
STATUTORY INSTRUMENTS

2013 No. 1400

**The Collective Investment Schemes (Tax
Transparent Funds, Exchanges, Mergers and
Schemes of Reconstruction) Regulations 2013**

Amendments in relation to exchanges, mergers and schemes of reconstruction

11. In Part 3, after Chapter 3 insert—

“CHAPTER 4

COLLECTIVE INVESTMENT SCHEMES: EXCHANGES,
MERGERS AND SCHEMES OF RECONSTRUCTION

103E Application of Chapter

(1) In this Chapter (except this section) references to a collective investment scheme are to a collective investment scheme falling within any of the following paragraphs—

- (a) an authorised contractual scheme which is a co-ownership scheme,
- (b) a unit trust scheme, or
- (c) an offshore fund.

(2) Sections 126 to 138A (reorganisation of share capital, conversion of securities etc) do not apply for the purposes of the treatment of participants in collective investment schemes falling within subsection (1)(a) to (c) except as applied by this Chapter.

(3) But sections 135 to 138A (company reconstructions) may apply for those purposes where either company A or company B is not a collective investment scheme falling within subsection (1)(a) to (c).

(4) In subsection (3), “company A” and “company B” have the meaning given by section 135 or 136 as the case may be.

(5) In this Chapter, “units” includes shares in a company.

103F Exchanges of units for units in the same scheme

(1) This section applies in the following cases.

Case 1

Where—

- (a) a participant in a collective investment scheme exchanges units in the scheme for other units in the scheme (“new units”) of substantially the same value, and
- (b) the property subject to the scheme and the rights of participants to share in the capital and income in relation to that property are the same immediately before and immediately after the event (ignoring any changes as a result of a variation in management charges).

Case 2

Where there is a reorganisation of the units in a collective investment scheme in which all the participants holding units in the scheme or, where there are different classes of unit in the scheme, all the participants holding units in the same class, exchange all their units for other units (“new units”) in the scheme.

(2) Where this section applies—

- (a) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if the collective investment scheme were a company and the event mentioned in subsection (1) were a reorganisation of its share capital, and
- (b) any distribution in relation to any new units is to be treated for the purposes of capital gains tax, corporation tax or income tax on the basis set out in section 127 (as adapted).

(3) In subsection (1), “management charges” mean the costs charged to the property subject to the scheme in respect of remunerating the parties operating the scheme, administering the scheme or investing or safeguarding the property subject to the scheme.

103G Exchange of units for those in another collective investment scheme

(1) This section applies in the following cases where units in a collective investment scheme (“collective investment scheme B”) are issued to a person in exchange for units in another collective investment scheme (“collective investment scheme A”).

(2) The cases are—

Case 1

Where units in collective investment scheme B are issued in exchange for units as the result of a general offer—

- (a) made to participants in collective investment scheme A or any class of them, and
- (b) made in the first instance on a condition such that if it were satisfied the property subject to collective investment scheme B would include units in collective investment scheme A giving rights to more than 50% of the capital, and more than 50% of the income, of collective investment scheme A.

Case 2

Where—

- (a) under an arrangement, participants in collective investment scheme A exchange units in that scheme for units of substantially the same value in collective investment scheme B, and
- (b) in consequence of the exchanges under the arrangement, 85% or more of the property subject to collective investment scheme B is constituted by units in collective investment scheme A.

(3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if collective investment scheme A and collective investment scheme B were the same company and the exchange were a reorganisation of its share capital.

(4) This section has effect subject to section 103K(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme).

103H Scheme of reconstruction involving issue of units

(1) This section applies where—

- (a) for the purposes of, or in connection with, a scheme of reconstruction an arrangement is entered into by all the participants holding units in an original collective investment scheme (“scheme A”), or where there are different classes of units in the scheme, all the participants holding any class of those units, and
- (b) under the arrangement—
 - (i) units in a successor collective investment scheme or feeder fund (“scheme B”) are issued to those participants in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in scheme A, and
 - (ii) the units in scheme A comprised in relevant holdings are retained by those participants or are cancelled or otherwise extinguished.

(2) Where this section applies—

- (a) those participants are treated as exchanging their relevant holdings in scheme A for the units held by them in consequence of the arrangement, and
- (b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if scheme A and scheme B were the same company and the exchange were a reorganisation of its share capital.

For this purpose units in scheme A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.

(3) Where a reorganisation within case 2 of section 103F(1) of the units in scheme A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.

(4) In this section, references to “relevant holdings” of units are—

- (a) where there is only one class of units in scheme A, to holdings of units in the scheme, and
- (b) where there are different classes of units in scheme A, to holdings of a class of units that is involved in the scheme of reconstruction (within the meaning of paragraph 3 of Schedule 5AZA).

(5) This section has effect subject to section 103K(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).

103I Scheme of reconstruction involving conversion scheme

(1) This section applies where—

- (a) a scheme of reconstruction is entered into and given effect to, and
- (b) for the purposes of, or in connection with, the scheme of reconstruction, units in a collective investment scheme (“the conversion scheme”) are issued to participants in another collective investment scheme (“scheme C”) in exchange for and in proportion to (or as nearly as may be in proportion to) their conversion holdings in accordance with regulation 12(1)(b) of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 ([S.I. 2011/1613](#)).

(2) Where this section applies sections 127 to 131 apply with the necessary adaptations as if scheme C and the conversion scheme were the same company and the exchange were a reorganisation of its share capital.

(3) In this section “conversion holdings” means the units in scheme C to be converted in accordance with regulation 12(1)(b) of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 into units in the conversion scheme for the purposes of, or in connection with, the scheme of reconstruction.

(4) This section has effect subject to section 103K(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).

103J Supplementary provisions

103J In sections 103H and 103I—

- (a) “feeder fund” has the meaning given by paragraph 3(2) of Schedule 5AZA to this Act;
- (b) “scheme of reconstruction” has the meaning given by paragraph 1 of Schedule 5AZA;
- (c) “original collective investment scheme” and “successor collective investment scheme” must be construed in accordance with paragraph 2(2) of Schedule 5AZA; and
- (d) references to units being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise .

103K Restriction on application of sections 103G, 103H and 103I

(1) Subject to subsection (2) below, and section 138, section 103G, 103H or 103I shall not apply to any issue of units in a collective investment scheme in exchange for or in respect of units in another scheme unless the exchange or scheme of reconstruction in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax, corporation tax or income tax.

(2) Subsection (1) above shall not affect the operation of section 103G, 103H or 103I in any case where the participant to whom the units are issued does not hold more than 5 per cent of, or of any class of, the units in the second scheme mentioned in subsection (1) above.

(3) For the purposes of subsection (2) above units held by participants connected with the participant there mentioned shall be treated as held by that participant.

(4) If any tax assessed on a participant (“the chargeable participant”) by virtue of subsection (1) above is not paid within 6 months from the date determined under subsection (5) below, any other participant who—

- (a) holds all or any part of the units that were issued to the chargeable participant, and
- (b) has acquired them without there having been, since their acquisition by the chargeable participant, any disposal of them not falling within section 58(1) or 171,

may, at any time within 2 years from that date, be assessed and charged (in the name of the chargeable participant) to all or, as the case may be, a corresponding part of the unpaid tax; and a participant paying any amount of tax under this subsection shall be entitled to recover from the chargeable participant a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.

(5) The date referred to in subsection (4) above is whichever is the later of—

- (a) the date when the tax becomes due and payable by the chargeable participant; and
- (b) the date when the assessment was made on the chargeable participant.

(6) Section 138 (procedure for clearance in advance) applies to this section as it applies to section 137 (with any necessary modifications).”