DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 3

REPORTING FUNDS AND THE TREATMENT OF PARTICIPANTS IN REPORTING FUNDS

CHAPTER 1

PRELIMINARY PROVISIONS

Structure of this Part

49.—(1) The structure of this Part is as follows—

(a) this Chapter contains preliminary provisions;

(b) Chapter 2 deals with entry into the reporting fund regime;

(c) Chapter 3 deals with the general duties of reporting funds;

(d) Chapter 4 deals with the preparation of accounts;

(e) Chapter 5 deals with the computation of reportable income;

(f) Chapter 6 deals with transactions by certain reporting funds which are not treated as trading;

(g) Chapter 7 deals with reports to participants;

(h) Chapter 8 deals with the tax treatment of participants in reporting funds;

(i) Chapter 9 deals with the provision of information to HMRC;

(j) Chapter 10 deals with breaches of reporting fund requirements;

(k) Chapter 11 deals with leaving the reporting fund regime;

(l) Chapter 12 deals with constant NAV funds.

(2) This Part contains provisions applying to—

(a) funds that are not constant NAV funds (see Chapters 2 to 11), and

(b) constant NAV funds (see Chapter 12).

Meaning of "reporting fund"

50. In these Regulations a "reporting fund" means an offshore fund to which this Part applies for a period of account.

CHAPTER 2

ENTRY INTO THE REPORTING FUND REGIME

Applications for this Part to apply

Who may make an application

51.—(1) The manager of an eligible offshore fund may make an application for this Part to apply to the fund.

(2) If it is proposed to establish an offshore fund which, on its establishment, is to be an eligible offshore fund, the person expected to become the manager of the fund on its establishment (the "applicant") may make an application for this Part to apply to the fund on its establishment.

(3) In this Part—

the "applicant" means the person referred to in paragraph (2);

an "application" means an existing fund application or a future fund application;

an "eligible offshore fund" means an offshore fund which is not a guaranteed return fund;

an "existing fund application" means an application made under paragraph (1);

a "future fund application" means an application made under paragraph (2);

the "manager", in relation to an offshore fund, includes the manager or other person who has or is expected to have day to day control of the property of the fund.

Conversion of non-reporting fund into reporting fund

52.—(1) The manager of a non-reporting fund may make an application for this Part to apply to a fund if the fund is an eligible offshore fund, and—

(a) has never been a reporting fund, or

(b) has been a reporting fund, but ceased to be such a fund because it gave notice under regulation 116.

(2) The provisions of this Part that apply to an existing fund application also apply to an application made under paragraph (1).

Contents of an application

53.—(1) An application must include the following—

(a) a statement of the first period of account for which it is proposed that this Part should apply to the fund;

(b) an undertaking that no period of account will exceed 18 months;

(c) a statement whether or not the fund intends to prepare its accounts in accordance with international accounting standards, and, if it does not, a statement of which generally accepted accounting practice it intends to use;

(d) in a case in which the fund does not intend to prepare its accounts in accordance with international accounting standards, a statement specifying the entries in the fund's accounts that are considered to equate to "total comprehensive income for the period" as that expression is used in international accounting standards;

(e) in a case in which the fund does not intend to prepare its accounts in accordance with international accounting standards, a statement specifying how the fund intends—

(i) to comply with regulation 66(1)(b), or

(ii) to calculate the adjustment required by regulation 66(2);

(f) an undertaking to meet the requirements relating to reports to participants in the fund (see Chapter 7);

(g) an undertaking to meet the requirements relating to the provision of information to HMRC (see Chapter 9).

(2) An existing fund application must be accompanied by the prospectus.

(3) A future fund application must be accompanied by the proposed prospectus.

(4) The application must be in English.

(5) If the prospectus or the proposed prospectus (as the case may be) is not in English, it must be accompanied by an English translation.

(6) In the case of an offshore fund constituted in the manner described in regulation 5 or 6, the requirements of this regulation may be met by providing material which is—

(a) applicable to an entity which includes the fund, and

(b) relevant for the application for this Part to apply to the fund.

Form, timing and withdrawal of application

54.—(1) An application must be made in writing to HMRC.

(2) The application must be received by HMRC before the expiry of a period of three months beginning with the first day of the first period of account for which it is proposed that this Part should apply to the fund.

(3) The application may be withdrawn at any time during a period beginning with the day the application is made and ending on the expiry of a period of 28 days beginning with the day on which HMRC give notice under regulation 55(1).

(4) The application must be withdrawn—

(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).

Procedure on applications

Response by HMRC to application

55.—(1) Within 28 days beginning with the day on which HMRC receive the application, HMRC must give notice to the person who made the application—

(a) accepting the application,

(b) rejecting the application, or

(c) asking for further information in order to consider the application.

(2) HMRC must not accept an application if any item mentioned in regulation 53 is not supplied.

(3) HMRC must not accept an application if they consider that there will be a significant difference, in computing reportable income (see Chapter 5), between—

(a) the result given by the use of international accounting standards, and

(b) the result given by the use of the accounting practice specified in the application and by the use of the entries in the fund's accounts, specified in the application, that are considered to equate to "total comprehensive income for the period" as that expression is used in international accounting standards (see regulation 63).

(4) Paragraph (5) applies if—

(a) HMRC have given notice under paragraph (1)(c), and

(b) the person who made the application provides further information within a period of 28 days beginning with the day on which HMRC ask for further information, or within such longer period as is agreed by HMRC.

(5) Within 28 days beginning with the day on which HMRC receive the further information, HMRC must give notice to the person who made the application—

(a) accepting the application, or

(b) rejecting the application.

Appeal against rejection of application

56.—(1) If HMRC reject an application, the person who made the application may appeal.

(2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice rejecting the application is given.

(3) On an appeal, the tribunal may uphold or quash the rejection of the application.

(4) If the tribunal quashes the rejection of the application, this Part applies as if HMRC had accepted the application in the form in which it was considered by the tribunal.

CHAPTER 3

THE GENERAL DUTIES OF REPORTING FUNDS

Effects of entry into the reporting fund regime

57.—(1) If HMRC accept an application, the offshore fund becomes a reporting 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 fund and to its participants on and after the date specified in paragraph (1).

(3) Once this Part has begun to apply to a fund, it shall continue to apply unless and until it ceases to apply in accordance with Chapter 11 of this Part.

General duties of reporting funds

58. A reporting fund must—

(a) prepare accounts in accordance with the requirements of Chapter 4;

(b) provide a computation of its reportable income in accordance with the requirements of Chapter 5;

(c) provide reports to participants in accordance with the requirements of Chapter 7; and

(d) provide information to HMRC in accordance with the requirements of Chapter 9.

CHAPTER 4

THE PREPARATION OF ACCOUNTS

Accounts to be prepared in accordance with acceptable accounting policy

59. A reporting fund must prepare accounts—

(a) in accordance with international accounting standards, or

(b) in accordance with the generally accepted accounting practice specified in the application.

