

**2012 No. 519**

**INCOME TAX**

**CORPORATION TAX**

**The Authorised Investment Funds (Tax) (Amendment)  
Regulations 2012**

*Made - - - at 10 a.m. on 27th February 2012*

*Laid before the House of Commons - at 1 p.m. on 27th February 2012*

*Coming into force - - at 1.30 p.m. on 27th February 2012*

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005(a).

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2012 and come into force at 1.30 p.m. on 27th February 2012.

(2) Subject to paragraphs (3) and (4), these Regulations have effect in relation to any distribution made at or after that time.

(3) Regulation 6 has effect in relation to any distribution made in respect of a distribution period ending at or after that time.

(4) Regulation 9 has effect in relation to accounting periods starting at or after that time.

(5) In this regulation, “distribution” and “distribution period” have the meaning given in regulation 15 of the Authorised Investment Funds (Tax) Regulations 2006(b).

**Amendments to the Authorised Investment Funds (Tax) Regulations 2006**

**2.** The Authorised Investment Funds (Tax) Regulations 2006(c) are amended as follows.

**Amendment of regulation 13 (treatment of interest distributions for purposes of loan relationships)**

**3.** In regulation 13 (treatment of interest distributions for purposes of loan relationships), for paragraph (1A)(d) substitute—

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(a) 2005 c. 22.

(b) S.I. 2006/964, regulation 15 was amended by 2010/294.

(c) S.I. 2006/964 (referred to in these footnotes as “the principal Regulations”); relevant amending instruments are S.I. 2008/705, 2008/3159, 2009/2036, 2010/294 and 2010/1642.

(d) Paragraph (1A) was inserted by S.I. 2010/1642.

“(1A) But paragraph (1) only applies to the extent that the interest distribution is derived from income in respect of which the legal owner is charged to corporation tax.”.

#### **Amendment of regulation 22 (dividend distribution: general)**

4. In regulation 22 (dividend distribution: general)(a), in paragraph (2) at the end insert “(but see regulation 96A (modification of CTA 2009))”.

#### **Amendment of regulation 48 (general)**

5.—(1) Amend regulation 48 (general)(b) as follows.

(2) In paragraph (2), for “and (2B) substitute “, (2B) and (2BA)”.

(3) After paragraph (2B) insert—

“(2BA) Paragraph (2)(b) does not apply to so much of any dividend distribution as on a just and reasonable apportionment is attributable to an unallowable arrangement.

(2BB) For the purposes of paragraph (2BA), an unallowable arrangement is an arrangement the main purpose or one of the main purposes of which is to secure that an amount of tax, or an increased amount of tax, is treated as deducted under paragraph (2)(b).

(2BC) In paragraph (2BB), “arrangement” includes any arrangement, agreement, scheme, transaction, series of transactions or understanding (whether or not legally enforceable).”.

#### **Amendment of regulation 49 (calculation of unfranked part of dividend distribution)**

6.—(1) Amend regulation 49 (calculation of unfranked part of dividend distribution)(c) as follows.

(2) In paragraph (2), for the definition of “C” substitute—

“C = such amount of the gross income as derives from income in respect of which the legal owner is charged to corporation tax, as reduced by—

(a) any amount carried forward from an earlier accounting period and allowed as a deduction in computing the legal owner’s liability to corporation tax for the accounting period in which the last day of the distribution period falls, and

(b) an amount equal to the legal owner’s net liability to corporation tax in respect of the gross income.”.

(3) Omit paragraph (2A)(d).

#### **Amendment of regulation 93 (introduction)**

7. In regulation 93 (introduction) for “96” substitute “96A”.

#### **Insertion of regulation 96A (Modification of CTA 2009)**

8. In Chapter 2 of Part 7, after regulation 96 insert—

##### **“Modification of CTA 2009**

**96A.**—(1) CTA 2009(e) is modified as follows.

(2) In section 490 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights)—

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(a) Regulation 22 was amended by S.I. 2010/294.

(b) Regulation 48 was amended by S.I. 2008/3159, 2009/2036, 2010/294 and 2010/1642.

(c) Regulation 49 was amended by S.I. 2008/3159.

(d) Paragraph (2A) was inserted by S.I. 2008/3159.

(e) CTA 2009 is defined in Part 1 of the Schedule to the principal Regulations as the Corporation Tax Act 2009 (c. 4).

- (a) for subsection (2) the following subsection is treated as substituted—
  - “(2) The Corporation Tax Acts have effect for the accounting period in accordance with subsections (3) and (3A) as if—
    - (a) the relevant holding were rights under a creditor relationship of the company, and
    - (b) any distribution in respect of the relevant holding were not a distribution (and accordingly is within Part 5).”;
- (b) after subsection (3) the following subsections are treated as inserted—
  - “(3A) To the extent that any distribution to which subsection (2)(b) applies relates to an unfranked part of a dividend distribution—
    - (a) regulation 48(2)(b) of the Authorised Investment Funds (Tax) Regulations 2006 applies to determine the amount of the distribution and any tax treated as deducted from that distribution, and
    - (b) regulations 48A and 48B of those Regulations<sup>(a)</sup> apply to determine the amount of any foreign income and the foreign element of the tax treated as deducted.
  - (3B) For the purposes of subsection (3A)—
    - (a) “dividend distribution” has the meaning given by regulation 22(3) of the Authorised Investment Funds (Tax) Regulations 2006, and
    - (b) regulation 49 of those Regulations explains how to calculate the unfranked part of the dividend distribution.”; and
- (c) subsections (4) and (5) are treated as omitted.”.

**Amendment of the Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008**

**9.**—(1) Amend the Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008<sup>(b)</sup> as follows.

(2) In regulation 1 (citation, commencement and effect), in paragraph (2) for “regulations 30 and” substitute “regulation”.

(3) In regulation 17 (omission of Chapter 4 of Part 4), in paragraph (2) for “regulations 30 and” substitute “regulation”.

(4) Omit regulation 30 (schemes authorised before 1st January 2009 – genuine diversity of ownership condition).

*Brooks Newmark  
Angela Watkinson*

10 a.m. on 27th February 2012      Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (“the principal Regulations”).

Regulation 1 provides for citation, commencement and effect. Regulation 2 introduces the amendments to the principal Regulations.

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(a) Regulations 48A and 48B were inserted by S.I. 2010/1642.  
 (b) S.I. 2008/3159.

Regulation 3 amends regulation 13 (treatment of interest distributions for purposes of loan relationships) to prevent an interest distribution being treated as interest under a loan relationship to the extent it is not derived from taxable income.

Regulation 4 makes a consequential amendment to regulation 22 (dividend distribution: general).

Regulation 5 amends regulation 48 (general) to prevent the use of arrangements which artificially increase the tax treated as deducted from dividend distributions.

Regulation 6 amends regulation 49 (calculation of unfranked part of dividend distribution) to amend the calculation of the unfranked part of a dividend distribution.

Regulation 7 makes a consequential amendment to regulation 93 (general).

Regulation 8 inserts regulation 96A which modifies section 490 of the Corporation Tax Act 2009 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) so that dividend distributions and interest distributions will be brought into account under Part 5 of that Act (loan relationships) by an investor in an authorised investment fund to which that section applies.

Regulation 9 amends the Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008 to omit the transitory provision which treats certain schemes authorised before 1st January 2009 as meeting the genuine diversity of ownership condition in regulation 14C of the principal Regulations.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.