
STATUTORY INSTRUMENTS

2009 No. 3001

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

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—

(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) [^{F1}an interest] in an offshore fund, or
- (c) any shares in an open-ended investment company.

Textual Amendments

F1 Words in reg. 104(5)(b) substituted (28.6.2013) by [The Offshore Funds \(Tax\) \(Amendment No. 2\) Regulations 2013 \(S.I. 2013/1411\)](#), regs. 1(1), **14(b)** (with reg. 1(3)(4))

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 ^{M1};

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

Marginal Citations

M1 Section 840ZA was inserted by paragraph 225 of Schedule 1 to the [Income Tax Act 2007 \(c. 3\)](#).

Changes to legislation:

There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, Cross Heading: Anti-avoidance provisions.