

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Offshore funds

Overview

641. This Part deals with the tax treatment of participants in offshore funds.

Section 354: Power to make regulations about tax treatment of participants

642. This section enables the Treasury to make regulations governing the tax treatment of participants in offshore funds. It is based on sections 41 and 42 of FA 2008.

Section 355: Meaning of “offshore fund”

643. This section sets out the main definition of the expression “offshore fund”. It is based on section 40A(2), (3) and (6) of FA 2008.

644. The definition is in turn dependent on the definition of “mutual fund” to be found in section 356.

645. *Subsection (3)* defines “co-ownership” for the purposes of the section. The meaning is not restricted to the definition of the term in the law of any part of the United Kingdom. It takes its meaning from the law of the territory in which the arrangements take effect.

Section 356: Meaning of “mutual fund”

646. This section defines “mutual fund”. It is based on sections 40B and 42A(2) of FA 2008.

647. To qualify as a mutual fund, arrangements must meet conditions A, B and C.

648. Condition C requires that an investor in the arrangements would expect to be able to realise the investment on a basis calculated entirely, or almost entirely, by reference to net asset value (“NAV”) or by reference to an index of any description.

Section 357: Exceptions to definition of “mutual fund”

649. This section provides some exceptions to the definition of “mutual fund” set out in section 356. It is based on section 40E of FA 2008.

650. Arrangements are not a mutual fund if condition D is met and either condition E or condition F is also met.

651. Condition D qualifies condition C in section 356. An investor in a company would normally only reasonably expect to be able to realise NAV on the liquidation of the company. So condition D potentially excludes from the mutual fund definition

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any case where a reasonable investor would only be able to realise the investment in arrangements in the event of a winding-up, dissolution or termination of the arrangements.

652. Condition E is that the arrangements are not designed to terminate on a fixed date.
653. Condition F comprises three parts.
- The first is that the arrangements are designed to terminate on a fixed date.
 - The second is that *subsection (5), (6) or (7)* applies.
 - Subsection (5) applies if none of the assets are chargeable income-producing assets.
 - Subsection (6) applies if the participants in the arrangements have no entitlement to benefit from the income arising on the assets that are the subject of the arrangements.
 - Subsection (7) applies if all of the net income arising is required to be paid or credited to participants in such a manner that a UK resident individual would be charged to income tax on the amounts paid or credited.
 - The third is that the arrangements are not designed to produce a return that is, in substance, equivalent to interest.

Section 358: Meaning of “relevant income-producing asset”

654. This section defines “relevant income-producing asset” for the purposes of section 357. It is based on section 40F of FA 2008.

Section 359: Power to make regulations about exceptions to definition of “mutual fund”

655. This section allows the Treasury to amend or repeal any provision of section 357 or section 358 by regulation. It is based on sections 40G and 42A(2) of FA 2008.

Section 360: Treatment of umbrella arrangements

656. This section sets out the treatment of umbrella arrangements (as defined in section 363). It is based on section 40A(1) and 40C(1) of FA 2008.
657. *Subsection (2)* provides that where there are such arrangements, each separate part (usually known as a “sub-fund”) is to be treated as a separate arrangement and the overall arrangements are disregarded. In such a case the overall arrangements themselves do not constitute a mutual fund or an offshore fund.

Section 361: Treatment of arrangements comprising more than one class of interest

658. This section sets out the treatment of arrangements where there is more than one class of interest. It is based on sections 40A(1) and 40D of FA 2008.
659. Each class of arrangements is looked at separately for the purposes of determining whether the arrangements constitute a mutual fund, and the main arrangements are disregarded.

Section 362: Meaning of “participant” and “participation”

660. This section defines “participant” and “participation”. It is based on section 40A(5) of FA 2008.

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Section 363: Meaning of “umbrella arrangements” and “part of umbrella arrangements”

661. This section defines “umbrella arrangements” and “part of umbrella arrangements”. It is based on section 40C(2) and (3) of FA 2008.