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STATUTORY INSTRUMENTS

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**2009 No. 2034**

**The Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009**

**PART 3**

**DUTY TO DEDUCT TAX FROM INTEREST DISTRIBUTIONS**

*Duty to deduct tax interest distributions*

**Duty to deduct tax from interest distributions: general**

**13.**—(1) Any obligation to deduct a sum under section 874(2) of the Income Tax Act 2007<sup>(1)</sup> is subject to the provisions of this regulation.

(2) In this Part the “deduction obligation” means the obligation specified in paragraph (1).

(3) The deduction obligation does not apply to the interest distribution if—

- (a) the recipient is a company (whether or not the company is resident in the United Kingdom for tax purposes);
- (b) the recipient consists of the trustees of a unit trust scheme;
- (c) the reputable intermediary condition in regulation 14 is met with respect to the recipient on the date the interest distribution is made; or
- (d) the residence condition in regulation 17 is met with respect to the recipient on the date the interest distribution is made.

(4) But if the recipient is a company acting in the capacity of a trustee of a trust, the deduction obligation is not excluded by virtue of paragraph (3)(a).

(5) In this regulation, “unit trust scheme” has the meaning given by section 237 of the Financial Services and Markets Act 2000<sup>(2)</sup>.

*The reputable intermediary condition*

**The reputable intermediary condition**

**14.**—(1) The reputable intermediary condition is met with respect to a recipient on the date the interest distribution is made if conditions A to C are met.

(2) Condition A is that the interest distribution is made on behalf of the recipient to a company.

(3) Condition B is that the investment trust or prospective investment trust making the interest distribution has reasonable grounds for believing that the recipient is not ordinarily resident in the United Kingdom.

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(1) 2007 c. 3; section 874(2) was amended by paragraph 26 of Schedule 1 to the [Finance Act 2008](#) (c. 9).

(2) 2000 c. 8.

- (4) Condition C is that the company mentioned in paragraph (2)—
- (a) is subject to the EC Money Laundering Directive,
  - (b) is subject to equivalent non-EC provisions, or
  - (c) is a company which—
    - (i) is resident in a regulated country or territory, and
    - (ii) is an associated company of a company which is subject to sub-paragraph (a) or (b).

#### **The reputable intermediary condition: further provisions**

15.—(1) This regulation applies for the purposes of Condition C in regulation 14.

(2) A company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive [91/308/EEC](#)(3), as amended by Directive [2001/97/EC](#)(4).

(3) A company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of Directive [91/308/EEC](#) (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(4) A country or territory is a regulated country or territory if it either is a member State or imposes requirements similar to those, which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(5) A company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 of ICTA (see section 416 of that Act).

#### **The reputable intermediary condition: consequences of reasonable but incorrect belief**

16.—(1) This regulation applies if conditions A to D are met.

(2) Condition A is that an interest distribution is made by an investment trust or prospective investment trust.

(3) Condition B is that the investment trust or prospective investment trust, in reliance on the reputable intermediary condition being met with respect to the recipient of the interest distribution, does not comply with the deduction obligation in relation to the interest distribution.

(4) Condition C is that the deduction obligation would apply but for the reputable intermediary condition being met.

(5) Condition D is that (contrary to the belief of the investment trust or prospective investment trust) the recipient is in fact ordinarily resident in the United Kingdom.

(6) The following provisions of the Income Tax Act 2007 have effect as if the deduction obligation applied—

- (a) section 874 (duty to deduct from certain payments of yearly interest), and
- (b) Chapter 15 of Part 15 (collection: deposit-takers, building societies and certain companies).

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(3) OJ L 166, 28.6.1991, p.77-83.

(4) OJ L 344, 28.12.2001, p.77-82.

### *The residence condition*

#### **The residence condition**

17.—(1) The residence condition is met with respect to a recipient on the date the interest distribution is made if any of conditions A to E is met.

(2) Condition A is that, in relation to an interest distribution which is not made to or received under a trust, there is a valid declaration, made by the recipient, that the recipient is not ordinarily resident in the United Kingdom.

