Draft Order laid before the House of Commons under section 217(3) of the Finance Act 2013, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2013 No.

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX

The Unauthorised Unit Trusts (Tax) Regulations 2013

Made - - - - ***
Coming into force in accordance with regulation 1(2) and (3)

The Treasury make the following Regulations in exercise of the powers conferred by section 217 of the Finance Act 2013(**1**).

In accordance with section 217(3) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

PART 1

Introductory and general provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Unauthorised Unit Trusts (Tax) Regulations 2013.

(2) Chapters 1 and 2 of Part 2 and Chapter 1 of Part 4 (and this Part so far as applying to those Chapters) come into force on the day after the day on which these Regulations are made.

(3) Apart from that, these Regulations come into force on 6th April 2014.

Interpretation

2. In these Regulations—

(**1**) 2013 c.29.

"the AIF Regulations" means the Authorised Investment Funds (Tax) Regulations 2006(**2**),

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs,

"eligible investor" has the meaning given by regulation 3(2),

"exempt unauthorised unit trust" has the meaning given by regulation 3(1),

"friendly society" has the same meaning it has for the purposes of Part 3 of FA 2012 (friendly societies carrying on long-term business),

"insurance company" has the same meaning as it has for the purposes of Part 2 of FA 2012 (insurance companies carrying on long-term business),

"non-reporting fund" has the same meaning as it has for the purposes of the Offshore Funds Regulations,

"notice" means notice in writing,

"the Offshore Funds Regulations" means the Offshore Funds (Tax) Regulations 2009(**3**),

"prospectus" means a prospectus or similar document made available to investors,

"UK resident" means resident in the United Kingdom (and references to a UK resident company are to a company which is resident there).

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—

(**2**) S.I. 2006/964, amended by Schedule 3 to the Corporation Tax Act 2010 (c.4) (referred to as "CTA 2010" in the remaining footnotes) and by S.I. 2006/964, 2006/3239, 2007/683, 2007/794, 2008/705, 2008/1463, 2008/3159, 2009/2036, 2009/2199, 2010/294, 2010/1642, 2011/244, 2011/2192, 2012/519, 2012/1783, 2012/3043 and 2013/1772.

(**3**) S.I. 2009/3001, amended by S.I. 2009/3139, 2010/294, 2011/1211, 2011/2192, 2011/2999, 2013/661, 2013/1411 and 2013/1770.

(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(**4**) of TMA 1970 relating to the first period must be delivered.

(**4**) 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

(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—

(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(**5**), and

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).

(**5**) 2006 c.46.

(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—