STATUTORY INSTRUMENTS

2008 No. 3159

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

STAMP DUTY RESERVE TAX

The Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008

Made - - - -	*10th December 2008*
Laid before the House of Commons	*11th December 2008*
Coming into force - -	*1st January 2009*

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. 3) Regulations 2008 and shall come into force on 1st January 2009.

(2) In relation to a qualified investor scheme authorised by the Financial Services Authority before 1st January 2009, these regulations have effect subject to regulations 30 and 31.

(3) Regulation 27 of these Regulations (inserted regulations 69Z24A to 69Z24D) has effect in relation to manufactured dividends paid on or after 1st January 2009.

(4) Regulation 28 of these Regulations (amendment of regulation 94 of the principal Regulations) has effect in relation to property income distributions paid on or after 1st January 2009.

Interpretation

2. In these Regulations—

"qualified investor scheme" has the same meaning as regulation 14B(4) (inserted by regulation 11 of these Regulations);

"tax year"—

(**a**) 2005, c. 22.

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

"the principal Regulations" means the Authorised Investment Funds (Tax) Regulations 2006(**c**).

Amendment of the principal Regulations

3. The principal Regulations are amended as follows.

Amendment of regulation 2

4. In regulation 2 (structure of Regulations), after "Part 2 deals with the tax treatment of authorised investment funds" insert—

"Part 2A deals with qualified investor schemes".

Amendment of regulation 10

5. After paragraph (3) of regulation 10 (general rule for loan relationships: exclusion of capital profits, gains or losses) insert—

"(4) This regulation is subject to regulation 14B (tax treatment of qualified investor schemes.".

Amendment of regulation 11

6. After paragraph (3) of regulation 11 (general rule for derivative contracts: exclusion of capital profits, gains or losses) insert—

"(4) This regulation is subject to regulation 14B (tax treatment of qualified investor schemes).".

Amendment of regulation 12

7. In paragraph (1) of regulation 12 (accounts prepared in accordance with UK generally accepted accounting practice), for sub-paragraphs (a) and (b) substitute "the heading "net capital gains/losses"".

Amendment of regulation 13

8. In paragraph (3) of regulation 13 (treatment of interest distributions for purposes of loan relationships) after "regulation 14" insert "and regulation 14B (tax treatment of qualified investor schemes)".

Amendment of regulation 14

9. In regulation 14 (treatment of deficits on loan relationships), at the end insert "This is subject to regulation 14B (tax treatment of qualified investor schemes)".

(**a**) 1988, c. 1. Amended by sections 526 and 527 of the Income and Corporation Taxes Act 1970 (c. 10); Schedule 7 to the Capital Gains Tax Act 1979 (c. 14); section 32 of, and paragraph 16(3) of Schedule 8 to, the Finance Act 1971 (c. 68); section 93 of, and paragraph 3 of Schedule 24 to, the Finance Act 1972 (c. 41); paragraph 10 of Schedule 4 to the Finance Act 1974 (c. 30); paragraph 11 of Schedule 4 to the Finance Act 1976 (c. 40); paragraph 4 of Schedule 2 to the Finance (No 2) Act 1979 (c. 47); section 34(5) of the Finance Act 1981 (c. 35); paragraph 7 of Schedule 18 to the Building Societies Act 1986 (c. 53); paragraph 2 of Schedule 15 to the Finance Act 1987 (c. 16).

(**b**) 1992, c. 12. The definition of "year of assessment" was substituted by paragraph 101(2) of Schedule 2 to the Finance Act 2008 (c. 9).

(**c**) S.I. 2006/964, relevantly amended by S.I. 2006/3239, 2007/683, 2007/794, 2008/705 and 2008/1463.

Insertion of regulation 14A

10. After regulation 14 (treatment of deficits on loan relationships) insert—

"Authorised investment funds with limited investment powers – stamp duty reserve tax

14A.—(1) Where, for the relevant period—

(a) an authorised investment fund is constituted as a unit trust scheme ("the scheme"); and

(b) conditions A to D in this regulation are met,

paragraph 2 of Schedule 19 to the Finance Act 1999(**a**) ("FA 1999") shall not apply to a surrender to the scheme that would, but for this regulation, be taxable under Part II of that Schedule.

(2) Condition A is that the scheme must be dedicated to investment in the shares of a specified open-ended investment company to which Part 4A applies ("the PAIF").

(3) Condition B is that—

(a) the trust deed of the scheme must specify that the scheme may only invest in the PAIF; and

(b) the prospectus for the scheme must state that the scheme may only invest in the PAIF.

(4) Condition C is when an investment in the scheme is made, the scheme must (within one working day of that investment) invest in the PAIF an amount equal to the investment.

(5) Condition D is that when a withdrawal of investment from the scheme is made, the scheme must (within one working day of that withdrawal) withdraw from the PAIF an amount equal to the withdrawal.

(6) For the purposes of complying with conditions C and D, an investment in the scheme may not be set off against a withdrawal from the scheme.

