
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

SCHEDULES

SCHEDULE 22

OFFSHORE FUNDS

PART 2

APPLICATION OF TCGA 1992 TO OFFSHORE FUNDS

TCGA 1992

7 TCGA 1992 is amended as follows.

F18

Textual Amendments

F1 [Sch. 22 para. 8](#) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Collective Investment Schemes and Offshore Funds \(Amendment of the Taxation of Chargeable Gains Act 1992\) Regulations 2017 \(S.I. 2017/1204\)](#), reg. 1(1), [13](#)

9 Accordingly, in the title of Part 3 and in the title of Chapter 3 of that Part, insert at the end “etc”.

Modifications etc. (not altering text)

C1 [Sch. 22 para. 9](#) having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), [art. 2](#)

10 In section 288(1) (interpretation), in the definition of “company”, for “section 99” substitute “sections 99 and 103A”.

Modifications etc. (not altering text)

C2 [Sch. 22 para. 10](#) having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), [art. 2](#)

Consequential provision

11 (1) In TMA 1970, in—

- (a) section 25(9) (issuing houses, stockbrokers, auctioneers, etc), and
 - (b) section 28(2) (non-resident companies and trusts),
- after “sections 99” insert “ , 103A ”.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F2}(2) In section 1165 of CTA 2010—

- (a) in subsection (1) for “section 99 of TCGA 1992 (application of that Act to unit trust schemes)” substitute “ sections 99 and 103A of TCGA 1992 (application of that Act to unit trust schemes and to certain offshore funds) ”, and
- (b) in subsection (3) for “section 99 of TCGA 1992” substitute “ sections 99 and 103A of TCGA 1992 ”.]

(3) In ITTOIA 2005—

- (a) in section 149(4) (taxation of amounts taken to reserves), at the end of paragraph (b) (before the “and”) insert—
 - “(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,” and
- (b) in section 150(8) (conversion etc of securities held as circulating capital), after paragraph (c) insert—
 - “(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992.”.

(4) In section 834(5) of the Companies Act 2006 (investment company: condition as to holdings in other companies), in the definition of “company” and “shares”, after “sections 99” insert “ , 103A ”.

^{F3}(5)

Textual Amendments

- F2** Sch. 22 para. 11(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 716(2)** (with Sch. 2)
- F3** Sch. 22 para. 11(5) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of The Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 (S.I. 2017/1204), regs. 1(1), **13**

Modifications etc. (not altering text)

- C3** Sch. 22 para. 11(1)(b)(3) having effect as specified (1.4.2010) by Finance Act 2009, Paragraph 12(2)(b) of Schedule 22 (Appointed Day) Order 2010 (S.I. 2010/670), **art. 2**

Commencement: general

- 12 (1) The amendments made by this Part of this Schedule have effect in relation to the acquisition, holding and disposal of rights in a relevant offshore fund on or after the commencement day, subject to paragraphs 13 and 15.
- (2) In this paragraph and paragraphs 15 to 18 “the commencement day” means—
- (a) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to capital gains tax, 1 December 2009, and
 - (b) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to corporation tax, such day as the Treasury may by order appoint.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Modifications etc. (not altering text)

C4 Sch. 22 para. 12(2)(b): 1.4.2010 appointed by [S.I. 2010/670](#), art. 2

Commencement: certain consequential amendments

- 13 (1) The amendment made by sub-paragraph (1)(a) of paragraph 11 comes into force on 1 December 2009 (and has effect as if section 103A of TCGA 1992 had effect from that date in relation to the issue, placing, acquisition, holding and disposal of rights in relevant offshore funds by any person).
- (2) The amendments made by sub-paragraphs (2), (4) and (5) of paragraph 11 come into force in accordance with an order made by the Treasury.

Commencement orders

- 14 (1) An order under paragraph 12(2)(b) or 13(2)—
- (a) may make different provision for different cases or different purposes, and
 - (b) may include transitional provision and savings.
- (2) [^{F4}Section 1171(4) of CTA 2010], section 287(3) of TCGA 1992 and section 1014(4) of ITA 2007 (orders etc subject to annulment) do not apply in relation to such an order.

