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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

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

**PART 3**

**REPORTING FUNDS AND THE TREATMENT  
OF PARTICIPANTS IN REPORTING FUNDS**

**CHAPTER 10**

**BREACHES OF REPORTING FUND REQUIREMENTS**

**Types of breaches**

**108.**—(1) This Chapter applies if a reporting fund is in breach of a requirement imposed in this Part.

(2) A breach of a requirement imposed in this Part is—

- (a) a minor breach, or
- (b) a serious breach.

(3) For the purposes of these Regulations, a breach of a requirement imposed in this Part is a “serious breach” if it is—

- (a) a breach specified as a serious breach in a provision of this Chapter, or
- (b) a breach which is not a minor breach.

(4) For the purposes of these Regulations, a breach of a requirement imposed in this Part is a “minor breach” if it is a breach (other than a breach specified as a serious breach in a provision of this Chapter)—

- (a) for which there is a reasonable excuse, or
- (b) which is inadvertent and remedied as soon as reasonably possible.

This paragraph is subject to the following provisions of this regulation.

(5) For the purposes of this Part a minor breach is not regarded as a breach if the reporting fund corrects the breach without any HMRC intervention.

(6) For the purposes of these Regulations there is an “HMRC intervention” in relation to a reporting fund if HMRC request the fund to provide them with information relating to a requirement imposed in this Part.

This is subject to paragraph (7).

(7) There is no HMRC intervention in relation to a reporting fund if—

- (a) the fund takes the initiative to correct a minor breach, and
- (b) HMRC request the fund to provide them with information so that they may deal with the initiative taken.

(8) Regulation 109 deals with the consequences of minor breaches.

- (9) Regulation 114 deals with the consequences of serious breaches.

### **Consequences of minor breaches**

**109.**—(1) If a reporting fund is in breach of a requirement imposed in this Part and the breach is a minor breach, the fund continues to be treated as a reporting fund.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) If paragraph (1) applies on four separate occasions in a period of ten years beginning with the first day of the period of account in which the first breach occurs, the fourth breach is a serious breach.

(4) If a single event results in more than one minor breach within a single period of account, there is only one minor breach in that period of account for the purposes of this Chapter.

### **Differences between reported income and reportable income**

**110.**—(1) This regulation applies if there is a difference between—

- (a) the reportable income of a reporting fund for a period of account, and
- (b) the reported income of the fund for all reporting periods comprised in the period of account.

(2) The following amounts must be determined for each reporting period comprised in the period of account—

- (a) the amount of the reported income for the reporting period, and
- (b) the amount of the reportable income for the period of account that is referable to that reporting period.

(3) If the difference between the two amounts specified in paragraph (2) is 10% or less of the reportable income, there is no breach of a requirement imposed in this Part.

(4) If the difference between the two amounts specified in paragraph (2) is more than 10% but not more than 15% of the reportable income—

- (a) an amount equal to the difference must be added to the reported income—
  - (i) for the reporting period in which the error is established, or
  - (ii) for the following reporting period; or
- (b) the reporting fund must make a supplementary report for the period of account in which the difference occurs before the end of a period of three months beginning immediately after the period of account in which the error is established.

(5) If the difference between the two amounts specified in paragraph (2) is more than 15% of the reportable income, the reporting fund must make a supplementary report to participants for the period of account in which the difference occurs before the end of a period of three months beginning immediately after the period of account in which the error is established.

(6) The supplementary report mentioned in paragraphs (4) and (5) must be made to those persons who were participants in the fund at the end of the period of account in which the difference occurs.

(7) If paragraph (4) or (5) applies and the action specified in the applicable paragraph is taken as soon as reasonably possible, there is a minor breach.

(8) If paragraph (4) or (5) applies but the action specified in the applicable paragraph is not taken as soon as reasonably possible, there is a serious breach.