(7) A scheme will not be dedicated to investment in the PAIF for the purpose of condition B if it has any assets other than shares in the PAIF and money.

(8) In this regulation—

"relevant period" means the relevant two-week period referred to in paragraph 4(2) of Schedule 19 to FA 1999(**b**).

"surrender" means a surrender within the meaning of paragraph 2 of Schedule 19 to FA 1999.

"working day" means a day other than—

(a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a Bank Holiday in the United Kingdom under the Banking and Financial Dealings Act 1971(**c**).

"money" includes cash held on deposit but does not include securities of any kind.".

Insertion of Part 2A

11. After regulation 14A(**d**) (authorised investment funds with limited investment powers – stamp duty reserve tax) insert the following Part—

(**a**) 1999, c. 16. Amended by section 93 of the Finance Act 2001 (c. 9).
(**b**) Subparagraph (4) was amended by section 93 of the Finance Act 2001 (c. 9).
(**c**) 1971, c. 80.
(**d**) Regulation 14A was inserted by regulation 10 of the Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008.

"PART 2A

Qualified Investor Schemes

Tax treatment of qualified investor schemes

14B.—(1) The provisions in paragraph (2) shall not apply to a qualified investor scheme in relation to an accounting period of the scheme unless the genuine diversity of ownership condition (see regulation 14C) is met in relation to that accounting period.

(2) The provisions referred to in paragraph (1) are—

(a) the provisions of Part 2 of these Regulations,

(b) the provisions of Part 4A of these Regulations,

(c) where the qualified investor scheme is an authorised unit trust scheme, section 468(1A) of ICTA(**a**),

(d) where the qualified investor scheme is an open-ended investment company, section 468A(1) of ICTA(**b**),

(e) in subsection (1) of section 99 of TCGA 1992(**c**) (as modified by these Regulations) the words "except that nothing in this section" to the end of that sub-section, and

(f) section 100 of TCGA 1992(**d**).

(3) Where the genuine diversity of ownership condition is not met in relation to an accounting period of the scheme—

(a) section 13A of ICTA(**e**) applies to the qualified investor scheme, whether or not that section would apply apart from this sub-paragraph; and

(b) the total amount shown in the distribution accounts available for distribution to participants must only be shown as available for distribution in accordance with paragraph (1)(b) of regulation 17 (contents of distribution accounts).

(4) 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.

(5) For the purposes of these Regulations, in relation to a qualified investor scheme, the "instrument constituting the scheme" means—

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

(b) in relation to an authorised unit trust scheme, the trust deed.

The genuine diversity of ownership condition

14C.—(1) The genuine diversity of ownership condition is that the qualified investor scheme must—

(**a**) 1988, c. 1. Subsection (1A) was inserted in relation to any accounting period ending after 31 March 1996, by section 73 of, and paragraph 10 of Schedule 6 to, the Finance Act 1996 (c. 8). It was amended by section 5(7) of, and paragraphs 40 and 41 of Schedule 1 to, the Finance Act 2008 (c. 9).

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

(**c**) 1992, c. 12. Section 99 was amended by regulation 20 of the Open-ended Investment Companies (Tax) Regulations 1997, SI 1997/1154; articles 62 and 62 of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001, SI 2001/3629; section 118 of the Finance Act 2004 (c. 12); and regulations 97–105 of the Authorised Investment Funds (Tax) Regulations 2006, SI 2006/964.

(**d**) Section 100 was amended by section 72(2) of the Finance Act 1995 (c. 4); subsections (2A) and (2B) were inserted by section 20 of the Finance (No. 2) Act 2005 with effect for 2005-06 and subsequent tax years.

(**e**) Section 13A was inserted, in relation to accounting periods beginning after 31 March 1989, by section 105(2) of the Finance Act 1989 (c. 26). It was amended by section 28(2) of the Finance Act 1999 (c. 16); sections 26(3), 178 and Part 3 of Schedule 26 to the Finance Act 2006 (c. 25); and regulation 48 of the Tax and Civil Partnership Regulations 2005, SI 2005/3229.

(a) meet Conditions A to D throughout the accounting period; or

(b) comply with paragraph (9).

(2) Condition A is that the scheme documents—

(a) contain a statement that units in the scheme will be widely available,

(b) specify the intended categories of investor, and

(c) specify that the manager of the scheme must market and make available the units in the scheme in accordance with condition C.

(3) Condition B is that neither—

(a) the specification of the intended categories of investor referred to in paragraph (2)(b), nor

(b) any other terms or conditions governing participation in the scheme, whether or not specified in the scheme documents,

have the effect of—

(i) limiting investors to a limited number of specific persons or specific groups of connected persons, or

(ii) deterring a reasonable investor within the intended categories of investor from investing in the scheme.

(4) Condition C is that units in the scheme must be marketed and made available—

(a) sufficiently widely to reach the intended categories of investors, and

(b) in a manner appropriate to attract those categories of investors.

(5) Condition C is subject to paragraph (8).

