INCOME TAX

CORPORATION TAX

The Investment Manager (Specified Transactions) Regulations 2009

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 127(12) and (13) of the Finance Act 1995(**a**), paragraph 3(3) and (4) of Schedule 26 to Finance Act 2003(**b**) and section 827(2) and (3) of the Income Tax Act 2007(**c**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Investment Manager (Specified Transactions) Regulations 2009 and come into force on xxx xxxxxx 2009.

(2) These Regulations have effect—

(a) for income tax purposes for the tax year 2008-09 and subsequent tax years; and

(b) for corporation tax purposes in relation to accounting periods ending on or after xxxx xxxx 2009.

Interpretation

2. In these Regulations—

"loan relationship" has the meaning given by regulation 7;

"non-resident person" means a person who is not resident in the United Kingdom.

Specified Transactions

3. Any transaction falling within any of regulations 4 to 6 and 8 to 11 is of a description specified for the purposes of—

(a) section 127 of the Finance Act 1995 (persons not treated as UK representatives)(**d**),

(b) paragraph 3 of Schedule 26 to the Finance Act 2003 (investment managers)(**e**), and

(c) section 827 of the Income Tax Act 2007 (meaning of "investment manager" and "investment transaction").

(**a**) 1995 c. 4; sub-sections (12) and (13) of section 127 were substituted by paragraph 2(1) of Schedule 16 to the Finance Act 2008 (c. 8). This is the first exercise of the powers conferred by sub-sections (12) and (13) of section 127 as so substituted.

(**b**) 2005 c. 14; sub-paragraphs (3) and (4) of paragraph 3 of Schedule 26 were substituted by paragraph 3(1) of Schedule 16 to the Finance Act 2008. This is the first exercise of the powers conferred by sub-paragraphs (3) and (4) of paragraph (3) as so substituted.

(**c**) 2007 c. 3; sub-sections (2) and (3) of section 827 were substituted by paragraph 5(2) of Schedule 16 to the Finance Act 2008. This is the first exercise of the powers conferred by sub-sections (2) and (3) of section 827 as so substituted.

(**d**) Section 127 was amended by paragraph 5 of Schedule 27, and Part 3(6) of Schedule 43, to the Finance Act 2003; sections 48(3) and 56(1) of the Finance Act 2005; section 95(10) of the Finance Act 2006 (c. 25); paragraph 367 of Schedule 1 to the Income Tax Act 2007 and section 53(11) of the Finance Act 2007 (c. 11).

(**e**) Paragraph 3 was amended by section 38 of, and paragraphs 3(1) and 9(2) of Schedule 16 to, the Finance Act 2008.

Transactions in stocks or shares

4. Any transaction in stocks or shares falls within this regulation.

Transactions in relevant contracts

5.—(1) Any transaction in a relevant contract falls within this regulation.

(2) For the purposes of this regulation a "relevant contract" is—

(a) an option;

(b) a future; or

(c) a contract for differences.

(3) For the purposes of paragraph (2) an "option" includes an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company; and for these purposes it is immaterial whether the shares or assets to which the instrument relates exist or are identifiable.

(4) For the purposes of paragraph (3) the reference to a loan relationship of a company is to be construed in accordance with regulation 7 (loan relationships: supplemental provisions) but with references in that regulation to "the non-resident person" treated as references to the company.

(5) For the purposes of paragraph (2) a "future" is a contract for the sale of property under which delivery is to be made—

(a) at a future date agreed when the contract is made, and

(b) at a price so agreed.

(6) For the purposes of paragraph (5)(b) a price is taken to be agreed when the contract is made—

(a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or

(b) in a case where the contract is expressed to be by reference to a standard lot and quality notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

(7) For the purposes of paragraphs (2) and (5) references to an option or a future do not include references to a contract whose terms provide—

(a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, and do not provide for the delivery of any property; or

(b) that each party is liable to make to the other party a cash payment in respect of all that party's obligations to the other under the contract and do not provide for the delivery of any property; or

(c) for the delivery of any property other than property a transaction in which would fall within any of regulations 4 to 6 and 8 to 11 of these Regulations where the property is delivered.

Nothing in this paragraph has effect to exclude, from references to a future or option, a future or option whose underlying subject matter is currency.

(8) In paragraph (7) "underlying subject matter" means—

(a) in relation to a future the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and

(b) in relation to an option the property which would fall to be delivered if the option were exercised.

(9) For the purposes of paragraph (2) a "contract for differences" is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

(a) the value or price of property described in the contract, or

(b) an index or other factor designated in the contract.

(10) For the purposes of paragraph (9)(b) an index or factor may be determined by reference to any matter and, for these purposes, a numerical value may be attributed to any variation in a matter.

(11) For the purposes of paragraph (2) none of the following is a contract for differences—

(a) a future;

(b) an option;

(c) a contract of insurance;

(d) a contract effected in the course of capital redemption business;

(e) a contract of indemnity;

(f) a guarantee;

(g) a warranty;

(h) a loan relationship.

(12) For the purposes of paragraph (11)—

(a) "capital redemption business" means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount become payable at a future time or over a period; and

(b) "loan relationship" is to be construed in accordance with regulation 7 (loan relationships: supplemental provisions) but with references to "the non-resident person" in that regulation treated as including references to a UK resident company.

(13) For the purposes of this regulation where an option, a future or a contract for differences relates to land, such option, future or contract for differences will not be a relevant contract except in cases where the option, the future or the contract for differences uses an index referred to in paragraph (9)(b) and the index is—

(a) publicly accessible; and

(b) comprised of a significant number of properties; and

(c) maintained by a person or persons not connected with the non-resident person or that non-resident person's investment manager.

