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STATUTORY INSTRUMENTS

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**2011 No. 1211**

**The Offshore Funds (Tax) (Amendment) Regulations 2011**

**PART 2**

**Equalisation Arrangements**

**CHAPTER 1**

*Introduction and amendments to principal Regulations*

**Introduction**

4. This Part makes the following provisions in relation to equalisation arrangements—
- (a) this Chapter makes amendments to the principal Regulations,
  - (b) Chapter 2 makes transitional provisions.

**Insertion of new regulation 50A (meaning of “equalisation arrangements”, “full equalisation arrangements” and “equalisation amount”)**

5. After regulation 50 insert—

**“Meaning of “equalisation arrangements”, “full equalisation arrangements” and “equalisation amount”**

**50A.** For the purposes of this Part—

- (a) a reporting fund operates equalisation arrangements if it has given a statement under regulation 53(1)(h) that it intends to operate such arrangements;
- (b) a reporting fund operates full equalisation arrangements if in relation to any interest acquired by way of initial purchase in the reporting period—
  - (i) the equalisation amount included in the consideration for the purchase is specified by the fund in a statement in writing to the participant making the acquisition, or
  - (ii) the equalisation amount per unit of interest in the fund is included in the report made available in accordance with regulation 90;
- (c) “equalisation amount” has the meaning given in regulation 72(2).”.

**Amendment to regulation 53 (contents of an application)**

6. In regulation 53 (contents of an application) in paragraph (1) at the end insert—
- “(h) a statement whether or not the fund intends to operate equalisation arrangements;
  - (i) in a case in which the fund does intend to operate equalisation arrangements, a statement whether or not the fund intends to operate full equalisation arrangements;

- (j) in a case in which the fund does not intend to operate equalisation arrangements, a statement specifying whether or not the fund intends to make income adjustments in a reporting period;
- (k) in a case in which the fund intends to make income adjustments in a reporting period, a statement specifying—
  - (i) whether the fund intends to make those adjustments on the basis of reported income (see regulation 92A) or on the basis of accounting income (see regulation 92B), and
  - (ii) the length of the computation period (see regulation 92C);
- (l) in a case in which the fund intends to make income adjustments in a reporting period on the basis of accounting income—
  - (i) a statement by the fund manager specifying how the accounting income is to be determined,
  - (ii) a statement by the fund manager that, on the basis of this determination, it is reasonable to expect that the difference between the amount of reported income per unit calculated using this method and the amount of reported income per unit calculated on the basis of reported income will be 10% or less of the latter of those amounts, and
  - (iii) an undertaking by the manager to meet the requirements relating to alternative income adjustments and notice to HMRC<sup>(1)</sup> (see regulation 92B(5)).”.

**Amendment to regulation 55 (response by HMRC to application)**

- 7.—(1) Amend regulation 55 (response by HMRC to application) as follows.
- (2) In paragraph (3) after “5” insert “or 6A”.
  - (3) After paragraph (3) insert—

“(3A) Where the fund intends to make income adjustments on the basis of accounting income (see regulation 53(1)(l)), HMRC must not accept an application if they do not consider that it is reasonable to expect that the difference between the amount of reported income per unit calculated using this method and the amount of reported income per unit calculated on the basis of reported income will be 10% or less of the latter of those amounts.”.

**Insertion of Chapter 2A (amendment to application for this Part to apply)**

8. After regulation 56 insert—

“CHAPTER 2A

*AMENDMENT TO APPLICATION FOR THIS PART TO APPLY*

**Amending a statement relating to equalisation**

**56A.**—(1) The manager of a reporting fund may apply to amend any statement under regulation 53(1)(h) to (l) in relation to a reporting period and subsequent reporting periods by application in writing to HMRC before the end of the first reporting period in relation to which the amendment is to have effect.

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(1) “HMRC” is defined in regulation 12 of the principal Regulations.

(2) Paragraphs (4) to (8) do not apply in relation to an application to amend a statement under regulation 53(1)(h) and (i) or under regulation 53(1)(i) if the amendment sought is that the fund intends to operate full equalisation arrangements.

