
STATUTORY INSTRUMENTS

2013 No. 2819

The Unauthorised Unit Trusts (Tax) Regulations 2013

PART 2

Exempt unauthorised unit trusts

CHAPTER 1

Meaning of “exempt unauthorised unit trust”

Meaning of “exempt unauthorised unit trust”

3.—(1) For the purposes of these Regulations an unauthorised unit trust is an “exempt unauthorised unit trust” with respect to a period of account if—

- (a) its trustees are UK resident for the period,
- (b) throughout the period all of its unit holders are eligible investors, and
- (c) it is approved under these Regulations for the period.

(2) For the purposes of these Regulations a unit holder is an “eligible investor” if—

- (a) any gain accruing in the event of a disposal of its units would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence), or
- (b) it holds all of its units pending disposal in the capacity of manager of the unauthorised unit trust.

(3) In determining whether paragraph (2)(a) applies no account is to be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by an insurance company or a friendly society.

(4) An unauthorised unit trust is not to be regarded as failing to meet the condition in paragraph (1) (b) in relation to any unit holder if—

- (a) the managers or trustees of the unit trust become aware at any time that the unit holder is not an eligible investor,
- (b) they could not reasonably have been expected to have become aware of that fact before that time, and
- (c) the unit holder disposes of its units before the end of the period of 28 days beginning with that time.

(5) Paragraph (4) may not be relied on more than twice in any period of ten years.

CHAPTER 2

Approval as an exempt unauthorised unit trust

Application for approval as an exempt unauthorised unit trust

4.—(1) The managers or trustees of an unauthorised unit trust may make an application in writing to the Commissioners for the trust (“the applicant”) to be approved.

(2) An application must be made on or before the last day of the first period of account for which approval is sought (or such later date as the Commissioners may allow).

(3) If accepted, an approval has effect for the period of account the first day of which is specified in the application and all subsequent periods (unless withdrawn under regulation 8).

(4) The Commissioners may not approve an unauthorised unit trust unless they are satisfied that the unit trust has, or will have, in place appropriate arrangements for the purpose of securing that the condition in regulation 3(1)(b) is met.

Contents of application

5.—(1) An application under this Chapter must contain the following—

- (a) a statement specifying the first day of the first period of account for which approval is sought (such period ending no earlier than 6 April 2014),
- (b) a copy of the applicant's current trust deed,
- (c) a copy of the applicant's most recent prospectus,
- (d) a statement specifying the appropriate arrangements which are or will be in place for the purpose of securing that the condition in regulation 3(1)(b) is and will be met for the first period for which approval is sought and all subsequent periods,
- (e) a statement whether or not the applicant is or will be operating equalisation arrangements.

(2) A day specified in the application in paragraph (1)(a) may be provisional.

(3) If a provisional day is specified in the application, any approval by the Commissioners of the application has no effect unless the managers or trustees of the applicant give notice to the Commissioners either—

- (a) confirming that day is the first day of the first period of account for which approval is sought, or
- (b) specifying a different day as the first day of the first period of account for which approval is sought.

(4) The notice must be given no later than the date on or before which a return made under section 8A(1) of TMA 1970 relating to the first period must be delivered.

(5) If a different day is specified under paragraph (3)(b), the application is to be treated for the purposes of regulation 4(3) as if that day had always been specified in the application.

Response by the Commissioners to application

6.—(1) The Commissioners may by notice require the managers or trustees of the applicant to provide further particulars in order to enable them to determine an application.

(2) A requirement may be imposed under paragraph (1) within 28 days of the receipt of the application or of any further particulars required under that paragraph.

(3) If a notice under paragraph (1) is not complied with within 28 days or such longer period as the Commissioners may allow, they need not proceed further on the application.

