



## **ISA Bulletin**

**Number 19**

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The ISA Bulletin keeps ISA managers informed of any new developments relating to the ISA scheme. Please ensure the appropriate people in your organisation read it.

We suggest that you keep Bulletins at the front of your copy of the Guidance Notes for ISA Managers.

### **What this Bulletin contains**

This Bulletin contains articles on

- Budget 2010 – increasing the Individual Savings Account (ISA) limits from 6 April 2011 in line with the Retail Prices Index (RPI)
- Qualifying investments – NURS – Fund of Alternative Investment Funds
- Qualifying investments – securities – ‘Kick-Out Plans’
- Qualifying investments – shares traded on AIM
- Recognised stock exchanges – New Retail Bond Market
- Recognised stock exchanges – Warsaw Stock Exchange
- Transferring an ISA – when must an application form be completed?

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## Budget 2010 - increasing the Individual Savings Account (ISA) limits from 6 April 2011 in line with the Retail Prices Index (RPI)

From 6 April 2011 the ISA limits will increase annually in line with the RPI.

The new annual limits will be rounded to the nearest multiple of 120, so that individuals who save monthly will be able to calculate their monthly savings more easily.

The new limits will be calculated by reference to RPI for the September before the start of the new tax year. HM Revenue & Customs (HMRC) will announce the new limits as soon as possible after the RPI figure is published, and at least four months before the start of the tax year in which they will apply. So, for example, the 2011-12 ISA limits will be indexed to the published September 2010 RPI figure, rounded to the nearest multiple of 120 and announced no later than 5 December 2010.

In the event that RPI is negative, the ISA limits would be unchanged.

As is the case now, following indexation, the cash ISA limit will be half the value of the stocks and shares ISA limit.

## Qualifying investments – NURS - Fund of Alternative Investment Funds

The Financial Services Authority (FSA) have made some amendments to the Collective Investment Schemes Source book (COLL) to introduce a new type of non-UCITS retail scheme (NURS) - a Fund of Alternative Investment Funds (FAIF). Further information can be found at [Financial Services Authority - Funds of Alternative Investment Funds \(FAIFs\)](#)

As they are NURS, it might appear that these funds would be qualifying investments. However, we understand from FSA that FAIFs are likely to be fairly illiquid and the fortnightly valuation we require of NURS may be beyond them. But even if a FAIF does offer a fortnightly valuation, it will not qualify for inclusion in an ISA because it fails to satisfy the ISA definition of a NURS. The FSA introduced the change by adding a new paragraph to COLL (COLL 5.7); however the HMRC definition of a NURS is a scheme to which, or to whose authorised fund manager and depository, COLL 5.1, 5.4 and 5.6 apply, consequently a FAIF fails to satisfy the ISA definition of a NURS.

We are currently discussing this issue with the FSA.

## Qualifying investments – securities – 'Kick-Out Plans'

To be a qualifying investment for stocks and shares ISAs, securities must satisfy the rules in regulation 7 of the ISA Regulations (SI 1998/1870). These are explained in chapter 7 of the Guidance Notes. The relevant paragraphs of the guidance are as follows:

7.8 **Qualifying securities are securities** (paragraph 7.13) other than securities in an investment trust (see paragraph 7.28b) that have been issued by a company (paragraph 7.5) that is incorporated anywhere in the world

- that satisfy **at least one** of the three conditions in paragraph 7.10 **and**
- **that satisfy the condition in paragraph 7.12.**

7.10 The three conditions of which **at least one** must be satisfied are

- that the securities; or
- the shares in the company issuing the securities, or
- the company issuing the securities is a 75 per cent subsidiary (paragraph 7.11) of a company whose shares

are listed on the official list of a recognised stock exchange (paragraph 7.74)

- 7.12 The condition that must be satisfied is that, at the date on which the security is purchased by the ISA manager, **the terms on which it was issued do not**
- **require the loan to be repaid or the security to be re-purchased or redeemed within the period of five years from that date, or**
  - allow the holder to require the loan to be repaid or the security to be repurchased or redeemed within the period of five years from that date, except in circumstances which are neither certain nor likely to occur

We have found some securities held in ISAs which do not satisfy the first bullet of paragraph 7.12. The securities in question (typically referred to as 'Kick-Out Plans') are structured in such a way that if a particular event occurs (typically a 'trigger point' linked to a financial index is reached) the security will be redeemed. As the requirement to redeem within five years is written into the terms of the product, it cannot be an ISA qualifying investment.