(3) An application to which paragraph (2) applies must be accepted by HMRC within 28 days beginning with the day on which HMRC receive the application.

(4) An application under paragraph (1) must specify—

- (a) the reason for the application,
- (b) the amendment sought to the statement, and
- (c) the first reporting period in which the amendment is to apply.

(5) Within 28 days beginning with the day on which HMRC receive the application, HMRC must give notice to the manager—

- (a) accepting the application,
- (b) rejecting the application, or
- (c) asking for further information in order to consider the application.

(6) HMRC must not accept an application if—

- (a) they consider the application is made for reasons other than commercial or administrative reasons, or
- (b) an application was accepted under this regulation in relation to either of the previous two reporting periods.

(7) Paragraph (8) applies if—

- (a) HMRC have given notice under paragraph (5)(c), and
- (b) the manager provides further information within a period of 28 days beginning with the day on which HMRC ask for further information or within such longer period as is agreed by HMRC.

(8) Within 28 days beginning with the day on which HMRC receive the further information, HMRC must give notice to the manager—

- (a) accepting the application, or
- (b) rejecting the application.

#### **Appeal against refusal of application to amend a statement**

**56B.**—(1) If HMRC reject an application the manager may appeal.

(2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice rejecting the application is given.

(3) On an appeal, the tribunal may uphold or quash the rejection of the application.

(4) If the tribunal quashes the rejection of the application, this Part applies as if HMRC had accepted the application.”.

#### **Substitution of regulation 72 (treatment of reporting funds operating equalisation arrangements)**

**9.** For regulation 72 (treatment of reporting funds operating equalisation arrangements) substitute—

**“Treatment of reporting funds operating equalisation arrangements**

**72.**—(1) This regulation applies if a reporting fund operates equalisation arrangements.

(2) If a person acquires an interest in the fund by way of initial purchase, the reportable income must be increased by an amount equal to that part of the acquisition price which is attributable to the undistributed income which has accrued to the fund in the period of account up to the time of the acquisition and which is taken into account in determining the acquisition price (“the equalisation amount”).

(3) If a participant disposes of an interest in the fund by way of redemption, the reportable income must be reduced by an amount equal to that part of the redemption price which is attributable to the undistributed income which has accrued to the fund in the period of account up to the time of the redemption and which is taken into account in determining the redemption price.

(4) For the purposes of these Regulations a person acquires an interest in an offshore fund by way of initial purchase if the acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund or by way of direct purchase from the managers of the fund acting in their capacity as managers of the fund.

(5) For the purposes of this regulation a person disposes of an interest in a fund by way of redemption if the disposal is by way of cancellation of the units, shares or other interest or by way of direct sale to the managers of the fund acting in their capacity as managers of the fund.”.

**Amendment to regulation 92 (contents of report to participants)**

**10.**—(1) Amend regulation 92 (contents of report to participants) as follows.

(2) In paragraph (1) at the end insert—

“(f) if the fund operates full equalisation arrangements and has not given a statement under regulation 50A(b)(i), the equalisation amount per unit of interest in the fund in relation to any interest acquired by way of initial purchase in the reporting period.”.

(3) In paragraph (3) for sub-paragraphs (a) and (b) substitute—

“(a) the reported income per unit of a reporting fund for a reporting period is—

(i) in the case of a reporting fund which operates equalisation arrangements, computed by dividing the reported income of the fund for the reporting period by the number of units in the fund in issue at the end of the reporting period,

(ii) in the case of a reporting fund which does not operate equalisation arrangements and does not make income adjustments, computed by dividing the reported income of the fund for the reporting period by the number of units in the fund in issue at the end of the reporting period,

(iii) in the case of a reporting fund which does not operate equalisation arrangements and which makes income adjustments in a reporting period on the basis of reported income, the amount determined in accordance with regulation 92A(2),

(iv) in the case of a reporting fund which does not operate equalisation arrangements and which makes income adjustments in a reporting period on the basis of accounting income, the amount determined in accordance with regulation 92B(2),