(4) The Commissioners must give notice to the applicant of their decision to accept or reject an application—

(1) 1970 c.9. Section 8A was inserted by section 90 of the Finance Act 1990 (c.29) and amended by sections 178(2) of the Finance Act 1994 (c.9), by section 103 of the Finance Act 1995 (c.4), by section 121 of the Finance Act 1996 (c.8), by paragraph 360 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c.5) (referred to as "ITTOIA 2005" in the remaining footnotes), by sections 89 of and Part 5(3) of Schedule 27 to the Finance Act 2007 (c.11), by paragraph 9 of Schedule 12 to the Finance Act 2008 (c.9) (referred to as "FA 2008" in the remaining footnotes), and by section 40 of and paragraph 9 of Schedule 19 to the Finance Act 2009 (c.10) (referred to as "FA 2009" in the remaining footnotes).

- (a) within 28 days of receiving the application, or
 - (b) if they give a notice under paragraph (2), within 28 days of that notice being complied with.
- (5) A notice of a decision to reject an application must give reasons for that decision.

Continuing requirements for approval

7.—(1) Approval under this Chapter is conditional on the requirements in this regulation being met by the unauthorised unit trust with respect to a period of account.

(2) Appropriate arrangements must be in place for the purpose of securing that the condition in regulation 3(1)(b) is met for the period.

(3) The period of account of the unauthorised unit trust must not exceed 18 months.

(4) The accounts for the period—

- (a) must be prepared in accordance with the IMA SORP or its principles so far as relating to determining revenue and capital, and
- (b) must be audited by a qualified independent auditor as being so prepared.

(5) In the following provisions of this Part references to accounts of an exempt unauthorised unit trust are to accounts meeting the conditions in paragraph (4).

(6) The managers or trustees of the trust must deliver with a return made under section 8A of TMA 1970—

- (a) a statement from the managers or the trustees that the condition in regulation 3(1)(b) has been met throughout the period, and
- (b) a copy of the trust's accounts.

(7) In this regulation—

- (a) “the IMA SORP” means the Investment Management Association’s Statement of Recommended Practice for the Financial Statements of Authorised Funds published in October 2010 as amended from time to time (or any successor statement of recommended practice), and
- (b) “qualified independent auditor” means a person who—
 - (i) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006(2), and
 - (ii) if the appointment were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).

Withdrawal of approval

8.—(1) The Commissioners may withdraw approval of an exempt unauthorised unit trust if they are satisfied that the requirements in regulation 7 are not met.

(2) The Commissioners may withdraw approval of an exempt unauthorised unit trust if the managers or trustees of an exempt unauthorised unit trust request them to do so.

(3) Withdrawal of an approval of an unauthorised unit trust is to be given by the Commissioners by notice to the managers or trustees of the trust.

(4) Withdrawal of approval has effect as from the date specified in the notice withdrawing the approval.

Appeal against rejection of application or withdrawal of approval

9.—(1) An unauthorised unit trust may appeal if an application is rejected or the Commissioners withdraw approval.

(2) The notice of appeal must be given to the Commissioners within a period of 42 days beginning with the day on which the notice of rejection or withdrawal is given.

(3) On an appeal, the tribunal may make a decision to uphold or quash the rejection or withdrawal.

(4) If the tribunal decides to quash a rejection of an application, these Regulations apply as if the Commissioners had accepted the application in the form in which it was considered by the tribunal.

(5) If the tribunal decides to quash the withdrawal of approval, these Regulations apply as if the Commissioners had not withdrawn their approval.

CHAPTER 3**Gains accruing to an exempt unauthorised unit trust****Exemption for gains accruing to an exempt unauthorised unit trust**

10. Gains accruing to an exempt unauthorised unit trust are not chargeable gains for the purposes of TCGA 1992.

CHAPTER 4**Taxation of income of exempt unauthorised unit trusts****Basis periods**

11.—(1) The income of an exempt unauthorised unit trust for a tax year is taken to be the income of the exempt unauthorised unit trust arising in a basis period for the tax year.

(2) The general rule is that the basis period for a tax year for an exempt unauthorised unit trust is the period of 12 months ending with the accounting date in that year.

(3) The accounting date, in relation to a tax year, means—

- (a) the date in the tax year to which accounts are drawn up, or
- (b) if there are two or more such dates, the latest of them.

(4) If there is no accounting date in the first tax year that the trust is an exempt unauthorised unit trust but there is an accounting date in the following tax year—

- (a) there is no basis period for the first tax year (so that the trust has no income for that year), but
- (b) the basis period for the following year is the period of account ending with the accounting date in that year.

