

# Enhancing the competitiveness of UK funds

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April 2009



HM TREASURY





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# Executive summary

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Asset management in the UK has, like other sectors, experienced pressures over recent months following the global financial crisis. Alongside the decisive action to support the stability of the financial system and wider economy, the Government has been continuing to work with the asset management industry on policy changes required to strengthen the UK's position as a leading international financial centre. Budget 2009 therefore announced the concluding steps of the Government's work on taxation and the competitiveness of UK funds.

This document complements Budget 2009 announcements by setting out further details of the tax and regulatory change that the Government has made over the last two years for Authorised Investment Funds (AIFs). Taken together, these changes make a tangible difference to the competitiveness of the UK. From 1 September 2009 funds will be able to:

- locate in the UK and invest tax efficiently in property, providing a level playing field with UK-REITs<sup>1</sup>;
- locate in the UK and sell to sophisticated investors without being impeded by complex tax rules;
- locate in the UK and undertake a wide range of investment transactions with certainty of tax treatment;
- locate in the UK and market competitively to UK and international investors; and
- locate in the UK and make transfers of title to units/shares by way of electronic communication.

Chapter 1 of this document summarises the tax and regulatory changes that the Government has announced following close consultation with industry.

Chapter 2 describes how the Government intends to take forward the proposals for Tax Elected Funds. Chapter 3 provides details on the legislative change intended to clarify whether certain undertakings by Authorised Investment Funds will be taxed as trading or investment.

In this paper, the Government also welcomes industry views on draft regulations to deliver Budget 2009 announcements for improvements to the taxation of asset management.

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<sup>1</sup> UK Real Estate Investment Trusts



# 1

## Introduction

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**1.1** Financial services across the globe have seen unprecedented disruption over recent months, with the global credit shock intensifying in Autumn 2008 into the worst global financial crisis for generations. Such circumstances clearly require a concerted response from the Government, and Budget 2009 set out a series of steps that the Government has taken.

**1.2** However, it is also vital to look to the future of UK financial services. The Government remains confident that the UK will continue to hold its position as a leading international financial centre in the medium to long term. But it cannot be complacent regarding the policy changes required to strengthen the UK's position. Budget 2009 provided an overview of steps of renewal and reform necessary to revitalise the financial markets. Details of the specific actions required to ensure a stable future for the financial sector will be set out in a forthcoming paper to be published before the summer.

**1.3** The UK asset management industry has also felt the impact of the financial crisis over recent months. The Government recognises that the UK asset management industry remains key, through both its direct contribution to the economy and the broader economic role it plays in helping to unite those with capital to invest with profitable investment opportunities.

**1.4** The ongoing strength of the asset management sector is a priority for the Government. This document details the steps that the Government has taken over the last two years and consolidated in Budget 2009 to enhance the competitiveness of the UK as a place for funds to locate. It outlines the impact these steps will have on the UK asset management landscape, and finally sets out draft regulations which deliver the final parts of the competitiveness package.

### Enhanced dialogue with the asset management industry

**1.5** The Government sees the dialogue established with the asset management industry over the last two years as key to identifying workable reforms that improve the sector's competitiveness, balanced against the need to maintain sound and sustainable public finances.

**1.6** The High Level Asset Management Working group, co-chaired by the Chancellor, is enabling the Government to hear first hand the concerns and viewpoints of senior industry practitioners. The Chancellor has asked the group to examine the steps required to ensure the UK remains a prime location and global centre for asset management. The group will publish its report on strategic priorities and commercial and public policy challenges later in the year.

**1.7** Specifically on taxation, following the publication of the Investment Management Association (IMA)/KPMG report *Taxation and the Competitiveness of UK Funds* in October 2006<sup>1</sup>, the Economic Secretary established a joint working group between the IMA, HM Treasury and HM Revenue and Customs (HMRC) to consider the Report's findings and consider a series of tax changes to enhance the UK's competitiveness as a place for funds to locate.

**1.8** One of the most valuable outcomes of the joint working group is the improved consultation and strengthened trust between the industry, HMRC, HM Treasury and the Financial Services

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<sup>1</sup> *Taxation and the Competitiveness of UK Funds*, Investment Management Association, October 2006

Authority (FSA). Quarterly meetings on taxation now take place which deliver regular and open dialogue between Government and the industry and a coherent approach to industry issues.

**1.9** One of the early outcomes of establishing this dialogue has been the centralisation of HMRC's resources on asset management to help ensure a consistent approach and a good understanding of the sector's issues.

## **Tax and regulatory changes for Authorised Investment Funds (AIFs)**

**1.10** As well as the need for improved trust and understanding, the IMA/KPMG report also recommended finding a solution to the 'property conundrum', serious consideration of abolition of Schedule 19, action on the trading versus investment divide for AIFs and that the Government should consider tax exemption for UK funds.

**1.11** The Government has worked closely with industry to address these recommendations, as well as matters arising from the joint working group meetings.

**1.12** To improve the competitiveness of the UK as a place for funds to locate, the Government:

- has removed tax as a barrier to the commercial development of funds by introducing a new regime to allow tax efficient investment into property;
- has introduced new rules which allow Qualified Investor Schemes to be established more easily in the UK;
- is increasing certainty on taxation for funds, their managers and their investors by legislating to clarify that certain transactions will be taxed as investment; and
- is responding to industry's desire to be able to market their funds more competitively by announcing the launch of the Tax Elected Fund regime. This regime will allow UK funds to be marketed competitively in the UK, throughout Europe and to the rest of the world.

