



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 2

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

### CHAPTER 3

#### AUTHORISED INVESTMENT FUNDS ETC

## 16 Open-ended investment companies

After section 468 of ICTA (authorised unit trust schemes) insert—

### “468A Open-ended investment companies

- (1) In relation to an open-ended investment company the rate of corporation tax for the financial year 2005 and subsequent financial years shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned (and sections 13, 13AA and 13AB shall not apply).
- (2) In this section “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies.
- (3) Each of the parts of an umbrella company shall be regarded for the purposes of this section as an open-ended investment company and the umbrella company as a whole shall not be so regarded (and shall not, unless an enactment expressly provides otherwise, be regarded as a company for any other purpose of the Tax Acts).
- (4) In subsection (3) “umbrella company” means an open-ended investment company—

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- (a) in respect of which the instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are to be made to them, and
  - (b) the shareholders of which are entitled to exchange rights in one pool for rights in another,
- and a reference to part of an umbrella company is a reference to a separate pool.”

## 17 Authorised unit trusts and open-ended investment companies

- (1) The following provisions shall cease to have effect—
- (a) sections 468H to 468Q of ICTA (authorised unit trusts),
  - (b) paragraphs 2A and 2B of Schedule 10 to FA 1996 (authorised unit trusts and open-ended investment companies: loan relationships),
  - (c) paragraphs 32 and 33 of Schedule 26 to FA 2002 (collective investment schemes: derivative contracts),
  - (d) section 373(4) and (6) of ITTOIA 2005 (open-ended investment company: interest distributions), and
  - (e) section 376(4) and (6) of ITTOIA 2005 (authorised unit trust: interest distributions).
- (2) In this Chapter “authorised investment funds” means—
- (a) authorised unit trust schemes, and
  - (b) open-ended investment companies.
- (3) The Treasury may, by regulations—
- (a) make provision about the treatment of authorised investment funds for the purposes of an enactment relating to taxation;
  - (b) provide for the modification of an enactment relating to taxation in its application in relation to—
    - (i) authorised investment funds,
    - (ii) shareholders or unit holders in authorised investment funds, or
    - (iii) transactions involving authorised investment funds;
  - (c) impose requirements on persons responsible for the management of an authorised investment fund in relation to the provision of information, the form of accounts, the keeping of records or other administrative matters.
- (4) For the purposes of this Chapter—
- (a) “unit trust scheme” has the meaning given by section 237 of the Financial Services and Markets Act 2000 (c. 8),
  - (b) a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of the Financial Services and Markets Act 2000 is in force in relation to that scheme during the whole or part of that accounting period,
  - (c) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme,
  - (d) a reference to a shareholder or unit holder includes a person beneficially entitled to shares or units (and a reference to owning units or shares shall be construed accordingly),

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- (e) “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies,
- (f) “associate” has the meaning given by section 417 of ICTA,
- (g) “net asset value” means the value of the assets of the authorised investment fund, after the deduction of specified liabilities,
- (h) a reference to a distribution includes investing an amount on behalf of a unit holder or shareholder in respect of his accumulation units or accumulation shares,
- (i) “distribution accounts” means accounts showing—
  - (i) the total amount available for distribution to unit holders or shareholders, and
  - (ii) how that amount is computed,
- (j) the “distribution date” for a distribution period in relation to an authorised investment fund means—
  - (i) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or
  - (ii) if no date is specified, the last day of that distribution period,
- (k) “distribution period” in relation to an authorised investment fund means a period by reference to which the total amount available for distribution to unit holders or shareholders is ascertained,
- (l) “umbrella company” has the meaning given by section 468A of ICTA,
- (m) “umbrella scheme” has the meaning given by section 468 of ICTA, and
- (n) section 839 of ICTA (connected persons) applies.

#### **Commencement Information**

**II** S. 17 partly in force; s. 17(2)-(4) in force at Royal Assent, see s. 19(1)

### **18 Section 17(3): specific powers**

- (1) Regulations under section 17(3)(a) or (b) may make provision about distributions which may, in particular—
  - (a) require an authorised investment fund to comply with prescribed rules for determining (whether by reference to a formula or otherwise) what proportion of an amount shown in distribution accounts as available for distribution is to be distributed by way of dividends and what proportion is to be distributed by way of yearly interest;
  - (b) permit persons responsible for the management of an authorised investment fund to elect to distribute entirely by way of dividends;
  - (c) require distribution accounts to show the amount available for distribution—
    - (i) by way of dividends;
    - (ii) by way of yearly interest;
  - (d) allow a distribution of yearly interest for a distribution period to be deducted, in the prescribed manner, in computing the profits of the authorised investment fund for the accounting period in which the last day of that distribution period falls;

