
STATUTORY INSTRUMENTS

1997 No. 1154

INCOME TAX

The Open-ended Investment Companies (Tax) Regulations 1997

<i>Made</i>	- - - -	<i>3rd April 1997</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th April 1997</i>
<i>Coming into force</i>	- -	<i>28th April 1997</i>

The Treasury, in exercise of the powers conferred on them by section 152 of the Finance Act 1995⁽¹⁾, hereby make the following Regulations:

PART I
INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Open-ended Investment Companies (Tax) Regulations 1997 and shall come into force on 28th April 1997.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“accumulation share”, in relation to an open-ended investment company, means a share in that company in respect of which income is credited periodically to the capital part of the scheme property of the company;

“authorised corporate director”, in relation to an open-ended investment company, has the meaning given by subsection (10) of section 468, read with subsections (16) and (17) of that section, as those subsections are added by regulation 10(4);

“authorised unit trust” has the meaning given by subsection (6) of section 468⁽²⁾;

“open-ended investment company” has the meaning given by subsection (10) of section 468, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4);

(1) 1995 c. 4.

(2) Section 468(6) was amended by section 113(1) of the Finance Act 1994 (c. 9).

“owner of shares”, in relation to an open-ended investment company, has the meaning given by subsection (10) of section 468, read with subsection (15) of that section, as those subsections are added by regulation 10(4); and references to “owner of a share” and “owner of the shares” shall be construed accordingly;

“scheme property”, in relation to an open-ended investment company, has the meaning given by subsection (10) of section 468, read with subsection (13) of that section, as those subsections are added by regulation 10(4);

“unit holder”, in relation to a unit trust scheme, has the meaning given by subsection (6) of section 468; and references to “holder of a unit” and “holders of units” shall be construed accordingly;

“units”, in relation to a unit trust scheme, means the rights or interests (however described) of the unit holders in the scheme;

“unit trust scheme” has the meaning given by section 469(7);

“the Taxes Act” means the Income and Corporation Taxes Act 1988⁽³⁾;

“the Tax Acts” means the provisions of “the Tax Acts” (as defined by section 831(2)) other than section 152 of the Finance Act 1995;

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992⁽⁴⁾.

(2) For the purposes of the definitions of “authorised corporate director”, “open-ended investment company”, “owner of shares” and “scheme property” in paragraph (1), references in subsections (11) to (16) of section 468 (as those subsections are added by regulation 10(4)) to “the Tax Acts” shall be construed as if they included references to these Regulations.

(3) In these Regulations references to a section or a Schedule, without more, are references to that section of, or that Schedule to, the Taxes Act.

PART II

GENERAL PROVISIONS RELATING TO TAX TREATMENT OF OPEN-ENDED INVESTMENT COMPANIES

Tax treatment of open-ended investment companies—general

3.—(1) Subject to the modifications and exceptions specified in this Part, and the modifications specified in Parts III to V, of these Regulations, the enactments specified in paragraph (3) shall have effect in relation to—

- (a) open-ended investment companies,
- (b) holdings in, and the assets of, such companies, and
- (c) transactions involving such companies,

in like manner as the manner in which they have effect in relation to authorised unit trusts, to rights under, and the assets subject to, such trusts and to transactions for purposes connected with such trusts.

(2) References in the enactments specified in paragraph (3) to companies, to holdings in, and the assets of, companies and to transactions involving companies, shall accordingly have effect (or shall not have effect as the case may be) in relation to open-ended investment companies, to holdings in, and the assets of, such companies, and to transactions involving such companies, in like manner as

⁽³⁾ 1988 c. 1.

⁽⁴⁾ 1992 c. 12.

the manner in which they have effect (or do not have effect) in relation to authorised unit trusts, to rights under, and the assets subject to, such trusts, and to transactions for purposes connected with such trusts.

- (3) The enactments specified in this paragraph are—
- (a) the Tax Acts, and
 - (b) the 1992 Act.

General modifications of the Tax Acts and the 1992 Act

4. The modifications specified in regulations 5 to 8 have effect subject to the modifications specified in Parts III to V of these Regulations.

General modification—authorised unit trust

5.—(1) Subject to paragraph (2), the modifications specified in this regulation are that references, however expressed, in the Tax Acts and the 1992 Act to—

- (a) an authorised unit trust (other than references in a definition of an authorised unit trust, an unauthorised unit trust or a unit trust scheme),
- (b) a unit trust scheme as denoting or including (whether expressly or by implication) an authorised unit trust (other than references in a definition of an authorised unit trust, an unauthorised unit trust or a unit trust scheme), and
- (c) the trustees of an authorised unit trust within sub-paragraph (a) or of a unit trust scheme within sub-paragraph (b),

shall have effect as if they included references to an open-ended investment company.

- (3) The provisions specified in this paragraph are—
- (a) section 468(1), (4) and (6) to (9)(5);
 - (b) section 468L(8), (9)(d) and (10) to (12)(6);
 - (c) section 469(1)(7);
 - (d) section 470;
 - (e) the definition of “company” in section 839(8);
 - (f) paragraph 6 of Schedule 20;
 - (g) section 80 of the Finance Act 1989;
 - (h) section 152(3) of the Finance Act 1993;
 - (i) section 154(2) of the Finance Act 1994;
 - (j) paragraphs 3 and 8 of Schedule 10 to the Finance Act 1996(8);
 - (k) sections 99(1), 100(2) and 272(5) of the 1992 Act.

