
STATUTORY INSTRUMENTS

2009 No. 2036

**The Authorised Investment Funds
(Tax) (Amendment) Regulations 2009**

Insertion of Part 2B

10. After regulation 14B (tax treatment of qualified investor schemes) insert the following Part—

“PART 2B

DIVERSELY OWNED AIFS

Tax treatment of diversely owned AIFs

14E.—(1) This regulation applies to an authorised investment fund in respect of an accounting period if—

- (a) the fund carries out an investment transaction in that period, and
- (b) the fund meets the genuine diversity of ownership condition in relation to that period.

(2) In these Regulations an authorised investment fund to which this regulation applies is referred to as a “diversely owned AIF”.

(3) If the profits or losses, as the case may be, arising from an investment transaction are capital profits, gains or losses, that investment transaction shall be treated as a non-trading transaction of the diversely owned AIF for the purposes of corporation tax.

(4) Chapter 2 of Part 3 of CTA 2009 (income taxed as trade profits)(1) does not apply to capital profits and losses arising from such an investment transaction.

(5) For the purposes of these Regulations “investment transaction” means a transaction specified in regulation 14F.

(6) For the purposes of paragraphs (3) and (4) capital profits, gains or losses arising from an investment transaction in an accounting period are such profits, gains or losses as fall to be dealt with under the heading “net capital gains/losses” in the statement of total return for an accounting period.

(7) For the purposes of paragraph (6), the “statement of total return for an accounting period” has the same meaning as in regulation 12(2).

Meaning of “investment transaction”

14F.—(1) For the purposes of these Regulations an “investment transaction” means—

- (a) any transaction in stocks and shares;

(1) CTA 2009 is an abbreviation for the [Corporation Tax Act 2009 \(c. 4\)](#) inserted into Part 1 of the Schedule to the principal Regulations by regulation 32(2) of these Regulations.

- (b) any transaction in a relevant contract (and see regulations 14G to 14K);
- (c) any transaction which results in a diversely owned AIF becoming a party to a loan relationship or a related transaction in respect of a loan relationship (and see regulation 14L);
- (d) any transaction in units in a collective investment scheme (and see regulation 14M);
- (e) any transaction in securities (and see paragraph (2));
- (f) any transaction consisting in the buying or selling of any foreign currency;
- (g) any transaction in a carbon emission trading product (and see regulation 14N).

(2) In paragraph (1)(e) “securities” means securities of any description not falling within sub-paragraphs (a) to (d) of paragraph (1).

Meaning of relevant contracts: general

14G.—(1) For the purposes of regulation 14F a “relevant contract” is—

- (a) an option,
- (b) a future, or
- (c) a contract for differences.

(2) For the purposes of this regulation an option, a future or a contract for differences which relates to land will only be a relevant contract if the option, the future or the contract for differences uses an index referred to in regulation 14K(1)(b) and the index is—

- (a) publicly accessible,
- (b) comprised of a significant number of properties, and
- (c) not maintained by—
 - (i) the diversely owned AIF,
 - (ii) the manager of the diversely owned AIF, or
 - (iii) a person who is a connected person in relation to the diversely owned AIF or the manager of the diversely owned AIF.

Meaning of relevant contract: options

14H.—(1) For the purposes of regulation 14G an “option” includes an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company, and for these purposes it is immaterial whether the shares or assets to which the instrument relates exist or are identifiable.

(2) For the purposes of paragraph (1) the reference to a loan relationship of a company is to be construed in accordance with regulation 14L but with references in that regulation to “diversely owned AIF” treated as references to “company”.

Meaning of relevant contract: futures

14I.—(1) For the purposes of regulation 14G a “future” is a contract for the sale of property under which delivery is to be made—

- (a) at a future date agreed when the contract is made, and
- (b) at a price so agreed.

(2) For the purposes of paragraph (1)(b) a price is taken to be agreed when the contract is made—

- (a) notwithstanding that the price is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Meaning of relevant contract: options and futures - general provisions

14J.—(1) For the purposes of regulations 14H and 14I references to an option or a future do not include references to a contract whose terms provide—

- (a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, and do not provide for the delivery of any property,
- (b) that each party is liable to make to the other party a cash payment in respect of all that party's obligations to the other under the contract and do not provide for the delivery of any property, or
- (c) for the delivery of any property other than property a transaction in which would fall within regulation 14F(1) where the property is delivered.

(2) Nothing in paragraph (1) has effect to exclude, from references to a future or option, a future or option whose underlying subject matter is currency.

