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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Offshore Funds (Tax) Regulations 2009**

**PART 1**

**INTRODUCTION**

*Interpretation*

**Meaning of “participant”**

7. In these Regulations references to a participant in a fund are to be read in accordance with section 40A(5) of FA 2008.

**Meaning of “interest” (of a participant in an offshore fund)**

8.—(1) For the purposes of these Regulations the interest of a participant in an offshore fund is the investment held by a participant taking part in arrangements (or arrangements constituting a fund) to which the relevant group of sections applies.

(2) Paragraph (1) does not apply to the use of the word “interest” in the expression “material interest in an offshore fund”.

**Meaning of “guaranteed return fund”**

9.—(1) For the purposes of these Regulations an offshore fund is a guaranteed return fund if conditions A to C are met.

(2) Condition A is that the return on the shares or other interests in the fund is defined by reference to an index.

(3) Condition B is that the assets of the fund which are held to produce the return on the shares or other interests concerned cannot give rise to a return which, if it arose directly to an individual resident in the United Kingdom, would be chargeable to income tax.

(4) Condition C is that it is reasonable to assume that the main purpose, or one of the main purposes, of the arrangements constituting the offshore fund is or was the production for participants of a return that equates, in substance, to the return on an investment of money at interest.

**Meaning of “market value”**

10.—(1) For the purposes of these Regulations the market value of any asset is to be determined in like manner as it would be determined for the purposes of TCGA 1992.

(2) But, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 272(5) of that Act (meaning of “market value” in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of these Regulations.

### Meaning of “transparent fund”

11. For the purposes of these Regulations a fund is a “transparent fund” if, in the case of holders of interests in the fund who are individuals resident in the United Kingdom, any sums which form part of the income of the fund are of such a nature that those holders—

- (a) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests, or
- (b) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom.

### General interpretation

12. In these Regulations—

“HMRC” means Her Majesty’s Revenue and Customs;

“period of account”, in relation to an offshore fund, means any period for which accounts of the offshore fund are drawn up;

“proposed prospectus” includes—

- (a) any document supplementing or amending the proposed prospectus, and
- (b) any document fulfilling the same function as a proposed prospectus;

“prospectus” includes—

- (c) any document supplementing or amending the prospectus, and
- (d) any document fulfilling the same function as a prospectus;

the “relevant group of sections” means sections 40A to 42A of FA 2008(1);

“tax year”—

- (e) in relation to income tax, has the meaning given by section 4(2) of ITA 2007, and
- (f) in relation to capital gains tax, has the meaning given by section 288(1ZA) of TCGA 1992(2);

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

“UCITS fund” means a fund which is an undertaking for collective investments in transferable securities that is authorised by a European Union Member State in accordance with Article 4 of Council Directive [85/611/EEC\(3\)](#).

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(1) Sections 40A to 40G were inserted by paragraph 2 of Schedule 22 to the Finance Act 2009 (c. 10), section 41 was amended by paragraph 3 of that Schedule, section 42 was amended by paragraph 4 of that Schedule and section 42A was inserted by paragraph 5 of that Schedule.

(2) Section 288(1ZA) was inserted by paragraph 101(3) of Schedule 2 to the Finance Act 2008 (c. 9).

(3) OJ No L 375, 20.12.85, p3.