(5) Section 468 was amended by section 52(2) of, and Part IV of Schedule 19 to, the Finance Act 1990 (c. 29), section 32(3) of the Finance (No. 2) Act 1992 (c. 48), section 113(1) and (2) of, and paragraph 3 of Schedule 14 and Part V(13) of Schedule 26 to, the Finance Act 1994, and paragraph 10(1) of Schedule 6 to the Finance Act 1996 (c. 8).

(6) Section 468L was inserted by paragraph 2 of Schedule 14 to the Finance Act 1994 and amended by paragraph 11 of Schedule 6 to the Finance Act 1996 and by S.I. 1997/212.

(7) Section 469(1) was amended by section 113(3)(a) of the Finance Act 1994 and by Part V(1) of Schedule 41 to the Finance Act 1996.

(8) Paragraph 8 of Schedule 10 to the Finance Act 1996 was amended by S.I. 1997/213.

General modification—manager of authorised unit trust

6.—(1) Subject to paragraph (2), the modifications specified in this regulation are that references, however expressed, in the Tax Acts and the 1992 Act to the manager of an authorised unit trust or of a unit trust scheme within regulation 5(1)(b) shall have effect as if they included references to the authorised corporate director of the open-ended investment company concerned.

(2) Paragraph (1) shall not apply to section 468(4), to section 272(5) of the 1992 Act, or to references in provisions which include reference, whether made expressly or by implication, to the authorised corporate director of an open-ended investment company.

General modification—unit of authorised unit trust

7.—(1) Subject to paragraphs (2) and (3), the modifications specified in this regulation are that—

- (a) references, however expressed, in the Tax Acts and the 1992 Act to—
- (i) a unit or an interest in, or rights under, an authorised unit trust,
 - (ii) a unit or an interest in, or rights under, a unit trust scheme within regulation 5(1)(b), or
 - (iii) an entitlement to a share of, or in, the investments subject to the trusts of an authorised unit trust or a unit trust scheme within regulation 5(1)(b),

shall have effect as if they included references to a share in the open-ended investment company concerned;

- (b) references, however expressed, in the Tax Acts and the 1992 Act to the holder of a unit within paragraph (a) (other than references in a definition of a unit holder) shall have effect as if they included references to the owner of a share in the open-ended investment company concerned.

(2) Paragraph (1) shall not apply to references in provisions which include reference, whether made expressly or by implication, to shares in, or an owner of shares in, an open-ended investment company.

(3) Paragraph (1) shall in addition not apply to references in any of the provisions specified in paragraph (4).

- (4) The provisions specified are—
- (a) section 468(1), (8) and (9);
 - (b) section 468L(9)(d) and (10);
 - (c) the definition of “company” in section 839(8);
 - (d) paragraph 6 of Schedule 20;
 - (e) paragraph 8 of Schedule 10 to the Finance Act 1996;
 - (f) sections 99(1), 117B(3)(a)(9) and 272(5) of the 1992 Act.

General modification—registered office of company

8.—(1) Subject to paragraph (2), the modifications specified in this regulation are that references in the Tax Acts and the 1992 Act to the registered office of a company shall have effect as if they were references to the head office of an open-ended investment company.

(2) Paragraph (1) shall not apply to references in provisions which include reference, whether made expressly or by implication, to the head office of an open-ended investment company.

(9) Section 117B was inserted by paragraph 62 of Schedule 14 to the Finance Act 1996.

PART III

SPECIFIC MODIFICATIONS OF CHAPTER III OF PART XII OF THE TAXES ACT (UNIT TRUST SCHEMES)

General provision

9. Sections 468, 468AA, and 468H to 468R(10) shall have effect with the modifications specified in regulations 10 to 13 and as if—

- (a) references in those sections to “accumulation units” included references to “accumulation shares”;
- (b) references in those sections to “the company referred to in section 468(1)” included references to the open-ended investment company concerned; and
- (c) references, however expressed, in those sections to the terms of an authorised unit trust included references to the instrument of incorporation of the open-ended investment company concerned and the prospectus in issue for the time being of that company (including any supplements to that prospectus).

Modifications of section 468

10.—(1) Section 468 shall be modified in accordance with paragraphs (2) to (4).

(2) After subsection (3) there shall be inserted the following subsection—

“(3A) Section 234A(11) shall apply in relation to an open-ended investment company.”

(3) After subsection (4) there shall be inserted the following subsection—

“(4A) Section 75(12) shall apply in relation to an open-ended investment company whether or not it is an investment company within the meaning of section 130; and sums appropriated in accordance with the terms of the prospectus in issue for the time being (including any supplements to that prospectus) of an open-ended investment company for such remuneration of its authorised corporate director as is paid in respect of the management of the company’s scheme property shall be treated for the purposes of section 75 as sums disbursed as expenses of management.”

