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STATUTORY INSTRUMENTS

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**2010 No. 294**

**The Authorised Investment Funds  
(Tax) (Amendment) Regulations 2010**

*Amendment of the principal Regulations*

**Amendment of the Authorised Investment Funds (Tax) Regulations 2006**

2. The Authorised Investment Funds (Tax) Regulations 2006(1) (“the principal Regulations”) are amended as follows.

**Amendment of regulation 2**

3. In regulation 2 (structure of the Regulations)(2) after “Part 6 contains further provisions relating to AIFs;” insert—

“Part 6A contains provisions relating to Funds Investing in Non-Reporting Offshore Funds (FINROFs);”.

**Amendment of regulation 8**

4. In regulation 8 (general interpretation)(3), in the appropriate alphabetical place in each case, insert—

““prospectus” includes a proposed prospectus, supplements to a prospectus and supplements to a proposed prospectus;”;

““Statement of Recommended Practice” means, in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to authorised investment funds issued by the Investment Management Association in November 2008(4);”.

**Amendment of regulation 12**

5. Paragraph (3) of regulation 12 (accounts prepared in accordance with UK generally accepted accounting practice)(5) is omitted.

**Amendment of regulation 14B**

6. For sub-paragraph (b) of paragraph (3) of regulation 14B (tax treatment of qualified investor schemes)(6) substitute—

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(1) S.I. 2006/964 as amended by S.I. 2006/3239, 2007/683, 2007/794, 2008/705, 2008/3159, 2009/56 and 2009/2036.

(2) Regulation 2 was amended by S.I. 2008/705, 2008/3159 and 2009/2036.

(3) Regulation 8 was amended by S.I. 2009/56 and 2009/2036.

(4) The Statement of Recommended Practice issued by the Investment Management Association can be found at: <http://www.investmentuk.org/news/standards/sorp.pdf>.

(5) Regulation 12 was amended by S.I. 2008/705 and 2008/3159.

(6) Regulation 14B was inserted by S.I. 2008/3159 and amended by S.I. 2009/2036.

“(b) the total amount available for income allocation to participants must only be allocated in accordance with paragraph (1)(b) of regulation 17 (allocation of income).”.

#### **Amendment of regulation 15**

7.—(1) Regulation 15 (interpretation) is amended as follows.

(2) For paragraph (1) substitute—

“(1) In these Regulations—

- (a) “income allocation” means the distribution of an amount to participants; and
- (b) “distribution” includes the crediting of an amount to the capital part of the scheme property on behalf of a participant in respect of the participant’s accumulation units.”.

(3) In paragraph (2), for “distribution to participants” substitute “income allocation to participants”.

(4) Omit paragraph (3).

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

8.—(1) Regulation 17 (contents of distribution accounts)(7) is amended as follows.

(2) For the heading to the regulation, substitute “allocation of income” and omit the cross-heading immediately preceding the regulation.

(3) For paragraph (1) substitute—

“(1) The total amount available for income allocation must be allocated in one of the following ways—

- (a) for distribution as yearly interest (see regulations 18 to 21); or
- (b) for distribution as dividends (see regulation 22).”.

(4) For paragraph (2) substitute—

“(2) Amounts chargeable to corporation tax in accordance with Part 4 of CTA 2009(8) must not be included in any amount of income allocated for distribution as yearly interest.”.

#### **Amendment of regulation 18**

9. In paragraph (1) of regulation 18 (interest distributions: general) for “shown in the distribution accounts as available for distribution to participants is shown as available” substitute “available for income allocation is allocated”.

#### **Amendment of regulation 20**

10. In regulation 20 (meaning of “qualifying investment”), after “Qualifying units in another authorised investment fund.” insert—

“*Category 4A*

Qualifying units in an offshore fund.”.

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(7) Regulation 17 was amended by S.I. 2009/2036.

(8) 2009 c.4.

### **Amendment of regulation 21**

11. After paragraph (5) in regulation 21 (meaning of “qualifying investments”: further provisions) insert—

“(5A) For the purpose of category 4A, units in an offshore fund are qualifying units at any time in the relevant period if, and only if, the offshore fund would itself (on the relevant assumption) satisfy the qualifying investments test throughout that period.

(5B) For the purposes of paragraph (5A), the relevant assumption is that the only investments of the offshore fund which are to be regarded as qualifying investments are those falling within categories 1 to 3 and 5 to 8.

(5C) In paragraph (5B), references to investments of an offshore fund—

- (a) in the case of an offshore fund which is a company, are references to investments which are the investments of the company, but do not include cash awaiting investment, and
- (b) in the case of any other offshore fund, are references to investments subject to the trust or other arrangements constituting the investments of the other offshore fund, but do not include cash awaiting investment.”.

### **Amendment of regulation 22**

12. In paragraph (1) of regulation 22 (dividend distributions: general) for “shown in the distribution accounts as available for distribution to participants is shown as available” substitute “available for income allocation is allocated”.

### **Amendment of regulation 23**

13.—(1) Regulation 23 (provisions applying if amounts available for distribution are de minimis) is amended as follows.

