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STATUTORY INSTRUMENTS

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**2009 No. 2036**

**INCOME TAX**

**CORPORATION TAX**

**CAPITAL GAINS TAX**

The Authorised Investment Funds  
(Tax) (Amendment) Regulations 2009

<i>Made</i>	- - - -	<i>21st July 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>23rd July 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 17(3) and 18 of the Finance (No. 2) Act 2005<sup>(1)</sup> and sections 973 and 974 of the Income Tax Act 2007<sup>(2)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment) Regulations 2009 and shall come into force on 1st September 2009.

**Amendment of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964)**

2. The Authorised Investment Funds (Tax) Regulations 2006<sup>(3)</sup> are amended as follows.

**Amendment of regulation 2**

3. In regulation 2 (structure of these Regulations)<sup>(4)</sup>—

(a) after “interpretation;” insert—

“Part 1A deals with the genuine diversity of ownership condition;”

(b) after “Part 2A deals with qualified investor schemes” insert—

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(1) 2005 c. 22.

(2) 2007 c. 3.

(3) S.I. 2006/964, referred to in the footnotes to these Regulations as “the principal Regulations”; relevant amending instruments are S.I. 2006/3239, 2007/683, 2007/794, 2008/705 and 2008/3159.

(4) Regulation 2 was amended by S.I. 2008/705 and 2008/3159.

- “Part 2B deals with diversely owned AIFs;”,  
 (c) after “Part 4A deals with Property AIFs;” insert—  
 “Part 4B deals with Tax Elected Funds;”.

#### **Amendment of regulation 6**

4. In regulation 6 (further definitions generally relevant for authorised investment funds) after paragraph (6) insert—

- “(7) In these Regulations “instrument constituting the fund” means—
- (a) in relation to an open-ended investment company, the instrument of incorporation, and
  - (b) in relation to an authorised unit trust scheme, the trust deed.
- (8) In these Regulations “genuine diversity of ownership condition” has the meaning given by regulation 9A.”.

#### **Amendment of regulation 8**

5. In regulation 8 (general interpretation) insert at the appropriate place—

- ““connected person” has the meaning given in—
- (a) sections 993 and 994 of ITA 2007 (connected persons)<sup>(5)</sup> in the case of a person chargeable to income tax, and
  - (b) section 839 of ICTA (connected persons)<sup>(6)</sup> in the case of a person chargeable to corporation tax;”.

#### **Insertion of Part 1A**

6. After regulation 9 (abbreviations and general index) insert the following Part—

### “PART 1A

#### THE GENUINE DIVERSITY OF OWNERSHIP CONDITION

##### **The genuine diversity of ownership condition**

9A.—(1) For the purposes of these Regulations, the genuine diversity of ownership condition is as follows.

- (2) The genuine diversity of ownership condition is that an authorised investment fund must—
- (a) meet conditions A to C throughout the accounting period; or
  - (b) comply with paragraph (8).
- (3) Condition A is that the fund documents—
- (a) contain a statement that units in the fund will be widely available,

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(5) ITA 2007 is an abbreviation for the Income Taxes Act 2007 provided for in Part 1 of the Schedule to the principal Regulations.  
 (6) ICTA is an abbreviation for the [Income and Corporation Taxes Act 1988 \(c. 1\)](#) provided for in Part 1 of the Schedule to the principal Regulations. Section 839 was amended by paragraph 20 of Schedule 17 to the [Finance Act 1995 \(c. 4\)](#), paragraph 25 of Schedule 13 to the [Finance Act 2006 \(c. 25\)](#) and paragraph 223 of Schedule 1 to the Income Tax Act 2007 and by [S.I. 1988/745](#) and [2005/3229](#).

- (b) specify the intended categories of investor, and
  - (c) specify that the manager of the fund must market and make available the units in the fund in accordance with paragraph 9A(6)(a).
- (4) Condition B is that neither—
- (a) the specification of the intended categories of investor, nor
  - (b) any other terms or conditions governing participation in the fund, whether or not specified in the fund documents,
- have a limiting or deterring effect.
- (5) In paragraph (4) a limiting or deterring effect means an effect which—
- (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
  - (b) deters a reasonable investor within the intended categories of investor from investing in the fund.
- (6) Condition C is that—
- (a) units in the fund must be marketed and made available—
    - (i) sufficiently widely to reach the intended categories of investors, and
    - (ii) in a manner appropriate to attract those categories of investors; and
  - (b) a person who is in an intended category of investor can, upon request to the manager of the fund, obtain information about that fund and acquire units in it.
- Condition C is subject to paragraph (7).
- (7) Condition C shall be treated as being met even if at the relevant time the fund has no capacity to receive additional investments, unless—
- (a) the capacity of the fund to receive investments in it is fixed by the fund documents (or otherwise), and
  - (b) a pre-determined number of specific persons or specific groups of connected persons make investments in the fund which collectively exhausts all, or substantially all, of that capacity.
- (8) An authorised investment fund which is a Property AIF also meets the genuine diversity of ownership condition if—
- (a) an investor in the fund is a unit trust scheme (a “feeder fund”);
  - (b) conditions A to C are met in relation to the authorised investment fund after taking into account—
    - (i) the fund documents relating to the feeder fund, and
    - (ii) the intended investors in the feeder fund; and
  - (c) the authorised investment fund and the feeder fund have the same manager (or proposed manager).
- (9) In this Part “fund documents” means—
- (a) the instrument constituting the fund, and
  - (b) the fund’s prospectus in issue for the time being (including any supplements to the prospectus).

### **Clearance in relation to the genuine diversity of ownership condition**

**9B.**—(1) An application for clearance that an authorised investment fund meets the genuine diversity of ownership condition (see regulation 9A) may be made in writing to the Commissioners by the manager (or proposed manager) of an authorised investment fund.

(2) An application for clearance must be accompanied by the fund documents in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the fund for which clearance is sought.

(3) If regulation 9A(2)(b) and (8) applies, an application for clearance by the authorised investment fund must be accompanied by—

- (a) the documents specified in paragraph (2), and
- (b) the fund documents of the feeder fund in the form in which it is proposed that those documents will apply at the beginning of the first accounting period of the fund for which clearance is sought.

(4) The Commissioners may require the manager (or proposed manager) to provide further particulars if they believe that full particulars of the fund have not been provided.

(5) The Commissioners must notify the applicant within 28 days of the receipt of the particulars (or, if paragraph (4) applies, of all further particulars required) that they—

- (a) give clearance that the fund meets the genuine diversity of ownership condition,
- (b) give that clearance subject to conditions, or
- (c) refuse to give that clearance.

(6) An authorised investment fund (and investors in that fund) may not rely on a clearance given under this regulation if—

- (a) at the beginning of the first accounting period of the fund to which the clearance relates (and at the beginning of each subsequent accounting period), a relevant statement in the fund documents in issue for the time being is not in accordance with a relevant statement in the documents considered by the Commissioners before giving clearance,
- (b) the fund acts or is operated in contravention of a relevant statement in the fund documents,
- (c) the fund documents are materially amended, or
- (d) the fund is operated otherwise than in accordance with condition C of the genuine diversity of ownership condition (see regulation 9A(6)).

(7) If regulation 9A(2)(b) and (8) applies an authorised investment fund (and investors in that fund) may not rely on a clearance given under this regulation if any of sub-paragraphs (a) to (d) of paragraph (6) apply in relation to either the authorised investment fund or the feeder fund.

(8) Paragraph (6)(c) does not apply if the manager of the fund has obtained a clearance given under this regulation which applies to the amendment.

(9) For the purposes of paragraph (6)(c), a material amendment is one that may reasonably be construed as causing, or likely to cause, the fund to fail to meet the genuine diversity of ownership condition in relation to any accounting period.”.

### **Amendment of regulation 13**

7. In regulation 13 (treatment of interest distributions for purposes of loan relationships) after paragraph (3) insert—

“(4) In this regulation an “interest distribution” includes a TEF distribution (non-dividend) (see regulation 69Z61(3)).”.

#### **Amendment of regulation 14B**

**8.** Regulation 14B (tax treatment of qualified investor schemes)(7) is amended as follows.

- (1) In paragraph (1) for “14C” substitute “9A”.
- (2) In paragraph (2) after sub-paragraph (a) insert—
  - “(aa) the provisions of Part 4 of these Regulations,”.
- (3) Omit paragraph (5).

#### **Omission of regulations 14C and 14D**

**9.** Omit regulations 14C (the genuine diversity of ownership condition) and 14D (clearance in relation to the genuine diversity of ownership condition)(8).

