

# Draft Corporation Tax Bill

---

---

## CONTENTS

### PART 1

#### RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

#### CHAPTER 1

#### OEICs, UNIT TRUSTS AND OFFSHORE FUNDS

##### *Introduction*

- 1 Overview of Chapter [j0696108]
- 2 Meaning of “open-ended investment company” etc [j0696108def]
- 3 Meaning of “offshore fund” etc [j0696108of]

##### *Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights*

- 4 Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights [j0696104]
- 5 Holding coming within section 4: opening valuations [j0696106]
- 6 Disregard of investments made and liabilities incurred with avoidance intention etc [j06910407]

##### *The qualifying investments test*

- 7 The qualifying investments test [j0696108e]
- 8 Meaning of “qualifying investments” [j0696108a]
- 9 Qualifying holdings [j0696108b]
- 10 Meaning of “hedging relationship” [j0696108c]

##### *Orders*

- 11 Power to change investments that are qualifying investments [j0696109]

A  
**B I L L**

TO

Restate, with minor changes, certain enactments relating to corporation tax; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

RELATIONSHIPS TREATED AS LOAN RELATIONSHIPS ETC

**CHAPTER 1**

OEICs, UNIT TRUSTS AND OFFSHORE FUNDS

*Introduction*

**1 Overview of Chapter [\[j0696108\]](#)**

- (1) This Chapter provides for the Corporation Tax Acts to apply in some circumstances to holdings in open-ended investment companies, unit trust schemes and offshore funds as if they were rights under a creditor relationship (see section 4).

*Origin: Drafting.*

- (2) That treatment depends on the company, scheme or fund failing the qualifying investments test.

*Origin: Drafting.*

- (3) Sections 7 to 10 deal with when that test is met.

*Origin: Drafting.*

- (4) For the meaning of “open-ended investment company” and “offshore fund” in this Chapter, see sections 2 and 3 respectively.

Origin: Drafting.

## 2 Meaning of “open-ended investment company” etc [\[j0696108def\]](#)

- (1) Section 468A(2) and (3) of ICTA (meaning of “open-ended investment company” and “company” and application to parts of umbrella companies) apply for the purposes of this Chapter as they apply for the purposes of section 468A of that Act.

Origin: FA 1996 Sch.10 para.8(7A), (7B); AIF(T)R 2006 reg.95(2); drafting.

- (2) In this Chapter “umbrella company” has the meaning given by section 468A(4).

Origin: FA 1996 Sch.10 para.8(7D); AIF(T)R 2006 reg.95(2); drafting.

## 3 Meaning of “offshore fund” etc [\[j0696108of\]](#)

- (1) Sections 756A to 756C of ICTA (meaning of “offshore fund” and application to parts of umbrella funds and classes of interests in offshore funds) apply for the purposes of this Chapter as they apply for the purposes of Chapter 5 of Part 17 of that Act, except as provided in subsection (2).

Origin: FA 1996 Sch.10 paras.7(1), (2), 8(7F); Annex 1, Change 64 [\[jc359\]](#).

- (2) For the purposes of this Chapter “offshore fund” includes anything that would be an offshore fund for the purposes of Chapter 5 of Part 17 of ICTA if the unit trust schemes and arrangements referred to in section 756A(1)(b) and (c) of that Act were not limited to collective investment schemes (and sections 756B and 756C apply for the purposes of this Chapter accordingly).

Origin: FA 1996 Sch.10 paras.7(1), (2), 8(7F); Annex 1, Change 64 [\[jc359\]](#).

- (3) For the purposes of this Chapter an interest in an offshore fund is a material interest in such a fund if it is such an interest for the purposes of section 759 of ICTA or would be if those schemes and arrangements were not so limited.

Origin: FA 1996 Sch.10 para.7(1).

*Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights*

## 4 Holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights [\[j0696104\]](#)

- (1) This section applies if—
- (a) at any time in an accounting period of a company it holds—
    - (i) any rights in an open-ended investment company,
    - (ii) any rights under a unit trust scheme, or
    - (iii) a material interest in an offshore fund, and
  - (b) there is a time in the period when the open-ended investment company, unit trust scheme or offshore fund fails to meet the qualifying investments test (see section 7).

Origin: FA 1996 Sch.10 paras.4(1), 7(1); AIF(T)R 2006 reg.95(2).

- (2) The Corporation Tax Acts apply for the accounting period in accordance with subsections (3) and (4) as if the relevant holding were rights under a creditor relationship of the company.

Origin: FA 1996 Sch.10 para.4(2).

- (3) The credits and debits that are to be brought into account for the purposes of Part 1 in respect of the company's relevant holdings must be determined on the basis of fair value accounting.

Origin: FA 1996 Sch.10 para.4(3).

- (4) But a credit relating to distributions of an open-ended investment company or authorised unit trust which become due and payable in an accounting period is only to be brought into account for that period if they are interest distributions.

Origin: FA 1996 Sch.10 para.4(4); AIF(T)R 2006 reg.95(2).