(2) For sub-paragraphs (a) and (b) of paragraph (3) substitute—

- “(a) has calculated that the total income available for income allocations is a de minimis amount, and
- (b) chooses to waive the allocation of that de minimis amount.”.

(3) In paragraph (7) for “shown in the fund’s distribution accounts as available for distribution” substitute “available for income allocation”.

### **Amendment of regulation 48**

14. In paragraph (2A)(9) of regulation 48 (general) for “section 95 of ICTA or section 219(4) of FA 1994” substitute “Chapter 2 of Part 3 of CTA 2009(10)”.

### **Substitution of regulation 50**

15. For regulation 50 (references to gross income) substitute—

“50. For the purposes of this Chapter, references to gross income are references to the net revenue before taxation determined in accordance with the Statement of Recommended Practice.”.

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(9) Paragraph (2A) was inserted by regulation 13 of S.I. 2008/3159.

(10) 2009 c.4.

#### **Amendment of regulation 69Z14**

16.—(1) Regulation 69Z14 (attribution of distributions)(11) is amended as follows.

(2) For the heading substitute “allocation of income”.

(3) For the words “the total amount shown” to “shall be attributed” substitute “the total amount available for income allocation in an open-ended investment company to which this Part applies shall be attributed”.

#### **Amendment of regulation 69Z25**

17. In sub-paragraph (b) of paragraph (3) of regulation 69Z25 (documents to be included with company tax return)(12) for “the total income shown in the distribution accounts” substitute “the total amount available for income allocation”.

#### **Amendment of regulation 69Z59**

18.—(1) Regulation 69Z59 (allocation of distributions)(13) is amended as follows.

(2) For the heading substitute “allocation of income”.

(3) For paragraph (1) substitute—

“(1) The total amount available for income allocation in a Tax Elected Fund shall be attributed as follows.”.

#### **Amendment of regulation 69Z62**

19. For sub-paragraph (b) of paragraph (2) of regulation 69Z62 (participants chargeable to corporation tax)(14) substitute—

“(b) in regulation 50 (references to gross income) for “the net revenue before taxation shall be determined in accordance with the Statement of Recommended Practice” there shall be substituted “the amount attributed to TEF distributions (dividends) in accordance with regulation 69Z59 (allocation of income);”.

#### **Amendment of regulation 77**

20. For paragraph (1) of regulation 77 (non-discrimination in respect of different classes of shares) substitute—

“(1) This regulation applies if there is an amount available for income allocation.”.

#### **Insertion of Part 6A**

21. After Part 6 of the principal Regulations insert the following Part—

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(11) Regulation 69Z14 was inserted by [S.I. 2008/705](#).

(12) Regulation 69Z25 was inserted by [S.I. 2008/705](#).

(13) Regulation 69Z59 was inserted by [S.I. 2009/2036](#).

(14) Regulation 69Z62 was inserted by [S.I. 2009/2036](#).

## “PART 6A

### Funds Investing in Non-Reporting Offshore Funds

#### CHAPTER 1

##### Preliminary Provisions

#### **FINROFs**

**85A.**—(1) This Part applies to—

- (a) an authorised investment fund which meets the investment condition in regulation 85D (the investment condition);
- (b) an authorised investment fund in respect of which an election has been made in accordance with regulation 85F (elective FINROFs);
- (c) a participant in a fund mentioned in paragraph (a) or (b); and
- (d) a participant in a fund which has left the FINROF regime, where the participant has not made a valid election under regulation 85Z11 (participant’s power to elect for deemed disposal).

(2) A fund to which this Part applies shall be known as a Fund Investing in Non-Reporting Offshore Funds (“FINROF”).

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

**85B.** The structure of this Part is as follows—

This Chapter contains preliminary provisions;

Chapter 2 deals with entry into the Funds Investing in Non-Reporting Offshore Funds regime (“FINROF regime”);

Chapter 3 deals with the tax treatment of FINROFs and of participants in FINROFs;

Chapter 4 deals with exceptions, etc from the charge to tax;

Chapter 5 deals with disposal of units in FINROFs;

Chapter 6 deals with income gains and computation of income gains;

Chapter 7 deals with deduction of income gains in computing chargeable gains;

Chapter 8 deals with leaving the FINROF regime.

#### **Interpretation**

**85C.** In this Part—

“gross asset value” means the value of the investments comprising the scheme property of the authorised investment fund before the deduction of specified liabilities, but does not include cash awaiting investment;

“non-reporting fund” has the same meaning as in the Offshore Funds Regulations;

“offshore fund” means a fund within the meaning of section 40A(2) of the Finance Act 2008<sup>(15)</sup>;

“Offshore Funds Regulations” means the Offshore Funds (Tax) Regulations 2009<sup>(16)</sup>;

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<sup>(15)</sup> 2008 c.9.

<sup>(16)</sup> S.I. 2009/3001, as amended by S.I. 2009/3139.

“reporting fund” has the same meaning as in regulation 50 of the Offshore Funds Regulations.

### **The investment condition**

**85D.**—(1) The investment condition is met in relation to an authorised investment fund if the total amount invested in non-reporting funds or FINROFs is more than 20% of the gross asset value of the authorised investment fund.