#### **Insertion of Part 2B**

**10.** After regulation 14B (tax treatment of qualified investor schemes) insert the following Part—

### **“PART 2B**

#### **DIVERSELY OWNED AIFS**

##### **Tax treatment of diversely owned AIFs**

**14E.—(1)** This regulation applies to an authorised investment fund in respect of an accounting period if—

- (a) the fund carries out an investment transaction in that period, and
- (b) the fund meets the genuine diversity of ownership condition in relation to that period.

(2) In these Regulations an authorised investment fund to which this regulation applies is referred to as a “diversely owned AIF”.

(3) If the profits or losses, as the case may be, arising from an investment transaction are capital profits, gains or losses, that investment transaction shall be treated as a non-trading transaction of the diversely owned AIF for the purposes of corporation tax.

(4) Chapter 2 of Part 3 of CTA 2009 (income taxed as trade profits)(9) does not apply to capital profits and losses arising from such an investment transaction.

(5) For the purposes of these Regulations “investment transaction” means a transaction specified in regulation 14F.

(6) For the purposes of paragraphs (3) and (4) capital profits, gains or losses arising from an investment transaction in an accounting period are such profits, gains or losses as fall to be dealt with under the heading “net capital gains/losses” in the statement of total return for an accounting period.

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(7) Regulation 14B was inserted by [S.I. 2008/3159](#).

(8) Regulations 14C and 14D were inserted by [S.I. 2008/3159](#).

(9) CTA 2009 is an abbreviation for the [Corporation Tax Act 2009 \(c. 4\)](#) inserted into Part 1 of the Schedule to the principal Regulations by regulation 32(2) of these Regulations.

(7) For the purposes of paragraph (6), the “statement of total return for an accounting period” has the same meaning as in regulation 12(2).

**Meaning of “investment transaction”**

**14F.**—(1) For the purposes of these Regulations an “investment transaction” means—

- (a) any transaction in stocks and shares;
- (b) any transaction in a relevant contract (and see regulations 14G to 14K);
- (c) any transaction which results in a diversely owned AIF becoming a party to a loan relationship or a related transaction in respect of a loan relationship (and see regulation 14L);
- (d) any transaction in units in a collective investment scheme (and see regulation 14M);
- (e) any transaction in securities (and see paragraph (2));
- (f) any transaction consisting in the buying or selling of any foreign currency;
- (g) any transaction in a carbon emission trading product (and see regulation 14N).

(2) In paragraph (1)(e) “securities” means securities of any description not falling within sub-paragraphs (a) to (d) of paragraph (1).

**Meaning of relevant contracts: general**

**14G.**—(1) For the purposes of regulation 14F a “relevant contract” is—

- (a) an option,
- (b) a future, or
- (c) a contract for differences.

(2) For the purposes of this regulation an option, a future or a contract for differences which relates to land will only be a relevant contract if the option, the future or the contract for differences uses an index referred to in regulation 14K(1)(b) and the index is—

- (a) publicly accessible,
- (b) comprised of a significant number of properties, and
- (c) not maintained by—
  - (i) the diversely owned AIF,
  - (ii) the manager of the diversely owned AIF, or
  - (iii) a person who is a connected person in relation to the diversely owned AIF or the manager of the diversely owned AIF.

**Meaning of relevant contract: options**

**14H.**—(1) For the purposes of regulation 14G an “option” includes an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company, and for these purposes it is immaterial whether the shares or assets to which the instrument relates exist or are identifiable.

(2) For the purposes of paragraph (1) the reference to a loan relationship of a company is to be construed in accordance with regulation 14L but with references in that regulation to “diversely owned AIF” treated as references to “company”.

### **Meaning of relevant contract: futures**

**14I.**—(1) For the purposes of regulation 14G a “future” is a contract for the sale of property under which delivery is to be made—

- (a) at a future date agreed when the contract is made, and
- (b) at a price so agreed.

(2) For the purposes of paragraph (1)(b) a price is taken to be agreed when the contract is made—

- (a) notwithstanding that the price is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

### **Meaning of relevant contract: options and futures - general provisions**

**14J.**—(1) For the purposes of regulations 14H and 14I references to an option or a future do not include references to a contract whose terms provide—

- (a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, and do not provide for the delivery of any property,
- (b) that each party is liable to make to the other party a cash payment in respect of all that party’s obligations to the other under the contract and do not provide for the delivery of any property, or
- (c) for the delivery of any property other than property a transaction in which would fall within regulation 14F(1) where the property is delivered.

(2) Nothing in paragraph (1) has effect to exclude, from references to a future or option, a future or option whose underlying subject matter is currency.

(3) In paragraph (1) “underlying subject matter” means—

- (a) in relation to a future, the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, and
- (b) in relation to an option, the property which would fall to be delivered if the option were exercised.

### **Meaning of relevant contract: contract for differences**

**14K.**—(1) For the purposes of regulation 14G a “contract for differences” is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

- (a) the value or price of property described in the contract, or
- (b) an index or other factor designated in the contract.

(2) For the purposes of paragraph (1)(b) an index or factor may be determined by reference to any matter and, for these purposes, a numerical value may be attributed to any variation in a matter.

(3) For the purposes of regulation 14G none of the following is a contract for differences—

- (a) an option,
  - (b) a future,
  - (c) a contract of insurance,
  - (d) a contract effected in the course of capital redemption business,
  - (e) a contract of indemnity,
  - (f) a guarantee,
  - (g) a warranty,
  - (h) a loan relationship.
- (4) For the purposes of paragraph (3)—

“capital redemption business” means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount becomes payable at a future time or over a period;

“loan relationship” is to be construed in accordance with regulation 14L but with references to “diversely owned AIF” in that regulation treated as references to “company”.

#### **Loan relationships or related transactions**

**14L.**—(1) For the purposes of regulation 14F a diversely owned AIF has a “loan relationship” if that diversely owned AIF stands (whether by reference to a security or otherwise) in the position of a creditor or debtor as respects any money debt and either—

- (a) that debt is one arising from a transaction for the lending of money; or
- (b) that debt is not one which arose from a transaction for the lending of money but is one—
  - (i) on which interest is payable to or by the diversely owned AIF, or
  - (ii) in relation to which exchange gains or losses arise to the diversely owned AIF, or
  - (iii) as respects which the conditions in paragraph (2) below are satisfied.

(2) The conditions referred to in paragraph (1)(b)(iii) are that—

- (a) the diversely owned AIF stands in the position of creditor in relation to the money debt; and
- (b) the money debt is one from which a discount (whether of an income or capital nature) arises to the diversely owned AIF.

(3) For the purposes of this regulation “exchange gains or losses” means profits or gains or losses which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the diversely owned AIF in another currency on an asset or liability of the diversely owned AIF.

(4) For the purposes of this regulation a “money debt” is a debt which is, or has at any time been, one that falls, or that may at the choice of the debtor or of the creditor fall, to be settled—

- (a) by the payment of money,
- (b) by the transfer of a right to settlement under a debt which is itself a money debt, or
- (c) by the issue or transfer of shares in any company,



disregarding any other alternative exercisable by either party.

(5) Subject to paragraph (6), if an instrument is issued by any person for the purpose of representing security for, or the rights of a creditor in respect of, any money debt, then (whatever the circumstances of the issue of the instrument) that debt shall be taken for the purposes of this regulation to be a debt arising from a transaction for the lending of money.

(6) For the purposes of this regulation a debt shall not be taken to arise from a transaction for the lending of money to the extent that it is a debt arising from rights conferred by shares in a company.

(7) For the purposes of this regulation so far as relating to exchange gains or losses any currency held by the diversely owned AIF shall be treated as a money debt.

(8) For the purposes of this regulation “money” includes money expressed in a currency other than sterling.

(9) In this Part a “related transaction” in relation to a loan relationship means any disposal or acquisition (in whole or in part) of rights or liabilities under that relationship.

#### **Units in a collective investment scheme**

**14M.—**(1) For the purposes of regulation 14F “units” in a collective investment scheme means the rights or interests (however described) of the participants in the collective investment scheme.

(2) For the purposes of this regulation “participant” has the same meaning as given by regulation 6(6) but with references to “authorised investment fund” and “fund” being read as references to “collective investment scheme”.

#### **Carbon emission trading products**

**14N.—**(1) For the purposes of regulation 14F a carbon emission trading product is—

- (a) a Community tradable emissions allowance, or
- (b) a transferable unit issued pursuant to the Kyoto Protocol,

which does not otherwise fall within any other regulation of this Part.

