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## STATUTORY INSTRUMENTS

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# 2011 No. 1211

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

### PART 5

#### Miscellaneous Amendments

##### **Amendment to regulation 4 (classification of offshore funds)**

- 28.** In regulation 4 (classification of offshore funds) in paragraph (2)—
- (a) at the beginning insert “In a period of account”, and
  - (b) omit “for a period of account”.

##### **Amendment to regulation 12 (general interpretation)**

- 29.** In regulation 12 (general interpretation) after the definition of “prospectus” insert—
- ““regulated market” has the same meaning as in Directive [2004/39/EC](#) of the European Parliament and the Council on markets in financial instruments<sup>(1)</sup> (see article 4.1(14));”.

##### **Amendment to regulation 16 (treatment of certain amounts as distributions)**

- 30.** In regulation 16 (treatment of certain amounts as distributions) in paragraph (2) for “94(2)” substitute “94(1) or (2)”.

##### **Amendment to regulation 54 (form, timing and withdrawal of application)**

- 31.** In regulation 54 (form, timing and withdrawal of application)(2) for paragraphs (2) and (3) substitute—

- “(2) The application must be received by HMRC<sup>(3)</sup> before the later of—
  - (a) the end of the first period of account for which it is proposed that this Part should apply to the fund, and
  - (b) the expiry of a period of 3 months beginning with the first day on which interests in the fund are made available to investors resident in the United Kingdom.
- (3) The application may be withdrawn—
  - (a) at any time during a period beginning with the day the application is made and ending on the expiry of a period of 28 days beginning on the day on which HMRC give notice under regulation 55(1) or (5), or
  - (b) at any later time, but before the end of the first reporting period, if HMRC are satisfied that the fund is not in breach of the requirements imposed by Part 3.”.

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<sup>(1)</sup> OJ No L 145, 30.4.2004, p1.

<sup>(2)</sup> Regulation 54 has been amended by [S.I. 2009/3139](#).

<sup>(3)</sup> “HMRC” is defined in regulation 12 of the principal Regulations.

### **Amendment to regulation 57 (effects of entry into the reporting fund regime)**

**32.**—(1) Amend regulation 57 (effects of entry into the reporting fund regime) as follows.

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

“This paragraph and paragraphs (2) and (3) are subject to paragraph (4).”.

(3) At the end insert—

“(4) Where an application has been withdrawn under regulation 54(3)(b), the fund and its participants shall be treated as if the fund had never been a reporting fund.”.

### **Amendment to regulation 67 (income from wholly-owned subsidiaries)**

**33.** In regulation 67 (income from wholly-owned subsidiaries) in paragraph (2)—

(a) in sub-paragraph (a) for “and beneficially” substitute “or indirectly”, and

(b) in sub-paragraph (b) after “directly” insert “or indirectly”.

### **Amendment to regulation 68 (income from other reporting funds)**

**34.**—(1) Amend regulation 68 (income from other reporting funds) as follows.

(2) In paragraph (3) for “specified in paragraphs (4) and (5)” substitute “in which the fund distribution date of RF2 falls or, if earlier, in which the date on which the reported income from RF2 in respect of that reporting period is recognised in the accounts of RF1”.

(3) Omit paragraph (4).

(4) In paragraph (5) for the words from “the fund” to “94(4)(b)” substitute “RF2 does not make a report available in accordance with regulation 90(5)”.

### **Insertion of new regulation 68A (index tracking funds)**

**35.** After regulation 68 insert—

#### **“Index tracking funds**

**68A.**—(1) This regulation applies if—

(a) a 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) in accordance with the reporting fund’s rule or the instrument constituting the reporting fund, the aim of the fund’s investment policy is to replicate the performance of a qualifying index,

(b) the main purpose of the investment in the non-reporting fund is to represent the composition of the qualifying index, and

(c) the capital and income returns of the reporting fund replicate as closely as practicable the returns of the investments comprised in the qualifying index.

(3) For the purposes of paragraph (2) an index is a “qualifying index” if—

(a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,

(b) an authority responsible for regulating offshore funds recognises the index on the basis that—

(i) its composition is sufficiently diverse,

- (ii) it represents an adequate benchmark for the market to which it refers, and
  - (iii) it is published in such a way that it is widely available, and
  - (c) it is calculated and published by a body which is managed independently from the management of the reporting fund.
- (4) Regulations 69 to 71 do not apply in respect of the interest in the non-reporting fund.”.

**Amendment to regulation 69 (income from non-reporting funds: first case)**

**36.**—(1) Amend regulation 69 (income from non-reporting funds: first case) as follows.

- (2) In paragraph (2) omit sub-paragraph (a).
- (3) In paragraph (3) for “68” substitute “68(1) to (3)”.
- (4) After paragraph (4) insert—

“(5) For the purposes of applying regulation 68, “fund distribution date” means the date six months after the end of the period of account in which the income arose.

(6) If the period of account referred to in paragraph (5) is more than 12 months, there shall be two periods of account and two fund distribution dates for the purposes of applying regulation 68.

The first fund distribution date is the date six months after the end of the first 12 months in the period of account.

The second fund distribution date is the date six months after the end of the period of account in which the income arose.”.

**Amendment to regulation 74 (the equivalence condition)**

**37.**—(1) Amend regulation 74 (the equivalence condition) as follows.

- (2) In paragraph (1) for “or B” substitute “, B or C”.
- (3) At the end insert—

“(4) Condition C is that the fund—

- (a) is constituted in another EEA state and authorised by the competent authority in that state to market to retail or professional investors, and
- (b) is required either by the competent authority in that state or by other binding arrangements to limit its borrowing and its exposure under derivative contracts and forward transactions to 100% of its net asset value.