(2) This regulation is subject to regulation 85E.

### **Interests in funds treated as not being interests in non-reporting funds**

**85E.**—(1) For the purposes of regulation 85D(1) the interests specified in paragraph (2) shall not be regarded as interests in non-reporting funds.

(2) The interests specified are—

- (a) any interest in an offshore fund in respect of which, by virtue of regulation 29 of the Offshore Funds Regulations (interests in transparent funds), no liability to tax would arise under regulation 17 of those Regulations (the charge to tax) on a disposal of that interest, and
- (b) any interest in an offshore fund that is treated as creditor relationship rights under section 490 of CTA 2009(17).

### **Elective FINROFs**

**85F.**—(1) An authorised investment fund which does not meet the investment condition may elect to be treated as a FINROF (an “elective FINROF”).

This is subject to paragraph (4).

(2) An election under paragraph (1) must—

- (a) be made in writing to HM Revenue and Customs by the manager; and
- (b) specify the date from which the fund is to be so treated.

(3) But the manager must not specify a date which is more than 3 months before the date of the election mentioned in paragraph (2).

(4) Before making an election, the fund must have obtained any necessary regulatory approval in respect of the instrument constituting the fund and the prospectus.

## **CHAPTER 2**

### **Entry into Funds Investing in Non-Reporting Offshore Fund (“FINROF”) regime**

#### **Entry into FINROF regime: the basic rule**

**85G.** This Part applies to an authorised investment fund from—

- (a) the date on which the fund first met the condition in regulation 85D (the investment condition); or
  - (b) the date specified in the notice given under regulation 85F (elective FINROFs),
- whichever is the earlier.

### **The requirement to notify where regulation 85D is satisfied**

**85H.**—(1) The legal owner of an authorised investment fund which is a FINROF by virtue of regulation 85D must notify HM Revenue and Customs of the date on which the fund first met the investment condition within a period of 3 months beginning with the date on which the fund first met that condition.

(2) For the purposes of paragraph (1), no account shall be taken of the period before the date of any previous valid election under regulation 85Z9 (leaving the FINROF regime).

(3) An authorised investment fund that fails to comply with this regulation is liable to a penalty not exceeding £3,000 determined in accordance with section 100 of TMA 1970(18).

(4) Sections 100A, 100B, 102, 103(4) and 118(2) of TMA 1970(19) apply to a penalty determined in accordance with paragraph (3).

(5) This regulation is subject to regulation 85J (inadvertent fulfilment of investment condition).

### **The requirement to notify participants when a fund enters the FINROF regime**

**85I.**—(1) The legal owner must notify the participants in a fund that the fund has entered the FINROF regime and inform them that any gains made on the disposal of units in the fund shall be treated as an income gain rather than a capital gain, in accordance with Chapter 3 of this Part.

(2) The notification under paragraph (1) must be given within a period of 3 months beginning with the date on which this Part first applied to the fund.

(3) For the purposes of paragraph (2), no account shall be taken of the period before the date of any previous valid election under regulation 85Z9 (leaving the FINROF regime).

(4) An authorised investment fund that fails to comply with this regulation is liable to a penalty not exceeding £3,000 determined in accordance with section 100 of TMA 1970.

(5) Sections 100A, 100B, 102, 103(4) and 118(2) of TMA 1970 apply to a penalty determined in accordance with paragraph (4).

(6) This regulation is subject to regulation 85J.

### **Inadvertent fulfilment of investment condition**

**85J.**—(1) If this regulation applies a fund shall be treated as if it had never met the investment condition and consequently none of the provisions of this Part (including the penalty provisions in regulations 85H and 85I) apply to the fund.

(2) This regulation applies where—

- (a) an authorised investment fund meets the investment condition but as soon as possible after becoming aware that the condition is met, the legal owner gives notice in writing to HM Revenue and Customs of the steps that the fund has taken, or proposes to take, to ensure that the fund no longer meets that condition,

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(18) 1970 c. 9. Section 100 was substituted for the original by section 167 of the [Finance Act 1989 \(c.26\)](#). It was amended by paragraph 3(2) of Schedule 11 to the [Finance Act 1990 \(c.29\)](#), section 315(2) of the [Finance Act 2004 \(c.12\)](#) and [S.I. 1994/1813](#).

(19) Sections 100A and 100B were substituted for the original section 100 by section 167 Finance Act 1989. Section 100A was amended by paragraph 29(b) of Schedule 24 to, and by Part 5(5) of Schedule 27 to, the [Finance Act 2007 \(c.11\)](#). Section 100B was amended by paragraph 31 of Schedule 19 to the [Finance Act 1994 \(c.9\)](#), by section 103(7) and 115(7) of the [Finance Act 1995 \(c.4\)](#), by [S.I. 1994/1813](#), [2009/56](#) and [2009/571](#). Section 103(4) was amended by [S.I. 2009/56](#). Section 118(2) was amended by section 94 of the [Finance \(No. 2\) Act 1987 \(c.51\)](#) and by Part 7 of Schedule 8 to the [Finance Act 1970 \(c.24\)](#) and [S.I. 2009/56](#).