**1.13** The request for abolition of Schedule 19, Stamp Duty Reserve Tax (SDRT) has also been very carefully considered and balanced against the need to maintain sound and sustainable public finances. The possible reform of Schedule 19 to reduce administrative and compliance burdens, and enhance competitiveness, has also been consulted on extensively. A formal consultation paper on two options for reform of Schedule 19 was published at 2007 Pre-Budget Report. At that time, a small majority of respondents from within the asset management industry felt that if Schedule 19 was not to be abolished their preference was for the first of the two reform options proposed. This entailed replacement of Schedule 19 with an assets based charge. However, subsequent discussions with the industry suggested that, given the administrative and other changes necessary to introduce a new charge, retaining the status quo was preferable. Following these extensive discussions, as announced in Budget 2009, the Government has decided not to reform Schedule 19 at this time but to retain the current regime. However, where improvements can be made to the Schedule 19 regime that do not cut across the need to maintain sound and sustainable public finances, the Government will take action, as for example, in the case of the feeder funds for Property AIFs.

**1.14** In addition to the extensive changes on taxation outlined above, the Government has also taken action to improve the regulatory environment for UK funds. The Government has introduced cost savings and reductions in error rates for asset managers by allowing transfers of title to units/shares in Authorised Investment Funds to be made by electronic communication.

## A changed landscape for UK asset management

**1.15** Taken together, the changes outlined in this paper mean that AIFs located in the UK can now be more competitive.

**1.16** More specifically, AIFs which are located in the UK can now:

- invest tax efficiently in property, providing a level playing field with UK-REITs;
- sell to sophisticated investors without being impeded by complex tax rules;
- undertake a wide range of investment transactions with certainty of tax treatment;
- market competitively to UK and international investors; and
- transfer title to units and shares in their funds by way of electronic communication.

### Next steps

**1.17** The Government recognises that there is still work to do to deliver Budget 2009 commitments on taxation.

**1.18** On the regulatory side, the Government is considering introducing a protected cell regime for open-ended investment company structures, which will enhance the UK's competitiveness by working to protect investors in UK funds from cross liability. The Government is working on this together with the FSA and industry representatives and will be issuing a public consultation document in the summer. Furthermore, the Government is playing a key role in the European Commission work on the forthcoming UCITS IV directive, which is being designed to make it easier and more efficient for fund managers to do cross-border business. Work is continuing to disseminate information to the industry and to communicate the industry's views to the European Commission.

**1.19** More broadly, the Government welcomes the enhanced dialogue with the industry which has proven so fruitful in identifying positive changes. This can be a technically challenging area of tax and regulation, and the expertise of industry members has been instrumental to introducing changes that succeed in delivering the Government's policy objective of increased competitiveness. Looking forward, the Government will endeavour to maintain this dialogue, on both regulatory and tax matters.



# 2

## Tax elected funds

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### Summary

**2.1** Budget 2009 announced that the Tax Elected Fund (TEF) regime will be introduced from 1 September 2009 to enhance the competitiveness of the UK as a place for funds to locate. This chapter sets out policy developments for the new regime and seeks industry views on draft legislation.

### Introduction

**2.2** In the IMA/KPMG Report the taxation of UK funds was identified as a negative component for UK funds. In particular, the perceived risk of a UK tax charge was cited as a significant reason for overseas investors to avoid UK funds. Although there was no clear consensus from industry on the question of having an exempt fund regime at the time of the Report, a consensus began to emerge as the Government progressed its competitiveness agenda over the last two years.

**2.3** On this basis, and following constructive discussions with industry, Budget 2008 announced that the Government would engage with industry to consider a direct tax exemption for Authorised Investment Funds, taxing the investor as if they held the underlying assets directly.

**2.4** In July 2008 the Government published a discussion paper<sup>1</sup> setting out its proposals for a special, elective tax regime for UK funds. In December 2008, the Government published a summary of responses to this discussion paper<sup>2</sup> and stated that it would continue to work with industry to address certain issues before issuing further proposals and draft regulations.

**2.5** Following further discussions with industry, Budget 2009 announced the launch of the Tax Elected Fund regime from 1 September 2009. The new TEF regime will allow those funds which meet the conditions of the regime and wish to elect for TEF tax treatment to market themselves more competitively to UK investors, throughout Europe and the rest of the world.

**2.6** The key features of the TEF regime, which allow them to be marketed competitively, are:

- that the regime is elective;
- that a TEF must meet the Genuine Diversity of Ownership condition; and
- that it moves the point of taxation from the TEF to the investor, with the result that investors face broadly the same tax treatment as they would have had the owned the underlying assets directly.

**2.7** Paragraphs 3.10 – 3.23 describe the changes to the TEF framework that the Government has made as a result of its consultation. Annex A contains draft regulations which deliver the TEF regime.

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<sup>1</sup> *Tax elected funds: a discussion paper*, HM Treasury, July 2008

<sup>2</sup> *Tax elected funds: summary of responses*, HM Treasury, December 2008

**2.8** The Government invites stakeholders to comment on the draft regulations contained in Annex A. Interested parties can send their comments by 11 June 2009 to:

Sue Harper  
Assets, Savings & Wealth  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Tel: 0207 270 6031  
E-mail: sue.harper@hm-treasury.gov.uk

**2.9** The Government will consider the responses and lay regulations, accompanied by an impact assessment. As announced in Budget 2009, the TEF regime will commence from 1 September 2009.