Change in accounting policy

60.—(1) This regulation applies if—

(a) there is a change of accounting policy in drawing up a reporting fund's accounts from one period of account (in this Chapter called the "earlier period") to the next (in this Chapter called the "later period"), and

(b) the approach in each of those periods accords with the law and practice applicable in relation to that period.

(2) If there is a difference between—

(a) the accounting value of an asset or liability of the offshore fund at the end of the earlier period, and

(b) the accounting value of that asset or liability at the beginning of the later period,

a corresponding debit or credit (as the case may be) must be brought into account for the purposes of these Regulations in the later period.

(3) In paragraph (2) "accounting value" means the carrying value of the asset or liability recognised for accounting purposes.

Change in accounting practice to a generally accepted accounting practice

61.—(1) This regulation applies if—

(a) there is a change of accounting practice in drawing up a reporting fund's accounts from the earlier period to the later period, and

(b) the fund prepares accounts for the later period in accordance with a generally accepted accounting practice.

(2) If the accounts for the later period are not prepared in accordance with international accounting standards, the offshore fund must give notice to HMRC—

(a) applying for approval of the generally accepted accounting practice, and

(b) providing the statement mentioned in regulation 53(1)(d).

(3) If the accounts for the later period are prepared in accordance with international accounting standards, the offshore fund must give notice to HMRC.

(4) Within 28 days beginning with the day on which HMRC receive an application under paragraph (2), HMRC must give notice to the offshore fund—

(a) accepting the application, or

(b) rejecting the application.

(5) If HMRC reject an application, the offshore fund may appeal.

(6) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice rejecting the application is given.

(7) On an appeal, the tribunal may uphold or quash the rejection of the application.

CHAPTER 5

THE COMPUTATION OF REPORTABLE INCOME

General

Duty to provide computation

62.—(1) This Chapter explains how reportable income is computed.

(2) A reporting fund must provide a computation of its reportable income for a period of account.

Computation of reportable income: general

63.—(1) The starting point for computing the reportable income of a reporting fund for a period of account is—

(a) in a case in which the fund prepares its accounts in accordance with international accounting standards, the "total comprehensive income for the period" as that expression is used in international accounting standards, or

(b) in any other case, the entries in the fund's accounts that are considered to equate to "total comprehensive income for the period" as that expression is used in international accounting standards.

(2) The starting point specified in paragraph (1) must be adjusted having regard to—

(a) capital items (see regulations 64 and 65),

(b) special classes of income (see regulations 66 to 71), and

(c) equalisation arrangements (see regulation 72).

(3) In the case of any one item, an adjustment under paragraph (2) may be made only once (even if more than one of the regulations mentioned in that paragraph apply to that item).

(4) The reportable income of the reporting fund for the period of account is the amount computed in accordance with the provisions of this Chapter and of Chapter 6.

(5) But if the computation gives rise to a negative amount, the reportable income is nil.

Adjustments for capital items

Treatment of capital items following IMA SORP

64.—(1) The capital items for which an adjustment is required are such profits, gains or losses as would fall to be dealt with under the heading "net capital gains/losses" in the statement of total return for the period of account if the accounts for that period were to be prepared in accordance with the IMA SORP.

(2) The amount specified in regulation 63(1) must be adjusted by—

(a) deducting gains that fall within the heading specified in paragraph (1), and

(b) adding losses that fall within that heading.

(3) A profit or loss from a trade may not be treated as a capital item for the purposes of this regulation.

This paragraph is subject to regulation 80.

(4) For the purposes of paragraph (1) the IMA SORP applies to determine the "net capital gains/losses" of an offshore fund for a period of account in the same way that it applies to determine the "net capital gains/losses" of an authorised investment fund for an accounting period.

(5) In this regulation—

"authorised investment fund" has the meaning given in the Authorised Investment Funds (Tax) Regulations 2006(**1**);

"the IMA SORP" means, in relation to any period of account for which it is required or permitted to be used, the Statement of Recognised Practice relating to authorised investment funds issued by the Investment Management Association in November 2008, as from time to time modified, amended or revised.

Treatment of other capital items

65.—(1) The amount specified in regulation 63(1) must also be adjusted by adding the amounts specified in paragraph (2).

(2) Those amounts are—

(a) expenses directly related to acquisition or disposal of investments (other than those taken into account in arriving at the amounts specified in sub-paragraph (a) or (b) of regulation 64(2)), and

(b) costs relating to the setting up, merger or dissolution of the fund.

Adjustments for special classes of income

Effective interest income or comparable amounts

66.—(1) This regulation applies if the accounting practice used does not include—

(a) the effective interest method for computing interest income (as described in international accounting standard 39 and equivalent United Kingdom financial reporting standards), or

(b) another method of accounting for interest in such a way that the difference between the purchase price of an asset and the expected redemption price of the asset is taken into account as part of the interest income over the expected life of the asset.

(2) The amount specified in regulation 63(1) must be adjusted by the addition of the net income computed by taking into account the expected redemption price of any interest bearing assets over the expected life of the asset.

(3) The sum mentioned in paragraph (2) may be computed by any reasonable method which—

(a) takes into account the full expected gain or loss on the asset, and

(b) gives a reasonably comparable result to the effective interest method.

Income from wholly-owned subsidiaries

67.—(1) This regulation applies if a reporting fund has a wholly-owned subsidiary.

(2) For the purposes of this regulation, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—

(a) in the case of an offshore fund falling within paragraph (a) of the definition of "offshore fund" in section 40A(2) of FA 2008(**2**), directly and beneficially owned by the fund;

(**1**) S.I. 2006/964, to which there are amendments not relevant to these Regulations.

(**2**) Section 40A was inserted by paragraph 2 of Schedule 22 to the Finance Act 2009 (c. 10).

(b) in the case of an offshore fund falling within paragraph (b) of the definition of "offshore fund" in that enactment, directly owned by the trustees of the fund for the benefit of the fund;

(c) in the case of an offshore fund falling within paragraph (c) of the definition of "offshore fund" in that enactment, owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.

(3) But in the case of a company which has only one class of issued share capital, the reference in paragraph (2) to the whole of the issued share capital shall be construed as a reference to at least 95% of that share capital.

(4) That percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in paragraph (2) shall be regarded as the receipts, expenditure, assets and liabilities of the fund.

(5) There shall be left out of account—

(a) the interest of the fund in the subsidiary, and

(b) any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

(6) The adjustments required under regulations 64 and 65 must be made to the amount determined under paragraph (4).

Income from other reporting funds

68.—(1) This regulation applies if a reporting fund ("RF1") has an interest in another reporting fund ("RF2").

(2) The excess (if any) of the income reported by RF2 in respect of RF1's interest in RF2 over the amount distributed by RF2 to RF1 must be added by RF1 to the amount specified in regulation 63(1) after making the adjustments specified in regulations 64 and 65.