(4) After subsection (9) there shall be added the following subsections—

“(10) Subject to subsections (11) to (18) below, in this Chapter—

“authorised corporate director” in relation to an open-ended investment company means a corporate director of the company acting in the capacity as the director having responsibility for the management of its scheme property, being an authorised person within the meaning of the Financial Services Act 1986, or if there is no such director, the person for the time being having responsibility for the management of the scheme property of the company and acting in that capacity;

(10) Sections 468A to 468D were repealed by section 52 of, and Part IV of Schedule 19 to, the Finance Act 1990, sections 468E and 468EE were repealed by paragraph 10(3) of Schedule 6, and Part V(1) of Schedule 41, to the Finance Act 1996, and sections 468F and 468G were repealed by paragraph 4 of Schedule 14, and Part V(13) of Schedule 26, to the Finance Act 1994. Sections 468H to 468R were inserted by paragraph 2 of Schedule 14 to the Finance Act 1994.

(11) Section 234A was inserted by section 32(1) of the Finance (No. 2) Act 1992 and amended by paragraph 2(1) and (2)(a) of Schedule 27 to the Finance Act 1996.

(12) Section 75 was amended by paragraph 8(4) of Schedule 1 to the Capital Allowances Act 1990 (c. 1), paragraph 12 of Schedule 16 to the Finance Act 1994, paragraph 23(2) of Schedule 8 and Part VIII(5) of Schedule 29 to the Finance Act 1995 and paragraph 8 of Schedule 14 to the Finance Act 1996.

“collective investment scheme” has the meaning given by section 75 of the Financial Services Act 1986⁽¹³⁾;

“open-ended investment company” means an open-ended investment company within the meaning given by section 75(8) of the Financial Services Act 1986 which is incorporated in the United Kingdom;

“owner of shares” in relation to an open-ended investment company means—

- (a) the beneficial owner of the shares, or
- (b) where the shares are held on trust (other than a bare trust), the trustees of the trust, or
- (c) where the shares are comprised in the estate of a deceased person, the deceased’s personal representatives;

“scheme property” in relation to an open-ended investment company means the property subject to the collective investment scheme constituted by the company.

(11) Subject to subsection (17) below, each of the parts of an umbrella company shall be regarded for the purposes of the Tax Acts, except where the context otherwise requires, as an open-ended investment company and the umbrella company as a whole shall not be so regarded and shall not be regarded as being a company for the purposes of the Tax Acts.

(12) In relation to a part of an umbrella company, any reference in this Chapter to investments of an open-ended investment company shall have effect for the purposes of the Tax Acts, except where the context otherwise requires, as a reference to such of the investments as under the arrangements referred to in subsection (18) below form part of the separate pool to which that part of the umbrella company relates.

(13) In relation to a part of an umbrella company, any references in this Chapter to the scheme property of an open-ended investment company shall have effect for the purposes of the Tax Acts, except where the context otherwise requires, as references to such property subject to the collective investment scheme constituted by the umbrella company as is comprised in the separate pool to which that part of the umbrella company relates.

(14) In relation to a part of an umbrella company, any references in this Chapter to the instrument of incorporation or the prospectus in issue for the time being (including any supplements to that prospectus) of an open-ended investment company shall have effect for the purposes of the Tax Acts as references to such parts of the instrument of incorporation or of that prospectus (including any supplements to that prospectus) as apply to that part of the umbrella company.

(15) A person for the time being having rights in a part of an umbrella company shall be regarded for the purposes of the Tax Acts, except where the context otherwise requires, as the owner of shares in the open-ended investment company which that part is deemed to be by virtue of subsection (11) above and not as the owner of shares in the umbrella company itself.

(16) In relation to a part of an umbrella company and subject to subsection (17) below, the authorised corporate director of an umbrella company shall be regarded for the purposes of the Tax Acts, except where the context otherwise requires, as the authorised corporate director of the open-ended investment company which that part is deemed to be by virtue of subsection (11) above and not as the authorised corporate director of the umbrella company itself.

(17) In relation to section 468P (residence declarations)—

⁽¹³⁾ Section 75 of the Financial Services Act 1986 was amended by S.I. 1988/803 and S.I. 1990/349.

- (a) a declaration under that section made by an owner of shares in an umbrella company shall be made to the umbrella company itself and not to the part or parts of that company in which the owner of the shares concerned is deemed to be an owner of shares by virtue of subsection (15) above;
 - (b) the undertaking contained in that declaration shall be an undertaking to notify the umbrella company and not the part or parts of that company in which the owner of the shares concerned is deemed to be an owner of shares by virtue of subsection (15) above; and
 - (c) subsections (11) and (16) above shall not apply in relation to subsection (8) of that section (regulations requiring information to be supplied and documents to be made available).
- (18) In this section, “umbrella company” means a company—
- (a) which falls within the definition of “open-ended investment company” in section 75(8) of the Financial Services Act 1986,
 - (b) which is incorporated in the United Kingdom,
 - (c) whose instrument of incorporation provides for arrangements for such pooling as is mentioned in section 75(3)(a) of that Act in relation to separate parts of the scheme property of the company, and
 - (d) the owners of shares in which are entitled to exchange rights in one part for rights in another;
- and any reference to a part of an umbrella company is a reference to such of the arrangements as relate to a separate pool.”

