Authorised Contractual Schemes Manual - DRAFT

The following pages of draft guidance are published by HMRC for comment.

Notes

Where existing HMRC guidance manuals are referred to in this draft these can be found in the Library pages on the HMRC website. Links should work both within the document and to other documents.

Stamp duty Land Tax treatment of investors is not covered in this guidance as the Government has announced its intention to consult on this. It is expected that a consultation document will be published shortly.

Capital Allowances treatment of investors (likely to be relevant only to investors in funds holding land and buildings) is also not covered here and it is hoped further material to incorporate this topic will be published shortly.

HMRC is also reviewing aspects of the capital gains treatment to ensure that the legislation works as intended. If any changes are made as a result of this review then these will be reflected and explained in the relevant part of a later version of this guidance.

Comments should be sent to:

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Next steps:

It is expected that the material contained in these pages will, subject to HMRC review together with any changes or additions following stakeholder comment, be incorporated in HMRC permanent guidance manuals in due course.

HMRC would like to thank those stakeholders who have reviewed an early draft of this guidance. We trust that this first widely circulated draft has been improved by the comments which we have received and incorporated.

ACSM - (Authorised Contractual Schemes Manual - Draft): Main Contents

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Note: See next page for a detailed contents list.

ACSM - (Authorised Contractual Schemes Manual): Detailed Contents (Draft)

ACSM1000 – Overview: contents

ACSM1010 - Overview: introduction

What is an Authorised Contractual Scheme (ACS)?

An ACS has no legal personality and does not constitute an entity in its own right. It is a form of **collective investment scheme** (see ACSM1020).

An ACS is essentially a pool of assets held and managed on behalf of a number of investors (participants) who are the co-owners of the assets.

The scheme has an operator (or manager) who is responsible under the contract for the operation of the scheme. The operator is also responsible for decisions about the investment of participants' funds in accordance with the contractual arrangements.

The scheme also has a depositary who is responsible for holding and safeguarding the assets of the participants that are part of the scheme. The depositary will acquire and dispose of assets on behalf of the participants on the instructions of the operator.

An ACS must be authorised by the Financial Conduct Authority and the operator and depositary must also be FCA authorised persons.

Tax

An ACS is not a taxable entity and is not within the charge to direct taxes. Each participant is responsible for tax arising on their own share of income and gains at their own rates of tax (although this works differently for each type of ACS – see ACSM1030). For this reason an ACS is described as "tax-transparent".

There are two types of ACS – see ACSM1030.

Where Stamp Taxes (ACSM5000) are payable on acquisitions then the operator of the ACS will account for these on behalf of the participants.

The ACS is exempt from VAT on the costs of management (see ACSM6010).

This Guidance

This guidance gives a general introduction and covers the tax implications of investment through an ACS. For regulations covering how an ACS can be operated and the duties of the operator and depositary please see the FCA handbook which is available on the FCA website at http://www.fshandbook.info/FS/html/FCA/

ACSM1020 –Authorised contractual Schemes (ACS)

Collective Investment Schemes

A collective investment scheme is an arrangement for investors (participants) to pool assets and to share proportionately in the income and gains arising.

A collective investment scheme may take the form of an open-ended investment company, unit trust or a contractual arrangement. Both a company and (in the person of its trustees) a unit trust are legal persons and are taxable entities.

Authorised Contractual Schemes (ACS)

A contractual arrangement is transparent for the purposes of tax and the participants remain responsible for any tax due on their share of the income (and gains) in the fund.

This means that the participant in an ACS will require full access to information about the assets held and the participant’s share of income (and gains) received by the scheme in order to meets its own tax obligations.

In the case of participants in a co-ownership fund the taxation of gains is based on their interests in the fund and not directly on the gains made by the fund – see ACSM1030.

Who can invest in an ACS?

It is a regulatory requirement that a direct investor in an ACS must either:

- Invest at least £1m, or
- Be a professional institutional investor.

Other investors including retail investors can invest in an ACS via a **feeder fund**.

ACSM1030 - Types of ACS

Different types (legal forms) for an ACS

An ACS may take one of two legal forms – whilst both of these are exempt from all direct taxes the tax treatment for UK investors is slightly different in each case. An ACS may be:

- a partnership fund, or
- a co-ownership fund.

The definition of each scheme can be found at **S235A FSMA 2000**.

Partnership Fund

A partnership fund is a form of limited partnership formed under the Limited Partnership Act 1907 as modified by the **Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/ 1388)**. The fund is authorised by the Financial Conduct Authority (FCA).

It is transparent for tax purposes and UK participants are taxable on their share of income and gains as they arise.