(b) the amount actually distributed to participants per unit of interest in the fund in respect of the reporting period must be computed at the time the distribution is made,

(ba) subject to paragraphs (3A) and (3B), the fund may chose to calculate the equalisation amount per unit of interest in the fund either on the basis of—

- (i) the sum of all the equalisation amounts in relation to all acquisitions by way of initial purchase in the reporting period divided by the total number of units acquired by way of initial purchase in the period, or
  - (ii) the equalisation amount in relation to the acquisition by the participant to whom the report is made available divided by the number of units acquired on that acquisition, and”.
- (4) After paragraph (3) insert—
- “(3A) A fund cannot change the basis for calculating the equalisation amount per unit of interest in the fund more than once in three successive reporting periods.
- (3B) In any reporting period all reports to participants must use the same basis for calculating the equalisation amount per unit of interest in the fund .”.

**Insertion of new regulations 92A, 92B and 92C (funds which do not operate equalisation arrangements)**

11. After regulation 92 insert—

**“Funds which do not operate equalisation arrangements: income adjustments on the basis of reported income**

**92A.**—(1) This regulation applies if a reporting fund does not operate equalisation arrangements and—

- (a) the fund has given a statement under regulation 53(1)(k) that it intends to make income adjustments in a reporting period on the basis of reported income, or
  - (b) regulation 92B(5) applies.
- (2) The reported income per unit of the fund for a reporting period is the sum of the reported income per unit for all the computation periods in the reporting period.
- (3) The reported income per unit for a computation period is calculated by dividing the reported income of the fund for the computation period by the average number of units in the fund in issue during the computation period.
- (4) For the purposes of paragraph (3) the reported income of the fund for a computation period means the reportable income of the fund for that period computed in accordance with Chapters 5 and 6 of this Part.
- (5) In the computation referred to in paragraph (4) Chapters 5 and 6 of this Part apply as if references to a period of account of the fund were references to a computation period.
- (6) For the purposes of paragraph (3) and regulation 92B(3) the average number of units in issue during a computation period is the sum of the units in the fund in issue during the period after each unit has been multiplied by the fraction of the period for which it is held.

**Funds which do not operate equalisation arrangements: income adjustments on the basis of accounting income**

**92B.**—(1) This regulation applies if a reporting fund does not operate equalisation arrangements and the fund has given a statement under regulation 53(1)(k) that it intends to make income adjustments in a reporting period on the basis of accounting income.

- (2) The reported income per unit of the fund for a reporting period is calculated as follows—

$$AIU \times \frac{RI}{AI}$$

where—

AIU is the sum of the accounting income per unit for all the computation periods in the reporting period,

RI is the reported income of the fund for the reporting period, and

AI is the sum of accounting income for all the computation periods in the reporting period.

This is subject to paragraphs (4) and (5).

(3) The accounting income per unit for a computation period is calculated by dividing accounting income for the computation period by the average number of units in the fund in issue during the computation period.

(4) Where RI is zero the reported income per unit of the fund for a reporting period is zero.

(5) Where the difference in the amount of reported income per unit calculated using this method and the amount of reported income per unit calculated on the basis of reported income is or is likely to be more than 10% of the latter of those amounts—

- (a) the fund must make income adjustments in that and future reporting periods on the basis of reported income, and
- (b) the manager must give notice to HMRC<sup>(2)</sup> of the change in the method of income adjustment with the information provided to HMRC in relation to that period under regulation 106 (reporting requirements).

(6) In this Part “accounting income” means an amount proportionally related to the reportable income of the fund determined from the interim or management accounts of the fund, but this amount must not be less than zero.

### **Funds which do not operate equalisation arrangements: computation period**

**92C.** In this Part a “computation period” means a period determined by a fund in accordance with the following rules.

#### *Rule 1*

A new computation period must start—

- (a) at the beginning of a reporting period, and
- (b) immediately after the end of a previous computation period.