Modifications of section 468AA

- 11.**—(1) Section 468AA(14) shall be modified in accordance with paragraphs (2) and (3).
- (2) In subsection (1)—
- (a) for the word “Trustees” (where it first occurs) there shall be substituted the words “An open-ended investment company”;
 - (b) subsection (b) and the word “and” immediately preceding it shall be omitted.
- (3) Subsection (3) shall be omitted.

Modifications of section 468I

- 12.**—(1) Section 468I(15) shall be modified in accordance with paragraphs (2) and (3).
- (2) In subsection (7) there shall be inserted at the beginning the words “Subject to subsection (9) below,”.
- (3) After subsection (7) there shall be added the following subsections—
- “(8) Subject to subsection (9) below, where distribution accounts show an amount as available for distribution to owners of shares in any of the ways set out in subsections (2) to (4) above there shall not be any discrimination between owners of shares in respect of different classes of shares.
 - (9) For the purposes of subsections (7) and (8) above differences in amounts treated as paid in accordance with section 468J(2) or 468K(2), or treated as made in accordance

(14) Section 468AA was inserted by section 81(1) of the Finance Act 1990.

(15) Section 468I was amended by paragraph 11 of Schedule 7 to the Finance Act 1997 (c. 16).

with section 468L(2), to owners of shares in proportion to their rights in respect of different classes of shares shall not be regarded as discriminatory where those differences—

- (a) are wholly attributable to differences between the amounts or treatment for accounting purposes of the charges or expenses which—
 - (i) are permitted by the instrument of incorporation of the open-ended investment company concerned or the prospectus in issue for the time being of that company (including any supplements to that prospectus), and
 - (ii) are payable out of the scheme property of that company in respect of the shares of those classes, and
- (b) except where the relevant condition is satisfied, are not such as to enable the owners of the shares in any one of those classes to obtain a tax advantage which they would not obtain if there were no differences between the amounts or treatment for accounting purposes of those charges or expenses.

(10) For the purposes of paragraph (b) of subsection (9) above the relevant condition is that the company is able to show that the differences between the amounts or treatment for accounting purposes of the charges or expenses referred to in that subsection apply for bona fide commercial reasons.

(11) In paragraph (b) of subsection (9) above “tax advantage” has the same meaning as in Chapter I of Part XVII of the Taxes Act.”

Modifications of section 468L

- 13.**—(1) Section 468L shall be modified in accordance with paragraphs (2) to (7).
- (2) In subsection (8)—
 - (a) for the words “authorised unit trust” there shall be substituted the words “open-ended investment company”;
 - (b) for the words “that trust” there shall be substituted the words “that company”.
 - (3) In subsection (9)—
 - (a) for the words “an authorised unit trust, means the investments of that trust” there shall be substituted the words “an open-ended investment company, means the investments of that company”;
 - (b) in paragraph (d) for the words “another authorised unit trust” there shall be substituted the words “an authorised unit trust”;
 - (c) in paragraph (e) for the words “an open-ended investment company” there shall be substituted the words “another open-ended investment company”.
 - (4) In subsection (10)—
 - (a) for the words “another authorised unit trust” there shall be substituted the words “an authorised unit trust”;
 - (b) for the words “the other authorised unit trust” there shall be substituted the words “that authorised unit trust”.
 - (5) In subsection (11) for the words “the other authorised unit trust” there shall be substituted the words “the authorised unit trust”.
 - (6) In subsection (12B) for the words “subsection (12A) above” there shall be substituted the words “this section”.
 - (7) Subsections (12C) to (12G) shall be omitted.

PART IV

OTHER SPECIFIC MODIFICATIONS OF THE TAX ACTS

Modification of section 832(1)

14. In section 832(1) after the definition of “notice” there shall be inserted the following definitions—

““open-ended investment company”, and “authorised corporate director”, “owner of shares” and “scheme property” in relation to an open-ended investment company, have the meanings given by subsection (10) of section 468, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;”.

Modification of section 839(8)

15. In section 839(8) in the definition of “company” the words “(including an open-ended investment company)” shall be inserted after the word “corporate”.

Modification of Schedule 20

16. After paragraph 6 of Schedule 20 there shall be inserted the following paragraph—

“6A. Shares in an open-ended investment company.”

Modification of section 152 of the Finance Act 1993

17. After subsection (2) of section 152 of the Finance Act 1993(16) there shall be inserted the following subsection—

“(2A) An open-ended investment company is not a qualifying company.”

Modifications of section 154 of the Finance Act 1994

18.—(1) In subsection (1) of section 154 of the Finance Act 1994 after the word “subsections” there shall be inserted the word “(1A),”.

(2) After subsection (1) of that section there shall be inserted the following subsection—

“(1A) An open-ended investment company is not a qualifying company for the purposes of this Chapter.”

Modifications of Schedule 10 to the Finance Act 1996

19.—(1) Schedule 10 to the Finance Act 1996 shall be modified in accordance with paragraphs (2) to (10).

(2) Paragraph 2(3) shall be omitted.

