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STATUTORY INSTRUMENTS

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**1997 No. 1154**

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

**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)(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
- (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—

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(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.

(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.

- (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
    - (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(5) (“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”.