

2021 No. 1270

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

**The Authorised Investment Funds (Tax) (Amendment)
Regulations 2021**

Made - - - - *15th November 2021*

Laid before the House of Commons *16th November 2021*

Coming into force - - *9th December 2021*

The Treasury, in exercise of the powers conferred by section 152 of the Finance Act 1995^(a) and sections 17(3) and 18 of the Finance (No. 2) Act 2005^(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2021 and come into force on 9th December 2021.

Amendment of the Authorised Investment Funds (Tax) Regulations 2006

2. The Authorised Investment Funds (Tax) Regulations 2006^(c) are amended as follows.

Amendments introducing long-term asset funds

3.—(1) In regulation 9A (the genuine diversity of ownership condition)^(d), after paragraph (8) insert—

“(8A) For the purposes of these Regulations, a long-term asset fund is treated as meeting the genuine diversity of ownership condition if—

(a) the fund’s prospectus was published on or before 9th December 2021, or

(a) 1995 c. 4; section 152 was amended by paragraph 13 of Schedule 19 to the Finance Act 1999 (c. 16), paragraph 288 of Schedule 1 to the Corporation Tax Act 2010 (2010 c. 4) and S.I. 2001/3629.
(b) 2005 c. 22; section 18 was amended by paragraph 605 of Schedule 1 to the Income Tax Act 2007 (c. 3), paragraph 669 of Schedule 1 to the Corporation Tax Act 2009 (c. 4), paragraph 22 of Schedule 6 to the Finance Act 2010 (c. 13), paragraph 124 of Schedule 16 to the Finance Act 2012 (c. 14), and paragraph 108 of Schedule 18 to the Financial Services Act 2021 (c. 21) and paragraph 136 of Schedule 46 to the Finance Act 2013 (c. 29).
(c) S.I. 2006/964 (“the principal Regulations”), relevantly amended by S.I. 2008/705, 2008/3159, 2009/2036, 2010/294, 2011/244, and 2011/2192.
(d) Regulation 9A was inserted by S.I. 2009/2036 and amended by S.I. 2010/294, 2011/244 and 2011/2192.

- (b) at least 70% of the shares or units in the fund are held by one or more relevant investors or by the manager of the fund in the capacity as manager.

(8B) In paragraph (8A), “relevant investor” means any of the persons specified in categories A to E.

(8C) Category A is the trustee or manager of—

- (a) an authorised unit trust scheme which meets the genuine diversity of ownership condition, or
- (b) a unit trust scheme which—
 - (i) is authorised under the law of a territory outside the United Kingdom in a way which makes it, under that law, the equivalent of an authorised unit trust scheme, and
 - (ii) meets conditions A to C or complies with paragraph (8).

(8D) Category B is a company—

- (a) which is an open-ended investment company which meets the genuine diversity of ownership condition, or
- (b) which—
 - (i) is incorporated under the law of a territory outside the United Kingdom and is, under that law, the equivalent of an open-ended investment company, and
 - (ii) meets conditions A to C or complies with paragraph (8).

(8E) Category C is a person acting in the course of a long-term insurance business (that is, the activity of effecting or carrying out contracts of long-term insurance within the meaning of the Financial Services and Markets (Regulated Activities) Order 2001(a)) where—

- (a) that person—
 - (i) is authorised under FISMA 2000(b) to carry on such business, or
 - (ii) has an equivalent authorisation under the law of a territory outside the United Kingdom to carry on such business, and
- (b) if that person is a company, it is not a close company.

(8F) Category D is a person who cannot be liable for corporation tax or income tax (as relevant) on the grounds of sovereign immunity.

(8G) Category E is the trustee, manager or administrator of a pension scheme (within the meaning given by section 150(1) of the Finance Act 2004(c)) other than an investment regulated pension scheme (within the meaning given by paragraphs 1 and 2 of Schedule 29A to that Act).

(8H) For the purposes of paragraph (8E)(b) (category C), in applying the rules in Chapter 2 of Part 10 of CTA 2010 to determine whether a company is “a close company”, section 442(a) (non-UK resident companies) is to be treated as omitted.”.

(2) After Part 2A(d) insert—

(a) S.I. 2001/544, relevantly amended by S.I. 2005/2114 and 2015/575. “Contracts of long-term insurance” are defined in regulation 3(1) of, and Part 2 of Schedule 1 to, S.I. 2001/544.

(b) 2000 c. 8. “FISMA 2000” is defined in Part 1 of the Schedule to the principal Regulations as the Financial Services and Markets Act 2000.

(c) 2004 c. 12, section 150 was amended by section 53(1) of the Finance Act 2013 and paragraph 1(2) of Schedule 3 to the Finance Act 2018 (c. 3).

