

*Draft Order laid before the House of Commons under section 217(3) of the Finance Act 2013, for approval by resolution of that House.*

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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**CAPITAL GAINS TAX**

**CORPORATION TAX**

**INCOME TAX**

**The Unauthorised Unit Trusts (Tax) Regulations 2013**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1(2) and (3)*

The Treasury make the following Regulations in exercise of the powers conferred by section 217 of the Finance Act 2013(a).

In accordance with section 217(3) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

**PART 1**

**Introductory and general provisions**

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Unauthorised Unit Trusts (Tax) Regulations 2013.

(2) Chapters 1 and 2 of Part 2 and Chapter 1 of Part 4 (and this Part so far as applying to those Chapters) come into force on the day after the day on which these Regulations are made.

(3) Apart from that, these Regulations come into force on 6th April 2014.

**Interpretation**

**2.** In these Regulations—

“the AIF Regulations” means the Authorised Investment Funds (Tax) Regulations 2006(b),

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(a) 2013 c.29.

(b) S.I. 2006/964, amended by Schedule 3 to the Corporation Tax Act 2010 (c.4) (referred to as “CTA 2010” in the remaining footnotes) and by S.I. 2006/964, 2006/3239, 2007/683, 2007/794, 2008/705, 2008/1463, 2008/3159, 2009/2036, 2009/2199, 2010/294, 2010/1642, 2011/244, 2011/2192, 2012/519, 2012/1783, 2012/3043 and 2013/1772.

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,  
“eligible investor” has the meaning given by regulation 3(2),  
“exempt unauthorised unit trust” has the meaning given by regulation 3(1),  
“friendly society” has the same meaning it has for the purposes of Part 3 of FA 2012 (friendly societies carrying on long-term business),  
“insurance company” has the same meaning as it has for the purposes of Part 2 of FA 2012 (insurance companies carrying on long-term business),  
“non-reporting fund” has the same meaning as it has for the purposes of the Offshore Funds Regulations,  
“notice” means notice in writing,  
“the Offshore Funds Regulations” means the Offshore Funds (Tax) Regulations 2009(a),  
“prospectus” means a prospectus or similar document made available to investors,  
“UK resident” means resident in the United Kingdom (and references to a UK resident company are to a company which is resident there).

## PART 2

### Exempt unauthorised unit trusts

#### CHAPTER 1

##### Meaning of “exempt unauthorised unit trust”

##### **Meaning of “exempt unauthorised unit trust”**

3.—(1) For the purposes of these Regulations an unauthorised unit trust is an “exempt unauthorised unit trust” with respect to a period of account if—

- (a) its trustees are UK resident for the period,
- (b) throughout the period all of its unit holders are eligible investors, and
- (c) it is approved under these Regulations for the period.

(2) For the purposes of these Regulations a unit holder is an “eligible investor” if—

- (a) any gain accruing in the event of a disposal of its units would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence), or
- (b) it holds all of its units pending disposal in the capacity of manager of the unauthorised unit trust.

(3) In determining whether paragraph (2)(a) applies no account is to be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by an insurance company or a friendly society.

(4) An unauthorised unit trust is not to be regarded as failing to meet the condition in paragraph (1)(b) in relation to any unit holder if—

- (a) the managers or trustees of the unit trust become aware at any time that the unit holder is not an eligible investor,
- (b) they could not reasonably have been expected to have become aware of that fact before that time, and
- (c) the unit holder disposes of its units before the end of the period of 28 days beginning with that time.

(5) Paragraph (4) may not be relied on more than twice in any period of ten years.

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(a) S.I. 2009/3001, amended by S.I. 2009/3139, 2010/294, 2011/1211, 2011/2192, 2011/2999, 2013/661, 2013/1411 and 2013/1770.

## CHAPTER 2

### Approval as an exempt unauthorised unit trust

#### **Application for approval as an exempt unauthorised unit trust**

4.—(1) The managers or trustees of an unauthorised unit trust may make an application in writing to the Commissioners for the trust (“the applicant”) to be approved.

(2) An application must be made on or before the last day of the first period of account for which approval is sought (or such later date as the Commissioners may allow).

(3) If accepted, an approval has effect for the period of account the first day of which is specified in the application and all subsequent periods (unless withdrawn under regulation 8).

(4) The Commissioners may not approve an unauthorised unit trust unless they are satisfied that the unit trust has, or will have, in place appropriate arrangements for the purpose of securing that the condition in regulation 3(1)(b) is met.

#### **Contents of application**

5.—(1) An application under this Chapter must contain the following—

- (a) a statement specifying the first day of the first period of account for which approval is sought (such period ending no earlier than 6 April 2014),
- (b) a copy of the applicant’s current trust deed,
- (c) a copy of the applicant’s most recent prospectus,
- (d) a statement specifying the appropriate arrangements which are or will be in place for the purpose of securing that the condition in regulation 3(1)(b) is and will be met for the first period for which approval is sought and all subsequent periods,
- (e) a statement whether or not the applicant is or will be operating equalisation arrangements.

(2) A day specified in the application in paragraph (1)(a) may be provisional.

(3) If a provisional day is specified in the application, any approval by the Commissioners of the application has no effect unless the managers or trustees of the applicant give notice to the Commissioners either—

- (a) confirming that day is the first day of the first period of account for which approval is sought, or
- (b) specifying a different day as the first day of the first period of account for which approval is sought.

(4) The notice must be given no later than the date on or before which a return made under section 8A(a) of TMA 1970 relating to the first period must be delivered.

(5) If a different day is specified under paragraph (3)(b), the application is to be treated for the purposes of regulation 4(3) as if that day had always been specified in the application.

#### **Response by the Commissioners to application**

6.—(1) The Commissioners may by notice require the managers or trustees of the applicant to provide further particulars in order to enable them to determine an application.