All ISA managers offering stocks and shares ISAs must check to see if they are holding products which breach this rule. If they are they should contact CAR Audit to discuss the matter.

Managers may be asked by CAR Audit to provide a full list of ISA investments they hold, along with Terms and Conditions, so that we can make the necessary checks.

## **Qualifying investments – Shares traded on AIM**

In *PEP and ISA Bulletins* 30 and 31 we explained that for a share issued by a company to be a qualifying investment for the ISA stocks and shares component it must be officially listed on a recognised stock exchange (and, if acquired after 6 October 2005, the 5 per cent test must be satisfied). We added that the AIM is not a Recognised Stock Exchange; therefore shares that are traded on AIM are qualifying investments only if, in addition, they are officially listed on another stock exchange that is a Recognised Stock Exchange (and, if acquired after 6 October 2005, the 5 per cent test is satisfied).

We have now come across cases where managers have believed that this condition is satisfied if a depositary instrument containing the share is listed on a recognised stock exchange.

We explained the rules about depositary instruments in *ISA Bulletins* 15 and 18, when discussing ADR/ADSs. For ISA purposes, a depositary interest will only qualify if the underlying security would qualify in its own right for inclusion as an ISA qualifying investment. So managers need to look beyond the listing of the depositary interest and check that the underlying investment qualifies for the ISA. If it does not, the depositary interest does not qualify for the ISA.

A case in point is Norseman Gold plc. A manager was told that shares in this company were a qualifying investment because, in addition to being traded on AIM, the shares were listed on the Australian Stock Exchange (ASX). In fact, the shares are not listed on the ASX, a depositary instrument containing the shares is listed on the ASX; the shares themselves are only traded on AIM. (See, for example [Norseman Gold](#).) And this means that neither the depositary interest listed on the ASX nor the shares traded on AIM are qualifying investments.

All ISA managers offering stocks and shares ISAs must check to see if they are holding non-qualifying depositary interests (because the underlying investments are shares that are simply traded on AIM). If they are they should contact CAR Audit to discuss the matter.

## **Recognised stock exchanges – New Retail Bond Market**

The London Stock Exchange has recently confirmed that securities listed on the New Retail Bond Market are admitted to trading on an EU Regulated market and are included in the official UK list as maintained by the FSA.

Securities admitted to trading on the New Retail Bond Market therefore meet the HMRC definition of 'listed on a recognised stock exchange' and satisfy that part of the ISA rules that require securities to be 'listed on a recognised stock exchange'. However, managers should remember that, to be a qualifying investment, the security must also have at least five years to run to maturity when it is purchased (see the article above on qualifying securities).

## **Recognised stock exchanges – Warsaw Stock Exchange**

The Warsaw Stock Exchange has been designated as a recognised stock exchange (RSE) with effect from 25 February 2010. The list of recognised stock exchanges has been updated accordingly (see [Recognised stock exchanges](#)).

Securities admitted to trading and listed on the EU regulated markets of the Warsaw Stock Exchange (those regulated under Title III of the Markets in Financial Instruments Directive (MiFID)) will meet the HMRC interpretation of 'listed' as set out in section 1005 (3) (a) and (3) (b) Income Tax Act 2007. These are

- The Main Market
- The Parallel Market
- The EU Regulated Market of the Catalyst Market operated by the Warsaw Stock Exchange.