(3) The adjustment specified in paragraph (2) must be made in the computation of the reportable income of RF1 for the period of account specified in paragraphs (4) and (5).

(4) The basic rule is that the period of account specified for the purposes of this regulation is the period of account in which the fund distribution date of RF2 falls.

The basic rule is subject to paragraph (5).

(5) If the fund distribution date of RF2 is determined in accordance with regulation 94(4)(b), RF1 must—

(a) include its best estimate of reported income from RF2 as an adjustment to the computation of its reportable income for the period of account in which the latest possible fund distribution date for RF2 falls (to the extent that any such amount has not already been recognised in the computation of RF1's reportable income for that or any earlier period of account), and

(b) make any necessary corrections to its best estimate in its computation of reportable income for the first later period of account in which it has sufficient information to make those corrections.

Income from non-reporting funds: first case

69.—(1) This regulation applies if—

(a) a reporting fund has an interest in a non-reporting fund, and

(b) the conditions in paragraph (2) are met for a period of account.

(2) The conditions are that—

(a) the main purpose or one of the main purposes of the investment in the non-reporting fund is not the deferral or avoidance of United Kingdom tax;

(b) the reporting fund has access to the accounts of the non-reporting fund;

(c) the reporting fund has sufficient information about the non-reporting fund to enable it to prepare a computation of reportable income for the non-reporting fund; and

(d) the reporting fund can reasonably expect to be able to rely on continued access to that information for the period in which it will hold the investment in the non-reporting fund.

(3) Regulation 68 applies as if the reporting fund were RF1 and the non-reporting fund were RF2.

(4) For the purposes of the computation mentioned in paragraph (2)(c), regulation 80 applies if (and only if) the non-reporting fund is a UCITS fund.

Income from non-reporting funds: second case

70.—(1) This regulation applies if a reporting fund has an interest in a non-reporting fund, but the conditions in regulation 69(2) are not met for a period of account.

(2) No adjustments may be made under regulations 64 and 65 in respect of the interest in the non-reporting fund.

(3) But if the condition specified in paragraph (4) is met, losses made by a reporting fund in earlier periods of account on an investment in a non-reporting fund may be set against gains made on the investment in the non-reporting fund to reduce the reportable income of the reporting fund, but only to the extent that the losses—

(a) have not previously had the effect of reducing income for the period of account in which they were incurred, or

(b) have not been used previously to reduce gains arising to the non-reporting fund.

(4) The condition specified is that the losses in earlier periods of account were all made during periods in which this Part applied continuously to the reporting fund.

Income from non-reporting funds if first case ceases to apply

71.—(1) This regulation applies if—

(a) a reporting fund has an interest in a non-reporting fund, and

(b) the conditions in regulation 69(2) have been met for an earlier period of account but are no longer met for a later period of account.

(2) Regulation 70 applies for the later period of account and for all subsequent periods of account.

Adjustments for equalisation arrangements

Treatment of reporting funds operating equalisation arrangements

72.—(1) This regulation applies if, in a period of account—

(a) a reporting fund operates equalisation arrangements, and

(b) a participant disposes of an interest in the fund.

(2) For the purposes of this regulation, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

(a) a person ("X") acquires by way of initial purchase an interest in the fund at some time during a period relevant to the arrangements, and

(b) the fund makes a distribution for a period which begins before the date of X's acquisition of that interest,

the amount of that distribution which is paid to X (assuming X still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (the "equalisation account") and which is determined by reference to the income which had accrued to the fund at the date of X's acquisition.

(3) For the purposes of this regulation, a person ("X") acquires an interest in an offshore fund by way of initial purchase if—

(a) X's acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund, or

(b) X's acquisition is by way of direct purchase from the managers of the fund and their sale to X is made in their capacity as managers of the fund.

(4) For the purposes of calculating reportable income, there must be a deduction of an amount equal to so much of the consideration for the disposal as represents the amount which would be credited to the equalisation account of the offshore fund if, on the same date, a holding of the same size were to be acquired by another person by way of initial purchase.

(5) But if the disposal mentioned in paragraph (4) is of a holding of units or shares which were issued within the same period of account as that in which the disposal takes place, the deduction must be limited to the income accrued or arising to those units or shares since issue.

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(**3**) (connected persons) applies in the case of a person chargeable to corporation tax.

Clearances in relation to the equivalence and genuine diversity of ownership conditions

Who may apply for clearance

77.—(1) The following may apply for clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition—

(a) the manager of an eligible offshore fund;

(**3**) 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.

(b) the manager of a non-reporting fund who makes an application under regulation 52.

(2) If it is proposed to establish an offshore fund which, on its establishment, is to be an eligible offshore fund, the applicant may apply for clearance that the fund will meet the equivalence condition and the genuine diversity of ownership condition on its establishment.

Procedure for obtaining clearance

78.—(1) The relevant person specified in regulation 77 (the "relevant person") must apply in writing to HMRC for clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition.

(2) A document submitted in accordance with paragraph (1) must be accompanied by the documents specified in regulation 75(2).

(3) HMRC may require the relevant person to provide further particulars if HMRC believe that full particulars of the fund have not been provided.

(4) HMRC must notify the relevant person within 28 days beginning with the day on which HMRC receive the documents mentioned in paragraphs (1) and (2) (or, as the case may be, the further particulars mentioned in paragraph (3))—

(a) giving clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition,

(b) giving that clearance subject to conditions, or

(c) refusing to give that clearance.

Circumstances in which clearance may not be relied upon

79.—(1) An offshore fund (and investors in that fund) may not rely on a clearance given under regulation 78 if any of conditions A to D is met.

(2) Condition A is that at the beginning of the first period of account of the fund to which the clearance relates (and at the beginning of each subsequent period of account), a relevant statement in the instrument constituting the fund or in its prospectus in issue for the time being is not in accordance with a relevant statement in the documents considered by HMRC before giving clearance.

(3) Condition B is that the fund is operated otherwise than in accordance with condition C of the genuine diversity of ownership condition (see regulations 75 and 76).

(4) Condition C is that the fund acts or is operated in contravention of a relevant statement in the instrument constituting the fund or in its prospectus.

(5) Condition D is that the documents specified in regulation 75(2) are materially amended.

(6) Condition D does not apply if the relevant person specified in regulation 77 has obtained a clearance given under regulation 78 which applies to the documents in their amended form.

(7) For the purposes of condition D, a material amendment is one that may reasonably be construed as causing, or likely to cause, the fund to fail to meet the equivalence condition or the genuine diversity of ownership condition in relation to any period of account.

Investment transactions carried out by diversely owned funds

Treatment of investment transactions carried out by diversely owned funds

80.—(1) This regulation applies if a diversely owned fund carries out an investment transaction in an accounting period.

(2) The investment transaction is treated as a non-trading transaction.