(9) For the purposes of paragraph (4) an error is established for a reporting period if, during that reporting period—

- (a) HMRC conclude—

- (i) that an error has been made in respect of an earlier reporting period, and
  - (ii) that, as a result of the error, the difference between the reported income for the reporting period and the reportable income for the period of account in which the reporting period is comprised is more than 10% but not more than 15%; and
- (b) HMRC give notice to the reporting fund of the matters specified in sub-paragraph (a).
- (10) For the purposes of paragraph (5) an error is established for a period of account if, during that period of account—
- (a) HMRC conclude—
    - (i) that an error has been made in respect of an earlier period of account, and
    - (ii) that, as a result of the error, the difference between the reported income and the reportable income for the period of account is more than 15%; and
  - (b) HMRC give notice to the reporting fund of the matters specified in sub-paragraph (a).

### **Provision of report that is incorrect or incomplete**

- 111.**—(1) This regulation applies if—
- (a) a reporting fund provides a report specified in paragraph (2) that is incorrect or incomplete, and
  - (b) regulation 110 does not apply.
- (2) The reports specified are—
- (a) the report to participants in accordance with the requirements of Chapter 7 of this Part, and
  - (b) the report to HMRC in accordance with the requirements of Chapter 9 of this Part.
- (3) If the reporting fund provides a correct report as soon as reasonably possible, there is a minor breach.
- (4) If the reporting fund does not provide a correct report as soon as reasonably possible, there is a serious breach.

### **Cases where information is not provided**

- 112.**—(1) This regulation applies if, on the relevant date, a reporting fund has not provided—
- (a) the information specified in regulation 106(1) to HMRC in relation to a period of account (the “requisite period of account”), and
  - (b) a report to each participant for each reporting period comprised in the requisite period of account.
- (2) In paragraph (1) the “relevant date” means the day immediately following the expiry of the period of six months beginning immediately after the end of the requisite period of account.
- (3) If the reporting fund provides the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of four months beginning with the relevant date, the breach is not regarded as a breach for the purposes of this Part.
- (4) If the reporting fund does not provide the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of four months beginning with the relevant date but does provide that information and those reports within a period of twelve months beginning with the relevant date, there is a minor breach.
- (5) If the reporting fund does not provide the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of twelve months beginning with the relevant date, there is a serious breach.

### **Serious breaches**

- 113.**—(1) There is a serious breach if condition A, B, C or D is met.
- (2) Condition A is that a period of account of a reporting fund exceeds 18 months.
- (3) Condition B is that a reporting fund has used an accounting practice which—
- (a) is not in accordance with international accounting standards, and
  - (b) has not been approved by HMRC (see regulations 53, 55 and 61).
- (4) Condition C is that—
- (a) a reporting fund fails, or its managers fail, to provide the information, particulars or documents within the time specified in a notice given under regulation 107(1), and
  - (b) there is no appeal against the notice within the time specified in regulation 107(6).
- (5) Condition D is that—
- (a) on an appeal against a notice given under regulation 107(1), the tribunal varies the notice,
  - (b) a reporting fund fails, or its managers fail, to provide the information, particulars or documents within the time specified in the notice (as so varied), and
  - (c) there is no appeal against the decision of the tribunal.

### **Consequences of serious breaches**

- 114.**—(1) This regulation applies if conditions A and B are met.
- (2) Condition A is that—
- (a) a reporting fund is in breach of a requirement imposed in this Part, and
  - (b) the breach is a serious breach.
- (3) Condition B is that HMRC give notice to the fund—
- (a) stating that the fund is in breach of a requirement imposed in this Part and that the breach is a serious breach, and
  - (b) specifying the serious breach.
- (4) The fund is treated as a non-reporting fund for the reporting period in which HMRC give the notice and for all subsequent periods.
- This is subject to paragraphs (5) and (6).
- (5) If regulation 113(4) applies, the fund is treated as a non-reporting fund for the reporting period in which the notice is given and for all subsequent periods.
- (6) If regulation 113(5) applies, the fund is treated as a non-reporting fund for the reporting period in which the notice as varied is given and for all subsequent periods.

### **Appeal against exclusion from the reporting fund regime**

- 115.**—(1) If HMRC give notice to a fund under regulation 114(3) (an “exclusion notice”), the fund may appeal.
- (2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the exclusion notice is given.
- (3) On an appeal, the tribunal may uphold or quash the exclusion notice.