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STATUTORY INSTRUMENTS

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**2006 No. 981**

**INCOME TAX**

**CORPORATION TAX**

The Unit Trust Schemes and Offshore Funds  
(Non-qualifying Investments Test) Order 2006

<i>Made</i>	- - - -	<i>30th March 2006</i>
<i>Laid before the House of Commons</i>	- - - -	<i>30th March 2006</i>
<i>Coming into force</i>	- -	<i>20th April 2006</i>

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

**Citation, commencement and effect**

1.—(1) This Order may be cited as the Unit Trust Schemes and Offshore Funds (Non-qualifying Investments Test) Order 2006 and shall come into force on 20th April 2006.

(2) This Order has effect in relation to accounting periods beginning on or after 1st April 2006.

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

2. In Schedule 10 to the Finance Act 1996 (loan relationships: collective investment schemes), paragraph 8(2) (non-qualifying investments test) is amended as follows.

3. In sub-paragraph (2)(3) for paragraphs (e) and (f) substitute—

“(e) derivative contracts whose underlying subject matter consists wholly of any one or more of the following—

(i) the matters referred to in paragraphs (a) to (d) above, and

(ii) currency;

(f) contracts for differences whose underlying subject matter consists wholly of any one or more of the following—

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(1) 1996 c. 8.

(2) Paragraph 8 of Schedule 10 was amended by paragraph 20 of Schedule 27 to the Finance Act 2002 (c. 23), paragraph 12(3) of Schedule 26 to the Finance Act 2004 (c. 12), by S.I. 1997/213, and by Article 95 of S.I. 2001/3629.

(3) In sub-paragraph (2) of paragraph 8 of Schedule 10, paragraphs (e) and (f) were inserted by paragraph 20(2) of Schedule 27 to the Finance Act 2002.

- (i) interest rates,
  - (ii) creditworthiness, and
  - (ii) currency;
  - (g) derivative contracts not within paragraph (e) or (f) where there is a hedging relationship between the derivative contract and an asset within paragraphs (a) to (d) above;
  - (h) alternative finance arrangements.”.
4. In sub-paragraph (4)(4) for the words from “paragraphs (a)” to the end substitute “paragraphs (a) to (c) and (e) to (h) of sub-paragraph (2) above”.
5. After sub-paragraph (7F)(5) insert the following sub-paragraphs—
- “(7G) For the purposes of this paragraph, in relation to a unit trust scheme, offshore fund or open-ended investment company, there is 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—
- (a) the hedging instrument and the hedged item are designated by the scheme, fund or company 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 scheme, fund or company.
- (7H) For the purposes of sub-paragraph (7G)(b) above, the “total net return” of a scheme, fund or company means the total net return of the scheme, fund or company, computed—
- (a) in accordance with generally accepted accounting practice, or
  - (b) in the case of accounts prepared in a jurisdiction outside the United Kingdom, in accordance with generally accepted accounting practice in that jurisdiction.
- (7I) In this paragraph “alternative finance arrangements” has the meaning given by section 46(1) of the Finance Act 2005(6).”.

30th March 2006

*Gillian Merron*  
*Joan Ryan*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(4) Sub-paragraph (4) of paragraph 8 of Schedule 10 was amended by paragraph 20(3) of Schedule 27 to the Finance Act 2002 and S.I. 1997/213.

(5) Sub-paragraph (7F) of paragraph 8 of Schedule 10 was inserted by paragraph 12(3) of Schedule 26 to the Finance Act 2004.

(6) 2005 c. 7.

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## EXPLANATORY NOTE

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

Paragraph 4 of Schedule 10 to the Finance Act 1996 (c. 8) (“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 during 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. The amendments update the list of qualifying investments in paragraph 8 to bring this list into line with commercial practice and to include further investments which produce returns similar to interest-bearing investments. The amendments will also have the effect of bringing the definition of the non-qualifying investments test in paragraph 8 into alignment with the non-qualifying investments test as it will apply for the purposes of the taxation of authorised investment funds: see the Authorised Investment Funds (Tax) Regulations 2006: S.I.2006/964.

This Order imposes no new costs on business.