Textual Amendments

F4 Words in Sch. 22 para. 14(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 716\(3\)](#) (with [Sch. 2](#))

Election modifying commencement

- 15 (1) This paragraph applies if a person makes an election—
- (a) for capital gains tax purposes, in respect of a relevant tax year, or
 - (b) for corporation tax purposes, in respect of a relevant accounting period.
- (2) The amendments made by this Part of this Schedule (other than the amendments made by paragraph 11(1)(a), (2), (4) and (5)) have effect, and are to be treated as always having had effect, in relation to the acquisition, holding and disposal by the person of rights in a relevant offshore fund on or after the first day of that tax year or accounting period (“the election day”).
- (3) Sub-paragraph (4) applies if, in respect of any time on or after the election day but before the commencement day, the relevant offshore fund was not certified as a distributing fund under Part 3 of Schedule 27 to ICTA (distributing funds: certification procedure).
- (4) The acquisition, holding or disposal by the person of rights in the fund at that time is to be treated as the acquisition, holding or disposal of rights in an offshore fund that is so certified.
- (5) In this paragraph and paragraph 16—

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“relevant accounting period” means an accounting period beginning on or after 1 April 2003 but before the day appointed under paragraph 12(2)(b);
“relevant tax year” means the tax year 2003-04 and any subsequent tax year up to and including the tax year 2009-2010.

Making an election

- 16 (1) An election under paragraph 15 must be made—
- (a) for capital gains tax purposes, by being included in a relevant return under TMA 1970, and
 - (b) for corporation tax purposes, by being included in a relevant company tax return.
- (2) A return under TMA 1970 is relevant if it is for—
- (a) the tax year in respect of which the election is made, or
 - (b) a subsequent relevant tax year.
- (3) A company tax return is relevant if it is for—
- (a) the accounting period in respect of which the election is made, or
 - (b) a subsequent relevant accounting period.
- (4) The references in sub-paragraph (1) to an election being included in a return include an election being included by virtue of an amendment of the return.
- (5) An election under paragraph 15 is irrevocable.

Giving effect to elections

- 17 If, in order to give effect to an election under paragraph 15, any adjustments are required, whether by the discharge or repayment of tax, the making of assessments or otherwise—
- (a) the adjustments must be made, and
 - (b) any time limit for making the adjustments is to be disregarded.

Modification of acquisition cost

- 18 (1) This paragraph applies where a participant in a relevant offshore fund—
- (a) holds rights in a relevant offshore fund immediately before the effective date, and
 - (b) disposes of those rights on or after that date.
- (2) For the purposes of TCGA 1992 the participant is to be treated as if the acquisition cost for those rights were the pre-commencement acquisition cost.
- (3) “The effective date” means—
- (a) if the participant has made an election under paragraph 15, the election day, or
 - (b) otherwise, the commencement day.
- (4) “Acquisition cost” means the total of the consideration, costs and expenditure described in section 38(1)(a) and (b) of TCGA 1992 (acquisition and disposal costs etc).

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)*

- (5) “Pre-commencement acquisition cost” means the total of the consideration, costs and expenditure that would have been allowable as a deduction under section 38(1) (a) and (b) of TCGA 1992 if the participant had disposed of the rights immediately before the effective date.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Finance Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(4)(za) inserted by [2010 c. 33 Sch. 9 para. 3\(3\)](#)
- Sch. 53 para. 2A-2D and cross-heading inserted by [2010 c. 33 Sch. 9 para. 7](#)
- Sch. 53 para. 6A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 8](#)
- Sch. 53 para. 11A11B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 17](#)
- Sch. 53 para. 14A and cross-heading inserted by [2010 c. 33 Sch. 9 para. 18](#)
- Sch. 54 para. 9B9C and cross-heading inserted by [2010 c. 33 Sch. 9 para. 11](#) (Sch. 54 para. 9B is amended before it comes into force by [2016 c. 24, Sch. 1 para. 66\(5\)](#))
- Sch. 54 para. 12A12B and cross-heading inserted by [2010 c. 33 Sch. 9 para. 19](#)
- Sch. 54 Pt. A1 inserted by [2010 c. 33 Sch. 9 para. 10](#) (Sch. 9 para. 10 is amended before it comes into force by [2017 c. 32, Sch. 4 para. 182](#))
- Sch. 55 para. 6(3A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(2\)\(a\)](#)
- Sch. 55 para. 6(4A)(za) inserted by [2015 c. 11 Sch. 20 para. 15\(3\)\(a\)](#)
- Sch. 55 para. 17(4)(ba) inserted by [2015 c. 11 Sch. 20 para. 19](#)
- Sch. 56 para. 3(1)(d) omitted by [2021 c. 26 Sch. 27 para. 40\(4\)\(c\)](#)