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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 4**

**CHARGE TO TAX ON SUBSTANTIAL QIS  
HOLDINGS IN QUALIFIED INVESTOR SCHEMES**

*General*

**Charge to tax under this Chapter**

**53.**—(1) A participant is charged to tax under this Chapter if the participant owns a substantial QIS holding in a qualified investor scheme.

(2) But a participant is excepted from the charge to tax under this Chapter if the participant is—

- (a) a charity within the meaning of section 506(1) of ICTA;
- (b) a registered pension scheme within the meaning of Part 4 of the Finance Act 2004(1);
- (c) a scheme which is treated, under paragraph 1(1) of Schedule 36 to the Finance Act 2004, as a registered pension scheme within the meaning of Part 4 of that Act;
- (d) an insurance company within the meaning of section 431(2) of ICTA(2) holding the units in the qualified investor scheme as assets of its long-term insurance fund;
- (e) a friendly society within the meaning of section 466(2) of ICTA(3);
- (f) a person for whom any profit on a sale of the units in the qualified investor scheme would be treated as a trading profit of its trade; or
- (g) a qualified investor scheme.

(3) In these Regulations a “qualified investor scheme” means a fund, authorised by the Financial Services Authority, in which a statement that the fund is a qualified investor scheme is included in the instrument constituting the scheme.

(4) In paragraph (2)(d) “long-term insurance fund” has the meaning given by section 431(2) of ICTA(4).

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(1) 2004 c. 12.

(2) The definition of “insurance company” in section 431(2) was substituted by Article 26(3) of S.I. 2001/3629.

(3) The definition of “friendly society” in section 466(2) was substituted by paragraph 14(4) of Schedule 9 to the Finance (No. 2) Act 1992 (c. 48).

(4) The definition of “long-term insurance fund” was inserted (as “long term business fund”) by paragraph 1(2) of Schedule 6 to the Finance Act 1990 (c. 29), and amended by paragraphs 2(1)(b) and 2(2)(a) of Article 52 of S.I. 2001/3629.

**Meaning of “substantial QIS holding”**

**54.**—(1) For the purposes of this Chapter a participant owns a substantial QIS holding in a qualified investor scheme if the participant, either alone or together with associates or connected persons, (and otherwise than as a nominee or a bare trustee) owns units which represent rights to 10% or more of the net asset value of the fund.

This is without prejudice to what is meant by “substantial” where the word appears in other contexts.

(2) Section 417 of ICTA<sup>(5)</sup> applies for the purposes of this regulation to determine whether persons are associates.

(3) Section 839 of ICTA<sup>(6)</sup> (connected persons) applies for the purposes of this regulation.

(4) A participant who owns a substantial QIS holding in a qualified investor scheme continues to own a substantial QIS holding in that scheme until the date on which the whole of that holding is disposed of (so that, accordingly, it does not matter that the holding no longer represents 10% or more of the net value of the qualified investor scheme).

(5) Paragraph (4) is subject to regulation 63 (cases where a participant’s holding becomes substantial).

**Amount charged to tax under this Chapter**

**55.**—(1) A participant is charged to tax under this Chapter by reference to the difference in value of a substantial QIS holding between two measuring dates (the “difference in value”).

(2) The difference in value is the amount given by the formula—

$$VLMD - VEMD$$

(3) In paragraph (2)—

VLMD is the market value of the substantial QIS holding at the beginning of a chargeable measuring date (the “later measuring date”), and

VEMD is the market value of the substantial QIS holding at the end of the previous measuring date (the “earlier measuring date”).

(4) In the case of units in a qualified investor scheme where both the buying and selling prices of units are published regularly by the manager of the scheme, “market value” means an amount equal to the buying price (that is the lower price) so published on any particular date, or if none were published on that date, on the latest date before.

(5) In the case of units in a qualified investor scheme where a single price is published regularly by the manager of the scheme, “market value” means the price so published on any particular date, or if none were published on that date, on the latest date before.

**Measuring dates and meaning of “chargeable measuring date”**

**56.**—(1) Each of the following is a measuring date—

- (a) the first measuring date (see regulation 64);
- (b) in a case where a participant already owns a substantial QIS holding in a qualified investor scheme, the date on which the participant acquires additional units in the qualified investor scheme;
- (c) any reporting date;

<sup>(5)</sup> Section 417 was amended by paragraph 173 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

<sup>(6)</sup> Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4) and by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005.

