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STATUTORY INSTRUMENTS

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**1997 No. 1156**

**TAXES**

**The Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997**

<i>Made</i>	- - - -	<i>3rd April 1997</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th April 1997</i>
<i>Coming into force</i>	- -	<i>28th April 1997</i>

The Treasury, in exercise of the powers conferred on them by section 152 of the Finance Act 1995<sup>(1)</sup>, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 and shall come into force on 28th April 1997.

**Interpretation**

2. In these Regulations—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 78 of the Financial Services Act 1986<sup>(2)</sup> is in force;

“the Board” means the Commissioners of Inland Revenue;

“open-ended investment company” and “authorised corporate director” in relation to that company have the meanings given by subsection (10) of section 468 of the Income and Corporation Taxes Act 1988<sup>(3)</sup>, read with subsections (11) to (18) of that section, as those subsections are added in relation to open-ended investment companies by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997<sup>(4)</sup>; and accordingly references in subsections (11) to (16) of that section to the “Tax Acts” shall be construed as if they included references to the enactments relating to stamp duty and Part IV of the Finance Act 1986<sup>(5)</sup> (stamp duty reserve tax);

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(6)</sup>;

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(1) 1995 c. 4.

(2) 1986 c. 60.

(3) 1988 c. 1.

(4) S.I.1997/1154.

(5) 1986 c. 41. Part IV of the Finance Act 1986 was repealed by sections 110 and 111 of, and Part VII of Schedule 19 to, the Finance Act 1990 (c. 29) with effect from a day to be appointed.

(6) 1988 c. 1.

“unit” and “unit trust scheme” have the same meanings as in Part VII of the Finance Act 1946(7).

### **Application of section 57(1A) and (1B) of the Finance Act 1946 to open-ended investment companies**

3. Section 57(1A) and (1B) of the Finance Act 1946(8) (regulatory powers) shall have effect in relation to open-ended investment companies as they have effect in relation to unit trust schemes.

### **Repurchase of shares by authorised corporate director**

4.—(1) Where a person authorises or requires the authorised corporate director of an open-ended investment company to treat him as no longer the owner of a share in that company and does not authorise or require the authorised corporate director to treat another person as the owner of that share, he shall be deemed, for the purposes of section 87 of the Finance Act 1986(9), to agree with the authorised corporate director to transfer that share to him; and any instrument whereby he gives the authority or makes the requirement shall be deemed for the purposes of the enactments relating to stamp duty to be a conveyance or transfer of the share on sale.

(2) Where the authorised corporate director of an open-ended investment company transfers a share in that open-ended investment company which was transferred to him within the immediately preceding two months—

- (a) any stamp duty payable in respect of the instrument of transfer relating to the transfer of the share shall not exceed 50p;
- (b) where there is no instrument of transfer, section 87 of the Finance Act 1986 shall not apply as regards the agreement to transfer.

(3) Where a share in an open-ended investment company is transferred to the authorised corporate director of that open-ended investment company and, before the expiration of two months from the date of the transfer, the authorised corporate director certifies that the events specified in paragraph (4) have occurred, the Board shall—

- (a) on the application of the person by or on behalf of whom stamp duty was paid in respect of the instrument of transfer or, where there was no instrument of transfer, stamp duty reserve tax was paid in relation to the agreement to transfer, and
- (b) on the production to them of the instrument of transfer (if any) and of the authorised corporate director’s certificate,

refund the duty or, as the case may be, the tax.

(4) The events specified in this paragraph are that—

- (a) the certificate (if any) in respect of the share has been cancelled,
- (b) as a consequence of the transfer, a proportionate part of the investments of the open-ended investment company concerned has been realised and the property of the company diminished accordingly, and
- (c) the share is extinguished and the authorised corporate director has no power to transfer any other share in lieu thereof.

(5) Paragraphs (1) to (4) shall have effect in relation to an authorised corporate director irrespective of whether he is acting on behalf of the open-ended investment company concerned or on his own account.

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(7) 1946 c. 64.

(8) Subsections (1A) and (1B) were inserted by section 48(c) of the Finance Act 1987 (c. 16).

(9) Section 87 was amended by paragraph 2 of Schedule 7 to the Finance Act 1987 and by sections 188(1) and 194(1) of, and Part VII of Schedule 41 to, the Finance Act 1996 (c. 8).

### **Bearer securities issued by an open-ended investment company in a foreign currency**

5. Bearer securities issued by an open-ended investment company in a currency other than sterling shall be treated, for the purposes of the enactments relating to stamp duty and of Part IV of the Finance Act 1986, as if the securities had been issued in sterling.

