
STATUTORY INSTRUMENTS

2006 No. 964

The Authorised Investment Funds (Tax) Regulations 2006

PART 4

**THE TREATMENT OF PARTICIPANTS
IN AUTHORISED INVESTMENT FUNDS**

CHAPTER 1

PRELIMINARY PROVISIONS

Structure of this Part

- 24.** The structure of this Part of these Regulations is as follows—
- this Chapter contains preliminary provisions;
 - Chapter 2 contains provisions relating to the tax treatment of participants chargeable to income tax;
 - Chapter 3 contains provisions relating to the tax treatment of participants chargeable to corporation tax;
 - Chapter 4 imposes a charge to tax on substantial QIS holdings in qualified investor schemes.

Funds excluded from the ambit of this Part

- 25.** This Part does not apply to an authorised investment fund if the fund—
- (a) is a registered pension scheme within the meaning of Part 4 of the Finance Act 2004⁽¹⁾, or
 - (b) is treated, under paragraph 1(1) of Schedule 36 to that Act, as having become such a scheme.

CHAPTER 2

PARTICIPANTS CHARGEABLE TO INCOME TAX

Deduction of tax from interest distributions: general

Deduction of tax where interest distributions made

- 26.—**(1) This regulation applies if an interest distribution is made for a distribution period to a participant chargeable to income tax.
- (2) Any obligation to deduct a sum under section 349(2) of ICTA⁽²⁾ is subject to the provisions of this regulation.

⁽¹⁾ 2004 c. 12.

⁽²⁾ Section 349(2) was amended by paragraph 1(2) of Schedule 11 to the Finance Act 1991 (c. 31), paragraph 18 of Schedule 14 to the Finance Act 1996 (c. 8) and paragraph 148(2) of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

- (3) In this Part the “deduction obligation” means the obligation specified in paragraph (2).
- (4) The deduction obligation does not apply to the interest distribution if—
- (a) the participant is a company;
 - (b) the participant consists of the trustees of a unit trust scheme;
 - (c) the reputable intermediary condition is met with respect to a participant on the distribution date (see regulation 27);
 - (d) the residence condition is met with respect to a participant on the distribution date (see regulation 30); or
 - (e) the non-liability condition is met with respect to a participant on the distribution date (see regulation 34).
- (5) But if the participant is a company which is the trustee of the trust to which (or under which) the interest distribution is made (or received), the deduction obligation is not excluded by virtue of paragraph (4)(a).
- (6) In its application to an interest distribution to a participant in respect of accumulation units, the deduction obligation is an obligation to deduct a sum out of the amount being credited to scheme capital on the participant’s behalf.

The reputable intermediary condition

The reputable intermediary condition

- 27.**—(1) The reputable intermediary condition is met with respect to a participant on the distribution date if conditions A to C are met.
- (2) Condition A is that the interest distribution is paid on behalf of the participant to a company.
- (3) Condition B is that the legal owner has reasonable grounds for believing that the participant is not ordinarily resident in the United Kingdom.
- (4) Condition C is that the company mentioned in paragraph (2)—
- (a) is subject to the EC Money Laundering Directive,
 - (b) is subject to equivalent non-EC provisions, or
 - (c) is a company which—
 - (i) is resident in a regulating country or territory, and
 - (ii) is an associated company of a company which is subject to paragraph (a) or (b).

The reputable intermediary condition: further provisions

- 28.**—(1) This regulation applies for the purposes of Condition C in regulation 27.
- (2) A company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive [91/308/EEC](#), as amended by Directive [2001/97/EC](#).
- (3) A company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.
- (4) A country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(5) A company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 of ICTA (close companies) (see section 416 of that Act).

Consequences of reasonable but incorrect belief

29.—(1) This regulation applies if conditions A to D are met.

(2) Condition A is that an interest distribution is made to a participant.

(3) Condition B is that the legal owner, in reliance on the reputable intermediary condition being met with respect to the participant, does not comply with the deduction obligation in relation to the interest distribution.

(4) Condition C is that the deduction obligation would apply but for the reputable intermediary condition being met.

(5) Condition D is that (contrary to the belief of the legal owner) the participant is in fact ordinarily resident in the United Kingdom.

(6) Section 350 of ICTA⁽³⁾ (charge to tax where payments made under section 349) and Schedule 16 to that Act⁽⁴⁾ (collection of income tax on company payments which are not distributions) have effect as if the deduction obligation applied.

