

**EXPLANATORY MEMORANDUM TO
THE AUTHORISED INVESTMENT FUNDS (TAX) (AMENDMENT)
REGULATIONS 2011**

2011 No. 244

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To permit Authorised Investment Funds (AIFs) which invest in non-reporting offshore funds to treat those investments, for tax purposes, as being investments in reporting funds in cases where they have sufficient information to compute the reported income.
 - 2.2 To increase the proportion of funds that may be invested by an AIF in other non-reporting funds before the fund is treated as being primarily a fund investing in non-reporting offshore funds (a treatment which leads to the investor being subject to tax on income on any gains made on disposal).
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 This instrument amends the Authorised Investment Funds 2006 (S.I. 2006/964) and the Offshore Funds (Tax) Regulations 2009 (2009/3001).
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 By treating a holding in a non-reporting offshore fund as if it were a reporting offshore fund for the purposes of making distributions, an AIF will not be subject to corporation tax on any gains that it realises on disposal of its holding. This is a treatment already available to offshore reporting funds and so will better align the competitive position of AIFs with reporting offshore funds.

7.2 The proportion of its assets that an AIF can hold in non-reporting offshore funds is limited in order to prevent the use of such funds by individuals taxable at the higher rates of income tax to 'convert' underlying income to capital gains. Following the reduction of the margin between the capital gains tax rate and the higher rates of income tax that limit can now be increased to allow more flexibility to AIFs.

- *Consolidation*

7.3 This instrument amends the Authorised Investment Funds (Tax) Regulations 2006 and the Offshore Funds (Tax) Regulations 2009. There are no plans to consolidate the revised Regulations in the immediate future.

8. Consultation outcome

Draft regulations were published for comment on 6 October. This instrument is revised from the draft then published to take account of comments received and to improve drafting.

9. Guidance

Guidance will shortly be published by HM Revenue and Customs in draft form for comment and will, once finalised, be incorporated into the existing guidance applying to the Authorised Investment Funds (Tax) Regulations 2006.

10. Impact

10.1 There is a negligible impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation applies to small business. The number of employees (the definition of a “small business” for this purpose) is not usually relevant to the size or organisational structure of an AIF. No comments were received during the consultation which might suggest the regulations impact on small businesses.

12. Monitoring & review

The Government keeps the AIF regulations under review and intends to continue to work with industry to develop these Regulations.

13. Contact

John Buckeridge at H M Revenue and Customs Tel: 020 7147 2560 or email: john.buckeridge@hmrc.gsi.gov.uk can answer any queries regarding the instrument.