

2010 No.

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

**The Authorised Investment Funds (Tax) (Amendment No. Y)
Regulations 2010**

<i>Made</i> - - - -	<i>February 2010</i>
<i>Laid before the House of Commons</i>	<i>February 2010</i>
<i>Coming into force</i> - -	<i>6th March 2010</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(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Authorised Investment Funds (Tax) (Amendment Y) Regulations 2010 and come into force on [6 March 2010].

(2) This is subject to the transitional provisions in regulations 7 and 8.

Amendment of the Authorised Investment Funds (Tax) Regulations 2006

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

Amendment of regulation 2

3. In regulation 2 (structure of the Regulations) of the principal Regulations after “Part 6 contains further provisions relating to AIFs” insert “Part 6A contains provisions relating to Funds Investing in Non-Reporting Offshore Funds (FINROFs)”.

Amendment of regulation 8

4. In regulation 8 (general interpretation) of the principal Regulations, after the definition of “owner of shares” insert—

“ “prospectus” includes a proposed prospectus and supplements to a prospectus.”.

(a) 2005 c 22.

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

Amendment of regulation 69E

5. In regulation 69E (the property investment business condition)(a) of the principal Regulations, omit paragraph (4).

Insertion of Part 6A

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

“PART 6A
Funds Investing in Non-Reporting Offshore Funds
CHAPTER 1
Preliminary Provisions

Structure of this Part

85A. The structure of this Part is as follows—

This Chapter contains preliminary provisions

Chapter 2 deals with entry into the Funds Investing in Non-Reporting Offshore Funds regime.

Chapter 3 deals with the tax treatment of Funds Investing in Non-Reporting Offshore Funds and of participants in Funds Investing in Non-Reporting Offshore Funds.

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

Chapter 5 deals with disposal of units in Funds Investing in Non-Reporting Offshore Funds.

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

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

Chapter 8 deals with exit from the Funds Investing in Non-Reporting Offshore Funds regime.

Interpretation

85B. In this Part—

“non-reporting fund” means an offshore non-reporting fund to which the Offshore Funds Regulations (apart from Part 3) apply,

“offshore fund” means a fund within the meaning of section 40A of FA 2008(b),

“the Offshore Funds Regulations” means the Offshore Funds (Tax) Regulations 2009(c),

“reporting fund” means an offshore fund to which Part 3 of the Offshore Fund Regulations applies.

Application of this Part

85C.—(1) This Part applies to—

(a) Regulation 69E was inserted by S.I. 2008/705.
(b) 2008 c 9.
(c) S.I. 2009/3001.

- (a) a fund which meets the investment condition in regulation 85D (the investment condition),
 - (b) a fund in respect of which an election has been made in accordance with regulation 85F (elective FINROFs), and
 - (c) a participant in a fund mentioned in paragraph (a) or (b).
- (2) A fund or a participant mentioned in paragraph (1) shall—
- (a) save where this Part makes different provision, be subject to the rest of these Regulations, and
 - (b) be charged to tax in accordance with Chapter 3 of this Part.
- (3) A fund to which this Part applies shall be known as a Fund Investing in Non-Reporting Offshore Funds (“FINROF”)

The investment condition

85D.—(1) An authorised investment fund meets the investment condition at any time at which it invests more than 20% of the value of the fund’s gross assets in non-reporting offshore funds or in other FINROFs.

- (2) This regulation is subject to regulation 85E (excluded interests).

Excluded interests

85E.—(1) For the purposes of regulation 85D(1) (the investment condition), the interests specified in this regulation shall not be taken into account when determining whether an authorised investment fund meets the requirements of paragraph (1) of that regulation.

(2) The interests specified are any interest in an offshore fund in respect of any disposal of which there would, by virtue of regulation 29 (interests in transparent funds) of the Offshore Funds Regulations, be no liability to tax on the authorised investment fund under regulation 17 (the charge to tax) of the Offshore Funds Regulations.