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- (e) make provision for determining the distribution date in relation to a distribution period of an authorised investment fund;
  - (f) permit distributions to be made, in prescribed circumstances, to or for the benefit of a person not ordinarily resident in the United Kingdom without deducting tax;
  - (g) permit distributions to be made without deducting tax, in prescribed circumstances, to a person ordinarily resident in the United Kingdom who is unlikely to be liable to pay an amount by way of income tax for the year of assessment in which the distribution is made;
  - (h) include provision, in respect of a unit holder or shareholder who is within the charge to corporation tax, about—
    - (i) the liability to corporation tax resulting from receipt of a distribution, and
    - (ii) the method of computing that liability.
- (2) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision for loan relationships held by an authorised investment fund;
  - (b) make special provision for derivative contracts held by an authorised investment fund;
  - (c) modify the meaning of “relevant holding” for the purposes of—
    - (i) paragraph 4 of Schedule 10 to FA 1996 (loan relationships), and
    - (ii) paragraph 36 of Schedule 26 to FA 2002 (derivative contracts);
  - (d) make special provision in relation to the treatment of umbrella companies and umbrella schemes (or shareholders or unit holders in umbrella companies or umbrella schemes);
  - (e) prohibit action which favours a class of unit holders or shareholders.
- (3) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision in relation to a person who, alone or together with associates or connected persons, owns (otherwise than as a nominee) units or shares, in a fund designated by the Financial Services Authority as a Qualified Investor Scheme, which represent 10% or more (or such other percentage as the regulations may specify) of the net asset value of the fund;
  - (b) include exceptions from provision made by virtue of paragraph (a) above including, in particular, an exception relating to units or shares held—
    - (i) by a charity (within the meaning of section 506(1) of ICTA),
    - (ii) by a registered pension scheme (within the meaning of section 150 of FA 2004),
    - (iii) by an insurance company (within the meaning of section 431(2) of ICTA) as assets of its long-term insurance fund (within the meaning of that section), or
    - (iv) by such other persons, in such circumstances, as the regulations may specify.
- (4) Regulations under section 17(3)(c) may, in particular, require persons responsible for the management of an authorised investment fund to supply information to, and make available books, documents and other records for inspection by, the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under section 17(3) may, in particular—

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- (a) amend a reference in an enactment to a provision repealed by section 17(1);
- (b) make different provision for different circumstances;
- (c) make incidental, consequential, supplemental or transitional provision.

## **19 Section 17: commencement and procedure**

- (1) Section 17(1) shall come into force on such day as the Treasury may appoint by order.
- (2) An order under subsection (1) may—
  - (a) commence only a specified repeal;
  - (b) commence different repeals at different times;
  - (c) commence a repeal at different times for different purposes;
  - (d) include savings.
- (3) Regulations under section 17(3) shall be subject to annulment by a resolution of the House of Commons.
- (4) But the first set of regulations under section 17(3) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

## **20 Unauthorised unit trusts: chargeable gains**

- (1) Section 100 of TCGA 1992 (exemption for authorised unit trusts, etc) shall be amended as follows.
- (2) After subsection (2) insert—
  - “(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—
    - (a) have been disposed of by a unit holder, and
    - (b) are held by the managers of the scheme (in that capacity) pending disposal.
  - (2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—
    - (a) an insurance company (within the meaning given by section 431 of the Taxes Act), or
    - (b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act).”
- (3) This section shall have effect for the year 2005-06 and subsequent years of assessment.

## **21 Unit trusts: treatment of accumulation units**

- (1) In Chapter 3 of Part 3 of TCGA 1992 (collective investment schemes, etc) after section 99A insert—

### **“99B Calculation of the disposal cost of accumulation units**

- (1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of

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this Act, an amount shall be treated as expenditure falling within section 38(1) (b) if—

- (a) it represents income from the investments subject to the unit trust scheme,
- (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
- (c) it is either—
  - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
  - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.

(2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—

- (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
- (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.

(3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by section 468H of the Taxes Act.”

(2) This section shall have effect in relation to a disposal of units on or after 16th March 2005.

## **22 Section 349B ICTA: exemption for distributions to PEP/ISA managers**

- (1) Section 349B(4) of ICTA (requirement for individual to be entitled to income tax exemption) shall be amended as follows.
- (2) In paragraph (a) after “of a plan” insert “of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply”.
- (3) Paragraph (b) shall cease to have effect.
- (4) This section shall have effect in relation to payments made on or after 6th April 2005.

## **23 Offshore funds**

(1) In section 761 of ICTA (charge on offshore income gain)—

- (a) in subsection (2)—
  - (i) for “sections 2(1) and 10” substitute “sections 2(1), 10 and 10B”, and
  - (ii) for “section 11(2)(b)” substitute “section 11(2A)(c)”, and
- (b) in subsection (3)—
  - (i) for “section 10” substitute “sections 10 and 10B”,
  - (ii) for “subsection (1) of that section” substitute “subsection (1) of section 10”, and

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- (iii) for “and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom”” substitute “ and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom and” ”.
- (2) For paragraph 1(1)(d) of Schedule 27 to ICTA (distributing funds) substitute—
- “**(d)** the form of the distribution is such that—
- (i) if any sum forming part of it were received in the United Kingdom by an individual resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005, or
- (ii) if any sum forming part of it were received in the United Kingdom by a company resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax in accordance with section 18 of ICTA (Schedule D)—
- (a) under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom, or
- (b) under Case V of Schedule D;”.
- (3) For paragraph 3(1)(a) of that Schedule (distributing funds) substitute—
- “**(a)** the holders of interests in the fund who are individuals domiciled and resident in the United Kingdom—
- (i) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests; or
- (ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom;
- (aa)** the holders of interests in the fund which are companies resident in the United Kingdom—
- (i) are chargeable to tax under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom;
- (ii) are chargeable to tax under Case V of Schedule D; or
- (iii) if any of that income is derived from assets within the United Kingdom, would have been chargeable under subparagraph (i) or (ii) had the assets been outside the United Kingdom; and”.
- (4) In paragraph 3(1)(b) of that Schedule (distributing funds) for “sub-paragraph (i) or (ii)” substitute “ paragraph (a) or (aa) ”.

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