

**Via Email**

15 October 2009

Lee Harley  
HMRC,  
CT&VAT Product and Process,  
3<sup>rd</sup> Floor, 100 Parliament Street,  
London  
SW1A 2BQ

Dear Lee,

**Consultation on draft guidance relating to The Authorised Investment Funds (Tax) (Amendment) Regulations 2009 (SI 2009/2036)**

The IMA represents the UK-based investment management industry. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of over £3 trillion of funds (based in the UK, Europe and elsewhere), including Authorised Investment Funds (AIFs), institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK AIFs (i.e. Authorised Unit Trusts and Open-Ended Investment Companies).

This letter relates to the draft guidance which was published on 21 August 2009. As a general observation, we commend HMRC for the admirable clarity of the draft guidance. We do, though, have a small number of detailed comments, which are set out in the attached.

Yours sincerely



Paul Bradbury  
Tax Adviser

## **Trading v investment IMA's response to the draft guidance notes**

### **1. CTM 48280 – CTM 48292**

There are a number of references throughout the guidance to regulations per the draft HMT consultation paper released 30 April 2009. We note that a few regulations have changed references per the final statutory instrument, and these need to be updated in the guidance.

### **2. CTM 48280 – Trading or investment**

The statement under the heading "*Capital and revenue*" that "*...it does not prevent revenue profits from "investment transactions" being taxable as income*" is an extremely important one and we suggest it should be given greater prominence. This may be achieved by possibly adding a third bullet point at the end of the second paragraph, cross referencing to the "*Capital and revenue*" paragraph and adding the words "*as defined in the IMA SORP*" after "*revenue profits*".

IMA welcomes the statement that:

*"Whilst it is possible that some activities carried out by and AIF might, on the facts, amount to trading, there is a general and prevailing assumption that AIFs will not be conducting a trade. The statements published in the August 2002 and December 2005 articles in Tax Bulletins 60 and 80, in relation to AIFs and loan relationships and derivative contracts continue to apply."*

This confirmation, that the presumption against trading continues to apply on the occasions where it is not possible to rely on the 'White List', will provide significant reassurance to managers and investors.

### **3. CTM 48284 – Relevant contracts**

IMA welcomes the very useful analysis, and in particular the statement that:

*"Where a contract provides for cash settlement only and does not provide for the delivery of any property, it will not be an option or a future for the purposes of regulation 14G; but such cash-settled derivative contracts will generally be contracts for differences within the meaning of regulation 14G(9)"*

Some members had expressed a concern relating to contracts where these could only be cash-settled, and this statement deals with that concern.

We also welcome the statement that a credit default swap is regarded as a relevant contract for the purposes of the regulations.

**4. CTM 48286 – Loan relationships and related transactions**

The first sentence of the fourth paragraph should have "is" immediately after "Regulation 14H".

**5. CTM 48292 – Regulation 14L: Carbon emission trading products**

The first line states "...carbon emission trading product is and investment transaction...". This should read "...an...".