- (5) In subsection (4) "interest distributions" has the meaning given by regulations made under section 17(3) of F(No 2)A 2005 (as at 1 April 2009, see regulation 18(3) of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964)).

Origin: FA 1996 Sch.10 para.4(4).

- (6) In this section and sections 5 and 6 "relevant holding" means a holding within subsection (1)(a).

Origin: FA 1996 Sch.10 para.4(1).

- (7) But arrangements that are investment bond arrangements for the purposes of Chapter 6 of this Part or are within section 48A of FA 2005 (alternative finance arrangements: alternative finance investment bond: introduction) are not treated as such a holding.

Origin: FA 2005 s.48B(5).

## 5 Holding coming within section 4: opening valuations [\[j0696106\]](#)

- (1) This section applies if –
- (a) a relevant holding is held by a company both –
    - (i) at the end of one accounting period ("the first period"), and
    - (ii) at the beginning of the next ("the second period"),
  - (b) section 4 applies to the holding for the second period, but not for the first period, and
  - (c) an opening valuation of the holding falls to be made as at the beginning of the second period for the purpose of bringing amounts into account for the purposes of Part 1 on the fair value accounting basis used for that period under section 4(3).

Origin: FA 1996 Sch.10 paras.5(1), 6.

- (2) For the purpose of that opening valuation the value of the holding as at that time is taken to be equal to the TCGA 1992 value.

Origin: FA 1996 Sch.10 para.6.

- (3) In subsection (2) "the TCGA 1992 value" means the market value of the holding for the purposes of TCGA 1992 if it had been disposed of immediately before the end of the first period.

Origin: FA 1996 Sch.10 para.6.

## 6 Disregard of investments made and liabilities incurred with avoidance intention etc [\[j06910407\]](#)

- (1) In determining the credits and debits in respect of a company's relevant holdings under section 4(3), amounts relating to any investment or liability of the open-ended investment company, unit trust scheme or offshore fund must be left out of account if –
- (a) the investment was made, or the liability was incurred, with the relevant avoidance intention, or
  - (b) any transaction or series of transactions was entered into in relation to the investment or liability with that intention.

Origin: FA 1996 Sch.10 para.4(5); AIF(T)R 2006 reg.95(2).

- (2) The relevant avoidance intention is the intention of –
- (a) eliminating or reducing the credits to be brought into account for the purposes of Part 1 or this Part as respects the company's relevant holdings, or
  - (b) creating or increasing the debits to be so brought into account.

Origin: FA 1996 Sch.10 para.4(6).

### *The qualifying investments test*

## 7 The qualifying investments test [\[j0696108e\]](#)

- (1) An open-ended investment company, a unit trust scheme or an offshore fund meets the qualifying investments test for the purposes of this Chapter if the market value of the qualifying investments of the company, scheme or fund does not exceed 60% of the market value of all its investments.

Origin: FA 1996 Sch.10 para.8(1); AIF(T)R 2006 reg.95(3).

- (2) References in this section and sections 8 and 9 to investments of an open-ended investment company are references –
- (a) except where paragraph (b) applies, to the property subject to the collective investment scheme constituted by the company, and
  - (b) in a case where under section 468A(3) of ICTA part of an umbrella company is regarded as an open-ended investment company, to such of the property subject to the collective investment scheme constituted by the umbrella company as forms part of the separate pool in question, other than cash awaiting investment.

Origin: FA 1996 Sch.10 para.8(5A), (7A), (7C).

- (3) References in this section and sections 8 and 9 to investments of a unit trust scheme are references to investments subject to the trusts of the scheme, other than cash awaiting investment.

Origin: FA 1996 Sch.10 para.8(5).

- (4) References in this section and sections 8 and 9 to investments of an offshore fund are references to assets of the fund, other than cash awaiting investment.

Origin: FA 1996 Sch.10 para.8(5).

- (5) In this section “collective investment scheme” has the meaning given by section 235 of FISMA 2000.

Origin: FA 1996 Sch.10 para.8(7A).

- (6) A person with rights in a part of an umbrella company that is regarded under section 468A(3) of ICTA as an open-ended investment company is treated for the purposes of this section as not owning shares in the umbrella company.

Origin: FA 1996 Sch.10 para.8(7C).

- (7) For the meaning of references to investments subject to the trusts of the scheme in the case of certain authorised unit trusts, see section 468(9) of ICTA (umbrella schemes).

Origin: Drafting.

## 8 Meaning of “qualifying investments” [j0696108a]

- (1) In section 7 “qualifying investments”, in relation to an open-ended investment company, a unit trust scheme or an offshore fund, means investments of the company, scheme or fund of any of the following descriptions –
- (a) money placed at interest,
  - (b) securities,
  - (c) shares in a building society,
  - (d) qualifying holdings in an open-ended investment company, a unit trust scheme or an offshore fund,
  - (e) alternative finance arrangements,
  - (f) derivative contracts whose underlying subject matter consists wholly of any one or more of –
    - (i) the matters referred to in paragraphs (a) to (e) (other than diminishing shared ownership arrangements), and
    - (ii) currency,
  - (g) contracts for differences whose underlying subject matter consists wholly of any one or more of –
    - (i) interest rates,
    - (ii) creditworthiness, and
    - (iii) currency, and
  - (h) derivative contracts not within paragraph (f) or (g) where there is a hedging relationship between the contract and an asset within paragraphs (a) to (d).