The residence condition

The residence condition

30.—(1) The residence condition is met with respect to a participant on the distribution date if any of conditions A to E is met.

(2) Condition A is that, in relation to an interest distribution which is not made to or received under a trust, there is a valid declaration, made by the participant, that the participant is not ordinarily resident in the United Kingdom.

(3) Condition B is—

- (a) that the participant holds the units as the personal representative of a deceased person, and
- (b) that the deceased, before his death, made a declaration, valid at the time of his death, that he was not ordinarily resident in the United Kingdom.

(4) Condition C is—

- (a) that the participant holds the units as the personal representative of a deceased person, and
- (b) that the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.

(5) Condition D is that, in the case of an interest distribution made to or received under a trust where the whole of the income is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the trustees of that trust, there is a valid declaration, made by the person in question that he is either not ordinarily resident or, in the case of a company, not resident in the United Kingdom.

(6) Condition E is that, in circumstances in which condition D does not apply and with respect to a participant in the case of an interest distribution made to or received under a trust, there is a valid declaration, made by the trustees of that trust that—

(3) Section 350 was amended by paragraph 8 of Schedule 6 to the Finance Act 1996 and section 96(2) of the Finance Act 2002.

(4) Schedule 16 was amended by section 149(3)(d) of the Finance Act 1989 (c. 26), Part II of Schedule 23 to the Finance Act 1996, section 91 of the Finance Act 1999 (c. 16) and paragraph 19 of Part 1 of Schedule 3 to the [Debt Arrangement and Attachment \(Scotland\) Act 2002](#) (asp. 17).

- (a) the trustees are not resident in the United Kingdom, and
- (b) each beneficiary of the trust is either not ordinarily resident or, in the case of a beneficiary which is a company, not resident in the United Kingdom.

Residence declarations

- 31.**—(1) A declaration made for the purposes of regulation 30 must—
- (a) be in such form as may be required or authorised by the Commissioners;
 - (b) be made in writing to the legal owner of the authorised investment fund in question; and
 - (c) contain any details or undertakings required by paragraphs (2) to (4) below.
- (2) A declaration made for the purposes of condition A or B in regulation 30 must contain—
- (a) the name and principal residential address of the person making it; and
 - (b) an undertaking that he will notify the legal owner if he becomes ordinarily resident in the United Kingdom.
- (3) A declaration made for the purposes of condition C in regulation 30 must contain the name of the deceased and his principal residential address immediately before his death.
- (4) A declaration made for the purposes of condition D or E in regulation 30 must contain—
- (a) the names and principal residential addresses of the trustees of the trust or, in the case of a trustee which is a company, the name of the company and the address of its registered or principal office;
 - (b) the names and principal residential addresses of the beneficiaries of the trust or, in the case of a beneficiary which is a company, the name of the company and the address of its registered or principal office; and
 - (c) an undertaking that the trustees of the trust will notify the legal owner of the authorised investment fund in question if—
 - (i) they become resident in the United Kingdom,
 - (ii) any beneficiary of the trust named in the declaration becomes ordinarily resident or, in the case of a company, resident in the United Kingdom, or
 - (iii) any person who becomes a beneficiary of the trust after the making of the declaration either is at the time of becoming a beneficiary, or subsequently becomes, ordinarily resident or, in the case of a company, resident in the United Kingdom.

References to beneficiaries in regulations 30 and 31

- 32.** In regulations 30 and 31 references to a beneficiary are references to any person who is known to the trustees of the trust to be either—
- (a) a person who is or will or may become, entitled to any income of the trust, whether in the form of income or not, or
 - (b) a person to whom any such income may be paid, or for whose benefit any such income may be applied, whether in the form of income or not, in the exercise of a discretion by them.

Interest distributions: the position of the legal owner

33.—(1) For the purposes of determining whether an interest distribution should be made with or without any deduction, the legal owner is entitled to treat a declaration made for the purposes of regulation 30 as valid.

- (2) But the legal owner may not treat a declaration as valid if condition A or B is met.

(3) Condition A is that the legal owner receives a notification in compliance with an undertaking under regulation 31 that a person in question has become resident or ordinarily resident in the United Kingdom.

(4) Condition B is that the legal owner comes into possession of information by some other means which indicates that such a person is or may be resident or ordinarily resident in the United Kingdom.

The non-liability condition

The non-liability condition

34.—(1) The non-liability condition is met with respect to a participant on the distribution date if conditions A and B are met.

