



# Finance Act 1990

## 1990 CHAPTER 29

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

##### *Unit and investment trusts etc.*

#### **51 Authorised unit trusts**

The following sections shall be inserted immediately before section 469 of the Taxes Act 1988—

##### **“468E Authorised unit trusts: corporation tax**

- (1) This section has effect as regards an accounting period of the trustees of an authorised unit trust ending after 31st December 1990.
- (2) Subject to subsection (3) below, the rate of corporation tax for a financial year shall be deemed to be the rate at which income tax at the basic rate is charged for the year of assessment which begins on 6th April in the financial year concerned.
- (3) Where the period begins before 1st January 1991, subsection (2) above shall only apply for the purpose of computing corporation tax chargeable for so much of the period as falls in the financial year 1991 and subsection (4) below shall apply for the purpose of computing corporation tax chargeable for so much of the period as falls in the financial year 1990.

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- (4) So much of the period as falls after 31st December 1990 and before 1st April 1991 shall be deemed to fall in a financial year for which the rate of corporation tax is the rate at which income tax at the basic rate is charged for the year 1990-91.
- (5) Subsections (3) and (4) above shall not apply where the authorised unit trust concerned is a certified unit trust as respects the period.
- (6) Where the period begins after 31st December 1990, section 338 shall have effect as if any reference to interest of any description were a reference to interest of that description on borrowing of a relevant description.
- (7) Where the authorised unit trust concerned is a certified unit trust as respects the period, subsection (6) above shall have effect without the words preceding “section 338”.
- (8) For the purposes of subsection (6) above borrowing is of a relevant description if it is borrowing in respect of which there has been no breach during the accounting period of the duties imposed on the manager of the scheme by regulations under section 81 of the Financial Services Act 1986 with respect to borrowing by the trustees of the scheme.
- (9) The Treasury may by regulations provide that for subsection (8) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of what constitutes borrowing of a relevant description for the purposes of subsection (6) above.
- (10) Regulations under subsection (9) above may contain such supplementary, incidental, consequential or transitional provision as the Treasury think fit.
- (11) In this section “certified unit trust” means, as respects an accounting period, a unit trust scheme in the case of which—
- (a) an order under section 78 of the Financial Services Act 1986 is in force during the whole or part of that accounting period, and
  - (b) a certificate under section 78(8) of that Act, certifying that the scheme complies with the conditions necessary for it to enjoy the rights conferred by the UCITS directive, has been issued before or at any time during that accounting period.
- (12) In this section—
- “authorised unit trust” has the same meaning as in section 468,
- “the UCITS directive” means the directive of the Council of the European Communities, dated 20th December 1985, on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (no.85/611/EEC), and
- “unit trust scheme” has the same meaning as in section 469.

#### **468F Authorised unit trusts: distributions**

- (1) Subsection (2) below applies where—
- (a) as regards a distribution period ending after 31st December 1990 a dividend is treated by virtue of section 468(2) as paid to a unit holder (whether or not income is in fact paid to the unit holder),

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- (b) the dividend is treated as paid by the trustees of a unit trust scheme which is an authorised unit trust as respects the accounting period in which the distribution period falls, and
  - (c) on the date of payment the unit holder is within the charge to corporation tax and not a dual resident.
- (2) For the purpose of computing corporation tax chargeable in the case of the unit holder the payment shall be deemed—
  - (a) to be an annual payment, and not a dividend or other distribution, and
  - (b) to have been received by the unit holder after deduction of income tax at the basic rate, for the year of assessment in which the date of payment falls, from a corresponding gross amount.
- (3) Subsection (2) above shall have effect subject to the following provisions of this section and to section 468G.
- (4) Subsection (2) above shall not apply where the rights in respect of which the dividend is treated as paid are held by the trustees of a unit trust scheme which is an authorised unit trust as respects the accounting period (of that scheme) in which the date of payment falls.
- (5) Where the unit holder is on the date of payment the manager of the scheme, subsection (2) above shall not apply in so far as the rights in respect of which the dividend is treated as paid are rights held by him in the ordinary course of his business as manager of the scheme.
- (6) Subsection (2) above shall not apply to so much of the payment as is attributable to income of the trustees arising before 1st January 1991.
- (7) Subsection (6) above shall not apply where—
  - (a) the payment is treated as made as regards a distribution period falling in an accounting period as respects which the authorised unit trust is a certified unit trust, or
  - (b) the authorised unit trust is on the date of payment a fund of funds.
- (8) In this section—
  - “authorised unit trust” has the same meaning as in section 468,
  - “certified unit trust” has the same meaning as in section 468E,
  - “distribution period” has the same meaning as in section 468,
  - “dual resident” means a person who is resident in the United Kingdom and falls to be regarded for the purposes of any arrangements having effect by virtue of section 788 as resident in a territory outside the United Kingdom,
  - “fund of funds” means a unit trust scheme the sole object of which is to enable the unit holders to participate in or receive profits or income arising from the acquisition, holding, management or disposal of units in unit trust schemes, and
  - “unit trust scheme” has the same meaning as in section 469.