(2) A requirement may be imposed under paragraph (1) within 28 days of the receipt of the application or of any further particulars required under that paragraph.

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(a) 1970 c.9. Section 8A was inserted by section 90 of the Finance Act 1990 (c.29) and amended by sections 178(2) of the Finance Act 1994 (c.9), by section 103 of the Finance Act 1995 (c.4), by section 121 of the Finance Act 1996 (c.8), by paragraph 360 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c.5) (referred to as “ITTOIA 2005” in the remaining footnotes), by sections 89 of and Part 5(3) of Schedule 27 to the Finance Act 2007 (c.11), by paragraph 9 of Schedule 12 to the Finance Act 2008 (c.9) (referred to as “FA 2008” in the remaining footnotes), and by section 40 of and paragraph 9 of Schedule 19 to the Finance Act 2009 (c.10) (referred to as “FA 2009” in the remaining footnotes).

(3) If a notice under paragraph (1) is not complied with within 28 days or such longer period as the Commissioners may allow, they need not proceed further on the application.

(4) The Commissioners must give notice to the applicant of their decision to accept or reject an application—

- (a) within 28 days of receiving the application, or
- (b) if they give a notice under paragraph (2), within 28 days of that notice being complied with.

(5) A notice of a decision to reject an application must give reasons for that decision.

### **Continuing requirements for approval**

**7.**—(1) Approval under this Chapter is conditional on the requirements in this regulation being met by the unauthorised unit trust with respect to a period of account.

(2) Appropriate arrangements must be in place for the purpose of securing that the condition in regulation 3(1)(b) is met for the period.

(3) The period of account of the unauthorised unit trust must not exceed 18 months.

(4) The accounts for the period—

- (a) must be prepared in accordance with the IMA SORP or its principles so far as relating to determining revenue and capital, and
- (b) must be audited by a qualified independent auditor as being so prepared.

(5) In the following provisions of this Part references to accounts of an exempt unauthorised unit trust are to accounts meeting the conditions in paragraph (4).

(6) The managers or trustees of the trust must deliver with a return made under section 8A of TMA 1970—

- (a) a statement from the managers or the trustees that the condition in regulation 3(1)(b) has been met throughout the period, and
- (b) a copy of the trust's accounts.

(7) In this regulation—

- (a) “the IMA SORP” means the Investment Management Association’s Statement of Recommended Practice for the Financial Statements of Authorised Funds published in October 2010 as amended from time to time (or any successor statement of recommended practice), and
- (b) “qualified independent auditor” means a person who—
  - (i) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006(a), and
  - (ii) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

### **Withdrawal of approval**

**8.**—(1) The Commissioners may withdraw approval of an exempt unauthorised unit trust if they are satisfied that the requirements in regulation 7 are not met.

(2) The Commissioners may withdraw approval of an exempt unauthorised unit trust if the managers or trustees of an exempt unauthorised unit trust request them to do so.

(3) Withdrawal of an approval of an unauthorised unit trust is to be given by the Commissioners by notice to the managers or trustees of the trust.

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(a) 2006 c.46.

(4) Withdrawal of approval has effect as from the date specified in the notice withdrawing the approval.

### **Appeal against rejection of application or withdrawal of approval**

**9.**—(1) An unauthorised unit trust may appeal if an application is rejected or the Commissioners withdraw approval.

(2) The notice of appeal must be given to the Commissioners within a period of 42 days beginning with the day on which the notice of rejection or withdrawal is given.

(3) On an appeal, the tribunal may make a decision to uphold or quash the rejection or withdrawal.

(4) If the tribunal decides to quash a rejection of an application, these Regulations apply as if the Commissioners had accepted the application in the form in which it was considered by the tribunal.

(5) If the tribunal decides to quash the withdrawal of approval, these Regulations apply as if the Commissioners had not withdrawn their approval.

## **CHAPTER 3**

### **Gains accruing to an exempt unauthorised unit trust**

#### **Exemption for gains accruing to an exempt unauthorised unit trust**

**10.** Gains accruing to an exempt unauthorised unit trust are not chargeable gains for the purposes of TCGA 1992.

## **CHAPTER 4**

### **Taxation of income of exempt unauthorised unit trusts**

#### **Basis periods**

**11.**—(1) The income of an exempt unauthorised unit trust for a tax year is taken to be the income of the exempt unauthorised unit trust arising in a basis period for the tax year.

(2) The general rule is that the basis period for a tax year for an exempt unauthorised unit trust is the period of 12 months ending with the accounting date in that year.

(3) The accounting date, in relation to a tax year, means—

- (a) the date in the tax year to which accounts are drawn up, or
- (b) if there are two or more such dates, the latest of them.

(4) If there is no accounting date in the first tax year that the trust is an exempt unauthorised unit trust but there is an accounting date in the following tax year—

- (a) there is no basis period for the first tax year (so that the trust has no income for that year), but
- (b) the basis period for the following year is the period of account ending with the accounting date in that year.

(5) If there is no accounting date in the first two tax years that the trust is an exempt unauthorised unit trust—

- (a) there is no basis period for the first tax year (so that the trust has no income for that year), but
- (b) the basis period for the second tax year is the period beginning on the first date of the period of account and ending on the 5 April in that year.

(6) Otherwise, if there is no accounting date in the tax year, the basis period is the period of 12 months beginning immediately after the end of the basis period for the previous tax year.

(7) If the basis period for a tax year does not coincide with a period of account of an exempt unauthorised unit trust, either of the steps in paragraph (8) must be taken if necessary in order to arrive at the amount of the income of the trust treated under regulation 14 as if it were accrued income profits arising in a basis period.