(2) Condition A is that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(3) Condition B is that a qualifying certificate has been given to the legal owner of the authorised investment fund.

(4) A qualifying certificate must be signed by the person giving it.

Qualifying certificates

35. For the purposes of these Regulations a “qualifying certificate” means a certificate that meets the following conditions—

- (a) the contents condition (see regulation 36);
- (b) the supplier condition (see regulation 37);
- (c) the time limit condition (see regulation 38);
- (d) the continuing validity condition (see regulation 39);
- (e) the qualifying circumstances condition (see regulation 40); and
- (f) if applicable, the joint holding condition (see regulation 41).

The contents condition

36.—(1) The contents condition is met if conditions A to C are met.

(2) Condition A is that the certificate contains a statement to the effect that the person beneficially entitled to the interest distribution is unlikely to be liable to pay any amount by way of income tax for the tax year in which the payment is made.

(3) Condition B is that the certificate contains an undertaking by the person giving it to notify the legal owner if the person beneficially entitled to the interest distribution becomes liable to pay any amount by way of income tax for the tax year in which the interest distribution is made.

(4) Condition C is that the certificate contains the following further three items of information.

(5) Item 1 is the name, permanent residential address including postcode, and date of birth of the person beneficially entitled to the payment.

(6) Item 2 is the national insurance number of an individual within paragraph (5)—

- (a) who is aged 16 or over at the beginning of the year in which the payment is made, and
- (b) who, at any time within the period of three years ending with the date on which a certificate is signed, has been liable to pay Class 1 or Class 2 contributions within the meaning of—

- (i) section 1(2) of the Social Security Contributions and Benefits Act 1992⁽⁵⁾, or
- (ii) section 1(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁶⁾.

The Commissioners may indicate in a particular case that this item of information is not required.

(7) Item 3 is the following details relating to the participant's holding of units in the authorised investment fund to which the certificate relates—

- (a) the name of the authorised investment fund,
- (b) the name of the fund manager, and
- (c) the reference number relating to the participant (if any).

The supplier condition

37.—(1) The supplier condition is met if the person giving the certificate is a person within any of categories A to G below.

(2) Category A is an individual who is—

- (a) aged 16 or over at the beginning of the tax year in which the interest distribution is made, and
- (b) beneficially entitled to the interest distribution.

(3) Category B is the parent or guardian of a person beneficially entitled to the payment if that person is under the age of 16 at the beginning of the tax year in which the interest distribution is made.

(4) Category C is an individual beneficially entitled to the payment who is under the age of 16 at the beginning of the tax year in which the interest distribution is made, but will reach that age during that tax year.

(5) Category D is the donee of a power of attorney authorising that person to administer the financial affairs of a person beneficially entitled to the payment.

(6) Category E is a parent, guardian, spouse or son or daughter of a person suffering from mental disorder.

(7) Category F is a receiver or other person appointed by any court in the United Kingdom to act in relation to the property and affairs of a person incapable, by reason of mental disorder, of managing and administering his property and affairs.

(8) Category G is a person—

- (a) appointed by the Secretary of State under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations 1987⁽⁷⁾, whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation, or
- (b) in Northern Ireland, appointed by the Department for Social Development under paragraph (1) of regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987⁽⁸⁾, whose appointment has not been revoked or terminated, or who has not resigned his office, in accordance with paragraph (2) of that regulation.

⁽⁵⁾ 1992 c. 4.

⁽⁶⁾ 1992 c. 7.

⁽⁷⁾ S.I. 1987/1968.

⁽⁸⁾ S.R. (NI) 1987 No. 465.

The time limit condition

38.—(1) The time limit condition is met if the certificate is given to the legal owner by the specified time.

(2) In the cases of all categories specified in regulation 37 except for category C, the specified time is the end of the tax year in which the interest distribution is made.

(3) In the case of category C in regulation 37, the specified time is the end of the tax year in which the individual beneficially entitled to the interest distribution reaches the age of 16.

The continuing validity condition

39.—(1) The continuing validity condition is met if the qualifying certificate continues in full force and effect and has not ceased to be valid.

(2) The qualifying certificate ceases to be valid in circumstances A to E.

(3) Circumstance A is the receipt, by the legal owner, of information that the person beneficially entitled to the interest distribution has become liable to pay an amount by way of income tax for the tax year in which the payment is made.

