Tax Representation

TAXREP 4/05

AUTHORISED INVESTMENT FUNDS

Memorandum submitted in January 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to the statement in paragraph 5.104 of the Pre-Budget Report 2004

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INTRODUCTION

1. We are writing to comment on the proposal set out in paragraph 5.104 of the Pre-Budget Report 2004.

> '….the Government intends to bring forward a modernising package including a number of technical changes, for example ….introducing a measure that applies the taxation arrangements for authorised funds to those funds where each investor holds less than 10 per cent of the fund.'

This follows from the technical discussion paper issued in July 2004 *The tax implications for authorised investment funds following the new FSA Regulations (COLL).* Paragraph 39 set out a number of options one of which was:

> 'Having some kind of subscription test. For example any authorised fund (including a QIS) that, in practice, had a limited number of unit holders would be excluded from the authorised unit trust regime and fall to be taxed as an ordinary trust or company outside the [Authorised Investment Fund] AIF regime.'

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

4. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

GENERAL COMMENTS

5. We understand that the proposal is aimed to prevent wealthy investors from using what are loosely referred to as 'private' unit trusts to avoid paying what the Revenue consider to be their 'fair' share of tax. The concern has been aggravated by the proposal to introduce Qualifying Investment Schemes (QIS) which are aimed at a narrower, sophisticated or experienced investor base.

6. We are concerned that the current proposal will operate in a capricious manner and will prevent tax relief being available to ordinary investors. It will also encourage funds to be established outside the UK and will threaten the competitiveness of UK funds. Finally we believe the measure may be in breach of the fundamental freedoms enshrined in the Treaty of Rome.

7. Authorised funds are open ended and the proposed 10 per cent limit could be breached at any moment by any investor who for purely commercial investment reasons decides to put extra funds into a particular fund. If the 10 per cent limit is breached by one investor then the proposal would have the effect of denying the normal tax treatment to all investors in that particular fund.

8. We believe that any anti-avoidance measure should apply at the investor level and not affect the fund and other investors in the fund.

9. The proposal also does not seem to take into account that many of the investors will be institutional investors, such as life companies and pension funds investing for their members.

10. In addition other investors will be nominees, for instance ISA plan managers, and it would, therefore, be unreasonable to expect a fund manager to be involved determining whether any single holder, or related holders, hold beneficially more than the 10 per cent limit.

FCL/IKY
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