(6) Condition D is that a person who is within one of the categories of intended investor in the scheme which have been specified in accordance with condition A may, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.

(7) Condition D is subject to paragraph (8).

(8) Conditions C and D shall be treated as being met even if at the relevant time the scheme has no capacity to receive additional investments, unless—

(a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise); and

(b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhausts all, or substantially all, of that capacity.

(9) The qualified investor scheme also meets the genuine diversity of ownership condition if—

(a) an investor in the scheme is a unit trust scheme (a "feeder fund"),

(b) paragraphs (2) to (8) are met in relation to the qualified investor scheme after taking into account the intended investors in the feeder fund, and

(c) the qualified investor scheme and the feeder fund have the same manager (or proposed manager).

(10) For the purposes of this regulation—

(a) sections 993 and 994 of ITA 2007(**a**) (connected persons) apply in the case of a person chargeable to income tax, and

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(**a**) 2007, c. 3.

(b) section 839 of ICTA(**a**) (connected persons) applies in the case of a person chargeable to corporation tax.

(11) In this regulation "scheme documents" means—

(a) the instrument constituting the scheme, and

(b) the scheme's prospectus in issue for the time being (including any supplements to the prospectus).

Clearance in relation to the genuine diversity of ownership condition

14D.—(1) An application for clearance that a qualified investor scheme meets the genuine diversity of ownership condition (see regulation 14C) may be made in writing to HM Revenue and Customs by the manager (or proposed manager) of a qualified investor scheme.

(2) An application for clearance must be accompanied by the instrument constituting the scheme and its prospectus in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the scheme for which clearance is sought.

(3) The Commissioners may require the manager (or proposed manager) to provide further particulars if they believe that full particulars of the scheme have not been provided.

(4) The Commissioners must notify the applicant within 28 days of the receipt of the particulars (or, if paragraph (3) applies, of all further particulars required) that they—

(a) give clearance that the scheme meets the genuine diversity of ownership condition;

(b) give that clearance subject to conditions; or

(c) refuse to give that clearance.

(5) The qualified investor scheme (and investors in that scheme) may not rely on a clearance given under this regulation if—

(a) at the beginning of the first accounting period of the scheme to which the clearance relates (and at the beginning of each subsequent accounting period), a relevant statement in the instrument constituting the scheme or in its prospectus in issue for the time being is not in accordance with a relevant statement in the documents considered by the Commissioners before giving clearance;

(b) the scheme acts or is operated in contravention of a relevant statement in the instrument constituting the scheme or in its prospectus in issue for the time being;

(c) the instrument constituting the scheme or the scheme's prospectus in issue for the time being is materially amended; or

(d) the scheme is operated otherwise than in accordance with condition C or D of the genuine diversity of ownership condition.

(6) But paragraph (5)(c) does not apply if the manager of the scheme has obtained a clearance given under this regulation which applies to the amendment.

(7) For the purposes of paragraph (5)(c), a material amendment is one that may reasonably be construed as causing, or likely to cause, the scheme to fail to meets the genuine diversity of ownership condition in relation to any accounting period."

Amendment of regulation 24

12. Omit the words "Chapter 4 imposes a charge to tax on substantial QIS holdings in qualified investor schemes" from regulation 24 (structure of this Part).

(**a**) 1988, c. 1. Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4), paragraph 25 of Schedule 13 to the Finance Act 2006 (c. 25) and paragraph 223 to Schedule 1 to the Income Tax Act 2007 (c. 3) and by S.I. 1988/745 and 2005/3229.

Amendment of regulation 48

13.—(1) Regulation 48 (dividend distributions: general) is amended as follows.

(2) In paragraph (2), before the words "For the purpose of" insert "Subject to paragraphs (2A) and (2B),".

(3) In paragraph (2)(b)—

(a) for "lower rate" substitute "basic rate"; and

(b) for "year of assessment" substitute "tax year".

(4) After paragraph (2) insert—

"(2A) But paragraph (2) does not apply to a dividend distribution to which section 95 of ICTA(**a**) or section 219(4) of FA 1994(**b**) applies.

(2B) If, on the distribution date, the participant is the manager of the authorised investment fund, paragraph (2) shall not apply to the extent that the rights in respect of which the dividend distribution is made are held by him in the ordinary course of the manager's business as manager of the fund."

(5) After paragraph (3) insert—

"(4) This regulation does not apply in respect of a holding in a qualified investor scheme if the scheme has not met the genuine diversity of ownership condition in regulation 14C in relation to an accounting period."

Amendment of regulation 49

14. After paragraph (2) of regulation 49 (calculation of unfranked part of a dividend distribution) insert—

"(2A) For the purpose of calculating the value of C in paragraph (1) in relation to a distribution made by an authorised investment fund ("AIF1") to a participant, the amount of any distribution from another authorised investment fund ("AIF2") which is treated by AIF1 as an annual payment by virtue of regulation 48(2)(a), shall be treated as not deriving from franked investment income arising to AIF2.".

