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STATUTORY INSTRUMENTS

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**2009 No. 3001**

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

**PART 3**

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

**CHAPTER 12**

**CONSTANT NAV FUNDS**

*Interpretation*

**Meaning of “constant NAV fund”**

**118.**—(1) In these Regulations a “constant NAV fund” means an offshore fund that meets conditions A and B.

(2) Condition A is that the net asset value of the fund (expressed in the currency in which units are issued) will not fluctuate by more than an insignificant amount throughout the fund’s existence.

(3) Condition B is that condition A is met as a result of—

- (a) the nature of the fund’s assets, and
- (b) the frequency with which the fund distributes its income.

*Modified application of this Part*

**General**

**119.** In the case of a constant NAV fund, Chapters 2 to 11 of this Part apply with the following modifications.

**Modified application of Chapter 2**

**120.**—(1) Chapter 2 applies with the following modifications.

(2) In regulation 53 for paragraph (1) substitute—

“(1) An application must include the following—

- (a) a statement of the first period of account for which it is proposed that the fund should be treated as a constant NAV fund for the purposes of these Regulations,
- (b) a statement that the fund is, or will be, a constant NAV fund at the beginning of that first period of account, and
- (c) an undertaking to notify HMRC if the offshore fund ceases to be a constant NAV fund.”.

(3) Regulations 55 and 56 do not apply.

### **Modified application of Chapter 3**

**121.**—(1) Chapter 3 applies with the following modifications.

(2) For regulation 57 substitute—

#### **“Effects of entry into the reporting fund regime**

**57A.**—(1) Unless HMRC reject an application because an item specified in regulation 53(1) has not been supplied, the offshore fund becomes a constant NAV fund on whichever is the later of—

- (a) the first day of the first period of account mentioned in regulation 53(1)(a), or
- (b) the day on which the fund is established.

(2) This Part applies to the constant NAV fund and to its participants on and after the date specified in paragraph (1).

(3) Once this Part has begun to apply to a constant NAV fund, it shall continue to apply unless and until the fund notifies HMRC that it has ceased to be a constant NAV fund.

(4) See regulation 108A for the consequences where the net asset value of the fund has risen by more than an insignificant amount and the fund has not notified HMRC that it has ceased to be a constant NAV fund.”.

(3) Regulation 58 does not apply.

### **Disapplication of Chapters 4 to 9**

**122.** Chapters 4 to 9 do not apply.

### **Modified application of Chapter 10**

**123.** For regulations 108 to 115 substitute—

#### **“Consequences of rise in net asset value of fund**

**108A.**—(1) This regulation applies if—

- (a) this Part applies to a constant NAV fund,
- (b) the net asset value of the fund (expressed in the currency in which units are issued) has risen by more than an insignificant amount, and
- (c) the fund has not notified HMRC that it has ceased to be a constant NAV fund.

(2) But this regulation does not apply if the net asset value of a constant NAV fund (expressed in the currency in which units are issued) has fallen by more than an insignificant amount.

(3) A participant who disposes of an interest in the fund and who makes a chargeable gain on the disposal is treated as making an offshore income gain.”.

### **Disapplication of Chapter 11**

**124.** Chapter 11 does not apply.