

Status: Point in time view as at 15/09/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10 **U.K.**

Section 98.

LOAN RELATIONSHIPS: COLLECTIVE INVESTMENT SCHEMES

Modifications etc. (not altering text)

C1 Sch. 10 modified (28.4.1997) by [S.I. 1997/1154](#), [reg.19\(1\)-\(10\)](#)

[^{F1}Investment trusts and venture capital trusts: capital reserves]

Textual Amendments

F1 [Sch. 10 para. 1A](#) and cross-heading substituted (with effect in relation to accounting periods beginning on or after 1.10.2002) for Sch. 10 para. 1 and heading by [Finance Act 2002 \(c. 23\)](#), s. 82, [Sch. 25 Pt. 1 para. 37](#)

^{F1}1

^{F1}1A (1) Where any profits, gains or losses arising to an investment trust from a creditor relationship for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for that accounting period, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.

(2) Where any profits, gains or losses arising to a venture capital trust from a creditor relationship for an accounting period—

- (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or
- (b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice,

those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.

(3) For the purposes of this paragraph, the “Statement of Recommended Practice” used for an accounting period is—

- (a) in relation to an accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or

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- (b) in relation to any accounting period for which it is permitted to be used, any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.]

[^{F2} Authorised unit trusts]

Textual Amendments

- F2** Sch. 10 paras. 2A, 2B and cross-headings substituted (with effect in relation to accounting periods beginning on or after 1.10.2002) for Sch. 10 para. 2 and heading by [Finance Act 2002 \(c. 23\), s. 82, Sch. 25 Pt. 1 para. 38](#)

^{F2}

- [^{F3}2A (1) Where any profits, gains or losses arising to an authorised unit trust from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
 - (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised; or
 - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to authorised unit trust schemes, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.
- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and

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- (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).]

Textual Amendments

- F3** Sch. 10 paras. 2A, 2B and cross-headings substituted (with effect in relation to accounting periods beginning on or after 1.10.2002) for Sch. 10 para. 2 and heading by [Finance Act 2002 \(c. 23\), s. 82, Sch. 25 Pt. 1 para. 38](#)

[^{F4}Open-ended investment companies

Textual Amendments

- F4** Sch. 10 paras. 2A, 2B and headings substituted (with effect in relation to accounting periods beginning on or after 1.10.2002) for Sch. 10 para. 2 and heading by [Finance Act 2002 \(c. 23\), s. 82, Sch. 25 Pt. 1 para. 38](#)

- 2B (1) Where any profits, gains or losses arising to an open-ended investment company from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised; or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to open-ended investment companies, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.

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- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and
 - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).]

Distributing offshore funds

- [^{F5}3 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining what, for any period, would be the total profits of an offshore fund are to include the assumptions in sub-paragraphs (2) and (3) below.
- (2) The first assumption is that the provisions of this Chapter so far as they relate to the creditor relationships of a company do not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund.
- (3) The second assumption is that for the purposes of corporation tax the profits and gains, and losses, that are to be taken to arise from the creditor relationships of an offshore fund are to be computed—
- (a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and
 - (b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment.
- (4) In this paragraph “unauthorised unit trust” means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988.]

Textual Amendments

- F5** [Sch. 10 para. 3](#) substituted (with effect in relation to accounting periods beginning on or after 1.10.2002) by [Finance Act 2002 \(c. 23\)](#), s. 82, [Sch. 25 Pt. 1 para. 39](#)

Company holdings in unit trusts and offshore funds

- 4 (1) This paragraph applies for the purposes of corporation tax in relation to any company where—
- (a) at any time in an accounting period that company holds any of the following (“a relevant holding”), that is to say, any rights under a unit trust scheme or any relevant interests in an offshore fund; and
 - (b) there is a time in that period when that scheme or fund fails to satisfy the non-qualifying investments test.
- (2) The Corporation Tax Acts shall have effect for that accounting period in accordance with sub-paragraphs (3) and (4) below as if the relevant holding were rights under a creditor relationship of the company.
- (3) An accruals basis of accounting shall not be used for the purposes of this Chapter as respects the company’s relevant holdings.

