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STATUTORY INSTRUMENTS

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**2006 No. 964**

**The Authorised Investment Funds (Tax) Regulations 2006**

**PART 3**

**DISTRIBUTIONS MADE BY AUTHORISED INVESTMENT FUNDS**

*Preliminary*

**Interpretation**

**15.**—(1) In these Regulations a reference to a “distribution” includes crediting an amount to the capital part of the scheme property of an authorised investment fund on behalf of a participant in respect of the participant’s accumulation units.

(2) In these Regulations “distribution period”, in relation to an authorised investment fund, means a period by reference to which the total amount available for distribution to participants is ascertained.

(3) In these Regulations “distribution accounts”, in relation to an authorised investment fund, means accounts showing—

- (a) the total amount available for distribution to participants, and
- (b) how that total amount is computed.

(4) In these Regulations the “distribution date” for a distribution period of an authorised investment fund means—

- (a) 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
- (b) if no date is specified, the last day of that distribution period.

**Funds excluded from the ambit of this Part**

**16.** This Part does not apply to an authorised investment fund if the fund—

- (a) is a registered pension scheme within the meaning of Part 4 of the Finance Act 2004<sup>(1)</sup>, or
- (b) is treated, under paragraph 1(1) of Schedule 36 to that Act, as having become such a scheme.

*Distribution accounts: general*

**Contents of distribution accounts**

**17.**—(1) The total amount shown in the distribution accounts as available for distribution to participants must be shown as available for distribution in one of the following ways—

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(1) 2004 c. 12.

- (a) it may be shown as available for distribution as yearly interest (see regulations 18 to 21 below); or
  - (b) it may be shown as available for distribution as dividends (see regulation 22 below).
- (2) The following may not be included in any amount shown in the distribution accounts as available for distribution as yearly interest—
- (a) amounts chargeable to corporation tax under Schedule A;
  - (b) amounts chargeable to corporation tax as income of an overseas property business (see section 70A(4) of ICTA(2)).

### *Interest distributions*

#### **Interest distributions: general**

**18.**—(1) Paragraph (2) applies where the total amount shown in the distribution accounts as available for distribution to participants is shown as available for distribution as yearly interest.

(2) The Tax Acts shall have effect as if the total amount were payments of yearly interest made on the distribution date by the authorised investment fund to the participants in proportion to their rights.

(3) In these Regulations an “interest distribution” means a payment of yearly interest treated as made by virtue of paragraph (2) (including a payment of interest treated as made to a participant who is not chargeable to income tax).

- (4) This regulation is subject to—
- (a) regulation 19 (the qualifying investments test), and
  - (b) regulation 23 (treatment of de minimis amounts).

#### **The qualifying investments test**

**19.**—(1) No amount may be shown as available for distribution as yearly interest unless the authorised investment fund in question satisfies the qualifying investments test throughout the distribution period.

(2) An authorised investment fund satisfies the qualifying investments test throughout a distribution period (the “relevant period”) if, at all times in that period, the market value of the qualifying investments exceeds 60% of the market value of all the investments of the fund.

- (3) Regulations 20 and 21 deal with the meaning of the expression “qualifying investments”.

#### **Meaning of “qualifying investments”**

**20.** In these Regulations “qualifying investments”, in relation to an authorised investment fund, means the investments of that fund which fall within any of the following categories (read, as appropriate, with any applicable provision in regulation 21)—

- Category 1  
Money placed at interest.
- Category 2  
Securities.
- Category 3  
Shares in a building society.

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(2) Section 70A was inserted by paragraph 25 of Schedule 5 to the Finance Act 1998 (c. 36).

Category 4

Qualifying units in another authorised investment fund.

Category 5

Derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in categories 1 to 4 and currency.

Category 6

Contracts for differences whose underlying subject matter consists wholly of any one or more of interest rates, creditworthiness and currency.

Category 7

Derivative contracts not within categories 5 or 6 where there is a hedging relationship between the derivative contract and an asset within categories 1 to 4.

Category 8

Alternative finance arrangements.

**Meaning of “qualifying investments”: further provisions**

21.—(1) This regulation applies for the purposes of regulation 20.

(2) For the purposes of category 2 “securities” do not include shares in a company.