Substitution of regulation 51

15. For regulation 51 substitute—

"Participants chargeable to corporation tax: holdings in qualified investor schemes where scheme does not meet the genuine diversity of ownership condition

51.—(1) This regulation applies if—

(a) a participant has a holding in a qualified investor scheme, and

(b) the scheme has not met the genuine diversity of ownership condition in regulation 14B in relation to an accounting period.

(**a**) 1988, c. 1. The provisions of section 95 were substituted by section 24 of, and Schedule 8 to, the Finance (No. 2) Act 1997 (c. 58) in relation to any distribution made on or after 2 July 1997; by sections 882, 883 and 884 of, and Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5); by section 69 of, and Schedule 7 to, the Finance Act 1997 (c. 16) in relation to distributions made on or after 26 November 2006; by section 216 of, and Schedule 43 to, the Finance Act 2003 (c. 14); and by section 137(2) of the Finance Act 2004 (c. 12).

(**b**) 1994, c. 9. Subsection (4) was amended by section 22 of, and Schedule 8 to, the Finance (No. 2) Act 1997 (c. 58) and S.I. 2001/3629.

(2) Section 212 of TCGA 1992(**a**) (annual deemed disposal of holdings of unit trusts etc.) does not apply to the participant in relation to that accounting period.

(3) Paragraph 4 of Schedule 10 to FA 1996(**b**) (company holdings in unit trusts and offshore funds) shall not apply to the participant in relation to that accounting period.".

Substitution of regulation 52A

16. For regulation 52A(**c**) substitute—

"Companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax

52A.—(1) This regulation applies if conditions A to C are met.

(2) Condition A is that—

(a) an authorised investment fund makes a dividend distribution, to which regulation 48(2) applies, to a participant carrying on general insurance business, and

(b) the distribution mentioned in sub-paragraph (a) falls to be brought into account as a trading receipt of that business.

(3) Condition B is that there is some foreign tax suffered by the authorised investment fund in respect of which relief is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 of ICTA(**d**) (relief by agreement with other territories) or by way of a credit under section 790(1) of that Act (unilateral relief).

(4) Condition C is that the participant—

(a) owns units which represent rights to 10% or more of the net asset value of the authorised investment fund; and

(b) does not own those units as a nominee or a bare trustee.

(5) But, for the purposes of paragraph (4), rights in an authorised investment fund held as assets of a company's long-term insurance fund are not treated as held by the participant.

(6) For the purposes of the specified provisions, an amount equal to the participant's portion of the foreign tax mentioned in paragraph (3) is treated as foreign tax and not as United Kingdom tax.

(7) For the purposes of paragraph (6), 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.

(8) In paragraph (6), "the specified provisions" means—

(**a**) 1992 c. 12. Section 212 was amended by section 137 of the Finance Act 2006 (c. 25); by S.I. 2001/3629; by paragraph 63 of Schedule 7 to the Finance Act 2007 (c. 11); by section 91(2) and (3) of, and Part III (8) of Schedule 23 to, the Finance Act 1993 (c. 34); by paragraphs 9(2) and 28(5) of Schedule 8 to the Finance Act 1995 (c. 4); by paragraph 5(3)(a) of Schedule 10 to the Finance Act 2007 (c. 11); by paragraph 63 of Schedule 14 to the Finance Act 1996 (c. 8); by section 134 of the Finance Act 1995; by paragraph 11 of Schedule 26 to the Finance Act 2004 (c. 12); by Part 3(12) of Schedule 43 to the Finance Act 2003 (c. 14); and by paragraph 18 of Schedule 8 to, and by Part 2(8) of Schedule 27 to, the Finance Act 2007.

(**b**) 1996, c. 8. Paragraph 4(2) was amended by paragraph 16(2) of Schedule 5 to the Finance Act 2007 (c. 11); paragraph 4(3) was amended by paragraph 41(2) of Schedule 10 to the Finance Act 2004 (c. 12); paragraph 4(4) was amended by paragraph 41(3) of Schedule 10 to the Finance Act 2004; paragraphs 4(5) and 4(6) were inserted by paragraph 16(3) of Schedule 5 to the Finance Act 2007.

(**c**) Regulation 52A was inserted by regulation 2 of S.I. 2006/3239 and amended by regulation 2 of S.I. 2007/683.

(**d**) 1988, c. 1. Section 788 was amended by section 88 of the Finance Act 2002 (c. 23); by section 176 of, and Part 8(2) of Schedule 26 to, the Finance Act 2006 (c. 25); by paragraph 321 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); by paragraphs 1 and 2 of Schedule 30 to, and part 2 of Schedule 40 to, the Finance Act 2000 (c. 17); and by section 88(2)(a) of the Finance Act 2002 (c. 23).

(a) section 804C of ICTA(**a**) (insurance companies: allocation of expenses etc in computations under Case I of Schedule D), to the extent that it applies to business of a company which is not long-term business; and

(b) regulation 48.

