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STATUTORY INSTRUMENTS

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**1997 No. 213**

**INCOME TAX**

**The Unit Trust Schemes and Offshore Funds  
(Non-qualifying Investments Test) Order 1997**

*Made* - - - - 3rd February 1997  
*Laid before the House of  
Commons* - - - - 4th February 1997  
*Coming into force* - - 25th February 1997

The Treasury, in exercise of the powers conferred on them by paragraphs 8(8) and 9 of Schedule 10 to the Finance Act 1996<sup>(1)</sup>, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Unit Trust Schemes and Offshore Funds (Non-qualifying Investments Test) Order 1997 and shall come into force on 25th February 1997.

**Amendments to paragraph 8 of Schedule 10 to the Finance Act 1996**

2. Paragraph 8 of Schedule 10 to the Finance Act 1996 shall be amended in accordance with regulations 3 to 10.

3. In sub-paragraph (2)(d) after the word “fund” there shall be added the words “or an open-ended investment company”.

4. In sub-paragraph (3)—

(a) after the words “offshore fund” there shall be inserted the words “or open-ended investment company”;

(b) after the words “or fund” there shall be inserted the words “or company”.

5. After sub-paragraph (3) there shall be inserted the following sub-paragraph—

“(3A) For the purposes of sub-paragraph (3) above an open-ended investment company fails to satisfy the non-qualifying investments test at any time when the market value of the investments of the company which are qualifying investments exceeds 60 per cent. of the market value of all its investments.”

6. In sub-paragraph (4)—

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(1) 1996 c. 8.

- (a) for the words “sub-paragraph (3)” there shall be substituted the words “sub-paragraphs (3) and (3A)”;
  - (b) after the words “or fund”, in both places where they occur, there shall be inserted the words “or company”.
7. After sub-paragraph (5) there shall be inserted the following sub-paragraph—
- “(5A) References in this paragraph to investments of an open-ended investment company are references to investments comprised in the scheme property of that company, but do not include references to cash awaiting investment.”
8. In sub-paragraph (6) after paragraph (b) there shall be added—
- “and
- (c) in relation to an open-ended investment company, are references to shares in that company.”
9. After sub-paragraph (6) there shall be inserted the following sub-paragraphs—
- “(6A) For the purposes of sub-paragraph (6)(c) above, where in respect of a given class of shares of an open-ended investment company—
- (a) shares issued of that class consist of both smaller denomination shares and larger denomination shares, and
  - (b) a person owns both smaller denomination shares and larger denomination shares of that class,
- those shares owned by him shall be treated as being securities of the same class for the purposes of the provisions of the Tax Acts and the 1992 Act relating to ownership of shares in a company.
- (6B) In sub-paragraph (6A) above, “smaller denomination shares” means shares to which are attached rights specified in the open-ended investment company’s instrument of incorporation that are expressed in the smaller of two denominations, and “larger denomination shares” means shares to which are attached rights so specified that are expressed in the larger of two denominations.”
10. After sub-paragraph (7) there shall be inserted the following sub-paragraphs—
- “(7A) In this paragraph—
- (a) “collective investment scheme” has the meaning given by section 75 of the Financial Services Act 1986<sup>(2)</sup>;
  - (b) “open-ended investment company” means, subject to sub-paragraph (7B) below, an open-ended investment company within the meaning given by section 75(8) of the Financial Services Act 1986 which is incorporated in the United Kingdom;
  - (c) “scheme property” of an open-ended investment company means, subject to sub-paragraph (7C)(b) below, the property subject to the collective investment scheme constituted by the company;
  - (d) references to a person owning shares in an open-ended investment company are references to—
    - (i) the beneficial owner of the shares,
    - (ii) where the shares are held on trust (other than a bare trust), the trustees of the trust, or

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(2) 1986 c. 60. Section 75 was amended by S.I. 1988/803 and S.I. 1990/349.

(iii) where the shares are comprised in the estate of a deceased person, the deceased's personal representatives.

(7B) Each of the parts of an umbrella company shall be regarded for the purposes of this paragraph as an open-ended investment company and the umbrella company as a whole shall not be so regarded and shall not be regarded as a company.

(7C) In relation to a part of an umbrella company—

- (a) references in this paragraph to investments of an open-ended investment company shall have effect as references to such of the investments as under the arrangements referred to in sub-paragraph (7D) below form part of the separate pool to which that part of the umbrella company relates;
- (b) references in this paragraph to the scheme property of an open-ended investment company shall have effect as if they were references to such property subject to the collective investment scheme constituted by the umbrella company as is comprised in the separate pool to which that part of the umbrella company relates;
- (c) a person for the time being having rights in that part shall be regarded as the owner of shares in the open-ended investment company which that part is deemed to be by virtue of sub-paragraph (7B) above, and not as the owner of shares in the umbrella company itself.

(7D) In sub-paragraphs (7B) and (7C) above “umbrella company” means a company—

- (a) which falls within the definition of “open-ended investment company” in section 75(8) of the Financial Services Act 1986,
- (b) which is incorporated in the United Kingdom,
- (c) whose instrument of incorporation provides for arrangements for such pooling as is mentioned in section 75(3)(a) of that Act in relation to separate parts of the scheme property of the company, and
- (d) the owners of shares in which are entitled to exchange rights in one part for rights in another;

and any reference to a part of an umbrella company is a reference to such of the arrangements as relate to a separate pool.”

3rd February 1997

*Richard Ottaway*  
*Roger Knapman*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

Paragraph 4 of Schedule 10 to the Finance Act 1996 (“Schedule 10”) makes provision relating to the taxation of a company’s loan relationships in cases where the company holds rights under a unit trust scheme or any relevant interest in an offshore fund in an accounting period and the scheme or fund fails to satisfy “the non-qualifying investments test” at any time in that period.

Paragraph 8 of Schedule 10 (“paragraph 8”) defines the non-qualifying investments test by reference to whether at any time in the accounting period the market value of the qualifying investments of the scheme or fund exceeds 60 per cent. of the market value of all the investments of the scheme or fund. Sub-paragraph (2) of paragraph 8 defines “qualifying investments” and sub-paragraph (8) of that paragraph enables the Treasury by order to amend the paragraph so as to extend or restrict the descriptions in sub-paragraph (2) of investments that are qualifying investments. Paragraph 9(1) of Schedule 10 enables the Treasury to make supplemental provisions in an order made under any provision of the Schedule.

This Order amends paragraph 8 so as to extend the descriptions of investments that are qualifying investments to include “qualifying holdings” in an open-ended investment company incorporated in the United Kingdom. The Order makes other amendments to paragraph 8 defining qualifying holdings in, and investments of, an open-ended investment company, the meaning of “open-ended investment company” and other relevant expressions.