Meaning of "investment transaction"

81. For the purposes of this Part an "investment transaction" means—

(a) any transaction in stocks and shares;

(b) any transaction in a relevant contract (and see regulations 82 to 86);

(c) any transaction which results in a diversely owned fund becoming a party to a loan relationship or a related transaction in respect of a loan relationship (and see regulation 87);

(d) any transaction in units in a collective investment scheme (and see regulation 88);

(e) any transaction in securities of any description not falling within paragraphs (a) to (d);

(f) any transaction consisting in the buying or selling of any foreign currency;

(g) any transaction in a carbon emission trading product (and see regulation 89).

Meaning of "relevant contract": general

82.—(1) For the purposes of regulation 81(b) a relevant contract is—

(a) an option,

(b) a future, or

(c) a contract for differences.

(2) For the purposes of this regulation an option, a future or a contract for differences which relates to land will only be a relevant contract where the option, the future or the contract for differences uses an index referred to in regulation 86(1)(b) and the index is—

(a) publicly accessible,

(b) comprised of a significant number of properties, and

(c) not maintained by—

(i) the diversely owned fund,

(ii) the manager of the diversely owned fund, or

(iii) a person connected with the diversely owned fund or the manager of the diversely owned fund.

(3) For the purposes of this regulation—

(a) sections 993 and 994 of ITA 2007 (connected persons) apply where the manager is a person other than a company, and

(b) section 839 of ICTA(**4**) (connected persons) applies in the case of a diversely owned fund or where the manager is a person who is a company.

Meaning of "relevant contract": options

83.—(1) For the purposes of regulation 82(1)(a) an "option" includes an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company, and for these purposes it is immaterial whether the shares or assets to which the instrument relates exist or are identifiable.

(2) For the purposes of paragraph (1) the reference to a loan relationship of a company is to be construed in accordance with regulation 87 but with references in that regulation to "diversely owned fund" treated as references to "company".

(**4**) 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.

Meaning of "relevant contract": futures

84.—(1) For the purposes of regulation 82(1)(b) a "future" is a contract for the sale of property under which delivery is to be made—

(a) at a future date agreed when the contract is made, and

(b) at a price so agreed.

(2) For the purposes of paragraph (1)(b) a price is taken to be agreed when the contract is made—

(a) notwithstanding that the price is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, or

(b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Options and futures: further provisions

85.—(1) For the purposes of regulations 83 and 84 references to an option or a future do not include references to a contract whose terms provide—

(a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, and do not provide for the delivery of any property, or

(b) that each party is liable to make to the other party a cash payment in respect of all that party's obligations to the other under the contract and do not provide for the delivery of any property, or

(c) for the delivery of any property other than property a transaction in which would fall within any of regulations 80 to 89 where the property is delivered.

(2) Nothing in paragraph (1) has effect to exclude, from references to an option or future, an option or future whose underlying subject matter is currency.

(3) In paragraph (1) "underlying subject matter" means—

(a) in relation to an option, the property which would fall to be delivered if the option were exercised, and

(b) in relation to a future, the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made.

Meaning of "relevant contract": contracts for differences

86.—(1) For the purposes of regulation 82(1)(c) a "contract for differences" is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—

(a) the value or price of property described in the contract, or

(b) an index or other factor designated in the contract.

(2) But none of the following is a contract for differences—

(a) a future;

(b) an option;

(c) a contract of insurance;

(d) a contract effected in the course of capital redemption business;

(e) a contract of indemnity;

(f) a guarantee;

(g) a warranty;

(h) a loan relationship.

(3) For the purposes of paragraph (2)—

"capital redemption business" means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount become payable at a future time or over a period;

"loan relationship" is to be construed in accordance with regulation 87, but with references to "diversely owned fund" in that regulation treated as references to "company".

(4) For the purposes of paragraph (1)(b) an index or factor may be determined by reference to any matter and, for these purposes, a numerical value may be attributed to any variation in a matter.

Interpretation of regulation 81(c)

87.—(1) For the purposes of regulation 81(c) a diversely owned fund has a "loan relationship" where the fund stands (whether by reference to a security or otherwise) in the position of a creditor or debtor as respects any money debt and either—

(a) that debt is one arising from a transaction for the lending of money, or

(b) that debt is not one which arose from a transaction for the lending of money but is one—

(i) on which interest is payable to or by the diversely owned fund, or

(ii) in relation to which exchange gains or losses arise to the diversely owned fund, or

(iii) as respects which the conditions in paragraph (2) below are satisfied.

(2) The conditions referred to in paragraph (1)(b)(iii) are that—

(a) the diversely owned fund stands in the position of creditor in relation to the money debt, and

(b) the money debt is one from which a discount (whether of an income or capital nature) arises to the diversely owned fund.

(3) In this regulation "exchange gains or losses" means profits or gains or losses which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the diversely owned fund in another currency on an asset or liability of the diversely owned fund.

(4) For the purposes of this regulation a "money debt" is a debt which is, or has at any time been, one that falls, or that may at the choice of the debtor or of the creditor, fall to be settled—

(a) by the payment of money,

(b) by the transfer of a right to settlement under a debt which is itself a money debt, or

(c) by the issue or transfer of shares in any company,

disregarding any other alternative exercisable by either party.

(5) Subject to paragraph (6), where an instrument is issued by any person for the purpose of representing security for, or the rights of a creditor in respect of, any money debt, then (whatever the circumstances of the issue of the instrument) that debt shall be taken for the purposes of this regulation to be a debt arising from a transaction for the lending of money.

(6) For the purposes of this regulation a debt does not arise from a transaction for the lending of money to the extent that it is a debt arising from rights conferred by shares in a company.

(7) For the purposes of this regulation so far as relating to exchange gains and losses, any currency held by the diversely owned fund shall be treated as a money debt.

(8) For the purposes of this regulation "money" includes money expressed in a currency other than sterling.

(9) For the purposes of regulation 81(c) a "related transaction" in relation to a loan relationship means any disposal or acquisition (in whole or in part) of rights or liabilities under that relationship.

Meaning of "units in a collective investment scheme"

88.—(1) For the purposes of regulation 81(d)—

"collective investment scheme" has the meaning given by section 235 of FISMA 2000,

"units" means the rights or interests (however described) of the investors in the collective investment scheme.

(2) In paragraph (1) a "investor", in relation to a collective investment scheme, means a beneficial owner of units in the scheme, except where the units are held on trust (other than a bare trust) or are comprised in the estate of a deceased person, and in such a case the investor, in relation to the scheme, means the trustees of the trust, or, as the case may be, the deceased's personal representatives.

Meaning of "transaction in a carbon emission trading product"

89.—(1) — For the purposes of regulation 81(g) a "transaction in a carbon emission trading product" means a transaction—

(a) in Community tradable emissions allowances, or

(b) in transferable units issued pursuant to the Kyoto Protocol,

where the transaction does not otherwise fall within any other paragraph of that regulation.

