
STATUTORY INSTRUMENTS

2008 No. 3159

**The Authorised Investment Funds (Tax)
(Amendment No. 3) Regulations 2008**

Insertion of Part 2A

11. After regulation 14A(1) (authorised investment funds with limited investment powers – stamp duty reserve tax) insert the following Part—

“PART 2A

Qualified Investor Schemes

Tax treatment of qualified investor schemes

14B.—(1) The provisions in paragraph (2) shall not apply to a qualified investor scheme in relation to an accounting period of the scheme unless the genuine diversity of ownership condition (see regulation 14C) 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 4A of these Regulations,
- (c) where the qualified investor scheme is an authorised unit trust scheme, section 468(1A) of ICTA(2),
- (d) where the qualified investor scheme is an open-ended investment company, section 468A(1) of ICTA (3),
- (e) in subsection (1) of section 99 of TCGA 1992(4) (as modified by these Regulations) the words “except that nothing in this section” to the end of that subsection, and
- (f) section 100 of TCGA 1992(5).

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

-
- (1) Regulation 14A was inserted by regulation 10 of the Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008.
 - (2) 1988, c. 1. Subsection (1A) was inserted in relation to any accounting period ending after 31 March 1996, by section 73 of, and paragraph 10 of Schedule 6 to, the Finance Act 1996 (c. 8). It was amended by section 5(7) of, and paragraphs 40 and 41 of Schedule 1 to, the Finance Act 2008 (c. 9).
 - (3) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22).
 - (4) 1992, c. 12. Section 99 was amended by regulation 20 of the Open-ended Investment Companies (Tax) Regulations 1997, SI 1997/1154; articles 62 and 62 of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001, SI 2001/3629; section 118 of the Finance Act 2004 (c. 12); and regulations 97–105 of the Authorised Investment Funds (Tax) Regulations 2006, SI 2006/964.
 - (5) Section 100 was amended by section 72(2) of the Finance Act 1995 (c. 4); subsections (2A) and (2B) were inserted by section 20 of the Finance (No. 2) Act 2005 with effect for 2005-06 and subsequent tax years.

- (a) section 13A of ICTA (6) applies to the qualified investor scheme, whether or not that section would apply apart from this sub-paragraph; 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 (contents of distribution accounts).
- (4) In these Regulations a “qualified investor scheme” means a fund, authorised by the Financial Services Authority, in which a statement that the fund is a qualified investor scheme is included in the instrument constituting the scheme.
- (5) For the purposes of these Regulations, in relation to a qualified investor scheme, the “instrument constituting the scheme” means—
- (a) in relation to an open-ended investment company, the instrument of incorporation, and
 - (b) in relation to an authorised unit trust scheme, the trust deed.

The genuine diversity of ownership condition

14C.—(1) The genuine diversity of ownership condition is that the qualified investor scheme must—

- (a) meet Conditions A to D throughout the accounting period; or
 - (b) comply with paragraph (9).
- (2) Condition A is that the scheme documents—
- (a) contain a statement that units in the scheme will be widely available,
 - (b) specify the intended categories of investor, and
 - (c) specify that the manager of the scheme must market and make available the units in the scheme in accordance with condition C.
- (3) Condition B is that neither—
- (a) the specification of the intended categories of investor referred to in paragraph (2) (b), nor
 - (b) any other terms or conditions governing participation in the scheme, whether or not specified in the scheme documents,
- have the effect of—
- (i) limiting investors to a limited number of specific persons or specific groups of connected persons, or
 - (ii) deterring a reasonable investor within the intended categories of investor from investing in the scheme.
- (4) Condition C is that units in the scheme must be marketed and made available—
- (a) sufficiently widely to reach the intended categories of investors, and
 - (b) in a manner appropriate to attract those categories of investors.
- (5) Condition C is subject to paragraph (8).
- (6) Condition D is that a person who is within one of the categories of intended investor in the scheme which have been specified in accordance with condition A may, upon request to the manager of the scheme, obtain information about the scheme and acquire units in it.