(8) The steps are—

- (a) apportioning the income of a period of account to the parts of that period falling in different basis periods, and
- (b) adding the income of a period of account (or part of a period) to the income of other periods of account (or parts),

and the steps must be taken by reference to the number of days in the periods concerned.

### **Treatment of income of an exempt unauthorised unit trust**

**12.**—(1) If income arises to the trustees of an exempt unauthorised unit trust, the income is treated as the income of the trustees and not of the unit holders.

(2) If income tax on any part of the income arising to the trustees of an exempt unauthorised unit trust would apart from this paragraph be charged at the dividend ordinary rate, income tax on that part of the income is instead charged at the basic rate.

(3) None of the following applies in relation to the income—

- (a) sections 397(1) and 397A(1)(a) of ITTOIA 2005 (tax credits for qualifying distributions),
- (b) section 399(2) and (6) of ITTOIA 2005 (person not entitled to tax credits treated as having paid income tax),
- (c) section 400(2) and (3) of ITTOIA 2005 (person whose income includes non-qualifying distribution treated as having paid income tax), and
- (d) section 479 of ITA 2007 (trustees' accumulated or discretionary income to be charged at special rates).

(4) Sections 494, 495 and 496B of ITA 2007(b) (discretionary payments) do not apply in relation to payments made by the trustees.

### **Treatment of capital expenditure of an exempt unauthorised unit trust**

**13.** The trustees (and not the unit holders) of an exempt unauthorised unit trust are treated as the persons to or on whom an allowance or charge is to be made under any provision relating to relief for capital expenditure.

### **Special provision for accrued income profits**

**14.**—(1) This regulation applies to income of an exempt unauthorised unit trust which—

- (a) arises from its investments in securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits), and
- (b) is shown in its accounts.

(2) The income is charged to tax under Chapter 2 of Part 12 of ITA 2007—

- (a) as if it were accrued income profits, and
- (b) as if those profits were treated as made in the tax year in which the last day of the period of account in which the income is accounted for falls.

(3) None of the income is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).

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(a) 2005 c.5. Section 397A was inserted by paragraph 4 of Schedule 12 to FA 2008.

(b) 2007 c.3. Section 496B was inserted by S.I. 2010/157.

## CHAPTER 5

### Charge to tax on unit holders of exempt unauthorised unit trusts

#### Charge to tax on unit holders

**15.**—(1) Tax is charged on income treated as received by a unit holder from an exempt unauthorised unit trust in the tax year.

(2) For the purposes of this regulation, unit holders are treated as receiving income if an amount is shown in the trust's accounts for a period of account as income available for payment to them or for investment.

(3) The income is treated as received by a unit holder for a distribution period.

(4) To calculate the amount of the income treated as received by a unit holder for a distribution period, calculate the unit holder's share of the trust's available income by applying the formula—

$$TAI \times \frac{R}{TR}$$

where—

TAI is the total amount shown in the trust's accounts as income available for payment to unit holders or for investment,

R is the unit holder's rights, and

TR is all the unit holders' rights.

(5) The income for a distribution period is treated as received on the date or latest date provided by the terms of the trust for any distribution for the period, unless that date is more than 12 months after it ends.

(6) If—

(a) that date is more than 12 months after the distribution period ends, or

(b) no date is so provided,

the income for the period is treated as received on the last day of the period.

(7) If the terms of the trust provide for a period over which income from the investments subject to the trust is aggregated to ascertain the amount available for distribution to unit holders, the "distribution period" means—

(a) if the period is 12 months or less, that period, or

(b) if the period is more than 12 months, each successive period of 12 months within that period and any remaining period of less than 12 months.

(8) In any other case, the "distribution period" means successive periods of 12 months, the first of which begins with the day on which the trust was established.

#### Person liable

**16.** The person liable for any tax charged under this Chapter is the unit holder treated as receiving the income.

#### Priority rules

**17.**—(1) Any income, so far as it falls within—

(a) regulation 15, and

(b) Chapter 2 of Part 2 of ITTOIA 2005 or Chapter 2 of Part 3 of CTA 2009 (income taxed as trade profits),

is dealt with under Part 2 of ITTOIA 2005 or Part 3 of CTA 2009.

(2) Any income, so far as it falls within—

- (a) regulation 15, and
  - (b) Chapter 3 of Part 3 of ITTOIA 2005, or Chapter 3 of Part 4 of CTA 2009, so far as relating to a UK property business,
- is dealt with under Part 3 of ITTOIA 2005 or Part 4 of CTA 2009.

## CHAPTER 6

### Relief for trustees of an exempt unauthorised unit trust

#### **Relief for deemed payments by trustees of an exempt unauthorised unit trust**

**18.**—(1) If the unit holders of an exempt unauthorised unit trust are treated as receiving income under regulation 15(2), the trustees are treated as making a deemed payment of the same amount on the final day of the period of account referred to in regulation 15(2).

(2) The trustees are entitled to relief for a tax year equal to the amount of the deemed payments treated as made in that year.

(3) The relief is given by deducting that amount in calculating the trustees' net income for the tax year (see Step 2 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)(a)).

(4) The total amount of the relief for a tax year must not exceed the amount of the trustees' modified net income for the tax year.

(5) If there is an excess, that excess is to be treated as if it were a deemed payment in the basis period for the following tax year.

(6) In this regulation "modified net income" has the meaning given by section 1025 of ITA 2007 but as if for subsection (2)(c) there were substituted—

“(c) any relief to which the person may be entitled under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.

#### **Amounts ineligible for relief under regulation 18**

**19.**—(1) Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is ineligible for relief.

(2) In determining the extent (if any) to which the payment is ineligible for relief section 450 of ITA 2007 (payments ineligible for relief) applies in relation to the payment as that section applies in relation to a payment to which section 449 of that Act applies(b).

