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STATUTORY INSTRUMENTS

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**2006 No. 964**

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

**PART 4**

**THE TREATMENT OF PARTICIPANTS  
IN AUTHORISED INVESTMENT FUNDS**

**CHAPTER 2**

**PARTICIPANTS CHARGEABLE TO INCOME TAX**

*Deduction of tax from interest distributions: general*

**Deduction of tax where interest distributions made**

**26.**—(1) This regulation applies if an interest distribution is made for a distribution period to a participant chargeable to income tax.

(2) Any obligation to deduct a sum under section 349(2) of ICTA(1) is subject to the provisions of this regulation.

(3) In this Part the “deduction obligation” means the obligation specified in paragraph (2).

(4) The deduction obligation does not apply to the interest distribution if—

- (a) the participant is a company;
- (b) the participant consists of the trustees of a unit trust scheme;
- (c) the reputable intermediary condition is met with respect to a participant on the distribution date (see regulation 27);
- (d) the residence condition is met with respect to a participant on the distribution date (see regulation 30); or
- (e) the non-liability condition is met with respect to a participant on the distribution date (see regulation 34).

(5) But if the participant is a company which is the trustee of the trust to which (or under which) the interest distribution is made (or received), the deduction obligation is not excluded by virtue of paragraph (4)(a).

(6) In its application to an interest distribution to a participant in respect of accumulation units, the deduction obligation is an obligation to deduct a sum out of the amount being credited to scheme capital on the participant’s behalf.

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(1) Section 349(2) was amended by paragraph 1(2) of Schedule 11 to the Finance Act 1991 (c. 31), paragraph 18 of Schedule 14 to the Finance Act 1996 (c. 8) and paragraph 148(2) of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

### *The reputable intermediary condition*

#### **The reputable intermediary condition**

**27.**—(1) The reputable intermediary condition is met with respect to a participant on the distribution date if conditions A to C are met.

(2) Condition A is that the interest distribution is paid on behalf of the participant to a company.

(3) Condition B is that the legal owner has reasonable grounds for believing that the participant is not ordinarily resident in the United Kingdom.

(4) Condition C is that the company mentioned in paragraph (2)—

(a) is subject to the EC Money Laundering Directive,

(b) is subject to equivalent non-EC provisions, or

(c) is a company which—

(i) is resident in a regulating country or territory, and

(ii) is an associated company of a company which is subject to paragraph (a) or (b).

#### **The reputable intermediary condition: further provisions**

**28.**—(1) This regulation applies for the purposes of Condition C in regulation 27.

(2) A company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive [91/308/EEC](#), as amended by Directive [2001/97/EC](#).

(3) A company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(4) A country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(5) A company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 of ICTA (close companies) (see section 416 of that Act).

#### **Consequences of reasonable but incorrect belief**

**29.**—(1) This regulation applies if conditions A to D are met.

(2) Condition A is that an interest distribution is made to a participant.

(3) Condition B is that the legal owner, in reliance on the reputable intermediary condition being met with respect to the participant, does not comply with the deduction obligation in relation to the interest distribution.

(4) Condition C is that the deduction obligation would apply but for the reputable intermediary condition being met.

(5) Condition D is that (contrary to the belief of the legal owner) the participant is in fact ordinarily resident in the United Kingdom.

(6) Section 350 of ICTA(2) (charge to tax where payments made under section 349) and Schedule 16 to that Act(3) (collection of income tax on company payments which are not distributions) have effect as if the deduction obligation applied.

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(2) Section 350 was amended by paragraph 8 of Schedule 6 to the Finance Act 1996 and section 96(2) of the Finance Act 2002.

### *The residence condition*

#### **The residence condition**

**30.**—(1) The residence condition is met with respect to a participant on the distribution date if any of conditions A to E is met.

(2) Condition A is that, in relation to an interest distribution which is not made to or received under a trust, there is a valid declaration, made by the participant, that the participant is not ordinarily resident in the United Kingdom.

(3) Condition B is—

- (a) that the participant holds the units as the personal representative of a deceased person, and
- (b) that the deceased, before his death, made a declaration, valid at the time of his death, that he was not ordinarily resident in the United Kingdom.

(4) Condition C is—

- (a) that the participant holds the units as the personal representative of a deceased person, and
- (b) that the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.

(5) Condition D is that, in the case of an interest distribution made to or received under a trust where the whole of the income is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the trustees of that trust, there is a valid declaration, made by the person in question that he is either not ordinarily resident or, in the case of a company, not resident in the United Kingdom.