## Further proposals for Tax elected funds

**2.10** *Tax elected funds: summary of responses* stated that the Government would continue to work to address certain issues with industry before issuing further proposals as part of the draft regulations. The following paragraphs sets out how the Government intends to take these matters forward.

## Authorised Investment Funds (AIFs)

**2.11** The TEF regime is available to any AIF which meets the conditions (see draft regulations 69Z46 to 69Z48). This means that both UK tax resident authorised unit trusts and open-ended investment companies, whether UCITS<sup>3</sup>, NURS<sup>4</sup> or QIS<sup>5</sup>, can apply for TEF status. As each sub-fund in an umbrella arrangement is treated as a separate AIF for UK tax purposes, the Government confirms that separate sub-funds in an umbrella arrangement may apply for TEF status.

## Tax vouchers

**2.12** One of the main issues that was raised in discussion of the TEF proposals related to tax vouchers. Following extensive discussions with industry, the Government has made changes to the proposals to provide more flexibility in the way that TEFs can provide tax information to their UK investors.

**2.13** The current legislation requires a tax voucher to be provided to investors in paper or e-mail format. To reduce administrative costs for TEFs, the Government will allow a TEF to provide simplified information to its investors in either paper or electronic format (for example, e-mail). TEFs using these simplified requirements must also provide detailed information on the internet to help investors to complete their self-assessment tax returns. For example, to allow an investor to enter the amount of their distribution into a web calculator to produce the amounts that should be entered onto their return. TEFs must also provide the detailed information on request to those investors without internet access. Draft regulation 7 sets out the simplified tax information requirements.

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<sup>3</sup> Undertakings for Collective Investment in Transferable Securities

<sup>4</sup> Non-UCITS Retail Schemes

<sup>5</sup> Qualified Investor Scheme

**2.14** The Government will also consider the feasibility of allowing other AIFs to benefit from this approach. In particular it may be possible to allow Property AIFs to use the same model given the elective nature of the regime.

## Distributions to investors

**2.15** In order to ensure that tax is charged at the correct rate, the Government confirms that TEFs will only be required to inform their investors of two streams of distributions:

- TEF distribution (dividend); and
- TEF distribution (non-dividend).

**2.16** Following the Government's announcement on its Foreign Profits reforms in Budget 2009<sup>6</sup>, foreign dividends for TEFs, along with all UK AIFs, will generally be exempt from tax. These exempt dividends will therefore be included in the TEF distribution (dividend) stream. Draft regulations 69Z56 to 69Z60 cover the tax treatment of TEFs and their distributions.

**2.17** The draft regulations do not, however, prescribe the number of physical payments to be made to investors at each distribution point. The number of physical payments will be a matter for each TEF to decide. Furthermore, the corporate streaming rules<sup>7</sup> will not apply for a TEF. This will reduce administrative burdens as TEFs will be required to provide the same information to both individual and corporate investors.

**2.18** These requirements will also enable TEFs to pay distributions or accumulate income gross of tax to all tax-exempt UK investors (for example, ISA, charity or pension investors) and to overseas investors.

## Property investment income

**2.19** The Government has carefully considered how property investment should be treated in a TEF balanced against the need to ensure sound and sustainable public finances.

**2.20** The Government has decided to allow TEFs to hold property indirectly. However, to protect tax yield, income distributions that a TEF receives from either a UK-REIT or a Property AIF will have to be received net of tax deducted at source. TEFs will not be allowed to hold property directly (see draft regulation 69Z46).

## Offshore income gains

**2.21** The treatment of offshore income gains remains challenging to deal with within the TEF regime. Following discussions with industry, the low proportion of assets currently held by AIFs in non-distributing offshore funds and given the forthcoming changes to the offshore fund regime, the Government is not minded to introduce special provisions to deal with offshore income gains within the TEF at the present time. The Government will continue to work with industry to develop a long-term solution to this issue.

## Expenses

**2.22** There are no special rules to specify where a TEF should allocate management expenses. A TEF will therefore be able to choose how best to allocate its management expenses.

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<sup>6</sup> *Building Britain's Future*, HM Treasury, April 2009

<sup>7</sup> Regulations 48-52, The Authorised Investment Funds (Tax) Regulations 2006 No. 964, as amended by SI 2008 No. 3239

## Breaches of condition

**2.23** Draft regulations 69Z63 to 69Z67 apply if a TEF breaches the conditions of the regime. These rules are similar to those for Property AIFs<sup>8</sup>. A fund that voluntarily leaves the TEF regime will be restricted as to when it can re-apply to be a TEF. A fund that is removed will not be permitted to re-apply for TEF status (see draft regulation 69Z49).

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<sup>8</sup> Part 4A of The Authorised Investment Funds (Tax) Regulations 2006 No. 964, as amended by SI 2008 No. 705

# 3

## Trading and investment

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### Summary

**3.1** Budget 2009 announced that the Government would introduce legislation to clarify whether certain transactions carried out by Authorised Investment Funds (AIFs) and equivalent offshore funds would be taxed as trading or investment. The trading and investment issue was identified in the IMA/KPMG report as an important factor in influencing fund location. This chapter summarises responses received to an earlier discussion paper setting out the proposed changes and seeks industry views on draft legislation.

### Introduction

**3.2** The Government is committed to ensuring that the UK retains its position as a leading international financial centre. Uncertainty around the trading and investment boundary for UK funds was raised in the IMA/KPMG report as an impediment to the further development of the UK asset management sector going forward.