### **Shares in open-ended investment companies dealing in interest-bearing investments**

6.—(1) Stamp duty shall not be chargeable on any transfer of shares of an open-ended investment company to which this regulation applies.

(2) This regulation applies to any open-ended investment company under whose prospectus or instrument of incorporation funds of the company—

- (a) cannot be invested in such a way that income can arise to the company which will be chargeable to tax otherwise than under Case III of Schedule D, and
- (b) cannot be invested in any investment on the transfer of which ad valorem stamp duty would be chargeable.

### **Conversion of an authorised unit trust to an open-ended investment company—exemption from stamp duty charge**

7.—(1) Stamp duty shall not be chargeable on an instrument transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) if the conditions set out in paragraph (2) are fulfilled.

(2) Those conditions are that—

- (a) the transfer forms part of an arrangement for the conversion of an authorised unit trust to an open-ended investment company, whereby the whole of the available property of the target trust becomes the whole of the property of the acquiring company;
- (b) under the arrangement all the units in the target trust are extinguished;
- (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
- (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
- (e) the consideration under the arrangement does not include anything else other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(3) An instrument on which stamp duty is not chargeable by virtue only of this regulation shall not be taken to be duly stamped unless it is stamped with the duty to which it would be liable but for this regulation or it has, in accordance with section 12 of the Stamp Act 1891<sup>(10)</sup>, been stamped with a particular stamp denoting that it is not chargeable with any duty.

(4) In this regulation and in regulations 8 to 10 “the whole of the available property of the target trust” means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust.

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<sup>(10)</sup> 1891 c. 39. Section 12 was amended by Part VI of Schedule 14 to the Finance Act 1971 (c. 68) and by section 9 of, and Part I of Schedule 3 to, the Finance Act (Northern Ireland) 1971 (c. 27).

(5) For the purposes of this regulation and regulations 8 to 10 each of the parts of an umbrella scheme (and not the scheme as a whole) shall be regarded as an authorised unit trust; and “umbrella scheme” has the same meaning as in section 468 of the Income and Corporation Taxes Act 1988<sup>(11)</sup>.

**Conversion of an authorised unit trust to an open-ended investment company—exemption from stamp duty reserve tax charge**

8.—(1) Section 87 of the Finance Act 1986 shall not apply as regards an agreement to transfer securities which constitute property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) if the conditions set out in paragraph (2) are fulfilled.

(2) Those conditions are that—

- (a) the agreement forms part of an arrangement for the conversion of an authorised unit trust to an open-ended investment company, whereby the whole of the available property of the target trust becomes the whole of the property of the acquiring company;
- (b) under the arrangement all the units in the target trust are extinguished;
- (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
- (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
- (e) the consideration under the arrangement does not include anything else other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(3) Where—

- (a) stamp duty is not chargeable on an instrument by virtue of regulation 7(1), or
- (b) section 87 of the Finance Act 1986 does not apply as regards an agreement by virtue of paragraph (1) of this regulation,

section 87 of the Finance Act 1986 shall not apply as regards an agreement, or a deemed agreement, to transfer a unit to the managers of the target trust which is made in order that the unit may be extinguished under the arrangement mentioned in regulation 7(2)(b) or, as the case may be, paragraph (2)(b) of this regulation.

**Amalgamation of an authorised unit trust with an open-ended investment company—exemption from stamp duty charge**

9.—(1) Stamp duty shall not be chargeable on an instrument transferring any property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) if the conditions set out in paragraph (2) are fulfilled.

(2) Those conditions are that—

- (a) the transfer forms part of an arrangement for the amalgamation of an authorised unit trust with an open-ended investment company, whereby the whole of the available property of the target trust becomes part (but not the whole) of the property of the acquiring company;
- (b) under the arrangement all the units in the target trust are extinguished;

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<sup>(11)</sup> Section 468 was amended by section 52(2) of, and Part IV of Schedule 19 to, the Finance Act 1990, section 32(3) of the Finance (No. 2) Act 1992 (c. 48), section 113(1) and (2) of, and paragraph 3 of Schedule 14 and Part V(13) of Schedule 26 to, the Finance Act 1994 (c. 9), and paragraph 10(1) of Schedule 6 to the Finance Act 1996.

- (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
- (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
- (e) the consideration under the arrangement does not include anything else other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.

(3) An instrument on which stamp duty is not chargeable by virtue only of this section shall not be taken to be duly stamped unless it is stamped with the duty to which it would be liable but for this regulation or it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty.

- (4) This regulation applies to any instrument which is executed—
- (a) on or after the date of coming into force of these Regulations; but
  - (b) before 1st July 1999.