(14) In paragraph (13) "investment manager" means a person providing investment or asset management services in the United Kingdom to a non-resident person.

(15) For the purposes of this regulation—

(a) sections 993 to 995 of the Income Tax Act 2007(connected persons and the meaning of control) apply in the case of a person chargeable to income tax, and

(b) sections 839 and 840 of the Income and Corporation Taxes Act 1988 (connected persons and the meaning of control)(**a**) apply in the case of a person chargeable to corporation tax.

Transactions involving loan relationships or related transactions

6. Any transaction which results in a non-resident person becoming a party to a loan relationship or a related transaction in respect of a loan relationship falls within this regulation.

(**a**) 1988, c. 1; section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995, paragraph 25 of Schedule 13 to the Finance Act 2006 and paragraph 223 to Schedule 1 to the Income Tax Act 2007 and by S.I. 1988/745 and 2005/3229. Section 840 was amended by paragraph 224 of Schedule 1 to the Income Tax Act 2007.

Loan relationships: supplemental provisions

7.—(1) For the purposes of regulation 6 a non-resident person has a "loan relationship" where that person stands (whether by reference to a security or otherwise) in the position of a creditor or debtor as respects any money debt and either—

(a) that debt is one arising from a transaction for the lending of money; or

(b) that debt is not one which arose from a transaction for the lending of money but is one—

(i) on which interest is payable to or by the non-resident person; or

(ii) in relation to which exchange gains or losses arise to the non-resident person; or

(iii) as respects which the conditions in paragraph (2) below are satisfied.

(2) The conditions referred to in paragraph (1)(b)(iii) are that—

(a) the non-resident person stands in the position of creditor in relation to the money debt; and

(b) the money debt is one from which a discount (whether of an income or capital nature) arises to the non-resident.

(3) In this regulation "exchange gains or losses" means—

(a) profits or gains, or

(b) losses,

which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the non-resident person in another currency on an asset or liability of the non-resident person.

(4) For the purposes of this regulation a "money debt" is a debt which is, or has at any time been, one that falls, or that may at the choice of the debtor or of the creditor fall, to be settled—

(a) by the payment of money,

(b) by the transfer of a right to settlement under a debt which is itself a money debt, or

(c) by the issue or transfer of shares in any company,

disregarding any other alternative exercisable by either party.

(5) Subject to paragraph (6), where an instrument is issued by any person for the purpose of representing security for, or the rights of a creditor in respect of, any money debt, then (whatever the circumstances of the issue of the instrument) that debt shall be taken for the purposes of these Regulations to be a debt arising from a transaction for the lending of money.

(6) For the purposes of these Regulations a debt shall not be taken to arise from a transaction for the lending of money to the extent that it is a debt arising from rights conferred by shares in a company.

(7) For the purposes of this regulation so far as relating to exchange gains and losses, any currency held by the company shall be treated as a money debt.

(8) For the purposes of this regulation "money" includes money expressed in a currency other than sterling.

(9) For the purposes of regulation 6 a "related transaction" in relation to a loan relationship means any disposal or acquisition (in whole or in part) of rights or liabilities under that relationship.

Transactions in units in collective investment schemes

8.—(1) Any transaction in units in a collective investment scheme falls within this regulation.

(2) In this regulation "collective investment scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(3) The arrangements must be such that the persons who are to participate ("participants") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(4) The arrangements must also have either or both of the following characteristics—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or

(b) the property is managed as a whole by or on behalf of the operator of the collective investment scheme.

(5) If arrangements provide for such pooling as is mentioned in paragraph (4)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

Transactions in securities

9.—(1) Any transaction in securities falls within this regulation.

(2) For the purposes of this regulation "a transaction in securities" is any transaction in securities of any description not falling within regulations 4 to 6 and 8.

Transactions in buying or selling foreign currency

10. Any transaction consisting in the buying or selling of any foreign currency falls within this regulation.

Transactions in carbon emission trading products

11.—(1) Any transaction in a carbon emission trading product falls within this regulation.

(2) In this regulation a "transaction in a carbon emission trading product" means a transaction which meets conditions A to C.

(3) Condition A is that the transaction is a transaction—

(a) in Community tradable emissions allowances, or

(b) in transferable units issued pursuant to the Kyoto Protocol.

(4) Condition B is that the transaction does not give rise to either—

(a) a chargeable gain falling within section 10 of the Taxation of Chargeable Gains Act 1992 (non-resident with United Kingdom branch or agency)(**a**), or

(b) a chargeable gain falling within section 10B of that Act (non-resident company with United Kingdom permanent establishment)(**b**) (and accordingly taken into account for the purposes of section 11(2A) of the Income and Corporation Taxes Act 1988 (profits attributable to a permanent establishment)(**c**).

(5) Condition C is that the transaction does not otherwise fall within any other regulation of these Regulations.

(6) For the purpose of this regulation—

"Community tradable emissions allowances" means transferable allowances which relate to the making of emissions of greenhouse gases, and are allocated as part of a system made for the purpose of implementing any community obligation of the United Kingdom relating to such emissions;

(**a**) 1992 c. 12; section 10 was amended by paragraph 2(2) of Schedule 27, and by Part 3(6) of Schedule 43, to the Finance Act 2003.

(**b**) Section 10B was inserted by section 149(4) of the Finance Act 2003.

(**c**) Section 11(2A) was substituted by section 149(3) of the Finance Act 2003.

"the Kyoto Protocol" means the Kyoto Protocol to the United Nations Framework Convention on Climate Change" signed at Kyoto on 11th December 1997;

"units" includes assigned amount units, certified emission reductions, emission reduction units and removal units.

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xx xxxxx 2009 Two of the Commissioners for Her Majesty's Revenue and Customs