- (d) the date on which there is a disposal of part of the substantial QIS holding (see regulation 67);
- (e) the date on which there is a disposal of the whole of the substantial QIS holding (see regulation 68);
- (f) the date of the participant's death.

(2) In this Chapter a "chargeable measuring date" means any measuring date other than the first measuring date.

#### **How tax is charged under this Chapter: income tax**

**57.**—(1) This regulation applies in the case of a participant chargeable to income tax.

(2) The following amounts must be calculated—

- (a) the difference in value calculated by reference to each chargeable measuring date falling within a tax year; and
- (b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to income tax under Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged) on that aggregate amount for that tax year.

(4) If the aggregate amount is a negative amount, the participant is treated as if—

- (a) a loss of that aggregate amount had been sustained by the participant in a transaction, and
- (b) this regulation were listed in Part 3 of the Table in section 836B(7) of ICTA.

#### **How tax is charged under this Chapter: corporation tax**

**58.**—(1) This regulation applies in the case of a participant chargeable to corporation tax.

(2) The following amounts must be calculated—

- (a) the difference in value calculated by reference to each chargeable measuring date falling within an accounting period; and
- (b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to corporation tax under Case VI of Schedule D on that aggregate amount for that accounting period.

(4) If the aggregate amount is a negative amount, the participant is treated as if a loss of that aggregate amount had been incurred by the participant in a transaction in respect of which the participant were within the charge to corporation tax under Case VI of Schedule D.

#### **Further provisions**

**59.**—(1) In this Chapter "disposal" is to be construed in accordance with TCGA 1992, and cognate expressions are to be construed accordingly.

(2) The provisions of TCGA 1992 that apply to determine—

- (a) the time at which a disposal and acquisition is made, and
- (b) how assets disposed of are to be identified,

apply for the purposes of this Chapter in the same way as they apply for the purposes of that Act.

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(7) Section 836B was inserted by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

### *The first measuring date*

#### **The general rule**

**60.**—(1) The general rule is that on the first date on which a participant who is within the charge to tax under this Chapter owns a substantial QIS holding in a qualified investor scheme, the participant must value his own holding in that scheme as at that date.

(2) The general rule is modified if any of the following regulations apply—

- (a) regulation 61 (cases affected by the coming into force of these Regulations);
- (b) regulation 62 (cases involving the launch of qualified investor schemes);
- (c) regulation 63 (cases where a participant’s holding becomes substantial).

#### **Cases affected by the coming into force of these Regulations**

**61.**—(1) This regulation applies if—

- (a) a participant chargeable to income tax owns a substantial QIS holding in a qualified investor scheme on 6th April 2006, or
- (b) a participant chargeable to corporation tax owns a substantial QIS holding in a qualified investor scheme on 1st April 2006.

(2) If on the measuring date first occurring after 30th June 2006 the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at 1st or 6th April 2006 (as the case may be).

(3) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to income tax, the participant must value his own holding in that scheme as at 6th April 2006.

(4) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to corporation tax, the participant must value its own holding in that scheme as at 1st April 2006.

#### **Cases involving the launch of qualified investor schemes**

**62.**—(1) This regulation applies if a qualified investor scheme is launched.

(2) If on the date immediately following the expiry of a period of twelve months beginning with the date of issue of the first prospectus of the scheme (“the qualification date”) the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at that date or any earlier date.

(3) If on the qualification date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date on which the participant first owned a substantial QIS holding in the scheme.

#### **Cases where a participant’s holding becomes substantial**

**63.**—(1) This regulation applies if, on any date, a participant owns a substantial QIS holding in a qualified investor scheme otherwise than as a result of the acquisition of units in that scheme.

(2) If on the next reporting date and the reporting date following it (“the second reporting date”) the participant does not own a substantial QIS holding in the qualified investor scheme, the participant—

- (a) is not required to value his own holding in that scheme at any time, and

(b) is not treated as owning a substantial QIS holding in the scheme on the second reporting date or at any earlier time.