Origin: FA 1996 Sch.10 para.8(2); FA 2005 Sch. 2 para.1; AIF(T)R 2006 reg.95(3).

- (2) In this section –
- “contract for differences” has the same meaning as in Part 8 (derivative contracts) (see section {j7cod}),
  - “derivative contract” includes a contract which in the relevant accounting period is treated as if it were a derivative contract as a result of section {j72636} (contracts relating to holdings in unit trusts, OEICs or offshore funds),
  - “diminishing shared ownership arrangements” means arrangements to which section {j0610547a} applies,
  - “hedging relationship” has the meaning given by section 10,

“qualifying holding” has the meaning given by section 9(1),  
“relevant accounting period” means the accounting period referred to in section 4(1),  
“security” does not include shares in a company, and  
“underlying subject matter” has the same meaning as in Part 8 (derivative contracts) (see section [§72611](#)).

[Origin: FA 1996 Sch.10 para.8\(7\), \(7E\); drafting.](#)

## 9 **Qualifying holdings** [\[j0696108b\]](#)

- (1) For the purposes of section 8(1)(d) a holding in an open-ended investment company, a unit trust scheme or an offshore fund is a qualifying holding at any time if –
- (a) at that time, or
  - (b) at any other time in the relevant accounting period,
- the company, scheme or fund would itself fail to meet the qualifying investments test, even on the assumption in subsection (2).

[Origin: FA 1996 Sch.10 para.8\(3\).](#)

- (2) The assumption is that investments of the company, scheme or fund are qualifying investments in relation to the company, scheme or fund only if they fall within section 8(1)(a), (b), (c), (e), (f), (g) or (h).

[Origin: FA 1996 Sch.10 para.8\(4\).](#)

- (3) In this section “holding” –
- (a) in relation to an open-ended investment company, means –
    - (i) except where sub-paragraph (ii) applies, shares in the company, and
    - (ii) in a case where under section 468A(3) of ICTA part of an umbrella company is regarded as an open-ended investment company, rights in the separate pool in question,
  - (b) in relation to a unit trust scheme, means an entitlement to a share in the investments of the scheme, and
  - (c) in relation to an offshore fund, means –
    - (i) shares in any company by which the fund is constituted, or
    - (ii) an entitlement to a share in the investments of the fund.

[Origin: FA 1996 Sch.10 para.8\(6\), \(7C\).](#)

- (4) In this section “relevant accounting period” means the accounting period referred to in section 4(1).

[Origin: FA 1996 Sch.10 para.8\(3\); drafting.](#)

## 10 **Meaning of “hedging relationship”** [\[j0696108c\]](#)

- (1) For the purposes of section 8, in relation to an open-ended investment company, a unit trust scheme or an offshore fund, there is a hedging relationship between a derivative contract (“the hedging instrument”) and an asset (“the hedged item”) so far as –
- (a) condition A is met, or
  - (b) in a case where condition A is not met, condition B is met.

Origin: FA 1996 Sch.10 para.8(7G).

- (2) Condition A is that the hedging instrument and the hedged item are designated as a hedge by the company, scheme or fund.

Origin: FA 1996 Sch.10 para.8(7G).

- (3) Condition B is that the hedging instrument is intended to act as a hedge of exposure to changes in fair value of a hedged item which is –
- (a) a recognised asset which could affect the total net return of the company, scheme or fund, or
  - (b) an identified part of such an asset which is attributable to a particular risk.

Origin: FA 1996 Sch.10 para.8(7G).

- (4) For the purposes of subsection (3) “the total net return” of a company, scheme or fund means its total net return calculated –
- (a) in accordance with generally accepted accounting practice, or
  - (b) in the case of accounts prepared in a jurisdiction outside the United Kingdom, in accordance with generally accepted accounting practice in that jurisdiction.

Origin: FA 1996 Sch.10 para.8(7H).

- (5) In this section “derivative contract” has the meaning given in section 8(2).

Origin: FA 1996 Sch.10 para.8(7E).

#### *Orders*

### **11 Power to change investments that are qualifying investments [j0696109]**

- (1) The Treasury may by order amend sections 7 to 10 so as to extend or restrict the descriptions of investments of an open-ended investment company, a unit trust scheme or an offshore fund that are qualifying investments for the purposes of those provisions.

Origin: FA 1996 Sch.10 para.8(8); Annex 1, Change [jc378].

- (2) The order may –
- (a) make different provision for different cases, and
  - (b) contain such incidental, supplemental, consequential and transitional provision and savings as the Treasury consider appropriate.

Origin: FA 1996 Sch.10 para.9(1).

- (3) In particular, the order may make such incidental modifications of section 9(2) as the Treasury consider appropriate.

Origin: FA 1996 Sch.10 para.9(2).