(3) In paragraph (1) “underlying subject matter” means—

- (a) in relation to a future, the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and
- (b) in relation to an option, the property which would fall to be delivered if the option were exercised.

Meaning of relevant contract: contract for differences

14K.—(1) For the purposes of regulation 14G a “contract for differences” is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

- (a) the value or price of property described in the contract, or
- (b) an index or other factor designated in the contract.

(2) For the purposes of paragraph (1)(b) an index or factor may be determined by reference to any matter and, for these purposes, a numerical value may be attributed to any variation in a matter.

(3) For the purposes of regulation 14G none of the following is a contract for differences—

- (a) an option,
- (b) a future,
- (c) a contract of insurance,
- (d) a contract effected in the course of capital redemption business,
- (e) a contract of indemnity,
- (f) a guarantee,
- (g) a warranty,

(h) a loan relationship.

(4) For the purposes of paragraph (3)—

“capital redemption business” means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount becomes payable at a future time or over a period;

“loan relationship” is to be construed in accordance with regulation 14L but with references to “diversely owned AIF” in that regulation treated as references to “company”.

Loan relationships or related transactions

14L.—(1) For the purposes of regulation 14F a diversely owned AIF has a “loan relationship” if that diversely owned AIF stands (whether by reference to a security or otherwise) in the position of a creditor or debtor as respects any money debt and either—

- (a) that debt is one arising from a transaction for the lending of money; or
- (b) that debt is not one which arose from a transaction for the lending of money but is one—
 - (i) on which interest is payable to or by the diversely owned AIF, or
 - (ii) in relation to which exchange gains or losses arise to the diversely owned AIF, or
 - (iii) as respects which the conditions in paragraph (2) below are satisfied.

(2) The conditions referred to in paragraph (1)(b)(iii) are that—

- (a) the diversely owned AIF stands in the position of creditor in relation to the money debt; and
- (b) the money debt is one from which a discount (whether of an income or capital nature) arises to the diversely owned AIF.

(3) For the purposes of this regulation “exchange gains or losses” means profits or gains or losses which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the diversely owned AIF in another currency on an asset or liability of the diversely owned AIF.

(4) For the purposes of this regulation a “money debt” is a debt which is, or has at any time been, one that falls, or that may at the choice of the debtor or of the creditor fall, to be settled—

- (a) by the payment of money,
- (b) by the transfer of a right to settlement under a debt which is itself a money debt, or
- (c) by the issue or transfer of shares in any company,

disregarding any other alternative exercisable by either party.

(5) Subject to paragraph (6), if an instrument is issued by any person for the purpose of representing security for, or the rights of a creditor in respect of, any money debt, then (whatever the circumstances of the issue of the instrument) that debt shall be taken for the purposes of this regulation to be a debt arising from a transaction for the lending of money.

(6) For the purposes of this regulation a debt shall not be taken to arise from a transaction for the lending of money to the extent that it is a debt arising from rights conferred by shares in a company.

(7) For the purposes of this regulation so far as relating to exchange gains or losses any currency held by the diversely owned AIF shall be treated as a money debt.

(8) For the purposes of this regulation “money” includes money expressed in a currency other than sterling.

(9) In this Part a “related transaction” in relation to a loan relationship means any disposal or acquisition (in whole or in part) of rights or liabilities under that relationship.

Units in a collective investment scheme

14M.—(1) For the purposes of regulation 14F “units” in a collective investment scheme means the rights or interests (however described) of the participants in the collective investment scheme.

(2) For the purposes of this regulation “participant” has the same meaning as given by regulation 6(6) but with references to “authorised investment fund” and “fund” being read as references to “collective investment scheme”.

Carbon emission trading products

14N.—(1) For the purposes of regulation 14F a carbon emission trading product is—

- (a) a Community tradable emissions allowance, or
- (b) a transferable unit issued pursuant to the Kyoto Protocol,

which does not otherwise fall within any other regulation of this Part.

(2) For the purpose of this regulation—

“Community tradable emissions allowance” means a transferable allowance which relates to the making of emissions of greenhouse gases which are allocated as part of a system made for the purpose of implementing any Community obligation of the United Kingdom relating to such emissions;

“the Kyoto Protocol” means the Kyoto Protocol to the United Nations Framework Convention on Climate Change signed at Kyoto on 11th December 1997⁽²⁾;

“unit” includes an assigned amount unit, certified emission reductions, an emission reduction unit and a removal unit.”.

(2) The text of the Kyoto Protocol is available at www.unfccc.int/kyoto_protocol/items/2830.php.