(3) In paragraph 8(1)—

(a) for the words “a unit trust scheme or offshore fund” there shall be substituted the words “an open-ended investment company”;

(b) for the words “scheme or fund” there shall be substituted the word “company”.

(16) Section 152(2) was repealed by Part V(3) of Schedule 41 to the Finance Act 1996 in relation to accounting periods ending after 31st March 1996.

(4) In paragraph 8(2) for the words “a unit trust scheme or offshore fund, means investments of the scheme or fund” there shall be substituted the words “an open-ended investment company, means investments of the company”.

(5) Paragraph 8(3A) shall be omitted.

(6) In paragraph 8(4) for the words “sub-paragraphs (3) and (3A)” there shall be substituted the words “sub-paragraph (3)”.

(7) Paragraph 8(6A) and (6B) shall be omitted.

(8) In paragraph 8(7) there shall be added at the end the words “, and references in this paragraph to investments of an open-ended investment company shall be construed in accordance with subsection (12) of section 468, read with subsection (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997”.

(9) Paragraph 8(7A) to (7D) shall be omitted.

(10) In paragraph 8(8) for the words “a unit trust scheme or offshore fund” there shall be substituted the words “an open-ended investment company”.

PART V

SPECIFIC MODIFICATIONS OF THE 1992 ACT

Modification of section 99 of the 1992 Act

20. In section 99(2) of the 1992 Act after paragraph (b) there shall be added the following paragraph—

- “(c) “open-ended investment company” has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly references in subsections (11) to (16) of that section to “the Tax Acts” shall be construed as if they included references to this Act.”

Modification of section 117B of the 1992 Act

21. In section 117B(3) of the 1992 Act there shall be added at the end the words “; and shares of a given class in an open-ended investment company shall be taken to be denominated in a currency other than sterling if the price at which they may be acquired from, or disposed of to, the company or its authorised corporate director is fixed by the company or director in a currency other than sterling, or (as the case may be) the price or prices at which they are quoted in The Stock Exchange Daily Official List is in a currency other than sterling.”

Modifications of section 272 of the 1992 Act

22. In section 272 of the 1992 Act(17)—

- (a) in subsection (3)(a) after the words “2 figures, or” there shall be added the words “where a single price is shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date, that price, or”;
- (b) after subsection (5) there shall be inserted the following subsections—

(17) Section 272 is modified by paragraphs 6 to 8 of Schedule 11 to the Taxation of Chargeable Gains Act 1992 and was amended by paragraph 12(1) of Schedule 38 to the Finance Act 1996.

“(5AA) In this Act “market value” in relation to shares of a given class in an open-ended investment company the prices of which are published regularly by the authorised corporate director of that company (whether or not those shares are also quoted in The Stock Exchange Daily Official List) shall mean an amount equal to the price so published on the relevant date, or if no price was published on that date, on the latest date before that date.

(5AB) In subsection (5AA) “authorised corporate director” has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (16) and (17) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly the reference in subsection (16) of that section to “the Tax Acts” shall be construed as if it included a reference to this Act.”

Modifications of section 288 of the 1992 Act

23. In section 288(8) of the 1992 Act in the Table—

- (a) after the expression ““Absolutely entitled as against the trustee”” there shall be inserted the following expression and reference—

““Authorised corporate director”	S.272(5AB) (as that provision is inserted by regulation 22(b) of the Open-ended Investment Companies (Tax) Regulations 1997);”
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- (b) after the expression ““Market value”” there shall be inserted the following expression and reference—

““Open-ended investment company”	S.99 (as that section is modified by regulation 20 of the Open-ended Investment Companies (Tax) Regulations 1997).”
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PART VI

MISCELLANEOUS PROVISIONS

Ownership of shares in open-ended investment companies

24.—(1) Where, in respect of a given class of shares specified in the instrument of incorporation of an open-ended investment company, shares issued of that class consist of both smaller denomination shares and larger denomination shares, and a person owns both smaller denomination shares and larger denomination shares of that class—

- (a) those shares owned by him shall be treated as being securities of the same class for the purposes of the provisions of the Tax Acts and the 1992 Act relating to ownership of shares in a company,
- (b) each larger denomination share shall be treated for those purposes as if it were comprised of the relevant number of smaller denomination shares, and
- (c) the market value of each smaller denomination share shall be taken for those purposes to be the relevant proportion of the market value of each larger denomination share.
- (2) In paragraph (1)—

- (a) “smaller denomination shares” means shares to which are attached rights specified in the company’s instrument of incorporation that are expressed in the smaller of two denominations, and “larger denomination shares” means shares to which are attached rights so specified that are expressed in the larger of two denominations;
- (b) “relevant number” means the number calculated by reference to the relevant proportion;
- (c) “relevant proportion” means the proportion, determined by the company’s instrument of incorporation, which the rights attaching to each smaller denomination share bear to the rights attaching to each larger denomination share.