- (b) the fund ceases to meet the investment condition before the end of a 4 month period beginning with the date that the fund first met the condition and the legal owner gives notice in writing to HM Revenue and Customs that the fund no longer meets the condition, and
  - (c) HM Revenue and Customs issue a notice in writing that this regulation applies.
- (3) HM Revenue and Customs must, within a period of 28 days beginning with the date on which they receive notice from the legal owner that the fund no longer meets the investment condition, issue a notice in writing to the legal owner that—
- (a) this regulation applies, or
  - (b) this regulation does not apply as HM Revenue and Customs are not satisfied that the conditions in sub-paragraphs (a) and (b) of paragraph (2) are met for the reasons specified in the notice.

#### **Appeal against refusal to provide written notice**

**85K.—(1)** A legal owner to whom a notice is issued under paragraph (3)(b) of regulation 85J (a “refusal notice”) 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 HM Revenue and Customs issued the refusal notice.

(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 issue the refusal notice.

(4) If the tribunal determine that it was just and reasonable for HM Revenue and Customs to issue the refusal notice, this Part applies to the fund from the date on which it first met the investment condition and the legal owner must notify the participants in the fund in accordance with regulation 85I.

(5) If the tribunal determine that it was not just and reasonable for HM Revenue and Customs to issue the refusal notice, paragraph (1) of regulation 85J shall apply.

#### **Disposal of an interest in an authorised investment fund prior to its becoming a FINROF**

**85L.—(1)** This regulation applies if an authorised investment fund either meets the investment condition or becomes an elective FINROF in accordance with regulation 85F.

(2) A participant in the fund may make an election to be treated for the purposes of TCGA 1992—

- (a) as disposing of all the units that they hold in the authorised investment fund on the deemed disposal date, and
- (b) as immediately upon that disposal, acquiring units in the FINROF.

(3) The disposal referred to in paragraph (2)(a) is treated as made for a consideration equal to the market value of the participant’s holding of units in the fund on the deemed disposal date.

(4) The acquisition referred to in paragraph (2)(b) is treated as made for a consideration equal to the consideration for the disposal referred to in paragraph (2)(a).

(5) If the participant is chargeable to income tax, the election mentioned in paragraph (2) must be made by being included in a return made for the tax year which includes the deemed disposal date.



(6) If the participant is chargeable to corporation tax, the election mentioned in paragraph (2) must be made by being included in the participant's company tax return for the accounting period which includes the deemed disposal date.

(7) In this regulation—

- (a) “company tax return” has the same meaning as in Schedule 18 to the Finance Act 1998<sup>(20)</sup>, and
- (b) “deemed disposal date” means the date on which this Part begins to apply to the authorised investment fund.

### CHAPTER 3

#### Tax treatment of FINROFs and of participants in FINROFs

##### *The charge to tax*

##### **The charge to tax: general provisions**

**85M.**—(1) There is a charge to tax if—

- (a) a person disposes of an asset,
- (b) either condition A or condition B is met, and
- (c) as a result of the disposal, an income gain (see regulation 85Z) arises to the person making the disposal.

(2) Condition A is that the asset consists of units in a FINROF at the time of the disposal.

(3) Condition B is that—

- (a) the asset consists of units in an authorised investment fund that had been a FINROF for some of the material period; and
- (b) no valid election under regulation 85Z11 (participant's power to elect for deemed disposal) was made in relation to the asset.

(4) In paragraph (3) “the material period” means a period beginning with the date of acquisition of the asset and ending with the date of the disposal.

##### **The charge to tax: further provisions**

**85N.**—(1) The income gain arising is treated for all purposes of the Tax Acts as income which arises at the time of the disposal to the person making the disposal (or treated as making the disposal).

(2) The tax is charged on the person making the disposal (or treated as making the disposal).

(3) In the case of a person chargeable to income tax, tax is charged under Chapter 8 of Part 5 of ITTOIA 2005<sup>(21)</sup> (miscellaneous income: income not otherwise charged) for the year of assessment in which the disposal is made, but sections 688(1) (income charged) and 689 (person liable) of ITTOIA 2005 do not apply.

(4) In the case of a person chargeable to corporation tax, tax is charged under Chapter 8 of Part 10 of CTA 2009<sup>(22)</sup> (miscellaneous income: income not otherwise charged) for the accounting period in which the disposal is made.

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<sup>(20)</sup> 1998 c.36.

<sup>(21)</sup> 2005 c.5. Section 688(1) was amended by paragraphs 17 and 22 of Schedule 12 to the Finance Act 2008 (c.9).

<sup>(22)</sup> 2009 c.4.

### **Application of certain provisions of TCGA 1992**

**85O.** The following enactments have effect in relation to income tax or corporation tax in respect of income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains—

- (a) section 2(1) of TCGA 1992<sup>(23)</sup> (persons chargeable to capital gains tax);
- (b) section 10 of TCGA 1992<sup>(24)</sup> (non-resident with a United Kingdom branch or agency);
- (c) section 10B of TCGA 1992<sup>(25)</sup> (non-resident company with United Kingdom permanent establishment).