(4) Circumstance B is the ending of the tax year in which the person beneficially entitled to the payment reaches the age of 16 in a case where paragraph (3) of regulation 37 (the supplier condition) applies.

(5) Circumstance C is the failure by a person who has given a qualifying certificate under paragraph (4) of regulation 37, but is not the holder of the holding to which the certificate for units relates, to become the holder before the first interest distribution made after the end of the tax year in which he reaches the age of 16.

(6) Circumstance D is where the Commissioners, having reason to believe that a person beneficially entitled to an interest distribution is or has become liable to pay an amount by way of income tax, by notice require the legal owner to deduct tax under section 349(2) of ICTA from interest distributions which—

(a) are made in respect of a holding specified in the notice, and

(b) are made to or for the benefit of that person after the expiry of a period of 30 days beginning with the date on which the notice is issued.

(7) Circumstance E is where the legal owner receives notification that the person by whom or on whose behalf the certificate was given has died.

(8) If the Commissioners issue a notice under paragraph (6), they must, at the same time, send a copy to the person referred to in the notice.

The qualifying circumstances condition

40.—(1) The qualifying circumstances condition is met in all circumstances except those circumstances in which condition A or B applies.

(2) Condition A applies if section 629 of ITTOIA 2005 (income paid to unmarried minor children of settlor) applies to the payment.

(3) Condition B applies if the holding to which the qualifying certificate relates is specified in a notice which—

(a) has been issued under regulation 39(6), and

(b) has not been cancelled.

The joint holding condition

41.—(1) The joint holding condition is met if—

- (a) more than one person is entitled to an interest distribution,
- (b) paragraph (2) of regulation 44 (notice relating to payments made under deduction of tax) is not applicable, and
- (c) either condition A or B is met.

(2) Condition A is that a qualifying certificate is given by or on behalf of each person beneficially entitled to the interest distribution.

(3) Condition B is that a qualifying certificate is given by or on behalf of one or more (but not all) of the persons beneficially entitled to the interest distribution.

Qualifying certificates valid for only part of jointly held accounts: introductory

42.—(1) Regulations 43 and 44 apply if—

- (a) condition A in regulation 41 is met, and
- (b) a qualifying certificate has ceased to be valid in one of circumstances A to D in regulation 39 (the continuing validity condition).

(2) Regulations 43 and 44 also apply if condition B in regulation 41 is met.

Qualifying certificates valid for only part of jointly held accounts: the general rule

43.—(1) The general rule is that it is to be assumed that each person is beneficially entitled in equal shares to the interest distribution, and accordingly—

- (a) payment of so much of the interest distribution as corresponds to the share of any person by or on behalf of whom a qualifying certificate has given must be made without deduction of tax; and
- (b) payment of the remainder of the interest distribution must be made under deduction of tax.

(2) For all the purposes of the Income Tax Acts, tax deducted from a payment within paragraph (1) (b) is treated as income tax paid by the persons to whom the payment is treated as made.

(3) If this regulation applies by virtue of regulation 42(2), it applies in relation to a payment of interest made at any time after the time when the qualifying certificate ceased to be valid.

This is subject to paragraph (4).

(4) In a case where circumstance D of regulation 39 applies, this regulation applies in relation to a payment of interest made at any time—

- (a) after the expiry of a period of 30 days beginning with the date of issue of the notice referred to in that circumstance D, or
- (b) after such date falling within that period as the legal owner may at its option determine.

(5) This regulation is subject to regulation 44.

Qualifying certificates valid for only part of jointly held accounts: further provisions

44.—(1) The legal owner of an authorised investment fund may give notice to the Commissioners of its intention that the whole of an interest distribution specified in the notice shall be made under deduction of tax.

(2) If notice is given under paragraph (1), regulation 43 does not apply; and, accordingly, tax must be deducted by the legal owner from any payment of an interest distribution which is made after the date of the notice, and to which the notice relates.

(3) The legal owner of an authorised investment fund may give notice to the Commissioners (a “cancellation notice”) cancelling a notice given under paragraph (1).

(4) If a cancellation notice is given, regulation 43 applies to any payment of an interest distribution which is made after the date of the cancellation notice, and to which the notice given under paragraph (3) formerly related.

Consequences of notice under regulation 39(6)

45.—(1) This regulation applies if the Commissioners issue a notice under regulation 39(6).

(2) No further qualifying certificate may be given by or on behalf of the person referred to in the notice in respect of units specified in the notice.