(6) Condition E is that, in circumstances in which condition D does not apply and with respect to a participant in the case of an interest distribution made to or received under a trust, there is a valid declaration, made by the trustees of that trust that—

- (a) the trustees are not resident in the United Kingdom, and
- (b) each beneficiary of the trust is either not ordinarily resident or, in the case of a beneficiary which is a company, not resident in the United Kingdom.

#### **Residence declarations**

**31.**—(1) A declaration made for the purposes of regulation 30 must—

- (a) be in such form as may be required or authorised by the Commissioners;
- (b) be made in writing to the legal owner of the authorised investment fund in question; and
- (c) contain any details or undertakings required by paragraphs (2) to (4) below.

(2) A declaration made for the purposes of condition A or B in regulation 30 must contain—

- (a) the name and principal residential address of the person making it; and
- (b) an undertaking that he will notify the legal owner if he becomes ordinarily resident in the United Kingdom.

(3) A declaration made for the purposes of condition C in regulation 30 must contain the name of the deceased and his principal residential address immediately before his death.

(4) A declaration made for the purposes of condition D or E in regulation 30 must contain—

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(3) Schedule 16 was amended by section 149(3)(d) of the Finance Act 1989 (c. 26), Part II of Schedule 23 to the Finance Act 1996, section 91 of the Finance Act 1999 (c. 16) and paragraph 19 of Part 1 of Schedule 3 to the [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp. 17).

- (a) the names and principal residential addresses of the trustees of the trust or, in the case of a trustee which is a company, the name of the company and the address of its registered or principal office;
- (b) the names and principal residential addresses of the beneficiaries of the trust or, in the case of a beneficiary which is a company, the name of the company and the address of its registered or principal office; and
- (c) an undertaking that the trustees of the trust will notify the legal owner of the authorised investment fund in question if—
  - (i) they become resident in the United Kingdom,
  - (ii) any beneficiary of the trust named in the declaration becomes ordinarily resident or, in the case of a company, resident in the United Kingdom, or
  - (iii) any person who becomes a beneficiary of the trust after the making of the declaration either is at the time of becoming a beneficiary, or subsequently becomes, ordinarily resident or, in the case of a company, resident in the United Kingdom.

#### **References to beneficiaries in regulations 30 and 31**

**32.** In regulations 30 and 31 references to a beneficiary are references to any person who is known to the trustees of the trust to be either—

- (a) a person who is or will or may become, entitled to any income of the trust, whether in the form of income or not, or
- (b) a person to whom any such income may be paid, or for whose benefit any such income may be applied, whether in the form of income or not, in the exercise of a discretion by them.

#### **Interest distributions: the position of the legal owner**

**33.—(1)** For the purposes of determining whether an interest distribution should be made with or without any deduction, the legal owner is entitled to treat a declaration made for the purposes of regulation 30 as valid.

(2) But the legal owner may not treat a declaration as valid if condition A or B is met.

(3) Condition A is that the legal owner receives a notification in compliance with an undertaking under regulation 31 that a person in question has become resident or ordinarily resident in the United Kingdom.

(4) Condition B is that the legal owner comes into possession of information by some other means which indicates that such a person is or may be resident or ordinarily resident in the United Kingdom.

#### *The non-liability condition*

#### **The non-liability condition**

**34.—(1)** The non-liability condition is met with respect to a participant on the distribution date if conditions A and B are met.

(2) Condition A is that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(3) Condition B is that a qualifying certificate has been given to the legal owner of the authorised investment fund.

(4) A qualifying certificate must be signed by the person giving it.

### **Qualifying certificates**

**35.** For the purposes of these Regulations a “qualifying certificate” means a certificate that meets the following conditions—

- (a) the contents condition (see regulation 36);
- (b) the supplier condition (see regulation 37);
- (c) the time limit condition (see regulation 38);
- (d) the continuing validity condition (see regulation 39);
- (e) the qualifying circumstances condition (see regulation 40); and
- (f) if applicable, the joint holding condition (see regulation 41).

### **The contents condition**

**36.**—(1) The contents condition is met if conditions A to C are met.

(2) Condition A is that the certificate contains a statement to the effect that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the payment is made.

(3) Condition B is that the certificate contains an undertaking by the person giving it to notify the legal owner if the person beneficially entitled to the interest distribution becomes liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(4) Condition C is that the certificate contains the following further three items of information.

(5) Item 1 is the name, permanent residential address including postcode, and date of birth of the person beneficially entitled to the payment.