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- (4) The authorised mark to market basis of accounting used for any accounting period as respects a relevant holding shall not be taken, for the purposes of this Chapter, to require the bringing into account of any credit relating to any distributions of an authorised unit trust which become due and payable in that period other than interest distributions within the meaning of section 468L(3) of the Taxes Act 1988.

Holding becoming or ceasing to be paragraph 4 holding

- 5 (1) Section 116 of the 1992 Act (reorganisations etc. involving qualifying corporate bonds) shall have effect in accordance with the assumptions for which this paragraph provides if—
- (a) a relevant holding is held by a company both at the end of one accounting period and at the beginning of the next; and
 - (b) paragraph 4 above applies to that holding for one of those periods but not for the other.
- (2) Where—
- (a) the accounting period for which paragraph 4 above applies to the relevant holding is the second of the periods mentioned in sub-paragraph (1) above, and
 - (b) the first of those periods is not a period ending on 31st March 1996 or a period at the end of which there is deemed under section 212 of the 1992 Act to have been a disposal of the relevant holding,
- the holding shall be assumed to have become a holding to which paragraph 4 above applies for the second of those periods in consequence of the occurrence, at the end of the first period, of a transaction such as is mentioned in section 116(1) of that Act.
- (3) In relation to the transaction that is deemed to have occurred as mentioned in sub-paragraph (2) above—
- (a) the relevant holding immediately before the beginning of the second accounting period shall be assumed to be the old asset for the purposes of section 116 of the 1992 Act; and
 - (b) the relevant holding immediately after the beginning of that period shall be assumed for those purposes to be the new asset.
- (4) Where the accounting period for which paragraph 4 above applies to the relevant holding is the first of the periods mentioned in sub-paragraph (1) above, then, for the purposes of the 1992 Act—
- (a) the holding shall be assumed to have become a holding to which paragraph 4 above does not apply for the second of those periods in consequence of the occurrence at the beginning of the second of those periods of a transaction such as is mentioned in section 116(1) of that Act;
 - (b) the relevant holding immediately before the beginning of that second period shall be assumed, in relation to that transaction, to be the old asset for the purposes of section 116 of the 1992 Act; and
 - (c) the relevant holding immediately after the beginning of that period shall be assumed, in relation to that transaction, to be the new asset for those purposes.
- (5) In this paragraph “the 1992 Act” means the ^{M1}Taxation of Chargeable Gains Act 1992.

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Marginal Citations

M1 1992 c. 12.

Opening valuation of paragraph 4 holding

- 6 Where—
- (a) paragraph 5(2) above applies in the case of any relevant holding of a company, and
 - (b) for the purpose of bringing amounts into account for the purposes of this Chapter on the mark to market basis used for that period in pursuance of paragraph 4 above, an opening valuation of the holding falls to be made as at the beginning of that period,
- the value of that asset at the beginning of that period shall be taken for the purpose of the opening valuation to be equal to whatever, in relation to a disposal immediately before the end of the previous accounting period, would have been taken to be the market value of the holding for the purposes of the Taxation of Chargeable Gains Act 1992.

Meaning of offshore funds

- 7 (1) For the purposes of paragraph 4 above an interest is a relevant interest in an offshore fund if—
- (a) it is a material interest in an offshore fund for the purposes of Chapter V of Part XVII of the Taxes Act 1988; or
 - (b) it would be such an interest if the assumption mentioned in sub-paragraph (2) below were made.
- (2) That assumption is that the unit trust schemes and arrangements referred to in paragraphs (b) and (c) of subsection (1) of section 759 of the Taxes Act 1988 are not limited to those which are also collective investment schemes.

