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STATUTORY INSTRUMENTS

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**2009 No. 3001**

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

**PART 2**

**THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS**

**CHAPTER 4**

**DISPOSALS OF INTERESTS IN NON-REPORTING FUNDS**

*Basic provisions*

**Application of this Chapter**

- 32.** This Chapter applies if a participant disposes of an asset and at the time of the disposal—
- (a) the asset is an interest in a non-reporting fund, or
  - (b) the asset is an interest in a reporting fund and the requirements specified in paragraph (3) of regulation 17 (read, as appropriate, with paragraphs (4) and (5) of that regulation) are met.

**Disposal of an asset: the basic rule**

- 33.—**(1) There is a disposal of an asset for the purposes of these Regulations if there would be a disposal of an asset for the purposes of TCGA 1992.
- (2) Paragraph (1) is subject to the following provisions of this Chapter.

*Further provisions*

**Provisions applicable on death**

- 34.—**(1) Notwithstanding anything in paragraph (b) of subsection (1) of section 62 of TCGA 1992 (general provisions applicable on death: no deemed disposal by the deceased), where a person dies and the assets of which the deceased was competent to dispose at the time of death include an interest in a non-reporting fund, then, for the purposes of these Regulations—
- (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
  - (b) nothing in this regulation affects the determination, in accordance with regulation 32, of the question whether that deemed disposal is one to which this Chapter applies.
- (2) Subject to paragraph (1), section 62 of TCGA 1992(1) applies for the purposes of these Regulations as it applies for the purposes of that Act, and the reference in that paragraph to the

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(1) Section 62 was amended by paragraph 5 of Schedule 21 to the Finance Act 1998 (c. 36), section 52 of the Finance Act 2002 (c. 23) and paragraph 29 of Schedule 2 to the Finance Act 2008 (c. 9).

assets of which a deceased person was competent to dispose are to be construed in accordance with subsection (10) of that section.

#### **Application of section 135 of TCGA 1992**

**35.**—(1) Section 135 of TCGA 1992<sup>(2)</sup> (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Part to the extent that—

- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is an interest in a non-reporting fund, and
- (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.

(2) In a case where section 135 of TCGA 1992 would apply apart from paragraph (1), the exchange in question shall for the purposes of this Part constitute a disposal of interests in the non-reporting fund for a consideration equal to their market value at the time of the exchange.

#### **Application of section 136 of TCGA 1992**

**36.**—(1) Section 136 of TCGA 1992<sup>(3)</sup> (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Part to the extent that—

- (a) the interest in the entity that is company A for the purposes of that section that is exchanged is an interest in a non-reporting fund, and
- (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.

(2) In a case where section 136 of TCGA 1992 would apply apart from paragraph (1), the deemed exchange in question shall for the purposes of this Part constitute a disposal of interests in the non-reporting fund for a consideration equal to their market value at the time of the deemed exchange.

#### **Exchange of interests of different classes**

**37.**—(1) If conditions A to D are met, section 127 of TCGA 1992 (equation of original shares and new holding) does not prevent an exchange from constituting a disposal for the purposes of these Regulations.

(2) Condition A is that an offshore fund is constituted by a class of interest (“class A”) in main arrangements.

(3) Condition B is that a participant exchanges an interest of class A for an interest in another offshore fund constituted by a different class of interest (“class B”) in those main arrangements.

(4) Condition C is that the interest of class A is at the time of the exchange an interest in a non-reporting fund.

(5) Condition D is that the interest of class B is at the time of the exchange an interest which is not an interest in a non-reporting fund.

(6) Any disposal to which this regulation applies is to be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

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(2) Section 135 was substituted by paragraph 1 of Schedule 9 to the Finance Act 2002.

(3) Section 136 was substituted by paragraph 2 of Schedule 9 to the Finance Act 2002.