
STATUTORY INSTRUMENTS

2006 No. 964

The Authorised Investment Funds (Tax) Regulations 2006

PART 6

FURTHER PROVISIONS RELATING TO AUTHORISED INVESTMENT FUNDS

CHAPTER 1

GENERAL

Ownership of shares of different denominations in open-ended investment companies

76.—(1) This regulation applies if conditions A and B are met.

(2) Condition A is that 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.

(3) Condition B is that a participant owns both smaller denomination shares and larger denomination shares of that class.

(4) For the purposes of the provisions relating to ownership of shares in a company contained in the Tax Acts and TCGA 1992, the shares owned by the participant are treated as securities of the same class.

(5) Each larger denomination share is to be treated for those purposes as if it were comprised of the relevant number of smaller denomination shares.

(6) The market value of each smaller denomination share is to be taken for those purposes to be the relevant proportion of the market value of each larger denomination share.

(7) In this regulation—

“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;

“larger denomination shares” means shares to which are attached rights so specified that are expressed in the larger of two denominations;

“relevant number” means the number calculated by reference to the relevant proportion; and

“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.

Non-discrimination in respect of different classes of shares

77.—(1) This regulation applies if the distribution accounts show an amount as available for distribution to participants.

(2) There must not be any discrimination between participants in respect of different classes of shares.

(3) There is no such discrimination if condition A and either condition B or C is met.

(4) Condition A is that the differences are wholly attributable to differences between the amounts or treatment for accounting purposes of the charges or expenses which—

- (a) 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) or by the trust deed under which the authorised unit trust is constituted, and
- (b) are payable out of the scheme property of that authorised investment fund in respect of the shares of those classes.

(5) Condition B is that the authorised investment fund is able to show that the differences between the amounts or treatment for accounting purposes of the charges or expenses referred to in condition A apply for bona fide commercial reasons.

(6) Condition C is that the differences are not such as to enable the participants 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.

(7) In paragraph (6) “tax advantage” has the same meaning as in Chapter 1 of Part 17 of ICTA (cancellation of tax advantages from transactions in securities).

CHAPTER 2

AMALGAMATION OF AN AUTHORISED UNIT TRUST WITH, AND CONVERSION OF AN AUTHORISED UNIT TRUST TO, AN OPEN-ENDED INVESTMENT COMPANY

Circumstances in which this Chapter applies

78.—(1) This Chapter applies if, in connection with a scheme of reorganisation, conditions A to E are met.

(2) Condition A is that the whole of the scheme property of an authorised unit trust that is available for transfer is transferred on a given date under an arrangement to an open-ended investment company.

(3) Condition B is that the consideration under the arrangement consists of or includes the issue, on the transfer date, of shares in the acquiring company to the holders of units in the target trust in exchange for those units.

(4) Condition C is that the consideration shares are issued to the holders of units in proportion to their holdings of the exchanged units.

(5) Condition D is that 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.

(6) Condition E is that under the arrangement all the units in the target trust are extinguished.

(7) In this Chapter—

the “target trust” means the authorised unit trust mentioned in paragraph (2);

the “transfer date” means the given date mentioned in paragraph (2);

the “acquiring company” means the open-ended investment company mentioned in paragraph (2); and

“the whole of the scheme property of an authorised unit 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;

the “consideration shares” means the shares in the acquiring company mentioned in paragraph (4); and

the “exchanged units” means the units in the target trust mentioned in paragraph (4).

Ending of accounting period of the target trust

79.—(1) An accounting period of the target trust (the “pre-transfer accounting period”) ends immediately before the transfer date; and, for the purposes of the Corporation Tax Acts, the whole of the scheme property of the target trust that is available for transfer is treated as having been transferred immediately after the end of that accounting period.

(2) This regulation applies despite anything in section 12(1) to (7) of ICTA (periods of assessment for corporation tax).

Carrying forward of excess management expenses

80.—(1) This regulation applies if condition A or B is met.

(2) Condition A is that, in respect of the pre-transfer accounting period of the target trust, the trustees are entitled, under section 75(9) of ICTA⁽¹⁾ (carry forward of management expenses and sums treated as management expenses), to carry forward an excess amount to the next accounting period of the trust.

(3) Condition B is that—

- (a) the pre-transfer accounting period is the final accounting period of the target trust, and
- (b) the trustees are entitled, under section 75(9) of ICTA, to carry forward an excess amount to what would have been the next accounting period of the trust were the trust to have an accounting period beginning on the transfer date.

(4) With effect from the transfer date, the entitlement is translated into a right in the acquiring company to treat the amount as if it had been carried forward under section 75(9) of ICTA to the first of its accounting periods to end on or after the transfer date.

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

81.—(1) This regulation applies if, in respect of any post-transfer distribution date of the target trust, there is an amount which falls to be treated, in accordance with regulation 3.1.4 (dividend distributions: general), as dividends on shares paid on that distribution date by the target trust to its participants in proportion to their rights.

(2) The amount shall instead be treated as dividends on shares paid on that date by the acquiring company to those persons in proportion to their rights.

(3) In this regulation “post-transfer distribution date” of a target trust means a distribution date of that trust which—

- (a) occurs on or after the transfer date, and
- (b) is the distribution date for a distribution period of the trust ending before the transfer date.

Continuing validity of residence declarations

82.—(1) This regulation applies if—

- (a) before the transfer date, a unit holder has made a residence declaration to the trustees of the target trust, and
- (b) immediately before the transfer date, the trustees of the target trust treated the residence declaration as valid.

(1) Section 75 was substituted by section 38(1) of the Finance Act 2004 (c. 12).

- (2) The acquiring company may treat the residence declaration as valid.

Powers of the acquiring company

83.—(1) On and after the transfer date, the acquiring company has the powers set out in paragraphs (2) and (3).

- (2) The acquiring company may continue anything which—
- (a) immediately before the transfer 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
 - (b) is not continued by those trustees on or after the transfer date.
- (3) The acquiring company may do anything which—
- (a) immediately before the transfer date was not 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 is not done by them for those purposes, and
 - (b) might reasonably have been expected to be done by those trustees for those purposes had the scheme of reorganisation not taken place.

Assessments made on discovery

84. The provisions of this Chapter do not affect any enactment in the Tax Acts which provides for assessments to be made where an officer of the Commissioners 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.

Prevention of double relief

85. For the purposes of the Tax Acts, nothing in this Chapter has the effect of enabling—

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

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