
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to the approval of companies as investment trusts for the purposes of sections 1158 and 1159 of the Corporation Tax Act 2010 (c. 4) and in relation to the requirements to be met by investment trusts whilst approved and the treatment of transactions entered into by investment trusts. They also make provision as to the treatment of investments by investment trusts in offshore funds and index tracker funds, and make consequential amendments to the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (“the Offshore Funds Regulations”).

Part 1 of these Regulations contains introductory and general provisions. Regulation 1 provides for citation, commencement and effect. Regulation 2 sets out the structure of the Regulations. Regulation 3 defines terms for the purposes of the Regulations.

Part 2 of these Regulations is concerned with the approval of companies as investment trusts. Chapter 1 of Part 2 deals with applications for approval. Regulation 4 defines terms for the purposes of Part 2. Regulation 5 provides that a company may apply to the Commissioners for approval as an investment trust. Regulation 6 sets out the material that must be included in an application for approval. Regulation 7 supplements regulation 6 and deals with the case where the company has not started an accounting period at the time of the application. Regulation 8 also supplements regulation 6 and deals with the case where the ordinary share capital of the company is not admitted to trading on a regulated market at the time of the application. Regulation 9 provides that the application for approval must be in writing and specifies by when an application in respect of an accounting period must be made. Regulation 10 deals with the Commissioners' response to an application. Regulation 11 provides for an appeal against a rejection of an application. Regulation 12 sets out the consequences of an application being accepted. Regulation 13 provides that acceptance of an application is conditional on the information specified in regulations 7(2)(b) and 8(3) being supplied to the Commissioners.

Chapter 2 deals with two cases where one of the conditions in section 1158 of the Corporation Tax Act 2010 is deemed to be met. Regulation 14 provides that condition B in section 1158 (requirement that the shares making up the ordinary share capital of the company are admitted to trading on a regulated market) is treated as met for a 60 day period where at the time of the application the company intends to obtain admission of its shares or has started the process to obtain admission but not completed it. Regulation 15 provides that a company being wound up is treated as meeting conditions A and B for a period after the winding up starts. Regulation 16 provides further conditions to be complied with as regards the winding up of an investment trust company.

Chapter 3 sets out the requirements that a company must meet in relation to each accounting period for which it is approved as an investment trust. Regulation 17 introduces the requirements. Regulation 18 provides that an investment trust must not be a close company at any point in an accounting period. Regulation 19 provides that an investment trust must not retain more than 15% of its income for the accounting period and that it must distribute income before the filing date for its tax return for that period. Regulation 20 makes provision about the calculation of an investment trust's income for an accounting period. Regulation 21 reduces the amount that may be retained under regulation 19 in a case where the investment trust has income reported to it by an offshore fund. The AIC Statement of Practice referred to in regulation 21(4) can be obtained from <http://www.theaic.co.uk/Documents/Technical/AICSORPJan09.pdf>. Regulation 22 provides for exceptions from the distribution obligations in regulations 19 and 21. Regulation 23 requires an investment trust to notify the Commissioners if it alters its investment policy and Regulation

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24 requires an investment trust to notify the Commissioners of any breach of the requirements in Chapter 3.

Chapter 4 deals with breaches of the requirements of the Regulations. Regulation 25 defines whether breaches are minor or serious. Regulation 26 provides that a breach of the requirement not to be a close company is a serious breach. Regulation 27 provides that a minor breach is treated as a serious breach if there have been a number of previous minor breaches during a ten year period. Regulation 28 provides that a breach of the income distribution requirement is treated as either a minor breach, a serious breach or no breach, depending on the size of the discrepancy between the amount required to be distributed and the amount distributed. Regulation 29 provides that approval as an investment trust is to be withdrawn on notice if there is a serious breach of the Regulations. Regulation 30 provides that an investment trust in breach of the eligibility conditions (conditions A to C specified in section 1158 of the Corporation Tax Act 2010) is to be treated as a company which has not been approved.

Chapter 5 deals with the case where an investment trust, although approved, treats itself as not being an investment trust. Regulation 31 provides that if an approved company makes a tax return on the basis that it is not an investment trust then the company is treated as not being approved in respect of the period to which the return relates and subsequently.

Part 3 makes provision in relation to investment transactions entered into by investment trusts. Regulation 32 provides that investment transactions entered into by investment trusts are treated as not being trading transactions for the purposes of the Corporation Tax Acts. Regulation 33 defines the expression “investment transaction”; and regulations 34 to 41 provide for the interpretation of the component parts of that definition.

Part 4 makes provision about investment trusts which have interests in offshore non-reporting funds. Regulation 42 specifies the conditions that an investment trust must satisfy in relation to an asset that represents an interest in an offshore non-reporting fund (“the asset”) if the disposal of the asset is not to give rise to a charge to tax on the investment trust. Where the conditions are satisfied, regulation 43 applies. Regulation 43 provides that the disposal of an asset will not be subject to a charge to tax under the Offshore Funds Regulations, which would otherwise be the case. Regulation 44 deals with the case where an investment trust holds an asset in relation to which the conditions in regulation 42(2) are not satisfied for the entire period that it holds the asset. Regulation 44 provides that the investment trust may treat the asset as an interest in a reporting fund if it makes a deemed disposal and reacquisition of the asset representing the interest. In order to do so, the investment trust must reasonably expect to satisfy the conditions in regulation 42(2) from the date of the reacquisition until the date on which it disposes of the asset. If it satisfies the conditions in regulation 42(2) for this period, regulation 43 applies on the disposal of the asset. Regulation 45 makes provision as regards the investment by an investment trust in index tracking funds. Regulation 46 makes a consequential amendment to regulation 18 of the Offshore Funds Regulations, so that the charge to tax under regulation 17 of those Regulations does not arise in relation to transactions by an investment trust falling within regulations 43 or 45 of these Regulations.

A Tax Information and Impact Note covering this instrument was published on 9 December 2010 alongside draft legislation on the modernisation of the tax rules for investment trust companies and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm> . It remains an accurate summary of the impacts that apply to this instrument.

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