#### **Amounts ineligible for relief under regulation 18: payments to certain unit holders where regulation 3(4) applies**

**20.** Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is attributable to income treated as received by a unit holder under regulation 15 where the unit holder—

- (a) disposed of its units in the circumstances described in regulation 3(4)(c), and
- (b) was not UK resident at the time the income is treated as received.

#### **Effect of equalisation arrangements on relief for trustees**

**21.**—(1) This regulation applies to an exempt unauthorised unit trust which operates equalisation arrangements in the case of a disposal of units by way of either cancellation or acquisition by the managers of the trust.

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(a) Section 23 was amended by section 5 of and paragraph 6(o)(i) of Schedule 1 to FA 2009.

(b) Section 449 was amended by section 66(4) of the FA 2008.

(2) The amount of the deemed payment for which the trustees are entitled to relief for a tax year under regulation 18 includes any amount paid to unit holders (in the basis period for the year) on a disposal of some or all of their units so far as attributable to the income of the trust which has accrued up to the date of the disposal (but has not otherwise been received, or treated as received, by unit holders).

## CHAPTER 7

### Miscellaneous provisions

#### **No tax charge for disposal of interests in offshore non-reporting funds: reporting condition**

**22.**—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if the reporting condition is met.

(2) The reporting condition is met if—

- (a) the trustees prepare computations of reportable income for the fund for all accounting periods which, if the fund were a reporting fund, would be reporting periods ending on or before the day of disposal, and
- (b) any excess of the trustees' share of the reportable income of the non-reporting fund over their share of the distributions made by the non-reporting fund is included in the amount mentioned in regulation 15(2) for each period of account ending on or before that day.

(3) Nothing in paragraph (2) applies in relation to any time before the date on which the trustees acquire or re-acquire the interest.

(4) The trustees are treated for all purposes as if they had disposed of and immediately reacquired an interest in a non-reporting fund on a date they specify if in the event of a subsequent disposal of the interest—

- (a) the reporting condition would not be met in relation to times before the date, but
- (b) the trustees reasonably expect the reporting condition will be met in relation to times on and after the date.

(5) The date the trustees specify must be included in an appropriate entry in their return made under section 8A of TMA 1970 for the period of account in which the date falls but the date must not be earlier than 6 April 2014.

(6) The deemed disposal and reacquisition of the interest is taken to be for a consideration equal to its market value on the specified date.

(7) In this regulation—

- “market value” has the meaning given by regulation 10 of the Offshore Funds Regulations,
- “reporting fund” has the meaning given by regulation 50 of those Regulations, and
- “reporting period” has the meaning given by regulation 91 of those Regulations.

(8) If a non-reporting fund is a UCITS fund for the purposes of regulation 12(a) of the Offshore Funds Regulations, regulation 80 of those regulations (treatment of investment transactions carried out by diversely owned funds) applies for the purposes of the computations mentioned in paragraph (2)(a).

#### **No tax charge for disposal of interests in offshore non-reporting funds: qualifying index**

**23.**—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if—

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(a) Regulation 12 was amended by S.I. 2011/1121.

- (a) in accordance with the trust’s investment strategy contained in its prospectus, the aim of the trust throughout the period during which the trustees held the interest has been to replicate the performance of a qualifying index,
  - (b) the main purpose of the investment in the non-reporting fund throughout that period is to represent the composition of the qualifying index, and
  - (c) the capital and income returns of the trust throughout that period replicated as closely as practicable the returns of the investment comprised in the qualifying index.
- (2) For the purposes of this regulation an index is a “qualifying index” if—
- (a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,
  - (b) an authority (whether in the United Kingdom or elsewhere) recognises the index on the basis that—
    - (i) its composition is sufficiently diverse,
    - (ii) it represents an adequate benchmark for the market to which it refers, and
    - (iii) it is published in such a way that it is widely available, and
  - (c) it is calculated and published by a body which is managed independently from the management of the exempt unauthorised unit trust.
- (3) In this regulation “regulated market” has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments<sup>(a)</sup>.

#### **Treatment of investment transactions carried out by exempt unauthorised unit trusts**

**24.**—(1) An investment transaction entered into by the trustees of an exempt unauthorised unit trust is treated for the purposes of the Income Tax Acts as entered into otherwise than in the course of a trade.

(2) “Investment transaction” has the same meaning as it has in Part 3 of the Investment Trust (Approved Company) (Tax) Regulations 2011<sup>(b)</sup>, but as if—

- (a) references to an investment trust were to an exempt unauthorised unit trust, and
- (b) references to the manager of the investment trust were to the managers or trustees of the exempt unauthorised unit trust.

#### **Authorised investment funds investing in exempt unauthorised unit trusts**

**25.** If an authorised investment fund (within the meaning given by the AIF Regulations) is at any time in a period of account a unit holder of an exempt unauthorised unit trust, the following provisions of CTA 2010 do not apply in relation to the fund for any financial year in which that period (or any part of it) falls—

- (a) Part 3 (relief for companies with small profits), and
- (b) sections 614 and 618 (applicable corporation tax rate),

(and, accordingly, the rate of corporation tax which applies in relation to the fund is the main rate within the meaning of section 3 of CTA 2010).

#### **Statements about income treated as received by unit holders**

**26.** A unit holder of an exempt unauthorised unit trust is entitled by notice to require the trustees of the trust to provide the unit holder with a statement in writing showing the amount of income treated as received by the unit holder for a distribution period under regulation 15.

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(a) OJ L 145, 30.4.2004 p.1. See article 4.1(14) for the meaning of “regulated market”.

(b) S.I. 2011/2999.

