



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XII

SPECIAL CLASSES OF COMPANIES AND BUSINESSES

CHAPTER VI

UNIT TRUSTS AND INVESTMENT TRUSTS

Unit trusts

354 Authorised unit trusts

- (1) In respect of income and chargeable gains arising to the trustees of an authorised unit trust, the Tax Acts shall have effect—
- (a) as if the trustees were a company, resident in the United Kingdom, whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, and
 - (b) as if the rights of the unit holders were shares in the company, and
 - (c) as if so much of the income arising to the trustees as is available for payment to unit holders or for investment were dividends on such shares paid to them in proportion to their rights, the date of payment, in the case of income not paid to unit holders, being taken to be—
 - (i) the date or latest date provided by the terms of the authorised unit trust for any distribution in respect of the distribution period in question,
 - (ii) if no date is so provided, the last day of the distribution period;and references in the Corporation Tax Acts to a body corporate shall be construed in accordance with this subsection.
- (2) Without prejudice to the generality of the preceding provisions—

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- (a) sums periodically appropriated out of income or chargeable gains arising as aforesaid for managers' remuneration shall be treated for the purposes of section 304 of this Act as sums disbursed as expenses of management,
 - (b) the proportion of income attributable to any unit holder, being income not paid to unit holders but available for investment, shall be treated as an amount paid to the unit holder after such deduction of tax as is authorised by section 232(3) of this Act (Schedule F),
 - (c) section 242 of this Act (explanation of income tax deductions to be annexed to dividend warrants, etc.) shall apply with any necessary modifications.
- (3) In ascertaining the amount available for distribution to unit holders in respect of any distribution period the trustees of an authorised unit trust may make such adjustments as may be reasonably required to allow for liabilities to and reliefs from tax where the amount of the liability or relief is not yet ascertained.
- (4) In this section " distribution period " means a period over which income from the investments subject to the trusts is aggregated for the purposes of ascertaining the amount available for distribution to unit holders.

355 Cancellation and creation of units

Where in an accounting period of an authorised unit trust the aggregate of the capital sums paid in respect of the cancellation of units exceeds the aggregate of the capital sums received in respect of the creation of units, then the amount (as computed apart from this section) of any chargeable gain or allowable loss accruing to the unit trust in that period shall be taken as reduced by the fraction of

$$\frac{A}{B}$$

it where—

A is the said excess,

B is the total net consideration received by the unit trust on the disposal of chargeable assets during the period after deduction of the incidental costs of making the disposal;

and if A exceeds B no chargeable gain or allowable loss shall accrue to the unit trust in that period.

Unit trusts and investment trusts

356 Rate of tax on chargeable gains

The rate of tax payable by an authorised unit trust or by an investment trust on any chargeable gains accruing in any accounting period (as calculated in accordance with section 265 of this Act) shall not exceed that payable in that period by an individual under section 20(3) of the Finance Act 1965.

357 Apportionment of chargeable gains

- (1) For the purposes of section 37 of the Finance Act 1965 (relief for unit holders in respect of chargeable gains of unit trust) the total net gains of an authorised unit trust for an accounting period are the excess, if any, of the chargeable gains accruing to the unit trust in the period over the allowable losses deductible from those gains (as those

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gains and losses are computed for the charge to tax on the unit trust), after deduction from that excess of the tax which will be charged on the unit trust for the period in respect of chargeable gains, and the proportion attributable to any unit holder of the total net gains for any accounting period shall be determined by the unit trust, regard being among other things had, as between units of different classes, to the proportion of the assets of the unit trust representing gains on capital which would be attributable to the respective classes in a liquidation of the unit trust; and no apportionment which the unit trust makes under this section shall be questionable in any proceedings by the unit holders or by any other person.

(2) After carrying out an apportionment under subsection (1) of this section the unit trust shall give any unit holder to whom part of the total net gains is attributable a notice referring to the provisions of this section and certifying—

- (a) the total net gains (employing that term) of the unit trust for the accounting period, so far as known ; and
- (b) the amount apportioned to him ;

and the unit holders between whom the total net gains are to be apportioned shall (except on an apportionment made in accordance with subsection (3) below) be determined by reference to the same date as the right to payment of the first dividend after the end of the accounting period, and that date shall be deemed to be the date when the apportionment is made and shall be specified in the notice.

(3) The apportionment under subsection (1) of this section shall be carried out separately for each accounting period but a notice may be issued in respect of part of an accounting period apportioned in the light of the information available at the time, and an apportionment (or final apportionment) for an accounting period may be made at or after the end of the period, notwithstanding that any amounts are not finally ascertained; but if at any time it is found that too much or too little has been apportioned it shall be corrected as soon as may be by deduction from or addition to the total net gains of a later accounting period or periods.

(4) A notice under subsection (2) of this section may be combined with the statement in writing required to be given under section 242 of this Act (explanation of income tax deductions to be annexed to dividend warrants, etc.).

(5) Before the notices under subsection (2) of this section are sent out, particulars of the apportionments shall be submitted to the inspector, and the notices shall not be sent out without his approval, but subject to a right of appeal to the General Commissioners having jurisdiction in any assessment on the unit trust, being a right of appeal against the refusal of the inspector to give his approval.

In the application of this subsection to Northern Ireland for the reference to the General Commissioners there shall be substituted a reference to the Special Commissioners.

(6) Anything required by this section to be done by a unit trust shall be done by the managers of the unit trust with the approval of the trustee.

(7) Subsections (1) to (5) above shall apply to an investment trust as they apply in relation to a unit trust with the necessary adaptations of references to units and unit holders.

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Interpretation

358 Definitions of authorised unit trust and unit holder

In this Chapter—

" authorised unit trust " means, as respects any accounting period, a unit trust scheme in the case of which an order of the Board of Trade under section 17 of the Prevention of Fraud (Investments) Act 1958 or of the Ministry of Commerce for Northern Ireland under section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 is in force during the whole or some part of that accounting period,

" unit holder " means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

359 Definition of investment trust

(1) For the purposes of this Chapter " investment trust " means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—

- (a) that the company's income is derived wholly or mainly from shares or securities ; and
- (b) subject to subsection (2) of this section, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) of this subsection, represents more than 15 per cent. by value of the investing company's investments, and
- (c) that the shares or securities of the company, or a class of them, are quoted on a recognised stock exchange in the United Kingdom, and
- (d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company's memorandum or articles of association, and
- (e) that the company does not retain in respect of any accounting period more than 15 per cent of the income it derives from shares and securities.

(2) Subsection (1)(b) above shall not apply—

- (a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company's investments, or
- (b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company's investments,

so long as no addition is made to the holding.

(3) For the purposes of subsection (2) above—

- (a) " holding " means the shares or securities (whether of one class or more than one class) held in any one company, and
- (b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition, or the latest addition, is made to the holding, and

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- (c) where in connection with a scheme of reconstruction or amalgamation, a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion (a) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.
- (4) In this section " company " and " shares " shall be construed in accordance with subsections (1) and (8) of section 45 of the Finance Act 1965.