



**Double taxation relief (DTR) avoidance using
unauthorised unit trusts (UTs)**

Draft legislation and Explanatory Note
3 November 2009

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Introduction

On 21 October 2009, the Government announced it was taking action to counter avoidance using unauthorised unit trusts (UTs). This document provides draft legislation and explanatory notes.

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Chapter 1 – Background

1. The Financial Secretary to the Treasury announced in a Written Ministerial Statement dated 21 October 2009 that legislation will be introduced in the forthcoming Finance Bill to block certain avoidance schemes that have been notified to HM Revenue & Customs (HMRC). Under these schemes, foreign income which has been subject to withholding tax by the relevant foreign tax authorities is paid to an unauthorised unit trust and credit for the foreign tax is claimed by the scheme's trustees. The unit holders are then deemed to receive the income arising to the scheme and are treated as if they have had United Kingdom tax deducted, thus avoiding certain restrictions on the use of credits for foreign tax and, in some cases, claiming "repayment" of tax that has not been and will not be paid to HMRC. The legislation will have effect from 21 October 2009.
2. A [Technical Note \(PDF 34K\)](#), which is available on HMRC's web site was also published on 21 October. The Technical Note announced that legislation will be introduced amending the relevant UUT legislation. The amendment will ensure that where any part of a deemed payment, and the deemed deduction arising on it, is referable to income on which the scheme trustees have claimed Double Taxation Relief (DTR) then it will be treated as foreign income in the unitholders' hands and the deemed deduction of tax will be treated as foreign tax.

Chapter 2 – Draft Legislation

This section contains the current draft of the legislation.

SCHEDULE 1

UNAUTHORISED UNIT TRUSTS

Amendments of Chapter 13 of Part 15 of ITA 2007

- 1 (1) Chapter 13 of Part 15 of ITA 2007 (deduction of income tax at source: unauthorised unit trusts) is amended as follows.
- (2) In section 941(6) (deemed payments to unit holders and deemed deductions of income tax), after the definition of “deemed deduction”, insert—
““deemed income” means the gross amount of income treated as received as mentioned in subsection (1),”.
- (3) In section 942 (income tax to be collected from trustees) after subsection (5) insert—
“(6) No relief under section 788 or 790(1) of ICTA (double tax relief) is allowed against income tax to be collected by virtue of this section.”
- (4) After section 943 (calculation of trustees’ income pool) insert—

“943A Treatment of cases involving double tax relief

- (1) This section applies where—
 - (a) the trustees of an unauthorised unit trust are treated as making deemed payments to unit holders in a tax year (“the current tax year”),
 - (b) there is a reduction in the income pool in the current tax year, and
 - (c) the amount of the trustees’ double tax relief pool as at the start of the current tax year is greater than zero.
- (2) Section 848 (income tax deducted at source treated as income tax paid by recipient) does not apply to the foreign element of the deemed deduction treated as made from any of the deemed payments.
- (3) Instead, for the purposes of the Tax Acts—
 - (a) the foreign element of the deemed deduction is treated as if it were tax payable under the law of a territory outside the United Kingdom with which there are not in force any arrangements under section 788 of ICTA (relief by agreement with other territories), and
 - (b) the foreign element of the deemed income represented by the deemed payment is treated as if it were income that—
 - (i) arises in a territory of the kind mentioned in paragraph (a), and
 - (ii) is income by reference to which the tax treated under paragraph (a) as payable was computed.
- (4) A reference in this Chapter to a reduction in the income pool in a tax year is to the amount (if any) by which—
 - (a) the amount of the income pool at the start of the tax year, exceeds

- (b) the amount of the income pool at the start of the following tax year.
- (5) See—
 section 943B for provision about references to the “foreign element” of a deemed deduction or deemed income, and
 section 943C for provision about the calculation of the trustees’ double tax relief pool as at the beginning of a tax year.

943B The “foreign element” of a deemed deduction or deemed income

- (1) References in this Chapter to the “foreign element” of—
 (a) a deemed deduction treated as made in a tax year, or
 (b) deemed income treated as received in a tax year,
 are to the deemed deduction or deemed income multiplied by the relevant fraction.
- (2) For this purpose “the relevant fraction” means—

$$\frac{A}{B}$$

where—

A is—

- (a) the reduction in the income pool in the tax year multiplied by the basic rate for the year, or
 (b) if lower, the amount of the trustees’ double tax relief pool as at the start of the tax year;

B is the total of the deemed deductions treated as made in the tax year.

943C Calculation of trustees’ double tax relief pool

- (1) This is how the amount of the trustees’ double tax relief pool as at the start of a tax year (“the current tax year”) is calculated.
- (2) The trustees’ double tax relief pool as at the start of the current tax year is—

$$A + B - C$$

where—

A is—

- (a) the amount of the trustees’ double tax relief pool as at the start of the previous tax year, or
 (b) if the current tax year is the tax year during which the unauthorised unit trust is established, or the trustees have been UK resident for no tax year prior to the current tax year, nil;

B is the amount of the reduction, if any, in the liability of the trustees to income tax under section 788 or 790(1) of ICTA (double tax relief) in the previous tax year;

C is the sum of the foreign elements (if any) of deemed deductions from deemed payments treated as made in the previous tax year.

- (3) If the trustees were non-UK resident for the previous tax year, references in subsection (2) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.

