Draft Regulations laid before the House of Commons under section 19(4) of the Finance (No. 2) Act 2005, for approval by resolution of the House of Commons.

DRAFT STATUTORY INSTRUMENTS

2006 No. XX

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Authorised Investment Funds (Tax) Regulations 2006

Made - - - -	*2006*
Coming into force - -	*2006*

The Treasury, in exercise of the powers conferred upon them by sections 17(3) and 18 of the Finance (No. 2) Act 2005(**1**) and section 152 of the Finance Act 1995(**2**) make the following Regulations:

PART 1

PRELIMINARY PROVISIONS AND INTERPRETATION

Preliminary provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) Regulations 2006, and shall come into force on 1st April 2006.

(2) These Regulations have effect—

(a) for the purposes of income tax—

(i) for the tax year 2006-07 and subsequent tax years, and

(ii) for distributions made on or after 6th April 2006;

(b) for the purposes of corporation tax—

(i) on income, for accounting periods beginning on or after 1st April 2006,

(**1**) 2005 c. 22.
(**2**) 1995 c. 4; section 152 was amended by paragraph 13 of Schedule 19 to the Finance Act 1999 (c. 16) and Article 90 of S.I. 2001/3629.

(ii) on chargeable gains, in relation to disposals made on or after 1st April 2006, and

(iii) for distributions made on or after 1st April 2006; and

(c) for the purposes of capital gains tax, in relation to disposals made on or after 6th April 2006.

(3) But regulation 26(4)(e) (the non-liability condition) has effect only in relation to distribution dates occurring on or after 6th April 2007.

Structure of these Regulations

2. The structure of these Regulations is as follows—

this Part contains preliminary provisions and provides for interpretation;

Part 2 deals with the tax treatment of authorised investment funds;

Part 3 deals with distributions made by authorised investment funds;

Part 4 deals with the treatment of participants in authorised investment funds;

Part 5 deals with compliance;

Part 6 contains further provisions relating to authorised investment funds;

Part 7 contains consequential amendments and modifications of enactments; and

Part 8 contains final provisions.

Interpretation

Definition of "authorised investment funds"

3. In these Regulations "authorised investment funds" means—

(a) open-ended investment companies, and

(b) authorised unit trust schemes.

Definition of "open-ended investment company"

4. In these Regulations "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of FISMA 2000(**3**) applies.

Interpretation of expressions relating to authorised unit trust schemes

5.—(1) In these Regulations "unit trust scheme" has the meaning given by section 237 of FISMA 2000.

(2) For the purposes of these Regulations a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of FISMA 2000 is in force in relation to that scheme during the whole or part of that accounting period.

(3) In these Regulations "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.

Further definitions generally relevant for authorised investment funds

6.—(1) In these Regulations the "legal owner" means—

(**3**) 2000 c. 8.

(a) in relation to an open-ended investment company, the open-ended investment company, and

(b) in relation to an authorised unit trust, the trustees of the trust.

(2) In these Regulations the "scheme property" means—

(a) in relation to an open-ended investment company, the property subject to the collective investment scheme constituted by the company, and

(b) in relation to an authorised unit trust, the property subject to the collective investment scheme constituted by the trust.

(3) In these Regulations the "manager" means—

(a) in relation to an open-ended investment company, the authorised corporate director, and

(b) in relation to an authorised unit trust, the person who is the manager of the trust for the purposes of Chapter 3 of Part 17 of FISMA 2000 (authorised unit trust schemes).

(4) In these Regulations, unless a contrary intention appears, "units" means the rights or interests (however described) of the participants in the authorised investment fund.

(5) In these Regulations "accumulation unit" means—

(a) in relation to an open-ended investment company, a share in the company in respect of which income is credited periodically to the capital part of the scheme property of the company, and

(b) in relation to an authorised unit trust, a unit in the trust in respect of which income is credited periodically to the capital part of the scheme property of the trust.

(6) In these Regulations a "participant", in relation to an authorised investment fund, means a beneficial owner of units in the fund, except where the units are held on trust (other than a bare trust) or are comprised in the estate of a deceased person, and in such a case the participant, in relation to the fund, means the trustees of the trust, or, as the case may be, the deceased's personal representatives.

Umbrella companies and umbrella schemes: interpretation

7.—(1) In these Regulations "umbrella company" has the meaning given by section 468A(4) of ICTA(**4**), and a reference to a part of an umbrella company is to be construed in accordance with that provision.

(2) For the purposes of these Regulations each of the parts of an umbrella company is regarded as an open-ended investment company and the umbrella company as a whole shall not be so regarded.

(3) In relation to a part of an umbrella company, any reference—

(a) to investments or to scheme property of an open-ended investment company has effect as a reference to such of the investments or to such of the scheme property as under the arrangements form part of the separate pool to which that part of the umbrella company relates, and

(b) a person for the time being having rights in that part is regarded as the owner of shares in the open-ended investment company which that part is regarded as being by virtue of paragraph (2), and not as the owner of shares in the umbrella company itself.