(3) If on the second reporting date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date mentioned in paragraph (1) and as at each subsequent measuring date.

#### **Definition of the “first measuring date”**

**64.** In this Chapter the “first measuring date” means the date on which, in accordance with regulation 60(1), 61(3) or (4), 62(3) or 63(3), the participant must value his own holding in the qualified investor scheme.

#### **Calculation to be made on the first measuring date**

**65.** On the first measuring date the participant must calculate the chargeable gain or loss that would have accrued for the purposes of tax in respect of chargeable gains if, on that date, the participant had disposed of the substantial QIS holding for a consideration equal to its market value at that time.

#### *Disposals of holdings*

#### **Reorganisations etc.**

**66.—**(1) For the purposes of this Chapter, sections 116(10) and 127 of TCGA 1992 (reorganisations) do not apply to a substantial QIS holding in a qualified investor scheme; and a transaction which would otherwise have fallen within either of those provisions is treated as involving a disposal and subsequent acquisition of that holding.

(2) The consideration for the subsequent acquisition is a consideration equal to the market value of the holding immediately before the acquisition.

#### **Disposal of part of a substantial QIS holding**

**67.—**(1) This regulation applies if a participant disposes of part of a substantial QIS holding.

(2) The date on which the participant disposes of the part of the substantial QIS holding is a chargeable measuring date.

(3) For the purposes of tax in respect of chargeable gains a corresponding part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.

(4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.

(5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the part of the substantial QIS holding of which there has been a disposal.

(6) This regulation is subject to regulation 69 (no gain/no loss disposals).

#### **Disposal of the whole of a substantial QIS holding**

**68.—**(1) This regulation applies if a participant disposes of the whole of a substantial QIS holding.

(2) The date on which the participant disposes of the substantial QIS holding is a chargeable measuring date.

- (3) For the purposes of tax in respect of chargeable gains—
- (a) in a case where regulation 67 has applied on any earlier disposal of part of the substantial QIS holding, the remaining part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal, and
  - (b) in any other case, the whole of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.
- (4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.
- (5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the substantial QIS holding.
- (6) This regulation is subject to regulation 69 (no gain/no loss disposals).

### **No gain/no loss disposals**

**69.**—(1) This regulation applies if, for the purposes of tax in respect of chargeable gains, any disposal of the whole or part of a substantial QIS holding falls within any of the following provisions of TCGA 1992—

- (a) section 58(1) (transfers between spouses);
  - (b) section 62(4) (acquisition as legatee);
  - (c) section 139 (company reconstructions)(**8**);
  - (d) section 140A (transfers of a UK trade)(**9**);
  - (e) section 140E (merger leaving assets within the UK tax charge)(**10**);
  - (f) section 171(1) (transfers within a group)(**11**).
- (2) Regulation 67(3) or 68(3) (as the case may be) does not apply in relation to the disposal.
- (3) On and after the date of the transfer, the transferee’s holding in the qualified investor scheme is a substantial QIS holding in that scheme (whether or not the transferee’s holding in that scheme (if any) was a substantial QIS holding in that scheme before that date).
- (4) If the transferee disposes of the whole, or part, of the substantial QIS holding, the held-over gain or, as the case may be, a corresponding part of the held-over gain, is treated as accruing to the transferee on the disposal.
- (5) In paragraph (4) “the held-over gain” means the chargeable gain or loss that would have accrued to the transferor if the disposal falling within paragraph (1) had been a disposal to which regulation 68(3) had applied.

(8) Section 139 was amended by section 251(5) of the Finance Act 1994 (c. 9), section 134(1) of the Finance Act 1998 (c. 36), paragraph 5 of Schedule 29 to the Finance Act 2000 (c. 17), Part 3(2) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 2(3) of Schedule 27 to the Finance Act 2003 (c. 14), and by Article 2(2)(d) of S.I. 1992/3066.

(9) Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(3) of Schedule 27 to the Finance Act 2003 and section 59(3) of the Finance (No. 2) Act 2005 (c. 22).

(10) Section 140E was inserted by section 51(1) of the Finance (No. 2) Act 2005.

(11) Section 171(1) was substituted by paragraph 2(2) of Schedule 29 to the Finance Act 2000 (c. 17).