Elective FINROFs

85F.—(1) An authorised investment fund may elect to be treated as a FINROF (an “elective FINROF”), notwithstanding that at the time that the election is made it does not meet the investment condition in regulation 85D.

- (2) The legal owner must notify the Commissioners in writing—
 - (a) requesting that the fund be treated as a FINROF; and
 - (b) specifying the date on which the fund is to be so treated.

(3) But the legal owner may not specify a date which is more than [90 days/3 months] before the date on which the notification mentioned in paragraph (2) is sent to the Commissioners.

CHAPTER 2

Entry into FINROF regime

Entry into FINROF regime: the basic rule

- 85G.**—(1) This Part applies to an authorised investment fund from—
- (a) the date on which the authorised investment fund satisfies the conditions in regulation 85D (the investment condition); or
 - (b) the date specified in the notice given under regulation 85F (elective FINROFs), whichever is the earlier.

(2) Chapter 8 deals with exit from the FINROF regime.

The requirement to notify the Commissioners where regulation 85D is satisfied

85H.—(1) The legal owner of an authorised investment fund which is a FINROF by virtue of regulation 85D (the investment condition) must, in accordance with this regulation, notify the Commissioners—

- (a) that the authorised investment fund meets the investment condition, and
- (b) of the date on which the fund first met that condition.

(2) For the purposes of sub-paragraph (b) of paragraph (1), no account shall be taken of the period before the date of any previous valid election under regulation 85Z10 (exit from the FINROF regime).

(3) The legal owner must notify the Commissioners in writing of the matters specified in paragraph (1) no later than 3 months from the date mentioned in paragraph (1)(b).

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

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

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

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

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

(2) The notification under paragraph (1) must be made within 3 months of the date on which the fund became subject to the provisions of this Part.

(3) For the purposes of paragraph (2), no account shall be taken of the period before the date of any previous valid election under regulation 85Z10 (exit from the FINROF regime).

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

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

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

Inadvertent fulfilment of investment condition

85J.—(1) This regulation applies where—

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- (a) 1970 c. 9. Section 100 was substituted for the original by section 167 of the Finance Act 1989 (c.26). It was amended by S.I. 1994/1813, paragraph 3(2) of Schedule 11 to the Finance Act 1990 (c.29), section 315(2) of the Finance Act 2004 (c.12).
 - (b) Sections 100A and 100B were substituted for the original section 100 by section 167 Finance Act 1989. Section 100A was amended by paragraph 29(b) of Schedule 24 to, and by Part 5(5) of Schedule 27 to, the Finance Act 2007 (c.11). Section 100B was amended by paragraph 31 of Schedule 19 to the Finance Act 1994 (c.9), by S.I. 2009/571, by section 103(7) and 115(7) of the Finance Act 1995 (c.4), by S.I. 2009/56 and by S.I. 1994/1813. Section 103(4) was amended by S.I. 2009/56. Section 118(2) was amended by S.I. 2009/56, section 94 of the Finance (No. 2) Act 1987 (c.51) and by Part 7 of Schedule 8 to the Finance Act 1970 (c.24).

- (a) an authorised investment fund meets the investment condition specified in regulation 85D (“the investment condition”) but the legal owner has failed to notify the Commissioners or the participants, and
- (b) the requirements in this regulation are satisfied.

(2) Where the legal owner can show that all reasonable care was taken to avoid the fund becoming a fund to which paragraph (1)(a) applies, the fund shall be treated as if it had never met that condition and, as a result, none of the provisions of this Part (including the penalty provisions in regulations 85H and 85I) shall apply to the fund.

