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STATUTORY INSTRUMENTS

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**2006 No. 964**

**The Authorised Investment Funds (Tax) Regulations 2006**

[<sup>F1</sup>PART 4A

PROPERTY AIFS

CHAPTER 3

THE TAX TREATMENT OF PROPERTY AIFS

*[<sup>F1</sup>Further provisions*

**Textual Amendments**

**F1** Pt. 4A inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5

**Profit/financing costs in the case of a Property AIF that is a qualified investor scheme**

**69Z9.**—(1) This regulation applies if conditions A and B are met.

(2) Condition A is that an open-ended investment company to which this Part applies is a qualified investor scheme.

(3) Condition B is that the result of the following calculation is less than 1.25 in respect of an accounting period—

Income / Financing Costs

IncomeFinancing Costs

(4) In paragraph (3)—

“Income” means the amount of the net income of F (tax-exempt) arising in the accounting period (before the offset of capital allowances, of losses from a previous accounting period, and of amounts taken into account under regulation 69Z1(3)), and

“Financing Costs” means the amount of the financing costs incurred in that period in respect of the business of F (tax-exempt).

(5) An amount shall be charged to corporation tax.

(6) That amount is determined as follows—

*Step One*

Determine the financing costs which, given the actual income, would produce the result of 1.25 in the calculation specified in paragraph (3) (the “theoretical financing costs”).

*Step Two*

Determine the amount by which the actual financing costs exceed the theoretical financing costs (“the excess financing cost”).

*Step Three*

Divide the main rate at which corporation tax is charged for the accounting period by the rate at which corporation tax is charged on an open-ended investment company for the accounting period (see section 468A(1) of ICTA) to determine the multiplier.

*Step Four*

Multiply the excess financing cost by the multiplier.

The result is the amount charged to tax.

(7) For the purposes of paragraphs (3) and (4) “financing costs” are the costs of debt finance; and in calculating the costs of debt finance in respect of an accounting period the matters to be taken into account include—

- (a) costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of FA 1996 (loan relationships), other than debits in respect of exchange losses from such relationships (within the meaning of section 103(1A) and (1B) of that Act),
- (b) any exchange gain or loss from a debtor relationship within the meaning of that Chapter in relation to debt finance,
- (c) any credit or debit falling to be brought into account under Schedule 26 to FA 2002 (derivative contracts) in relation to debt finance,
- (d) the financing cost implicit in a payment under a finance lease, and
- (e) any other costs arising from what would be considered, in accordance with generally accepted accounting practice, to be a financing transaction.

(8) No loss, deficit, expense or allowance may be set off against the amount charged to tax by paragraph (5).

**Cancellation of tax advantage**

**69Z10.**—(1) This regulation applies if a company to which this Part applies has tried to obtain a tax advantage for itself or another person.

(2) The Commissioners may give a notice to the company specifying the tax advantage.

(3) If the Commissioners give a notice to the company under paragraph (2) a tax advantage obtained by the company shall be counteracted, in accordance with the notice, by an adjustment by way of—

- (a) an assessment;
- (b) the cancellation of a right of repayment;
- (c) a requirement to return a repayment already made; or
- (d) the computation or recomputation of profits or gains, or liability to tax, on a basis specified by the Commissioners in the notice.

(4) The Commissioners may (in addition to the adjustment under paragraph (3)) assess the company to such additional amount of income tax under Case VI of Schedule D as they think is equivalent to the value of the tax advantage.

(5) For the purposes of this regulation “tax advantage” has the meaning given by section 709 of ICTA.

(6) But a company does not obtain a tax advantage by reason only of this Part applying to it, unless it does anything (whether before or during the application of this Part) which is wholly or

principally designed to create or inflate or apply a loss, deduction or expense (whether or not suffered or incurred by the company).

### Appeal against notice under regulation 69Z10

**69Z11.**—(1) If a notice is given to a company under regulation 69Z10, the company may appeal<sup>F2</sup> ....

(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 notice under regulation 69Z10 is given.

(3) On an appeal [<sup>F3</sup>that is notified to the tribunal, the tribunal] may—

- (a) affirm, vary or cancel the notice, and
- (b) affirm, vary or quash an assessment made under regulation 69Z10(4).

#### Textual Amendments

**F2** Words in [reg. 69Z11\(1\)](#) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 157\(2\)](#)

**F3** Words in [reg. 69Z11\(3\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 157\(3\)](#)

### Distribution to holder of excessive rights: charge to tax

**69Z12.**—(1) This regulation applies if an open-ended investment company to which this Part applies—

- (a) makes a distribution to, or in respect of, a holder of excessive rights (see regulation 69Z13), and
- (b) the company has not taken reasonable steps to prevent the possibility of such a distribution being made.

(2) The company is treated as having received an amount of income calculated in accordance with paragraph (3).

(3) The amount of the income is determined by the formula—

$$I \times P$$

(4) In paragraph (3)—

I is the net income of F (tax-exempt) distributable in accordance with regulation 69Z14(a);

P is the percentage of the rights to the net asset value of the company held by, or on behalf of, the holder of excessive rights.

(5) The amount determined in accordance with paragraph (3) shall be charged to corporation tax as if it were income of F (residual) chargeable under Case VI of Schedule D arising in the accounting period in which the distribution mentioned in paragraph (1) was made by the company.

(6) No loss, deficit, expense or allowance may be set off against the amount charged to tax by paragraph (5).

### Meaning of “holder of excessive rights”

**69Z13.**—(1) In this Part a “holder of excessive rights” means a body corporate which—

- (a) is a participant in an open-ended investment company to which this Part applies, and

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**Changes to legislation:** *There are currently no known outstanding effects for the The Authorised Investment Funds (Tax) Regulations 2006, Cross Heading: Further provisions. (See end of Document for details)*

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- (b) is beneficially entitled to shares representing rights to 10% or more of the net asset value of the company.
- (2) Paragraphs (4) and (5) of regulation 69L apply for the purposes of paragraph (1) as they apply for the purposes of regulation 69K.
- (3) In this Part an “excessive holding” means the holding of a holder of excessive rights.]

**Changes to legislation:**

There are currently no known outstanding effects for the The Authorised Investment Funds (Tax) Regulations 2006, Cross Heading: Further provisions.