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STATUTORY INSTRUMENTS

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**1997 No. 1154**

**The Open-ended Investment Companies (Tax) Regulations 1997**

**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(1) 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(2) shall apply in relation to an open-ended investment company.”

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

“(4A) Section 75(3) 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—

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- (1) Sections 468A to 468D were repealed by section 52 of, and Part IV of Schedule 19 to, the Finance Act 1990, sections 468E and 468EE were repealed by paragraph 10(3) of Schedule 6, and Part V(1) of Schedule 41, to the Finance Act 1996, and sections 468F and 468G were repealed by paragraph 4 of Schedule 14, and Part V(13) of Schedule 26, to the Finance Act 1994.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

“(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;

“collective investment scheme” has the meaning given by section 75 of the Financial Services Act 1986(4);

“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.

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

(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)—

- (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(5) 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(6) 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—

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

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

“(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 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.