943D Information: payment statements and annual statements

- (1) This section applies in relation to any tax year in which the trustees of an unauthorised unit trust are treated as making a deemed payment to a unit holder.
- (2) The trustees must give the unit holder—
 - (a) a statement (a “payment statement”) in relation to each deemed payment treated as made in the tax year, and
 - (b) a statement (an “annual statement”) in relation to the tax year.
- (3) A payment statement must include—
 - (a) an estimate of the foreign element (if any) of the deemed deduction treated as made from the deemed payment, and
 - (b) an estimate of the foreign element (if any) of the deemed income represented by the deemed payment.
- (4) The estimates of the foreign elements required under subsection (3) are the amounts that those foreign elements would be—
 - (a) disregarding any other deemed payment that the trustees are treated as making in the tax year (and any deemed deduction treated as made from such a deemed payment), and
 - (b) disregarding any income received by the trustees at a time not within the statement period.
- (5) For this purpose “the statement period” means the period—
 - (a) beginning with the beginning of the tax year or, if the deemed payment is not the first deemed payment treated as made in the tax year, the day after that on which the last deemed payment was treated as made, and
 - (b) ending with the date on which the deemed payment is treated as made.
- (6) A payment statement must be given as soon as reasonably practicable after the deemed payment is treated as made.
- (7) An annual statement must specify—
 - (a) the total of the foreign elements (if any) of deemed deductions from deemed payments treated as made to the unit holder in the tax year, and
 - (b) the total of the foreign elements (if any) of amounts of deemed income represented by deemed payments treated as made to the unit holder in the tax year.
- (8) An annual statement must be given as soon as reasonably practicable after the end of the tax year.
- (9) The duties imposed by this section are enforceable by the unit holder.”

Consequential amendments

- 2 (1) In section 550 of ITTOIA 2005 (distributions from unauthorised unit trusts: income tax treated as paid), after “is” insert “, subject to section 943A of that Act (treatment of cases involving double tax relief),”.
- (2) In section 848 of ITA 2007 (income tax deducted at source treated as income tax paid by the recipient), at the end insert –
 - “(4) In relation to income tax deducted at source under section 941 (unauthorised unit trusts), this section is subject to section 943A (treatment of cases involving double tax relief).”
- (3) In section 971 of CTA 2009 (distributions from unauthorised unit trusts: overview of Chapter), in subsection (2)(a), after “is” insert “, subject to section 943A of that Act (treatment of cases involving double tax relief),”.

Commencement

- 3 The amendments made by this Schedule have effect in relation to payments treated under section 941(2) of ITA 2007 as made on or after 21 October 2009 (“the commencement date”).

Transitional provision: opening value of trustees’ double tax relief pool

- 4 (1) This paragraph applies, and section 943C of ITA 2007 does not apply, in relation to the determination of the amount of the trustees’ double tax relief pool as at the start of the tax year 2009-10.
- (2) That amount is –
 - (a) the lower of amounts A and B, or
 - (b) if there is no amount A or B, nil.
- (3) Amount A is the sum of –
 - (a) any amount by which the liability of the trustees to income tax for the tax year 2007-08 is reduced under section 788 or 790(1) of ICTA, and
 - (b) any amount by which the liability of the trustees to income tax for the following tax year is so reduced.
- (4) Amount B is 20% of the amount (if any) of the trustees’ income pool as at the start of the tax year 2009-10 (calculated in accordance with section 943 of ITA 2007).

Transitional provision: payment statements

- 5 (1) This paragraph applies to any deemed payment that is treated as made in the transitional period.
- (2) Section 943D(6) of CTA 2009 is treated as if it required the payment statement in relation to the deemed payment to be given as soon as reasonably practicable after the end of the transitional period.
- (3) In this paragraph “the transitional period” means the period –
 - (a) beginning with the commencement date, and
 - (b) ending with the coming into force of the amendments made by this Schedule.

Chapter 3 – Draft Explanatory Note

This section contains the draft explanatory note based on the current draft of the legislation.

SUMMARY

1. The clauses introduce legislation to prevent the use of UUTs to avoid certain restrictions on the use of credits for foreign tax and, in some cases, claiming “repayment” of tax that has not been and will not be paid to HMRC.

DETAILS OF THE CLAUSE

2. This note should be read in conjunction with the [Technical Note \(PDF 34K\)](#) published on 21 October 2009, which is available on HMRC’s web site.
3. The draft legislation amends the Income Tax Act 2007 (ITA).
4. In particular [Paragraph 1\(4\)](#) introduces [new sections 943A to 943D](#) to ITA.
5. [New sections 943A to 943C](#) provide for the changes to the tax treatment of unit holders described in paragraphs 14 to 18 of the Technical Note published on 21 October. The sections apply whenever the trustees of an unauthorised unit trust are treated as making deemed payments to unit holders in any tax year.
6. [New section 943D](#) places a duty upon the trustees of the UUT to provide information to enable unit holders to calculate their tax liabilities or repayments based upon the treatment of some or all of the deemed deduction (treated as made from the deemed payment/s) as foreign tax, and of some or all of the deemed payments as foreign income.
7. [Paragraph 1\(2\)](#) provides for an amendment to section 941 ITA to provide a definition of “deemed income” (see [section 943A\(3\)\(b\)](#)).
8. [Paragraph 1\(3\)](#) provides an amendment to section 942 ITA to make clear that double tax relief does not apply to income tax collectable by reference to the amount of deemed payments.
9. [Paragraph 2](#) provides for consequential amendments to legislation.

10. Paragraph 3 provides for a commencement date of 21 October 2009 (see paragraph 19 of the Technical Note).
11. Paragraph 4 makes transitional provision to determine the opening value of the trustees' double tax relief pool in accordance with paragraphs 19 and 20 of the Technical Note.
12. Paragraph 5 makes transitional provisions to treat section 943D(6) as requiring payment statements for deemed payments treated as made in the transitional period to be provided as soon as reasonably practicable after the end of the transitional period (the end being the date that the amendments made by the Schedule come into force).