(3) Paragraph (2) applies if, and only if—

- (a) the Commissioners and the participants are notified as soon as possible when the legal owner becomes aware that the fund is a fund to which paragraph (1)(a) applies—
 - (i) of that fact; and
 - (ii) the steps that the fund has taken, or proposes to take, to ensure that the fund no longer satisfies the requirements of regulation 85D;
- (b) steps are taken to ensure the fund no longer satisfies the requirements of regulation 85D as soon as reasonably practicable (and in any event no longer than 3 months after the legal owner first became aware that the fund met those requirements); and
- (c) the legal owner has satisfied the Commissioners that the fund no longer meets the requirements of regulation 85D and that the fund has taken the steps referred to in sub-paragraph (b) as soon as reasonably practicable.
- (d) the Commissioners have given written notice to the legal owner that they are so satisfied.

Appeal against refusal to provide written acknowledgment

85K.—(1) If the Commissioners refuse to provide the legal owner with a written notice under sub-paragraph (d) of paragraph (3) of regulation 85J (inadvertent fulfilment of investment condition), the legal owner may appeal against the refusal.

(2) The notice of appeal must be given to the Commissioners within a period of 28 days beginning with the day on which the Commissioners refused to provide the written notice.

(3) On an appeal that is notified to the tribunal, the tribunal shall determine whether it was just and reasonable for the Commissioners to refuse to provide the written notice.

(4) If the tribunal allow the appeal—

- (a) they may direct that this Part shall not apply to the fund, and
- (b) if they do, regulation 85J (inadvertent fulfilment of investment condition) shall apply as if the Commissioners had issued a notice under paragraph (3)(d) of that regulation.

(5) If the tribunal refuse the appeal, this Part is treated as having applied to the fund from the date on which the fund began to satisfy requirements of regulation 85D (the investment condition).

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

85L.—(1) A participant in an authorised investment fund to which either regulation 85D (the investment condition) or 85F (elective FINROFs) applies may make an election to be treated for the purposes of the TCGA 1992—

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

(2) The disposal referred to in paragraph (1)(a) is treated as made for a consideration equal to the market value of the participant's holding of units in the fund on the deemed disposal date.

(3) The acquisition referred to in paragraph (1)(b) is treated as made for the same amount as the disposal referred to in paragraph (1)(a).

(4) If the participant is chargeable to income tax, the election mentioned in paragraph (1) must be made by being included in a return made for the tax year which includes the deemed disposal date.

(5) If the participant is chargeable to corporation tax, the election mentioned in paragraph (1) must be made by being included in the participant's company tax return for the accounting period which includes the deemed disposal date.

(6) In this regulation—

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

CHAPTER 3

Tax treatment of FINROFs and of participants in FINROFs

The charge to tax

Tax treatment of FINROFs

85M.—(1) This regulation applies from the date on which a fund became a FINROF.

(2) A FINROF does not incur any liability to tax under regulations 17 (the charge to tax) and 18 (the charge to tax: further provisions) of the Offshore Fund Regulations.

The charge to tax: general provisions

85N.—(1) There is a charge to tax if—

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

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

(3) Condition B is that—

- (a) the asset consists of units in an authorised investment fund that—
 - (i) had, at any time before the date of disposal been a FINROF but
 - (ii) had ceased to be a FINROF before the date of disposal,
- (b) the fund was a FINROF for some or all of the material period, and
- (c) an election under regulation 85Z12(2) (participant's power to elect for deemed disposal) was not prevented by paragraph (5) of that regulation, and
- (d) no valid election was made under regulation 85Z12(2) in respect of the asset.

(4) In this regulation “material period” means a period beginning with the day on which consideration was given for the acquisition of the asset and ending with the disposal date.

(a) 1998 c. 36.

The charge to tax: further provisions

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

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

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

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

Application of certain provisions of TCGA 1992

85P. The following enactments have effect in relation to income tax or corporation tax in respect of income gains arising in respect of the disposal of units in a FINROF as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains—

- (a) section 2(1) of TCGA 1992(c) (persons chargeable to capital gains tax);
- (b) section 10 of TCGA 1992(d) (non-resident with a United Kingdom branch or agency);
- (c) section 10B of TCGA 1992(e) (non-resident company with United Kingdom permanent establishment).