(6) Section 13A was inserted, in relation to accounting periods beginning after 31 March 1989, by section 105(2) of the Finance Act 1989 (c. 26). It was amended by section 28(2) of the Finance Act 1999 (c. 16); sections 26(3), 178 and Part 3 of Schedule 26 to the Finance Act 2006 (c. 25); and regulation 48 of the Tax and Civil Partnership Regulations 2005, SI 2005/3229.

- (7) Condition D is subject to paragraph (8).
- (8) Conditions C and D shall be treated as being met even if at the relevant time the scheme has no capacity to receive additional investments, unless—
- (a) the capacity of the scheme to receive investments in it is fixed by the scheme documents (or otherwise); and
 - (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the scheme which collectively exhausts all, or substantially all, of that capacity.
- (9) The qualified investor scheme also meets the genuine diversity of ownership condition if—
- (a) an investor in the scheme is a unit trust scheme (a “feeder fund”),
 - (b) paragraphs (2) to (8) are met in relation to the qualified investor scheme after taking into account the intended investors in the feeder fund, and
 - (c) the qualified investor scheme and the feeder fund have the same manager (or proposed manager).
- (10) For the purposes of this regulation—
- (a) sections 993 and 994 of ITA 2007⁽⁷⁾ (connected persons) apply in the case of a person chargeable to income tax, and
 - (b) section 839 of ICTA ⁽⁸⁾ (connected persons) applies in the case of a person chargeable to corporation tax.
- (11) In this regulation “scheme documents” means—
- (a) the instrument constituting the scheme, and
 - (b) the scheme’s prospectus in issue for the time being (including any supplements to the prospectus).

Clearance in relation to the genuine diversity of ownership condition

14D.—(1) An application for clearance that a qualified investor scheme meets the genuine diversity of ownership condition (see regulation 14C) may be made in writing to HM Revenue and Customs by the manager (or proposed manager) of a qualified investor scheme.

(2) An application for clearance must be accompanied by the instrument constituting the scheme and its prospectus in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the scheme for which clearance is sought.

(3) The Commissioners may require the manager (or proposed manager) to provide further particulars if they believe that full particulars of the scheme have not been provided.

(4) The Commissioners must notify the applicant within 28 days of the receipt of the particulars (or, if paragraph (3) applies, of all further particulars required) that they—

- (a) give clearance that the scheme meets the genuine diversity of ownership condition;
- (b) give that clearance subject to conditions; or

(7) 2007, c. 3.

(8) 1988, c. 1. Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4), paragraph 25 of Schedule 13 to the Finance Act 2006 (c. 25) and paragraph 223 to Schedule 1 to the Income Tax Act 2007 (c. 3) and by S.I. 1988/745 and 2005/3229.

(c) refuse to give that clearance.

(5) The qualified investor scheme (and investors in that scheme) may not rely on a clearance given under this regulation if—

- (a) at the beginning of the first accounting period of the scheme to which the clearance relates (and at the beginning of each subsequent accounting period), a relevant statement in the instrument constituting the scheme or in its prospectus in issue for the time being is not in accordance with a relevant statement in the documents considered by the Commissioners before giving clearance;
- (b) the scheme acts or is operated in contravention of a relevant statement in the instrument constituting the scheme or in its prospectus in issue for the time being;
- (c) the instrument constituting the scheme or the scheme's prospectus in issue for the time being is materially amended; or
- (d) the scheme is operated otherwise than in accordance with condition C or D of the genuine diversity of ownership condition.

(6) But paragraph (5)(c) does not apply if the manager of the scheme has obtained a clearance given under this regulation which applies to the amendment.

(7) For the purposes of paragraph (5)(c), a material amendment is one that may reasonably be construed as causing, or likely to cause, the scheme to fail to meet the genuine diversity of ownership condition in relation to any accounting period.”