



Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 8

OFFSHORE FUNDS [F¹ETC]

Textual Amendments

- F1** Word in Pt. 8 heading inserted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(5\)\(b\)\(6\)](#)

Tax treatment of participants in offshore funds

354 Power to make regulations about tax treatment of participants

- (1) The Treasury may by regulations make provision about the treatment of participants in an offshore fund for the purposes of enactments relating to income tax, corporation tax or capital gains tax.
- (2) Regulations under subsection (1) may, in particular, make special provision about the treatment of participants in an offshore fund comprising—
 - (a) a part of umbrella arrangements (see section 360), or
 - (b) arrangements relating to a class of interest in other arrangements (see section 361).
- (3) Regulations under subsection (1) may, in particular—
 - (a) make provision for an offshore fund, or a trustee or officer of an offshore fund, to make elections relating to the treatment of participants in the offshore fund for the purposes of income tax, corporation tax or capital gains tax,
 - (b) make provision about the supply of information by offshore funds, or trustees or officers of offshore funds—

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- (i) to Her Majesty's Revenue and Customs, or
 - (ii) to participants,
 - (c) make provision about the preparation of accounts and the keeping of records by offshore funds or trustees or officers of offshore funds, and
 - (d) make other provision about the administration of offshore funds.
- (4) Regulations under subsection (1) may, in particular, make provision consequential on the repeal by the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) of Chapter 5 of Part 17 of ICTA (offshore funds).
- (5) Regulations under subsection (1) may, in particular—
- (a) provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter,
 - (b) make provision by reference to standards or other documents issued by any person,
 - (c) modify an enactment (whenever passed or made),
 - (d) make different provision for different cases or different purposes, and
 - (e) make incidental, consequential, supplementary and transitional provision and savings.
- (6) Regulations under subsection (1) may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (7) In this section—
- “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978), and
 - “modify” includes amend, repeal or revoke.

355 Meaning of “offshore fund”

- (1) In section 354 “offshore fund” means—
- (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
 - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
 - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom.
- (2) Subsection (1)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (3) In this section—
- “body corporate” does not include a limited liability partnership, and
 - “co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.
- (4) See also section 151W(b) of TCGA 1992, section 564U(b) of ITA 2007 and section 519(4)(b) of CTA 2009 (which have the effect that investment bond arrangements are not an offshore fund for the purposes of section 354).

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356 Meaning of “mutual fund”

- (1) In section 355 “mutual fund” means arrangements with respect to property of any description (including money) that meet conditions A, B and C.
- (2) Subsection (1) is subject—
 - (a) to the exceptions made by or under sections 357 and 359, and
 - (b) to sections 360 and 361.
- (3) Condition A is that the purpose or effect of the arrangements is to enable the participants—
 - (a) to participate in the acquisition, holding, management or disposal of the property, or
 - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (4) Condition B is that the participants do not have day-to-day control of the management of the property.
- (5) For the purposes of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (6) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
 - (a) the net asset value of the property that is the subject of the arrangements, or
 - (b) an index of any description.
- (7) The Treasury may by regulations amend condition C.
- (8) Regulations under subsection (7) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

357 Exceptions to definition of “mutual fund”

- (1) Arrangements are not a mutual fund for the purposes of section 355 if—
 - (a) condition D is met, and
 - (b) condition E or F is met.
- (2) Condition D is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in section 356(6) only in the event of the winding up, dissolution or termination of the arrangements.
- (3) Condition E is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (4) Condition F is that—
 - (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements,
 - (b) subsection (5), (6) or (7) applies, and

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- (c) the arrangements are not designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (5) This subsection applies if none of the assets that are the subject of the arrangements is a relevant income-producing asset (see section 358).
- (6) This subsection applies if, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (7) This subsection applies if—
 - (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
 - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (8) For the purposes of this section the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

358 Meaning of “relevant income-producing asset”

- (1) This section has effect for the purposes of section 357.
- (2) An asset is a relevant income-producing asset if it produces income on which, if it were held directly by an individual resident in the United Kingdom, the individual would be charged to income tax (but see subsections (3) and (4)).
- (3) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—
 - (a) the asset (taking account of the hedging), or
 - (b) any product of the hedging arrangements.
- (4) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets (as defined by this section).

