Taxation of collective investment undertakings. FA89 s18(1) to (9), (11), (11A) and (12); FA91 s19 (1) and (2); FA93 s20(a); FA94 s25(1); S.I. No. 227 of 1994 ; FA95 s38; FA96 s35(1); FA97 s32 734.—(1) (a) In this section and in Schedule 18—

"accounting period", in relation to a collective investment undertaking, means the chargeable period or its basis period (2)) on the income or profits of which the undertaking is chargeable to income tax or corporation tax, as the case may be, for any chargeable period (within the meaning of that section), or would be so chargeable but for an insufficiency of income or profits, and—

(i) where 2 basis periods overlap, the period common to both shall be deemed to fall in the first basis period only,

(ii) where there is an interval between the end of the basis period for one chargeable period and the basis period for the next chargeable period, the interval shall be deemed to be part of the second basis period, and

(iii) the reference in paragraph (i) to the overlapping of 2 periods shall be construed as including a reference to the coincidence of 2 periods or to the inclusion of one period in another, and the reference to the period common to both shall be construed accordingly;

"the Acts" means the Tax Acts and the Capital Gains Tax Acts;

"the airport" has the same meaning as in the Customs-Free Airport Act, 1947 ;

"appropriate tax", in relation to the amount of any relevant payment made by a collective investment undertaking or in relation to any amount of undistributed relevant income of such an undertaking, as the case may be, means a sum representing tax on the amount of the payment or the amount of the undistributed relevant income, as appropriate, at a rate equal to the standard rate of income tax in force at the time of the payment or at the end of the accounting period to which the undistributed relevant income relates, as the case may be, after making a deduction from that sum of an amount equal to, or to the aggregate of—

(i) in the case of a relevant payment—

(I) in so far as it is made wholly or partly out of relevant income which at a previous date had been or formed part of the undistributed relevant income of the undertaking, the amount of any appropriate tax deducted—

(A) from the relevant income, or

(B) where the payment, or that part of the payment which is made out of relevant income, is less than the relevant income, from such part of the relevant income as is represented by the payment, or that part of the payment, as the case may be, and

(II) any other amount or amounts of tax deducted—

(A) from the relevant profits out of which the relevant payment is made, or

(B) where the payment is less than the profits, from such part of the profits as is represented by the payment,

under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

or

(ii) in the case of an amount of undistributed relevant income, any amount or amounts of tax deducted from the income under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

but the amount of the deduction shall not exceed the amount of the sum;

“the Area” has the same meaning as it has for the purposes of section 446;

“chargeable gain” has the same meaning as in the Capital Gains Tax Acts;

“collective investor”, in relation to an authorised investment company ), means an investor, being a life assurance company, pension fund or other investor—

(i) who invests in securities or any other property whatever with moneys contributed by 50 or more persons—

(I) none of whom has at any time directly or indirectly contributed more than 5 per cent of such moneys, and

(II) each of a majority of whom has contributed moneys to the investor with the intention of being entitled, otherwise than on the death of any person or by reference to a risk of any kind to any person or property, to receive from the investor—

(A) a payment which, or

(B) payments the aggregate of which,

exceeds those moneys by a part of the profits or income arising to the investor,

and

(ii) who invests in the authorised investment company primarily for the benefit of those persons;

“collective investment undertaking” means, subject to paragraph (b)—

(i) a unit trust scheme which is or is deemed to be an authorised unit trust scheme ) and which has not had its authorisation under that Act revoked,

(ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations,

(iii) a limited partnership which—

(I) has as its principal business, as expressed in the partnership agreement establishing the limited partnership, the investment of its funds in property, and

(II) has been authorised to carry on that business, under any enactment which provides for such authorisation, by the Central Bank of Ireland,

and where, in addition to being a collective investment undertaking, it is also a specified collective investment undertaking, and

(iv) any authorised investment company )—

(I) which has not had its authorisation under that Part of that Act revoked, and

(II) (A) which has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated, or

(B) (aa) which is not a qualified company,

(bb) which in addition to being a collective investment undertaking is also a specified collective investment undertaking, and

(cc) where all the holders of units who must be resident outside the State, for the company to be a specified collective investment undertaking, are collective investors;

“distribution” has the same meaning as in the Corporation Tax Acts;

“qualified company” has, in relation to any business of a collective investment undertaking carried on in—

(i) the airport, the same meaning as it has for the purposes of section 445, or

(ii) the Area, the same meaning as it has for the purposes of section 446;

“qualifying management company”, in relation to a collective investment undertaking, means a qualified

company which in the course of relevant trading operations carried on by the qualified company manages the whole or any part of the investments and other activities of the business of the undertaking;

“relevant gains”, in relation to a collective investment undertaking, means gains accruing to the undertaking, being gains which would constitute chargeable gains in the hands of a person resident in the State;

“relevant income”, in relation to a collective investment undertaking, means any amounts of income, profits or gains which arise to or are receivable by the collective investment undertaking, being amounts of income, profits or gains—