(2) For the purpose of this regulation—

“Community tradable emissions allowance” means a transferable allowance which relates to the making of emissions of greenhouse gases which are allocated as part of a system made for the purpose of implementing any Community obligation of the United Kingdom relating to such emissions;

“the Kyoto Protocol” means the Kyoto Protocol to the United Nations Framework Convention on Climate Change signed at Kyoto on 11th December 1997<sup>(10)</sup>;

“unit” includes an assigned amount unit, certified emission reductions, an emission reduction unit and a removal unit.”.

#### **Amendment of regulation 17**

**11.** In regulation 17 (contents of distribution accounts) after paragraph (1) insert—

“(1A) Paragraph (1) does not apply in relation to an authorised investment fund to which Part 4A or 4B applies.”.

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<sup>(10)</sup> The text of the Kyoto Protocol is available at [www.unfccc.int/kyoto\\_protocol/items/2830.php](http://www.unfccc.int/kyoto_protocol/items/2830.php).

### **Amendment of regulation 48**

12. In paragraph (4) of regulation 48 (dividend distributions: general)(11) for “14C” substitute “9A”.

### **Amendment of regulation 51**

13. In paragraph (1)(b) of regulation 51 (participants chargeable to corporation tax: holdings in qualified investor schemes where scheme does not meet the genuine diversity of ownership condition)(12) for “14B” substitute “9A”.

### **Insertion of regulations 52B to 52E**

14. After regulation 52A (companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax)(13) insert—

#### **“Diversely owned AIFs and financial traders: treatment of shares and units**

**52B.**—(1) This regulation and regulation 52C apply if a financial trader has held, or holds, shares or units in a diversely owned AIF.

(2) In computing the trading profits or losses of the financial trader for the relevant period, the following amounts must be brought into account—

- (a) all distributions received by or credited to the financial trader in respect of such shares or units for the relevant period; and
- (b) any amount required to be brought into account under regulation 52C.

(3) In this regulation and in regulation 52D(2) references to distributions are subject to section 130 of CTA 2009 (insurers receiving distributions etc)(14).

(4) In this regulation and in regulations 52C and 52D—

“relevant period” means—

- (a) in the case of a financial trader within the charge to corporation tax, an accounting period, and
- (b) in the case of a financial trader within the charge to income tax, a period of account;

“financial trader” has the meaning given by regulation 52E.

#### **Financial traders: amounts to be brought into account in respect of shares or units held in diversely owned AIFs**

**52C.**—(1) The only amounts that are to be brought into account in computing the trading profits or losses in respect of the shares or units in the diversely owned AIF for the relevant period are—

- (a) amounts that are brought into account in accordance with Cases 1 to 4, and
- (b) amounts within regulation 52B(2)(a).

This is subject to section 130 of CTA 2009 (insurers receiving distributions etc) and regulation 52D.

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(11) Regulation 48 was amended by [S.I. 2008/3159](#).

(12) Regulation 51 was substituted by [S.I. 2008/3159](#).

(13) Regulation 52A was inserted by [S.I. 2006/3239](#), amended by [S.I. 2007/683](#) and substituted by [S.I. 2008/3159](#).

(14) Section 130 was amended by paragraph 22 of Schedule 14 to the [Finance Act 2009 \(c. 10\)](#).

(2) Case 1 applies if the financial trader held the shares or units in a diversely owned AIF at the beginning of the relevant period and holds those shares or units throughout that period. Where Case 1 applies, the amount to be brought into account is the difference between the market value of the shares or units at the end of the immediately preceding relevant period and the market value of those shares or units at the end of the relevant period.

(3) Case 2 applies if a financial trader acquired shares or units in a diversely owned AIF during the relevant period and retains those shares or units throughout the relevant period. Where Case 2 applies, the amount to be brought into account is the difference between the market value of the shares or units at the end of the relevant period and the acquisition cost of those shares or units.

(4) Case 3 applies if the financial trader held shares or units in a diversely owned AIF at the beginning of the relevant period and disposes of those shares or units during that period. Where Case 3 applies the amount to be brought into account is the difference between the market value of the shares or units at the end of the immediately preceding relevant period and the disposal value of the shares or units.

(5) Case 4 applies if the financial trader acquires shares or units in a diversely owned AIF during the relevant period and disposes of those shares or units during that period. Where Case 4 applies the amount to be brought into account is the difference between the acquisition cost of the shares or units and the disposal value of those shares or units.

(6) In this regulation—

“acquisition cost” means the value of the consideration given for the acquisition of the shares or units;

“disposal value” means the value of the consideration received for the disposal of the shares or units;

“market value” means—

- (a) in the case of shares or units in a diversely owned AIF where both the buying and selling prices of units are published regularly by the manager of the fund, an amount equal to the buying price (that is the lower price) so published on any particular date or, if none were published on that date, on the latest date before;
- (b) in the case of shares or units in a diversely owned AIF where a single price is published regularly by the manager of the fund, the price so published on any particular date, or if none were published on that date, on the latest date before.

### **Shares and units not within regulation 52C**

**52D.**—(1) Regulation 52C does not apply in respect of any shares or units in a diversely owned AIF in relation to which—

- (a) conditions A and B are both satisfied, or
- (b) condition C is satisfied.

(2) Condition A is that the shares or units in the diversely owned AIF form part of the financial trader’s stock in trade and all the profits and losses, including distributions, arising in relation to the shares or units in the diversely owned AIF are included in the computation of the financial trader’s trading profits for the relevant period.

(3) Condition B is that the shares or units in the diversely owned AIF are accounted for under generally accepted accounting practice on the basis of fair value accounting.

(4) Condition C is that the shares or units in the diversely owned AIF are a relevant holding in respect of which the provisions of section 490 of CTA 2009<sup>(15)</sup> apply in relation to the financial trader.

- (5) In paragraph (4) “relevant holding” means—
- (a) any rights under a unit trust scheme;
  - (b) a material interest in an offshore fund; or
  - (c) any shares in an open-ended investment company.

### Meaning of financial trader

**52E.**—(1) In regulations 52B, 52C and 52D “financial trader” means a person who is carrying on a business which is—

- (a) a banking business,
- (b) an insurance business, or
- (c) a business consisting wholly or in part of dealing in trading assets such that any profit on such assets would form part of the trading profits of that business.

This paragraph is subject to paragraphs (2) and (3).

(2) “An insurance business” in paragraph (1)(b) does not include life assurance business carried on by an insurance company and in the event that such a company carries on both life assurance business and any other insurance business that company will not be a financial trader in respect of the life assurance business.

- (3) If—
- (a) a financial trader, “A”, directly or indirectly transfers trading assets to a diversely owned AIF under or as part of an arrangement which has an unallowable purpose, and
  - (b) a connected person, “B”—
    - (i) holds shares or units in that diversely owned AIF at the time of the transfer; or
    - (ii) directly or indirectly acquires shares or units in that diversely owned AIF at a later time,

B is treated as being a financial trader in relation to those shares or units.

- (4) In paragraphs (1) and (3) “trading assets” means—
- (a) stocks or shares;
  - (b) a relevant contract within regulation 14G;
  - (c) a loan relationship within regulation 14L;
  - (d) units in a collective investment scheme within regulation 14M;
  - (e) securities within regulation 14F;
  - (f) foreign currency; or
  - (g) a carbon emission trading product within regulation 14N,

a profit on the sale of which would form part of the trading profits of the financial trader.

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(15) CTA 2009 is an abbreviation for the [Corporation Tax Act 2009 \(c. 4\)](#) inserted into Part 1 of the Schedule to the principal Regulations by regulation 32(2) of these Regulations.

(5) An arrangement includes any scheme, understanding or transaction of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.

(6) An arrangement has an unallowable purpose if the main purpose or one of the main purposes for either A or B being party to the arrangement is to obtain a tax advantage or an income tax advantage for any person.

(7) In paragraph (6)—

“tax advantage” has the meaning given by section of 840ZA of ICTA(16); and

“income tax advantage” has the meaning given by section 683 of ITA 2007(17).”

#### **Amendment of regulation 69D**

15. In paragraph (b) of regulation 69D (conditions for this part to apply to company)(18) for “69J” substitute “9A”.

#### **Omission of regulation 69DA**

16. Omit regulation 69DA (conditions for this part to apply to a company where the company is also a qualified investor scheme)(19).

#### **Omission of regulation 69J**

17. Omit regulation 69J (the genuine diversity of ownership condition)(20).

#### **Amendment of regulation 69O**

18. In paragraph (5)(b) of regulation 69O (the notification condition)(21) for “69J” substitute “9A”.

#### **Amendment of regulation 69P**

19. Regulation 69P (form and timing of notice under regulation 69O)(22) is amended as follows—

- (a) in paragraph (7)(a) for “69U” substitute “9B”, and
- (b) in paragraph (8)(a) for “69U” substitute “9B”.