**3.3** At 2007 Pre-Budget Report, HMRC published guidance to provide more certainty for financial services generally on this issue. Building on that guidance, in 2008 Pre-Budget Report the Government announced its intention to discuss with the asset management industry the potential for increased legislative certainty between trading and investment in relation to the tax treatment of transactions of AIFs.

**3.4** *Trading and Investment for Authorised Investment Funds*<sup>1</sup> was published in December 2008 setting out proposals for a legislative change to address this issue. These proposals have been generally very well received by industry. Consequently, Budget 2009 announced that Government will be introducing new legislation for AIFs with effect from 1 September 2009. The Government will also address this issue for equivalent offshore funds with effect from 1 December 2009, in parallel with wider changes to the offshore funds tax regime.

**3.5** This chapter sets out a summary of responses to *Trading and Investment for Authorised Investment Funds* and outlines the approach taken in the draft regulations in Annex B that deliver these proposals.

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<sup>1</sup> Trading and Investment for Authorised Investment Funds, HM Treasury, December 2008

**3.6** The Government invites stakeholders to comment on these draft regulations by 11 June 2009, with response to be sent to:

Lee Harley  
HM Revenue & Customs  
CT & VAT, Financial Products and Services  
3rd Floor, 100 Parliament Street  
London  
SW1A 2BQ  
Tel: 020 7147 2597  
E-mail: lee.harley@hmrc.gsi.gov.uk

**3.7** The Government will consider the responses and lay regulations with effect from 1 September 2009.

## Summary of responses and the Government's response

**3.8** The Government is grateful for and has considered the responses from interested parties to the December 2008 discussion paper.

**3.9** All the responses were favourable to the proposals for legislative certainty on investment transactions for UK AIFs. No respondents suggested any changes to the proposed 'white list' of transactions.

**3.10** Several respondents highlighted the need for increased certainty for trading and investment for transactions undertaken by offshore funds. The Government has carefully considered this and intends, for the purpose of taxing UK investors, to extend the 'white list' to offshore funds that are equivalent to UK AIFs. The 'white list' will be included in the regulations for offshore funds and will take effect on 1 December 2009, alongside other changes to the offshore funds tax regime.

**3.11** Several respondents also asked for this legislative certainty to be extended to other types of UK investment vehicle, specifically pension funds and Investment Trust Companies. The Government would be willing to consider requests for legislative certainty for investment transactions in these contexts. However, the legislative changes proposed in this paper for UK AIFs and equivalent offshore funds have arisen following extensive discussion and consideration. A similar process would need to take place before such changes could be considered in those contexts.

**3.12** The draft regulations in Annex B deliver the Government's decision to legislate a 'white list' of financial transactions for UK AIFs as set out in the HM Treasury December 2008 discussion paper *Trading and investment for Authorised Investment Funds*. This includes, as set out in that document:

- the requirement that the AIFs meets the Genuine Diversity of Ownership condition (draft regulation 14E(1)(b));
- the removal of the precipice problem by ring-fencing 'white list' transactions for tax purposes and characterising these as non trading (draft regulation 14E(3)), with the characterisation of 'non-white list' transactions remaining to be determined by applying general tax principles (draft regulation 14E(4));
- provisions requiring financial traders who acquire shares or units in funds which benefit from these trading and investment changes to recognise distributions and realised and unrealised profits or losses on those shares or units in each taxable

period, and to bring them into account when computing the profits of their financial trade (Draft regulations 52B and 52C).

**3.13** If the Government finds evidence that either UK AIFs or their offshore equivalents are exploiting the legislation to give their UK investors an unfair tax advantage, the Government will take immediate and targeted action to prevent this.





# Draft regulations: tax elected funds

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**A.1** The draft regulations for Tax Elected Funds have been drawn up under the powers provided by sections 17(3) and 18 of the Finance (No. 2) Act 2005. These draft regulations work by inserting new regulations in the Authorised Investment Fund (Tax) Regulations 2006.

**A.2** The draft regulations for payment of Property Income Distribution from a UK-REIT net of tax have been drawn up under the powers provided by sections 973 and 974 of the Income Tax Act 2007.

**A.3** The draft regulations will be renumbered before being published in final form.

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## STATUTORY INSTRUMENTS

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**2009 No.**

**INCOME TAX**

**CORPORATION TAX**

**CAPITAL GAINS TAX**

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

<i>Made</i>	- - - -	<i>July 2009</i>
<i>Laid before the House of Commons</i>		<i>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.

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<sup>(1)</sup> 2005 c. 22.

<sup>(2)</sup> 2007 c. 3.

## **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 Regulations), after “Part 4A deals with Property AIFs;”, insert—  
“Part 4B deals with Tax Elected Funds;”.

### **Amendment of regulation 13**

4. In regulation 13 (treatment of interest distributions for purposes of loan relationships) at the end insert—

“(4) In this regulation an “interest distribution” includes a TEF distribution (non-dividend) (see regulation 69Z60(3)).”.

### **Amendment of regulation 17**

5. 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 apply.”.

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

6. After regulation 69Z41 insert the following Part—

“PART 4B  
TAX ELECTED FUNDS  
CHAPTER 1  
PRELIMINARY PROVISIONS

#### **Tax Elected Funds**

**69Z42.**—(1) This Part makes provisions 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.

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<sup>(3)</sup> 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 and 2008/705.

## 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.

## 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 Her Majesty’s 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 hold any estate, interest or right in or over land.