However, securities admitted to trading on the following markets will not meet the HMRC interpretation of 'listed'

- The New Connect Market
- The Catalyst Multi-lateral Trading Facility (MTF) operated by the Warsaw Stock Exchange

The Catalyst Market of the Warsaw Stock Exchange comprises four segments. Two segments are operated by the Warsaw Stock Exchange and two by BondSpot. Only the two segments operated by the Warsaw Stock Exchange (the Retail Markets) are designated as part of a recognised stock exchange. The two segments operated by BondSpot (the Wholesale Markets) are not designated as part of a recognised stock exchange.

## **Transferring an ISA – when must an application form be completed**

We have been asked to clarify the circumstances in which an investor must complete a fresh application form when transferring an ISA.

All transfers made after 5 April 2008, require the investor to make 'a fresh application under regulation 12 (with any necessary modifications to reflect that it is made on a transfer)'.

We can confirm that managers who adopt one of the following approaches will be regarded complying with this requirement of the ISA Regulations.

- a) A combined form that is both a transfer instruction authorising the transfer and an application to subscribe after the transfer, or

b) Separate documentation in the form of a transfer instruction and an application form.

The combined form is both a request to transfer an ISA and an application to subscribe to the new manager. ISA managers who decide to adopt this approach should produce their own forms, which should use the wording in the specimen forms at paragraphs 11.34 and 11.35. In cases where no subscription is to be made following the transfer, the words in square brackets may be deleted.

If the investor deletes the words in square brackets, the form becomes simply a request to transfer an ISA (in which case it does not have to be signed by the investor but can be signed by someone authorised to sign on their behalf, for example under a Power of Attorney). Should the investor subsequently decide to subscribe to the ISA after the transfer, a standard application form must be completed.

The separate documentation consists of

- a transfer instruction authorising the transfer, and
- a standard application form (as used by any new investor opening an ISA for the first time).

ISA managers who decide to adopt this approach should produce their own transfer instructions. They should include

- the appropriate authorisation to hold the ISA investments etc, and agreement to the ISA terms and conditions (the final lines on the specimen forms at paragraphs 11.34 and 11.35), and
- a tear-off slip, separately signed, to be sent to the old manager to authorise him to release the ISA for transfer

However, they are not required to include the investor's date of birth, National Insurance number or any of the declarations.

The investor must always complete the transfer instruction. However the application form must be completed only where

- the investor is eligible to subscribe to the ISA after the transfer (the residence condition is satisfied), and
- the investor intends to subscribe to the ISA after the transfer, and
- the (new) manager does not hold a valid, new style (2008-09 or later) application form.

For example an investor decides to transfer an ISA to ABC Ltd (the new ISA manager) on 1 August 2009. He is a new customer, therefore ABC Ltd does not hold a valid new-style (2008-09 or later) ISA application form. The investor says that he does not wish to subscribe after the transfer – perhaps because he has already subscribed elsewhere for the tax year 2009-10. While the investor must complete a transfer instruction, **an application form is not required** (because the investor does not intend to subscribe to the ISA after the transfer).

On 1 May 2010 the investor decides to transfer a second ISA to ABC Ltd. This time he says that he intends to subscribe to ABC Ltd after the transfer. The investor must complete a transfer instruction; in addition, **an application form is required** (because the investor intends to subscribe to the ISA after the transfer and ABC Ltd does not hold a valid, new style [2008-09 or later] application form).

On 15 June 2011 the investor decides to transfer a third ISA to ABC Ltd. Again he says that he intends to subscribe to ABC Ltd after the transfer. While the investor must complete a transfer

instruction, **an application form is not required** (because while the investor intends to subscribe to the ISA after the transfer, ABC Ltd holds a valid, new style [2008-09 or later] application form).

## **Future articles**

Part of the purpose of the ISA Bulletins is to clarify areas of the Guidance Notes for ISA Managers. If you feel that any aspect of the guidance is unclear you should contact David Taylor. His telephone number is 0151 472 6156.