#### **Amendment of regulation 69Q**

20. Regulation 69Q (contents of notice under regulation 69O)(23) is amended as follows—

- (a) in paragraph (3)(a) after “specified in” insert “regulation 9A and”, and
- (b) in paragraph (5)(a) after “specified in” insert “regulation 9A and”.

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(16) ICTA is an abbreviation for the [Income and Corporation Taxes Act 1988 \(c. 1\)](#) provided for in Part 1 of the Schedule to the principal Regulations. Section 840ZA was inserted by paragraph 225 of Schedule 1 to the [Income Tax Act 2007 \(c. 3\)](#).

(17) ITA 2007 is an abbreviation for the [Income Taxes Act 2007 \(c. 3\)](#) provided for in Part 1 of the Schedule to the principal Regulations.

(18) Regulation 69D was inserted by [S.I. 2008/705](#) and amended by [S.I. 2008/3159](#).

(19) Regulation 69DA was inserted by [S.I. 2008/3159](#).

(20) Regulation 69J was inserted by [S.I. 2008/705](#) and amended by [S.I. 2008/3159](#).

(21) Regulation 69O was inserted by [S.I. 2008/705](#).

(22) Regulation 69P was inserted by [S.I. 2008/705](#).

(23) Regulation 69Q was inserted by [S.I. 2008/705](#).

### Omission of regulation 69U

21. Omit regulation 69U (clearance in relation to the genuine diversity of ownership condition)(24).

### Amendment of regulation 69Z8

22. In paragraph (1)(a) of regulation 69Z8 (multiple breaches of separate conditions)(25) after “in” insert “regulation 9A or”.

### Substitution of regulation 69Z34

23. For regulation 69Z34 (certificates of deduction of tax)(26) substitute—

#### “Certificates of deduction of tax

**69Z34.**—(1) A company making a relevant distribution which is subject to deduction of tax by virtue of regulation 69Z22(1) must furnish the recipient with a statement that complies with condition A or B.

This is subject to paragraph (5).

(2) The duty imposed by paragraph (1) is enforceable at the suit or instance of the recipient.

(3) Condition A is that the statement is in writing showing—

- (a) the gross amount of the payment,
- (b) the amount of tax deducted, and
- (c) the actual amount paid.

(4) Condition B is that the statement is in writing—

- (a) showing—
  - (i) the gross amount of the distribution made to the participant,
  - (ii) the number and class of units held by the participant in respect of which the distribution is made,
  - (iii) the net amount of the distribution per unit,
  - (iv) whether any tax has been deducted from the distribution, and
  - (v) the date the distribution was made;
- (b) providing details to allow the participant to access an electronic means of calculating the amounts that would be shown in a statement provided in accordance with condition A; and
- (c) providing the participant with an alternative method of obtaining the details of those amounts without recourse to electronic means.

(5) If an appropriate statement for the purposes of section 234A of ICTA is provided by the company in accordance with regulation 70(4) and (5)—

- (a) condition A does not apply, and
- (b) the statement required by condition B must be included in the appropriate statement.

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(24) Regulation 69U was inserted by [S.I. 2008/705](#).

(25) Regulation 69Z8 was inserted by [S.I. 2008/705](#).

(26) Regulation 69Z8 was inserted by [S.I. 2008/705](#).

(6) Where paragraph (5) applies, “distribution” in regulation 70(4) and (5) shall be taken to include the property income distribution and the statement must show the percentage of the gross distribution attributable to the property income distribution.”.

#### **Insertion of Part 4B**

24. After regulation 69Z41 insert the following Part—

**“PART 4B**  
**TAX ELECTED FUNDS**  
**CHAPTER 1**  
**PRELIMINARY PROVISIONS**

#### **Tax Elected Funds**

**69Z42.**—(1) This Part makes provision in relation to an authorised investment fund which meets the conditions in regulations 69Z45 to 69Z48.

(2) In these Regulations an authorised investment fund to which this Part applies may be referred to as a “Tax Elected Fund”.

#### **Structure of this Part**

**69Z43.** The structure of this Part is as follows—

- this Chapter contains preliminary provisions;
- Chapter 2 deals with entry into and membership of the Tax Elected Funds regime;
- Chapter 3 deals with the tax treatment of Tax Elected Funds;
- Chapter 4 deals with distributions made by Tax Elected Funds;
- Chapter 5 deals with the treatment of participants in Tax Elected Funds;
- Chapter 6 deals with compliance in relation to the Tax Elected Funds regime; and
- Chapter 7 contains provisions relating to an authorised investment fund’s leaving the Tax Elected Funds regime.

#### **Interpretation**

**69Z44.** In this Part—

- “entry” means the time when this Part begins to apply to an authorised investment fund;
- “cessation” means the time when this Part ceases to apply to an authorised investment fund;
- “overseas property business” has the meaning given in section 206 of CTA 2009;
- “UK property business” has the meaning given in section 205 of CTA 2009.

## CHAPTER 2

### ENTRY INTO AND MEMBERSHIP OF THE TAX ELECTED FUNDS REGIME

#### *Conditions of membership of the Tax Elected Funds regime*

#### **Conditions for this Part to apply to fund**

**69Z45.** In order for this Part to apply to an authorised investment fund in respect of an accounting period—

- (a) the following conditions (the “TEF conditions”) must be met—
  - (i) the property condition (see regulation 69Z46);
  - (ii) the genuine diversity of ownership condition (see regulation 9A);
  - (iii) the loan creditor condition (see regulation 69Z47); and
  - (iv) the scheme documentation condition (see regulation 69Z48); and
- (b) an application for this Part to apply must be accepted by HM Revenue and Customs (see regulations 69Z49 to 69Z53).

#### *The TEF conditions*

#### **The property condition**

**69Z46.** The property condition is that the authorised investment fund does not have a UK property business or an overseas property business.

#### **The loan creditor condition**

**69Z47.—(1)** The loan creditor condition is that the authorised investment fund must meet conditions A to C throughout the accounting period in the case of any loan relationship to which the fund is party as a debtor.

(2) Condition A is that, in the case of a debtor relationship of the fund, the person standing in the position of a creditor as respects the debt in question is not entitled to an amount by way of interest which depends to any extent on—

- (a) the results of all or part of the authorised investment fund’s business, or
- (b) the value of any of the fund’s assets.

(3) For the purposes of condition A, a loan shall not be treated as dependent on the results of the fund’s business by reason only that the terms of the loan provide—

- (a) for the interest to be reduced in the event of results improving, or
- (b) for the interest to be increased in the event of results deteriorating.

(4) Condition B is that, in the case of a debtor relationship of the fund, the person standing in the position of a creditor as respects the debt in question is not entitled to an amount by way of interest which exceeds a reasonable commercial return on the consideration lent.

(5) Condition C is that, in the case of a debtor relationship of the fund, the person standing in the position of a creditor as respects the debt in question is entitled on repayment to an amount which—

- (a) does not exceed the consideration lent, or



- (b) is reasonably comparable with the amount generally repayable (in respect of an equal amount of consideration) under the terms of issue of securities listed on a recognised stock exchange.

(6) In this regulation “loan relationship” and “debtor relationship” shall be construed in accordance with Part 5 of CTA 2009 (loan relationships)(27).

### **The scheme documentation condition**

**69Z48.** The scheme documentation condition is that the instrument constituting the authorised investment fund and its prospectus must include provisions which require the fund to meet the property condition and the loan creditor condition on entry and throughout the accounting period.

*Application for this Part to apply*

### **Application process**

**69Z49.**—(1) An application for this Part to apply to an authorised investment fund may be made by—

- (a) the manager of an existing authorised investment fund, or
- (b) if it is proposed to establish an authorised investment fund, the person expected to become the manager of the fund once established (the “applicant”).

(2) Before making an application in relation to an existing authorised investment fund, the fund must obtain any necessary shareholder or unit holder approval and must have applied for any necessary regulatory approval in respect of the instrument constituting the fund and the prospectus.

(3) The manager or applicant must notify HM Revenue and Customs when any necessary regulatory authorisation has been given.

(4) Where in relation to an existing authorised investment fund this Part has previously applied to the fund—

- (a) no application may be made if a termination notice was issued in relation to the fund, or
- (b) if an election was made under regulation 69Z70 that this Part should cease to apply, no application can be made in relation to any accounting period which begins within six years of the cessation.