## PART 3

### Non-exempt unauthorised unit trusts

#### CHAPTER 1

##### Definition of non-exempt unauthorised unit trust

##### **Definition of non-exempt unauthorised unit trust**

27. An unauthorised unit trust is a “non-exempt unauthorised unit trust” if it is not an exempt unauthorised unit trust.

#### CHAPTER 2

##### Tax treatment of non-exempt unauthorised unit trusts

##### **Non-exempt unauthorised unit trust treated as UK resident company**

28.—(1) In respect of income arising and chargeable gains accruing to UK resident trustees of a non-exempt unauthorised unit trust, and for the purposes of the provisions relating to relief for capital expenditure, the Tax Acts have effect as if—

- (a) the trustees were a UK resident company, and
- (b) the rights of the unit holders were shares in the company.

(2) References in the Corporation Tax Acts to a body corporate are to be read in accordance with paragraph (1); and sections 1104 and 1107 of CTA 2010 (companies and nominees required to provide tax certificates) apply with any necessary modifications.

##### **Part 3 of CTA 2010 not to apply to non-exempt unauthorised unit trusts**

29. Part 3 of CTA 2010 (relief for companies with small profits) does not apply in relation to a non-exempt unauthorised unit trust.

## PART 4

### Transitional provisions

#### CHAPTER 1

##### Transitional provisions for exempt unauthorised unit trusts

##### **Transitional year for exempt unauthorised unit trusts**

30.—(1) This regulation applies in the case of a trust—

- (a) which was an unauthorised unit trust immediately before 6 April 2014, and
- (b) which is approved as an exempt unauthorised unit trust for a period including 6 April 2014.

(2) For the purposes of this regulation a trust’s “transitional year” is—

- (a) the tax year 2013-14, where the trust has an accounting date in the tax year 2013-14 on or after the day after these Regulations are made, or
- (b) the tax year 2014-15, where the trust either has an accounting date in the tax year 2013-14 before the day after these Regulations are made or has no accounting date in the tax year 2013-14.

(3) In a tax year which is a trust’s transitional year, the income of the trust for that tax year is taken to be the income arising in the period beginning with 6 April and ending with the accounting date in that year.

(4) If a trust's transitional year is the tax year 2014-15, regulation 7(4), Chapters 3 to 7 of Part 2 and Parts 3 and 5 do not apply in relation to the trust for that year.

(5) A transitional year does not count for the purposes of determining the first or second tax year that a trust is an exempt unauthorised unit trust under regulation 11(4) or (5).

(6) Any deemed payment or deemed deduction which would (but for this regulation) have been treated as made by the trustees under section 941 of ITA 2007 after the accounting date of the transitional year of the trust is treated as made on that accounting date.

(7) Any income of the trust which—

- (a) is shown in the trust's accounts for its transitional year as available for payment to unit holders or for investment, and
- (b) would (but for this regulation) arise to the trustees in a tax year later than the transitional year,

is treated as arising to the trustees in the trust's transitional year.

(8) For the purposes of this regulation, the accounting date, in relation to a tax year, means—

- (a) the date in the tax year to which accounts are drawn up, or
- (b) if there are two or more such dates, the latest of them.

## CHAPTER 2

### Transitional provisions for non-exempt unauthorised unit trusts

#### **Unauthorised unit trusts coming within charge to corporation tax: final deemed payments and accrued income profits**

**31.**—(1) In the case of an unauthorised unit trust which comes within the charge to corporation tax on 6 April 2014 or a later date, any amount of income which would (but for this regulation) have been treated under—

- (a) Chapter 10 of Part 4 of ITTOIA 2005, or
- (b) Chapter 5 of Part 10 of CTA 2009,

as received by its unit holders on or after 6 April 2014 or that later date is treated as received on 5 April 2014 or, as the case may be, the day before that later date (and, accordingly, the trustees are treated as making a deemed payment under section 941 of ITA 2007 in respect of that income on the same day).

(2) Any income of the trust which would (but for this regulation) be included in the amount of accrued income profits treated under Part 12 of ITA 2007 as made on or after 6 April 2014 or a later date, is included in the amount of accrued income profits treated under that Part as made on 5 April 2014 or, as the case may be, the day before that later date.

#### **Part 5 not to apply to mixed unauthorised unit trusts**

**32.**—(1) An unauthorised unit trust is not a non-exempt unauthorised unit trust, and Part 5 does not apply in relation to the trust, if at all times in the period beginning with 24 May 2012 and ending with 5 April 2014 it had at least one unit holder which was, and at least one unit holder which was not, an eligible investor.

(2) But paragraph (1) ceases to apply in relation to the trust if subsequently it no longer has any unit holders which are eligible investors.

## PART 5

### Repeals and consequential amendments

#### **Chevening Estate Act 1959**

**33.** In section 2 of the Chevening Estate Act 1959(a) (exemption from income tax, etc)—

(a) in subsection (1), after paragraph (c) insert—

“(d) from income tax chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013, in respect of income arising from and subject to those trusts.”, and

(b) in subsection (1A), omit paragraph (c).

#### **TCGA 1992**

**34.** In section 100(b) of TCGA 1992 (exemption for authorised unit trusts etc), omit subsections (2) to (2B).

#### **Finance Act 2000**

**35.** In paragraph 51(3)(c) of Schedule 22 to the Finance Act 2000(d) (tonnage tax: general exclusion of investment income)—

(a) omit paragraph (c) (together with the “or” at the end of it),

(b) in paragraph (d), for “that Part” substitute “Part 10 of that Act”, and

(c) at the end of that paragraph insert—

“, or

(e) regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.

#### **ITTOIA 2005**

**36.**—(1) ITTOIA 2005 is amended as follows.

(2) In section 365(1) (overview of Part 4 of Act), omit paragraph (i).