(2) For the purposes of this regulation—

"Community tradable emissions allowances" means transferable allowances which relate to the making of emissions of greenhouse gases, and are allocated as part of a system made for the purpose of implementing any community obligation of the United Kingdom relating to such emissions;

"the Kyoto Protocol" means the Kyoto Protocol to the United Nations Framework Convention on Climate Change signed at Kyoto on 11th December 1997(**5**);

"units" includes assigned amount units, certified emission reductions, emission reduction units and removal units.

CHAPTER 7

REPORTS TO PARTICIPANTS

Report to participants for a reporting period

90.—(1) A reporting fund must make a report available to each participant for each reporting period.

(2) For the purposes of these Regulations a report is made available if the fund—

(a) sends the report to a participant by post,

(b) sends the report to a participant by means of an electronic communications service,

(**5**) The text of the Kyoto Protocol is available at www.unfccc.int/kyoto_protocol/items/2830.php.

(c) makes the report available on a website accessible to relevant participants and to HMRC, or

(d) publishes the report in a newspaper which is published in English in the United Kingdom and readily available in all parts of the United Kingdom.

(3) In paragraph (2)(c) "relevant participants" means participants who—

(a) are resident in the United Kingdom, or

(b) are reporting funds,

during any part of the reporting period.

(4) If the fund does not provide the report to a participant by sending it to the participant by post, the fund must, if so required by the participant, make the report available to the participant in some further manner (whether or not that further manner is also specified in regulation 90(2)) as the fund and the participant may agree.

(5) The reporting fund must make the report available within a period of six months beginning with the day immediately following the final day of the reporting period.

(6) The report must be in English.

Meaning of "reporting period"

91. In these Regulations a "reporting period" of a reporting fund means a period determined in accordance with the following rules—

First rule

If the reporting fund's period of account is twelve months or less, the reporting period is the same as the period of account.

Second rule

If the reporting fund's period of account is more than twelve months, there are two reporting periods.

The first reporting period is a period consisting of the first twelve months of the period of account.

The second reporting period is a period consisting of the remainder of the period of account.

Contents of report to participants

92.—(1) The report to participants for a reporting period must include the following information—

(a) the amount actually distributed to participants per unit of interest in the fund in respect of the reporting period;

(b) the excess of the amount of the reported income per unit of interest in the fund for the reporting period over the amount actually distributed to participants per unit of interest in the fund in respect of the reporting period;

(c) the dates on which distributions were made;

(d) the fund distribution date (see regulation 94(4));

(e) a statement whether or not the fund remains a reporting fund at the date the fund makes the report available.

(2) In these Regulations the "reported income" of a reporting fund for a reporting period means the reportable income of the fund for the reporting period, computed by or on behalf of the fund, and provided, in the report for the reporting period, to the participants in the fund.

(3) For the purposes of paragraph (1)—

(a) the reported income per unit of a reporting fund for a report is computed by dividing the reported income of the fund for the reporting period by the number of units in the fund in issue at the end of the reporting period,

(b) the amount actually distributed to participants per unit of interest in the fund in respect of the reporting period must be computed at the time the distribution is made, and

(c) the amount per unit of interest in the fund must be expressed to at least four decimal places of a pound (or other currency unit) of value per unit.

(4) If the amount of the reported income per unit of interest in the fund for the reporting period is equal to, or less than, the amount actually distributed to participants per unit of interest in the fund in respect of the reporting period, the amount to be stated for the purposes of paragraph (1)(b) is nil.

(5) This regulation is subject to regulation 93.

Lengthy periods of account where full information not available

93.—(1) This regulation applies if a reporting fund—

(a) has a period of account which is longer than twelve months, and

(b) has difficulty in computing its reportable income for the reporting period constituting the first twelve months of that period of account (the "relevant reporting period").

(2) For the purpose of preparing its report to participants for the relevant reporting period, the fund may elect—

(a) to compute its reportable income based on such information as is reasonably available, or

(b) to make a just and reasonable apportionment of the income of the period of account.

(3) The computation of reportable income for the reporting period following the relevant reporting period must include all amounts not accounted for in the relevant reporting period.

CHAPTER 8

THE TAX TREATMENT OF PARTICIPANTS IN REPORTING FUNDS

Tax treatment of the reported income of the fund in the hands of participants

Reported income: general provisions

94.—(1) In the case of a reporting fund which is not a transparent fund, the Tax Acts have effect as if the excess (if any) of the reported income of the fund in respect of a reporting period over the distributions made by the fund in respect of the reporting period were additional distributions made to the participants in the fund in proportion to their rights.

(2) In the case of a reporting fund which is a transparent fund, the Tax Acts have effect as if the excess (if any) of the reported income of the fund in respect of a reporting period over the income of the fund for the reporting period were additional income of the participants in the fund in proportion to their rights.

(3) The excess specified in paragraphs (1) and (2) is treated as made, on the fund distribution date, to participants holding an interest in the fund at the end of the reporting period.

(4) In these Regulations the "fund distribution date" for a reporting period of a reporting fund means—

(a) in a case where the reporting fund issues its report to participants within a period of six months beginning with the day immediately following the last day of the reporting period, the date on which the report is issued, and

(b) in any other case, the last day of the reporting period.

Participants chargeable to income tax: corporate funds

95.—(1) This regulation applies if—

(a) a reporting fund makes a distribution to a participant chargeable to income tax in respect of a reporting period, and

(b) the fund falls within section 40A(2)(a) of FA 2008(**6**).

(2) This regulation also applies if some or all of the excess specified in regulation 94(1) is treated as made by such a fund to such a participant.

(3) If section 378A of ITTOIA 2005(**7**) (offshore fund distributions) applies to any amount falling within paragraph (1) or (2), the amount is charged to income tax in accordance with that section.

(4) If paragraph (3) does not apply to any amount falling within paragraph (1) or (2), but the participant is entitled to a tax credit on receiving a distribution falling within paragraph (1), section 397A of ITTOIA 2005(**8**) (savings and investment income: dividends from non-UK resident companies) also applies to the excess falling within paragraph (2).

Participants chargeable to income tax: other non-transparent funds

96.—(1) This regulation applies if—

(a) a reporting fund makes a distribution to a participant chargeable to income tax in respect of a reporting period,

(b) the fund falls within paragraph (b) or (c) of section 40A(2) of FA 2008, and

(c) the fund is not a transparent fund.

(2) This regulation also applies if some or all of the excess specified in regulation 94(1) is treated as made by such a fund to such a participant.

(3) Any amount to which paragraph (1) or (2) applies is charged to income tax—

(a) under section 378A of ITTOIA 2005 (offshore fund distributions), or

(b) (if that section does not apply) under Chapter 8 of Part 5 of ITTOIA 2005 (miscellaneous income: income not otherwise charged) for the year of assessment in which the distribution is made, but sections 688(1) and 689 of ITTOIA 2005(**9**) (income charged and person liable) do not apply.