Modifications etc. (not altering text)

C2 Sch. 10 para. 7 applied (29.4.1996) by 1992 c. 12, s. 117B(8) (as inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 62 (with savings in Pt. IV Ch. II))

Non-qualifying investments test

- 8 (1) For the purposes of paragraph 4 above a unit trust scheme or offshore fund fails to satisfy the non-qualifying investments test at any time when the market value of the qualifying investments exceeds 60 per cent. of the market value of all the investments of the scheme or fund.
- (2) Subject to sub-paragraph (8) below, in this paragraph “qualifying investments”, in relation to a unit trust scheme or offshore fund, means investments of the scheme or fund which are of any of the following descriptions—
- (a) money placed at interest;
 - (b) securities;
 - (c) shares in a building society;

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- (d) qualifying holdings in a unit trust scheme or an offshore fund [^{F6}or an open-ended investment company].
 - ^{F7}(e) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (d) above;
 - (f) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.]
- (3) For the purposes of sub-paragraph (2) above a holding in a unit trust scheme or offshore fund [^{F8}or open-ended investment company] is a qualifying holding at any time if—
- (a) at that time, or
 - (b) at any other time in the same accounting period,
- that scheme or fund [^{F9}or company] would itself fail (even on the relevant assumption) to satisfy the non-qualifying investments test.
- ^{F10}(3A) For the purposes of sub-paragraph (3) above an open-ended investment company fails to satisfy the non-qualifying investments test at any time when the market value of the investments of the company which are qualifying investments exceeds 60 per cent. of the market value of all its investments.]
- (4) For the purposes of [^{F11}sub-paragraphs (3) and (3A)] above the relevant assumption is that investments of the scheme or fund [^{F12}or company] are qualifying investments in relation to that scheme or fund [^{F12}or company] only if they fall within paragraphs (a) to (c) [^{F13}, (e) and (f)] of sub-paragraph (2) above.
- (5) References in this paragraph to investments of a unit trust scheme or offshore fund are references, as the case may be—
- (a) to investments subject to the trusts of the scheme, or
 - (b) to assets of the fund,
- but in neither case do they include references to cash awaiting investment.
- ^{F14}(5A) References in this paragraph to investments of an open-ended investment company are references to investments comprised in the scheme property of that company, but do not include references to cash awaiting investment.]
- (6) References in this paragraph to a holding—
- (a) in relation to a unit trust scheme, are references to an entitlement to a share in the investments of the scheme; and
 - (b) in relation to an offshore fund, are references to shares in any company by which that fund is constituted or any entitlement to a share in the investments of the fund.
- ^{F15}and
- ^{F15}(c) in relation to an open-ended investment company, are references to shares in that company.]
- ^{F16}(6A) For the purposes of sub-paragraph (6)(c) above, where in respect of a given class of shares of an open-ended investment company—
- (a) shares issued of that class consist of both smaller denomination shares and larger denomination shares, and
 - (b) a person owns both smaller denomination shares and larger denomination shares of that class,

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those shares owned by him shall be treated as being securities of the same class for the purposes of the provisions of the Tax Acts and the 1992 Act relating to ownership of shares in a company.

^{F16}(6B) In sub-paragraph (6A) above, “smaller denomination shares” means shares to which are attached rights specified in the open-ended investment company’s instrument of incorporation that are expressed in the smaller of two denominations, and “larger denomination shares” means shares to which are attached rights so specified that are expressed in the larger of two denominations.]

(7) In this paragraph “security” does not include shares in a company.

^{F17}(7A) In this paragraph—

- (a) “collective investment scheme” has the meaning given by [^{F18}235 of the Financial Services and Markets Act 2000];
- (b) “open-ended investment company” means, subject to sub-paragraph (7B) below, an open-ended investment company within the meaning given by [^{F18}236 of the Financial Services and Markets Act 2000] which is incorporated in the United Kingdom;
- (c) “scheme property” of an open-ended investment company means, subject to sub-paragraph (7C)(b) below, the property subject to the collective investment scheme constituted by the company;
- (d) references to a person owning shares in an open-ended investment company are references to—
 - (i) the beneficial owner of the shares,
 - (ii) where the shares are held on trust (other than a bare trust), the trustees of the trust, or
 - (iii) where the shares are comprised in the estate of a deceased person, the deceased’s personal representatives.

^{F17}(7B) Each of the parts of an umbrella company shall be regarded for the purposes of this paragraph as an open-ended investment company and the umbrella company as a whole shall not be so regarded and shall not be regarded as a company.