#### 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)<sup>(4)</sup>.

### **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 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 69Z68 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 under regulation 69Z49 must be made in writing to the Commissioners.

(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 paragraphs (4) to (9).

(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 paragraphs (4) to (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—

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<sup>(4)</sup> 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 13 of these Regulations.

- (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 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 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 made under regulation 69Z49 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) unit holder consent to the application is not required, or
    - (ii) unit holder consent has been given, in which case the statement must specify the date of the 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 the documents and statements supplied do not demonstrate that the authorised investment fund (or the proposed authorised investment fund) will meet all the TEF conditions.
- (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 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 incorporation and authorisation 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) distribution income, being distributions qualifying for exemption under section 1285 of CTA 2009 (UK company distributions)<sup>(5)</sup>;
- (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>(6)</sup>;

“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.

#### 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>(7)</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 within section 1285 of CTA 2009 (UK company distributions).

## CHAPTER 4

### DISTRIBUTIONS MADE BY TAX ELECTED FUNDS

#### Attribution of distributions

**69Z58.**—(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) distribution income,
- (b) property investment income, and
- (c) property business income.

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

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<sup>(5)</sup> 2009 c. 4.

<sup>(6)</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>(7)</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(36).

### **TEF distributions (dividends)**

**69Z59.**—(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 (dividends)” 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)**

**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 (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

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

**69Z61.**—(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**

**69Z62.** 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**

**69Z63.**—(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**

**69Z64.**—(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 69Z63(4)(d) and regulation 69Z66).

(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**

**69Z65.**—(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 paragraphs (4) and regulations 69Z63(4)(d) and 69Z66).

(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**

**69Z66.** 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**

**69Z67.**—(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 69Z63(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**

**69Z68.**—(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**

**69Z69.**—(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), 69Z60 (TEF distributions (non-dividend)) and 69Z61 (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**

**69Z70.**—(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

**69Z71.**—(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

**7.**—(1) Amend regulation 70 (application of section 234A of ICTA) as follows.

(2) After paragraph (3) insert—

“(4) In the case of a Tax Elected Fund, an appropriate statement for the purposes of section 234A of ICTA<sup>(8)</sup> includes a written statement—

(a) showing—

(i) the gross amount of the distribution made to the participator,

(ii) the number and class of units held by the participator 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,

(v) the date the distribution was made, and

(vi) the percentage of the distribution attributable to TEF distribution (dividend) and the percentage attributable to TEF distribution (non-dividend);

(b) providing details to allow the participator 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 sub-section (6) (in the case of a TEF distribution (non-dividend)) or sub-section (7) (in the case of a TEF distribution (dividend)) of section 234A; and

(c) providing the participator with an alternative method of obtaining the details of those amounts without recourse to electronic means.”.

## Amendment of headings

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

## Amendment to regulation 71

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

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<sup>(8)</sup> 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 the Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006

14.—(1) The Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006<sup>(9)</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.”.

July 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

[abc]

[pqr]

### 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”). The primary purpose of these Regulations is to insert a new Part 4B, dealing with a certain type of authorised investment fund (“Tax Elected Funds”), into 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, 13 and 17 of the principal Regulations respectively.

Regulation 6 inserts the new Part 4B 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 for the treatment of property investment income.

Chapter 4 of Part 4B is concerned with distributions made by Tax Elected Funds. Regulation 69Z58 provides for the total amount shown in the distribution accounts of a Tax Elected Fund to be attributed in two different ways; and regulations 69Z59 and 69Z60 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. Regulations 69Z61 is concerned with the obligation to deduct tax from a distribution to participants. Regulation 69Z62 makes a consequential modification to the Corporation Tax Act 2009.

Chapter 6 of Part 4B is concerned with compliance. Regulations 69Z63 to 69Z66 deal with the consequences where conditions for membership of the Tax Elected Funds regime are breached. Regulation 69Z67 provides for information to be provided to an officer of Revenue and Customs.

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<sup>(9)</sup> S.I. 2006/2867, to which there are no relevant amending instruments.

Chapter 7 of Part 4B is concerned with leaving the Tax Elected Funds regime. Regulations 69Z68 to 69Z71 provide for Part 4B to cease to apply to a fund in various different circumstances.

Regulations 7 to 13 make consequential amendments to the principal Regulations. Regulation 7 amends regulation 70 (application of section 234A of ICTA) to make provision for the information to be provided to a participator in a Tax Elected Fund. Regulations 8 to 12 make consequential amendments to provide for the treatment of TEF distributions (non-dividend).

Regulation 13 makes amendments to the Schedule to the principal Regulations to provide for abbreviations and defined expressions used in Part 4B.

Regulation 14 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.

[Impact assessment]

# B

## Draft regulations: trading and investment

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**B.1** The draft regulations have been drawn up under the powers provided by sections 17(3) and 18 of the Finance (No. 2) Act 2005.

**B.2** These draft regulations work by inserting new regulations in the Authorised Investment Fund (AIF) (Tax) regulations 2006. The draft regulations will be renumbered before being published in final form.

**B.3** The regulations also contain amendments to the way that the genuine diversity of ownership rules are included in the Authorised Investment Fund tax regulations. Currently the AIF regulations include a genuine diversity of ownership condition for Property Authorised Investment Funds and Qualified Investor Schemes. As the genuine diversity of ownership condition will also be needed for the Tax Elected Fund regime and the new rules for trading and investment, the regulations are being simplified to include only one genuine diversity of ownership condition which will apply to each of these regimes.