(6) Item 2 is the national insurance number of an individual within paragraph (5)—

- (a) who is aged 16 or over at the beginning of the year in which the payment is made, and
- (b) who, at any time within the period of three years ending with the date on which a certificate is signed, has been liable to pay Class 1 or Class 2 contributions within the meaning of—
  - (i) section 1(2) of the Social Security Contributions and Benefits Act 1992(4), or
  - (ii) section 1(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(5).

The Commissioners may indicate in a particular case that this item of information is not required.

(7) Item 3 is the following details relating to the participant’s holding of units in the authorised investment fund to which the certificate relates—

- (a) the name of the authorised investment fund,
- (b) the name of the fund manager, and
- (c) the reference number relating to the participant (if any).

### **The supplier condition**

**37.**—(1) The supplier condition is met if the person giving the certificate is a person within any of categories A to G below.

(2) Category A is an individual who is—

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(4) 1992 c. 4.  
(5) 1992 c. 7.

- (a) aged 16 or over at the beginning of the tax year in which the interest distribution is made, and
  - (b) beneficially entitled to the interest distribution.
- (3) Category B is the parent or guardian of a person beneficially entitled to the payment if that person is under the age of 16 at the beginning of the tax year in which the interest distribution is made.
- (4) Category C is an individual beneficially entitled to the payment who is under the age of 16 at the beginning of the tax year in which the interest distribution is made, but will reach that age during that tax year.
- (5) Category D is the donee of a power of attorney authorising that person to administer the financial affairs of a person beneficially entitled to the payment.
- (6) Category E is a parent, guardian, spouse or son or daughter of a person suffering from mental disorder.
- (7) Category F is a receiver or other person appointed by any court in the United Kingdom to act in relation to the property and affairs of a person incapable, by reason of mental disorder, of managing and administering his property and affairs.
- (8) Category G is a person—
- (a) appointed by the Secretary of State under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations 1987<sup>(6)</sup>, whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation, or
  - (b) in Northern Ireland, appointed by the Department for Social Development under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987<sup>(7)</sup>, whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation.

### **The time limit condition**

**38.**—(1) The time limit condition is met if the certificate is given to the legal owner by the specified time.

(2) In the cases of all categories specified in regulation 37 except for category C, the specified time is the end of the tax year in which the interest distribution is made.

(3) In the case of category C in regulation 37, the specified time is the end of the tax year in which the individual beneficially entitled to the interest distribution reaches the age of 16.

### **The continuing validity condition**

**39.**—(1) The continuing validity condition is met if the qualifying certificate continues in full force and effect and has not ceased to be valid.

(2) The qualifying certificate ceases to be valid in circumstances A to E.

(3) Circumstance A is the receipt, by the legal owner, of information that the person beneficially entitled to the interest distribution has become liable to pay an amount by way of income tax for the tax year in which the payment is made.

(4) Circumstance B is the ending of the tax year in which the person beneficially entitled to the payment reaches the age of 16 in a case where paragraph (3) of regulation 37 (the supplier condition) applies.

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<sup>(6)</sup> S.I. 1987/1968.

<sup>(7)</sup> S.R. (NI) 1987 No. 465.

(5) Circumstance C is the failure by a person who has given a qualifying certificate under paragraph (4) of regulation 37, but is not the holder of the holding to which the certificate for units relates, to become the holder before the first interest distribution made after the end of the tax year in which he reaches the age of 16.

(6) Circumstance D is where the Commissioners, having reason to believe that a person beneficially entitled to an interest distribution is or has become liable to pay an amount by way of income tax, by notice require the legal owner to deduct tax under section 349(2) of ICTA from interest distributions which—

- (a) are made in respect of a holding specified in the notice, and
- (b) are made to or for the benefit of that person after the expiry of a period of 30 days beginning with the date on which the notice is issued.

(7) Circumstance E is where the legal owner receives notification that the person by whom or on whose behalf the certificate was given has died.

(8) If the Commissioners issue a notice under paragraph (6), they must, at the same time, send a copy to the person referred to in the notice.

#### **The qualifying circumstances condition**

**40.**—(1) The qualifying circumstances condition is met in all circumstances except those circumstances in which condition A or B applies.

(2) Condition A applies if section 629 of ITTOIA 2005 (income paid to unmarried minor children of settlor) applies to the payment.

(3) Condition B applies if the holding to which the qualifying certificate relates is specified in a notice which—

- (a) has been issued under regulation 39(6), and
- (b) has not been cancelled.