(9) In this regulation—

"general insurance business" means the business of effecting and carrying out contracts of insurance falling within Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**b**);

"long-term business" has the meaning given in section 431(2) of ICTA(**c**) (interpretative provisions relating to insurance companies).".

Omission of Chapter 4 of Part 4

17.—(1) Omit Chapter 4 of Part 4 (regulations 53 to 69).

(2) Paragraph (1) is subject to regulations 30 and 31 of these Regulations.

Insertion of regulation 69DA

18. After regulation 69D (conditions for this Part to apply to company) insert—

"Conditions for this Part to apply to a company where the company is also a qualified investor scheme

69DA. Where an open-ended investment company—

(a) is also a qualified investor scheme (see regulation 14C); and

(b) meets the genuine diversity of ownership condition in regulation 14B for an accounting period,

the company shall be treated as also meeting the genuine diversity of ownership condition in regulation 69J for the accounting period, even if it would not otherwise do so.".

Amendment of regulation 69G

19. In paragraph (4)(c) of regulation 69G (property investment business: further provisions)(**d**), after "shares" insert "or units".

Amendment of regulation 69J

20. In paragraph (5) of regulation 69J (the genuine diversity of ownership condition), for sub-paragraph (b) substitute—

"(b) in the case of a qualified investor scheme, a person who is within one of the categories of intended investor in the scheme which have been specified in accordance with condition A may, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.".

(**a**) Section 804C was inserted by paragraph 18(1) of Schedule 30 to the Finance Act 2000 (c. 17). It was amended by paragraph 11 of Schedule 33 to the Finance Act 2003 (c. 14); by article 52 of S.I. 2001/3629; and by section 38 of, and paragraph 50 of Schedule 7 to, the Finance Act 2007 (c. 11).

(**b**) S.I. 2001/544.

(**c**) The definition of "long term business" was inserted into section 431 by paragraph 1 (subject to paragraphs 11 and 12) of Schedule 6 to the Finance Act 1990 (c. 29). This definition was substituted by article 26(5) of S.I. 2001/3629.

(**d**) Regulations 69G, 69J, 69K, 69L, 69Z, 69Z19, 69Z23 and 69Z24 were inserted by S.I. 2008/705.

Amendment of regulation 69K

21. In paragraph (4) of regulation 69K (the corporate ownership condition), for "shareholder" substitute "participant".

Amendment of regulation 69L

22.—(1) Regulation 69L (the corporate ownership condition: further provisions) is amended as follows.

(2) After "shares" in paragraph (2)(a) insert "as a participant".

(3) In paragraph (5) for "the trustees are treated" substitute "the unit trust scheme is treated".

Amendment of regulation 69Z

23. In paragraph (1) of regulation 69Z (meaning of "net income"), for "net income/(expenses) before taxation" substitute "net revenue/(expense) before taxation".

Amendment of regulation 69Z19

24. For paragraph (1) of regulation 69Z19 (PAIF distributions (interest): liability to tax of participants) substitute—

"(1) A PAIF distribution (interest) received by a participant in an open-ended investment company to which this Part applies shall be treated—

(a) in the case of a participant within the charge to corporation tax, as if it were interest arising from a loan relationship; and

(b) in the case of a participant within the charge to income tax, as if it were a payment of yearly interest falling within Chapter 2 of Part 4 of ITTOIA 2005(**a**).".

Amendment of regulation 69Z23

25. Regulation 69Z23 (deduction of tax from PAIF distributions (interest)) is amended as follows—

(a) in paragraph (1) for "savings rate" substitute "basic rate"; and

(b) omit paragraph (3).

Amendment of regulation 69Z24

26. Regulation 69Z24 (distribution payments to be made without deduction of tax) is amended as follows—

(a) in paragraph (1), before the words "On making a distribution", insert "Subject to paragraphs (3A) and (3B),"; and

(b) after paragraph (3), insert—

"(3A) But neither condition A nor condition B is met, in relation to a unit trust scheme, where—

(a) the distribution is made to the trustee of the scheme;

(b) the trustee is chargeable to corporation tax or income tax on the distribution in the United Kingdom; and

(c) the trustee has made a request in writing to the Property AIF that the Property AIF should deduct tax from the distribution.

(**a**) 2005, c. 5.

(3B) The Property AIF must not specify that the trustee of any unit trust scheme seeking to acquire shares in the Property AIF must have tax deducted from any distribution.".

Insertion of regulations 69Z24A to 69Z24D

27. After regulation 69Z24 (distribution payments to be made without deduction of tax) insert—

"Manufactured dividends representing property income distributions

69Z24A.—(1) This regulation applies to the extent that a manufactured dividend which is paid by a dividend manufacturer is representative of property income distributions to which regulation 69Z15 applies.

(2) The amount of the manufactured dividend falling within paragraph (1) is referred to in this regulation as "the manufactured PID amount".

(3) The recipient of the manufactured PID amount is treated as having received a distribution to which regulation 69Z18 applies.