Participants chargeable to income tax: transparent funds

97.—(1) This regulation applies if—

(a) a reporting fund is a transparent fund, and

(b) some or all of the excess specified in regulation 94(2) is treated as income of a participant by virtue of that provision.

(2) Any amount to which paragraph (1) applies is charged to income tax under Chapter 8 of Part 5 of ITTOIA 2005 as relevant foreign income within the meaning given by section 830 of ITTOIA 2005(**10**) for the year of assessment in which the distribution is made, but sections 688(1) and 689 of ITTOIA 2005 do not apply.

(**6**) Section 40A was inserted by paragraph 2 of Schedule 22 to the Finance Act 2009 (c. 10).
(**7**) Section 378A was inserted by section 39(3) of the Finance Act 2009.
(**8**) Section 397A was inserted by paragraph 4 of Schedule 12 to the Finance Act 2008 (c. 9) and amended by paragraph 2 of Schedule 19 to the Finance Act 2009.
(**9**) Section 688(1) was amended by paragraph 22 of Schedule 12 to the Finance Act 2008.
(**10**) Section 830 was amended by paragraphs 51, 96, 156 and 162 of Schedule 7 to the Finance Act 2008.

Participants chargeable to corporation tax

98.—(1) This regulation applies if some or all of the excess specified in regulation 94 is treated as made to a participant chargeable to corporation tax.

(2) The amount is exempt if it would be exempt if it were an actual distribution made by the fund.

Disposals and deemed disposals of interests

Disposals of interests

99.—(1) If a participant has an interest in a reporting fund and disposes of the interest, the participant disposes of an asset for the purposes of tax in respect of chargeable gains.

(2) For the purposes of the disposal referred to in paragraph (1), an amount equal to the accumulated undistributed income is treated as expenditure—

(a) given for the acquisition of the asset, and

(b) falling within section 38(1)(a) of TCGA 1992 (acquisition and disposal costs).

(3) In paragraph (2) the "accumulated undistributed income" means the aggregate of amounts specified in regulation 94 on which the participant has been charged to tax under any of regulations 95 to 98.

(4) The expenditure mentioned in paragraph (2) is treated as incurred, in the case of each amount referred to in paragraph (3), on the fund distribution date for the reporting period in respect of which the amount is treated as distributed.

(5) But if the participant receives an amount in respect of the interest in the reporting fund which is chargeable to income tax, and that amount is received (or treated as received) after the date of the disposal referred to in paragraph (1), the amount is treated as received immediately before that disposal for the purposes of tax in respect of chargeable gains.

(6) This regulation is subject to regulation 17.

Deemed disposals of interests

100.—(1) This regulation applies if an offshore fund ceases to be a reporting fund and becomes a non-reporting fund.

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

(a) as disposing of an interest in the reporting fund at the end of that fund's final period of account, and

(b) as acquiring an interest in the non-reporting fund at the beginning of that fund's first period of account.

This is subject to paragraph (3).

(3) The election mentioned in paragraph (2) may only be made if a report has been made available to the participant under regulation 90 for the reporting fund's final period of account.

(4) The disposal referred to in paragraph (2)(a) is treated as made for a consideration equal to the net asset value of the participant's interest in the fund at the end of the period of account for which the final reported income is reported to the participant.

(5) The acquisition referred to in paragraph (2)(b) is treated as made for the same amount as the disposal referred to in paragraph (2)(a).

(6) 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 disposal date.

(7) 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 disposal date.

(8) In this regulation—

"company tax return" has the same meaning as in Schedule 18 to the Finance Act 1998(**11**);

"disposal date" means the final day of the reporting fund's final period of account.

Charitable companies and charitable trusts

Special provisions applying to charitable companies and charitable trusts

101.—(1) This regulation applies if—

(a) a charitable company is a participant in a reporting fund, or

(b) the trustees of a charitable trust are participants in a reporting fund.

(2) No liability to tax arises in respect of any amount which, under regulation 94(1), is treated as distributed to a charitable company or the trustees of a charitable trust.

(3) Paragraph (2) of regulation 99 (read with paragraphs (3) and (4) of that regulation) does not apply to the disposal of an interest in a reporting fund by a charitable company or the trustees of a charitable trust.

(4) In this regulation "charity" and "charitable company" have the same meaning as in section 506 of ICTA(**12**).

Anti-avoidance provisions

Treatment of financial traders if conditions specified in regulation 73 are met

102.—(1) This group of regulations applies if a financial trader holds, or has held, an interest in a diversely owned fund.

(2) In this Chapter—

"this group of regulations" means this regulation and regulations 103 to 105;

"financial trader" has the meaning given by regulation 105.

(3) In computing the trading profits or losses of the financial trader for the relevant period, the following amounts must be brought into account—

(a) all distributions received by or credited to the financial trader in respect of the interest for the relevant period, and

(b) any amount required to be brought into account under regulation 103.

(4) In this group of regulations "relevant period" means—

(a) in the case of a financial trader within the charge to income tax, a period of account, and

(b) in the case of a financial trader within the charge to corporation tax, an accounting period.

(5) In this group of regulations references to distributions are subject to section 130 of CTA 2009 (insurers receiving distributions etc).

(**11**) 1998 c. 36.

(**12**) Section 506 was amended by section 55(2) of the Finance Act 2006 (c. 25) and paragraph 95 of Schedule 1 to the Income Tax Act 2007 (c. 3).

Amounts brought into account in computing trading profits or losses of financial traders

103.—(1) The only amounts that may be brought into account in computing the trading profits or losses of the financial trader in respect of the interest in the reporting fund for the relevant period are—

(a) amounts within regulation 102(3)(a), and

(b) amounts brought into account in accordance with Cases A to D.

(2) Paragraph (1) is subject to section 130 of CTA 2009 and to regulation 104.

(3) Case A applies if the financial trader holds the interest at the beginning of the relevant period and continues to hold the interest throughout the relevant period.

If Case A applies, the amount to be brought into account is the difference between the market value of the interest at the end of the relevant period and the market value of the interest at the end of the period immediately preceding the relevant period.

(4) Case B applies if the financial trader acquires the interest during the relevant period and continues to hold the interest throughout the remainder of the relevant period.

If Case B applies, the amount to be brought into account is the difference between the market value of the interest at the end of the relevant period and the acquisition cost of the interest.

(5) Case C applies if the financial trader holds the interest at the beginning of the relevant period and disposes of the interest during the period.

If Case C applies the amount to be brought into account is the difference between the disposal value of the interest and the market value of the interest at the end of the period immediately preceding the relevant period.

(6) Case D applies if the financial trader acquires and disposes of the interest during the relevant period.

If Case D applies the amount to be brought into account is the difference between the disposal value of the interest and its acquisition cost.