(d) Part 2A was inserted by S.I. 2008/3159.

**“PART 2AA
LONG-TERM ASSET FUNDS**

Tax treatment of long-term asset funds

14DA.—(1) The provisions in paragraph (2) do not apply to a long-term asset fund in relation to an accounting period of the fund unless the genuine diversity of ownership condition is met in relation to that accounting period.

(2) The provisions referred to in paragraph (1) are—

- (a) the provisions of Part 2 of these Regulations,
- (b) the provisions of Part 4 of these Regulations,
- (c) the provisions of Part 4A of these Regulations(a),
- (d) in section 99(1) of TCGA 1992(b), the words from “except that nothing in this section” to the end of that subsection,
- (e) section 100 of TCGA 1992(c),
- (f) where the fund is an open-ended investment company, section 614 of CTA 2010(d), and
- (g) where the fund is an authorised unit trust, section 618 of CTA 2010(e).

(3) Where the genuine diversity of ownership condition is not met in relation to an accounting period of the fund—

- (a) Part 3A of CTA 2010 (companies with small profits)(f) does not apply, and
- (b) the total amount shown in the distribution accounts available for distribution to participants must only be shown as available for distribution in accordance with paragraph (1)(b) of regulation 17 (allocation of income for distribution as dividends).

(4) In these Regulations, a “long-term asset fund” means an authorised investment fund whose instrument constituting the fund contains a statement that the fund is a long-term asset fund.”.

(3) In the heading to regulation 51 (participants chargeable to corporation tax: holdings in qualified investment schemes where the scheme does not meet the genuine diversity of ownership condition)(g), after “schemes” insert “and long-term asset funds”.

(4) In regulation 51(1)(a), after “scheme” insert “or a long-term asset fund”.

(5) In Part 2 of the Schedule, after the entry for “Loan creditor condition (in Part 4B)”(h) insert—

“Long-term asset fund	Regulation 14DA(4)”
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Amendment to regulation 14B (tax treatment of qualified investor schemes)

4. In regulation 14B(3)(i)—

(a) Part 4A was inserted by S.I. 2008/705.
(b) 1992 c. 12; section 99(1) was amended by paragraph 96 of Schedule 46 to the Finance Act 2013.
(c) Section 100 was amended by section 72(2) of the Finance Act 1995, section 20 of the Finance (No. 2) Act 2005, paragraph 74 of Schedule 16 and paragraph 15 to Schedule 18 to the Finance Act 2012 and S.I. 2013/2819.
(d) Section 614 was amended by paragraph 15(2) of Schedule 1 to the Finance Act 2014 (c. 26) and, with effect for the financial year 2023 and subsequent financial years, by paragraph 27 of Schedule 1 to the Finance Act 2021 (c. 26).
(e) Section 618 was amended by paragraph 15(3) of Schedule 1 to the Finance Act 2014 and, with effect for the financial year 2023 and subsequent financial years, by paragraph 28 of Schedule 1 to the Finance Act 2021.
(f) Part 3A was inserted by paragraph 3 of Schedule 1 to the Finance Act 2021 and has effect for the financial year 2023 and subsequent financial years.
(g) Regulation 51 was substituted by S.I. 2008/3159 and amended by S.I. 2009/2036.
(h) This entry was inserted by S.I. 2009/2036.
(i) Regulation 14B was inserted by S.I. 2008/3159 and amended by S.I. 2009/2036 and 2010/294.

- (a) omit sub-paragraph (a), and
- (b) after sub-paragraph (b) insert—
 - “, and
- (c) Part 3A of CTA 2010 (companies with small profits) does not apply.”.

James Morris
Rebecca Harris

15th November 2021

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (“the principal Regulations”) to make provision for the tax treatment of a new type of authorised investment fund called a long-term asset fund and make provision in relation to the application of Part 3A of the Corporation Tax Act 2010 (“CTA 2010”) to qualified investor schemes.

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments.

Regulation 3 makes amendments in relation to long-term asset funds. Paragraph (1) amends the genuine diversity of ownership condition in regulation 9A of the principal Regulations to treat that condition as being satisfied if the fund published its prospectus before these Regulations come into force on 9th December 2021 or if at least 70% of the units in the fund are held by specified investors. Paragraph (2) inserts new Part 2AA into the principal Regulations, which includes the definition of a long-term asset fund and sets out the consequences if the fund does not meet the genuine diversity of ownership condition. Paragraphs (3) to (5) make consequential amendments.

Regulation 4 omits a repealed provision and disapplies Part 3A of CTA 2010 (companies with small profits) to a qualified investor scheme that does not meet the genuine diversity of ownership scheme.

A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.