(5) If there is no accounting date in the first two tax years that the trust is an exempt unauthorised unit trust—

- (a) there is no basis period for the first tax year (so that the trust has no income for that year), but
- (b) the basis period for the second tax year is the period beginning on the first date of the period of account and ending on the 5 April in that year.

(6) Otherwise, if there is no accounting date in the tax year, the basis period is the period of 12 months beginning immediately after the end of the basis period for the previous tax year.

(7) If the basis period for a tax year does not coincide with a period of account of an exempt unauthorised unit trust, either of the steps in paragraph (8) must be taken if necessary in order to

arrive at the amount of the income of the trust treated under regulation 14 as if it were accrued income profits arising in a basis period.

(8) The steps are—

- (a) apportioning the income of a period of account to the parts of that period falling in different basis periods, and
- (b) adding the income of a period of account (or part of a period) to the income of other periods of account (or parts),

and the steps must be taken by reference to the number of days in the periods concerned.

Treatment of income of an exempt unauthorised unit trust

12.—(1) If income arises to the trustees of an exempt unauthorised unit trust, the income is treated as the income of the trustees and not of the unit holders.

(2) If income tax on any part of the income arising to the trustees of an exempt unauthorised unit trust would apart from this paragraph be charged at the dividend ordinary rate, income tax on that part of the income is instead charged at the basic rate.

(3) None of the following applies in relation to the income—

- (a) sections 397(1) and 397A(1)(3) of ITTOIA 2005 (tax credits for qualifying distributions),
- (b) section 399(2) and (6) of ITTOIA 2005 (person not entitled to tax credits treated as having paid income tax),
- (c) section 400(2) and (3) of ITTOIA 2005 (person whose income includes non-qualifying distribution treated as having paid income tax), and
- (d) section 479 of ITA 2007 (trustees' accumulated or discretionary income to be charged at special rates).

(4) Sections 494, 495 and 496B of ITA 2007(4) (discretionary payments) do not apply in relation to payments made by the trustees.

Treatment of capital expenditure of an exempt unauthorised unit trust

13. The trustees (and not the unit holders) of an exempt unauthorised unit trust are treated as the persons to or on whom an allowance or charge is to be made under any provision relating to relief for capital expenditure.

Special provision for accrued income profits

14.—(1) This regulation applies to income of an exempt unauthorised unit trust which—

- (a) arises from its investments in securities within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits), and
- (b) is shown in its accounts.

(2) The income is charged to tax under Chapter 2 of Part 12 of ITA 2007—

- (a) as if it were accrued income profits, and
- (b) as if those profits were treated as made in the tax year in which the last day of the period of account in which the income is accounted for falls.

(3) None of the income is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).

(3) 2005 c.5. Section 397A was inserted by paragraph 4 of Schedule 12 to FA 2008.

(4) 2007 c.3. Section 496B was inserted by S.I. 2010/157.

CHAPTER 5

Charge to tax on unit holders of exempt unauthorised unit trusts

Charge to tax on unit holders

15.—(1) Tax is charged on income treated as received by a unit holder from an exempt unauthorised unit trust in the tax year.

(2) For the purposes of this regulation, unit holders are treated as receiving income if an amount is shown in the trust's accounts for a period of account as income available for payment to them or for investment.

(3) The income is treated as received by a unit holder for a distribution period.

(4) To calculate the amount of the income treated as received by a unit holder for a distribution period, calculate the unit holder's share of the trust's available income by applying the formula—

$$TAI \times \frac{R}{TR}$$

where—

TAI is the total amount shown in the trust's accounts as income available for payment to unit holders or for investment,

R is the unit holder's rights, and

TR is all the unit holders' rights.

(5) The income for a distribution period is treated as received on the date or latest date provided by the terms of the trust for any distribution for the period, unless that date is more than 12 months after it ends.

(6) If—

(a) that date is more than 12 months after the distribution period ends, or

(b) no date is so provided,

the income for the period is treated as received on the last day of the period.