Interests not within regulation 103

104.—(1) Regulation 103 does not apply in respect of an interest in a reporting fund if—

(a) conditions A and B are met, or

(b) condition C is met.

(2) Condition A is that the interest forms part of the financial trader's stock in trade and all the profits and losses, including distributions, arising in respect of the interest are included in the computation of the financial trader's trading profits for the relevant period.

(3) Condition B is that the interest is accounted for under generally accepted accounting practice on the basis of fair value accounting.

(4) Condition C is that the interest is a relevant holding in respect of which the provisions of section 490 of CTA 2009 (holdings in OEICs, unit trusts and offshore funds treated as creditor relationship rights) apply in relation to the financial trader.

(5) In paragraph (4) a "relevant holding" means—

(a) any rights under a unit trust scheme,

(b) a material interest in an offshore fund, or

(c) any shares in an open-ended investment company.

Meaning of "financial trader"

105.—(1) In this Chapter "financial trader" means a person who is carrying on a business which is—

(a) a banking business,

(b) an insurance business, or

(c) a business consisting wholly or in part of dealing in trading assets such that any profit on such assets would form part of the trading profits of that business.

This is subject to paragraphs (2) and (3).

(2) For the purposes of paragraph (1)(b) an insurance business does not include life assurance business carried on by an insurance company and if such a company carries on both life assurance business and any other insurance business the company must not be treated as a financial trader in respect of the life assurance business.

(3) If—

(a) a financial trader ("A") directly or indirectly transfers trading assets to a diversely owned fund under, or as part of, an arrangement which has an unallowable purpose, and

(b) a connected person ("B")—

(i) holds an interest in the diversely owned fund at the time of the transfer, or

(ii) directly or indirectly acquires an interest in the diversely owned fund at a later time,

B is treated as being a financial trader in relation to that interest.

(4) In this regulation "trading assets" means—

(a) stocks or shares;

(b) a relevant contract (construed in accordance with regulations 82 to 86);

(c) a loan relationship (construed in accordance with regulation 87);

(d) units in a collective investment scheme (construed in accordance with regulation 88);

(e) securities of any description not falling within any of sub-paragraphs (a) to (d);

(f) foreign currency; or

(g) a carbon emission trading product (construed in accordance with regulation 89);

a profit on the sale of which would form part of the trading profits of the financial trader.

(5) An arrangement includes any scheme, understanding or transaction of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.

(6) An arrangement has an unallowable purpose if the main purpose or one of the main purposes for either A or B being party to the arrangement is to obtain a tax advantage or an income tax advantage for any person.

(7) In paragraph (6)—

"tax advantage" has the meaning given by section of 840ZA of ICTA(**13**);

"income tax advantage" has the meaning given by section 683 of ITA 2007.

(**13**) Section 840ZA was inserted by paragraph 225 of Schedule 1 to the Income Tax Act 2007 (c. 3).

CHAPTER 9

THE PROVISION OF INFORMATION TO HMRC

Reporting requirements

106.—(1) A reporting fund must provide the following information to HMRC in relation to each period of account—

(a) its audited accounts (see Chapter 4);

(b) its computation of its reportable income for the period of account based on its audited accounts (see Chapter 5);

(c) a copy of the report made available to participants for each reporting period falling within the period of account (including, for each reporting period, the information specified in regulation 92(1));

(d) the reported income of the fund for each reporting period falling within the period of account;

(e) the amount actually distributed to participants in respect of each reporting period falling within the period of account;

(f) the number of units in the fund in issue at the end of each reporting period falling within the period of account;

(g) the amount of the reported income per unit of interest in the fund in respect of each reporting period falling within the period of account;

(h) a declaration confirming that the fund has complied with the obligations specified in regulations 53 and 58.

(2) The information specified in paragraph (1) must be provided within six months of the end of the period of account.

Information obligations of reporting funds

107.—(1) HMRC may give notice requiring a reporting fund or its managers, within such time, not being less than 42 days, as is specified in the notice, to provide any information, particulars or documents, in the possession or power of the reporting fund or its managers, as HMRC may reasonably require for the purposes of determining whether the fund has met, or continues to meet, its obligations under Chapter 3 of this Part.

(2) Before a notice is given to a reporting fund by HMRC under paragraph (1), the fund must have been given a reasonable opportunity to deliver the information, particulars or documents, or to make them available (the "initial request"); and HMRC must not give notice under paragraph (1) until the initial request has been given to the fund.

(3) HMRC must give the initial request to the reporting fund or its manager within a period of one year beginning with the day that the fund provides the information specified in regulation 106(1).

(4) HMRC may extend the time specified in paragraph (1) if they consider it reasonable to do so.

(5) A person to whom a notice under paragraph (1) is given may appeal.

(6) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice under paragraph (1) is given.

(7) On an appeal, the tribunal may uphold, vary or quash the notice.

CHAPTER 10

BREACHES OF REPORTING FUND REQUIREMENTS

Types of breaches

108.—(1) This Chapter applies if a reporting fund is in breach of a requirement imposed in this Part.

(2) A breach of a requirement imposed in this Part is—

(a) a minor breach, or

(b) a serious breach.

(3) For the purposes of these Regulations, a breach of a requirement imposed in this Part is a "serious breach" if it is—

(a) a breach specified as a serious breach in a provision of this Chapter, or

(b) a breach which is not a minor breach.

(4) For the purposes of these Regulations, a breach of a requirement imposed in this Part is a "minor breach" if it is a breach (other than a breach specified as a serious breach in a provision of this Chapter)—

(a) for which there is a reasonable excuse, or

(b) which is inadvertent and remedied as soon as reasonably possible.

This paragraph is subject to the following provisions of this regulation.

(5) For the purposes of this Part a minor breach is not regarded as a breach if the reporting fund corrects the breach without any HMRC intervention.

(6) For the purposes of these Regulations there is an "HMRC intervention" in relation to a reporting fund if HMRC request the fund to provide them with information relating to a requirement imposed in this Part.

This is subject to paragraph (7).

(7) There is no HMRC intervention in relation to a reporting fund if—

(a) the fund takes the initiative to correct a minor breach, and

(b) HMRC request the fund to provide them with information so that they may deal with the initiative taken.

(8) Regulation 109 deals with the consequences of minor breaches.

(9) Regulation 114 deals with the consequences of serious breaches.

Consequences of minor breaches

109.—(1) If a reporting fund is in breach of a requirement imposed in this Part and the breach is a minor breach, the fund continues to be treated as a reporting fund.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) If paragraph (1) applies on four separate occasions in a period of ten years beginning with the first day of the period of account in which the first breach occurs, the fourth breach is a serious breach.

(4) If a single event results in more than one minor breach within a single period of account, there is only one minor breach in that period of account for the purposes of this Chapter.