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### STATUTORY INSTRUMENTS

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**2009 No.xxxx**

**INCOME TAX**

**CORPORATION TAX**

**CAPITAL GAINS TAX**

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

<i>Made</i>	- - - -	<i>2009</i>
<i>Laid before the House of Commons</i>		<i>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(2) of the Finance Act (No. 2) Act 2005<sup>(1)</sup>.

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<sup>(1)</sup> 2005 c. 22.

## Citation and commencement

15. 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 (S.I. 2006/964)

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

### Amendment of regulation 2

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

- (a) after “interpretation;” insert “Part 1A deals with the genuine diversity of ownership condition;”, and
- (b) after “Part 2A deals with qualified investor schemes” insert “Part 2B deals with diversely owned AIFs;”.

### Amendment of regulation 6

18. After paragraph (6) of regulation 6 (further definitions generally relevant for authorised investment funds) 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.”.

### Amendment of regulation 8

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

““genuine diversity of ownership condition” has the meaning given by regulation 9A;”.

## Insertion of Part 1A

20. 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,
  - (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 Condition C.
- (4) Condition B is that neither—

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<sup>(2)</sup> S.I. 2006/964, referred to in the footnotes to these Regulations as “the principal Regulations, relevantly amended by S.I. 2006/3239, 2007/683, 2008/705, 2008/1463 and 2008/3159.

<sup>(3)</sup> Regulation 2 was amended by S.I. 2008/705 and 2008/3159.

- (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—
    - (i) limits investors to a limited number of specific persons or specific groups of connected persons, or
    - (ii) 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 the intended categories of investors 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) The authorised investment fund also meets the genuine diversity of ownership condition if—
  - (a) an investor in the fund is a unit trust scheme (a “feeder fund”),
  - (b) paragraphs (3) to (7) are met in relation to the authorised investment fund after taking into account 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) For the purposes of this regulation—
  - (a) sections 993 and 994 of ITA 2007 (connected persons)<sup>(4)</sup> apply in the case of a person chargeable to income tax, and
  - (b) section 839 of ICTA (connected persons)<sup>(5)</sup> applies in the case of a person chargeable to corporation tax.
- (10) In this regulation “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 instrument constituting the fund and its prospectus 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.

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<sup>(4)</sup> 2007 c.1.

<sup>(5)</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 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 to Schedule 1 to the Income Tax Act 2007 and by S.I. 1988/745 and 2005/3229.

(3) 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.

(4) The Commissioners must notify the applicant within 28 days of the receipt of the particulars (or, if paragraph (3) 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.

(5) 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 instrument constituting the fund or in its prospectus 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 instrument constituting the fund or in its prospectus in issue for the time being;
- (c) the instrument constituting the fund or the fund’s prospectus in issue for the time being is 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)).

(6) Paragraph (5)(c) does not apply if the manager of the fund has obtained a clearance given under this regulation which applies to the amendment.

(7) For the purposes of paragraph (5)(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 14B**

**21.** Regulation 14B (tax treatment of qualified investor schemes)<sup>(6)</sup> is amended as follows.

- (1) In paragraph (1) substitute “9A” for “14C”.
- (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**

**22.** Omit regulations 14C (the genuine diversity of ownership condition)<sup>(7)</sup> and 14D (clearance in relation to the genuine diversity of ownership condition)<sup>(8)</sup>.

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

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

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<sup>(6)</sup> Regulation 14B was inserted by S.I. 2008/3159.

<sup>(7)</sup> Regulation 14C was inserted by S.I. 2008/3159.

<sup>(8)</sup> Regulation 14D was inserted by S.I. 2008/3159.

## “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) The 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 the Corporation Tax Act 2009 does not apply to profits and losses arising from such an investment transaction.

(5) For the purposes of these Regulations “investment transaction” means a transaction falling with regulations 14F to 14L.

#### **Transactions in stocks or shares**

**14F.** Any transaction in stocks or shares is an investment transaction.

#### **Transactions in relevant contracts**

**14G.**—(1) Any transaction in a relevant contract is an investment transaction.

(2) For the purposes of this regulation a “relevant contract” is—

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

(3) For the purposes of paragraph (2) 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.

(4) For the purposes of paragraph (3) the reference to a loan relationship of a company is to be construed in accordance with regulation 14H but with references in that regulation to “diversely owned AIF” treated as references to the company.

(5) For the purposes of paragraph (2) 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.

(6) For the purposes of paragraph (5)(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.

(7) For the purposes of paragraph (2), (3) and (5) a 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; or

- (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 any of regulations 14F to 14L of these Regulations where the property is delivered.

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

(8) In paragraph (7) "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.

(9) For the purposes of paragraph (2) 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.

(10) For the purposes of paragraph (9)(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.

(11) For the purposes of paragraph (2) none of the following is a contract for differences—

- (a) a future;
- (b) an option;
- (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.

(12) For the purposes of paragraph (11)—

- (a) "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 become payable at a future time or over a period;
- (b) "loan relationship" is to be construed in accordance with regulation 14H but with references to "diversely owned AIF" in that regulation treated as references to the company.

(13) 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 where the option, the future or the contract for differences uses an index referred to in paragraph (9)(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 connected with the diversely owned AIF or the manager of the diversely owned AIF.

(14) For the purposes of this regulation—

- (a) sections 993 and 994 of ITA 2007 (connected persons) apply where the manager is a person other than a company, and
- (b) section 839 of ICTA (connected persons) applies in the case of a diversely owned AIF or where the manager is a person who is a company.

