Draft Regulations laid before the House of Commons under sections 622A(3), 1158(8) and 1159(4) of the Corporation Tax Act 2010 and section 372(3)(b) of the Taxation (International and Other Provisions) Act 2010, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.

CORPORATION TAX

The Investment Trust (Approved Company) (Tax) Regulations 2011

Made - - - -	*2011*
Coming into force - -	*1st January 2012*

The Treasury make the following regulations in exercise of the powers conferred by sections 622A, 1158(6) and 1159 of the Corporation Tax Act 2010(**1**) and section 354 of the Taxation (International and Other Provisions) Act 2010(**2**).

In accordance with sections 622A(3), 1158(8) and 1159(4) of the Corporation Tax Act 2010 and section 372(3)(b) of the Taxation (International and Other Provisions) Act 2010, a draft of these Regulations 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 Investment Trust (Approved Company) (Tax) Regulations 2011 and come into force on 1 January 2012.

(2) Subject to paragraph (3), these Regulations have effect in relation to accounting periods beginning on or after 1 January 2012.

(3) Regulations 43, 45 and 46 have effect in relation to disposals made on or after 1 January 2012.

Structure of these Regulations

2. The structure of these Regulations is as follows—

(**1**) 2010 c. 4; new sections 1158 and 1159 were substituted by section 49 of the Finance Act 2011 (c. 11) and section 622A was inserted by section 50 of that Act.
(**2**) 2010 c. 8.

This Part contains introductory and general provisions;

Part 2 contains the following provisions about investment trusts—

Chapter 1 deals with applications for approval as an investment trust,

Chapter 2 deals with cases where the eligibility conditions are treated as being met,

Chapter 3 deals with the requirements to be met by investment trusts whilst approved,

Chapter 4 deals with breaches of the requirements to be met by investment trusts and subsequent withdrawal of approval,

Chapter 5 deals with an approved company treating itself as not being an investment trust;

Part 3 contains provisions about transactions by investment trusts which are treated as entered into otherwise than in the course of a trade; and

Part 4 contains provisions about investment trusts having interests in offshore non-reporting funds and index tracking funds, and makes consequential provision.

Interpretation

3.—(1) In these Regulations—

"company tax return" has the same meaning as in paragraph 3(1) of Schedule 18 to the Finance Act 1998(**3**),

"CTA 2009" means the Corporation Tax Act 2009(**4**),

"CTA 2010" means the Corporation Tax Act 2010(**5**),

"the Offshore Funds Regulations" means the Offshore Funds (Tax) Regulations 2009(**6**),

"tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) For the purposes of these Regulations the market value of any asset is to be determined in a like manner as it would be determined for the purposes of the Taxation of Chargeable Gains Act 1992(**7**).

PART 2

Investment Trusts

CHAPTER 1

Application procedure

Interpretation

4. In this Part—

"the eligibility conditions" mean conditions A to C in section 1158 of CTA 2010,

"the income distribution requirement" has the meaning given in regulation 21(9).

(**3**) 1998 c. 36. Paragraph 3 of Schedule 18 was amended by paragraphs 380 and 385 of Schedule 1 to the Income Tax Act 2007 (c. 3) and paragraph 68(a) of Schedule 4 to the Commissioners of Revenue and Customs Act 2005 (c. 11).
(**4**) 2009 c. 4.
(**5**) 2010 c. 4.
(**6**) S.I. 2009/3001, amended by S.I. 2009/3139, 2010/294, 2011/244, 2011/1211 and 2011/2192.
(**7**) 1992 c. 12.

Application for approval as an investment trust

5.—(1) A company may apply to the Commissioners(**8**) for approval as an investment trust in accordance with this Chapter.

(2) A company which makes such an application is referred to in this Chapter as "the applicant".

Contents of application

6.—(1) An application under regulation 5 must include the particulars specified in this regulation.

(2) The application must—

(a) specify the date of the first day of an accounting period in respect of which the applicant seeks approval as an investment trust ("the specified date"),

(b) contain a statement that the applicant meets, or is expected to meet, in respect of the accounting period referred to in sub-paragraph (a)—

(i) the eligibility conditions, and

(ii) the requirements of Chapter 3 of this Part,

(c) contain an undertaking given in relation to the accounting period referred to in sub-paragraph (a) and each subsequent accounting period in respect of which it is or expects to be an investment trust, that the applicant will meet—

(i) the eligibility conditions, and

(ii) the requirements of Chapter 3 of this Part,

(d) include a copy of the applicant's current published investment policy, and

(e) provide evidence to show that the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market(**9**).

This regulation is subject to regulations 7, 8, 9 and 13.

Contents of application: accounting period not commenced at time of application

7.—(1) This regulation applies if at the time the application is made the applicant has not commenced an accounting period.