(5) In this Part—

“applicant” means the person referred to in paragraph (1)(b);

“application” means an application under this regulation;

“existing fund application” means an application made under paragraph (1)(a); and

“future fund application” means an application made under paragraph (1)(b).

### **Form and timing of application under regulation 69Z49**

**69Z50.**—(1) An application must be made in writing to the Commissioners.

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(27) CTA 2009 is an abbreviation for the [Corporation Tax Act 2009 \(c. 4\)](#) inserted into Part 1 of the Schedule to the principal Regulations by regulation 32(2) of these Regulations.

(2) An existing fund application must be received by HM Revenue and Customs at least 28 days before the beginning of the specified accounting period (see regulation 69Z51(2)).

This is subject to paragraph (8).

(3) A future fund application must be received by HM Revenue and Customs at least 42 days before the date the fund is expected to be established and authorisation given.

This is subject to paragraph (9).

(4) Within a period of 28 days (or 14 days in the case of an application within paragraph (8) or (9)) beginning on the day on which the application is received, HM Revenue and Customs must—

- (a) notify the manager or applicant that the application is accepted, or
- (b) issue a refusal notice.

(5) An application may be withdrawn or amended at any time before it is accepted—

- (a) by the manager (in the case of an existing fund application), or
- (b) by the applicant (in the case of a future fund application).

(6) If an application is amended before it is accepted, regulation 69Z49 shall apply to the amended application.

(7) But if HM Revenue and Customs give notice that they are satisfied that the amended application is valid, the amended application shall take effect as if made on the date of the original application.

(8) An existing fund application may be received by HM Revenue and Customs at least 14 days before the beginning of the specified accounting period if—

- (a) HM Revenue and Customs have given clearance under regulation 9B, and
- (b) the manager of the authorised investment fund certifies that there have been no changes in substance between—
  - (i) the form in which the instrument constituting the fund and its prospectus were considered by HM Revenue and Customs before giving the clearance, and
  - (ii) the form in which it is proposed that those documents will apply at the beginning of the specified accounting period.

(9) A future fund application may be received by HM Revenue and Customs at least 14 days before the proposed fund is authorised and established if—

- (a) HM Revenue and Customs have given clearance under regulation 9B, and
- (b) the applicant certifies that there have been no changes in substance between—
  - (i) the form in which the instrument constituting the fund and its prospectus were considered by HM Revenue and Customs before giving the clearance, and
  - (ii) the form in which it is proposed that those documents will apply at the time when the proposed fund is authorised.

### **Contents of application under regulation 69Z49**

**69Z51.**—(1) An application must include the following information.

(2) An existing fund application must specify the accounting period from the beginning of which the application seeks to apply this Part to the fund (the “specified accounting period”).

- (3) An existing fund application must be accompanied by—
- (a) a statement by the manager of the authorised investment fund that the TEF conditions are reasonably expected to be met in respect of the fund throughout the specified accounting period;
  - (b) the following documents relating to the fund—
    - (i) the instrument constituting the fund, and
    - (ii) its prospectus;
  - (c) a statement by the manager as to whether or not this Part has previously applied to the fund and where this Part has previously applied that statement must include—
    - (i) the dates of entry and cessation, and
    - (ii) a statement by the manager that a termination notice has never been issued in respect of the fund;
  - (d) a statement by the manager that either—
    - (i) shareholder or unit holder consent to the application is not required, or
    - (ii) shareholder or unit holder consent has been given, in which case the statement must specify the date of the shareholder or unit holder resolution giving consent;
  - (e) a copy of the application to the Financial Services Authority for approval for any changes in the instrument constituting the fund and its prospectus; and
  - (f) copies of any documents accompanying the application mentioned in sub-paragraph (e) to the extent that those documents do not fall within sub-paragraphs (a) to (d).
- (4) A future fund application must specify the date it is expected the fund will be established and authorisation given and seek to apply this Part to the proposed fund from that date.
- (5) A future fund application must be accompanied by—
- (a) a statement by the applicant that the TEF conditions are reasonably expected to be met in respect of the proposed fund throughout its first accounting period;
  - (b) the following documents relating to the proposed fund—
    - (i) the proposed instrument constituting the fund, and
    - (ii) its proposed prospectus (including any supplements to the proposed prospectus);
  - (c) a copy of the application to the Financial Services Authority for authorisation of the proposed fund as an authorised investment fund; and
  - (d) copies of any documents accompanying the application mentioned in sub-paragraph (c) to the extent that those documents do not fall within sub-paragraphs (a) and (b).

*Procedural matters relating to the making of applications for this Part to apply*

### **Refusing an application: refusal notice**

**69Z52.**—(1) If any of conditions A to C are met HM Revenue and Customs must refuse the application and give a notice (a “refusal notice”)—

- (a) to the manager of the authorised investment fund if an existing fund application has been made, or
  - (b) to the applicant if a future fund application has been made.
- (2) Condition A is that—
- (a) the documents supplied do not demonstrate that the authorised investment fund (or the proposed authorised investment fund) will meet all the TEF conditions, or
  - (b) the statement given in accordance with regulation 69Z51(3)(a) or (5)(a) does not demonstrate that the fund (or proposed fund) can reasonably be expected to meet all the TEF conditions throughout the specified accounting period or the first accounting period.
- (3) Condition B is that the application is not accompanied by the documents and statements specified in regulation 69Z51(3) in the case of an existing fund application or regulation 69Z51(5) in the case of a future fund application.
- (4) Condition C is that any necessary shareholder, unit holder or regulatory authorisation or approval has not been given.
- (5) A refusal notice must specify the reason for refusing the application.

#### **Appeal against refusal notice**

- 69Z53.**—(1) A person to whom a refusal notice is given may appeal.
- (2) The notice of appeal must be given to HM Revenue and Customs within a period of 28 days beginning with the day on which the refusal notice is given.
- (3) On an appeal that is notified to the tribunal, the tribunal shall determine whether it was just and reasonable for HM Revenue and Customs to give the refusal notice.
- (4) If the tribunal allow the appeal—
- (a) they may direct that this Part shall apply to the authorised investment fund (or, as the case may be, to the proposed authorised investment fund), and
  - (b) they may specify the date from which this Part shall so apply.
- (5) The date mentioned in paragraph (4)(b)—
- (a) must not be earlier than the beginning of the specified accounting period if an existing fund application has been made, and
  - (b) must not be earlier than the date of authorisation by the Financial Services Authority if a future fund application has been made.

#### *Consequences of entry*

#### **Effects of entry**

- 69Z54.** On entry a new distribution period of the authorised investment fund shall begin.

#### **Duration**

- 69Z55.** Once this Part has begun to apply to an authorised investment fund it shall continue to apply unless and until it ceases to apply in accordance with Chapter 7 of this Part.

## CHAPTER 3

### THE TAX TREATMENT OF TAX ELECTED FUNDS

#### Components of income

**69Z56.**—(1) For the purposes of corporation tax, the income arising to a Tax Elected Fund consists of—

- (a) dividend income;
- (b) property investment income, being—
  - (i) distributions of profits of C (tax-exempt) in relation to shares held in a UK-REIT, and
  - (ii) property income distributions in relation to shares held in a Property AIF;
- (c) property business income (arising on a breach of the property condition), being—
  - (i) profits of a UK property business that are not within sub-paragraph (b), and
  - (ii) income from an overseas property business; and
- (d) other income.

(2) In this regulation, “C (tax-exempt)” shall be construed in accordance with Part 4 of FA 2006<sup>(28)</sup>.

#### Treatment of property investment income

**69Z57.**—(1) Section 7(2) of ICTA (treatment of certain payments and repayments of income tax: set off of tax)<sup>(29)</sup> shall not apply to payments of property investment income.

(2) Property investment income arising to a Tax Elected Fund shall be treated for the purposes of the Tax Acts as a distribution that is exempt for the purposes of Part 9A of CTA 2009 (company distributions)<sup>(30)</sup> but shall not be treated as franked investment income.

#### Treatment of distributions

**69Z58.** Section 931R of CTA 2009 (election that distribution should not be exempt)<sup>(31)</sup> shall not apply in relation to distributions received by a Tax Elected Fund.

## CHAPTER 4

### DISTRIBUTIONS MADE BY TAX ELECTED FUNDS

#### Attribution of distributions

**69Z59.**—(1) The total amount shown in the distribution accounts of a Tax Elected Fund as available for distribution to participants shall be attributed as follows.