(5) In paragraph (4), the competent authority in an EEA state is the authority designated in accordance with Article 97 of Council Directive [2009/65/EC](#)(4) in relation to that fund.”.

**Amendment to regulation 75 (the genuine diversity of ownership condition)**

**38.**—(1) Amend regulation 75 (the genuine diversity of ownership condition) as follows.

(2) In paragraph (1) after “meets” insert “,or, in relation to a fund constituted by a class of interests in the main arrangements, the main arrangements meet,”.

- (3) At the end insert—

“(5) A fund also meets the genuine diversity of ownership condition if—

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(4) OJ No L 302, 17.11.2009, p32.

- (a) an investor in the fund is an offshore fund, an open-ended investment company or an authorised unit trust scheme (“the feeder fund”),
- (b) conditions A to C are met in relation to the fund after taking into account—
  - (i) the fund documents relating to the feeder fund, and
  - (ii) the intended investors in the feeder fund, and
- (c) the fund and the feeder fund have the same manager (or proposed manager).”.

#### **Amendment to regulation 90 (report to participants for a reporting period)**

**39.**—(1) Amend regulation 90 (report to participants for a reporting period) as follows.

(2) In the following places before “participant” insert “relevant”—

- (a) paragraph (1);
- (b) paragraph (2)(a) and (b);
- (c) paragraph (4) in the first place it occurs.

(3) In paragraph (3) for “paragraph (2)(c)” substitute “this regulation”.

#### **Amendment to regulation 94 (reported income: general provisions)**

**40.**—(1) Amend regulation 94 (reported income: general provisions) as follows.

(2) In paragraph (2A)(5) for “paragraph” substitute “paragraphs (1) and”.

(3) In paragraph (3) after “date,” insert “or on such earlier date as the reported income in respect of that reporting period is recognised in the participant’s accounts,”.

(4) After paragraph (3) insert—

“(3A) If—

- (a) a participant disposes of an interest in a reporting fund in a reporting period (“the earlier period”), and
- (b) section 106A of TCGA 1992 (identification of securities: capital gains tax)(6) applies to identify the whole or any part of that interest with an interest acquired in the next reporting period,

then, for the purposes of paragraph (3), the disposal of the interest so identified shall be ignored and the participant shall be treated as holding that interest at the end of the earlier period.”.

(5) In paragraph (4) for the words from “means—” to the end substitute “means the date six months following the last day of the reporting period”.

#### **Amendment to regulation 106 (reporting requirements)**

**41.**—(1) Amend regulation 106 (reporting requirements) as follows.

(2) In paragraph (1)(a) at the beginning insert “subject to paragraph (3),”.

(3) At the end insert—

“(3) A reporting fund may provide unaudited accounts for a period of account if HMRC(7) are satisfied, in relation to that period, that—

- (a) it would be impossible or unreasonable to provide audited accounts, and

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(5) Paragraph (2A) was inserted by [S.I. 2009/3139](#).

(6) Section 106A was inserted by section 124(1) of the Finance Act 1998 (c. 36).

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

- (b) there is no reason to believe that the unaudited accounts cannot be relied upon for the purposes of calculating reportable income.”.

#### **Amendment to Schedule 1 (transitional provisions and savings)**

**42.**—(1) In Schedule 1 (transitional provisions and savings) amend paragraph 3 as follows.

(2) For sub-paragraphs (2) and (3) substitute—

“(2) The fund or any person within paragraph 18(1) of Schedule 27 to ICTA may apply in writing to HMRC for the fund to be treated as a distributing fund in respect of the overlap period or any earlier period of account.

(3) If the fund or any person within paragraph 18(1) of Schedule 27 to ICTA has made a successful application under sub-paragraph (2), the fund or that person may apply in writing to HMRC for the fund to be continued to be treated as a distributing fund in respect of the succeeding period.

(3ZA) But no application may be made under paragraph (3) if HMRC have accepted an application for Part 3 to apply to the fund.”.

(3) In sub-paragraph (3B)(8) for “2011” substitute “2012”.

#### **Amendment to Schedule 3 (abbreviations and defined expressions)**

**43.**—(1) Amend Schedule 3 (abbreviations and defined expressions) as follows.

(2) In Part 1 (abbreviations of Acts) at the end insert—

“CTA 2010	The Corporation Tax Act <a href="#">2010 (c. 4)</a> ”.
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(3) In Part 2 (index of expressions defined or otherwise explained in these Regulations)—

- (a) in the definition of “investment transaction” omit “(in Part 3)”, and  
(b) insert the following definitions in the appropriate places—

“Accounting income (in Part 4)	Regulation 92B(6)
Acquisition by way of initial purchase (in Part 4)	Regulation 72(4)
Computation period (in Part 4)	Regulation 92C
Equalisation amount per unit of interest (in Part 4)	Regulation 92(3)(ba)
Equalisation amount (in Part 4)	Regulation 72(2)
Fund operating equalisation arrangements (in Part 4)	Regulation 50A(a)
Fund operating full equalisation arrangements (in Part 4)	Regulation 50A(b)
Regulated market	Regulation 12
Transparent reporting fund	Regulation 89A(2)”.

(8) Paragraph (3B) was inserted by [S.I. 2009/3139](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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