

2011 No. 244

CORPORATION TAX

CAPITAL GAINS TAX

**The Authorised Investment Funds (Tax) (Amendment)
Regulations 2011**

<i>Made</i> - - - -	<i>8th February 2011</i>
<i>Laid before the House of Commons</i>	<i>9th February 2011</i>
<i>Coming into force</i> - -	<i>6th March 2011</i>

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) and section 354 of the Taxation (International and Other Provisions) Act 2010(b).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2011 and come into force on 6th March 2011.

(2) Subject to regulation 8, regulations 2 to 4 and 6, 7 and 9 of these Regulations have effect—

(a) for the purposes of corporation tax—

(i) on income, for accounting periods ending on or after 6th March 2011, and

(ii) on chargeable gains, in relation to disposals made on or after 6th March 2011, and

(b) for the purposes of capital gains tax, in relation to disposals made on or after 6th March 2011.

Amendment of the principal Regulations

2. The Authorised Investment Funds (Tax) Regulations 2006(c) (“the principal Regulations”) are amended in accordance with these Regulations.

Amendment of regulation 8

3.—(1) Regulation 8 (general interpretation) is amended as follows.

(2) After the entry for “net asset value” insert—

(a) 2005 c.22. Section 18 was amended by paragraph 605 of Schedule 1 to the Income Tax Act 2007 (c.3) and paragraph 669 of Schedule 1 to the Corporation Tax Act 2009 (c.4).

(b) 2010 c.8.

(c) S.I. 2006/964, as amended by S.I. 2007/794, 2008/705, 2008/3159, 2009/56, 2009/2036, 2009/2199, 2010/294 and 2010/1642. There are other amendments, none of which are relevant.

“non-reporting fund” has the same meaning as in regulation 4(2) of the Offshore Funds Regulations;

“offshore fund” means a fund within the meaning of section 355 of the Taxation (International and Other Provisions) Act 2010(a);

“Offshore Funds Regulations” means the Offshore Funds (Tax) Regulations 2009(b);”.

(3) After the entry for “prospectus”(c) insert—

“reportable income” has the same meaning as in Chapter 5 of Part 3 of the Offshore Funds Regulations;”.

(4) After the entry for “reporting date” insert—

“reporting fund” means an offshore fund to which Part 3 of the Offshore Funds Regulations applies”.

Insertion of regulations 14ZA, 14ZB and 14ZC

4. After regulation 14 (treatment of deficits on loan relationships) of the principal Regulations insert—

“Authorised investment funds having interests in offshore non-reporting funds

Interests in offshore non-reporting funds: general

14ZA.—(1) Regulation 14ZB applies if—

(a) an authorised investment fund disposes of an asset which is an interest in a non-reporting fund (“the asset”); and

(b) the conditions in paragraph (2) are satisfied for the period beginning with the date on which the authorised investment fund acquired the asset and ending on the date of the disposal.

(2) The conditions are that—

(a) the authorised investment fund has access to the accounts of the non-reporting fund,

(b) the authorised investment fund had sufficient information about the non-reporting fund referred to in paragraph (1)(a) to enable it to prepare computations of reportable income for the non-reporting fund for every accounting period which, if the non-reporting fund were a reporting fund, would be a reporting period ending within the period mentioned in paragraph (1)(b),

(c) the authorised investment fund has prepared such computations, and

(d) any excess of the authorised investment fund’s share of the reportable income of the non-reporting fund over the authorised investment fund’s share of the distributions made by the non-reporting fund is included in the amount available for income allocation by the authorised investment fund for each reporting period of the authorised investment fund which falls within the period mentioned in paragraph (1)(b).

(3) An authorised investment fund has an interest in a non-reporting fund if and to the extent that it has an interest in such a fund for the purposes of the Offshore Funds Regulations.

(4) For the purposes of the computations mentioned in paragraph (2)(b), regulation 80 of the Offshore Funds Regulations applies if (and only if) the non-reporting fund is a UCITS fund.

(a) 2010 c. 8.

(b) S.I. 2009/3001 as amended by S.I. 2009/3139 and 2010/294.

(c) The definition of “prospectus” was inserted by S.I. 2010/294.

(5) In this regulation, “UCITS fund” has the same meaning as in regulation 12 of the Offshore Funds Regulations and “reporting period” has the same meaning as in regulation 91 of those Regulations.

Treatment of disposal of interest in non-reporting fund

14ZB. No tax shall be charged on the authorised investment fund under regulation 17 of the Offshore Funds Regulations on the disposal by the authorised investment fund of an asset which is an interest in a non-reporting fund at the time of the disposal.

Treatment of interest in non-reporting fund: cases where the conditions in regulation 14ZA(2) would not be satisfied

14ZC.—(1) This regulation applies in relation to an asset of an authorised investment fund (“the asset”) which—

- (a) is an interest in a non-reporting fund, but
- (b) in relation to which the conditions in regulation 14ZA(2) would not (apart from this regulation) be satisfied for the whole of the period specified in regulation 14ZA(1)(b) in relation to the asset.

(2) Paragraph (4) applies if the authorised investment fund, in relation to the asset, reasonably expects to satisfy the conditions in regulation 14ZA(2) for the period beginning with a date to be determined in accordance with paragraph (3) (“the deemed start date”) and ending on the date of the disposal of the asset.

(3) The deemed start date is a date to be determined by the authorised investment fund but which must not be earlier than 6th March 2011.