#### **468G Dividends paid to investment trusts**

- (1) Section 468F(2) shall not apply in a case where—
  - (a) the first condition set out below is fulfilled, and

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- (b) if one or more of the second to fourth conditions set out below applies, the condition (or each of the conditions) which applies is fulfilled.
- (2) The first condition is that—
- (a) the unit holder is a company which is an investment trust as respects the accounting period of the company that includes 20th March 1990, and
  - (b) immediately before the end of 20th March 1990, not less than 90 per cent. by value of the company’s investments consisted of units in a unit trust scheme which (or units in different unit trust schemes each of which) was an authorised unit trust on 20th March 1990.
- (3) The second condition applies if the date of payment is included in an accounting period of the company which falls after the company’s accounting period that includes 20th March 1990; and the condition is that the company is an investment trust as respects—
- (a) the accounting period of the company that includes the date of payment, and
  - (b) each (if any) accounting period of the company which falls after the company’s accounting period that includes 20th March 1990 and before the company’s accounting period that includes the date of payment.
- (4) The third condition applies if the company makes an investment after 20th March 1990, and on or before the date of payment, in units in a unit trust scheme which is an authorised unit trust on the date of payment; and the condition is that, immediately before the end of the date of payment, each unit held by the company in a unit trust scheme which is an authorised unit trust on that date is a unit in a unit trust scheme—
- (a) in which the company held units immediately before the end of 20th March 1990, and
  - (b) which was an authorised unit trust on 20th March 1990.
- (5) The fourth condition applies if—
- (a) the third condition applies, and
  - (b) immediately before the end of 20th March 1990 the company held units in more than one unit trust scheme which was an authorised unit trust on that date;
- and the condition is that the investments made by the company after 20th March 1990, and on or before the date of payment, were made in accordance with the requirements applicable to the investment of funds of the company on 20th March 1990.
- (6) For the purposes of this section—
- (a) “authorised unit trust” has the same meaning as in section 468,
  - (b) “unit trust scheme” has the same meaning as in section 469, and
  - (c) a unit trust scheme is an authorised unit trust on a particular date if it is an authorised unit trust as respects the accounting period of the scheme that includes that date.”

## 52 Unit trusts: repeals

- (1) The Taxes Act 1988 shall have effect subject to the following provisions of this section.

- (2) In section 468 (authorised unit trusts) subsection (5) shall not apply as regards a distribution period beginning after 31st December 1990.
- (3) Where a particular distribution period is by virtue of subsection (2) above the last distribution period as regards which section 468(5) applies in the case of a trust, the trustees' liability to income tax in respect of any source of income chargeable under Case III of Schedule D shall be assessed as if they had ceased to possess the source of income on the last day of that distribution period.
- (4) But where section 67 of the Taxes Act 1988 applies by virtue of subsection (3) above, it shall apply with the omission from subsection (1)(b) of the words from “and shall” to “this provision”.
- (5) Section 468B (certified unit trusts: corporation tax) shall not apply as regards an accounting period ending after 31st December 1990.
- (6) Section 468C (certified unit trusts: distributions) shall not apply as regards a distribution period ending after 31st December 1990.
- (7) Section 468D (funds of funds: distributions) shall not apply as regards a distribution period ending after 31st December 1990.
- (8) In this section “distribution period” has the same meaning as in section 468 of the Taxes Act 1988.