This is subject to paragraphs (3) and (4).

(3) If the Commissioners are satisfied, as a result of information received following the issue of the notice, that the person referred to in the notice—

- (a) was not liable at the date of the notice, and has not since become liable, to pay an amount by way of income tax, or
- (b) is no longer liable to pay such an amount,

they must cancel the notice and give notice of the cancellation to the legal owner and the person referred to in the notice.

(4) If, under paragraph (3), the Commissioners cancel the notice, a further qualifying certificate may be given on behalf of the person referred to in the notice.

Qualifying certificate not in writing

46.—(1) If a qualifying certificate is not in writing, the legal owner concerned may—

- (a) make a declaration in writing on behalf of the person giving the qualifying certificate (“the relevant person”) that the particulars contained in the certificate are those recorded in the declaration, and
- (b) send a copy of the declaration (“the copy declaration”) to the relevant person.

(2) The declaration takes effect as from the date on which the copy declaration is sent to the relevant person in accordance with paragraph (1).

This is subject to paragraph (3).

(3) The relevant person may notify any corrections to the legal owner within the period of 30 days beginning with the date on which the copy declaration was sent to him; and the corrections may be incorporated in a revised declaration made by the legal owner.

(4) A qualifying certificate is regarded as being given in writing for the purposes of this regulation if it is given by electronic communication containing an electronic signature of the relevant person.

(5) For the purposes of this regulation a declaration made by the legal owner is regarded as made in writing if it is produced by electronic means; and the copy declaration may be sent to the relevant person by telephonic facsimile transmission or by electronic communication.

CHAPTER 3
PARTICIPANTS CHARGEABLE TO CORPORATION TAX

Interest distributions

The obligation to deduct tax

47.—(1) This regulation applies if an interest distribution is made for a distribution period to a participant chargeable to corporation tax.

(2) The deduction obligation does not apply to the interest distribution.

(3) But if the participant is a company which is the trustee of the trust to which (or under which) the interest distribution is made (or received), the deduction obligation is not excluded by virtue of paragraph (2).

(4) In its application to an interest distribution to a participant in respect of accumulation units, the deduction obligation is an obligation to deduct a sum out of the amount being invested on the participant's behalf.

Dividend distributions

General

48.—(1) Paragraph (2) applies if—

- (a) a dividend distribution for a distribution period is made to a participant by the legal owner of an authorised investment fund, and
- (b) on the distribution date for that distribution period the participant is within the charge to corporation tax.

(2) For the purpose of computing the corporation tax chargeable upon the participant, the unfranked part of the dividend distribution is treated—

- (a) as an annual payment and not as a dividend distribution or an interest distribution; and
- (b) as having been received by the participant after deduction of income tax at the lower rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.

(3) Regulation 49 explains how to calculate the unfranked part of the dividend distribution.

Calculation of unfranked part of dividend distribution

49.—(1) This is how to calculate the unfranked part of the dividend distribution—

$$U = \frac{A \times C}{D}$$

(2) In paragraph (1)—

- U = the unfranked part of the dividend distribution to the participant;
- A = the amount of the dividend distribution;
- C = such amount of the gross income as does not derive from franked investment income, as reduced by an amount equal to the legal owner's net liability to corporation tax in respect of the gross income;
- D = the amount of the gross income, as reduced by an amount equal to the legal owner's net liability to corporation tax in respect of the gross income.

(3) Any reference in this regulation to the legal owner's net liability to corporation tax in respect of the gross income is a reference to the amount of the liability of the legal owner to corporation tax in respect of that gross income less the amount (if any) of any reduction of that liability which is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 of ICTA (relief by agreement with other territories) or by way of a credit under section 790(1) of that Act (unilateral relief).

References to gross income

50. For the purposes of this Chapter the references to the gross income are references to the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to participants for the distribution period in question.

Cases where participant is the manager of the fund

51. If on the distribution date the participant is the manager of the authorised investment fund, regulation 48(2) shall not apply in so far as the rights in respect of which the dividend distribution is made are held by him in the ordinary course of his business as manager of the fund.

Repayments of tax

52.—(1) This regulation applies if, in relation to a dividend distribution, any tax is treated as having been deducted by virtue of regulation 48(2)(b).

(2) The amount to which the participant is entitled by way of repayment of that tax must not exceed the amount of the participant's portion of the legal owner's net liability to corporation tax in respect of the gross income.

