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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

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

**PART 3**

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

**CHAPTER 6**

**TRANSACTIONS BY CERTAIN REPORTING  
FUNDS WHICH ARE NOT TREATED AS TRADING**

*Conditions to be met by reporting funds for this Chapter to apply*

**Introductory**

**73.**—(1) A reporting fund meets the conditions for this Chapter to apply in respect of a period of account if it meets—

- (a) the equivalence condition (see regulation 74), and
- (b) the genuine diversity of ownership condition (see regulations 75 and 76).

(2) In this Part a “diversely owned fund” means a reporting fund in respect of which the conditions mentioned in paragraph (1) are met for a period of account.

**The equivalence condition**

**74.**—(1) The equivalence condition is met if the fund meets condition A or B throughout the period of account.

(2) Condition A is that the fund is recognised by the Financial Services Authority within the meaning of section 264, 270 or 272 of FISMA 2000.

(3) Condition B is that the fund is a UCITS fund.

**The genuine diversity of ownership condition**

**75.**—(1) The genuine diversity of ownership condition is met if the fund meets conditions A to C throughout the period of account.

(2) Condition A is that the fund produces documents, available to investors and to HMRC, which contain—

- (a) a statement specifying the intended categories of investor,
- (b) an undertaking that interests in the fund will be widely available, and
- (c) an undertaking that interests in the fund will be marketed and made available in accordance with the requirements of paragraph (4)(a).

(3) Condition B is—

- (a) that the specification of the intended categories of investor do not have a limiting or deterrent effect, and
  - (b) that any other terms or conditions governing participation in the fund do not have a limiting or deterrent effect.
- (4) Condition C is—
- (a) that interests 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) that a person who falls within one of the intended categories of investors can, upon request to the manager of this fund, obtain information about the fund and acquire units in it.

**The genuine diversity of ownership condition: further provisions**

**76.**—(1) For the purposes of regulation 75(3) a limiting or deterring effect means an effect which—

- (a) limits investors to a limited number of specific persons or specific groups of connected persons, or
  - (b) deters a reasonable investor falling within one of the intended categories of investor from investing in the fund.
- (2) Condition C (see regulation 75(4)) 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.
- (3) For the purposes of this regulation—
- (a) sections 993 and 994 of ITA 2007 (connected persons) apply in the case of a person chargeable to income tax, and
  - (b) section 839 of ICTA(1) (connected persons) applies in the case of a person chargeable to corporation tax.

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(1) 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), paragraph 223 of Schedule 1 to the Income Tax Act 2007 (c. 3) and by S.I. 1988/745 and 2005/3229.