### **53 Unit trust managers: exemption from bond-washing provisions**

- (1) Section 732 of the Taxes Act 1988 (application of bond-washing provisions to dealers in securities) shall have effect, and be deemed always to have had effect, with the insertion of the following subsection after subsection (5)—
  - “(5A) Subsection (1) above shall not apply if the securities are rights in a unit trust scheme and the subsequent sale is carried out by the first buyer in the ordinary course of his business as manager of the scheme.”
- (2) Section 472 of the Taxes Act 1970 (corresponding provision of the old law) shall be deemed always to have had effect with the insertion after subsection (5) of the subsection set out in subsection (1) above.

### **54 Indexation: collective investment schemes**

- (1) The provisions specified in subsection (2) below (which provide for an indexation allowance on the disposal of assets) shall not apply in the case of a disposal if each of the three conditions set out below is fulfilled.
- (2) The provisions are—
  - (a) in the Finance Act 1982, sections 86(4) and 87 and, in Schedule 13, paragraphs 1 to 7, 8(2)(c) and 10(3), and
  - (b) in the Finance Act 1985, section 68(4) to (8) and, in Schedule 19, paragraphs 1(3), 2, 5, 7(3), 8(1)(b) and (c), 11 to 15, 18, 22 and 23.
- (3) The first condition is that the disposal is of rights in property to which collective investment arrangements relate; and—
  - (a) collective investment arrangements are arrangements which constitute a collective investment scheme;

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- (b) “collective investment scheme” has the same meaning as in the Financial Services Act 1986.
- (4) Subject to subsection (5) below, the second condition is that, at some time in the relevant ownership period, not less than 90 per cent. of the market value (at that time) of the investment property then falling within the arrangements was represented by—
  - (a) non-chargeable assets,
  - (b) shares in a building society, or
  - (c) such assets and such shares.
- (5) In a case where—
  - (a) the arrangements are ones under which the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled in relation to separate parts of the property in question, and
  - (b) the disposal is of rights in property falling within a separate part,
 subsection (4) above shall have effect as if the reference to the arrangements were to the separate part.
- (6) For the purposes of subsection (4) above the relevant ownership period is the period which begins with the later of—
  - (a) the earliest date on which any relevant consideration was given for the acquisition of the rights, and
  - (b) 1st April 1982,
 and ends with the day on which the disposal is made.
- (7) For the purposes of subsection (4) above investment property is all property other than cash awaiting investment.
- (8) For the purposes of subsection (4) above an asset is a non-chargeable asset if, were it to be disposed of—
  - (a) at the time the rights are disposed of, and
  - (b) by a person resident in the United Kingdom,
 any gain accruing on the disposal would not be a chargeable gain.
- (9) In subsection (4)(b) above “shares” and “building society” have the same meanings as in the Building Societies Act 1986.
- (10) For the purposes of subsection (6) above relevant consideration is consideration which, assuming the application of Chapter II of Part II of the Capital Gains Tax Act 1979 to the disposal of the rights, would fall to be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents (directly or indirectly) the whole or any part of the acquisition cost of the person making the disposal.
- (11) The third condition is that the disposal is made on or after 20th March 1990.

## **55 Investment trusts**

- (1) In section 842 of the Taxes Act 1988 (investment trusts) the following subsections shall be inserted after subsection (2)—
  - “(2A) Subsection (1)(e) above shall not apply as regards an accounting period if—

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- (a) the company is required to retain income in respect of the period by virtue of a restriction imposed by law, and
  - (b) the amount of income the company is so required to retain in respect of the period exceeds an amount equal to 15 per cent. of the income the company derives from shares and securities.
- (2B) Subsection (2A) above shall not apply where—
- (a) the amount of income the company retains in respect of the accounting period exceeds the amount of income it is required by virtue of a restriction imposed by law to retain in respect of the period, and
  - (b) the amount of the excess or, where the company distributes income in respect of the period, that amount together with the amount of income which the company so distributes is at least £10,000 or, where the period is less than 12 months, a proportionately reduced amount.
- (2C) Paragraph (e) of subsection (1) above shall not apply as regards an accounting period if the amount which the company would be required to distribute in order to fall within that paragraph is less than £10,000 or, where the period is less than 12 months, a proportionately reduced amount.”
- (2) This section applies in relation to accounting periods ending on or after the day on which this Act is passed.