- (2) There shall be attributed to TEF distributions (dividends)—
  - (a) dividend income,
  - (b) property investment income, and

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<sup>(28)</sup> FA 2006 is an abbreviation for the [Finance Act 2006 \(c. 25\)](#) provided for in Part 1 of the Schedule to the principal Regulations.

<sup>(29)</sup> ICTA is an abbreviation for the [Income and Corporation Taxes Act 1988 \(c. 1\)](#) provided for in Part 1 of the Schedule to the principal Regulations; section 7(2) was amended by section 98(2) of the [Finance Act 1990 \(c. 29\)](#) and Part 3(28) of Schedule 27 to the [Finance Act 1998 \(c. 36\)](#).

<sup>(30)</sup> Part 9A was inserted by Schedule 14 to the [Finance Act 2009 \(c. 10\)](#).

<sup>(31)</sup> Section 931R was inserted by Schedule 14 to the Finance Act 2009.

- (c) property business income.
- (3) Other income shall be attributed to TEF distributions (non-dividend).

**TEF distributions (dividends)**

- 69Z60.**—(1) This regulation applies if—
- (a) a Tax Elected Fund makes a distribution, and
  - (b) the amount distributed includes sums attributed to TEF distributions (dividends).
- (2) The Tax Acts shall have effect as if the sums were dividends on shares paid on the distribution date by the fund to the participants in proportion to their rights.
- (3) In this Part a “TEF distribution (dividend)” means a sum attributed to TEF distributions (dividends) which is distributed (including a dividend treated as paid to a participant who is not chargeable to corporation tax).
- (4) This regulation is subject to regulation 23 (treatment of de minimis amounts).

**TEF distributions (non-dividend)**

- 69Z61.**—(1) This regulation applies if—
- (a) a Tax Elected Fund makes a distribution, and
  - (b) the amount distributed includes sums attributed to TEF distributions (non-dividend).
- (2) The Tax Acts shall have effect as if the sums were payments of yearly interest made on the distribution date by the fund to the participants in proportion to their rights.
- (3) In these Regulations a “TEF distribution (non-dividend)” means a sum attributed to TEF distributions (non-dividend) which is distributed (including a payment made to a participant who is not chargeable to income tax).
- (4) This regulation is subject to regulation 23 (treatment of de minimis amounts).

CHAPTER 5

THE TREATMENT OF PARTICIPANTS IN TAX ELECTED FUNDS

*TEF distribution (dividend)*

**Participants chargeable to corporation tax**

- 69Z62.**—(1) If a TEF distribution (dividend) is made for a distribution period to a participant within the charge to corporation tax, regulations 48 to 52A (dividend distributions) shall apply with the modifications specified in paragraph (2).
- (2) The specified modifications are—
- (a) for “dividend distribution” in each place it occurs there shall be substituted “TEF distribution (dividend)”;
  - (b) in regulation 50 (references to gross income) for “distribution accounts” there shall be substituted “TEF distributions (dividends) account”;
  - (c) for “an authorised investment fund” in each place it occurs there shall be substituted “a Tax Elected Fund”; and
  - (d) for “the authorised investment fund” in each place it occurs there shall be substituted “the Tax Elected Fund”.

*TEF distributions (non-dividend)*

**Obligation to deduct tax from TEF distributions (non-dividend)**

**69Z63.**—(1) If a TEF distribution (non-dividend) is made for a distribution period to a participant within the charge to income tax, regulations 26 to 33 (deduction of tax from interest distributions: general) shall apply with the modification specified in paragraph (3).

(2) If a TEF distribution (non-dividend) is made for a distribution period to a participant within the charge to corporation tax, regulation 47 (the obligation to deduct tax) shall apply with the modification specified in paragraph (3).

(3) The modification specified is that for “interest distribution” in each place it occurs there shall be substituted “TEF distribution (non-dividend)”.

**Modification of section 490 of CTA 2009**

**69Z64.** Section 490 of CTA 2009 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) shall apply to a participant in a TEF as if in subsections (4) and (5) for “interest distribution” there were substituted “TEF distribution (non-dividend)”.

CHAPTER 6

COMPLIANCE IN RELATION TO THE TAX ELECTED FUNDS REGIME

*Breaches of TEF conditions*

**Breach of conditions: general**

**69Z65.**—(1) This regulation applies if a Tax Elected Fund—

- (a) does not meet one of the TEF conditions, and
- (b) becomes aware that it does not meet the condition.

(2) Within 28 days of becoming aware of the breach, the fund must provide the following information to the Commissioners—

- (a) the date on which the condition first ceased to be met;
- (b) the date on which the fund became aware of the breach;
- (c) details of the condition that was breached;
- (d) the nature of the breach;
- (e) the steps the fund proposes to take to rectify the breach;
- (f) the date by which the fund proposes to rectify the breach; and
- (g) where there has been a previous breach of the TEF conditions, details of the condition that was breached on that occasion, the date of that breach and the date that breach was rectified.

(3) The date referred to in paragraph (2)(f) must be the earliest date by which the objective of complying with the relevant condition may reasonably be achieved.

(4) The Commissioners must give a termination notice to the fund if—

- (a) the steps that the fund proposes to take will not rectify the breach;

- (b) the date by which the fund proposes to rectify the breach is not the earliest date by which the objective of remedying the relevant condition may reasonably be achieved;
- (c) the fund is intentionally or negligently in breach of a condition; or
- (d) there are three breaches of the same TEF condition in a period of ten years beginning with the first day of the accounting period in which the fund becomes aware of the first of those breaches.

**Breach of the property condition, genuine diversity of ownership condition or scheme documentation condition**

**69Z66.**—(1) This regulation applies if a Tax Elected Fund is in breach of the property condition, genuine diversity of ownership condition or scheme documentation condition.

(2) If the fund is inadvertently in breach but rectifies the breach within a reasonable time of the fund becoming aware of the breach, this Part shall continue to apply to the fund despite the breach (but see regulations 69Z65(4)(d) and 69Z68).

(3) If the fund is inadvertently in breach but does not rectify the breach within a reasonable time of the fund first becoming aware of the breach, the Commissioners must give a termination notice to the fund.

**Breach of the loan creditor condition**

**69Z67.**—(1) This regulation applies if a Tax Elected Fund is in breach of the loan creditor condition.

(2) If the fund is inadvertently in breach but rectifies the breach within a period of 28 days beginning with the day on which the fund first becomes aware of the breach, this Part shall continue to apply to the fund despite the breach (but see paragraph (4) and regulations 69Z65(4)(d) and 69Z68).

(3) If the fund is inadvertently in breach but does not rectify the breach within a period of 28 days beginning with the day on which the fund first becomes aware of the breach, the Commissioners must give a termination notice to the fund.

(4) If the fund is in breach of the same condition specified in paragraphs (2) to (5) of regulation 69Z47 in two different accounting periods in a period of ten years beginning with the first day of the accounting period in which the fund becomes aware of the first of those breaches, the Commissioners must give a termination notice to the fund.

**Multiple breaches of separate conditions**

**69Z68.** The Commissioners must give a termination notice to a Tax Elected Fund if—

- (a) there has been a breach of at least two of the TEF conditions, and
- (b) there have been four breaches in a period of ten years beginning with the first day of the accounting period in which the first breach occurs.

*Information about possible breaches of the TEF conditions*

**Information to be provided to officers of Revenue and Customs**

**69Z69.**—(1) This regulation applies if an officer of Revenue and Customs thinks that a Tax Elected Fund—

- (a) does not meet, or may not meet, one of the TEF conditions, or



(b) has not rectified a breach of such a condition.

(2) The officer may serve a notice (an “information notice”) on the manager of the fund requiring the manager to provide any of the information specified in regulation 69Z65(2) within a specified period.

(4) If the manager does not comply with the information notice within the specified period the Commissioners must give a termination notice.

(5) In this regulation the specified period is a period of 28 days beginning with the day on which the notice is served or, on an application by the manager, such longer period as the officer of Revenue and Customs thinks is reasonable.

## CHAPTER 7

### LEAVING THE TAX ELECTED FUNDS REGIME

#### **Termination by election: authorised investment fund**

**69Z70.**—(1) This regulation applies if a Tax Elected Fund gives a notice under this regulation electing that this Part is to cease to apply to the fund at the end of a specified accounting period.

(2) This Part shall cease to apply to the fund at the end of that accounting period.

(3) A notice under paragraph (1) must—

- (a) be given in writing to the Commissioners,
- (b) be given before the end of the accounting period specified in paragraph (1), and
- (c) give the reasons for the fund leaving the TEF regime.

#### **Termination by notice: Commissioners**

**69Z71.**—(1) This regulation applies if the Commissioners give a notice in writing under this paragraph to a Tax Elected Fund (a “termination notice”).