#### **The joint holding condition**

**41.**—(1) The joint holding condition is met if—

- (a) more than one person is entitled to an interest distribution,
- (b) paragraph (2) of regulation 44 (notice relating to payments made under deduction of tax) is not applicable, and
- (c) either condition A or B is met.

(2) Condition A is that a qualifying certificate is given by or on behalf of each person beneficially entitled to the interest distribution.

(3) Condition B is that a qualifying certificate is given by or on behalf of one or more (but not all) of the persons beneficially entitled to the interest distribution.

#### **Qualifying certificates valid for only part of jointly held accounts: introductory**

**42.**—(1) Regulations 43 and 44 apply if—

- (a) condition A in regulation 41 is met, and
- (b) a qualifying certificate has ceased to be valid in one of circumstances A to D in regulation 39 (the continuing validity condition).

(2) Regulations 43 and 44 also apply if condition B in regulation 41 is met.

**Qualifying certificates valid for only part of jointly held accounts: the general rule**

**43.**—(1) The general rule is that it is to be assumed that each person is beneficially entitled in equal shares to the interest distribution, and accordingly—

(a) payment of so much of the interest distribution as corresponds to the share of any person by or on behalf of whom a qualifying certificate has given must be made without deduction of tax; and

(b) payment of the remainder of the interest distribution must be made under deduction of tax.

(2) For all the purposes of the Income Tax Acts, tax deducted from a payment within paragraph (1) (b) is treated as income tax paid by the persons to whom the payment is treated as made.

(3) If this regulation applies by virtue of regulation 42(2), it applies in relation to a payment of interest made at any time after the time when the qualifying certificate ceased to be valid.

This is subject to paragraph (4).

(4) In a case where circumstance D of regulation 39 applies, this regulation applies in relation to a payment of interest made at any time—

(a) after the expiry of a period of 30 days beginning with the date of issue of the notice referred to in that circumstance D, or

(b) after such date falling within that period as the legal owner may at its option determine.

(5) This regulation is subject to regulation 44.

**Qualifying certificates valid for only part of jointly held accounts: further provisions**

**44.**—(1) The legal owner of an authorised investment fund may give notice to the Commissioners of its intention that the whole of an interest distribution specified in the notice shall be made under deduction of tax.

(2) If notice is given under paragraph (1), regulation 43 does not apply; and, accordingly, tax must be deducted by the legal owner from any payment of an interest distribution which is made after the date of the notice, and to which the notice relates.

(3) The legal owner of an authorised investment fund may give notice to the Commissioners (a “cancellation notice”) cancelling a notice given under paragraph (1).

(4) If a cancellation notice is given, regulation 43 applies to any payment of an interest distribution which is made after the date of the cancellation notice, and to which the notice given under paragraph (3) formerly related.

**Consequences of notice under regulation 39(6)**

**45.**—(1) This regulation applies if the Commissioners issue a notice under regulation 39(6).

(2) No further qualifying certificate may be given by or on behalf of the person referred to in the notice in respect of units specified in the notice.

This is subject to paragraphs (3) and (4).

(3) If the Commissioners are satisfied, as a result of information received following the issue of the notice, that the person referred to in the notice—

(a) was not liable at the date of the notice, and has not since become liable, to pay an amount by way of income tax, or

(b) is no longer liable to pay such an amount,

they must cancel the notice and give notice of the cancellation to the legal owner and the person referred to in the notice.



(4) If, under paragraph (3), the Commissioners cancel the notice, a further qualifying certificate may be given on behalf of the person referred to in the notice.

**Qualifying certificate not in writing**

**46.**—(1) If a qualifying certificate is not in writing, the legal owner concerned may—

(a) make a declaration in writing on behalf of the person giving the qualifying certificate (“the relevant person”) that the particulars contained in the certificate are those recorded in the declaration, and

(b) send a copy of the declaration (“the copy declaration”) to the relevant person.

(2) The declaration takes effect as from the date on which the copy declaration is sent to the relevant person in accordance with paragraph (1).

This is subject to paragraph (3).

(3) The relevant person may notify any corrections to the legal owner within the period of 30 days beginning with the date on which the copy declaration was sent to him; and the corrections may be incorporated in a revised declaration made by the legal owner.

(4) A qualifying certificate is regarded as being given in writing for the purposes of this regulation if it is given by electronic communication containing an electronic signature of the relevant person.

(5) For the purposes of this regulation a declaration made by the legal owner is regarded as made in writing if it is produced by electronic means; and the copy declaration may be sent to the relevant person by telephonic facsimile transmission or by electronic communication.