



Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 3

AUTHORISED INVESTMENT FUNDS ETC

^{F1}16 Open-ended investment companies

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Textual Amendments

^{F1} S. 16 repealed (1.4.2010, with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), [Sch. 3 Pt. 1](#) (with Sch. 2)

17 Authorised unit trusts and open-ended investment companies

- (1) The following provisions shall cease to have effect—
 - (a) sections 468H to 468Q of ICTA (authorised unit trusts),
 - ^{F2}(b)
 - ^{F2}(c)
 - (d) section 373(4) and (6) of ITTOIA 2005 (open-ended investment company: interest distributions), and
 - (e) section 376(4) and (6) of ITTOIA 2005 (authorised unit trust: interest distributions).
- (2) In this Chapter “authorised investment funds” means—
 - (a) authorised unit trust schemes, and

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- (b) open-ended investment companies.
- (3) The Treasury may, by regulations—
- (a) make provision about the treatment of authorised investment funds for the purposes of an enactment relating to taxation;
 - (b) provide for the modification of an enactment relating to taxation in its application in relation to—
 - (i) authorised investment funds,
 - (ii) shareholders or unit holders in authorised investment funds, or
 - (iii) transactions involving authorised investment funds;
 - (c) impose requirements on persons responsible for the management of an authorised investment fund in relation to the provision of information, the form of accounts, the keeping of records or other administrative matters.
- (4) For the purposes of this Chapter—
- (a) “unit trust scheme” has the meaning given by section 237 of the Financial Services and Markets Act 2000 (c. 8),
 - (b) a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of the Financial Services and Markets Act 2000 is in force in relation to that scheme during the whole or part of that accounting period,
 - (c) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme,
 - (d) a reference to a shareholder or unit holder includes a person beneficially entitled to shares or units (and a reference to owning units or shares shall be construed accordingly),
 - (e) “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies,
 - (f) “associate” has the meaning given by section 417 of ICTA,
 - (g) “net asset value” means the value of the assets of the authorised investment fund, after the deduction of specified liabilities,
 - (h) a reference to a distribution includes investing an amount on behalf of a unit holder or shareholder in respect of his accumulation units or accumulation shares,
 - (i) “distribution accounts” means accounts showing—
 - (i) the total amount available for distribution to unit holders or shareholders, and
 - (ii) how that amount is computed,
 - (j) the “distribution date” for a distribution period in relation to an authorised investment fund means—
 - (i) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or
 - (ii) if no date is specified, the last day of that distribution period,
 - (k) “distribution period” in relation to an authorised investment fund means a period by reference to which the total amount available for distribution to unit holders or shareholders is ascertained,
 - (l) “umbrella company” has the meaning given by ^{F3}section 615 of the Corporation Tax Act 2010],

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- (m) “umbrella scheme” has the meaning given by [F⁴section 619 of the Corporation Tax Act 2010], and
- (n) [F⁵section 1122 of the Corporation Tax Act 2010] (connected persons) applies.

Textual Amendments

- F2** S. 17(1)(b)(c) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))
- F3** Words in s. 17(4)(l) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(a)** (with [Sch. 2](#))
- F4** Words in s. 17(4)(m) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(b)** (with [Sch. 2](#))
- F5** Words in s. 17(4)(n) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 479(c)** (with [Sch. 2](#))

Commencement Information

- I1** S. 17 partly in force; s. 17(2)-(4) in force at Royal Assent, see s. 19(1)
- I2** S. 17(1) in force at 1.4.2006 for the purposes of corporation tax, with effect as specified in art. 2(3) of the commencing S.I. and 6.4.2006 for the purposes of income tax, with effect as specified in art. 2(2) of the commencing S.I. by [S.I. 2006/982](#), **art. 2**

18 Section 17(3): specific powers

- (1) Regulations under section 17(3)(a) or (b) may make provision about distributions which may, in particular—
 - (a) require an authorised investment fund to comply with prescribed rules for determining (whether by reference to a formula or otherwise) what proportion of an amount shown in distribution accounts as available for distribution is to be distributed by way of dividends and what proportion is to be distributed by way of yearly interest;
 - (b) permit persons responsible for the management of an authorised investment fund to elect to distribute entirely by way of dividends;
 - (c) require distribution accounts to show the amount available for distribution—
 - (i) by way of dividends;
 - (ii) by way of yearly interest;
 - (d) allow a distribution of yearly interest for a distribution period to be deducted, in the prescribed manner, in computing the profits of the authorised investment fund for the accounting period in which the last day of that distribution period falls;
 - (e) make provision for determining the distribution date in relation to a distribution period of an authorised investment fund;
 - (f) permit distributions to be made, in prescribed circumstances, to or for the benefit of a person not ^{F6}... resident in the United Kingdom without deducting tax;
 - (g) permit distributions to be made without deducting tax, in prescribed circumstances, to a person ^{F6}... resident in the United Kingdom who is unlikely to be liable to pay an amount by way of income tax for the year of assessment in which the distribution is made;
 - (h) include provision, in respect of a unit holder or shareholder who is within the charge to corporation tax, about—

