
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 3

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

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(1).

(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(2) (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(3) (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(4) (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(5) for the year of assessment in which the distribution is made, but sections 688(1) and 689 of ITTOIA 2005 do not apply.

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.

(2) Section 378A was inserted by section 39(3) of the Finance Act 2009.

(3) 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.

(4) Section 688(1) was amended by paragraph 22 of Schedule 12 to the Finance Act 2008.

(5) Section 830 was amended by paragraphs 51, 96, 156 and 162 of Schedule 7 to the Finance Act 2008.