(7) If the terms of the trust provide for a period over which income from the investments subject to the trust is aggregated to ascertain the amount available for distribution to unit holders, the "distribution period" means—

(a) if the period is 12 months or less, that period, or

(b) if the period is more than 12 months, each successive period of 12 months within that period and any remaining period of less than 12 months.

(8) In any other case, the "distribution period" means successive periods of 12 months, the first of which begins with the day on which the trust was established.

Person liable

16. The person liable for any tax charged under this Chapter is the unit holder treated as receiving the income.

Priority rules

17.—(1) Any income, so far as it falls within—

(a) regulation 15, and

(b) Chapter 2 of Part 2 of ITTOIA 2005 or Chapter 2 of Part 3 of CTA 2009 (income taxed as trade profits),

is dealt with under Part 2 of ITTOIA 2005 or Part 3 of CTA 2009.

(2) Any income, so far as it falls within—

(a) regulation 15, and

(b) Chapter 3 of Part 3 of ITTOIA 2005, or Chapter 3 of Part 4 of CTA 2009, so far as relating to a UK property business,

is dealt with under Part 3 of ITTOIA 2005 or Part 4 of CTA 2009.

CHAPTER 6

Relief for trustees of an exempt unauthorised unit trust

Relief for deemed payments by trustees of an exempt unauthorised unit trust

18.—(1) If the unit holders of an exempt unauthorised unit trust are treated as receiving income under regulation 15(2), the trustees are treated as making a deemed payment of the same amount on the final day of the period of account referred to in regulation 15(2).

(2) The trustees are entitled to relief for a tax year equal to the amount of the deemed payments treated as made in that year.

(3) The relief is given by deducting that amount in calculating the trustees' net income for the tax year (see Step 2 of the calculation in section 23 of ITA 2007 (calculation of income tax liability)(**5**)).

(4) The total amount of the relief for a tax year must not exceed the amount of the trustees' modified net income for the tax year.

(5) If there is an excess, that excess is to be treated as if it were a deemed payment in the basis period for the following tax year.

(6) In this regulation "modified net income" has the meaning given by section 1025 of ITA 2007 but as if for subsection (2)(c) there were substituted—

“(c) any relief to which the person may be entitled under regulation 18 of the Unauthorised Unit Trusts (Tax) Regulations 2013.”.

Amounts ineligible for relief under regulation 18

19.—(1) Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is ineligible for relief.

(2) In determining the extent (if any) to which the payment is ineligible for relief section 450 of ITA 2007 (payments ineligible for relief) applies in relation to the payment as that section applies in relation to a payment to which section 449 of that Act applies(**6**).

Amounts ineligible for relief under regulation 18: payments to certain unit holders where regulation 3(4) applies

20. Relief is not to be given under regulation 18 for any part of a deemed payment so far as it is attributable to income treated as received by a unit holder under regulation 15 where the unit holder—

(a) disposed of its units in the circumstances described in regulation 3(4)(c), and

(b) was not UK resident at the time the income is treated as received.

(5) Section 23 was amended by section 5 of and paragraph 6(o)(i) of Schedule 1 to FA 2009.

(6) Section 449 was amended by section 66(4) of the FA 2008.

Effect of equalisation arrangements on relief for trustees

21.—(1) This regulation applies to an exempt unauthorised unit trust which operates equalisation arrangements in the case of a disposal of units by way of either cancellation or acquisition by the managers of the trust.

(2) The amount of the deemed payment for which the trustees are entitled to relief for a tax year under regulation 18 includes any amount paid to unit holders (in the basis period for the year) on a disposal of some or all of their units so far as attributable to the income of the trust which has accrued up to the date of the disposal (but has not otherwise been received, or treated as received, by unit holders).

CHAPTER 7

Miscellaneous provisions

No tax charge for disposal of interests in offshore non-reporting funds: reporting condition

22.—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if the reporting condition is met.

(2) The reporting condition is met if—

- (a) the trustees prepare computations of reportable income for the fund for all accounting periods which, if the fund were a reporting fund, would be reporting periods ending on or before the day of disposal, and
- (b) any excess of the trustees' share of the reportable income of the non-reporting fund over their share of the distributions made by the non-reporting fund is included in the amount mentioned in regulation 15(2) for each period of account ending on or before that day.