#### *Rule 2*

A computation period must end—

- (a) at the end of a reporting period, and
- (b) on any date on which income is allocated to participants for distribution or accumulation.

#### *Rule 3*

Subject to rules 1 and 2, if a reporting period consists of more than one computation period those periods must be of approximately equal length.”.

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(2) “HMRC” is defined in regulation 12 of the principal Regulations.

## **Insertion of regulation 94A**

12. After regulation 94 insert—

### **“Equalisation amounts not treated as distributions**

**94A.**—(1) This regulation applies if—

- (a) a participant has acquired by way of initial purchase an interest in a reporting fund, and
- (b) the reporting fund operates full equalisation arrangements.

(2) Where this regulation applies—

- (a) the amount of any excess treated as additional distributions made to the participant is reduced by the equalisation amount, and
- (b) the amount of any actual distributions to the participant in respect of the reporting period shall be treated as reduced by the amount, if any, by which the equalisation amount exceeds the excess.

(3) But the amount of any excess treated as additional distributions or any actual distributions shall not be reduced to below nil.

(4) For the purposes of paragraph (2) the excess is the amount treated as additional distributions made to the participant in accordance with regulation 94(1) and (2).”.

## **Amendment to regulation 99 (disposals of interests)**

13. In regulation 99 (disposals of interests) after paragraph (2) insert—

“(2A) But where regulation 94A has applied, the expenditure given for the acquisition of the asset shall be treated as reduced by an amount equal to the amount of any reduction under regulation 94A(2)(b).”.

## **CHAPTER 2**

### *Transitional provisions*

#### **Transitional provisions: introduction**

14.—(1) This Chapter applies to offshore funds which are reporting funds at the date these Regulations come into force.

(2) In this Chapter a reference to regulation 53(1) or any sub-paragraph of that regulation is a reference to regulation 53(1) (contents of an application) of the principal Regulations as amended by regulation 6 of these Regulations.

(3) In this Chapter—

“HMRC” means Her Majesty’s Revenue and Customs;

“transitional fund” means a fund to which this Chapter applies.

#### **Transitional provisions: general provisions**

15.—(1) The manager of a transitional fund must give the statements required by sub-paragraphs (h) to (l) of regulation 53(1) by a notice in writing to HMRC within one year of the date these Regulations come into force.

(2) A transitional fund will be treated as having operated equalisation arrangements, full equalisation arrangements or as not operating equalisation arrangements in accordance with those

statements from the time that the fund first became a reporting fund for the purposes of any report made to participants after the date these Regulations come into force.

This is subject to regulation 16.

#### **Transitional provisions: special cases**

**16.**—(1) The amendments made by this Part shall not apply in relation to a reporting period which ended before the date these Regulations come into force if the manager of a transitional fund so elects by notice in writing given with the notice under regulation 15(1).

(2) If no notice is given under regulation 15(1) or if paragraph (3) applies, a transitional fund shall be treated as having given a statement under regulation 53(1)(k)(i) and be treated from the time that the fund first became a reporting fund as not operating equalisation arrangements and as intending to make adjustments on the basis of reported income.

(3) This paragraph applies if—

- (a) a transitional fund has given a statement that it does not intend to operate equalisation arrangements and intends to make income adjustments on the basis of accounting income (see regulation 53(1)(l)), and
- (b) HMRC do not consider that it is reasonable to expect that the difference between the amount of reported income per unit calculated using this method and the amount of reported income per unit calculated on the basis of reported income will be 10% or less of the latter of those amounts.

(4) Where paragraph (3) applies HMRC must give notice to the manager of the transitional fund within 28 days of receiving the notice under regulation 15(1).

(5) The notice under paragraph (4) must state that paragraph (2) of this regulation applies to the fund.

#### **Appeal against a refusal to accept a statement**

**17.**—(1) If HMRC give notice under regulation 16(4), the manager of the transitional fund may appeal.

(2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice under regulation 16(4) is given.

(3) On an appeal, the tribunal may uphold or quash the notice.

(4) If the tribunal quashes the notice, this Chapter applies as if regulation 16(3) had never applied.