Application of section 10A of TCGA 1992

85Q.—(1) Section 10A of TCGA 1992(f) (temporary non-residence) applies for the purposes of this Part with the following modifications.

(2) The section applies as if, in subsection (2)—

- (a) the reference to section 86A was omitted;
- (b) for the reference to capital gains tax there were substituted a reference to income tax;
- (c) in paragraph (a), for the reference to chargeable gains and losses there were substituted a reference to income gains;
- (d) paragraph (b) and (c) were omitted; and
- (e) for the references to gains or losses there were substituted a reference to income gains.

(3) The section applies as if, in subsection (3)—

- (a) for the reference to gains and losses there were substituted a reference to income gains; and
- (b) for the reference to any gain or loss there were substituted a reference to any income gains.

(a) 2005 c 5. Section 688(1) was amended by paragraphs 17 and 22 of Schedule 12 to the Finance Act 2008 (c. 9).
(b) 2009 c .4.
(c) 1992 c.12.
(d) Section 10 was amended by paragraph 2(2) of Schedule 27 to the Finance Act 2003 (c.14).
(e) Section 10B was inserted by section 149(4) of the Finance Act 2003 (c.) and amended by paragraph 360 of Schedule 1 to the Corporation Tax Act 2009 (c.4).
(f) Section 10A was inserted by section 127(1) of the Finance Act 1998 (c.36) and amended by section 32 of the Finance (No. 2) Act 2005 (c. 22), section 74(4)(a) of the Finance Act 2006 (c. 25) and paragraph 59 of Schedule 7 to the Finance Act 2008.

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

CHAPTER 4

Exceptions, etc from the charge to tax

Exceptions from the charge to tax

85R.—(1) No liability arises under regulation 85N (the charge to tax: general provisions) if any of conditions A to E is met.

(2) Condition A is that the participant is required to treat its units in the FINROF as a loan relationship under Chapter 3 of Part 6 of CTA 2009(a).

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

(4) Condition C is that the asset is an intangible fixed asset to which the provisions of Part 8 of CTA 2009 apply.

(5) Condition D is that the asset consists of excluded indexed securities as defined in section 433 of ITTOIA 2005(b).

(6) Condition E is that the asset is a right arising under a policy of insurance.

Trading stock etc.

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

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

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

Long-term insurance funds of insurance companies

85T.—(1) No liability to tax arises under regulation 85N in respect of disposals of assets of an insurance company's long-term insurance fund.

(2) In paragraph (1) “insurance company” and “long-term insurance fund” have the same meaning as is section 431(2) of ICTA(a).

(a) 2009 c.4.
 (b) 2005 c.5.

Charitable companies and charitable trusts

85U.—(1) A charitable company or a charitable trust shall be exempt from corporation tax in respect of an income gain arising on the disposal of units in a FINROF if the gain is applicable and is applied for charitable purposes.

(2) Paragraphs (3) and (4) apply if—

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

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

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

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

CHAPTER 5

Disposal of units in FINROFs

Application of this Chapter

85V. The regulations in this Chapter apply if a participant disposes of an asset and at the time of the disposal—

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

Disposal of an asset: the basic rule

85W.—(1) There is a disposal of an asset for the purposes of these Regulations if there would be a disposal of an asset for the purposes of TCGA 1992.

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

Provisions applicable on death

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

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

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- (a) 1988 c.1. In section 431(2), the definition of “insurance company” was substituted by S.I. 2001/3629 and amended by S.I. 2006/3270. As regards the expression “long-term insurance fund”, a definition of “long-term business fund” was inserted by paragraph 1(2) of the Finance Act 1990 (c.29) and amended by Part 5(26) of Schedule 41 to the Finance Act 1996 (c.X). The definition was re-labelled as a definition of “long-term insurance fund” and further amended by S.I. 2001/3629.
 - (b) Section 506 was amended by section 55(2) of the Finance Act 2006 (c.25) and paragraph 95 of Schedule 1 to the Income Tax Act 2007 (c.3).
 - (c) Section 62 was amended by paragraph 5 of Schedule 21 to the Finance Act 1998 (c.36), section 52 of the Finance Act 2002 (c.23) and paragraph 29 of Schedule 2 to the Finance Act 2008 (c.9).