More details of the taxation of UK resident participants can be found at ACSM2030.

Co-ownership Fund

A co-ownership fund is formed by a contract entered into initially by the operator and depositary.

UK resident participants are taxable on their share of income as it arises. There is legislation relating to Capital Gains which treats a holding in a co-ownership fund as being an asset for tax purposes and which treats the holders' share of the fund assets as not being an asset for tax purposes. This means that a UK resident participant can only incur a chargeable gain on a disposal an interest in the fund (or an event treated as a disposal)

More details of the taxation of UK resident participants can be found at ACSM2010 and ACSM2020.

Non-Resident Participants

Non-residents are only taxable in the UK on investment income arising in the fund if the income arises in the UK and is taxable in the UK (the main example of this is income from the rental of property situated in the UK).

Non-residents are normally not liable to tax on capital gains in the UK. The exception for individuals is that in certain circumstances where they are considered to be temporarily non-resident, see CG26520. For corporate non-resident participants the exception can be where they carry on a trade in the UK through a permanent establishment, see CG42040.

More details on the tax position of non-resident participants in an ACS can be found at ACSM3000 and following pages.

ACSM1040 – Tax and an ACS

An ACS is not liable to tax

An ACS does not have its own legal personality and is not within the charge to direct tax. Instead, the income (and for a limited partnership scheme the gains) made by the scheme are subject to tax in the hands of each participant in the ACS as the income and gains arise. In these respects an ACS is 'tax transparent'. Partnerships and co-ownership funds are specifically excluded from the definition of a company for purposes of the Corporation Tax Acts by **CTA2010/S1121(1)**.

As a limited partnership, a partnership fund is required to submit a UK tax return in the same way as any other partnership. A co-ownership fund is not required to submit a UK tax return.

The tax treatment of an investor depends on whether they have invested in a co-ownership fund or a limited partnership fund. ACSM2000 deals with the taxation of UK investors when they invest in each type of fund. The tax treatment of overseas investors is covered in ACSM3000.

Investors in an ACS fund

It is worth noting that investors in an ACS fund are likely to be, in the main, institutional investors. This is because of the rules specifying who may invest in such a fund. The rules can be found at **S261E Financial Services and Markets Act 2000**. The rules are also outlined at ACSM1020.

Double Taxation Conventions

The fiscal transparency of both types of ACS fund means they do not have access to double taxation conventions between the UK and other jurisdictions. Instead, the availability of double taxation convention reliefs will reflect the convention between the investor's jurisdiction of residence and the jurisdiction where the income or gain arises. For further information, see ACSM8000.

ACSM2000 - Taxation of UK investors: contents

ACSM2010 - Taxation of UK investors - Co-ownership funds

Income

Participants in a co-ownership fund are taxable on their share of the fund's income. This applies to both corporate and individual investors. For investors who are individuals, this means that their share of any income received by the fund will be subject to their marginal rate of income tax for that type of income. Therefore, investors require detailed information relating to their share of fund income in order to fulfil their tax obligations. See ACSM2050.

Any income received will be subject to the normal tax treatment applied to that type of income in the hands of that investor. For example, dividend income is likely to be non-taxable in the hands of a corporate investor. Income from property and interest received will need to be treated according to the general rules that apply to each stream of income. For some types of income the computation and the treatment is different for taxpayers within the charge to CT and those within the charge to IT.

See ACSM2020 for some further examples.

Capital Gains

Capital gains are not treated as arising on the participant's share of assets held subject to the fund but, instead, a unit in the fund is treated as if it were an asset purely for the purposes of tax on capital gains.

Investors in a co-ownership fund are subject to tax on capital gains made on their interest in the fund, and not on movements in the underlying assets held in the fund. This means that a gain or loss does not arise when the fund disposes of assets within the fund. Instead, participants will need to consider chargeable gains consequences when they dispose of (or there is a deemed disposal of) their interest in the fund.

The gains of UK resident individuals arising from the disposal of an interest will be subject to capital gains tax (subject to the annual exempt amount and any capital losses), whilst similar gains arising to corporate investors will be subject to corporation tax. The amount of any gain is calculated using the normal rules. Further information can be found at ACSM4020 and in the Capital Gains Manual.

Insurance Companies

Insurance companies investing in co-ownership funds are subject to different rules. An investment held in the long-term fund of an insurance company will be subject to **TCGA1992/S212** – this currently applies to all other holdings in collective investment schemes held by insurance companies (except in partnerships). Broadly, this means that if the interests are held in the long-term fund of an insurance company, the company is deemed, for the purposes of corporation tax on capital gains, to have disposed of and immediately reacquired the interests concerned at their market value at the end of an accounting period.

