
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.

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

(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.

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⁽⁶⁾;
“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⁽⁷⁾.

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).

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—

⁽⁶⁾ 1998 c. 36.

⁽⁷⁾ 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).

- (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(8);

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

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