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

Application of section 135 of TCGA 1992

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

- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is units in a FINROF, and
- (b) the interest in the entity that is company B for those purposes that is exchanged is not units in such a fund.

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

Application of section 136 of TCGA 1992

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

- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is units in a FINROF, and
- (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.

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

CHAPTER 6

Income gains and computation of income gains

General provisions

85Z1.—(1) An income gain arises to a person on the disposal of an asset if a basic gain arises on the disposal.

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

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

The basic gain and its computation

85Z2.—(1) In the case of a participant chargeable to income tax, the basic gain is a gain of the amount which would be the gain on that disposal for the purposes of TCGA 1992 if the gain were computed without regard to any charge to income tax arising under this Part.

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

(a) Section 135 was substituted by paragraph 1 of Schedule 9 to the Finance Act 2002 (c.23).
(b) Section 136 was substituted by paragraph 2 of Schedule 9 to the Finance Act 2002 (c.23).

- (a) without regard to any charge to corporation tax arising under this Part, and
 - (b) without regard to any indexation allowance on the disposal under TCGA 1992.
- (3) The computation of the basic gain is subject to—
- (a) regulation 85X (provisions applicable on death);
 - (b) regulation 85Y (application of section 135 of TCGA 1992);
 - (c) regulation 85Z (application of section 136 of TCGA 1992);
 - (d) regulation 85Z3 (earlier disposal to which the no gain/no loss basis applies);
 - (e) regulation 85Z4 (modifications of TCGA 1992); and
 - (f) regulation 85Z5 (losses).

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

85Z3.—(1) This regulation applies if—

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

Modifications of TCGA 1992

85Z4.—(1) If the disposal forms part of a transfer to which section 162 of TCGA 1992 (roll-over relief on transfer of business) applies, the basic gain arising on the disposal is computed without regard to any deduction which falls to be made under that section in computing a chargeable gain.

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

Losses

85Z5.—(1) If the effect of any computation under regulations 85Z2 (the basic gain and its computation) to 85Z4 (modifications of TCGA 1992) would be to produce a loss, the basic gain on the disposal is nil.

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

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

(a) Section 56(2) was amended by section 93(5) of the Finance Act 1994 (c.9).

(b) Section 165 was amended by paragraph 1(1) of Schedule 7 to the Finance Act 1993 (c.34), section 140(4) of, and Part 3(31) of Schedule 27 to, the Finance Act 1998 (c.36), section 90(1), (3) and (4) of the Finance Act 2000 (c.17), paragraph 3 of Schedule 21 to the Finance Act 2004 (c.12) and paragraph 33 of Schedule 2 to the Finance Act 2008 (c.9). Section 260 was amended by section 72(6) of, and paragraph 4(2) of Schedule 13 to, the Finance Act 1995 (c.4), Parts 3(31) and 4 of Schedule 27 to the Finance Act 1998, section 90(2) of the Finance Act 2000, paragraph 5 of Schedule 21 to the Finance Act 2004 and paragraph 32 of Schedule 20 to the Finance Act 2006 (c.25).

(c) Section 16 was amended by section 113(1) of the Finance Act 1995, paragraph 7 of Schedule 4 to the Finance (No. 2) Act 2005 (c.22), paragraph 298 of Schedule 1 to the Income Tax Act 2007 (c.3) and paragraph 61 of Schedule 7 to the Finance Act 2008.

CHAPTER 7

Deduction of income gains in computing chargeable gains

Scope of this Chapter

85Z6.—(1) This Chapter applies if—

- (a) a disposal gives rise to an income gain, and
- (b) that disposal also constitutes the disposal of the units concerned for the purposes of TCGA 1992.