ACSM2020 - Taxation of UK Investors: Co-ownership funds: further information

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Fiscal Transparency

A co-ownership fund is formed by a contract initially made between the operator and the depositary of the fund to which the participants (investors) become parties.

The assets of the fund (the property subject to the scheme) are held as legal owner by the depositary on behalf of the participants who are jointly the beneficial owners of the scheme assets which they hold as tenants in common (or in Scotland as common property).

The scheme operator must make decisions on behalf of the participants about the acquisition, management and disposal of property subject to the scheme as authorised by the scheme deed and those decisions are binding on participants.

As the assets of the scheme remain the direct property of the participants the participants are taxable on income arising from their share of those assets in exactly the same way as if they were the sole owner of each asset subject to the scheme (unless tax legislation specifically provides otherwise).

This also means that income arising from the assets in the scheme arises directly to the participants (in the appropriate proportions). The scheme itself has no legal personality. Income will be paid to the depositary which holds it in on behalf of participants and immediately becomes the joint property of the participants as part of the assets subject to the scheme.

Tax effects of fiscal transparency – general

Where the scheme has several different types of income then a participant is immediately taxable on each type of income separately irrespective of whether the income is immediately, or at any time, passed to the participant.

This has the consequence that the participant must, for the purposes of meeting their own tax obligations, require full information to be provided by the scheme administrator on their share of all income arising "to the scheme", covering the amounts, dates and sources of such income as well as any other information which they might need to meet their tax obligations.

The participant is taxable according to the specific rules of the tax regime which applies. It is likely that corporate investors will have a different tax outcome to individuals or to investment funds. Some important examples are given below.

Participants within the charge to Corporation Tax (CT)

Such a participant (typically a company as assumed in these paragraphs) will include its share of income under the scheme as part of the calculation of its CT liability. This is subject to a different treatment for chargeable gains as explained in ACSM2010.

Where scheme holds loan assets, the participants in the scheme will be, collectively, the beneficial owner of the assets. As such, a corporate investor in the scheme will stand in the position of creditor in respect of the loans, and so will be within the scope of the loan relationships regime. The corporate investor will therefore need to analyse the amounts it has recognised in its accounts to identify the amounts which represent profits and losses from those loan assets. These amounts will be brought into account for tax purposes in accordance with section 307 Part 5 CTA 2009.

The same comments as above also apply in respect of derivative contracts (within Part 7 CTA 2009) to a share of which the company is a party by virtue of its participation in a co-ownership fund. These are chargeable to CT in accordance with section 571(1) and the rest of Part 7.

The basic rules on loan relationships and on derivatives also apply to foreign exchange differences where again foreign exchange differences, which arise in respect of assets held subject to the fund, must be treated as arising proportionately to the fund participants.

See the Corporate Finance Manual for further details of the treatment of loan relationships, derivatives, foreign exchange differences and other financial instruments. In all cases these should be treated for CT purposes in the same way (in respect of the share falling to the company) as if the company held them outside the fund.

Participants within the charge to Income Tax.

Whilst it is not anticipated that co-ownership funds are likely to have participants within the charge to Income Tax due to the high minimum investment and the need for such participants to deal with full tax information arising from their share of all the assets subject to the fund; it remains possible.

As well as the general points above such participants (typically individuals) need to be aware that if the fund holds interest bearing assets then these may be deeply discounted securities for which the accruing discount is taxable as well as any interest coupons paid out by the issuer of the securities. See SAIM3000ff for further information.

As with companies the general rule that must be applied is that, for the purposes of income tax, an individual participating in a co-ownership fund must treat all amounts arising from their share of assets subject to the fund in the same way as if they had directly held that proportion of each asset.

This does not apply for the purposes of capital gains tax – see ACSM4000.

ACSM2030 - Taxation of UK investors - Limited partnership funds

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Income

As with co-ownership funds, participants in a limited partnership fund are taxable on their share of the fund's income. This applies to both institutional and individual investors. For individual investors, this means any income received will be subject to their marginal rate of income tax. Therefore investors require detailed information relating to their share of fund income in order to fulfil their tax obligations. See ACSM2050.

Capital Gains

The treatment of capital gains made in a limited partnership fund differs from the treatment of a gain made in a co-ownership fund. Gains made on assets held within the fund are treated as arising directly to participants. This means that UK resident investors that are liable to tax on capital gains require full information on any asset disposals or changes of partnership interests in order to fulfil their tax obligations. Effectively, the treatment applied is the same as for any other partnership.