(3) In section 397(6)(e) (tax credits for qualifying distributions of UK resident companies: UK residents and eligible non-UK residents), omit the entry relating to section 504(4) of ITA 2007.

(4) In section 397A(6)(f) (tax credits for qualifying distributions of non-UK resident companies: UK residents and eligible non-UK residents), omit the entry relating to section 504(4) of ITA 2007.

(5) In section 399(7)(g) (qualifying distributions received by persons not entitled to tax credits), omit the entry relating to section 504(4) of ITA 2007.

(6) In section 400(h) (non-qualifying distributions), omit subsection (7).

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(a) 1959 c.49. Section 2 was amended by Part 1 of Schedule 13 to the Finance Act 1963 (c.25), by section 4 of the Chevening Estate Act 1987 (c.20), by paragraph 356 of Part 2 of Schedule 1 and Schedule 3 to ITTOIA 2005 and by paragraph 241 of Part 2 of Schedule 1 to the Income Tax Act 2007 (c.3) (referred to as “ITA 2007” in the remaining footnotes).

(b) 1992 c.12. Sections 100(2A) and (2B) were inserted by section 20 of the Finance (No 2) Act 2005 (c.22) and amended by paragraph 74 of Schedule 16 and paragraph 15 of Schedule 18 to the Finance Act 2012 (c.14).

(c) Paragraph 51 was amended by section 1322 of and paragraphs 462 and 470 of Schedule 1 to the Corporation Tax Act 2009 (c.4) (referred to as “CTA 2009” in the remaining footnotes).

(d) 2000 c.17.

(e) Section 397 was amended by paragraph 515 of Schedule 1 to ITA 2007.

(f) Section 397A was inserted by paragraph 4 of Schedule 12 to the FA 2008 and amended by paragraph 2 of Schedule 19 to the FA 2009 and by paragraph 66 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c.8) (referred to as “TIOPA 2010” in the remaining footnotes).

(g) Section 399(7) was amended by paragraph 516 of Schedule 1 to ITA 2007.

(h) Section 400 was amended by paragraph 517 of Schedule 1 to ITA 2007.

- (7) In section 410(3)(a) (when stock dividend income arises), for “section 504 of that Act” substitute “regulation 12 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.
- (8) Omit Chapter 10(b) of Part 4 (distributions from unauthorised unit trusts).
- (9) In section 839(e) (annual payments payable out of relevant foreign income)—
- (a) in subsection (3) —
    - (i) omit the entry relating to Chapter 10 of Part 4 of ITTOIA 2005,
    - (ii) omit the “or” before the entry relating to Chapter 7 of Part 5 of that Act, and
  - (b) at the end insert—
    - “, or
    - regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”, and
  - (c) in subsection (3A)(b), for the words from “Chapter 5” to the end substitute “Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.

### ITA 2007

- 37.**—(1) ITA 2007 is amended as follows.
- (2) In section 2(9) (overview of Act), omit paragraph (e) (but not the “and” at the end of it).
- (3) In section 14(2) (income charged at the dividend ordinary rate: other persons), omit the entry relating to section 504(3) of ITA 2007 (but not the “and” at the end of it).
- (4) In section 24(2)(b)(d) (reliefs deductible at Step 2), for “section 505 (relief for trustees of unauthorised unit trust)” substitute “regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.
- (5) In section 462(e) (overview of Part 9 of Act), omit subsection (9).
- (6) Omit sections 504 to 505(f) (unauthorised unit trusts).
- (7) In section 532(2)(f) (special rules about charitable trusts etc: exemption for savings and investment income), for the words from “Chapter 10” to the end substitute “regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 as received by a unit holder from an exempt unauthorised unit trust”.
- (8) In section 809CZB(1)(b)(g) (loan or credit transactions: certain payments treated as yearly interest), for the words from “Chapter 5” to the end substitute “Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.
- (9) In section 825(2) (meaning of “disregarded savings and investment income”)—
- (a) omit paragraph (d) (together with the “or” at the end of it), and
  - (b) at the end of paragraph (e) insert—
    - “, or
    - (f) regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.
- (10) In section 847(5) (overview of Part), omit paragraph (b) (but not the “and” at the end of it).
- (11) In section 848(h) (income tax deducted at source treated as income tax paid by recipient), omit subsection (4).

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(a) Section 410 was amended by paragraph 519 of Schedule 1 of ITA 2007 and by paragraph 21 of Schedule 6 to the Finance Act 2010 (c.13) (referred to as “FA 2010” in the remaining footnotes).

(b) Chapter 10 was amended by paragraph 542 of Schedule 1 to ITA 2007.

(c) Section 839 was amended by paragraphs 587 and 637 of Schedule 1 to CTA 2009.

(d) Section 24(1)(b) was amended by section 84 of and paragraph 27 of Schedule 27 to FA 2008.

(e) Section 462 was amended by section 31 of and paragraph 3 of Schedule 14 to the Finance (No 3) Act 2010 (c.33).

(f) Chapter 9 was amended by section 66 to and paragraph 25 of Schedule 12 to FA 2008 and S.I. 2010/23.

(g) Section 809CZB was inserted by paragraph 7 of Schedule 5 to TIOPA 2010.

(h) Section 848(4) was inserted by paragraph 2 of Schedule 13 to FA 2010.

(12) In section 873(2)(a)(a) (discretionary or accumulation settlements), for “section 504” substitute “regulation 12 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.

(13) In section 899(4)(b)(ii)(b) (meaning of “qualifying annual payment”), for the words from “Chapter 5” to the end substitute “Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.

(14) In section 904(2)(b)(ii)(c) (annual payments for dividends or non-taxable consideration), for the words from “Chapter 5” to the end substitute “Chapter 7 of Part 10 of that Act (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.