(3) Nothing in paragraph (2) applies in relation to any time before the date on which the trustees acquire or re-acquire the interest.

(4) The trustees are treated for all purposes as if they had disposed of and immediately reacquired an interest in a non-reporting fund on a date they specify if in the event of a subsequent disposal of the interest—

- (a) the reporting condition would not be met in relation to times before the date, but
- (b) the trustees reasonably expect the reporting condition will be met in relation to times on and after the date.

(5) The date the trustees specify must be included in an appropriate entry in their return made under section 8A of TMA 1970 for the period of account in which the date falls but the date must not be earlier than 6 April 2014.

(6) The deemed disposal and reacquisition of the interest is taken to be for a consideration equal to its market value on the specified date.

(7) In this regulation—

- “market value” has the meaning given by regulation 10 of the Offshore Funds Regulations,
- “reporting fund” has the meaning given by regulation 50 of those Regulations, and
- “reporting period” has the meaning given by regulation 91 of those Regulations.

(8) If a non-reporting fund is a UCITS fund for the purposes of regulation 12(7) of the Offshore Funds Regulations, regulation 80 of those regulations (treatment of investment transactions

(7) Regulation 12 was amended by [S.I. 2011/1121](#).

carried out by diversely owned funds) applies for the purposes of the computations mentioned in paragraph (2)(a).

No tax charge for disposal of interests in offshore non-reporting funds: qualifying index

23.—(1) No tax is charged on the trustees of an exempt unauthorised unit trust under regulation 17 of the Offshore Funds Regulations on the disposal of an interest in a non-reporting fund if—

- (a) in accordance with the trust’s investment strategy contained in its prospectus, the aim of the trust throughout the period during which the trustees held the interest has been to replicate the performance of a qualifying index,
 - (b) the main purpose of the investment in the non-reporting fund throughout that period is to represent the composition of the qualifying index, and
 - (c) the capital and income returns of the trust throughout that period replicated as closely as practicable the returns of the investment comprised in the qualifying index.
- (2) For the purposes of this regulation an index is a “qualifying index” if—
- (a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,
 - (b) an authority (whether in the United Kingdom or elsewhere) recognises the index on the basis that—
 - (i) its composition is sufficiently diverse,
 - (ii) it represents an adequate benchmark for the market to which it refers, and
 - (iii) it is published in such a way that it is widely available, and
 - (c) it is calculated and published by a body which is managed independently from the management of the exempt unauthorised unit trust.

(3) In this regulation “regulated market” has the same meaning as in [Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments⁽⁸⁾.

Treatment of investment transactions carried out by exempt unauthorised unit trusts

24.—(1) An investment transaction entered into by the trustees of an exempt unauthorised unit trust is treated for the purposes of the Income Tax Acts as entered into otherwise than in the course of a trade.

(2) “Investment transaction” has the same meaning as it has in Part 3 of the Investment Trust (Approved Company) (Tax) Regulations 2011⁽⁹⁾, but as if—

- (a) references to an investment trust were to an exempt unauthorised unit trust, and
- (b) references to the manager of the investment trust were to the managers or trustees of the exempt unauthorised unit trust.

Authorised investment funds investing in exempt unauthorised unit trusts

25. If an authorised investment fund (within the meaning given by the AIF Regulations) is at any time in a period of account a unit holder of an exempt unauthorised unit trust, the following provisions of CTA 2010 do not apply in relation to the fund for any financial year in which that period (or any part of it) falls—

- (a) Part 3 (relief for companies with small profits), and

⁽⁸⁾ OJ L 145, 30.4.2004 p.1. See article 4.1(14) for the meaning of “regulated market”.

⁽⁹⁾ [S.I. 2011/2999](#).

(b) sections 614 and 618 (applicable corporation tax rate),
(and, accordingly, the rate of corporation tax which applies in relation to the fund is the main rate within the meaning of section 3 of CTA 2010).

Statements about income treated as received by unit holders

26. A unit holder of an exempt unauthorised unit trust is entitled by notice to require the trustees of the trust to provide the unit holder with a statement in writing showing the amount of income treated as received by the unit holder for a distribution period under regulation 15.