(4) The authorised investment fund is treated for all purposes (including for the purposes of determining the beginning of the period mentioned in regulation 14ZA(1)(b)) as if it had, on the deemed start date, disposed of the asset (and not satisfied the conditions in regulation 14ZA(2)) and immediately reacquired the asset for a consideration equal to its market value on the deemed start date.

(5) The authorised investment fund must notify the Commissioners of the deemed start date by making an appropriate entry in its tax return for the accounting period in which the deemed start date falls.”.

Amendment of regulation 85D

5. In paragraph (1) of regulation 85D (the investment condition)(a) for “20%” substitute “50%”.

Amendment of regulation 85E

6.—(1) Regulation 85E (interests in funds treated as not being interests in non-reporting funds)(b) is amended in accordance with this regulation.

(2) For paragraph (2) substitute—

“(2) The interests specified are—

- (a) any interest in an offshore fund in respect of which, by virtue of regulation 29 or 30 of the Offshore Funds Regulations, no liability to tax would arise under regulation 17 of those Regulations on a disposal of that interest; and
- (b) any interest of an authorised investment fund in a non-reporting fund which meets the conditions in regulation 14ZA(2).”.

(a) Regulation 85D was inserted by S.I. 2010/294.

(b) Regulation 85E was inserted by S.I. 2010/294.

Amendment of the Schedule

- 7.—(1) The Schedule (abbreviations and defined expressions) is amended as follows.
- (2) In Part 2 (index of expressions defined or otherwise explained in these Regulations)—
- (a) omit the entries relating to “non reporting fund (in Part 6A)”, “offshore fund (in Part 6A)”, “Offshore Funds Regulations 2009 (in Part 6A)” and “reporting fund (in Part 6A)”, and
 - (b) insert the following at the appropriate alphabetical place in each case—

Non-reporting fund	Regulation 8
Offshore fund	Regulation 8
Offshore Funds Regulations	Regulation 8
Reportable income	Regulation 8
Reporting fund	Regulation 8

Transitional provision

8.—(1) This regulation applies to an authorised investment fund (“the fund”) which, on 5th March 2011, met the requirement of paragraph (2).

(2) The requirement is that the fund did not meet the investment condition in regulation 85D of the principal Regulations by virtue of holding an interest in an offshore fund that is treated as creditor relationship rights under section 490 of CTA 2009(a) (a “relevant interest”).

(3) A relevant interest shall continue to be treated as not being an interest in a non-reporting fund for the purposes of regulation 85E of the principal Regulations for the period beginning on 6th March 2011 and ending on 5th July 2011.

Consequential amendments

9.—(1) In regulation 85C (interpretation)(b), the entries for “non-reporting fund”, “offshore fund”, “Offshore Funds Regulations” and “reporting fund” are omitted.

(2) For paragraph (6) of regulation 18 (the charge to tax: further provisions) of the Offshore Funds (Tax) Regulations 2009 substitute—

“(6) Nothing in regulation 17 of these Regulations applies to an authorised investment fund to which regulation 14ZB or Part 6A of the Authorised Investment Funds (Tax) Regulations 2006 applies.”.

*Angela Watkinson
Michael Fabricant*

8th February 2011

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 3 amends regulation 8 of the principal Regulations and makes interpretative provisions.

Regulation 4 inserts new regulations 14ZA, 14ZB and 14ZC into the principal Regulations.

(a) 2009 c. 4, section 490 was amended by regulation 131 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001).
(b) Regulation 85C was inserted by S.I. 2010/294.

New regulation 14ZA specifies the conditions that an authorised investment fund 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 authorised investment fund. Where the conditions are satisfied, new regulation 14ZB applies.

New regulation 14ZB provides that the disposal of an asset will not be subject to a charge to tax under the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (“the Offshore Funds Regulations”), which would otherwise be the case.

New regulation 14ZC deals with the case where an authorised investment fund holds an asset in relation to which the conditions in regulation 14ZA(2) are not satisfied for the entire period that it holds the asset. Regulation 14ZC provides that the authorised investment fund 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 authorised investment fund must reasonably expect to satisfy the conditions in regulation 14ZA(2) from the date of the reacquisition until the date on which it disposes of the asset. If it satisfies the conditions in new regulation 14ZA(2) for this period, new regulation 14ZB applies on the disposal of the asset.

Regulation 5 amends regulation 85D of the principal Regulations so that the investment condition is met if an authorised investment fund invests more than 50% of its gross asset value in non-reporting funds or FINROFs (funds investing in non-reporting offshore funds).

Regulation 6 amends regulation 85E of the principal Regulations to specify that interests in funds which satisfy the conditions in regulation 14ZA are treated as not being interests in non-reporting funds. It brings interests in offshore funds which, by virtue of regulation 29 or 30 of the Offshore Funds Regulations, are not liable to tax under regulation 17 of those Regulations within the scope of regulation 85E of the principal Regulations. Finally, it removes the reference in paragraph (2)(b) of regulation 85E to interests in offshore funds that are treated as creditor relationship rights under section 490 of the Corporation Tax Act 2009 (“CTA”).

Regulation 7 amends the table of abbreviations and defined expressions in the Schedule to the principal Regulations.

Regulation 8 makes transitional provision for interests in funds which are, on 6th March 2011, treated as creditor relationship rights under section 490 of CTA. Such interests will continue to be interests treated as not being interests in a non-reporting fund until 5th July 2011.

Regulation 9 makes consequential amendments to the principal Regulations and the Offshore Funds Regulations.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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£4.00