

1988 No. 267

INCOME TAX

**The Income Tax (Definition of Unit Trust Scheme)
Regulations 1988**

<i>Made - - - -</i>	<i>18th February 1988</i>
<i>Laid before the House of Commons</i>	<i>18th February 1988</i>
<i>Coming into force</i>	<i>11th March 1988</i>

The Treasury, in exercise of the powers conferred on them by section 354A(7) of the Income and Corporation Taxes Act 1970(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Definition of Unit Trust Scheme) Regulations 1988 and shall come into force on 11th March 1988 and shall have effect in accordance with regulation 9.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“charitable unit trust scheme” means a unit trust scheme of one of the descriptions specified in regulation 7;

“enterprise zone” has the same meaning as in section 74 of the Finance Act 1980(b);

“enterprise zone property scheme” means a unit trust scheme of the description specified in regulation 4;

“inspector” means any inspector of taxes;

“limited partnership” means a limited partnership registered under the Limited Partnerships Act 1907(c) and “general partner” and “limited partner” have the same meanings as in that Act;

“limited partnership scheme” means a unit trust scheme of the description specified in regulation 8;

“participant” in relation to a unit trust scheme, has the meaning given by section 75(2) of the Financial Services Act 1986(d);

“Schedule A” means the Schedule referred to as Schedule A in section 67(1) of the Taxes Act;

“Schedule D” means the Schedule referred to as Schedule D in section 108 of the Taxes Act(e);

“scheme property” means, in relation to a unit trust scheme, property of any description, including money, which is held on trust for the participants in the scheme;

(a) 1970 c.10; section 354A was inserted by section 39 of the Finance Act 1987 (c.16). (b) 1980 c.48. (c) 1907 c.24; relevant amendments were made by section 286 of, and Part I of Schedule 6 to, the Companies (Consolidation) Act 1908 (c.69), section 1 of, and Part I of the Schedule to, the Statute Law Revision Act 1927 (c.42) and sections 46(b) and 51(2) of, and Schedule 7 to, the Banking Act 1979 (c.37). (d) 1986 c.60. (e) Section 108 was repealed in part by Part II of Schedule 22 to the Finance Act 1973 (c.51).

"section 354A" means section 354A of the Taxes Act;

"tax year" means a year beginning with 6th April in any year and ending with 5th April in the following year;

"the Taxes Act" means the Income and Corporation Taxes Act 1970;

"trustee" means, in relation to a unit trust scheme, the person holding the scheme property on trust for the participants;

"unit trust scheme" means a scheme which, apart from these Regulations, is a unit trust scheme for the purposes of section 354A.

(2) The provisions of section 56 of the Finance Act 1985(a) shall have effect to determine when capital expenditure is to be taken to be incurred for the purposes of these Regulations.

Exception of certain unit trust schemes from section 354A

3. Subject to the provisions of these Regulations, a unit trust scheme which is—

- (a) an enterprise zone property scheme, or
- (b) a charitable unit trust scheme, or
- (c) a limited partnership scheme, or
- (d) a profit sharing scheme which has been approved in accordance with Part I of Schedule 9 to the Finance Act 1978(b),

shall be treated as not being a unit trust scheme for the purposes of section 354A.

Description of an enterprise zone property scheme

4.—(1) A unit trust scheme is an enterprise zone property scheme when it has the characteristics mentioned in paragraph (2) below.

(2) Those characteristics are—

(a) that, except as provided in paragraph (3)(a) below, the scheme property consists wholly of land (including any buildings or structures on that land)—

(i) the whole or substantially the whole of which, at the time when it became subject to the trusts of the scheme, was situated in one or more enterprise zones, and

(ii) any part of which not so situated was contiguous with land forming part of the scheme property which, at that time, was so situated;

(b) that, except as provided in paragraph (3)(b) below, the contributions of the participants are expended on—

(i) the construction of, or the purchase of interests in, buildings or structures on that land,

(ii) the provision of machinery or plant which is an integral part of such buildings or structures,

as well as on the acquisition of, or of rights in or over, that land;

(c) that so much of the expenditure referred to in sub-paragraph (b) above as is not—

(i) expenditure on the acquisition of, or of rights in or over, the land itself, or

(ii) expenditure in relation to a building or structure, or to that part of a building or structure, which is not on land situated in an enterprise zone, or

(iii) expenditure on the provision of machinery or plant,

is expenditure in relation to which Chapter I of Part I of the Capital Allowances Act 1968(c) applies with the modifications specified in Schedule 13 to the Finance Act 1980(d);

(a) 1985 c.54. (b) 1978 c.42; Part I of Schedule 9 was amended by section 25(1) (4) (5) and (6) of the Finance Act 1983 (c.28). (c) 1968 c.3; relevant amendments to Chapter I of Part I were made by section 537(2) of, and paragraph 5(2) and (3) of Schedule 15 to, the Income and Corporation Taxes Act 1970 (c.10), sections 75 and 76 of the Finance Act 1980 (c.48), sections 73(1), 74(1) (2) (3) and (4) and 75(1) (2) and (3) of the Finance Act 1981 (c.35), sections 73, 74(1) and (3) and 75(1) and (2) of the Finance Act 1982 (c.39) and section 30 of the Finance Act 1983 (c.28). (d) 1980 c.48; relevant amendments to Schedule 13 were made by sections 73(1) and 139(6) of, and Part VI of Schedule 19 to, the Finance Act 1981 (c.35).