(3) For the purposes of category 4 units in another authorised investment fund are qualifying units at any time in the relevant period if, and only if, the other authorised investment fund would itself (on the relevant assumption) satisfy the qualifying investments test throughout that period.

(4) For the purposes of paragraph (3) the relevant assumption is that the only investments of the other authorised investment fund which are to be regarded as qualifying investments are those falling within categories 1 to 3 and 5 to 8.

(5) In paragraph (4) references to investments of an authorised investment fund—

(a) in the case 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, and

(b) in the case of an authorised unit trust are references to investments subject to the trusts of that authorised unit trust, but do not include references to cash awaiting investment.

(6) For the purposes of categories 5 and 6 “underlying subject matter” has the same meaning as in paragraph 11 of Schedule 26 to FA 2002(3).

(7) For the purposes of categories 5 and 6 underlying subject matter may consist of currency only if and to the extent that there is a hedging relationship between the contract and a qualifying investment falling within categories 1 to 4.

(8) In paragraph (7) “hedging relationship” has the meaning given by paragraph 12(14) of Schedule 26 to FA 2002(4).

(9) For the purposes of category 6 a “contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to FA 2002(5).

(10) For the purposes of category 7 a fund has a hedging relationship between a derivative contract on the one hand (“the hedging instrument”) and an asset on the other (“the hedged item”) if and to the extent that—

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(3) 2002 c. 23. Paragraph 11 of Schedule 26 was amended by Article 12 of S.I. 2004/2201.

(4) Paragraph 12(14) of Schedule 26 to the Finance Act 2002 was added by Article 9 of S.I. 2005/646.

(5) Paragraph 12 of Schedule 26 to the Finance Act 2002 was amended by Article 13 of S.I. 2004/2201 and Article 9 of S.I. 2005/646.

- (a) the hedging instrument and the hedged item are designated by the fund as a hedge, or
- (b) in any other case the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of a hedged item which is a recognised asset or an identified portion of such an asset that is attributable to a particular risk and could affect the total net return of the fund.

(11) For the purposes of category 8 “alternative finance arrangements” has the meaning given by section 46(1) of the Finance Act 2005<sup>(6)</sup>.

#### *Dividend distributions*

##### **Dividend distributions: general**

**22.**—(1) Paragraph (2) applies where the total amount shown in the distribution accounts as available for distribution to participants is shown as available for distribution as dividends.

(2) The Tax Acts shall have effect as if the total amount were dividends on shares paid on the distribution date by the authorised investment fund to the participants in proportion to their rights.

(3) In these Regulations a “dividend distribution” means a dividend treated as paid by virtue of paragraph (2) (including a dividend treated as paid to a participant who is not chargeable to corporation tax).

(4) This regulation is subject to regulation 23 (treatment of de minimis amounts).

#### *De minimis amounts*

##### **Provisions applying if amounts available for distribution are de minimis**

**23.**—(1) An authorised investment fund is not treated as making a distribution for a distribution period if conditions A to D are met.

(2) Condition A is that, in accordance with rules made by the Financial Services Authority, the authorised investment fund has an agreed de minimis limit.

(3) Condition B is that the authorised investment fund—

- (a) has prepared distribution accounts in which the amount shown as available for distribution to participants is a de minimis amount, and
- (b) chooses to waive the distribution of that de minimis amount.

(4) Condition C is that the de minimis amount is carried forward to the next distribution period as an amount available for distribution to participants.

(5) Condition D is that none of the units of the authorised investment fund in issue on the distribution date are in bearer form.

(6) If this regulation applies, the authorised investment fund is not required to comply with the requirements of section 234A of ICTA<sup>(7)</sup> (information relating to distributions) in respect of the de minimis amount for the distribution period in question.

(7) In this regulation—

the “de minimis limit”, in relation to an authorised investment fund, means an amount in respect of which a distribution of income of the fund is not required if the total amount shown in the

<sup>(6)</sup> 2005 c. 7.

<sup>(7)</sup> Section 234A was inserted by section 32(1) of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(2) of Schedule 37 to the Finance Act 1996 (c. 8).

fund's distribution accounts as available for distribution to participants does not exceed that amount, and

“de minimis amount” means an amount falling within the de minimis limit.