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- (i) the liability to corporation tax resulting from receipt of a distribution, and
 - (ii) the method of computing that liability.
- (2) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision for loan relationships held by an authorised investment fund;
 - (b) make special provision for derivative contracts held by an authorised investment fund;
 - [^{F7}(c) modify the meaning of “relevant holding” for the purposes of—
 - (i) sections 490 and 492 of the Corporation Tax Act 2009 (loan relationships), and
 - (ii) section 587 of that Act (derivative contracts).]
 - (d) make special provision in relation to the treatment of umbrella companies and umbrella schemes (or shareholders or unit holders in umbrella companies or umbrella schemes);
 - (e) prohibit action which favours a class of unit holders or shareholders.
- (3) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision in relation to a person who, alone or together with associates or connected persons, owns (otherwise than as a nominee) units or shares, in a fund designated by the [^{F8}Financial Conduct Authority] as a Qualified Investor Scheme, which represent 10% or more (or such other percentage as the regulations may specify) of the net asset value of the fund;
 - (b) include exceptions from provision made by virtue of paragraph (a) above including, in particular, an exception relating to units or shares held—
 - (i) by a charity ^{F9} ...,
 - (ii) by a registered pension scheme (within the meaning of section 150 of FA 2004),
 - [^{F10}(iii) by an insurance company (within the meaning of section 65 of FA 2012) as assets for the purposes of its long-term business (within the meaning of section 63 of that Act),]or
 - (iv) by such other persons, in such circumstances, as the regulations may specify.
- (4) Regulations under section 17(3)(c) may, in particular, require persons responsible for the management of an authorised investment fund to supply information to, and make available books, documents and other records for inspection by, the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under section 17(3) may, in particular—
- (a) amend a reference in an enactment to a provision repealed by section 17(1);
 - (b) make different provision for different circumstances;
 - (c) make incidental, consequential, supplemental or transitional provision.

Textual Amendments

- F6** Word in s. 18(1)(f)(g) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 136](#)
- F7** S. 18(2)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 669](#) (with [Sch. 2 Pts. 1, 2](#))

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- F8** Words in s. 18(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 108](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F9** Words in s. 18(3)(b)(i) omitted (1.4.2012) by virtue of [Finance Act 2010 \(c. 13\), Sch. 6 paras. 22, 34\(2\)](#); [S.I. 2012/736, art. 16](#)
- F10** S. 18(3)(b)(iii) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\), Sch. 16 para. 124](#)

19 Section 17: commencement and procedure

- (1) Section 17(1) shall come into force on such day as the Treasury may appoint by order.
- (2) An order under subsection (1) may—
- (a) commence only a specified repeal;
 - (b) commence different repeals at different times;
 - (c) commence a repeal at different times for different purposes;
 - (d) include savings.
- (3) Regulations under section 17(3) shall be subject to annulment by a resolution of the House of Commons.
- (4) But the first set of regulations under section 17(3) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

20 Unauthorised unit trusts: chargeable gains

- (1) Section 100 of TCGA 1992 (exemption for authorised unit trusts, etc) shall be amended as follows.
- (2) After subsection (2) insert—
- “(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—
- (a) have been disposed of by a unit holder, and
 - (b) are held by the managers of the scheme (in that capacity) pending disposal.
- (2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—
- (a) an insurance company (within the meaning given by section 431 of the Taxes Act), or
 - (b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act).”

(3) This section shall have effect for the year 2005-06 and subsequent years of assessment.

21 Unit trusts: treatment of accumulation units

- (1) In Chapter 3 of Part 3 of TCGA 1992 (collective investment schemes, etc) after section 99A insert—

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“99B Calculation of the disposal cost of accumulation units

- (1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1) (b) if—
 - (a) it represents income from the investments subject to the unit trust scheme,
 - (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
 - (c) it is either—
 - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
 - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.
- (2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—
 - (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
 - (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.
- (3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by section 468H of the Taxes Act.”

(2) This section shall have effect in relation to a disposal of units on or after 16th March 2005.

22 Section 349B ICTA: exemption for distributions to PEP/ISA managers

- (1) Section 349B(4) of ICTA (requirement for individual to be entitled to income tax exemption) shall be amended as follows.
- (2) In paragraph (a) after “of a plan” insert “ of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply ”.
- (3) Paragraph (b) shall cease to have effect.
- (4) This section shall have effect in relation to payments made on or after 6th April 2005.

^{F11}23 Offshore funds

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Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Chapter 3. (See end of Document for details)

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Textual Amendments

- F11** S. 23 repealed (with effect in accordance with reg. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

Changes to legislation:

There are currently no known outstanding effects for the Finance (No. 2) Act 2005, Chapter 3.