Differences between reported income and reportable income

110.—(1) This regulation applies if there is a difference between—

(a) the reportable income of a reporting fund for a period of account, and

(b) the reported income of the fund for all reporting periods comprised in the period of account.

(2) The following amounts must be determined for each reporting period comprised in the period of account—

(a) the amount of the reported income for the reporting period, and

(b) the amount of the reportable income for the period of account that is referable to that reporting period.

(3) If the difference between the two amounts specified in paragraph (2) is 10% or less of the reportable income, there is no breach of a requirement imposed in this Part.

(4) If the difference between the two amounts specified in paragraph (2) is more than 10% but not more than 15% of the reportable income—

(a) an amount equal to the difference must be added to the reported income—

(i) for the reporting period in which the error is established, or

(ii) for the following reporting period; or

(b) the reporting fund must make a supplementary report for the period of account in which the difference occurs before the end of a period of three months beginning immediately after the period of account in which the error is established.

(5) If the difference between the two amounts specified in paragraph (2) is more than 15% of the reportable income, the reporting fund must make a supplementary report to participants for the period of account in which the difference occurs before the end of a period of three months beginning immediately after the period of account in which the error is established.

(6) The supplementary report mentioned in paragraphs (4) and (5) must be made to those persons who were participants in the fund at the end of the period of account in which the difference occurs.

(7) If paragraph (4) or (5) applies and the action specified in the applicable paragraph is taken as soon as reasonably possible, there is a minor breach.

(8) If paragraph (4) or (5) applies but the action specified in the applicable paragraph is not taken as soon as reasonably possible, there is a serious breach.

(9) For the purposes of paragraph (4) an error is established for a reporting period if, during that reporting period—

(a) HMRC conclude—

(i) that an error has been made in respect of an earlier reporting period, and

(ii) that, as a result of the error, the difference between the reported income for the reporting period and the reportable income for the period of account in which the reporting period is comprised is more than 10% but not more than 15%; and

(b) HMRC give notice to the reporting fund of the matters specified in sub-paragraph (a).

(10) For the purposes of paragraph (5) an error is established for a period of account if, during that period of account—

(a) HMRC conclude—

(i) that an error has been made in respect of an earlier period of account, and

(ii) that, as a result of the error, the difference between the reported income and the reportable income for the period of account is more than 15%; and

(b) HMRC give notice to the reporting fund of the matters specified in sub-paragraph (a).

Provision of report that is incorrect or incomplete

111.—(1) This regulation applies if—

(a) a reporting fund provides a report specified in paragraph (2) that is incorrect or incomplete, and

(b) regulation 110 does not apply.

(2) The reports specified are—

(a) the report to participants in accordance with the requirements of Chapter 7 of this Part, and

(b) the report to HMRC in accordance with the requirements of Chapter 9 of this Part.

(3) If the reporting fund provides a correct report as soon as reasonably possible, there is a minor breach.

(4) If the reporting fund does not provide a correct report as soon as reasonably possible, there is a serious breach.

Cases where information is not provided

112.—(1) This regulation applies if, on the relevant date, a reporting fund has not provided—

(a) the information specified in regulation 106(1) to HMRC in relation to a period of account (the "requisite period of account"), and

(b) a report to each participant for each reporting period comprised in the requisite period of account.

(2) In paragraph (1) the "relevant date" means the day immediately following the expiry of the period of six months beginning immediately after the end of the requisite period of account.

(3) If the reporting fund provides the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of four months beginning with the relevant date, the breach is not regarded as a breach for the purposes of this Part.

(4) If the reporting fund does not provide the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of four months beginning with the relevant date but does provide that information and those reports within a period of twelve months beginning with the relevant date, there is a minor breach.

(5) If the reporting fund does not provide the information mentioned in paragraph (1)(a) and the reports mentioned in paragraph (1)(b) within a period of twelve months beginning with the relevant date, there is a serious breach.

Serious breaches

113.—(1) There is a serious breach if condition A, B, C or D is met.

(2) Condition A is that a period of account of a reporting fund exceeds 18 months.

(3) Condition B is that a reporting fund has used an accounting practice which—

(a) is not in accordance with international accounting standards, and

(b) has not been approved by HMRC (see regulations 53, 55 and 61).

(4) Condition C is that—

(a) a reporting fund fails, or its managers fail, to provide the information, particulars or documents within the time specified in a notice given under regulation 107(1), and

(b) there is no appeal against the notice within the time specified in regulation 107(6).

(5) Condition D is that—

(a) on an appeal against a notice given under regulation 107(1), the tribunal varies the notice,

(b) a reporting fund fails, or its managers fail, to provide the information, particulars or documents within the time specified in the notice (as so varied), and

(c) there is no appeal against the decision of the tribunal.

Consequences of serious breaches

114.—(1) This regulation applies if conditions A and B are met.

(2) Condition A is that—

(a) a reporting fund is in breach of a requirement imposed in this Part, and

(b) the breach is a serious breach.

(3) Condition B is that HMRC give notice to the fund—

(a) stating that the fund is in breach of a requirement imposed in this Part and that the breach is a serious breach, and

(b) specifying the serious breach.

(4) The fund is treated as a non-reporting fund for the reporting period in which HMRC give the notice and for all subsequent periods.

This is subject to paragraphs (5) and (6).

(5) If regulation 113(4) applies, the fund is treated as a non-reporting fund for the reporting period in which the notice is given and for all subsequent periods.

(6) If regulation 113(5) applies, the fund is treated as a non-reporting fund for the reporting period in which the notice as varied is given and for all subsequent periods.

Appeal against exclusion from the reporting fund regime

115.—(1) If HMRC give notice to a fund under regulation 114(3) (an "exclusion notice"), the fund may appeal.

(2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the exclusion notice is given.

(3) On an appeal, the tribunal may uphold or quash the exclusion notice.

CHAPTER 11

LEAVING THE REPORTING FUND REGIME

Termination by notice given by reporting fund

116.—(1) If a reporting fund gives a notice under this regulation specifying a day (the "specified day") at the end of which this Part is to cease to apply to the fund, this Part shall cease to apply to the fund at the end of that day.

(2) The specified day must be the last day of a period of account of the reporting fund.

(3) A notice under paragraph (1) must be given in writing to HMRC before the specified day.

(4) If the fund gives a notice under paragraph (1), the fund must also make the notice available to each participant before the specified day.

(5) Paragraphs (2) to (4) of regulation 90 apply to determine whether the notice is made available to a participant in the same way as they apply to determine whether a report for a reporting period is made available to a participant.

(6) This regulation is subject to regulation 117.

Reporting fund not complying with requirements

117.—(1) This regulation applies if—

(a) a reporting fund gives a notice under regulation 116, and

(b) the fund has not complied with all requirements imposed in this Part for all periods during which it was a reporting fund.

(2) For the purposes of these Regulations the fund is treated as a fund to which regulation 114 has applied and not as a fund to which regulation 116 has applied.

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.