^{F17}(7C) In relation to a part of an umbrella company—

- (a) references in this paragraph to investments of an open-ended investment company shall have effect as references to such of the investments as under the arrangements referred to in sub-paragraph (7D) below form part of the separate pool to which that part of the umbrella company relates;
- (b) references in this paragraph to the scheme property of an open-ended investment company shall have effect as if they were references to such property subject to the collective investment scheme constituted by the umbrella company as is comprised in the separate pool to which that part of the umbrella company relates;
- (c) a person for the time being having rights in that part shall be regarded as the owner of shares in the open-ended investment company which that part is deemed to be by virtue of sub-paragraph (7B) above, and not as the owner of shares in the umbrella company itself.

^{F17}(7D) In sub-paragraphs (7B) and (7C) above “umbrella company” means a company—

- (a) which falls within the definition of “open-ended investment company” in [^{F18}236 of the Financial Services and Markets Act 2000],

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- (b) which is incorporated in the United Kingdom,
- (c) whose instrument of incorporation provides for arrangements for such pooling as is mentioned in section [F19]235(3)(a) of that Act in relation to separate parts of the scheme property of the company, and
- (d) the owners of shares in which are entitled to exchange rights in one part for rights in another;

and any reference to a part of an umbrella company is a reference to such of the arrangements as relate to a separate pool.]

[F20(7E) For the purposes of this paragraph—

“contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;

“derivative contract” means—

- (a) a contract which is a derivative contract within the meaning of that Schedule, or
- (b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);

“underlying subject matter” has the same meaning as in paragraph 11 of that Schedule.]

- (8) The Treasury may by order amend this paragraph so as to extend or restrict the descriptions of investments of a unit trust scheme or offshore fund that are qualifying investments for the purposes of this paragraph.

Textual Amendments

- F6** Words in Sch. 10 para. 8(2)(d) added (25.2.1997) by [S.I. 1997/213](#), [art. 2](#)
- F7** Sch. 10 para. 8(2)(e)(f) inserted (with effect in relation to accounting periods beginning on or after 1.10.2002 subject to [Sch. 28](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 83, [Sch. 27 para. 20\(2\)](#)
- F8** Words in Sch. 10 para. 8(3) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 4\(a\)](#)
- F9** Words in Sch. 10 para. 8(3) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 4\(b\)](#)
- F10** Sch. 10 para. 8(3A) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 5](#)
- F11** Words in Sch. 10 para. 8(4) substituted (25.2.1997) by [S.I. 1997/213](#), [art. 6\(a\)](#)
- F12** Words in Sch. 10 para. 8(4) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 6\(b\)](#)
- F13** Words in Sch. 10 para. 8(4) inserted (with effect in relation to accounting periods beginning on or after 1.10.2002 subject to [Sch. 28](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 83, [Sch. 27 para. 20\(3\)](#)
- F14** Sch. 10 para. 8(5A) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 7](#)
- F15** Sch. 10 para. 8(6)(c) and the preceding word “and” added (25.2.1997) by [S.I. 1997/213](#), [art. 8](#)
- F16** Sch. 10 para. 8(6A)(6B) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 9](#)
- F17** Sch. 10 para. 8(7A)-(7D) inserted (25.2.1997) by [S.I. 1997/213](#), [art. 10](#)
- F18** Words in Sch. 10 para. 8(7A)(a)(b)(7D)(a) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 95\(2\)\(a\)\(b\)\(3\)\(a\)](#)
- F19** Words in Sch. 10 para. 8(7D)(c) substituted (1.12.2001) by [S.I. 2001/3629](#), [art. 95\(3\)\(b\)](#)
- F20** Sch. 10 para. 8(7E) inserted (with effect in relation to accounting periods beginning on or after 1.10.2002 subject to [Sch. 28](#) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 83, [Sch. 27 para. 20\(4\)](#)

Powers to make orders

- 9 (1) An order made by the Treasury under any provision of this Schedule may—

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- (a) make different provision for different cases; and
 - (b) contain such incidental, supplemental, consequential and transitional provision as the Treasury may think fit.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under paragraph 8(8) above may make such incidental modifications of paragraph 8(4) above as the Treasury may think fit.

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