(2) This Part shall cease to apply to the fund.

(3) The Commissioners may give a termination notice only if a provision contained in this Part provides that the Commissioners must give a termination notice.

(4) A termination notice must state the reason for it.

(5) If a termination notice is given to an authorised investment fund, this Part shall be taken to have ceased to apply to the fund at the end of the accounting period immediately preceding the accounting period in which the notice was given.

(6) But regulations 13 (treatment of interest distributions for the purpose of loan relationships), 69Z61 (TEF distributions (non-dividend)) and 69Z63 (obligation to deduct tax from TEF distributions (non-dividend)) shall apply in relation to any TEF distribution (non-dividend) made before the notice was given.

#### **Appeal against termination notice**

**69Z72.**—(1) An authorised investment fund to which a termination notice is given may appeal.

(2) The notice of appeal must be given to HM Revenue and Customs within a period of 28 days beginning with the day on which the termination notice is given.

(3) On an appeal that is notified to the tribunal, the tribunal shall determine whether it was just and reasonable for HM Revenue and Customs to give the termination notice.

- (4) If they decide that it was, they must confirm the notice.
- (5) If they decide that it was not, they must set aside the notice.

### **Mergers**

- 69Z73.**—(1) This regulation applies if a Tax Elected Fund—
- (a) is party to a merger or takeover, and
  - (b) as a result, ceases to meet one or more of the TEF conditions.
- (2) On the occurrence of the merger or takeover—
- (a) an accounting period of the fund shall end at the end of the date of the merger or takeover, and
  - (b) this Part shall cease to apply to the fund at the end of that date.”.

### **Amendment of regulation 70**

- 25.** In regulation 70 (application of section 234A of ICTA) after paragraph (3) insert—
- “(4) In the case of a Property AIF and a Tax Elected Fund, an appropriate statement for the purposes of section 234A of ICTA(32) includes a written statement—
- (a) showing the details specified in paragraph (5),
  - (b) providing details to allow the participant to access an electronic means of calculating the amounts that would be shown in a written statement that would, apart from this paragraph, be provided in accordance with subsection (6) (in the case of a PAIF distribution (interest) or a TEF distribution (non-dividend)) or subsection (7) (in the case of a PAIF distribution (dividends) or a TEF distribution (dividend)) of section 234A, and
  - (c) providing the participant with an alternative method of obtaining the details of those amounts without recourse to electronic means.
- (5) The specified details are—
- (a) the gross amount of the distribution made to the participant,
  - (b) the number and class of units held by the participant in respect of which the distribution is made,
  - (c) the net amount of the distribution per unit,
  - (d) whether any tax has been deducted from the distribution,
  - (e) the date the distribution was made, and
  - (f) the percentage of the gross distribution attributable—
    - (i) in the case of a Property AIF, to PAIF distribution (interest) and to PAIF distribution (dividends), or
    - (ii) in the case of a Tax Elected Fund, to TEF distribution (dividend) and to TEF distribution (non-dividend).”.

### **Amendment of headings**

- 26.** In the heading before regulation 71 and the headings to regulations 71 and 72, after “interest distributions” insert “and TEF distributions (non-dividend)”.

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(32) Section 234A was inserted by section 32(1) and (4) of the [Finance \(No. 2\) Act 1992 \(c. 45\)](#) and amended by paragraph 2(2) (a) of Schedule 37 to the [Finance Act 1996 \(c. 8\)](#).

### **Amendment of regulation 71**

27. In paragraph (1) of regulation 71 (notification of interest distributions made without deduction of tax) after “interest distributions” insert “and TEF distributions (non-dividend)”.

### **Amendment of regulation 72**

28. In paragraph (1) of regulation 72 (information about interest distributions made without deduction of tax) after “interest distributions” insert “and TEF distributions (non-dividend)”.

### **Amendment of regulation 74**

29. In paragraph (2)(c), (d) and (e) of regulation 74 (use of information) after “interest distribution” in each place it occurs insert “or a TEF distribution (non-dividend)”.

### **Amendment of regulation 95**

30. In regulation 95 (modifications of CTA 2009(33)) after paragraph (1) insert—

“(1A) In section 297 (trading credits and debits to be brought into account under Part 3) after subsection (1) the following subsections are treated as inserted—

“(1A) For the purposes of subsection (1) a “diversely owned AIF is treated as being party to all of its loan relationships other than for the purposes of a trade carried on by it.

(1B) In subsection (1A) “diversely owned AIF” has the meaning given by regulation 14E of the Authorised Investment Funds (Tax) Regulations 2006.”.

(1B) In section 573 (trading debits and credits to be brought into account under Part 3) after subsection (1) the following subsections are treated as inserted—

“(1A) For the purposes of subsection (1) a diversely owned AIF is treated as being party to all of its derivative contracts other than for the purposes of a trade carried on by it.

(1B) In subsection (1A) “diversely owned AIF” has the meaning given by regulation 14E of the Authorised Investment Funds (Tax) Regulations 2006.”.

### **Amendment of regulation 96**

31.—(1) Regulation 96 (modifications of ITTOIA 2005(34)) is amended as follows.

(2) After paragraph (1) insert—

“(1A) In the application of the provisions specified in paragraph (1B) in relation to a Property AIF and a Tax Elected Fund—

(a) for “the total” substitute “an”, and

(b) the amount available for distribution as PAIF distribution (interest) or TEF distribution (non-dividend), as the case may be, shall be treated as the amount available for distribution as yearly interest.

(1B) The specified provisions are—

(a) section 373(1) (open-ended investment company interest distributions), and

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(33) CTA 2009 is an abbreviation for the [Corporation Tax Act 2009 \(c. 4\)](#) inserted into Part 1 of the Schedule to the principal Regulations by regulation 32(2) of these Regulations.

(34) ITTOIA 2005 is an abbreviation for the [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#) provided for in Part 1 of the Schedule to the principal Regulations.

(b) section 376(1) (authorised unit trust interest distributions).”.

(3) In paragraph (3)(b) for “376(1)” substitute “377(1)”.

### Amendment of the Schedule

**32.**—(1) The Schedule (abbreviations and defined expressions) is amended as follows.

(2) In Part 1 (abbreviations of Acts) insert at the appropriate place—

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“CTA 2009	The Corporation Tax Act 2009 (c. 4)”.
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(3) In Part 2 (index of defined expressions)(35)—

(a) in the entry relating to “genuine diversity of ownership condition”—

(i) omit “(in Part 4A)”, and

(ii) for “69J” substitute “9A”;

(b) in the entry relating to “instrument constituting the scheme” for “14B” substitute “6(7)”;

(c) insert at the appropriate place—

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“Applicant (in Part 4B)	Regulation 69Z49(5)”
“Application (in Part 4B)	Regulation 69Z49(5)”
“Cessation (in Part 4B)	Regulation 69Z44”
“Distribution income (in Part 4B)	dRegulation 69Z56(1)(a)”
“Diversely owned AIF	Regulation 14E(2)”
“Entry (in Part 4B)d	Regulation 69Z44”d
“Existing fund application (in Part 4B)	Regulation 69Z49(5)”
“Fund documents	Regulation 9A(10)”
“Future fund application (in Part 4B)	Regulation 69Z49(5)”
“Information notice (in Part 4B)	Regulation 69Z67(2)”
“Instrument constituting the fund	Regulation 6(7)”
“Investment transaction	Regulation 14E(5)”
“Loan creditor condition (in Part 4B)	Regulation 69Z47”
“Property condition (in Part 4B)	Regulation 69Z46”
“Property business income (in Part 4B)	Regulation 69Z56(1)(c)”
“Property investment income (in Part 4B)	Regulation 69Z56(1)(b)”
“Refusal notice (in Part 4B)	Regulation 69Z52(1)”
“Specified accounting period (in Part 4B)	Regulation 69Z51(2)”
“Tax Elected Fund	Regulation 69Z42(2)”
“TEF conditions (in Part 4B)	Regulation 69Z45(a)”

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(35) Part 2 of the Schedule was amended by S.I. 2007/794, 2008/705 and 2008/3159

“TEF distribution (dividend) (in Part 4B)	Regulation 69Z60(3)”
“TEF distribution (non-dividend)	Regulation 69Z61(3)”
“Termination notice (in Part 4B)	Regulation 69Z70(1)”.”

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**Amendment of the Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006**

**33.**—(1) The Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006<sup>(36)</sup> are amended as follows.

(2) In regulation 7 (gross payment of distributions) after paragraph (2) insert—

“(2A) But paragraph (2) does not apply to a Tax Elected Fund.

