STATUTORY INSTRUMENTS

2010 No. 1642

INCOME TAX

CORPORATION TAX

The Authorised Investment Funds (Tax) (Amendment No. 2) Regulations 2010

Made - - - - 10.45 a.m. on 22*nd June 2010*

Laid before the House of Commons 1.15 p.m. on 22*nd June 2010*

Coming into force - - 1.45 p.m. on 22*nd June 2010*

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment No. 2) Regulations 2010 and come into force at 1.45 p.m. on 22nd June 2010.

(2) These Regulations have effect in relation to distributions made at or after that time.

Amendments to the Authorised Investment Funds (Tax) Regulations 2006

2. The Authorised Investment Funds (Tax) Regulations 2006(**b**) are amended as follows.

Amendment of regulation 13 (treatment of interest distributions for purposes of loan relationships)

3. In regulation 13 (treatment of interest distributions for purposes of loan relationships) after paragraph (1) insert—

"(1A) But paragraph (1) does not apply to the extent that the interest distribution is derived from franked investment income.".

Amendment of regulation 48 (general)

4.—(1) Amend regulation 48 (general)(**c**) as follows.

(2) In paragraph (2)(b) for "income tax at the basic rate" substitute "tax at a rate equal to the basic rate of income tax".

(3) After paragraph (2B) insert—

(**a**) 2005 c. 22.
(**b**) S.I. 2006/964; relevant amending instruments are S.I. 2006/3239, 2008/705, 2008/3159, and 2009/2036.
(**c**) Regulation 48 has been amended by S.I. 2008/3159, there are other amending instruments but none is relevant.

"(2C) Regulation 48A makes provision in relation to the unfranked part of the dividend distribution treated as an annual payment under paragraph (2)(a) and regulation 48B makes provision in relation to the tax treated as deducted under paragraph (2)(b).".

Insertion of regulations 48A and 48B

5. After regulation 48 insert—

"Income treated as an annual payment treated as foreign income

48A. If there is a foreign element of the tax treated as deducted under regulation 48(2)(b) (see regulation 48B), a corresponding proportionate part of the distribution which is treated as an annual payment under regulation 48(2)(a) is treated as if it were income that—

(a) arises in a territory of the kind mentioned in regulation 48B(3)(a), and

(b) is income by reference to which the tax treated under that provision as payable was computed.

Tax treated as deducted from a dividend distribution

48B.—(1) The tax treated as deducted under regulation 48(2)(b) ("the deemed deduction") is treated as income tax.

(2) But paragraph (1) does not apply to any foreign element of the deemed deduction.

(3) Instead, for the purposes of the Tax Acts the foreign element of the deemed deduction is treated as if it were tax—

(a) payable under the law of a territory outside the United Kingdom with which there are not in force any arrangements under section 2(1) of TIOPA 2010 (double taxation relief by agreement),

(b) calculated by reference to income arising or any chargeable gain accruing, in the territory, and

(c) corresponding to United Kingdom corporation tax.

(4) The amount of the foreign element of the deemed deduction is the amount, if any, by which the participant's portion of the legal owner's liability to corporation tax in respect of the gross income is reduced by any relief which is given, or falls to be given by way of a credit under section 18 of TIOPA 2010 (entitlement to credit for foreign tax reduces UK tax by amount of the credit).

(5) For the purposes of paragraph (4) 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.".

Omission of regulation 52 (repayments of tax)

6. Omit regulation 52 (repayments of tax).

Omission of regulation 52A (companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax)

7. Omit regulation 52A (companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax)(**a**).

(**a**) Regulation 52A was inserted by S.I. 2006/3239 and substituted by 2008/3159.

Amendment of the Schedule (abbreviations and defined expressions)

8. In the Schedule (abbreviations and defined expressions) in Part 1 (abbreviations of Acts)(**a**) at the end insert—

"TIOPA 2010	The Taxation (International and Other Provisions) Act 2010 (c. 8)"

Michael Fabricant
Angela Watkinson
10:45 a.m. on 22nd June 2010 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations").

Regulation 1 provides for citation, commencement and effect. Regulation 2 introduces the amendments to the principal Regulations.

Regulations 2 to 8 make amendments to the principal Regulations.

Regulation 3 amends regulation 13 (treatment of interest distributions for purposes of loan relationships) to prevent an interest distribution being treated as interest under a loan relationship to the extent it is derived from franked investment income.

Regulations 4 to 8 make provision in relation to cases where all or part of a dividend distribution is ultimately derived from overseas dividend income.

Regulation 4 amends regulation 48 (general) to amend the provision relating to tax treated as deducted from a dividend distribution which is now provided for in new regulation 48B and to insert a cross reference to the new regulations inserted by these Regulations.

Regulation 5 inserts two new regulations. New regulation 48A provides that where the tax treated as deducted from a dividend distribution contains a foreign element a corresponding proportionate part of the distribution is treated as foreign income by reference to which that tax was computed.

New regulation 48B provides that the tax treated as deducted under regulation 48(2)(b) of the principal Regulations is treated as income tax except to the extent that this amount contains a foreign element. The amount of the foreign element is calculated by reference to the credit for foreign tax received by the authorised investment fund making the distribution. That amount is treated as foreign tax paid in a territory with which the United Kingdom has no double taxation arrangements in force.

Regulation 6 omits regulation 52 (repayments of tax). This provision imposed a restriction on repayments of tax which is now unnecessary in consequence of the treatment provided by new regulation 48B.

Regulation 7 omits regulation 52A (companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax). This regulation specified, where certain conditions were met, the amount of tax that was to be treated as foreign tax in respect of distributions paid to a participant carrying on general insurance business. This regulation is no longer required in view of the wider provision made in new regulation 48B.

(**a**) Part 1 of the Schedule was amended by S.I. 2008/705 and 2009/2036.

Regulation 8 amends the Schedule to insert an abbreviation of the Taxation (International and Other Provisions) Act 2010.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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