(3) In calculating the amount to which the participant is entitled by way of repayment of that tax, tax treated as having been deducted by virtue of regulation 48(2)(b) is set off in priority to any other tax under section 7(2) of ICTA and under paragraph 5 of Schedule 16 to that Act.

(4) For the purposes of paragraph (2) the participant's portion shall be determined by reference to the proportions in which participants have rights in the authorised investment fund in the distribution period in question.

CHAPTER 4

CHARGE TO TAX ON SUBSTANTIAL QIS HOLDINGS IN QUALIFIED INVESTOR SCHEMES

General

Charge to tax under this Chapter

53.—(1) A participant is charged to tax under this Chapter if the participant owns a substantial QIS holding in a qualified investor scheme.

(2) But a participant is excepted from the charge to tax under this Chapter if the participant is—

- (a) a charity within the meaning of section 506(1) of ICTA;
- (b) a registered pension scheme within the meaning of Part 4 of the Finance Act 2004(9);
- (c) a scheme which is treated, under paragraph 1(1) of Schedule 36 to the Finance Act 2004, as a registered pension scheme within the meaning of Part 4 of that Act;

(9) 2004 c. 12.

- (d) an insurance company within the meaning of section 431(2) of ICTA(10) holding the units in the qualified investor scheme as assets of its long-term insurance fund;
- (e) a friendly society within the meaning of section 466(2) of ICTA(11);
- (f) a person for whom any profit on a sale of the units in the qualified investor scheme would be treated as a trading profit of its trade; or
- (g) a qualified investor scheme.

(3) 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.

(4) In paragraph (2)(d) “long-term insurance fund” has the meaning given by section 431(2) of ICTA(12).

Meaning of “substantial QIS holding”

54.—(1) For the purposes of this Chapter a participant owns a substantial QIS holding in a qualified investor scheme if the participant, either alone or together with associates or connected persons, (and otherwise than as a nominee or a bare trustee) owns units which represent rights to 10% or more of the net asset value of the fund.

This is without prejudice to what is meant by “substantial” where the word appears in other contexts.

(2) Section 417 of ICTA(13) applies for the purposes of this regulation to determine whether persons are associates.

(3) Section 839 of ICTA(14) (connected persons) applies for the purposes of this regulation.

(4) A participant who owns a substantial QIS holding in a qualified investor scheme continues to own a substantial QIS holding in that scheme until the date on which the whole of that holding is disposed of (so that, accordingly, it does not matter that the holding no longer represents 10% or more of the net value of the qualified investor scheme).

(5) Paragraph (4) is subject to regulation 63 (cases where a participant’s holding becomes substantial).

Amount charged to tax under this Chapter

55.—(1) A participant is charged to tax under this Chapter by reference to the difference in value of a substantial QIS holding between two measuring dates (the “difference in value”).

(2) The difference in value is the amount given by the formula—

$$VLMD - VEMD$$

(3) In paragraph (2)—

VLMD is the market value of the substantial QIS holding at the beginning of a chargeable measuring date (the “later measuring date”), and

VEMD is the market value of the substantial QIS holding at the end of the previous measuring date (the “earlier measuring date”).

(10) The definition of “insurance company” in section 431(2) was substituted by Article 26(3) of S.I. 2001/3629.

(11) The definition of “friendly society” in section 466(2) was substituted by paragraph 14(4) of Schedule 9 to the Finance (No. 2) Act 1992 (c. 48).

(12) The definition of “long-term insurance fund” was inserted (as “long term business fund”) by paragraph 1(2) of Schedule 6 to the Finance Act 1990 (c. 29), and amended by paragraphs 2(1)(b) and 2(2)(a) of Article 52 of S.I. 2001/3629.

(13) Section 417 was amended by paragraph 173 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(14) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4) and by paragraph 340 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005.

(4) In the case of units in a qualified investor scheme where both the buying and selling prices of units are published regularly by the manager of the scheme, “market value” means an amount equal to the buying price (that is the lower price) so published on any particular date, or if none were published on that date, on the latest date before.

(5) In the case of units in a qualified investor scheme where a single price is published regularly by the manager of the scheme, “market value” means the price so published on any particular date, or if none were published on that date, on the latest date before.