## **Transactions involving loan relationships or related transactions**

**14H.**—(1) 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 is an investment transaction.

(2) For the purposes of paragraph (1) a diversely owned AIF has a “loan relationship” where 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 (3) below are satisfied.
- (3) The conditions referred to in paragraph (2)(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.
- (4) In this regulation “exchange gains or losses” means—
- (a) profits or gains, or
  - (b) 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.

(5) 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.

(6) Subject to paragraph (7), where 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.

(7) 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.

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

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

(10) In paragraph (1) 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.

## **Transactions in units in collective investment schemes**

**14I.**—(1) Any transaction in units in a collective investment scheme is an investment transaction.

(2) For the purposes of this regulation “units” means the rights or interests (however described) of the participants in the collective investment scheme.

(3) 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.”

## **Transactions in securities**

**14J.**—(1) Any transaction in securities is an investment transaction.

(2) For the purposes of this regulation “securities” means securities of any description not falling within regulations 14F to 14I.

### **Transactions in buying or selling foreign currency**

**14K.** Any transaction consisting in the buying or selling of any foreign currency is an investment transaction.

### **Transactions in carbon emission trading products**

**14L.**—(1) Any transaction in a carbon emission trading product is an investment transaction.

(2) In this regulation a “transaction in a carbon emission trading product” means a transaction which meets conditions A and B.

(3) Condition A is that the transaction is a transaction—

- (a) in Community tradable emissions allowances, or
- (b) in transferable units issued pursuant to the Kyoto Protocol.

(4) Condition B is that the transaction does not otherwise fall within any other regulation of this Part.

(5) For the purpose of this regulation—

“Community tradable emissions allowances” means transferable allowances which relate to the making of emissions of greenhouse gases, and 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>(9)</sup>;

“units” includes assigned amount units, certified emission reductions, emission reduction units and removal units.”

### **Amendment of regulation 48**

**24.** In regulation 48(4) (dividend distributions: general)<sup>(10)</sup> substitute “9A” for “14C”.

### **Amendment of regulation 51**

**25.** In regulation 51(1)(b) (participants chargeable to corporation tax: holdings in qualified investor schemes where scheme does not meet the genuine diversity of ownership condition)<sup>(11)</sup> substitute “9A” for “14B”.

### **Insertion of regulations 52B and 52C**

**26.** After regulation 52A (companies carrying on general insurance business: treatment of certain amounts of tax as foreign tax)<sup>(12)</sup> insert—

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

**52B.**—(1) This regulation, and regulation 52C, apply where a financial trader has held, or holds, shares or units in a diversely owned AIF to which regulation 14E applies.

(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

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<sup>(9)</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).

<sup>(10)</sup> Regulation 48 was amended by S.I. 2008/3159.

<sup>(11)</sup> Regulation 51 was substituted by S.I. 2008/3159.

<sup>(12)</sup> Regulation 52A was inserted by S.I. 2006/3239, amended by 2007/683 and substituted by 2008/3158.

- (b) any amount required to be brought into account under regulation 52C.
- (3) In this regulation and in regulation 52C—
  - “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” means a person carrying on a business which is—
    - (a) a banking business,
    - (b) an insurance business or
    - (c) a business consisting wholly or in part in dealing in an instrument such that any profit on the sale of such instruments would form part of the trading profits of that business.
- (4) In paragraph (3) “dealing in an instrument” means a dealing in—
  - (a) stocks or shares;
  - (b) a relevant contract within regulation 14G;
  - (c) a loan relationship within regulation 14H;
  - (d) units in a collective investment scheme within regulation 14I;
  - (e) securities within regulation 14J;
  - (f) foreign currency; or
  - (g) a carbon emission trading product within regulation 14L.

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

**52C.**—(1) The amounts to be brought into account under this regulation are the amounts determined in accordance with the following Cases.

This is subject to paragraphs (3) to (6).

*Case 1*

Case 1 applies where 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.

*Case 2*

Case 2 applies where 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.

*Case 3*

Case 3 applies where the financial trader held shares or units in a diversely owned AIF at the beginning of the relevant period and disposed 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.

*Case 4*

Case 4 applies where 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.

- (2) 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) the amounts that are brought into account in accordance with Cases 1 to 4 and
  - (b) amounts within regulation 52B(2)(a).
- (3) This regulation 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.
- (4) 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 of the relevant period.
- (5) 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.
- (6) 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 CTA 2009 apply in relation to the financial trader.
- (7) In this regulation—
- (a) “acquisition cost” means the value of the consideration given for the acquisition of the shares or units;
  - (b) “disposal value” means the value of the consideration received for the disposal of the shares or units;
  - (c) “market value” means—
    - (i) 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;
    - (ii) 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.
  - (d) “relevant holding” means—
    - (i) any rights under a unit trust scheme;
    - (ii) a material interest in an offshore fund; or
    - (iii) any shares in an open-ended investment company.”.

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

27. In paragraph (b) of regulation 69D (conditions for this part to apply to company)<sup>(13)</sup> substitute “9A” for “69J”.

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

28. Omit regulation 69DA (conditions for this part to apply to a company where the company is also a qualified investor scheme)<sup>(14)</sup>.

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

29. Omit regulation 69J (the genuine diversity of ownership condition)<sup>(15)</sup>.

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<sup>(13)</sup> Regulation 69D was inserted by S.I. 2008/705 and amended by S.I. 2008/3159.

