DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 2

THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS

CHAPTER 3

EXCEPTIONS ETC. FROM THE CHARGE TO TAX

Exceptions from the charge

25.—(1) No liability to tax arises under regulation 17 if any of conditions A to E is met.

(2) Condition A is that the participant is required to treat the interest in the fund as a loan relationship under Chapter 3 of Part 6 of CTA 2009.

(3) Condition B is that the participant is required to treat the interest in the fund as a derivative contract to which the provisions of Part 7 of CTA 2009 apply.

(4) Condition C is that the asset is an intangible fixed asset to which the provisions of Part 8 of CTA 2009 apply.

(5) Condition D is that the asset consists of excluded indexed securities as defined in section 433 of ITTOIA 2005.

(6) Condition E is that the asset is a right arising under a policy of insurance.

Trading stock etc.

26.—(1) No liability to tax arises under regulation 17 if condition A or B is met.

(2) Condition A is that the interest in the fund is held as trading stock.

(3) Condition B is that the disposal of the interest is taken into account in computing the profits of a trade.

Long-term insurance funds of insurance companies

27.—(1) No liability to tax arises under regulation 17 in respect of disposals of assets of an insurance company's long-term insurance fund.

(2) In paragraph (1) "insurance company" and "long-term insurance fund" have the same meaning as in section 431(2) of ICTA(**1**).

(**1**) In section 431(2), the definition of "insurance company" was substituted by S.I. 2001/3629 and amended by S.I. 2006/3270. As regards the expression "long-term insurance fund", a definition of "long term business fund" was inserted by paragraph 1(2) of the Finance Act 1990 (c. 29) and amended by Part 5(26) of Schedule 41 to the Finance Act 1996. The definition was re-labelled as a definition of "long-term insurance fund" and further amended by S.I. 2001/3629.

Loans other than participating loans

28.—(1) No liability to tax arises under regulation 17 if the asset is a loan which is not a participating loan.

(2) For the purposes of paragraph (1) a "participating loan" means a loan where the amount payable on redemption exceeds the issue price by an amount which is determined in whole or in part by reference to the income of the non-reporting fund.

Interests in transparent funds

29.—(1) No liability to tax arises under regulation 17 if—

(a) the disposal is the disposal of an interest in an offshore fund falling within paragraph (b) or (c) of section 40A(2) of FA 2008(**2**), and

(b) the fund is a transparent fund.

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

(2) But there is a charge to tax under regulation 17 if—

(a) there is a disposal of an interest in a transparent fund, and

(b) during a period beginning with the date the interest (or any part of it) was acquired and ending with the date of the disposal, the offshore fund has at any time held interests in other non-reporting funds which amounted in total to more than 5% by value of the offshore fund's assets.

(3) And there is a charge to tax under regulation 17 if—

(a) there is a disposal of an interest in a transparent fund,

(b) the fund is a non-reporting fund, and

(c) the fund fails to make sufficient information available to participants in the fund to enable those participants to meet their tax obligations in the United Kingdom with respect to their shares of the income of the fund.

(4) If, on the disposal by an offshore fund of an interest in another non-reporting fund, no liability would arise under regulation 17 by virtue of this regulation, that interest is not taken into account for the purposes of paragraph (2)(b).

Rights in certain existing holdings

30.—(1) No liability to tax arises under regulation 17 in respect of any rights in an offshore fund to which this regulation applies if the rights are acquired by a person—

(a) before 1st December 2009, or

(b) in accordance with paragraph (2).

(2) Rights are acquired in accordance with this paragraph if—

(a) the rights are acquired by the participant in accordance with a legally enforceable agreement in writing that was entered into by the participant before 30th April 2009,

(b) in the case of an agreement which was conditional, the conditions are met before that date, and

(c) the agreement is not varied on or after that date.

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

(3) Rights of a person in a fund are rights in an offshore fund to which this regulation applies if, on the date on which the person acquired the rights, those rights did not constitute a material interest in an offshore fund within the meaning of that expression given by section 759 of ICTA(**3**).

Charitable companies and charitable trusts

31.—(1) A charitable company shall be exempt from corporation tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes.

(2) See section 535 of ITA 2007 for an exemption for income tax purposes for offshore income gains accruing to a charitable trust.

(3) Paragraphs (4) and (5) apply if—

(a) property held on charitable trusts ceases to be subject to charitable trusts, and

(b) that property represents directly or indirectly an offshore income gain.

(4) The trustees are treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value.

(5) An offshore income gain accruing on the disposal arising under paragraph (4) is treated as an offshore income gain not accruing to a charity.

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

(**3**) Section 759 is repealed by these Regulations (see regulation 13(2) and Schedule 2) subject to the saving contained in paragraph 3(4) of Schedule 1 (see regulation 13(3) of these Regulations).

(**4**) 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).