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STATUTORY INSTRUMENTS

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**2009 No. 2036**

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

**Insertion of Part 4B**

24. After regulation 69Z41 insert the following Part—

**“PART 4B  
TAX ELECTED FUNDS  
CHAPTER 1  
PRELIMINARY PROVISIONS**

**Tax Elected Funds**

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

**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;

“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.

## 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 HM 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 have a UK property business or an overseas property business.

#### **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)(1).

### **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 shareholder or 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 69Z70 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 must be made in writing to the Commissioners.

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(1) 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 32(2) of these Regulations.

(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 paragraph (8).

(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 paragraph (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—

- (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 at least 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 at least 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 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) shareholder or unit holder consent to the application is not required, or
    - (ii) shareholder or unit holder consent has been given, in which case the statement must specify the date of the shareholder or 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—
- (a) the documents supplied do not demonstrate that the authorised investment fund (or the proposed authorised investment fund) will meet all the TEF conditions, or
  - (b) the statement given in accordance with regulation 69Z51(3)(a) or (5)(a) does not demonstrate that the fund (or proposed fund) can reasonably be expected to meet all the TEF conditions throughout the specified accounting period or the first accounting period.
- (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 shareholder, 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 authorisation by the Financial Services Authority 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) dividend income;
- (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(2).

#### 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)(3) 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 that is exempt for the purposes of Part 9A of CTA 2009 (company distributions)(4) but shall not be treated as franked investment income.

#### Treatment of distributions

**69Z58.** Section 931R of CTA 2009 (election that distribution should not be exempt)(5) shall not apply in relation to distributions received by a Tax Elected Fund.

## CHAPTER 4

### DISTRIBUTIONS MADE BY TAX ELECTED FUNDS

#### Attribution of distributions

**69Z59.**—(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) dividend income,
  - (b) property investment income, and

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(2) FA 2006 is an abbreviation for the [Finance Act 2006 \(c. 25\)](#) provided for in Part 1 of the Schedule to the principal Regulations.

(3) 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 \(c. 36\)](#).

(4) Part 9A was inserted by Schedule 14 to the [Finance Act 2009 \(c. 10\)](#).

(5) Section 931R was inserted by Schedule 14 to the Finance Act 2009.

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

**TEF distributions (dividends)**

- 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 (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 (dividend)” 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)**

- 69Z61.**—(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

*TEF distribution (dividend)*

**Participants chargeable to corporation tax**

- 69Z62.**—(1) If a TEF distribution (dividend) is made for a distribution period to a participant within the charge to corporation tax, regulations 48 to 52A (dividend distributions) shall apply with the modifications specified in paragraph (2).
- (2) The specified modifications are—
- (a) for “dividend distribution” in each place it occurs there shall be substituted “TEF distribution (dividend)”;
  - (b) in regulation 50 (references to gross income) for “distribution accounts” there shall be substituted “TEF distributions (dividends) account”;
  - (c) for “an authorised investment fund” in each place it occurs there shall be substituted “a Tax Elected Fund”; and
  - (d) for “the authorised investment fund” in each place it occurs there shall be substituted “the Tax Elected Fund”.



*TEF distributions (non-dividend)*

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

**69Z63.**—(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**

**69Z64.** 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**

**69Z65.**—(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**

**69Z66.**—(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 69Z65(4)(d) and 69Z68).

(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**

**69Z67.**—(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 paragraph (4) and regulations 69Z65(4)(d) and 69Z68).

(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**

**69Z68.** 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**

**69Z69.**—(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 69Z65(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**

**69Z70.**—(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**

**69Z71.**—(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), 69Z61 (TEF distributions (non-dividend)) and 69Z63 (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**

**69Z72.**—(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**

- 69Z73.**—(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.”.