(i) which are or are to be paid to unit holders as relevant payments,

(ii) out of which relevant payments are or are to be made to unit holders, or

(iii) which are or are to be accumulated for the benefit of, or invested in transferable securities for the benefit of, unit holders,

and which if they arose to an individual resident in the State would in the hands of the individual constitute income for the purposes of income tax;

“relevant payment” means a payment made to a unit holder by a collective investment undertaking by reason of rights conferred on the unit holder as a result of holding a unit or units in the collective investment undertaking, other than a payment made in respect of the cancellation, redemption or repurchase of a unit;

“relevant profits”, in relation to a collective investment undertaking, means the relevant income and relevant gains of the undertaking;

“relevant Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 );

“relevant trading operations” has, in relation to any business of a collective investment undertaking carried on by a qualified company in—

(i) the airport, the same meaning as it has for the purposes of section 445, or

(ii) the Area, the same meaning as it has for the purposes of section 446;

“return” means a return under paragraph 1(2) of Schedule 18;

“specified collective investment undertaking” means, subject to paragraph (c), a collective investment undertaking—

(i) most of the business of which, to the extent that it is carried on in the State—

(I) (A) is carried on in the Area by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking, or

(B) is not so carried on in the Area but—

(aa) is so carried on in the State,

(bb) would be so carried on in the Area but for circumstances outside the control of the person or persons carrying on the business, and

(cc) is so carried on in the Area when those circumstances cease to exist,

or

(II) is carried on in the airport by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking,

and

(ii) in which, except to the extent that such units are held by the undertaking itself, the qualifying management company of the undertaking, a company referred to in section 710 (2), a specified company or another specified collective investment undertaking, all the holders of units in the undertaking are persons resident outside the State,

and includes any company limited by shares or guarantee which—

(iii) is wholly owned by such a collective investment undertaking or its trustees, if any, for the benefit of the holders of units in that undertaking,

(iv) is so owned solely for the purpose of limiting the liability of that undertaking or its trustees, as the case may be, in respect of futures contracts, options contracts or other financial instruments with similar risk characteristics, by enabling it or its trustees, as the case may be, to invest or deal in such investments through the company, and

(v) would, if references to an undertaking in paragraph (i) were to be construed as including references to a company limited by shares or guarantee, satisfy the condition set out in paragraph (i);

“specified company” means a company—

(i) which is—

(I) a qualified company carrying on relevant trading operations ), or

(II) a qualified company carrying on relevant trading operations ) so long as those relevant trading operations could be certified by the Minister for Finance as relevant trading operations for the purposes of

section 446 if they were carried on in the Area rather than in the airport,

and

(ii) not more than 25 per cent of the share capital of which is owned directly or indirectly by persons resident in the State;

“tax” means income tax, corporation tax or capital gains tax, as may be appropriate;

“transferable securities” has the same meaning as in the relevant Regulations; “undistributed relevant income”, in relation to a collective investment undertaking, means any relevant income arising to or receivable by the undertaking in an accounting period of the undertaking and which at the end of the accounting period has not been paid to the unit holders and from which appropriate tax has not previously been deducted;

“unit” includes any investment, such as a subscription for shares or a contribution of capital, in a collective investment undertaking, being an investment which entitles the investor—

(i) to a share of the investments or relevant profits of, or

(ii) to receive a distribution from,

the collective investment undertaking;

“unit holder”, in relation to a collective investment undertaking, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking.

(b) References in this section to a collective investment undertaking, apart from such references in the definition of “specified collective investment undertaking”, shall include references to a company limited by shares or guarantee which is a specified collective investment undertaking.

(c) For the purposes of the definition of “specified collective investment undertaking”, a reference to a qualifying management company shall be construed as if—

(i) in section 445 (2) there were deleted “, and any certificate so given shall, unless it is revoked under subsection (4), (5) or (6), remain in force until the 31st day of December, 2005”, and

(ii) in section 446 (2) there were deleted “, and any certificate so given shall, unless it is revoked under subsection (4), (5) or (6), remain in force until the 31st day of December, 2005”.

(2) For the purposes of this section—

(a) Where any payment is made out of relevant profits or out of any part of such profits from which any tax including appropriate tax has been deducted and the payment is less than the relevant profits or that

part of such profits, the amount of the tax so deducted which is referable to the part of the profits represented by the payment shall be the amount which bears to the total amount of the tax deducted from the relevant profits or the part of such profits, the same proportion as the amount of the payment bears to the amount of the relevant profits or the part of such profits, as the case may be, and

(b) any reference in this section to the amount of a relevant payment shall be construed as a reference to the amount which would be the amount of the relevant payment if the appropriate tax were not to be deducted from the relevant payment or from any undistributed relevant income out of which the relevant payment or any part of such payment is made.

(3) Notwithstanding anything in the Acts but subject to subsection (5), a collective investment undertaking shall not be chargeable to tax in respect of relevant profits, but the relevant profits shall be chargeable to tax in the hands of any unit holder, including the undertaking, to whom a relevant payment of or out of the relevant profits is made if and to the extent that the unit holder would be chargeable to tax in the State on such relevant profits, or on such part of the relevant profits as is represented by the payment, on the basis that and in all respects as if, subject to subsections (4) and (6), the relevant profits or that part of the relevant profits had arisen or accrued to the unit holder without passing through the hands of the undertaking.