Individuals will be subject to capital gains tax on any gain (subject to the annual exempt amount and any capital losses), whilst corporate investors will be subject to corporation tax on any capital gain. The amount of any gain is calculated using the normal rules. Further information can be found in the Capital Gains Manual at CG27000c+.

ACSM2040 - Taxation of UK investors - comparison of the funds

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The following table summarises the similarities and differences between the taxation of UK investors in a co-ownership fund and a limited partnership fund:

Type of Fund	**Treatment of income**	**Treatment of capital gains**
Co-ownership fund	The fund is not liable to any tax on income. It is not required to submit a tax return in the UK. Participants are taxable on their share of the fund's income.	The fund is not liable to any tax on capital gains. It is not required to submit a tax return in the UK. Investors in a fund are subject to tax on capital gains made on their interest in the fund, and not on movements in the underlying assets held in the fund. (NB: different rules may apply to insurance companies)
Limited partnership fund	The fund is not liable to any tax on income. It must submit a UK tax return detailing how income is divided amongst partners. Participants are taxable on their share of the fund's income.	The fund is not liable to any tax on capital gains. It must submit a UK tax return detailing how capital gains are divided amongst partners. Gains made on assets held within the fund are treated as arising directly to participants.

ACSM2050 - Providing information to investors

Overriding principle

As an ACS is 'transparent' for direct tax purposes, participants require sufficient information on income (and gains for a limited partnership fund) made by the fund in order to fulfil their tax obligations. This is the overriding principle. Different types of investor will require different information. Therefore, the comments below are only a guide (see also ACSM2020). It is again worth noting that, in the main, investors in a fund are likely to be institutional, largely due to the rules governing who may invest in a fund.

Participants that are exempt from UK taxation may require less information for UK tax purposes (although they may still need to complete a tax return). A taxable institutional investor will require sufficient information to enable them to complete their own tax return. The information required by overseas investors will depend on the tax treatment of income and gains in the jurisdiction in which they are resident – it is not within the scope of this manual to provide guidance on what overseas investors might require in order to fulfil their tax obligations.

Due to the differing treatment of capital gains made within each type of fund, investors will require different information in order to fulfil their tax obligations.

Investors within the charge to UK Corporation Tax

Corporate investors may require different types of information about taxable income than investors liable to income tax. For example where the fund has loan relationships or derivative contracts then a corporate investor will need to account for their share of profits etc in accordance with the CT rules applying to loan relationships or derivatives.

Co-ownership funds

UK resident participants in a co-ownership fund will require information regarding their share of any income received by the fund. In particular, they will require details of the type of income received, such as any income from property, dividend income, interest receivable and so on. This will include details of any income that has had tax deducted.

They will not require information on any capital gains made on assets held within the fund as such gains will not be subject to corporation tax (or, in the case of individuals, capital gains tax) on gains from these assets. Instead, gains arising from the disposal of whole/ part of their interest in the fund will be taxable. See ACSM4020.

Participants holding an interest for part of a period

The arrangements for reporting income to these participants will need to allocate income correctly to them in accordance with their ownership period. See also ACSM4022 regarding equalisation payments made by participants on acquisition.

Limited partnership funds

The information required by investors in a limited partnership fund may be more comprehensive where the fund has investors that are subject to tax on capital gains. This is because taxable investors will require details of not only income received by the fund, but also gains on the underlying assets held by the fund. The information required by investors is essentially the same as required by partners in other partnerships.

ACSM3000 - Taxation of overseas investors

An ACS is not liable to direct taxation in the UK.

The income or gains of investors within an ACS that are not resident in the UK will also not be subject to UK taxes unless the income and gains that have arisen to the fund arise from within the UK.

Where the source from which the ACS derives the income or gain is outside the UK then there are no UK tax implications for non-UK resident investors.

Capital gains arising in the UK are not generally subject to UK tax for non-residents (but see ACSM1030).

In most cases investment income with a source in the UK is also not liable to tax in the UK.

The main exceptions to this are:

- Interest with a UK source. This will not be subject to withholding tax in the UK but could give rise to a UK tax liability in some cases.
- Income arising from UK situated land and property (including Property Income Distributions made by UK-REITS or Property Authorised Investment Funds) – see ACSM7000.

Investors that are resident (or otherwise liable to tax) in other jurisdictions may be subject to tax in their own jurisdiction. This guidance deals only with liabilities to UK taxation.

As noted at ACSM2050, the information required by overseas investors with a liability to tax in their own jurisdiction will depend on the tax rules within the jurisdiction in which they are resident and as such is beyond the scope of this guidance.