(4) In relation to a part of an umbrella company, any references in these Regulations to the instrument of incorporation or the prospectus in issue for the time being (including any supplements to that prospectus) of an open-ended investment company have effect, for the purposes of these Regulations, as references to such parts of the instrument of incorporation or of that prospectus (including any supplements to that prospectus) as apply to that part of the umbrella company.

(**4**) Section 468A was inserted by section 16 of the Finance (No. 2) Act 2005 (c. 22).

(5) In these Regulations "umbrella scheme" has the meaning given by section 468(8) of ICTA, and a reference to a part of an umbrella scheme is to be construed in accordance with that provision.

(6) For the purposes of these Regulations each of the parts of an umbrella scheme is regarded as an authorised unit trust and the umbrella scheme as a whole is not regarded as an authorised unit trust or as any other form of collective investment scheme.

(7) In relation to a part of an umbrella scheme, any reference—

(a) to investments or to scheme property subject to the trusts of an authorised unit trust has effect as a reference to such of the investments or to such of the scheme property as under the arrangements form part of the separate pool to which that part of the umbrella scheme relates, and

(b) to a unit holder, has effect as a reference to a person for the time being having rights in that separate pool.

(8) In relation to a part of an umbrella scheme, any references in these Regulations to the prospectus in issue for the time being (including any supplements to that prospectus) of an authorised unit trust have effect, for the purposes of these Regulations, as references to such parts of that prospectus (including any supplements to that prospectus) as apply to that part of the umbrella scheme.

General interpretation

8. In these Regulations—

"authorised corporate director", in relation to an open-ended investment company, means a corporate director of the company acting in the capacity as the director having responsibility for the management of its scheme property, being an authorised person within the meaning given by section 31(2) of FISMA 2000, or if there is no such director, the person for the time being having responsibility for the management of the scheme property of the company and acting in that capacity;

"collective investment scheme" has the meaning given by section 235 of FISMA 2000;

the "Commissioners" means the Commissioners for Revenue and Customs;

"creditor relationship" has the meaning given by section 103(1) of FA 1996(**5**);

"derivative contract" means—

(a) a contract which is a derivative contract within the meaning of Schedule 26 to FA 2002(**6**), or

(b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule(**7**) (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);

"investments" do not include cash awaiting investment;

"net asset value" means the value of the assets of the authorised investment fund, after the deduction of specified liabilities;

"owner of shares", in relation to an open-ended investment company, means a beneficial owner of shares in the company, except where the shares are held on trust (other than a bare trust) or are comprised in the estate of a deceased person, and in such a case the owner of shares, in relation to the company, means the trustees of the trust, or, as the case may be, the deceased's personal representatives;

(**5**) 1996 c. 8.
(**6**) 2002 c. 23.
(**7**) Paragraph 36 of Schedule 26 was amended by paragraph 62 of Schedule 10 to the Finance Act 2004 (c. 12).

"reporting date" means the final day of each annual and each half-yearly accounting period of the authorised investment fund;

"residence declaration" is to be construed in accordance with regulation 31;

"tax year"—

(a) in relation to income tax, means a year of assessment within the meaning of ICTA (see section 832(1) of that Act), and

(b) in relation to capital gains tax, means a year of assessment within the meaning of TCGA 1992 (see section 288(1) of that Act).

Abbreviations and general index

9.—(1) The Schedule to these Regulations (which contains abbreviations and defined expressions that apply for the purposes of these Regulations) has effect.

(2) Part 1 of the Schedule gives the meaning of the abbreviated references to Acts used in these Regulations.

(3) Part 2 of the Schedule lists the places where expressions used in these Regulations are defined or otherwise explained—

(a) in these Regulations for the purposes of these Regulations, or

(b) in these Regulations for the purposes of a Part or Chapter of these Regulations.

PART 2

THE TAX TREATMENT OF AUTHORISED INVESTMENT FUNDS

Loan relationships and derivative contracts: exclusion of capital profits, gains or losses

General rule for loan relationships: exclusion of capital profits, gains or losses

10.—(1) This regulation applies if any profits, gains or losses arising to an authorised investment fund from a creditor relationship in an accounting period are capital profits, gains or losses.

(2) For the purposes of Chapter 2 of Part 4 of FA 1996(**8**) (loan relationships) those profits, gains or losses must not be brought into account as credits or debits.

(3) Regulation 12 explains what is meant by "capital profits, gains or losses" in the case of an authorised investment fund that prepares accounts in accordance with UK generally accepted accounting practice.

General rule for derivative contracts: exclusion of capital profits, gains or losses

11.—(1) This regulation applies if any profits, gains or losses arising to an authorised investment fund from a derivative contract in an accounting period are capital profits, gains or losses.

(2) For the purposes of Schedule 26 to FA 2002(**9**) (derivative contracts) those profits, gains or losses must not be brought into account as credits or debits.

(3) Regulation 12 explains what is meant by "capital profits, gains or losses" in the case of an authorised investment fund that prepares accounts in accordance with UK generally accepted accounting practice.

(**8**) 1996 c. 8.
(**9**) 2002 c. 23.