
STATUTORY INSTRUMENTS

1997 No. 1154

The Open-ended Investment Companies (Tax) Regulations 1997

PART VI

MISCELLANEOUS PROVISIONS

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)(1), 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

(1) 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.

(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.

(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)(2) (carry forward of franked investment income), or
- (c) section 246F(3)(3) (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(4) (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—

(2) 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.
(3) Sections 246A to 246Y were inserted by paragraph 1 of Schedule 16 to the Finance Act 1994.
(4) 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.

- (i) on the transfer date in writing to the acquiring company by the owner of the shares exchanged for the units in question, and
 - (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.