ACSM4000 - Capital gains - contents

ACSM4010 - Capital gains: general

The general approach adopted by the Taxation of Chargeable Gains Act 1992 is to treat collective investments schemes as a company and the interests held in each as shares in that deemed company. See **TCGA92/S99(1)** and CG41310. However as explained at ACSM1040 an authorised contractual scheme, whether in the form of a Partnership fund or co-ownership fund, is specifically excluded from the definition of a company for the purposes of the Corporation Tax Acts and this also applies for purposes of the TCGA.

The tax treatment of capital gains differs for co-ownership schemes and Partnership funds. This section of the ACS manual explains:

- what the capital gains treatments are for participants in an ACS,
- the effect of the TCGA, and
- outlines the capital gains treatment of insurance companies that invest in co-ownership funds.

The application of the TCGA means that co-ownership funds can be involved in reorganisations or reconstructions involving mergers or demergers. **SI2013/1400** introduced bespoke rules governing reorganisations and reconstructions of collective investment schemes. Specific guidance on these rules will be published as soon as practical. In general these bespoke rules adopt the same principles as that which exist for companies and shareholders, see **TCGA92 Part IV Ch II**. Until such time as the new guidance is published it is suggested that in the first instance reference is made to existing CG guidance at CG52500+.

ACSM4020 - Capital gains: co-ownership funds

As explained at ACSM4010 a co-ownership scheme is not a company and is not treated as a company and so, in that respect, the application of the TCGA differs from that for other collective schemes. However, as far as UK investors are concerned, the actual tax effect for capital gains will be very similar. .

Without special rules each investor in a co-ownership fund would have a chargeable occasion every time that there was a disposal of an asset by the co-ownership fund. **TCGA92/S103D** prevents this from happening by providing that for the purposes of the TCGA a participant's interest in the assets held by the fund is to be disregarded. Instead, each unit held by a participant in the co-ownership fund is deemed to be an asset for the purposes of the TCGA. When the participant disposes of any units in the co-ownership fund the capital gain is to be calculated as if it were a unit trust scheme and as if the units disposed of were units in a unit trust scheme. The special rules for capital gains do not affect the treatment of income received from the fund, see ACSM2010 and ACSM2020.

What this means is that for the purposes of the TCGA on each occasion that the participant disposes of a unit in a co-ownership fund that will be a disposal within **TCGA92/S21** and any gain or loss on that chargeable occasion will be calculated in accordance with the general application of the TCGA, see CG14200+.

For comparison; this has the same capital gains treatment which applies to a UK resident participant in a relevant offshore fund. A relevant offshore fund is an offshore fund that is not a company, partnership or unit trust. That is a contractual arrangement (where the contract is not one of partnership). See Offshore Funds Manual for further details.

Whilst special rules now exist for participants in a co-ownership fund, as the fund itself is not a taxable entity, see ACSM1010, no chargeable occasion can arise on the fund when it disposes of any chargeable asset.

ACSM4030 - Capital gains: co-ownership funds - calculating the gain

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Where a co-ownership scheme involves the accumulation of income **TCGA92/S103D(4)** provides that **TCGA92/S99B** might apply.

The general purpose of section 99B is to prevent a possible double charge to tax. For example an investor within the charge to UK tax holds accumulation units in a co-ownership scheme. Instead of the income being made available to the investor it is retained by the scheme with the effect that the retained income enhances the value of the investment. Although the income has been retained, nevertheless for the purposes of the Taxes Acts it is treated as being made available to the investor and it is charged to tax as income. When the investor disposes of their interest in the co-ownership scheme the consideration received will, in normal circumstances, reflect the enhanced value. Thus the potential capital gain will include the enhanced value. In effect the retained income, which has already been subject to a charge to tax as income would also now be subject to a charge to tax as capital.

Where the relevant conditions are met section 99B is designed to prevent a possible double charge by treating the retained income as part of the allowable capital costs when computing any capital gain on the disposal of an interest in the co-ownership scheme.

In the context of co-ownership schemes the criteria set by section 99B is that the income must

- Represent income from the interest in the co-ownership scheme, and
- be reinvested/retained within the co-ownership scheme and for the purposes of the Taxes Acts the income
  - is either charged to income tax as income of the investor in the co-ownership scheme or would be but for relevant reliefs, or
  - is taken into account as a receipt in calculating the profits, gains or losses of the investor in the co-ownership scheme.

If the relevant criteria are met then for the purposes of the TCGA the income retained is treated as enhancement expenditure within section 38(1)(b). Such expenditure is treated as having been incurred on the same date that the retained income would be treated as coming within the charge to income tax.