Measuring dates and meaning of “chargeable measuring date”

56.—(1) Each of the following is a measuring date—

- (a) the first measuring date (see regulation 64);
- (b) in a case where a participant already owns a substantial QIS holding in a qualified investor scheme, the date on which the participant acquires additional units in the qualified investor scheme;
- (c) any reporting date;
- (d) the date on which there is a disposal of part of the substantial QIS holding (see regulation 67);
- (e) the date on which there is a disposal of the whole of the substantial QIS holding (see regulation 68);
- (f) the date of the participant’s death.

(2) In this Chapter a “chargeable measuring date” means any measuring date other than the first measuring date.

How tax is charged under this Chapter: income tax

57.—(1) This regulation applies in the case of a participant chargeable to income tax.

(2) The following amounts must be calculated—

- (a) the difference in value calculated by reference to each chargeable measuring date falling within a tax year; and
- (b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to income tax under Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged) on that aggregate amount for that tax year.

(4) If the aggregate amount is a negative amount, the participant is treated as if—

- (a) a loss of that aggregate amount had been sustained by the participant in a transaction, and
- (b) this regulation were listed in Part 3 of the Table in section 836B(15) of ICTA.

How tax is charged under this Chapter: corporation tax

58.—(1) This regulation applies in the case of a participant chargeable to corporation tax.

(2) The following amounts must be calculated—

- (a) the difference in value calculated by reference to each chargeable measuring date falling within an accounting period; and
- (b) the aggregate amount of those differences in value.

(3) If the aggregate amount is a positive amount, the participant is charged to corporation tax under Case VI of Schedule D on that aggregate amount for that accounting period.

(4) If the aggregate amount is a negative amount, the participant is treated as if a loss of that aggregate amount had been incurred by the participant in a transaction in respect of which the participant were within the charge to corporation tax under Case VI of Schedule D.

Further provisions

59.—(1) In this Chapter “disposal” is to be construed in accordance with TCGA 1992, and cognate expressions are to be construed accordingly.

(2) The provisions of TCGA 1992 that apply to determine—

- (a) the time at which a disposal and acquisition is made, and
- (b) how assets disposed of are to be identified,

apply for the purposes of this Chapter in the same way as they apply for the purposes of that Act.

The first measuring date

The general rule

60.—(1) The general rule is that on the first date on which a participant who is within the charge to tax under this Chapter owns a substantial QIS holding in a qualified investor scheme, the participant must value his own holding in that scheme as at that date.

(2) The general rule is modified if any of the following regulations apply—

- (a) regulation 61 (cases affected by the coming into force of these Regulations);
- (b) regulation 62 (cases involving the launch of qualified investor schemes);
- (c) regulation 63 (cases where a participant’s holding becomes substantial).

Cases affected by the coming into force of these Regulations

61.—(1) This regulation applies if—

- (a) a participant chargeable to income tax owns a substantial QIS holding in a qualified investor scheme on 6th April 2006, or
- (b) a participant chargeable to corporation tax owns a substantial QIS holding in a qualified investor scheme on 1st April 2006.

(2) If on the measuring date first occurring after 30th June 2006 the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at 1st or 6th April 2006 (as the case may be).

(3) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to income tax, the participant must value his own holding in that scheme as at 6th April 2006.

(4) If on the measuring date first occurring after 30th June 2006 the participant owns a substantial QIS holding in the qualified investor scheme and is chargeable to corporation tax, the participant must value its own holding in that scheme as at 1st April 2006.

Cases involving the launch of qualified investor schemes

62.—(1) This regulation applies if a qualified investor scheme is launched.

(2) If on the date immediately following the expiry of a period of twelve months beginning with the date of issue of the first prospectus of the scheme (“the qualification date”) the participant does not own a substantial QIS holding in the qualified investor scheme, the participant is not required to value his own holding in that scheme as at that date or any earlier date.

(3) If on the qualification date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date on which the participant first owned a substantial QIS holding in the scheme.

Cases where a participant’s holding becomes substantial

63.—(1) This regulation applies if, on any date, a participant owns a substantial QIS holding in a qualified investor scheme otherwise than as a result of the acquisition of units in that scheme.

(2) If on the next reporting date and the reporting date following it (“the second reporting date”) the participant does not own a substantial QIS holding in the qualified investor scheme, the participant—

- (a) is not required to value his own holding in that scheme at any time, and
- (b) is not treated as owning a substantial QIS holding in the scheme on the second reporting date or at any earlier time.