(2) In this Chapter, the disposal specified in paragraph (1)(b) is called the “TCGA disposal”.

Treatment of the TCGA disposal: general rules

85Z7.—(1) This regulation applies for the purposes of the computation of the chargeable gain arising on the TCGA disposal.

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

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

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

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

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

Modification of section 162 TCGA 1992

85Z8.—(1) This regulation applies if the TCGA disposal forms part of a transfer to which section 162 of TCGA applies (roll-over relief on transfer of business in exchange wholly or partly for shares).

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

Application of section 128 of TCGA 1992

85Z9.—(1) This regulation applies if there is a disposal to which this Part applies by virtue of—

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

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

CHAPTER 8
Exit from FINROF regime

Exit from FINROF regime

85Z10.—(1) The provisions of this Part apply to a FINROF until the legal owner makes an election for its application to cease.

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

(3) An election may not be made in respect of a FINROF unless—

- (a) the FINROF has less than 20% of its assets invested in non-reporting funds or in other FINROFs—
 - (i) at the date of the election, and
 - (ii) at the date stated under paragraph (4) (the date from which this Part is to cease to apply to the FINROF) ; and
- (b) the FINROF has been subject to this Part for at least one complete accounting period.

(4) An election under this regulation must—

- (a) be made no later than 3 months after the date on which this Part is to cease to apply to the FINROF, and
- (b) state the date from which this Part is to cease to apply to the FINROF.

Requirement to notify participants when a fund exits from the FINROF regime

85Z11.—(1) The legal owner must notify the participants in a fund that Part 6A no longer applies to apply to the fund.

(2) The notification under paragraph (1) must be made no later than 3 months after the date mentioned in regulation 85Z10(4)(b).

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

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

Participant's power to elect for deemed disposal

85Z12.—(1) The provisions of this Part shall continue to apply to a participant in a FINROF unless the participant makes an election in accordance with paragraph (2).

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

- (a) as disposing of the units owned by the participant in the FINROF at its market value on the disposal date, and
- (b) as acquiring a holding in the authorised investment fund on the disposal date.

(3) The income gain arising on the deemed disposal referred to in paragraph (2)(a) shall be determined in accordance with Chapter 6 of this Part.

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

(5) An election may not be made under paragraph (2) unless the income gain arising on the disposal referred to in paragraph (2)(a) (determined in accordance with Chapter 6 of this Part) is greater than zero.

(a) 1970 c. 9.

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

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

(8) In this regulation—

“company tax return” has the same meaning as in Schedule 18 to the Finance Act 1998(a); and

the “deemed disposal date” means the date when, in accordance with paragraph (4) of regulation 85Z10, the fund ceases to be a FINROF.”.

Transitional provisions: the first case

7.—(1) This regulation applies to an authorised investment fund which, as of the date on which these Regulations came into force, has invested at least 20% of its assets in a non-reporting fund

(2) Part 6A of the principal Regulations applies to such an authorised investment fund from [6th] June 2010.

(3) Provided that the authorised investment fund satisfies the requirements of paragraph (1) on [6th] June 2010 that date shall, for the purposes of regulation 85G(1)(a) (entry into FINROF regime: the basic rule), be treated as the date from which the authorised investment fund satisfies the conditions in regulation 85D (the investment condition).

Transitional provisions: the second case

8.—(1) This regulation applies to an authorised investment fund which holds investments in an offshore fund that is reasonably expected by the manager of the authorised investment fund to gain distributing fund status under the transitional rules in paragraph (3) of Schedule 1 to the Offshore Fund Regulations(b).

(2) Investments in the offshore fund mentioned in paragraph (1) shall be treated as investments in a reporting fund for the purposes of Part 6A of the principal Regulations.

	<i>Name</i>
	<i>Name</i>
[6th] March 2010	Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

(a) 1998 c. 36.

(b) Paragraph (3) was amended by regulation 5(3) of S.I. 2009/3139.