Amalgamation of an authorised unit trust with, and conversion of an authorised unit trust to, an open-ended investment company

25.—(1) This regulation applies where, in connection with a scheme of reorganisation—

- (a) the whole of the scheme property of an authorised unit trust (“the target trust”) that is available for transfer is transferred on a given date (“the transfer date”) under an arrangement to an open-ended investment company (“the acquiring company”);
- (b) the consideration under the arrangement consists of or includes the issue on that date of shares (“the consideration shares”) in the acquiring company to the holders of units in the target trust in exchange for those units (“the exchanged units”);
- (c) the consideration shares are issued to those persons in proportion to their holdings of the exchanged units;
- (d) the consideration under the arrangement does not include anything else in addition to the issue of the consideration shares, other than (where applicable) the assumption or discharge by the acquiring company of liabilities of the trustees of the target trust; and
- (e) under the arrangement all the units in the target trust are extinguished.

(2) Notwithstanding anything in section 12(1) to (7)(18), an accounting period of the target trust (“the pre-transfer accounting period”) shall end immediately before the transfer date and the whole of the property referred to in paragraph (1) shall be treated, for the purposes of the Corporation Tax Acts, as having been transferred immediately after the end of that accounting period.

(3) Where there is an amount of surplus advance corporation tax in relation to the pre-transfer accounting period of the target trust which—

- (a) has not been dealt with under section 239(3), and
- (b) were it not for this provision, would be treated under section 239(4) as if it were advance corporation tax paid in respect of distributions made by the trust in its next accounting period or, where the pre-transfer accounting period is the final accounting period of the trust, in what would have been its next accounting period were the trust to have an accounting period beginning on the transfer date,

that amount—

- (i) shall, with effect from the transfer date, be treated under section 239(4) as if it were advance corporation tax paid in respect of distributions made by the acquiring company in the first of its accounting periods to end on or after the transfer date; and accordingly
- (ii) where the pre-transfer accounting period is not the final accounting period of the trust, shall not be treated under section 239(4) as if it were advance corporation tax paid in respect of distributions made by the trust in its next accounting period.

(18) Section 12 was amended by paragraph 3 of Schedule 9 to the Finance Act 1990, paragraph 1(1) and 2(a) of Schedule 9 to the Finance Act 1995, and (prospectively) by paragraph 11 of Schedule 24 to the Finance Act 1996.

(4) Where in respect of the pre-transfer accounting period of the target trust the trustees are entitled under—

- (a) section 75(3) (carry forward of management expenses and sums treated as management expenses),
- (b) section 241(3)(19) (carry forward of franked investment income), or
- (c) section 246F(3)(20) (carry forward of foreign income dividends),

to carry forward an excess amount to the next accounting period of the trust or, where the pre-transfer accounting period is the final accounting period of the trust, to what would have been its next accounting period were the trust to have an accounting period beginning on the transfer date, then that entitlement shall be translated with effect from the transfer date into a right in the acquiring company to treat that amount as if it had been carried forward under the provision in question to the first of its accounting periods to end on or after the transfer date.

(5) In a case to which paragraph (4)(b) or (c) applies, the amount so treated as carried forward shall be treated for the purposes of Schedule 13 as an amount received by the acquiring company on the transfer date.

(6) For the purpose of the operation of sections 242(21) (set-off of losses against surplus of franked investment income) and 244 in respect of accounting periods of the target trust ending before the transfer date—

- (a) the target trust shall be regarded as ceasing to exist immediately after the end of its pre-transfer accounting period,
- (b) the acquiring company shall be regarded as the continuation of that trust with effect from the transfer date, and
- (c) the pre-transfer accounting period of the target trust shall be regarded as the accounting period ending immediately before the beginning of the first accounting period of the acquiring company to end on or after the transfer date.

(7) For the purposes of elections made under sections 246J(1) and 246P(6), and of claims (including supplementary claims) made under sections 246N and 246Q, in respect of foreign income dividends paid by the target trust in accounting periods ending before the transfer date—

- (a) the target trust shall be regarded as ceasing to exist immediately after the end of its pre-transfer accounting period,
- (b) the acquiring company shall be regarded as the continuation of that trust with effect from the transfer date, and
- (c) the first accounting period of the acquiring company which ends on or after the transfer date shall be regarded as the accounting period which succeeds the pre-transfer accounting period of the target trust.

(8) A declaration under section 468P made before the transfer date by a unit holder to the trustees of the target trust which is treated by them as valid immediately before the transfer date shall be treated for the purposes of that section (as it applies in relation to open-ended investment companies by virtue of these Regulations) as if—

- (a) it had been made for the purposes of section 468O—
 - (i) on the transfer date in writing to the acquiring company by the owner of the shares exchanged for the units in question, and

(19) Section 241 was amended by paragraph 18(5) and (6) of Schedule 8, and Part VIII(5) of Schedule 29, to the Finance Act 1995.

(20) Sections 246A to 246Y were inserted by paragraph 1 of Schedule 16 to the Finance Act 1994.

(21) Section 242 was amended by paragraph 8(11) of Schedule 1 to the Capital Allowances Act 1990, paragraph 5 of Schedule 15 to the Finance Act 1991 (c. 31), paragraph 18(7) and (8) of Schedule 8, and Part VIII(5) of Schedule 29, to the Finance Act 1995, paragraph 12 of Schedule 14, and Part V(3) of Schedule 41, to the Finance Act 1996, and section 71 of the Finance Act 1997.

