

---

STATUTORY INSTRUMENTS

---

**2006 No. 964**

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

[<sup>F1</sup>PART 6A

FUNDS INVESTING IN NON-REPORTING OFFSHORE FUNDS

[<sup>F1</sup>CHAPTER 2

Entry into Funds Investing in Non-Reporting Offshore Fund (“FINROF”) regime

**Textual Amendments**

- F1** Pt. 6A inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2010 \(S.I. 2010/294\)](#), regs. 1(1), **21** (with regs. 25, 26)

**Entry into FINROF regime: the basic rule**

**85G.** This Part applies to an authorised investment fund from—

- (a) the date on which the fund first met the condition in regulation 85D (the investment condition); or
- (b) the date specified in the notice given under regulation 85F (elective FINROFs),

whichever is the earlier.

**The requirement to notify where regulation 85D is satisfied**

**85H.**—(1) The legal owner of an authorised investment fund which is a FINROF by virtue of regulation 85D must notify HM Revenue and Customs of the date on which the fund first met the investment condition within a period of 3 months beginning with the date on which the fund first met that condition.

(2) For the purposes of paragraph (1), no account shall be taken of the period before the date of any previous valid election under regulation 85Z9 (leaving the FINROF regime).

(3) 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 TMA 1970.

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

(5) 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 of this Part.

(2) The notification under paragraph (1) must be given within a period of 3 months beginning with the date on which this Part first applied to the fund.

(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 85Z9 (leaving 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 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**

**85J.**—(1) If this regulation applies a fund shall be treated as if it had never met the investment condition and consequently none of the provisions of this Part (including the penalty provisions in regulations 85H and 85I) apply to the fund.

(2) This regulation applies where—

(a) an authorised investment fund meets the investment condition but as soon as possible after becoming aware that the condition is met, the legal owner gives notice in writing to HM Revenue and Customs of the steps that the fund has taken, or proposes to take, to ensure that the fund no longer meets that condition,

(b) the fund ceases to meet the investment condition before the end of a 4 month period beginning with the date that the fund first met the condition and the legal owner gives notice in writing to HM Revenue and Customs that the fund no longer meets the condition, and

(c) HM Revenue and Customs issue a notice in writing that this regulation applies.

(3) HM Revenue and Customs must, within a period of 28 days beginning with the date on which they receive notice from the legal owner that the fund no longer meets the investment condition, issue a notice in writing to the legal owner that—

(a) this regulation applies, or

(b) this regulation does not apply as HM Revenue and Customs are not satisfied that the conditions in sub-paragraphs (a) and (b) of paragraph (2) are met for the reasons specified in the notice.

### **Appeal against refusal to provide written notice**

**85K.**—(1) A legal owner to whom a notice is issued under paragraph (3)(b) of regulation 85J (a “refusal notice”) 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 HM Revenue and Customs issued the refusal notice.

(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 issue the refusal notice.

(4) If the tribunal determine that it was just and reasonable for HM Revenue and Customs to issue the refusal notice, this Part applies to the fund from the date on which it first met the

investment condition and the legal owner must notify the participants in the fund in accordance with regulation 85I.

(5) If the tribunal determine that it was not just and reasonable for HM Revenue and Customs to issue the refusal notice, paragraph (1) of regulation 85J shall apply.

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

**85L.**—(1) This regulation applies if an authorised investment fund either meets the investment condition or becomes an elective FINROF in accordance with regulation 85F.

(2) A participant in the fund may make an election to be treated for the purposes of TCGA 1992—

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

(3) The disposal referred to in paragraph (2)(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.

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

(5) 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.

(6) 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.

(7) In this regulation—

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

**Changes to legislation:**

There are currently no known outstanding effects for the The Authorised Investment Funds (Tax) Regulations 2006, CHAPTER 2.