(2) If this regulation applies the applicant must—

(a) specify a provisional date for the purposes of regulation 6(2)(a), and

(b) where a provisional date is specified, as soon as reasonably practicable, confirm in writing to the Commissioners the date of the first day of the accounting period in respect of which the applicant seeks approval as an investment trust.

Contents of application: shares not admitted to trading at time of application

8.—(1) This regulation applies if at the time the application is made the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are not admitted to trading on a regulated market.

(2) If this regulation applies, the application—

(a) for the purposes of regulation 6(2)(d), may include a copy of the applicant's prospectus instead of the current published investment policy, and

(**8**) Section 1159 of the Corporation Tax Act 2010 defines "the Commissioners" as the Commissioners for Her Majesty's Revenue and Customs.

(**9**) Section 1158 defines "regulated market".

(b) must explain how the applicant will be in a position to comply with condition B in section 1158(3) of CTA 2010 by the specified date.

(3) The applicant must provide evidence to the Commissioners that the shares making up the applicant's ordinary share capital (or, if there are such shares of more than one class, those of each class) are admitted to trading on a regulated market—

(a) before the end of a period of 60 days beginning with the date on which the shares were so admitted, or

(b) by such other date as the Commissioners may agree.

Form, timing and withdrawal of application

9.—(1) An application must be made in writing to the Commissioners.

(2) The application must be made to the Commissioners before the end of the period of 90 days beginning with the last day of the first accounting period for which approval is sought.

(3) The applicant may withdraw the application at any time during the period beginning with the day on which the application is made and ending 28 days after the day on which the Commissioners give notice under regulation 10 accepting the application.

Response by Commissioners to application

10.—(1) Within 28 days beginning with the date on which the application is made, the Commissioners must give notice in writing to the applicant—

(a) accepting the application,

(b) rejecting the application, or

(c) asking for further information in order to consider the application.

(2) The Commissioners must not accept an application if any particular or information mentioned in regulation 6, 7 or 8 is not supplied.

(3) Paragraph (4) applies if—

(a) the Commissioners have given a notice under paragraph (1)(c), and

(b) the applicant provides the further information within the period of 28 days beginning with the day on which the Commissioners ask for the further information, or within such longer period as may be agreed by the Commissioners.

(4) Within 28 days beginning with the day on which they receive the further information, the Commissioners must give notice to the applicant—

(a) accepting the application, or

(b) rejecting the application.

(5) If the Commissioners reject the application, the notice given to the applicant under paragraph (1)(b) or (4)(b) must contain a statement of the reason for which the application was rejected.

Appeal against rejection of the application

11.—(1) If the Commissioners reject an application, the applicant may appeal.

(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 rejecting the application is given.

(3) On an appeal, the tribunal may uphold or quash the rejection of the application.

(4) If the tribunal quashes the rejection of the application, these Regulations apply as if the Commissioners had accepted the application in the form in which it was considered by the tribunal.

Effect of acceptance of application

12. If the Commissioners accept (or are treated as accepting) an application, the applicant is approved as an investment trust—

(a) for the accounting period commencing on the specified date (or commencing on such later date as may be confirmed in accordance with regulation 7(2)(b)), and

(b) for each subsequent accounting period,

but this is subject to regulations 13 and 25 to 31.

Acceptance of application conditional on receipt of specified information

13.—(1) An acceptance by the Commissioners of an application is conditional on the provision of any information or particulars required by regulations 7(2)(b) and 8(3).

(2) If the applicant does not provide any such information or particulars, the application shall be treated as if it had not been made and the company treated as if it had not been an investment trust for any of the period to which the application mentioned in paragraph (1) related.

CHAPTER 2

Cases where eligibility conditions treated as being met

Delay in admission of company's ordinary share capital to trading on a regulated market

14.—(1) Paragraph (3) applies if at the date on which the application under regulation 5 is made the applicant—

(a) has commenced procedures to obtain admission of the shares making up its ordinary share capital (or, if there are such shares of more than one class, those of each class) to trading on a regulated market but has not obtained admission, or

(b) has given a commitment in its prospectus to commence such procedures but has not started those procedures.

(2) Paragraph (3) also applies if a company which has been approved as an investment trust issues shares of a class ("the new shares") which is different from any of those which make up its ordinary share capital.

(3) Condition B in section 1158(3) of CTA 2010 is to be treated as met for the period of 60 days beginning with—

(a) in the case of paragraph (1), the date of the application, or

(b) in the case of paragraph (2), the date on which the new shares were issued.

Winding up of company approved as investment trust

15.—(1) Paragraph (2) applies if—

(a) a company is being wound up,

(b) the company was approved as an investment trust in respect of the accounting period which ended immediately before the winding up started (see section 12 of CTA 2009),

(c) the company satisfied the eligibility conditions in respect of the accounting period referred to in sub-paragraph (b), and