- (ii) in such form as may be required or authorised by the Board pursuant to section 468P(1)(a),
 - (b) it contained the details or undertakings required by section 468P(1)(c), and
 - (c) the undertaking contained in the declaration to notify the trustees of the target trust were an undertaking to notify the acquiring company.
- (9) The acquiring company may on or after the transfer date—
- (a) continue anything which immediately before that date was in the process of being done by the trustees of the target trust for the purposes of tax in relation to accounting periods of the target trust ending before that date and which is not continued by the trustees on or after that date, and
 - (b) do anything which—
 - (i) immediately before that date was not in the process of being done for the purposes of tax in relation to such accounting periods by the trustees of the target trust, and is not done by them for those purposes, but
 - (ii) might reasonably have been expected to be done by them for those purposes had the scheme of reorganisation not taken place.
- (10) The exchange of units for shares referred to in paragraph (1)(b) shall not be treated as being a “transaction in securities” for the purposes of Schedule 7 to the Finance Act 1997.
- (11) In paragraph (1)(a) “the whole of the scheme property of an authorised unit trust (“the target trust”) that is available for transfer” means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust.

Distributions by authorised unit trust after the end of its pre-transfer accounting period

26.—(1) Where, in a case to which regulation 25(1) applies, there is in respect of any post-transfer distribution date of the target trust an amount which, were it not for this provision, would be treated for the purposes of the Tax Acts in accordance with subsection (2) of section 468J as dividends on shares paid on that distribution date by the target trust to its unit holders in proportion to their rights, that amount shall instead be treated for those purposes in accordance with that subsection (as it applies in relation to open-ended investment companies by virtue of these Regulations) as dividends on shares paid on that date by the acquiring company to those persons in proportion to their rights.

(2) Where, in a case to which regulation 25(1) applies, there is in respect of any post-transfer distribution date of the target trust an amount which, were it not for this provision, would be treated for the purposes of the Tax Acts in accordance with subsection (2) of section 468K as foreign income dividends on shares paid on that distribution date by the target trust to its unit holders in proportion to their rights, that amount shall instead be treated for those purposes in accordance with that subsection (as it applies in relation to open-ended investment companies by virtue of these Regulations) as foreign income dividends on shares paid on that date by the acquiring company to those persons in proportion to their rights.

(3) In circumstances in which paragraph (1) or (2) applies where—

- (a) there is an amount of surplus advance corporation tax in relation to the accounting period of the acquiring company in which a post-transfer distribution date of the target trust falls, not being advance corporation tax which has been repaid to that company, and
- (b) that amount has not been dealt with under section 239(3),

the amount shall, subject to paragraph (4), be treated for the purposes of section 239(3) as if it were an amount of surplus advance corporation tax in relation to the post-transfer accounting period of the target trust.

(4) The aggregate amount of surplus advance corporation tax falling to be treated as mentioned in paragraph (3) in respect of the post-transfer accounting period of the target trust shall not exceed the aggregate amount of advance corporation tax paid in respect of dividends and foreign income dividends treated as paid by the acquiring company by virtue of paragraphs (1) and (2).

(5) For the purposes of sections 246J, 246N, 246P and 246Q, amounts treated by virtue of paragraph (2) as foreign income dividends paid on a distribution date by the acquiring company shall be treated as foreign income dividends paid by the target trust in its pre-transfer accounting period and not as foreign income dividends paid by the acquiring company.

(6) For the purposes of paragraph (5), section 246J shall have effect as if—

- (a) in subsection (4) the words from “or for the accounting period” to the end were omitted;
- (b) in subsection (5) the words from “and no such amount” to the end were omitted.

(7) In this regulation—

“post-transfer accounting period” in relation to a target trust means the accounting period of that trust which begins on the transfer date and ends, notwithstanding anything in section 12(1) to (7), on the post-transfer distribution date or, where there is more than one post-transfer distribution date, the latest such date;

“post-transfer distribution date” of a target trust means a distribution date of that trust which occurs on or after the transfer date and which is the distribution date for a distribution period of the trust ending before the transfer date.

Provisions supplementary to regulations 25 and 26

27.—(1) Nothing in regulations 25 and 26 shall have the effect for the purposes of the Tax Acts of enabling any—

- (a) set-off or matching of an amount to be made,
- (b) repayment of an amount of tax or payment of an amount of tax credit to be made, or
- (c) other relief to be given,

more than once in respect of the same amount or relief.

(2) The provisions of regulations 25 and 26 are without prejudice to any enactment of the Tax Acts which provides, where an officer of the Board discovers that a set-off, matching, repayment of tax, or payment of tax credit or provision for relief in any other form ought not to have been made, given or otherwise allowed, or is or has become excessive, for assessments to be made—

- (a) for recovering any tax that ought to have been paid,
- (b) for recovering any repayment of tax or payment of tax credit that ought not to have been made,
- (c) for withdrawing any relief that ought not to have been given, and
- (d) generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of—

(i) the target trust and the holders of units in the target trust, and

(ii) the acquiring company and the owners of shares in the acquiring company,

are what they would have been if only such set-offs, matchings, repayments, payments or provisions for relief had been made, given or otherwise allowed as ought to have been made, given or otherwise allowed.