(3) Condition B is—

- (a) that the recipient receives the interest distribution as the personal representative of a deceased person, and
- (b) that the deceased person had made a declaration, which was valid at the time of the deceased person's death, that the deceased person was not ordinarily resident in the United Kingdom.

(4) Condition C is—

- (a) that the recipient receives the interest distribution as a personal representative of a deceased person, and
- (b) that the personal representative has made a declaration that the deceased, immediately before the time at which the deceased died, was not ordinarily resident in the United Kingdom.

(5) Condition D is that, in the case of an interest distribution made to or received under a trust where the whole of the income is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the trustees of that trust, there is a valid declaration, made by the person in question that the person is either not ordinarily resident or, in the case of a company, not resident in the United Kingdom.

(6) Condition E is that, in circumstances in which condition D does not apply and with respect to a recipient in the case of an interest distribution made to or received under a trust, there is a valid declaration, made by the trustees of that trust, that—

- (a) the trustees are not resident in the United Kingdom, and
- (b) each beneficiary of the trust is either not ordinarily resident or, in the case of a beneficiary which is a company, not resident in the United Kingdom.

#### **The residence condition: declarations**

18.—(1) A declaration for the purposes of regulation 17 must—

- (a) be in such form as may be required or authorised by the Commissioners;
- (b) be made in writing to the investment trust or prospective investment trust making the interest distribution in question; and
- (c) contain any details or undertakings required by paragraphs (2) to (4).

(2) A declaration made for the purposes of condition A or B in regulation 17 must contain—

- (a) the name and principal residential address of the person making it; and
- (b) an undertaking that the investment trust or prospective investment trust will be notified by that person if the person becomes ordinarily resident in the United Kingdom.

(3) A declaration made for the purposes of condition C in regulation 17 must contain the name of the deceased and the principal residential address of the deceased immediately before the time at which the deceased died.

- (4) A declaration made for the purposes of condition D or E in regulation 17 must contain—
- (a) the names and principal residential addresses of the trustees of the trust or, in the case of a trustee which is a company, the name of the company and the address of its registered or principal office;
  - (b) the names and principal residential addresses of the beneficiaries of the trust or, in the case of a beneficiary which is a company, the name of the company and the address of its registered or principal office; and
  - (c) an undertaking that the trustees of the trust will notify the investment trust or prospective investment trust if—
    - (i) they become resident in the United Kingdom,
    - (ii) any beneficiary of the trust named in the declaration becomes ordinarily resident or, in the case of a company, resident in the United Kingdom, or
    - (iii) any person who becomes a beneficiary of the trust after making the declaration either is at the time of becoming a beneficiary, or subsequently becomes, ordinarily resident or, in the case of a company, resident in the United Kingdom.

#### **References to beneficiaries in regulations 17 and 18**

**19.** In regulations 17 and 18 references to a beneficiary are references to any person who is known to the trustees of the trust to be either—

- (a) a person who is, or will, or may become, entitled to any income of the trust, whether in the form of income or not, or
- (b) a person to whom any such income may be paid, or for whose benefit any such income may be applied, whether in the form of income or not, in the exercise of a discretion by the trustees.

#### **Interest distributions: declarations and position of investment trust or prospective investment trust**

**20.—(1)** For the purposes of determining whether an interest distribution should be made with or without any deduction required by the deduction obligation, an investment trust or prospective investment trust is entitled to treat a declaration made for the purposes of regulation 17 as valid.

(2) But the investment trust or prospective investment trust may not treat the declaration as valid if condition A or B is met.

(3) Condition A is that the investment trust or prospective investment trust receives a notification in compliance with an undertaking under regulation 18 that a person to whom the undertaking relates has become resident or ordinarily resident in the United Kingdom.

(4) Condition B is that the investment trust or prospective investment trust comes into possession of information by some other means which indicates that such a person is or may be resident or ordinarily resident in the United Kingdom.