(2B) In paragraph (2A) “Tax Elected Fund” has the meaning given by regulation 69Z42(2) of the Authorised Investment Funds (Tax) Regulations 2006.”.

21st July 2009

*Dave Watts*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(36) [S.I. 2006/2867](#), to which there are no relevant amending instruments.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Authorised Investment Funds (Tax) Regulations (S.I. 2006/964) (“the principal Regulations”).

Regulation 1 of these Regulations deals with citation and commencement, and regulation 2 provides for the principal Regulations to be amended. Regulations 3, 4 and 5 make consequential amendments to regulations 2, 6 and 8 of the principal Regulations respectively.

Regulation 3 inserts a reference to Parts 1A, 2B and 4B in regulation 2 of the principal Regulations.

Regulation 4 inserts a definition of “instrument constituting the fund” and “genuine diversity of ownership condition” into regulation 6 of the principal Regulations.

Regulation 5 inserts a definition of “connected person” into regulation 8 of the principal Regulations.

Regulation 6 inserts Part 1A into the principal Regulations comprising regulations 9A and 9B. Part 1A defines the genuine diversity of ownership (“the GDO”) condition, which details the conditions that must be fulfilled in order for the GDO condition referred to in Parts 2A, 2B, 4A and 4B of the principal Regulations to be satisfied. Part 1A also contains the clearance procedure that can be followed by an authorised investment fund to ascertain whether it meets the GDO condition.

Regulation 7 modifies the meaning of “interest distribution” in regulation 13 of the principal Regulations to make provision relating to Tax Elected Funds.

Regulation 8 amends regulation 14B of the principal Regulations to reflect that as a consequence of these regulations the GDO condition applies to the principal Regulations where specified. Previously, although Parts 2A and 4A contained references to a GDO condition, each Part had its own specific GDO condition.

Regulation 9 omits regulations 14C and 14D of the principal Regulations, which previously contained the GDO condition and the clearance procedure for Part 2A of the principal Regulations.

Regulation 10 inserts a new Part 2B into the principal Regulations comprising regulations 14E to 14N. New regulation 14E details the tax treatment of an authorised investment fund which carries out an investment transaction and which meets the GDO condition in the particular period under consideration. An investment transaction is defined in new regulation 14F as a transaction in stocks or shares, a transaction in a relevant contract, a transaction which results in a diversely owned authorised investment fund becoming a party to a loan relationship or a related transaction, a transaction in units in a collective investment scheme, a transaction in securities, a transaction in buying or selling currency and a transaction in a carbon emissions trading product. New regulations 14G to 14N make further provisions in relation to these transactions.

Regulation 11 amends regulation 17 of the principal Regulations to make consequential amendments to provisions in respect of distribution accounts in relation to Property AIFs and Tax Elected Funds.

Regulation 12 amends regulation 48(4) of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 13 amends regulation 51(1)(b) of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 14 inserts new regulations 52B to 52E into the principal Regulations. New regulation 52B sets out the tax treatment of shares and units held by a financial trader in a diversely owned authorised investment fund which meets the requirements of regulation 14E in a relevant period. The regulation contains definitions of the terms used in the regulation and in new regulation 52C. New regulation 52C sets out the amounts that financial traders are to bring into account in respect of the shares or units held in the diversely owned authorised investment fund and covers a number of different scenarios. New regulation 52D excludes certain shares and units from regulation 52C. New regulation 52E defines “financial trader” and contains consequential definitions.

Regulation 15 amends regulation 69D of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 16 omits regulation 69DA of the principal Regulations. As a consequence of the introduction of a general GDO into the principal Regulations this regulation is no longer required.

Regulation 17 omits regulation 69J of the principal Regulations which contained the GDO condition which has to be satisfied in order for Part 4A to apply to an open-ended investment company. As a consequence of the introduction of a general GDO condition into the principal Regulations this regulation is no longer required.

Regulation 18 amends regulation 69O of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 19 amends regulation 69P of the principal Regulations to reflect that the procedure for clearance in respect of the GDO condition is contained in regulation 9B.

Regulation 20 amends regulation 69Q of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 21 omits regulation 69U of the principal Regulations. This regulation contained the clearance procedure for the GDO condition in relation to Part 4A of the principal Regulations. As a consequence of the introduction of the GDO condition this regulation is no longer required.

Regulation 22 amends regulation 69Z8 of the principal Regulations to reflect that the GDO condition, which is a condition that has to be satisfied in order for Part 4A to apply to an open-ended investment company is now contained in regulation 9A of the principal Regulations.

Regulation 23 substitutes regulation 69Z34 (certificates of deduction of tax) of the principal Regulations to provide for information relating to the deduction of tax to be provided in a written statement or electronically.

Regulation 24 inserts the new Part 4B dealing with a certain type of authorised investment fund (“Tax Elected Funds”) into the principal Regulations. Part 4B comprises regulations 69Z42 to 69Z71 of the principal Regulations and is divided into seven Chapters.

Chapter 1 of Part 4B contains preliminary provisions. Regulation 69Z42 is of an introductory nature; regulation 69Z43 sets out the structure of Part 4B; and regulation 69Z44 defines two key concepts.

Chapter 2 of Part 4B is concerned with entry into the Tax Elected Funds regime. Regulation 69Z45 specifies the conditions which an authorised investment fund must meet in order for Part 4B to apply to it in respect of an accounting period. The conditions are the property condition (dealt with in regulation 69Z46); the loan creditor condition (dealt with in regulation 69Z47); and the scheme documentation condition (dealt with in regulation 69Z48). Regulations 69Z49 to 69Z53 deal with procedural matters arising in connection with an application for Part 4B to apply. Regulations 69Z54 and 69Z55 are concerned with the consequences of entry into the Tax Elected Funds regime.

Chapter 3 of Part 4B is concerned with the tax treatment of Tax Elected Funds. Regulation 69Z56 provides for the components of income of a Tax Elected Fund. Regulation 69Z57 provides

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for the treatment of property investment income. Regulation 69Z58 provides for the treatment of distributions.

Chapter 4 of Part 4B is concerned with distributions made by Tax Elected Funds. Regulation 69Z59 provides for the total amount shown in the distribution accounts of a Tax Elected Fund to be attributed in two different ways; and regulations 69Z60 and 69Z61 are concerned with the tax implications of the different attributions.

Chapter 5 of Part 4B is concerned with the treatment of participants in Tax Elected Funds. Regulation 69Z62 makes provision relating to participants chargeable to corporation tax. Regulation 69Z63 is concerned with the obligation to deduct tax from a distribution to participants. Regulation 69Z64 makes a consequential modification to the Corporation Tax Act 2009.

Chapter 6 of Part 4B is concerned with compliance. Regulations 69Z65 to 69Z68 deal with the consequences where conditions for membership of the Tax Elected Funds regime are breached. Regulation 69Z69 provides for information to be provided to an officer of Revenue and Customs.

Chapter 7 of Part 4B is concerned with leaving the Tax Elected Funds regime. Regulations 69Z70 to 69Z73 provide for Part 4B to cease to apply to a fund in various different circumstances.

Regulations 25 to 29 make consequential amendments to the principal Regulations. Regulation 25 amends regulation 70 (application of section 234A of ICTA) to make provision for the information to be provided to a participant in a Tax Elected Fund. Regulations 26 to 29 make consequential amendments to provide for the treatment of TEF distributions (non-dividend).

Regulation 30 amends regulation 95 of the principal Regulations, which regulation, as a consequence of the rewriting of Finance Act 1996, modifies the Corporation Tax Act 2009.

Regulation 31 amends regulation 96 of the principal Regulations to modify the provisions of the Income Tax (Trading and Other Income) Act 2005 in relation to Property AIFs and Tax Elected Funds.

Regulation 32 makes amendments to the Schedule to the principal Regulations to provide for abbreviations and defined expressions used in Part 4B.

Regulation 33 makes amendments to the Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006 (S.I. 2006/2867) to provide that distributions by a Real Estate Investment Trust are not made gross.

A full Impact Assessment has not produced in relation to the insertion of Part 1A (the genuine diversity of ownership condition) as no impact on the private or voluntary sectors is foreseen. A full and final Impact Assessment has not been produced in relation to the insertion of Part 2B (diversely owned AIFs) as a negligible impact on the private or voluntary section is foreseen. A full Impact Assessment has been produced in relation to the insertion of Part 4B (Tax Elected Funds) and is available on the HMRC website under <http://www.hmrc.gov.uk/ria/index.htm#full>.