### **Application of section 10A of TCGA 1992**

**85P.**—(1) Section 10A of TCGA 1992<sup>(26)</sup> (temporary non-residence) applies for the purposes of this Part with the following modifications.

- (2) The section applies as if, in subsection (2)—
  - (a) the reference to section 86A were omitted;
  - (b) for the reference to capital gains tax there were substituted a reference to income tax;
  - (c) in paragraph (a), for the reference to chargeable gains and losses there were substituted a reference to income gains;
  - (d) paragraphs (b) and (c) were omitted; and
  - (e) for the references to gains or losses there were substituted a reference to income gains.
- (3) The section applies as if, in subsection (3)—
  - (a) for the reference to gains and losses there were substituted a reference to income gains; and
  - (b) for the reference to any gain or loss there were substituted a reference to any income gains.
- (4) The section applies as if subsection (4) were omitted.
- (5) The section applies as if, in subsection (5)—
  - (a) for the reference to gains and losses there were substituted a reference to income gains;
  - (b) for the reference to any chargeable gain or allowable loss there were substituted a reference to any income gain; and
  - (c) for the reference to section 10 or 16(3) there were substituted a reference to regulation 85O(b) (application of certain provisions of TCGA).
- (6) The section applies as if subsection (6) were omitted.
- (7) The section applies as if, in subsection (7), for the reference to capital gains tax there were substituted a reference to income tax.
- (8) The section applies as if, in subsection (9C)—

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(23) 1992 c.12.

(24) Section 10 was amended by paragraph 2(2) of Schedule 27 to the [Finance Act 2003 \(c.14\)](#).

(25) Section 10B was inserted by section 149(4) of the Finance Act 2003 and amended by paragraph 360 of Schedule 1 to the [Corporation Tax Act 2009 \(c.4\)](#).

(26) Section 10A was inserted by section 127(1) of the [Finance Act 1998 \(c.36\)](#) and amended by section 32 of the [Finance \(No. 2\) Act 2005 \(c.22\)](#), section 74(4)(a) of the [Finance Act 2006 \(c.25\)](#) and paragraph 59 of Schedule 7 to the [Finance Act 2008 \(c.9\)](#).

- (a) for the reference to capital gains tax there were substituted a reference to income tax; and
- (b) for the reference to chargeable gains there were substituted a reference to income gains.

## CHAPTER 4

### Exceptions, etc from the charge to tax

#### Exceptions from the charge to tax

**85Q.**—(1) No liability to tax arises under regulation 85M (the charge to tax: general provisions) if condition A or B is met.

(2) Condition A is that the participant is required to treat units in the FINROF as a loan relationship to which the provisions of Chapter 3 of Part 6 of CTA 2009<sup>(27)</sup> apply.

(3) Condition B is that the participant is required to treat units in the FINROF as a derivative contract to which the provisions of Part 7 of CTA 2009 apply.

#### Trading stock etc.

**85R.**—(1) No liability to tax arises under regulation 85M if condition A or B is met.

(2) Condition A is that the units in the fund are held as trading stock.

(3) Condition B is that the disposal of the units is taken into account in computing the profits of a trade.

#### Long-term insurance funds of insurance companies

**85S.**—(1) No liability to tax arises under regulation 85M in respect of disposals of units of an insurance company's long-term insurance fund.

(2) In paragraph (1) "insurance company" and "long-term insurance fund" have the same meaning as in section 431(2) of ICTA<sup>(28)</sup>.

#### Charitable companies and charitable trusts

**85T.**—(1) A charitable company shall be exempt from corporation tax in respect of an income gain if the gain is applicable and is applied for charitable purposes.

(2) A charitable trust shall be exempt from income tax in respect of an income gain if the gain is applicable and is applied for charitable purposes.

(3) Paragraphs (4) and (5) apply if—

- (a) property held on charitable trusts ceases to be subject to charitable trusts, and
- (b) that property represents directly or indirectly an income gain.

(4) The trustees are treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value.

(5) An income gain accruing on the disposal arising under paragraph (4) is treated as an income gain not accruing to a charity.

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<sup>(27)</sup> 2009 c.4.

<sup>(28)</sup> 1988 c.1. In section 431(2), the definition of "insurance company" was substituted by S.I. 2001/3629 and amended by S.I. 2006/3270. As regards the expression "long-term insurance fund", a definition of "long-term business fund" was inserted by paragraph 1(2) of the Finance Act 1990 (c.29) and amended by Part 5(26) of Schedule 41 to the Finance Act 1996 (c.8). The definition was re-labelled as a definition of "long-term insurance fund" and further amended by S.I. 2001/3629.

(6) In this regulation “charity” and “charitable company” have the same meaning as in section 506 of ICTA(29).

## CHAPTER 5

### Disposal of units in FINROFs

#### Application of this Chapter

**85U.** This Chapter applies if a participant disposes of an asset and at the time of the disposal—

- (a) the asset consists of units in a FINROF, or
- (b) the asset consists of units in an authorised investment fund that is not a FINROF and the requirements specified in paragraph (3) of regulation 85M are met.