ACSM4040 - Capital gains: co-ownership funds - equalisation

Where units in a co-ownership fund are acquired and the cost of acquisition includes a payment for income (to be distributed) which has accrued prior to acquisition then the equalisation payment is not part of the acquisition cost of the units for chargeable gains purposes (as it will be returned to the investor as part of a distribution of the fund's income – often called "equalisation").

In such cases the investor will require information about the equalisation payment. The total amount of the payment will suffice for deducting this from the acquisition price for TCGA purposes.

However for income purposes the investor will also need to be able to identify the total income (in each tax category) arising to the investor from the fund and may well, depending on the approach used by the fund administrator to give investors income information, require a full breakdown of the equalisation payment by tax category of the accrued income that it is matching for this purpose.

ACSM4050 - Capital gains: insurance companies - co-ownership fund

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When an insurance company transfers an asset to a co-ownership fund, (see ACSM1030), in exchange for an issue of units to the insurance company **TCGA92/S211B** will apply. The effect for the purposes of the TCGA is that the insurance company will be treated as having disposed of the asset to the fund on the basis that neither a gain or loss will accrue to the company (no gain no loss) provided immediately before the asset was transferred the following condition is met:

- That the transferor is a UK life insurance company and the asset was held as part of its long term business category as defined in section FA 2012 section 116(2) subject to section 116(3). If the transferor is an overseas life insurance company the asset must have been in a UK long term business category as defined by FA 2012 section 117(2) subject to section 117(3).
- The units that the life insurance company will receive from the fund are treated as having been acquired for a consideration equal to the amount of consideration used to arrive at the no gain no loss position.

Note: A transfer to a relevant offshore fund will receive the same treatment provided that the conditions in section 211B are met.

See ACSM4050 for how an insurance company treats holdings in a co-ownership scheme for the purposes of TCGA.

ACSM4060 - Capital gains: co-ownership funds - insurance companies and annual disposals

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Under **TCGA92/S212** an insurance company is treated as having made an annual disposal of the units it holds in a unit trust. Co-ownership funds were added to the list of assets to ensure that units held in such a fund are subject to the same requirement, see Section 212(1)(ba).

Section 213 provides special rules for determining how gains or losses that accrue under section 212 are to be brought into charge.

Anti avoidance rules were built into section 213 to prevent any tax avoidance involving the interaction of sections 212 and 213 following the transfer of an asset to which section 211B applied (see ACSM4040).

Sections 4ZB and 4ZC were introduced into section 213 to give effect to these anti avoidance rules where within three years after the end of the accounting period in which the original transfer to which section 211B applies there is a disposal or part disposal of the units received in respect of that transfer. If that occurs then in the year that the disposal takes place the gain that would otherwise be spread over later years is treated as having accrued in the year of disposal.

Example

For example, in year 1 there is a transfer of an asset to which section 211B applies. The amount of consideration that is used to arrive at a no gain no loss position is £1m. The insurance company receives 10 units in the co-ownership fund which for the purposes of the TCGA have a base cost of £1m. At the end of year 1 in accordance with section 212 the units held are deemed to have been sold and reacquired at market value which is £2.4m. The company is deemed to have accrued a gain of £1.4m which in accordance with section 213 is to be spread over 7 years with 1/7 being brought into charge at year 1 and 1/7 for the next six years. The CG cost of those units carried forward to year 2 is £2.4M. Shortly after the end of year one the insurance company sells the units to a third party, i.e. this is not a deemed disposal within section 212. The market value has only slightly increased by £1,000 therefore the chargeable gain in year 2 would, but for the anti avoidance rules be £1,000 plus the 1/7 of the gain in year 1 is calculated under section 212.

The anti avoidance rule in section 213(4ZB) directs that in such a situation the gain spread over years 3 -7 is deemed to have accrued in year 2. Therefore the total gain on the disposal of these units in year 2 is £1,000 plus £1.2m

At the time an insurance company makes an actual disposal of units in a co-ownership fund they may hold units that were acquired following a transfer to which section 211B applied and units acquired by other means, e.g. purchased directly from another person. Where that is the case section 213(4ZC)(a) provides that for the purposes of section 213(4ZB) the units acquired by way of a section 211B transfer are treated as having been disposed of before units acquired by other means. This rule equally applies where the fund has different classes of units

Where there has been more than one transfer to which section 211B applied then units acquired under the later transfer are treated as having been disposed of before the earlier transfer, section 213(4ZC)(b). For example an insurance company transfers assets to a fund in year 1 and year 2 and on each occasion 100 units are issued to the company. It is assumed that section 211B applies. No other units are held in the fund. In year 4 the company disposes of 50 of the units it held in the fund to a third party. Under section 213(4ZC) (b) the company is treated as having disposed of 50 of the 100 units acquired in year 2.

