

## **EXPLANATORY MEMORANDUM TO THE**

### **THE UNIT TRUST SCHEMES AND OFFSHORE FUNDS (NON-QUALIFYING INVESTMENTS TEST) ORDER 2006**

#### **2006 No. 981**

- 1.** This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.
  
- 2. Description**
  - 2.1 This order updates the list of qualifying investments given at paragraph 8(2) of Schedule 10 to the Finance Act 1996.
  - 2.2 Schedule 10 to the Finance Act 1996 deals with the loan relationships and collective investments schemes.
  - 2.3 The Schedule provides, among other things, for a company's holdings in certain collective investment schemes to be treated as rights under a creditor relationship when more than sixty per cent of the scheme investments are interest bearing or produce returns of a similar nature to interest.
  - 2.4 Paragraph 8(2) of the Schedule provides a list of "qualifying investments" of the type described above.
  
- 3. Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1 None
  
- 4. Legislative Background**
  - 4.1 This is described within paragraph 2 above.
  - 4.2 The powers to update the list of qualifying investments are provided within paragraph 8 to Schedule 10 to the Finance Act 1996 at subparagraph 8. Detail of the extent of those powers is provided within paragraph 9 to Schedule 10.
  - 4.3 These changes bring the non-qualifying investment test used for determining whether the holding by a company in a collective investment scheme is treated as rights under a creditor relationship of the company into line with the definition of qualifying investments used for determining whether an Authorised Investment Fund can make an interest distribution. (Authorised Investment Funds (Tax) Regulations 2006)

## **5. Extent**

5.1 This order applies throughout the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Economic Secretary to the Treasury, Ivan Lewis, has made the following statement: In my view the provisions of these draft Regulations are compatible with the Convention rights.

## **7. Policy Background**

7.1 The purpose of this order is to update the list of qualifying investments in line with current developments in the financial industry and in legislation.

7.2 The amendments to the list of “qualifying investments” made by this order reflect current practice in the use of derivative contracts and contracts for differences in association with investments that have interest-like returns.

7.3 They further recognise that the purpose of some derivative contracts is to hedge against risk in interest-type investments.

7.4 Finally the amendments recognise the place of alternative finance arrangements (as defined by section 46(1) of the Finance Act 2005). These might, for example, be arrangements that are compliant with Shari’a law, which prohibits the payment and receipt of interest.

7.5 The amendments also mirror changes to “qualifying investments” for the purposes of the making of Interest Distributions by Authorised Funds (see 4.3 above)

## **8. Impact**

8.1 A Full Regulatory Impact Assessment was prepared for the Authorised Investment Fund (Tax) Regulations 2006.

8.2 It is not expected that these changes will give rise to any additional compliance costs for the fund industry.

8.3 It is not expected that there will be any effect on small business.

## **9. Contact**

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