(15) Omit Chapter 13(d) of Part 15 (unauthorised unit trusts).

(16) In section 964 (collection through self-assessment), omit subsection (2).

(17) In section 975 (statements about deduction of income tax)—

(a) omit subsections (3) and (4),

(b) in subsection (6), omit “or (4)” and “or U (as the case may be)”, and

(c) omit subsection (7).

(18) In section 1025 omit subsection (4) (meaning of “modified net income”).

(19) In Schedule 2 (unauthorised unit trusts: calculation of trustees’ income pool), omit paragraphs 167 and 168.

(20) In Schedule 4 (index of defined expressions), omit—

(a) the entry relating to deemed deduction (in Chapter 13 of Part 15),

(b) the entry relating to deemed income (in Chapter 13 of Part 15),

(c) the entry relating to deemed payment (in Chapter 13 of Part 15),

(d) the entry relating to foreign element (in Chapter 13 of Part 15), and

(e) the entry relating to the gross amount (in Chapter 13 of Part 15).

## **CTA 2009**

**38.**—(1) CTA 2009 is amended as follows.

(2) In section 932(1) (overview of Part), omit paragraph (d).

(3) Omit Chapter 5(e) of Part 10 (distributions from unauthorised unit trusts).

(4) In section 982(1)(a) and (2)(a)(f) (provisions which must be given priority over Part 10), omit “5 or”.

## **CTA 2010**

**39.**—(1) CTA 2010 is amended as follows.

(2) In section 1(3) (overview of Act), omit paragraph (h).

(3) In section 486 (exemption for investment income and non-trading profits from loan relationships)—

(a) in subsection (2)(c), for the words from “Chapter 5” to the end substitute “regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 as received by a unit holder from an exempt unauthorised unit trust.”, and

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(a) Section 873 was amended by paragraph 23 of Schedule 6 to FA 2010.

(b) Section 899(4)(b) was amended by paragraph 707 of Schedule 1 to CTA 2009.

(c) Section 904 was amended by paragraph 708 of Schedule 1 to CTA 2009.

(d) Chapter 13 was amended by paragraph 713 of Schedule 1 to CTA 2009 and by paragraph 1 of Schedule 13 to FA 2010.

(e) Chapter 5 was amended by paragraph 66 of Schedule 1 to CTA 2010.

(f) Section 982(1)(a) was amended by paragraph 26 of Schedule 14 to FA 2009.

- (b) in subsection (4), for the words from “Part 10 of CTA 2009” to the end substitute “regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013 (see regulation 17 of those regulations as to provisions given priority over that regulation).”.

(4) Omit Chapter 3 of Part 13 (unauthorised unit trusts).

(5) In section 778(1)(b) (certain payments treated as interest), for the words from “Chapter 5” to the end substitute “Chapter 7 of Part 10 of CTA 2009 (annual payments not otherwise charged) or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.

## **FA 2012**

**40.** In section 74(1) of FA 2012 (the I – E rules: meaning of “income”)—

- (a) omit paragraph (f),
- (b) omit the “and” before paragraph (j), and
- (c) after that paragraph insert—
  - “, and
  - (k) income of the company chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.

## **Consequential repeals of other enactments**

**41.** In consequence of the amendments made by the above provisions of this Part, omit the following provisions—

- (a) in ITA 2007, paragraphs 541 and 542 of Schedule 1,
- (b) in FA 2008, paragraph 23 of Schedule 1 and paragraph 25 of Schedule 12,
- (c) in CTA 2009, paragraph 713 of Schedule 1,
- (d) in FA 2009, paragraph 13(a) of Schedule 19,
- (e) in CTA 2010, paragraph 663 of Schedule 1, and
- (f) in FA 2010, section 40 and Schedule 13.

## **AIF Regulations**

**42.—**(1) In regulation 17(2)(a) of the AIF Regulations (allocation of income), after “Part 4 of CTA 2009” insert “or regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013”.

## **Offshore Funds Regulations**

**43.** In regulation 18(6)(b) of the Offshore Funds Regulations (the charge to tax: further provisions)—

- (a) omit the “or” at the end of paragraph (a), and
- (b) after paragraph (b) insert—
  - “, or
  - (c) the trustees of an exempt unauthorised unit trust to which regulations 22 or 23 of the Unauthorised Unit Trusts (Tax) Regulations 2013 applies.”.

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) Regulation 17(2) was substituted by S.I. 2010/294.  
(b) Regulation 8(6) was substituted by S.I. 2011/2999.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about the treatment of the trustees or unit holders of unauthorised unit trusts for the purposes of income tax, corporation tax and capital gains tax. They are made in exercise of the powers conferred by section 217 of the Finance Act 2013. They set out the requirements for an unauthorised unit trust to be approved as an exempt unauthorised unit trust; and make provision for the taxation of gains and income of exempt and non-exempt unauthorised unit trusts as well as the tax treatment of the unit holders and trustees of those trusts. These Regulations make provision for the treatment of certain types of investment or disposal made by exempt unauthorised unit trusts. They include provisions for consequential amendments to various enactments relating to the treatment of unauthorised unit trusts. These Regulations also contain transitional provisions.

Part 1 of these Regulations contains introductory and general provisions. Regulation 1 provides for citation, commencement and effect. Regulation 2 defines terms for the purposes of the Regulations.

Part 2 of these Regulations is concerned with exempt unauthorised unit trusts.

Chapter 1 of Part 2 defines an exempt unauthorised unit trust and sets out the conditions a trust must meet to be an exempt unauthorised unit trust in a period of account. The conditions include that all unit holders are eligible investors (defined in regulation 3(2)) and that the trust is approved for the period.