Sections 213(4ZD) and (4ZE) provide that in applying these rules to relevant offshore funds the meaning of relevant offshore fund within section 103A will apply, see the Capital Gains Manual and references to units in sections 213(4ZB) & (4ZC). This means rights in the fund are treated as shares within section 103A.

ACSM4070 - Capital gains: limited partnership funds

As explained at ACSM4010, a limited partnership fund will not be treated as a company and so remain as a transparent entity. However, unlike a co-ownership fund, there are no special rules relating to the application of the TCGA to a limited partnership funds.

Participants in a limited partnership fund will in effect continue to be treated in the same manner as a partner in any partnership. Each participant will hold an interest in each of the underlying assets held by the limited partnership fund relative to the number of units they hold in comparison with the total number of units issued by the fund. For example, if a fund has issued 10 units and a participant holds one unit in that fund then the participant has 1/10th interest in each underlying asset.

Therefore on each occasion that the limited partnership fund disposes of a chargeable asset that will create a chargeable occasion for each participant in that fund. Any gain or loss on that chargeable occasion should be calculated in accordance with the general application of the TCGA, see the Capital Gains manual at CG14200+.

Similarly if there is a change in partnership shares (perhaps due to a participant joining or leaving) then there will be an acquisition or disposal for all participants – see the Capital Gains Manual at CG27000+.

ACSM5000 - Stamp Duty and SDRT

Stamp duty and stamp duty reserve tax (SDRT) apply in the normal way to acquisitions of securities by an Authorised Contractual Scheme (ACS), subject to the exemptions described below. The operator of the ACS may account for the duty or tax on behalf of the participants.

The following transactions are exempt from stamp duty and SDRT:

- transfers of securities to an ACS in consideration for the issue of units in the ACS (paragraph 25A(1)(a) of FA99/SCH13 (for stamp duty) and subsection (7B)(a)(i) of FA86/S90 (for SDRT));
- transfers of securities between depositaries under the same ACS, that is, between sub-schemes of an umbrella scheme (paragraph 25A(1)(b) of FA99/SCH13 (for stamp duty) and subsection (7B)(a)(ii) of FA86/S90 (for SDRT));
- transfers of units in an ACS (paragraph 25A(1)(c) of FA99/SCH13 (for stamp duty) and subsection (7B)(b) of FA86/S90 (for SDRT)).

These exemptions do not apply where the transactions form part of arrangements for the avoidance stamp duty or SDRT (paragraph 25A(3) of FA99/SCH13 (for stamp duty) and subsection (7D) of FA86/S90 (for SDRT)).

ACSM6000 - VAT - Contents

ACSM6010 - VAT exemption for the management of an ACS

Article 135(1)(g) of Council Directive 2006/112/EC (Principal VAT Directive) requires member states to exempt from VAT the management of special investment funds as defined by the member state in question. The United Kingdom gives effect to this requirement by **Item 9, Group 5, Schedule 9 VAT Act 1994** with reference to the meaning in **S237(3) Financial Services Market Act 2000**.

While member states have a discretion to define "special investment funds" for the purpose of applying Article 135(1)(g), they must nevertheless have regard to the purpose of the exemption. The purpose of the exemption is to facilitate the investment in securities for investors through investment undertakings and avoid defining "special investment funds" so as to discriminate between funds which are similar, and therefore in competition with each other. This includes funds such as those covered by the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.

It is considered that ACSs are similar to those collective funds that are presently listed in item 9, Group 5, Schedule 9 VATA and therefore the exemption has been extended to include the managements of ACSs.

The Value Added Tax (Finance) Order 2013 amends Group 5 of Schedule 9 to include as an exempt supply the management of ACS and provides that, for the purposes of applying the exemption, ACS are to be defined in accordance with S237 of FSMA 2000.

ACSM6020 – Input tax

Fund management services which are exempt under items 9 or 10 of Group 5 Schedule 9 VAT Act 1994 are not included in the Specified Supplies Order (SI 1999/3121) which means there is no right to deduct VAT on any costs incurred, even if the customer is established outside the EU. For example, fund management services made to a collective investment scheme established in the Channel Islands which is defined under item 9 or 10 will not give rise to a recovery of VAT on related costs.

However, fund management services concerning funds which are not defined in items 9 or 10 are subject to UK VAT if the customer of the services (i.e. the fund) is established in the UK, but are outside the scope of UK VAT and carry a right to deduct if the customer is established outside the UK.