#### Disposal of an asset: the basic rule

**85V.**—(1) There is a disposal of an asset for the purposes of this Part if there would be a disposal of an asset for the purposes of TCGA 1992.

- (2) Paragraph (1) is subject to the following regulations in this Chapter.

#### Provisions applicable on death

**85W.**—(1) Notwithstanding anything in paragraph (b) of subsection (1) of section 62 of TCGA 1992(30) (general provisions applicable on death: no deemed disposal by the deceased), where a person dies and the assets of which the deceased was competent to dispose at the time of death include units in a FINROF, then, for the purposes of these Regulations—

- (a) immediately before the acquisition referred to in paragraph (a) of that subsection, those units shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
- (b) nothing in this regulation affects the determination, in accordance with regulation 85U, of the question whether that deemed disposal is one to which this Chapter applies.

(2) Subject to paragraph (1), section 62 of TCGA 1992 applies for the purposes of these Regulations as it applies for the purposes of that Act, and the reference in that paragraph to the assets of which a deceased person was competent to dispose are to be construed in accordance with subsection (10) of that section.

#### Application of section 135 of TCGA 1992

**85X.**—(1) Section 135 of TCGA 1992(31) (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Part to the extent that—

- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is units in a FINROF, and

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(29) Section 506 was amended by section 55(2) of the [Finance Act 2006 \(c.25\)](#) and paragraph 95 of Schedule 1 to the [Income Tax Act 2007 \(c.3\)](#).

(30) Section 62 was amended by paragraph 5 of Schedule 21 to the [Finance Act 1998 \(c.36\)](#), section 52 of the [Finance Act 2002 \(c.23\)](#) and paragraph 29 of Schedule 2 to the [Finance Act 2008 \(c.9\)](#).

(31) Section 135 was substituted by paragraph 1 of Schedule 9 to the [Finance Act 2002 \(c.23\)](#).

(b) the interest in the entity that is company B for those purposes that is exchanged is not units in such a fund.

(2) In a case where section 135 of TCGA 1992 would apply apart from paragraph (1), the exchange in question shall for the purposes of this Part constitute a disposal of units in the FINROF for a consideration equal to their market value at the time of the exchange.

### **Application of section 136 of TCGA 1992**

**85Y.**—(1) Section 136 of TCGA 1992(**32**) (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Part to the extent that—

(a) the interest in the entity that is company A for the purposes of that section that is exchanged is units in a FINROF, and

(b) the interest in the entity that is company B for those purposes that is exchanged is not units in such a fund.

(2) In a case where section 136 of TCGA 1992 would apply apart from paragraph (1), the deemed exchange in question shall for the purposes of this Part constitute a disposal of units in the FINROF for a consideration equal to their market value at the time of the deemed exchange.

## **CHAPTER 6**

### **Income gains and computation of income gains**

#### **General provisions**

**85Z.**—(1) An income gain arises to a person on the disposal of an asset if a basic gain arises on the disposal.

(2) The disposal gives rise to an income gain of an amount equal to the basic gain on the disposal.

(3) The following provisions of this Chapter explain how the basic gain is computed.

#### **The basic gain and its computation**

**85Z1.**—(1) In the case of a participant chargeable to income tax, the basic gain is a gain of the amount which would be the gain on that disposal for the purposes of TCGA 1992 if the gain were computed without regard to any charge to income tax arising under this Part.

(2) In the case of a participant chargeable to corporation tax, the basic gain is a gain of the amount which would be the gain on that disposal for the purposes of TCGA 1992 if the gain were computed—

(a) without regard to any charge to corporation tax arising under this Part, and

(b) without regard to any indexation allowance on the disposal under TCGA 1992.

(3) The computation of the basic gain is subject to—

(a) regulation 85W (provisions applicable on death);

(b) regulation 85X (application of section 135 of TCGA 1992);

(c) regulation 85Y (application of section 136 of TCGA 1992);

(d) regulation 85Z2 (earlier disposal to which the no gain/no loss basis applies);

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(32) Section 136 was substituted by paragraph 2 of Schedule 9 to the Finance Act 2002.

- (e) regulation 85Z3 (modifications of TCGA 1992); and
- (f) regulation 85Z4 (losses).

### **Earlier disposal to which the no gain/no loss basis applies**

**85Z2.**—(1) This regulation applies if—

- (a) a participant is chargeable to corporation tax, and
  - (b) the amount of any chargeable gain or allowable loss which would arise on the disposal would fall to be computed in a way which, in whole or in part, would take account of the indexation allowance on an earlier disposal to which section 56(2) of TCGA 1992(33) (disposals on a no gain/no loss basis) applies.
- (2) The basic gain on the disposal is computed as if—
- (a) no indexation allowance had been available on any such earlier disposal, and
  - (b) subject to that, neither a gain nor a loss had arisen to the person making such an earlier disposal.

### **Modifications of TCGA 1992**

**85Z3.**—(1) If the disposal forms part of a transfer to which section 162 of TCGA 1992 (roll-over relief on transfer of business) applies, the basic gain arising on the disposal is computed without regard to any deduction which falls to be made under that section in computing a chargeable gain.

