
STATUTORY INSTRUMENTS

2011 No. 1211

The Offshore Funds (Tax) (Amendment) Regulations 2011

PART 4

Transparent Funds

Introduction

21. This Part makes amendments in relation to transparent funds.

Amendment to regulation 49 (structure of this Part)

22.—(1) Amend regulation 49 (structure of this Part) as follows.

(2) In the heading after “structure” insert “and application”.

(3) In paragraph (1) after sub-paragraph (f) insert—

“(fa) Chapter 6A deals with transparent reporting funds;”.

(4) In paragraph (2)—

(a) in sub-paragraph (a) omit “and”, and

(b) after sub-paragraph (a) insert—

“(aa) transparent reporting funds (see Chapter 6A), and”.

(5) At the end insert—

“(3) Chapters 4 to 6 do not apply to transparent reporting funds.”.

Amendment to regulation 58 (general duties of reporting funds)

23.—(1) Amend regulation 58 (general duties of reporting funds) as follows.

(2) In paragraph (a) at the end insert “(except in the case of transparent reporting funds)”.

(3) In paragraph (b) at the end insert “or 6A, as the case may be”.

Insertion of new Chapter 6A in Part 3

24. After regulation 89 insert—

“CHAPTER 6A

TRANSPARENT REPORTING FUNDS

Transparent reporting funds

89A.—(1) This Chapter explains how reportable income is computed in the case of a transparent reporting fund.

(2) For the purposes of these Regulations a “transparent reporting fund” is a reporting fund which is a transparent fund.

Reportable income: general

89B.—(1) A transparent reporting fund must provide a computation of its reportable income for a period of account.

(2) The reportable income of a transparent reporting fund for a period of account is comprised of—

- (a) each of the separate sums of income for the period which fall within paragraph (a) or (b) of regulation 11 (meaning of transparent funds), and
- (b) the adjustments made to those sums in accordance with regulations 89C to 89E.

(3) For the purposes of this Part the adjustments referred to in paragraph (2)(b) are excesses of reported income of the fund over the sums which form part of the income of the fund within paragraph (2)(a).

Adjustment in relation to income from other reporting funds

89C.—(1) This regulation applies if a transparent reporting fund (“TRF”) has an interest in another reporting fund (“RF”).

(2) The reportable income of TRF in relation to that interest shall include the excess (if any) of the income reported by RF in respect of TRF’s interest in RF over the amount distributed by RF in relation to that interest.

(3) The excess is treated as reportable income of TRF for the period of account in which the fund distribution date of RF falls.

(4) If RF does not make a report available in accordance with regulation 90(5), TRF must—

- (a) include its best estimate of reported income from RF as an adjustment to the computation of its reportable income in relation to that interest for the period of account in which the latest possible fund distribution date for RF falls (to the extent that any such amount has not already been recognised in the computation of TRF’s reportable income for that or any earlier period of account), and
- (b) make any necessary corrections to its best estimate in its computation of reportable income for the first later period of account in which it has sufficient information to make those corrections.

Adjustment in relation to income from non-reporting funds: first case

89D.—(1) This regulation applies if—

- (a) a transparent reporting fund has an interest in a non-reporting fund, and
- (b) the conditions in paragraph (2) are met for a period of account.

(2) The conditions are that—

- (a) the transparent reporting fund has access to the accounts of the non-reporting fund;
- (b) the transparent reporting fund has sufficient information about the non-reporting fund to enable it to prepare a computation of reportable income for the non-reporting fund; and

- (c) the transparent reporting fund can reasonably expect to rely on continued access to that information for the period in which it will hold the investment in the non-reporting fund.
- (3) Regulation 89C applies as if the transparent reporting fund were TRF and the non-reporting fund were RF.
- (4) For the purposes of the computation mentioned in paragraph (2)(b), regulation 80 applies if (and only if) the non-reporting fund is a UCITS fund.

Adjustment in relation to income from non-reporting funds: second case

- 89E.**—(1) This regulation applies if a transparent reporting fund has an interest in a non-reporting fund, but the conditions in regulation 89D(2) are not met for a period of account.
- (2) The reportable income of the transparent reporting fund for a period of account in relation to that interest shall include an amount equal to the increase in the fair value of the interest in the non-reporting fund in that period.
 - (3) But if the condition specified in paragraph (4) is met, decreases in the fair value of that interest in earlier periods of account may be set against the increase referred to in paragraph (2) to reduce the amount of the increase, but—
 - (a) not to below zero, and
 - (b) only to the extent that the decreases in fair value have not previously had the effect of reducing the amount of a fair value increase.
 - (4) The condition specified is that the decrease in fair value in earlier periods of account all occurred during periods in which this Part applied continuously to the transparent reporting fund.
 - (5) In this regulation “fair value” in relation to an interest in a non-reporting fund means the amount which, at the time the value is to be determined, is the amount for which the interest could be exchanged between knowledgeable and willing parties dealing at arm’s length.”.

Amendment to regulation 92 (contents of report to participants)

- 25.**—(1) Amend regulation 92 (contents of report to participants) as follows.
- (2) In the heading after “participants” insert “: non-transparent funds”.
 - (3) In paragraph (1) at the beginning insert “In the case of reporting funds which are not transparent funds,”.

Insertion of regulation 92D (contents of reports to participants: transparent reporting funds)

- 26.** After regulation 92C (inserted by regulation 11 of these Regulations) insert—

“Contents of reports to participants: transparent reporting funds

- 92D.** In the case of transparent reporting funds, the report to participants for a reporting period must—
- (a) contain sufficient information to enable those participants to meet their tax obligations in the United Kingdom with respect to their interests in the fund, and
 - (b) include a statement whether or not the fund remains a reporting fund at the date the fund makes the report available.”.

Amendment to regulation 106 (reporting requirements)

27. In regulation 106 (reporting requirements) in paragraph (1)—
- (a) in sub-paragraph (a) omit “(see Chapter 4)”,
 - (b) in sub-paragraph (b) after “5” insert “or 6A, as the case may be”,
 - (c) in sub-paragraph (c) after “92(1)” insert “or 92D, as the case may be”.