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STATUTORY INSTRUMENTS

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**2011 No. 2192**

**CORPORATION TAX  
CAPITAL GAINS TAX**

**The Authorised Investment Funds (Tax)  
(Amendment No. 2) Regulations 2011**

*Made - - - - 5th September 2011*  
*Laid before the House of*  
*Commons - - - - 6th September 2011*  
*Coming into force - - 1st October 2011*

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005<sup>(1)</sup> and section 354 of the Taxation (International and Other Provisions) Act 2010<sup>(2)</sup>.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment No. 2) Regulations 2011 and come into force on 1st October 2011.

(2) These Regulations have effect—

(a) for the purposes of corporation tax—

(i) on income, for accounting periods starting on or after that date, and

(ii) on chargeable gains, in relation to disposals made on or after that date, and

(b) for the purposes of capital gains tax, in relation to disposals made on or after that date.

**Amendment of the Authorised Investment Funds (Tax) Regulations 2006**

2. The Authorised Investment Funds (Tax) Regulations 2006<sup>(3)</sup> are amended as follows.

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(1) 2005 c. 22. Section 18 was amended by paragraph 605 of Schedule 1 to the Income Tax Act 2007 (c. 3) and paragraph 669 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).  
(2) 2010 c. 8.  
(3) S.I. 2006/964, amended by S.I. 2008/705, 2008/3159, 2009/2036, 2010/294 and 2011/244, there are other amending instruments but none is relevant.

### **Amendment of regulation 9A (the genuine diversity of ownership condition)**

3. In regulation 9A (the genuine diversity of ownership condition)(4), in paragraph (8) —
- (a) in the introductory wording omit “which is a Property AIF”, and
  - (b) in sub-paragraph (a), insert “, an offshore fund or another authorised investment fund” between “unit trust scheme” and “(a “feeder fund”)”.

### **Insertion of new regulation 14ZD (index tracking funds)**

4. In Part 2, after regulation 14ZC(5) insert—

*“Treatments applying to authorised investment funds with specific investment purposes*

#### **Index tracking funds**

**14ZD.**—(1) This regulation applies if—

- (a) an authorised investment fund has an interest in a non-reporting fund, and
  - (b) the conditions in paragraph (2) are met throughout the relevant period.
- (2) The conditions are that—
- (a) in accordance with either the authorised investment fund’s prospectus or the instrument constituting the authorised investment fund, the aim of the authorised investment fund’s investment policy is to replicate the performance of a qualifying index,
  - (b) the main purpose of the investment in the non-reporting fund is to represent the composition of the qualifying index, and
  - (c) the capital and income returns of the authorised investment fund replicate as closely as practicable the returns of the investments comprised in the qualifying index.
- (3) For the purposes of paragraph (2) an index is a “qualifying index” if—
- (a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,
  - (b) either a competent authority for the United Kingdom or an authority responsible for regulating offshore funds recognises the index on the basis that—
    - (i) its composition is sufficiently diverse,
    - (ii) it represents an adequate benchmark for the market to which it refers, and
    - (iii) it is published in such a way that it is widely available, and
  - (c) it is calculated and published by a body which is managed independently from the management of the authorised investment fund.
- (4) Regulation 17 of the Offshore Funds Regulations(6) does not apply in respect of a disposal of the interest in the non-reporting fund by the authorised investment fund.
- (5) In this regulation “the relevant period” means the period—
- (a) starting on the day the authorised investment fund acquires the interest in the non-reporting fund (or any part of it), and

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(4) Regulation 9A was inserted by [S.I. 2009/2036](#) and amended by [S.I. 2010/294](#).

(5) Regulation 14ZC was inserted by [S.I. 2011/244](#).

(6) “Offshore Funds Regulations” are defined in regulation 8 of the Authorised Investment Funds (Tax) Regulations 2006, that definition was inserted by [S.I. 2011/244](#).

- (b) ending on the day of the disposal of the interest.
- (6) In this regulation—
  - (a) a “competent authority in the United Kingdom” means the authority which is a competent authority for the United Kingdom for the purposes of Directive [2009/65/EC](#) of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)(7), and
  - (b) “regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments(8) (see article 4.1(14)).”.

#### **Amendment of regulation 20 (meaning of “qualifying investments”)**

5. In regulation 20 (meaning of “qualifying investments”)(9), for “4” in the descriptions of Category 5 and Category 7 substitute “4A”.

#### **Amendment of regulation 69F (meaning of “property investment business”)**

6. In regulation 69F (meaning of “property investment business”)(10), omit paragraph (7).

#### **Consequential amendment**

7. In the Offshore Funds (Tax) Regulations 2009(11), in paragraph (6) of regulation 18 (the charge to tax: further provisions)(12) after “regulation 14ZB” insert “, 14ZD(1)”.

5th September 2011

*Angela Watkinson*  
*Jeremy Wright*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(7) OJ No L 302, 17.11.2009, p32.

(8) OJ No L 145, 30.4.2004, p1.

(9) Regulation 20 was amended by [S.I. 2010/294](#).

(10) Regulation 69F was inserted by [S.I. 2008/705](#).

(11) [S.I. 2009/3001](#), amended by [S.I. 2010/294](#) and [2011/244](#); there are other amending instruments but none is relevant.

(12) Paragraph (6) of Regulation 18 was inserted by [S.I 2010/294](#) and amended by [2011/244](#).

**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 Regulations)*

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (“the principal Regulations”).

Regulation 1 deals with citation, commencement and effect; and regulation 2 introduces the amendments.

Regulation 3 amends regulation 9A of the principal Regulations to extend the genuine diversity of ownership condition for all authorised investment funds (not just Property AIFs) to circumstances where the feeder fund is a unit trust scheme, an offshore fund or another authorised investment fund.

Regulation 4 inserts new regulation 14ZD to the principal Regulations. New regulation 14ZD disapplies regulation 17 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) in respect of the disposal of an interest in a non-reporting fund by an authorised investment fund which tracks a recognised index of listed securities.

Regulation 5 amends regulation 69F so that Category 4A is treated in the same way as Categories 1 to 4 for the purposes of Category 5 and Category 7.

Regulation 6 removes the definition of “recognised stock exchange” as the definition in section 1005 of the Income Tax Act 2007 and section 1137 of the Corporation Tax Act 2010 will apply for the purposes of the principal Regulations.

Regulation 7 makes a consequential amendment to the Offshore Funds (Tax) Regulations 2009.

A Tax Information and Impact Note covering this Instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.