(4) In relation to the dividend manufacturer—

(a) if the dividend manufacturer is a company and the manufactured dividend is paid in the course of a trade carried on in the United Kingdom, the manufactured PID amount shall be treated as an expense of the trade;

(b) if the manufactured dividend is paid in connection with investment business, the manufactured PID amount shall be treated for the purposes of section 75 of ICTA(**a**) as expenses of management; and

(c) in the case of a company carrying on life assurance business, so much of the manufactured PID amount as would be referable by virtue of section 432A of ICTA(**b**) to basic life assurance and general annuity business if it were received by the company shall be treated for the purposes of section 76 of ICTA(**c**) as if it were an expense payable falling to be brought into account at step 3 of section 76(7).

(5) Regulations 69Z22, 69Z24 and 69Z29 to 69Z35 apply to the dividend manufacturer as if—

(a) the dividend manufacturer were an open-ended investment company to which this Part applies; and

(b) the manufactured PID amount were a distribution to which those regulations apply.

Manufactured dividends representing PAIF distributions (interest)

69Z24B.—(1) This regulation applies to the extent that a manufactured dividend which is paid by a dividend manufacturer is representative of a PAIF distribution (interest) to which regulation 69Z16 applies.

(2) The amount of the manufactured dividend to which this regulation applies is referred to in this regulation as the "manufactured PAIF interest amount".

(**a**) 1988, c. 1. Section 75 was substituted by section 38(1) of the Finance Act 2004 (c. 12), and amended by section 28 of the Finance Act 2007 (c. 11).

(**b**) Section 432A was inserted, in relation to income arising, and disposals occurring, on or after 1 January 1990, by section 41 of, and paragraph 4 of Schedule 6 (subject to paragraphs 11 and 12 thereof) to, the Finance Act 1990 (c. 29). It was amended by paragraph 17 of Schedule 17 to the Finance Act 2008 (c. 9); by paragraph 8 of Schedule 7 to the Finance Act 2004 (c. 12); by article 52 of S.I. 2001/3629; by paragraph 13 of Schedule 8 to the Finance Act 1995 (c. 4); by section 38 of, and paragraph 13 of Schedule 7 to, the Finance Act 2007 (c. 11) (subject to transitional provisions in paragraphs 80 to 84); by paragraph 3 of Schedule 7 to, and Part V of Schedule 19 to, the Finance Act 1991 (c. 31); by section 167(2) of the Finance Act 1996; and by article 9 of S.I. 2008/954.

(**c**) Section 76 was substituted by section 40(1) of the Finance Act 2004 (c. 12) in relation to accounting periods beginning on or after 1st April 2004. Subsection (7) was amended by paragraph 2 of Schedule 8 to the Finance Act 2007 (c. 11) (subject to transitional provisions in paragraphs 28 and 29); by paragraph 5 of Schedule 17 to the Finance Act 2008 (c. 9); and by paragraph 16 of Schedule 10 to, and Part 2 (8) and (10) of Schedule 27 to, and paragraph 3 of Schedule 7 to, the Finance Act 2007.

(3) If the recipient of the manufactured dividend is a company within the charge to corporation tax it is treated as having received, in relation to the manufactured PAIF interest amount, an amount to which section 97 of FA 1996(**a**) applies.

(4) If the recipient of the manufactured dividend is within the charge to income tax it is treated as having received, in relation to the manufactured PAIF interest amount, an amount to which regulation 69Z19 applies.

(5) If the dividend manufacturer is a company within the charge to corporation tax, section 97 of FA 1996 is treated as applying to the manufactured PAIF interest amount.

(6) Regulations 69Z23, 69Z24 and 69Z29 to 69Z35 apply to the dividend manufacturer in relation to the manufactured PAIF interest amount as if the dividend manufacturer were an open-ended investment company to which this Part applies.

Manufactured dividends – PAIF distributions (dividends)

69Z24C.—(1) This regulation applies to the extent that a manufactured dividend which is paid by a dividend manufacturer is representative of a PAIF distribution (dividends) to which regulation 69Z17 applies.

(2) The recipient of the manufactured dividend is treated as having received, to that extent, an amount to which regulation 69Z20 applies.

(3) If the dividend manufacturer is a company, paragraph 2(2)(b) of Schedule 23A to ICTA(**b**) has effect in relation to the amount of the manufactured dividend to which paragraph (1) applies.

Interpretation

69Z24D. In regulations 69Z24A to 69Z24C, "manufactured dividend" and "dividend manufacturer" have the meanings given by Schedule 23A to ICTA.".

Amendment of regulation 94

28. After paragraph (4) of regulation 94 (modifications of ICTA) insert—

"(4A) After paragraph (b) of section 432A(1ZA) of ICTA(**c**) (apportionment of income and gains), there is treated as inserted—

"(ba) income from property income distributions to which regulation 69Z15 of the Authorised Investment Funds (Tax) Regulations 2006 apply (property income distributions by an open-ended investment company.""".