Chapter 2 deals with approval as an exempt unauthorised unit trust. Regulation 4 deals with the application to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") for approval. Regulation 5 sets out the material that an application for approval must contain and makes particular provisions for a provisional application for approval. Regulation 6 sets out the response the Commissioners may give to an application which includes notifying the managers or trustees of an applicant to provide further particulars. Regulation 7 sets out the continuing requirements on which approval as exempt unauthorised unit trust is conditional. These requirements include preparing accounts in accordance with specified standards. Regulation 8 deals with withdrawal of approval by the Commissioners and regulation 9 deals with appeals against a rejection of an application for, or withdrawal of, approval.

Chapter 3 provides that gains accruing to an exempt unauthorised unit trust are not chargeable gains for the purposes of the Taxation of Chargeable Gains Act 1992.

Chapter 4 deals with the taxation of income of exempt unauthorised unit trusts. Regulation 11 sets out the rules to ascertain the basis period for a tax year for an exempt unauthorised unit trust. Regulation 12 provides that if income arises to the trustees of an exempt unauthorised unit trust, the income is treated as the income of the trustees; and that if income arises to those trustees it is charged at the basic rate (if the dividend ordinary rate would otherwise apply). Regulation 13 provides that the trustees of an exempt unauthorised unit trust are the persons to or on whom an allowance or charge relating to relief for capital expenditure is to be made. Regulation 14 makes provision for the treatment of accrued income profits (under Chapter 2 of Part 12 of the Income Tax Act 2007 ("ITA 2007")) of an exempt unauthorised unit trust.

Chapter 5 deals with the charge to tax on unit holders of an exempt unauthorised unit trust. Regulation 15 provides that tax is charged on income treated as received by a unit holder and sets out the calculation of such income by reference to distribution periods (defined in regulation 15(7)). Regulation 16 provides that the person liable for tax charged under Chapter 5 is the unit holder treated as receiving the income. Regulation 17 sets out where the charge falls in priority to other enactments providing for a charge to tax on income.

Chapter 6 provides for relief for trustees of an exempt unauthorised unit trust. Regulation 18 provides that trustees are entitled to relief for a tax year equal to the amount of deemed payments for that year. The amount of deemed payments is equal to the amount of income treated, under regulation 15(2), as received by the unit holders for a period of account. Regulations 19 and 20 set

out cases where amounts are ineligible for relief under regulation 18. Regulation 21 makes provision for the effect of equalisation arrangements on the amount for which the trustees are entitled to relief.

Chapter 7 contains miscellaneous provisions relating to the treatment of exempt unauthorised unit trusts. Regulations 22 and 23 set out the circumstances in which no tax is charged on the trustees under regulation 17 of the Offshore Funds (Tax) Regulations 2006 S.I. 2009/3001 on the disposal of an interest in a “non-reporting fund” (as defined in those Regulations). Regulation 24 provides that certain investment transactions entered into by the trustees of an exempt unauthorised unit trust are treated as entered into otherwise than in the course of a trade. Regulation 25 provides that the main rate of corporation tax (within the meaning of section 3 of the Corporation Tax Act 2010) applies to an authorised investment fund which is a unit holder in an exempt unauthorised unit trust. Regulation 26 provides that a unit holder of an exempt unauthorised unit trust is entitled by notice to require the trustees to provide a statement in writing showing the amount of income treated as received by the unit holder for a distribution period.

Part 3 of these Regulations is concerned with non-exempt unauthorised unit trusts.

Chapter 1 defines a non-exempt unauthorised unit trust as an unauthorised unit trust which is not an exempt unauthorised unit trust.

Chapter 2 deals with the tax treatment of non-exempt unauthorised unit trusts. Regulation 28 provides that the Tax Acts have effect as if the trustees were a UK resident company and the rights of the unit holders were shares in the company. Regulation 29 provides that Part 3 of the Corporation Tax Act 2009 (“CTA 2009”) (relief for companies with small profits) does not apply to non-exempt unauthorised unit trusts.

Part 4 of these Regulations is concerned with transitional provisions.

Chapter 1 sets out the transitional provisions for an exempt unauthorised unit trust. Regulation 30 applies in the case of a trust which was an unauthorised unit trust immediately before 6 April 2014 and which is approved as an exempt unauthorised unit trust for a period including 6 April 2014. Regulation 30(2) establishes which tax year is the transitional year for a trust to which regulation 30 applies. Regulation 30(3) makes provision to establish the income of a trust for a tax year which is a transitional year. Regulations 30(4) to (5) deal with the application of other provisions contained in these Regulations to the transitional year in certain cases. Regulation 30(6) make provision for treating deemed payments or deductions as being made on the accounting date of a transitional year (defined in regulation 30(8)). Regulation 30(7) makes provision in particular circumstances for an amount of income of a trust to be treated as arising in the trust’s transitional year where it otherwise would be treated as arising in another year.

Chapter 2 sets out the transitional provisions for non-exempt unauthorised unit trusts. Regulation 31 makes transitional provisions to treat income as being received the day before an unauthorised unit trust comes with the charge to corporation tax where it would otherwise be treated as received by unit holders after the unauthorised unit trust comes within the charge to corporation tax (under Chapter 10 of Part 4 of the Income Tax (Trading and Other Income) Act, Part 12 of ITA 2007 or Chapter 5 of Part 10 CTA 2009). Regulation 32 provides that the repeals and consequential amendments to enactments relating to the tax treatment of unauthorised unit trusts contained in Part 5 of these Regulations do not apply to trusts which, between 24 May 2012 and 5 April 2014, have at least one unit holder who was an eligible investor and one unit holder who was not.

Part 5 provides for repeals and consequential amendments to various enactments relating to the treatment of unauthorised unit trusts.

A Tax Information and Impact Note covering this Instrument has been published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>

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