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

- (1) The Treasury may by regulations amend or repeal any provision of section 357 or 358.
- (2) The Treasury may by regulations provide that arrangements are not a mutual fund for the purposes of section 355—
 - (a) in specified circumstances, or
 - (b) if they are of a specified description.
- (3) Regulations under this section may include provision having effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.
- (4) Regulations under subsection (1) may only be made if a draft of the statutory instrument containing the regulations has been laid before and approved by a resolution of the House of Commons.

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Supplementary

360 Treatment of umbrella arrangements

- (1) This section has effect for the purposes of this Part.
- (2) In the case of umbrella arrangements (see section 363)—
 - (a) each part of the umbrella arrangements is to be treated as separate arrangements, and
 - (b) the umbrella arrangements are to be disregarded.
- (3) Subsection (2)(a) is subject to section 361.

361 Treatment of arrangements comprising more than one class of interest

- (1) This section has effect for the purposes of this Part.
- (2) Where there is more than one class of interest in arrangements (the “main arrangements”)—
 - (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and
 - (b) the main arrangements are to be disregarded.
- (3) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

362 Meaning of “participant” and “participation”

- (1) In this Part references to “participant”, in relation to arrangements (or a fund), are to a person taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise.
- (2) In this Part references (however expressed) to participation, in relation to arrangements (or a fund), are to be read in accordance with subsection (1).

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

- (1) In this Part “umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (2) In this Part references to a part of umbrella arrangements are to the arrangements relating to a separate pool.

[^{F2}363A [^{F3}Residence of undertakings for collective investment in transferable securities and alterative investment funds]

- [^{F4}(1) This section applies to—
- (a) a UCITS which is authorised in a foreign country or territory pursuant to Article 5 of the UCITS Directive, and

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- (b) an AIF which is authorised or registered in a foreign country or territory, or is not authorised or registered but has its registered office in a foreign country or territory,
unless the UCITS or AIF is an excluded entity.
- (2) If the UCITS or AIF is a body corporate which (apart from this section) would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax or capital gains tax, the body corporate is instead to be treated as if it were not resident in the United Kingdom.
- (2A) A UCITS or AIF is “an excluded entity” if it—
- (a) is a unit trust scheme the trustees of which are UK resident,
 - (b) is resident in the United Kingdom by virtue of section 14 of CTA 2009,
 - (c) is, or has been, an investment trust with respect to an accounting period, or
 - (d) is or has been—
 - (i) a company UK REIT in relation to an accounting period, or
 - (ii) a member of a group of companies at a time when the group is or was a group UK REIT in relation to an accounting period.
- (2B) The Treasury may, by regulations, modify this section so as to—
- (a) add a description of UCITS or AIF as an excluded entity,
 - (b) provide that a description of UCITS or AIF is no longer an excluded entity, or
 - (c) vary a description of an excluded entity.]
- (3) If, by virtue of section 99 or 103A of TCGA 1992, that Act applies in relation to the [F⁵UCITS or AIF] as if it were a company, that Act applies as if the company were [F⁶not resident] in the United Kingdom (if it would not otherwise do so).
- (4) In this section[F⁷—
- “AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013,
- “foreign country or territory” means a country or territory outside the United Kingdom,
- “investment trust with respect to an accounting period” is to be construed in accordance with section 1158 of CTA 2010,
- “UCITS” means an undertaking for collective investment in transferable securities,
- “the UCITS Directive” means Directive [2009/65/EC](#) of the European Parliament and of the Council,
- “company UK REIT in relation to an accounting period” and “group UK REIT in relation to an accounting period” are to be construed in accordance with section 527 of CTA 2010.]]

Textual Amendments

F2 S. 363A inserted (19.7.2011) by [Finance Act 2011 \(c. 11\)](#), s. 59

F3 S. 363A heading substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\)](#), s. 289(5)(c)(6)

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- F4** Ss. 363A(1)-(2B) substituted for s. 363A(1)(2) (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(2\)\(6\)](#)
- F5** Words in s. 363A(3) substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(3\)\(6\)](#)
- F6** Words in s. 363A(3) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 146](#)
- F7** Words in s. 363A(4) substituted (retrospective to 5.12.2013) by [Finance Act 2014 \(c. 26\), s. 289\(4\)\(6\)](#)

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