Amendments to Part 2 of the Schedule

29. In Part 2 of the Schedule (index of expressions defined or otherwise explained in these regulations)—

(a) omit the entries in the index for the following expressions—

(i) "Chargeable measuring date (in Chapter 4 of Part 4)",

(ii) "Difference in value (in Chapter 4 of Part 4)",

(**a**) 1996, c. 8. Section 97 was amended by section 82 of, and paragraph 13 of Schedule 25 to, the Finance Act 2002 (c. 23); by paragraph 11 of Schedule 7 to the Finance (No. 2) Act 2005 (c. 22); by paragraph 374 to Schedule 1 to the Income Tax Act 2007 (c. 3); and section 47 of, and Schedule 14 to, the Finance Act 2007 (c. 11); by paragraph 16 of Schedule 14 to the Finance Act 2007 (c. 11); by Part VI(10) of Schedule 18 to the Finance Act 1997.

(**b**) 1988, c. 1. Schedule 23A was inserted, in relation to manufactured dividends on United Kingdom equities paid on or after 26 February 1992, and in relation to payments of amounts representative of periodical payments of interest on United Kingdom securities made on or after 30 June 1992, and inserted for remaining purposes in relation to payments made on or after 22 April 1993 by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31). It was substituted by section 102(5) of the Finance Act 1998 (c. 36).

(**c**) Section 432(1ZA) was inserted by section 43 of, and paragraph 17 of Schedule 17 to, the Finance Act 2008 (c. 9).

(iii) "Disposal (in Chapter 4 of Part 4)",

(iv) "Earlier measuring value (in Chapter 4 of Part 4)",

(v) "First measuring value (in Chapter 4 of Part 4)",

(vi) "Later measuring value (in Chapter 4 of Part 4)",

(vii) "Market value (in Chapter 4 of Part 4)",

(viii) "Measuring date (in Chapter 4 of Part 4)", and

(ix) "Substantial QIS holding (in Chapter 4 of Part 4)"; and

(b) in the entry relating to "Qualified investor scheme", for "53(3)" substitute "14B(4)";

(c) at the appropriate place in the Schedule, insert "instrument constituting the scheme" and "regulation 14B".

Transitory Provision

Schemes authorised before 1st January 2009 – genuine diversity of ownership condition

30. Where a qualified investor scheme is authorised by the Financial Services Authority before 1st January 2009, the scheme shall be deemed to have met the genuine diversity of ownership condition in the inserted regulation 14C (regulation 11 of these Regulations) for the period—

(a) beginning on 1st January 2009; and

(b) ending on the date on which the scheme's first accounting period beginning on or after 1st January 2009 ends.

Schemes authorised before 1st January 2009 - continuation of provisions in Chapter 4 of Part 4 of the principal Regulations

31.—(1) Regulations 55 (amount charged to tax under this Chapter) and 56 (measuring date and meaning of "chargeable measuring date") continue to have effect in relation to qualified investor schemes authorised by the Financial Services Authority before 1st January 2009, with the amendments specified in this regulation.

(2) For paragraph (1) of regulation 55 substitute—

"(1) A participant in a qualified investor scheme authorised by the Financial Services Authority before 1st January 2009 is charged to tax under Chapter 4 of Part 4 by reference to the difference in value of a substantial QIS holding between the two measuring dates specified in regulation 56 ("the difference in value").".

(3) For paragraph (1) of regulation 56 substitute—

"(1) For the purposes of regulation 55—

(a) the earlier measuring date is the date that was the later measuring date on the last occasion that the value was calculated in accordance with this Chapter; and

(b) the later measuring date is 31st December 2008.".

(4) For the purposes of regulations 55 and 56 (as amended by this regulation), the remaining provisions of Chapter 4 of Part 4 of the principal Regulations continue to have effect.

Signatory text

Tony Cunningham
Frank Roy

10th December 2008 — 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 Fund (Tax) Regulations 2006 (S.I. 2006/964) ("the principal Regulations"). These Regulations come into force on 1st January 2009.

Regulation 1 provides for the citation, commencement and effect of these Regulations and specifies how the regulations apply to investors in such schemes.

Regulation 2 contains interpretative provisions.

Regulation 3 introduces the amendments to the principal Regulations.

Regulation 4 inserts a reference to Part 2A in regulation 2 of the principal Regulations.

Regulations 5 to 9 make consequential provision to regulations 10 to 14 of the principal Regulations. The amendment in each case is consequent on amendments to the requirements of the genuine diversity of ownership condition. Regulation 7 also amends regulation 12 of the principal Regulations, in consequence of amendments made to the Investment Management Association's Statement of Recommended Practice. This amendment, and the similar amendment effected by regulation 22 of these Regulations, is made as a result of changes to the Statement of Recommended Practice ("SORP") issued by the Investment Management Association. A full copy of the SORP can be found at www.investmentuk.org

Regulation 10 inserts a new regulation 14A, which excludes authorised investment funds which are constituted as unit trust schemes and which may only invest in a specified open-ended investment company to which Part 4A of the principal Regulations applies, from the charge to stamp duty reserve tax under Schedule 19 to the Finance Act 1999.