- (d) that the terms of the scheme secure that—
 - (i) the contributions of the participants are all to be made within the same tax year and no contributions can be made by participants in any subsequent tax year;
 - (ii) the capital expenditure referred to in sub-paragraph (b) above is to be incurred wholly in the tax year in which the participants make their contributions;
 - (iii) the nature of the rights and interests of all participants in the scheme is the same;
 - (iv) the rights and interests of the participants in the scheme cannot be purchased, or otherwise redeemed or cancelled, by the trustee in whole or in part except by way of distribution to the participants generally;
 - (v) in relation to any arrangements which are entered into after the making of these Regulations, the trustee is irrevocably authorised and obliged to undertake on behalf of the participants the responsibilities specified in regulation 5 and the duty once in every tax year to provide to the inspector in writing the information with respect to the preceding tax year concerning the participants in the scheme which is specified by regulation 6(2).
- (3) A unit trust scheme is an enterprise zone property scheme notwithstanding that—
 - (a) the scheme property at any time consists also of—
 - (i) cash held temporarily by the trustee pending its expenditure as mentioned in paragraph (2)(b) above or sub-paragraph (b) below, or its distribution to the participants generally;
 - (ii) cash or other assets held by the trustee in connection with the management of the scheme property; or
 - (b) the contributions of the participants are expended for purposes incidental to, or arising out of, the expenditure referred to in paragraph (2)(b) above.

Responsibilities of trustee of an enterprise zone property scheme

5.—(1) The responsibilities of the trustee of an enterprise zone property scheme specified in this regulation are to negotiate and agree with the inspector on behalf of the participants—

- (a) the amount of any expenditure referred to in regulation 4(2)(b) which is—
 - (i) capital expenditure of each of the participants for a chargeable period in relation to which Chapter I of Part I of the Capital Allowances Act 1968 applies, or applies with the modifications specified in Schedule 13 to the Finance Act 1980, and
 - (ii) capital expenditure of each of the participants on the provision of machinery or plant in respect of which a writing-down allowance is to be or may be made in accordance with section 44 of the Finance Act 1971(a);
- (b) where, in relation to a building or structure which forms part of the scheme property, an event occurs which gives rise or may give rise to a balancing allowance or a balancing charge to or on each of the participants, the amount of any sale, insurance, salvage or compensation moneys within the meaning of section 86(1) of the Capital Allowances Act 1968 relevant to that event;
- (c) the disposal value, calculated in accordance with section 44(6) of the Finance Act 1971(b), of any plant and machinery forming part of the scheme property which is or may be required to be brought into account by each of the participants for a chargeable period;
- (d) the amount of any profits or gains arising for each accounting period of the scheme in respect of rents or receipts from the scheme property which are chargeable on the participants under Schedule A;

(a) 1971 c.68; section 44 was amended by section 40(1) of the Finance Act 1976 (c.40), section 51(5) of the Finance Act 1980 (c.48), section 59(1) of the Finance Act 1984 (c.43), section 55(1) (2) and (3) of, and paragraph 3(1) (2) and (3) of Schedule 14 and Part VI of Schedule 27 to, the Finance Act 1985 (c.54) and section 55(7)(c) of the Finance Act 1986 (c.41). (b) Section 44(6) was amended by section 51(5) of the Finance Act 1980 (c.48).

- (e) the amount of any interest of money or other annual profits or gains from scheme property which are chargeable on the participants under Schedule D.

(2) The trustee of an enterprise zone property scheme shall also be responsible for providing within three months after the end of each accounting period of the scheme to each person who was a participant in the scheme at any time during that period, or to his personal representative as the case may be, a certificate showing in relation to that participant—

- (a) the parts of amounts of capital expenditure incurred in that period, and agreed with the inspector in accordance with paragraph (1)(a)(i) and (ii) above, which are attributable to his interest in the scheme at the time when the expenditure in question was incurred;
- (b) the parts of amounts of sale, insurance, salvage or compensation moneys in relation to events occurring in that period, and of the disposal values of plant and machinery agreed with the inspector in accordance with paragraph (1)(b) and (c) above, which are attributable to his interest in the scheme at the relevant time;
- (c) the parts of amounts agreed with the inspector to be chargeable under Schedule A or Schedule D, as the case may be, in accordance with paragraph (1)(d) and (e) above which are attributable to his interest in the scheme for any period in the accounting period in question during which he held that interest.