**Amalgamation of an authorised unit trust with an open-ended investment company—  
exemption from stamp duty reserve tax charge**

**10.**—(1) Section 87 of the Finance Act 1986 shall not apply as regards an agreement to transfer securities which constitute property which is subject to the trusts of an authorised unit trust (“the target trust”) to an open-ended investment company (“the acquiring company”) if the conditions set out in paragraph (2) are fulfilled.

- (2) Those conditions are that—
- (a) the agreement forms part of an arrangement for the amalgamation of an authorised unit trust with an open-ended investment company, whereby the whole of the available property of the target trust becomes part (but not the whole) of the property of the acquiring company;
  - (b) under the arrangement all the units in the target trust are extinguished;
  - (c) the consideration under the arrangement consists of or includes the issue of shares (“the consideration shares”) in the acquiring company to the persons who held the extinguished units;
  - (d) the consideration shares are issued to those persons in proportion to their holdings of the extinguished units; and
  - (e) the consideration under the arrangement does not include anything else other than the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust.
- (3) Where—
- (a) stamp duty is not chargeable on an instrument by virtue of regulation 9(1), or
  - (b) section 87 of the Finance Act 1986 does not apply as regards an agreement by virtue of paragraph (1) of this regulation,

section 87 of the Finance Act 1986 shall not apply as regards an agreement, or a deemed agreement, to transfer a unit to the managers of the target trust which is made in order that the unit may be extinguished under the arrangement mentioned in regulation 9(2)(b) or, as the case may be, paragraph (2)(b) of this regulation.

- (4) This regulation applies—

- (a) to an agreement which is not conditional, if the agreement is made on or after the date of coming into force of these Regulations but before 1st July 1999; and
- (b) to a conditional agreement, if the condition is satisfied on or after the date of coming into force of these Regulations but before 1st July 1999.

**Disapplication of section 42 of the Finance Act 1930**

**11.** Section 42 of the Finance Act 1930<sup>(12)</sup> (relief from transfer stamp duty in case of transfer of property as between associated companies) shall not apply as regards any beneficial interest in property that is conveyed or transferred to or from an open-ended investment company.

**Disapplication of sections 75 to 77 of the Finance Act 1986**

**12.** Sections 75 to 77 of the Finance Act 1986<sup>(13)</sup> (acquisition by a company of another company's undertaking) shall not apply as regards open-ended investment companies.

3rd April 1997

*Bowen Wells*  
*Gyles Brandreth*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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<sup>(12)</sup> 1930 c. 28; section 42 was amended by section 27(2) of the Finance Act 1967 (c. 54) and by section 149(2) to (5) of the Finance Act 1995.

<sup>(13)</sup> Section 77 was repealed by Part VI of Schedule 19 to the Finance Act 1990 with effect from a day to be appointed.

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## EXPLANATORY NOTE

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

These Regulations make provision for the application of the enactments relating to stamp duty and stamp duty reserve tax to open-ended investment companies (within the meaning of the Financial Services Act 1986 (c. 60)) which are incorporated in the United Kingdom. The Regulations secure that the enactments in question have effect in relation to open-ended investment companies in the same manner as the manner in which they have effect in relation to authorised unit trusts.

Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 applies the regulatory powers in section 57 of the Finance Act 1946 (unit trust schemes) to open-ended investment companies.

Regulation 4 makes provision in relation to the repurchase of shares by the authorised corporate director of an open-ended investment company.

Regulation 5 provides that bearer securities issued by an open-ended investment company in a currency other than sterling shall be treated, for the purposes of stamp duty and stamp duty reserve tax, as if they had been issued in sterling.

Regulation 6 exempts from the charge to stamp duty transfers of shares in open-ended investment companies that deal only in gilt-edged securities.

Regulations 7 to 10 exempt from the charge to stamp duty or stamp duty reserve tax transfers of property, or agreements to transfer securities, to an open-ended investment company on the occasion of the conversion of an authorised unit trust to, or the amalgamation of an authorised trust with, that open-ended investment company. Regulation 9 (exemption from stamp duty charge on an amalgamation) applies to instruments executed before 1st July 1999. Regulation 10 (exemption from stamp duty reserve tax on an amalgamation) applies to unconditional agreements to transfer made before 1st July 1999 and to conditional agreements to transfer where the condition is satisfied before that date.

Regulation 11 disapplies section 42 of the Finance Act 1930 (relief from stamp duty in the case of transfers of property between associated companies) in relation to transfers to or from open-ended investment companies.

Regulation 12 disapplies sections 75 to 77 of the Finance Act 1986 (acquisition by a company of another company) in relation to open-ended investment companies.