(4) Where in accordance with subsection (3) a unit holder is to be charged to tax on a relevant payment made by a collective investment undertaking which is not a specified collective investment undertaking—

(a) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant income, the unit holder shall be charged to tax on that amount under Case IV of Schedule D as if it were an amount of income arising to the unit holder at the time the payment is made, and

(b) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant gains, it shall be treated as a capital distribution within the meaning of section 731 and, if it is not already the case, the Capital Gains Tax Acts shall apply in all respects as if the amount of the relevant payment were a capital distribution made by a unit trust and the unit or units in respect of which it is paid were a unit or units in a unit trust.

(5) (a) Where a collective investment undertaking which is not a specified collective investment undertaking—

(i) makes a relevant payment of or out of relevant profits to a unit holder resident in the State, or

(ii) has at the end of an accounting period of the undertaking any undistributed relevant income,

it shall deduct out of the amount of the relevant payment or the amount of the undistributed relevant income, as the case may be, the appropriate tax.

(b) Where appropriate tax is deducted in accordance with paragraph (a)—

(i) the unit holder to whom the relevant payment is made or the unit holder or unit holders entitled to

the relevant income, as the case may be, shall allow the deduction, and

(ii) the collective investment undertaking shall, on the making of the relevant payment to the unit holder or on the making of any relevant payment out of the undistributed relevant income to any unit holder, as the case may be, be acquitted and discharged of so much money as is represented—

(I) by the deduction, or

(II) where the relevant payment is less than the amount of the undistributed relevant income, by so much of the deduction as is referable to the relevant payment,

as if the amount of money had actually been paid to the unit holder.

(c) Schedule 18 shall apply for the purposes of supplementing this subsection.

(6) (a) Where a unit holder receives a relevant payment from a collective investment undertaking which is not a specified collective investment undertaking and appropriate tax has been deducted from the payment, or from the relevant profits or part of those profits out of which the payment is made, then, the unit holder shall—

(i) if the unit holder is not resident in the State for tax purposes at the time the payment is made, be entitled, on due claim and on proof of the facts, to repayment of the appropriate tax, or so much of it as is referable to the relevant payment, as the case may be, or

(ii) in any other case, be entitled—

(I) to have the unit holder's liability to tax under any assessment made in respect of the relevant payment or any part of the relevant payment reduced by a sum equal to so much, if any, of the appropriate tax as is referable to the amount of the relevant payment contained in the assessment, and

(II) where the appropriate tax so referable exceeds the unit holder's liability to tax in respect of the relevant payment, or in respect of that part of the relevant payment contained in the assessment, to repayment of the excess.

(b) For the purposes of paragraph (a)(ii), the inspector or on appeal the Appeal Commissioners shall make such apportionment of the appropriate tax deducted from a relevant payment, or from the relevant profits out of which the relevant payment or any part of the relevant payment is made, as is just and reasonable to determine the amount of the appropriate tax, if any, referable to any part of the relevant payment contained in an assessment.

(7) Section 732 shall not apply as on and from—

(a) the 24th day of May, 1989, to—

(i) a qualifying unit trust ), and

(ii) the disposal of qualifying units (within the meaning of that section) in such a qualifying unit trust,

where the qualifying unit trust is also a specified collective investment undertaking, and

(b) (i) the 6th day of April, 1990, or

(ii) where this section applies by virtue of subsection (12)(b) on an earlier day to a qualifying unit trust which is a collective investment undertaking, such earlier day in respect of the qualifying unit trust,

to such a qualifying unit trust or to the disposal of such qualifying units in the qualifying unit trust, where the qualifying unit trust is a collective investment undertaking without also being a specified collective investment undertaking.

(8) Section 805 shall not apply to a collective investment undertaking if but for this subsection it would otherwise apply.

(9) As respects any collective investment undertaking which is a company (within the meaning of the Corporation Tax Acts)—

(a) a relevant payment made out of the relevant profits of the undertaking or a payment made in respect of the cancellation, redemption or repurchase of a unit in the undertaking shall not be treated as a distribution for any of the purposes of the Tax Acts, and

(b) if but for this subsection section 440 would otherwise apply, it shall not apply to the collective investment undertaking.

(10) Notwithstanding section 1034, a person not resident in the State shall not by virtue of that section be assessable and chargeable in the name of an agent in respect of a relevant payment made out of the relevant profits of a collective investment undertaking.

(11) For the purposes of the Tax Acts, a unit holder other than a qualifying management company shall not be treated as carrying on a trade in the State through a branch or agency or otherwise where that unit holder would not be so treated if the unit holder did not hold any units in a specified collective investment undertaking.

(12) This section shall apply as on and from—

(a) in the case of a specified collective investment undertaking, the 24th day of May, 1989, and

(b) in the case of any other collective investment undertaking, the 6th day of April, 1990, or such earlier day, not being earlier than the 6th day of April, 1989, as the Revenue Commissioners may agree to in writing with any such other collective investment undertaking in respect of that undertaking.