(2) If the disposal is made otherwise than under a bargain at arm's length and a claim for relief is made in respect of that disposal under section 165 or 260 of TCGA 1992(34) (relief for gifts), the claim does not affect the computation of the basic gain arising on the disposal.

### **Losses**

**85Z4.**—(1) If the effect of any computation under regulations 85Z1 to 85Z3 would be to produce a loss, the basic gain on the disposal is nil.

(2) Paragraph (1) applies notwithstanding section 16 of TCGA 1992(35) (losses determined in like manner as gains).

(3) Accordingly, for the purposes of these Regulations, no loss is to be treated as arising on the disposal.

## **CHAPTER 7**

### **Deduction of income gains in computing chargeable gains**

#### **Scope of this Chapter**

**85Z5.**—(1) This Chapter applies if—

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- (33) Section 56(2) was amended by section 93(5) of the [Finance Act 1994 \(c.9\)](#).
  - (34) Section 165 was amended by paragraph 1(1) of Schedule 7 to the [Finance Act 1993 \(c.34\)](#), section 140(4) of, and Part 3(31) of Schedule 27 to, the [Finance Act 1998 \(c.36\)](#), section 90(1), (3) and (4) of the [Finance Act 2000 \(c.17\)](#), paragraph 3 of Schedule 21 to the [Finance Act 2004 \(c.12\)](#) and paragraph 33 of Schedule 2 to the [Finance Act 2008 \(c.9\)](#). Section 260 was amended by section 72(6) of, and paragraph 4(2) of Schedule 13 to, the [Finance Act 1995 \(c.4\)](#), Parts 3(31) and 4 of Schedule 27 to the Finance Act 1998, section 90(2) of the [Finance Act 2000 \(c.17\)](#), paragraph 5 of Schedule 21 to the [Finance Act 2004 \(c.12\)](#) and paragraph 32 of Schedule 20 to the [Finance Act 2006 \(c.25\)](#).
  - (35) Section 16 was amended by section 113(1) of the [Finance Act 1995 \(c.4\)](#), paragraph 7 of Schedule 4 to the [Finance \(No. 2\) Act 2005 \(c.22\)](#), paragraph 298 of Schedule 1 to the [Income Tax Act 2007 \(c.3\)](#) and paragraph 61 of Schedule 7 to the [Finance Act 2008 \(c.9\)](#).

- (a) a disposal gives rise to an income gain, and
  - (b) that disposal also constitutes the disposal of the units concerned for the purposes of TCGA 1992.
- (2) In this Chapter, the disposal specified in paragraph (1)(b) is called the “TCGA disposal”.

#### **Treatment of the TCGA disposal: general rules**

**85Z6.**—(1) This regulation applies for the purposes of the computation of the chargeable gain arising on the TCGA disposal.

(2) The provisions of this regulation have effect in relation to the TCGA disposal in substitution for section 37(1) of TCGA 1992 (deduction of consideration chargeable to tax on income).

(3) In the computation of the gain arising on the TCGA disposal, a sum equal to the income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.

(4) Paragraph (3) is subject to the following provisions of this Chapter.

(5) Paragraph (6) applies if the TCGA disposal is of such a nature that, by virtue of section 42 of TCGA (part disposal), an apportionment falls to be made of certain expenditure.

(6) No deduction is to be made by virtue of paragraph (3) in determining the amount or value of the consideration for the purpose of the fraction in section 42(2) of TCGA 1992.

#### **Modification of section 162 TCGA 1992**

**85Z7.**—(1) This regulation applies if the TCGA disposal forms part of a transfer to which section 162 of TCGA applies (roll-over relief on transfer of business in exchange wholly or partly for shares).

(2) For the purposes of subsection (4) of section 162 of TCGA 1992 (determination of the amount of the deduction from the gain on the old assets) “B” in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) is to be taken to be what it would be if the value of the consideration other than shares so received by the transferor were reduced by an amount equal to the income gain.

#### **Application of section 128 of TCGA 1992**

**85Z8.**—(1) This regulation applies if there is a disposal to which this Part applies by virtue of—

- (a) regulation 85X (application of section 135 of TCGA 1992), and
- (b) regulation 85Y (application of section 136 of TCGA 1992).

(2) TCGA 1992 has effect as if an amount equal to the income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).

## CHAPTER 8

### Leaving the FINROF regime

#### Leaving the FINROF regime

**85Z9.**—(1) The provisions of this Part apply to a FINROF until the date specified in an election under this regulation made by the manager.

(2) An election under this regulation must be made to HM Revenue and Customs in writing and must comply with the following provisions of this regulation.

(3) An election may only be made in respect of a FINROF if—

(a) the FINROF does not meet the investment condition—

(i) at the date specified in the election, and

(ii) at the date on which the election is made,

(b) the FINROF has been subject to this Part for at least one complete accounting period, and

(c) the fund has obtained any necessary regulatory approval of the instrument constituting the fund and the prospectus.

(4) An election under this regulation must specify the date from which this Part ceases to apply to the FINROF.

(5) But the date specified in paragraph (4) must not be earlier than the date which is 3 months before the date on which the election is made.