<sup>(14)</sup> Regulation 69DA was inserted by S.I. 2008/3159.

<sup>(15)</sup> Regulation 69J was inserted by S.I. 2008/705 and amended by S.I. 2008/3159.

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

30. In paragraph 5(b) of regulation 69O (the notification condition)<sup>(16)</sup> substitute “9A” for “69J”.

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

31. Regulation 69P (form and timing of notice under regulation 69O)<sup>(17)</sup> is amended as follows—

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

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

32. Regulation 69Q (contents of notice under regulation 69O)<sup>(18)</sup> 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”.

### **Omission of regulation 69U**

33. Omit regulation 69U (clearance in relation to the genuine diversity of ownership condition)<sup>(19)</sup>.

### **Amendment of regulation 69Z8**

34. In paragraph 1(a) of regulation 69Z8 (multiple breaches of separate conditions)<sup>(20)</sup> after “in” insert “regulation 9A or”.

### **Amendment of regulation 95**

35.—(1) Regulation 95 (modifications of CTA 2009)<sup>(21)</sup> is amended as follows.

(2) 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 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;”.

### **Amendment to Part 1 of the Schedule**

36. In Part 1 of the Schedule (abbreviation of Acts) at the appropriate place insert—

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“CTA 2009	The Corporation Tax Act 2009 (c. 4)”
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<sup>(16)</sup> Regulation 69O was inserted by S.I. 2008/705.

<sup>(17)</sup> Regulation 69P was inserted by S.I. 2008/705.

<sup>(18)</sup> Regulation 69Q was inserted by S.I. 2008/705.

<sup>(19)</sup> Regulation 69U was inserted by S.I. 2008/705.

<sup>(20)</sup> Regulation 69Z8 was inserted by S.I. 2008/705.

<sup>(21)</sup> 2009 (c. 4).

## Amendment to Part 2 of the Schedule

37.—(1) Amend Part 2 of the Schedule (index of expressions defined or otherwise explained)<sup>(22)</sup> as follows—

(2) In the entry relating to “genuine diversity of ownership condition”—

- (a) omit “(in Part 4A)”, and
- (b) substitute “9A” for “69J”.

(3) In the entry relating to “instrument constituting the scheme” substitute “6(7)” for “14B”.

(4) At the appropriate places in the Schedule insert—

“Diversely owned AIF	Regulation 14E(2)”
“Investment transaction	Regulation 14E(5)”.

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xx xxxxx 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

### EXPLANATORY NOTE

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

These Regulations amend the Authorised Investment Fund (Tax) Regulations 2006 (S.I. 2006/964) (“the principal Regulations”). These Regulations come into force on 1 September 2009.

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 introduces the amendments to the principal Regulations.

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

Regulation 4 inserts a definition of “the instrument constituting the fund” into regulation 6 of the principal Regulations.

Regulation 5 inserts a definition of “genuine diversity of ownership condition” 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 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 8 omits regulations 14C and D of the principal Regulations, which previously contained the GDO condition and the clearance procedure for Part 2A of the principal Regulations.

Regulation 9 inserts a new Part, 2B, into the principal Regulations comprising regulations 14E to 14L. New regulation 14E details the tax treatment of an authorised investment fund which carries out an investment transaction of a description within regulations 14F to 14L and which meets the GDO condition in the particular period under consideration. New regulation 14F specifies that a transaction in stocks or shares is an investment transaction. New regulation 14G specifies that a transaction in a relevant contract is an investment transaction, this contains various definitions of terms used in new regulation 14G. New Regulation 14H specifies that a transaction which results in a diversely owned authorised investment fund becoming a party to a loan relationship or a related transaction in respect of such a relationship is an investment transaction. New regulation 14I specifies that any transaction in units in a collective investment scheme is an investment transaction and provides for a specific extended meaning of “units”. New regulation 14J specifies that a transaction in securities is an investment transaction for the purposes of the principal Regulations. New regulation 14K specifies that a transaction in buying or selling currency is an

<sup>(22)</sup> Part 2 of the Schedule was amended by S.I. 2007/794, 2008/705 and 2008/3159

investment transaction. New regulation 14L specifies that a transaction in a carbon emissions trading product is an investment transaction and provides that such a transaction is one which meets conditions A and B which are set out in the regulation.

Regulation 10 amends regulation 48(4) of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 11 amends regulation 51(1)(b) of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 12 inserts new regulations, 52B and 52C, 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.

Regulation 13 amends regulation 69D of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 14 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 15 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 16 amends regulation 69O of the principal Regulations to reflect that the GDO condition is contained in regulation 9A.

Regulation 17 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 18 amends regulation 69Q of the principal Regulations to include a reference to regulation 9A. This amendment reflects the fact that the GDO condition is no longer set out in regulation 69J but is located in regulation 9A.

Regulation 19 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 20 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 21 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 (c. 4).

Regulation 22 amends Part 1 of the Schedule to the principal Regulations to reflect references to the Corporation Tax Act 2009. Part 1 of the Schedule contains abbreviations used in the principal Regulations and an explanation of those abbreviations.

Regulation 23 amends Part 2 of the Schedule to the principal Regulations which contains the index of expressions defined or otherwise explained. The amendments amend the entries relating to the GDO condition and “instrument constituting the scheme” and insert references to “diversely owned AIF” and to “investment transaction”.





# Confidentiality of responses

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## Confidentiality

**C.1** Information provided in response to this paper, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

**C.2** If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

**C.3** The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



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