ACSM6030 - Registration

The determination of the person liable to register for VAT is a question of fact that has to be decided on a supply-by-supply basis i.e. how is the fund set up and structured in relation to the scheme assets/property and the terms of the contractual scheme deed and partnership scheme. However, in general terms it is envisaged that an authorised contractual scheme will be registered for VAT (where relevant) in the name of the general partner/operator.

ACSM7000 - Taxation of property income

UK Resident Participants

As described at ACSM1040 and ACSM1030, UK investors in both co-ownership and limited partnership schemes are taxable on their share of the fund's income. This applies to both corporate and individual investors. For individual investors, this means any income received will be subject to their marginal rate of income tax. This includes property income.

Participants not resident in the UK

The income or gains of non-resident participants in an ACS will not be subject to taxation on income and gains unless the income or gain arises in the UK and is subject to tax in the UK for non-residents. Capital gains and much investment income arising in the UK are not subject to tax for non-residents. See ACSM3000.

However, income that arises from UK land and buildings is subject to UK income tax for non-resident participants whether corporate or individual. Should the ACS receive income from UK property, that income is liable to UK tax in the hands of the participants. This applies to both individual and corporate participants, whether or not resident in the UK. If their usual place of abode (which is not the same as residence status) is outside the UK, tax on income from rental property will be deducted at source through a special scheme for non-resident landlords.

The rules allow rent to be paid gross at source if the non-resident wishes and if HMRC agree. The non-resident will then self assess the amount of tax due. Information about taxation under these circumstances can be found in the Self Assessment: the Legal Framework manual.

Role of ACS operator

For the purposes of the non-resident landlord scheme, the ACS operator will need to consider whether or not they must deduct UK income tax at source from the rental income received. Operators should refer to the Non-Resident Landlord Regulations and the International Manual (INTM37000) regarding the operator's obligations as the UK agent in receipt of rental income in relation to any non-resident participants. Operators will need to consider whether they should register as a Letting Agent for the purposes of the scheme. Further information about how to operate the scheme is shown on our website on the non-resident landlord pages on the HMRC website. Contact details are also shown on the website.

Property Income Distributions (PIDS) (from UK-REITS and Property Authorised Investment Funds (PAIFs))

PIDS are taxed as UK propertv income and will often be paid net of basic rate income tax by the UK-REIT or the PAIF. Non-UK residents may be entitled to reclaim part of the UK tax withheld by the UK-REIT or PAIF under the double tax convention in place between their own jurisdiction and the United Kingdom.

There are rules in place to discourage or prevent any corporate investor from holding a 10 per cent or greater share in a UK-REIT (GREIT02100 and following) or a PAIF (CTM48817). As an ACS is 'look-through' for tax purposes then those rules apply to investors with a holding in a UK-REIT or a PAIF through an ACS as they do to direct holders. If any investor with a holding through an ACS also has a direct holding then those must be aggregated for this purpose.

It is possible that the ACS Operator may handle any treaty claims or UK repayment claims for investors and if so investors should check what information the Operator will require in order to make a treaty claim to HMRC.

In circumstances where all of the investors in an ACS would be (on directly held shares) entitled to gross payment of a PID then the ACS depositary (as nominee for the investors) may be able to certify this to the payer and obtain gross payment. GREIT08125 gives more information on gross payments from UK-REITS and CTM48863 and following for gross payments from PAIFs.

ACSM8000 - Double taxation conventions

The fiscal transparency of both types of ACS fund means they are not treated as resident for the purposes of double taxation conventions between the UK and other jurisdictions. Instead, the availability of double taxation convention reliefs will depend on the convention between the investor's jurisdiction of residence and the jurisdiction where the income or gain arises.

Provided the overseas jurisdiction recognises an ACS as a transparent entity, investors should be entitled to the same treaty benefits as though they had made the investments directly. Whilst it is beyond the scope of UK legislation to prescribe how an ACS is treated by a foreign jurisdiction, it is anticipated that the majority, if not all, foreign states will view an ACS as transparent for tax purposes.

Investors will need to consult the relevant tax convention in order to establish whether treaty benefits are applicable and, if so, in what circumstances. The treatment of an ACS will need to be discussed with the overseas jurisdiction concerned. Any claim for treaty relief will need to be made using the procedures existing in that state.

In practice fund operators/administrators may offer a service whereby they will submit claims for benefits on investors' behalf. In such cases the fund operator or administrator will inform investors of the information that they will need from investors in order to establish any claims for treaty benefits.

Full information on UK double tax conventions can be found on the HMRC website.