#### Requirement to notify participants when a fund leaves the FINROF regime

**85Z10.**—(1) If an election is made under regulation 85Z9, the legal owner must notify the participants in a fund that this Part no longer applies to the fund but continues to apply to a participant unless an election is made in accordance with regulation 85Z11.

(2) The notification under paragraph (1) must be made within a period of 3 months beginning with the date mentioned in regulation 85Z9(5).

(3) An authorised investment fund which fails to comply with this regulation is liable to a penalty not exceeding £3,000 determined in accordance with section 100 of TMA 1970<sup>(36)</sup>.

(4) Sections 100A, 100B, 102, 103(4) and 118(2) of TMA 1970 apply to a penalty determined in accordance with paragraph (3)<sup>(37)</sup>.

#### Participant's power to elect for deemed disposal

**85Z11.**—(1) Notwithstanding an election made under regulation 85Z9, this Part continues to apply to a participant in a FINROF unless the participant makes an election in accordance with paragraph (2).

(2) A participant in the fund may make an election to be treated—

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(36) 1970 c. 9. 1970 c. 9. Section 100 was substituted for the original by section 167 of the [Finance Act 1989 \(c.26\)](#). It was amended by paragraph 3(2) of Schedule 11 to the [Finance Act 1990 \(c.29\)](#), section 315(2) of the [Finance Act 2004 \(c.12\)](#) and [S.I. 1994/1813](#).

(37) Sections 100A and 100B were substituted for the original section 100 by section 167 Finance Act 1989. Section 100A was amended by paragraph 29(b) of Schedule 24 to, and by Part 5(5) of Schedule 27 to, the [Finance Act 2007 \(c.11\)](#). Section 100B was amended by paragraph 31 of Schedule 19 to the [Finance Act 1994 \(c.9\)](#), by section 103(7) and 115(7) of the [Finance Act 1995 \(c.4\)](#), by [S.I. 1994/1813](#), [2009/56](#) and [2009/571](#). Section 103(4) was amended by [S.I. 2009/56](#). Section 118(2) was amended by section 94 of the [Finance \(No. 2\) Act 1987 \(c.51\)](#) and by Part 7 of Schedule 8 to the [Finance Act 1970 \(c.24\)](#) and [S.I. 2009/56](#).



- (a) as disposing of the units owned by the participant in the FINROF at their market value on the deemed disposal date, and
  - (b) as acquiring units in the authorised investment fund on the deemed disposal date.
- (3) The income gain arising on the deemed disposal referred to in paragraph (2)(a) shall be determined in accordance with Chapter 6 of this Part.
- (4) The acquisition referred to in paragraph (2)(b) is treated as made for a consideration equal to the consideration for the disposal referred to in paragraph (2)(a).
- (5) An election may not be made under paragraph (2) unless the income gain arising on the disposal referred to in paragraph (2)(a) (determined in accordance with Chapter 6 of this Part) is greater than zero.
- (6) If the participant is chargeable to income tax, the election mentioned in paragraph (2) must be made by being included in a return made for the tax year which includes the deemed disposal date.
- (7) If the participant is chargeable to corporation tax, the election mentioned in paragraph (2) must be made by being included in the participant’s company tax return for the accounting period which includes the deemed disposal date.
- (8) In this regulation—
- “company tax return” has the same meaning as in Schedule 18 to the Finance Act 1998(38); and
- the “deemed disposal date” means the date on which, in accordance with regulation 85Z9, the fund ceases to be a FINROF..”.

**Amendment of the Schedule**

- 22.—(1) The Schedule (abbreviations and defined expressions) is amended as follows.
- (2) In Part 2 (index of expressions defined or otherwise explained in these Regulations)—
- (a) omit the entries relating to “Prospectus (in Part 4A)”, “distribution” and “distribution accounts” and
  - (b) insert, at the appropriate alphabetical place in each case—

Distribution	Regulation 15(1)(b)
Elective FINROF (in Part 6A)	Regulation 85F
FINROF (in Part 6A)	Regulation 85A
Gross asset value (in Part 6A)	Regulation 85C
Income allocation	Regulation 15(1)(a)
Investment condition (in Part 6A)	Regulation 85D
Non-reporting fund (in Part 6A)	Regulation 85C
Offshore fund (in Part 6A)	Regulation 85C
Offshore Funds Regulations (in Part 6A)	Regulation 85C
Prospectus	Regulation 8
Reporting fund (in Part 6A)	Regulation 85C

(38) 1998 c.36.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Statement of Recommended Practice	Regulation 8
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**Consequential amendments**

**23.**—(1) In regulations 7(4) and (8) and 77(4)(a) omit “(including any supplements to that prospectus)” in each place in which those words occur.

(2) In regulations 9A(9)(b) and 69E(2) omit “(including any supplements to the prospectus)”.

(3) In regulation 69E omit paragraph (4).

(4) In regulations 69Q(5)(b)(ii) and 69Z51(5)(b)(ii) omit—

(a) “proposed” in the first place in which that word occurs in each regulation; and

(b) “(including any supplements to the proposed prospectus)”.