Provision of information by trustee of an enterprise zone property scheme

6.—(1) The information concerning the participants in an enterprise zone property scheme which the trustee of the scheme shall once in every tax year provide to the inspector in writing with respect to the preceding tax year is that specified by paragraph (2) below.

(2) The information specified by this paragraph is—

- (a) the name, address and tax office reference, and, if an individual resident in the United Kingdom at any time in the preceding tax year, the national insurance number, of each person who was a participant in the scheme at any time in that tax year;
- (b) in respect of each such participant, the interest which he had in the scheme at any such time;
- (c) a copy of any certificate referred to in regulation 5(2) which is supplied to a participant or his personal representative in relation to an accounting period of the scheme ending in, or at the same time as, the preceding tax year.

Descriptions of a charitable unit trust scheme

7.—(1) A unit trust scheme is a charitable unit trust scheme if it is of one of the descriptions specified in paragraph (2) below.

(2) Those descriptions are—

- (a) a common investment fund established under section 22 of the Charities Act 1960(a) or section 25 of the Charities Act (Northern Ireland) 1964(b);
- (b) an investment fund or a deposit fund within the meaning of the Scheme scheduled to the Church Funds Investment Measure 1958(c) or of the scheme contained in the First Schedule to the Methodist Church Funds Act 1960(d);
- (c) a fund held by the Church of Scotland Trust under the provisions of section 15 of the Church of Scotland Trust Order 1932(e);

(a) 1960 c.58; subsection (10) was repealed prospectively by section 212(2) and (3) of, and paragraph 1(a) of Schedule 16 and Part I of Schedule 17 to, the Financial Services Act 1986 (c.60), subsection (11) was amended prospectively by section 212(2) of, and paragraph 1(b) of Schedule 16 to, that Act, and subsection (12) was repealed by section 1(4) and (5) of, and Part III of Schedule 2 to, the Education Act 1973 (c.16). (b) 1964 c.33 (N.I.); subsection (16) was repealed prospectively by section 212(2) and (3) of, and paragraph 6(a) of Schedule 16 and Part I of Schedule 17 to, the Financial Services Act 1986, and subsection (17) was amended prospectively by section 212(2) of, and paragraph 6(b) of Schedule 16 to, that Act. (c) 1958 No. 1; section 5 was repealed in part by Part I of Schedule 7 to the Charities Act 1960. (d) 1960 c.xxiii. (e) Scheduled to the Church of Scotland Trust Order Confirmation Act 1932 (c.xxi).

- (d) a unit trust scheme under the terms of which—
- (i) the scheme property is held by the trustee on trust for charitable purposes only, and
 - (ii) the participants are required to be bodies of persons established for charitable purposes only or trustees of trusts so established;
- and the income of the participants in which is in either case applied to charitable purposes only.

Description of a limited partnership scheme

8. A unit trust scheme is a limited partnership scheme when the scheme property is held on trust for the general partners and the limited partners in a limited partnership.

Effect of Regulations

9. These Regulations shall have effect in relation to distribution periods (within the meaning of section 354A) beginning on or after 11th March 1988.

David Lighbown
Mark Lennox-Boyd

18th February 1988

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for certain unauthorised unit trust schemes to be excepted from the treatment of such schemes given by section 354A of the Income and Corporation Taxes Act 1970 ("section 354A"). This section, which was inserted by section 39(1) of the Finance Act 1987, treats income arising to the trustees of unauthorised unit trust schemes as being income of the trustees and not of the unit holders for income tax purposes and treats any capital allowances due in respect of trust expenditure as being available to the trustees and not to the unit holders. Four types of unit trust scheme are excepted from section 354A by these Regulations: enterprise zone property schemes, charitable unit trust schemes, limited partnership schemes and approved profit sharing schemes. In the first three cases the treatment of the trustees and unit holders for the purposes of income tax and capital allowances will accord with the legal nature of the relationship between them, as established by the terms of the scheme. Approved profit sharing schemes will be taxed in accordance with Chapter III of the Finance Act 1978.

Regulation 1 provides for the title and commencement.

Regulation 2 contains definitions.

Regulation 3 provides that enterprise zone property schemes, charitable unit trust schemes, limited partnership schemes and approved profit sharing schemes are to be excepted from the definition of "unit trust scheme" in section 354A.

Regulation 4 describes an enterprise zone property scheme.

Regulation 5 specifies responsibilities of the trustee of an enterprise zone property scheme.

Regulation 6 specifies information to be provided by the trustee of an enterprise zone property scheme.

Regulation 7 describes charitable unit trust schemes.

Regulation 8 describes a limited partnership scheme.

Regulation 9 provides that the Regulations are to have effect in relation to distribution periods within the meaning of section 354A beginning on or after 11th March 1988.

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