Regulation 11 inserts a new Part 2A into the principal Regulations comprising new regulations 14B to 14D. New regulation 14B provides that the tax provisions specified in the regulation (which collectively provide for beneficial tax treatment of the scheme and the investments in it) do not apply for an accounting period of the scheme unless the genuine diversity of ownership condition is met for that accounting period.

New regulation 14C specifies the conditions that the scheme must meet in order to meet the genuine diversity of ownership condition for an accounting period. It also makes provision for cases where an investment in the scheme is made by another unit fund.

New regulation 14D makes provision for an advance clearance system enabling a qualified investor scheme to apply to HMRC for clearance that it is or will meet the genuine diversity of ownership condition in relation to an accounting period.

Regulation 12 omits the reference to Chapter 4 from regulation 24 of the principal Regulations, which deals with the structure of Part 4 of those Regulations.

Regulation 13 amends regulation 48 of the principal Regulations, making consequential amendments and, by a new paragraph (2A), disapplying regulation 48(2) (which deals with how to calculate the unfranked part of a dividend distribution) to dividend distributions to which section 95 of ICTA (a distribution made by a company resident in the UK, or a payment that is representative of such a distribution) or section 219(4) of FA 1994 (UK distributions which are included in the profits from assets of a corporate member's premium trust fund) apply. A new paragraph (2B) disapplies regulation 48(2) to dividend distributions paid to fund managers, where they hold rights in the fund in the ordinary course of their business as fund manager.

Regulation 14 amends regulation 49 of the principal Regulations to make different provision for calculating the unfranked part of a dividend distribution where a distribution is paid by one authorised investment fund to another.

Regulation 15 substitutes a new regulation 51 in the principal Regulations which deals with the case where a participant is chargeable to corporation tax and has a holding in a qualified investor scheme which does not meet the genuine diversity of ownership condition.

Regulation 16 substitutes a new regulation 52A in the principal Regulations which specifies, where certain conditions are met, the amount of tax that is to be treated as foreign tax in respect of distributions paid to a participant carrying on general insurance business.

Regulation 17 omits Chapter 4 of Part 4 of the principal Regulations.

Regulation 18 inserts a new regulation 69DA into the principal Regulations which provides that an open-ended investment scheme which is also a qualified investor scheme which meets the genuine diversity of ownership condition does not also need to meet the equivalent conditions in regulation 69J.

Regulation 19 amends regulation 69G of the principal Regulations by including shares in the assets that may be involved in property investment business for the purposes of Part 4A.

Regulation 20 amends regulation 69J of the principal Regulations, by making equivalent provision to that in the inserted regulation 14C(7) and (8) (by regulation 10 of these Regulations) regarding the requirement to provide information about a Property AIF that is also a qualified investor scheme.

Regulation 21 amends regulation 69K of the principal Regulations by substituting "participant" for "shareholder" in condition B.

Regulation 22 amends regulation 69L of the principal Regulations by clarifying that the prohibition is on acquiring shares as a participant in the open-ended investment company, and provides that it is the unit trust, not the trustees, which is treated as the beneficial owner of the shares.

Regulation 23 amends regulation 69Z of the principal Regulations in consequence of amendments made to the Investment Management Association's Statement of Recommended Practice.

Regulation 24 amends regulation 69Z19 of the principal Regulations by substituting a new paragraph (1), which clarifies how PAIF distribution (interest) is to be treated depending on whether the participant is within the charge to corporation tax or income tax.

Regulation 25 amends regulation 69Z23 of the principal Regulations by substituting "basic rate" for "savings rate" in paragraph (1) and by omitting paragraph (3) (which defines "savings rate").

Regulation 26 amends regulation 69Z24 of the principal Regulations by inserting new paragraphs (3A and (3B) which provide for circumstances in which conditions A and B specified in paragraphs (2) and (3) shall not be met.

Regulation 27 inserts new regulations 69Z24A, 69Z24B, 69Z24C and 69Z24D into the principal Regulations. Regulation 69Z24A makes provision as to the treatment of manufactured dividends which represent property income distributions. Regulation 69Z24B makes provision as to the treatment of manufactured dividends representing PAIF distributions (interest). Regulation 69Z24C makes provision as to the treatment of manufactured dividends representing PAIF distributions (dividends). Regulation 69Z24D contains interpretative provisions.

Regulation 28 amends regulation 94 of the principal Regulations by treating as inserting after paragraph (b) of section 432A(1ZA) of ICTA a new paragraph (ba) which includes a reference to income from property income distributions by an open-ended investment company in the definition of "income".

Regulation 29 makes consequential omissions and an amendment to the Schedule of defined terms in the principal Regulations.

Regulations 30 and 31 make transitory provision for qualified investor schemes authorised by the Financial Services Authority before 1st January 2009.

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

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