(3) If on the second reporting date the participant owns a substantial QIS holding in the qualified investor scheme, the participant must value his own holding in that scheme as at the date mentioned in paragraph (1) and as at each subsequent measuring date.

Definition of the “first measuring date”

64. In this Chapter the “first measuring date” means the date on which, in accordance with regulation 60(1), 61(3) or (4), 62(3) or 63(3), the participant must value his own holding in the qualified investor scheme.

Calculation to be made on the first measuring date

65. On the first measuring date the participant must calculate the chargeable gain or loss that would have accrued for the purposes of tax in respect of chargeable gains if, on that date, the participant had disposed of the substantial QIS holding for a consideration equal to its market value at that time.

Disposals of holdings

Reorganisations etc.

66.—(1) For the purposes of this Chapter, sections 116(10) and 127 of TCGA 1992 (reorganisations) do not apply to a substantial QIS holding in a qualified investor scheme; and a transaction which would otherwise have fallen within either of those provisions is treated as involving a disposal and subsequent acquisition of that holding.

(2) The consideration for the subsequent acquisition is a consideration equal to the market value of the holding immediately before the acquisition.

Disposal of part of a substantial QIS holding

67.—(1) This regulation applies if a participant disposes of part of a substantial QIS holding.

(2) The date on which the participant disposes of the part of the substantial QIS holding is a chargeable measuring date.

(3) For the purposes of tax in respect of chargeable gains a corresponding part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.

(4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.

(5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the part of the substantial QIS holding of which there has been a disposal.

(6) This regulation is subject to regulation 69 (no gain/no loss disposals).

Disposal of the whole of a substantial QIS holding

68.—(1) This regulation applies if a participant disposes of the whole of a substantial QIS holding.

(2) The date on which the participant disposes of the substantial QIS holding is a chargeable measuring date.

(3) For the purposes of tax in respect of chargeable gains—

- (a) in a case where regulation 67 has applied on any earlier disposal of part of the substantial QIS holding, the remaining part of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal, and
- (b) in any other case, the whole of the chargeable gain or loss specified in regulation 65 is treated as accruing on the disposal.

(4) Subject to paragraph (3) and for the purposes of tax in respect of chargeable gains, the participant is treated as making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the participant.

(5) For the purposes of tax in respect of chargeable gains, this regulation does not affect the treatment of the other party to the transaction involving the substantial QIS holding.

(6) This regulation is subject to regulation 69 (no gain/no loss disposals).

No gain/no loss disposals

69.—(1) This regulation applies if, for the purposes of tax in respect of chargeable gains, any disposal of the whole or part of a substantial QIS holding falls within any of the following provisions of TCGA 1992—

- (a) section 58(1) (transfers between spouses);
- (b) section 62(4) (acquisition as legatee);
- (c) section 139 (company reconstructions)(**16**);
- (d) section 140A (transfers of a UK trade)(**17**);
- (e) section 140E (merger leaving assets within the UK tax charge)(**18**);
- (f) section 171(1) (transfers within a group)(**19**).

(2) Regulation 67(3) or 68(3) (as the case may be) does not apply in relation to the disposal.

(16) Section 139 was amended by section 251(5) of the Finance Act 1994 (c. 9), section 134(1) of the Finance Act 1998 (c. 36), paragraph 5 of Schedule 29 to the Finance Act 2000 (c. 17), Part 3(2) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 2(3) of Schedule 27 to the Finance Act 2003 (c. 14), and by Article 2(2)(d) of S.I. 1992/3066.

(17) Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48) and amended by paragraph 2(3) of Schedule 27 to the Finance Act 2003 and section 59(3) of the Finance (No. 2) Act 2005 (c. 22).

(18) Section 140E was inserted by section 51(1) of the Finance (No. 2) Act 2005.

(19) Section 171(1) was substituted by paragraph 2(2) of Schedule 29 to the Finance Act 2000 (c. 17).

(3) On and after the date of the transfer, the transferee's holding in the qualified investor scheme is a substantial QIS holding in that scheme (whether or not the transferee's holding in that scheme (if any) was a substantial QIS holding in that scheme before that date).

(4) If the transferee disposes of the whole, or part, of the substantial QIS holding, the held-over gain or, as the case may be, a corresponding part of the held-over gain, is treated as accruing to the transferee on the disposal.

(5) In paragraph (4) "the held-over gain" means the chargeable gain or loss that would have accrued to the transferor if the disposal falling within paragraph (1) had been a disposal to which regulation 68(3) had applied.