides for the revocation of statutory instruments whose subject matter is now contained in these Regulations.

The Schedule to these Regulations is in two Parts. Part 1 gives the meaning of the abbreviated references to Acts used in these Regulations; and Part 2 consists of an Index of expressions defined or otherwise explained in these Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available on the website of Her Majesty's Revenue and Customs at www.hmrc.gov.uk/ria/ria-aif.pdf.

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