Modifications of the Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994

28.—(1) The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994(22) (“the principal Regulations”) shall have effect in relation to open-ended investment companies as they have effect in relation to authorised unit trusts with the modifications specified in paragraphs (3) to (15).

(2) In paragraphs (3) to (15) “regulation”, except where the context otherwise requires, means a regulation of the principal Regulations.

(3) Regulation 2 shall be renumbered as paragraph (1) of that regulation.

(4) In regulation 2(1) for the definitions of “authorised unit trust” and “unit holder” there shall be substituted the following definition—

““authorised corporate director”, in relation to an open-ended investment company, has the meaning given by subsection (10) of section 468 of the Taxes Act without regard to the modification made by subsection (16) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;”.

(5) In regulation 2(1) after the definition of “interest distribution” there shall be inserted the following definitions—

““open-ended investment company”—

- (a) except as regards the reference to that expression in regulation 9(2)(a), has the meaning given by subsection (10) of section 468 of the Taxes Act without regard to the modifications made by subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;
- (b) as regards that reference, has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;

“owner of shares”, in relation to an open-ended investment company, has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsection (15) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;”.

(6) In regulation 2(1) after the definition of “the Tax Acts” there shall be added the following definition—

““umbrella company” has the meaning given by subsection (18) of section 468 of the Taxes Act, as that subsection is added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997, and references to a part of an umbrella company shall be construed in accordance with that subsection.”

(7) In regulation 2 after paragraph (1) there shall be added—

“(2) For the purposes of the definitions of “open-ended investment company” and “owner of shares” in paragraph (1), references in subsections (11) to (16) of section 468 of the Taxes Act (as added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997) to “the Tax Acts” shall be construed as if they included references to these Regulations.”

(8) In regulation 4 in the substituted section 468O(1) for the words “a unit holder” there shall be substituted the words “an owner of shares”.

(9) In regulation 5(b) in the substituted section 468P(2)(c) for the words “the trustees of the authorised unit trust” there shall be substituted the words “the open-ended investment company”.

(10) In regulation 6(2) for the words “a unit holder” there shall be substituted the words “an owner of shares”.

(11) In regulation 7(1)—

(a) for the words “the trustees of an authorised unit trust” there shall be substituted the words “an open-ended investment company”;

(b) for the words “that authorised unit trust” there shall be substituted the words “that company or, where the open-ended investment company concerned is an umbrella company, the part of that company in question”.

(12) In regulation 7(2)—

(a) for the words “the manager of an authorised unit trust” there shall be substituted the words “the authorised corporate director of an open-ended investment company”;

(b) for the words “that authorised unit trust” there shall be substituted the words “that company or, where the open-ended investment company concerned is an umbrella company, the part of that company in question”.

(13) In regulation 7(3) for the words “authorised unit trust” in both places where they occur there shall be substituted the words “open-ended investment company”.

(14) In regulation 8 for the words “The trustees or the manager of an authorised unit trust” there shall be substituted the words “An open-ended investment company or its authorised corporate director”.

(15) In regulation 9(2)—

(a) in sub-paragraph (a) for the words “the trustees of the authorised unit trust” there shall be substituted the words “the open-ended investment company”;

(b) in sub-paragraph (b) for the words “a unit holder” there shall be substituted the words “an owner of shares”.

3rd April 1997

Bowen Wells
Gyles Brandreth
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the tax treatment under the Tax Acts and the Taxation of Chargeable Gains Act 1992 (c. 12) (“the 1992 Act”) of open-ended investment companies (within the meaning of the Financial Services Act 1986 (c. 60)) which are incorporated in the United Kingdom. The Regulations secure that the Tax Acts and the 1992 Act have effect in relation to open-ended investment companies in the same manner as the manner in which they have effect in relation to authorised unit trusts. The Regulations achieve this effect principally by making modifications to those enactments.

The Regulations are in a number of Parts, of which Part I (comprising regulations 1 and 2) is introductory.

Part II (regulations 3 to 8) makes general provision, including modifications extending generally to the Tax Acts and the 1992 Act, for the tax treatment of open-ended investment companies to equate with that of authorised unit trusts.

Part III (regulations 9 to 13) makes specific modifications to the provisions of the Income and Corporation Taxes Act 1988 relating to authorised unit trusts.

Part IV (regulations 14 to 19) makes specific modifications to other provisions of the Tax Acts.

Part V (regulations 20 to 23) makes specific modifications to the 1992 Act.

Part VI (regulations 24 to 28) contains miscellaneous provisions. Regulation 24 makes provision relating to classes of shares of open-ended investment companies. Regulations 25 to 27 provide for the tax treatment applicable in the case of a conversion of an authorised unit trust to an open-ended investment company, or the merger of an authorised unit trust with an open-ended investment company to form an open-ended investment company. Regulation 28 provides that the provisions of the Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994 (S.I.1994/2318) shall have effect in relation to open-ended investment companies as they have effect in relation to authorised unit trusts with the modifications specified.