

2004 No. 2572

INCOME TAX

The Offshore Funds Regulations 2004

Made - - - - *30th September 2004*

Laid before the House of Commons *1st October 2004*

Coming into force - - *22nd October 2004*

The Treasury, in exercise of the powers conferred upon them by section 758(7) and (8) of, and paragraph 21 of Schedule 27 and paragraph 9 of Schedule 28 to, the Income and Corporation Taxes Act 1988(a) and section 145(2)(b) of the Finance Act 2004(b) make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Offshore Funds Regulations 2004 and shall come into force on 22nd October 2004.

(2) These Regulations have effect in relation to account periods ending on or after 22nd July 2004.

Interpretation

2. In these Regulations—

“class of interest” has the meaning given by section 756C of ICTA 1988(c);

“ICTA 1988” means the Income and Corporation Taxes Act 1988(d);

“main fund” has the meaning given by section 756C(1) of ICTA 1988;

“umbrella fund” has the meaning given by section 756B(1) of ICTA 1988; and

references to a part of a fund are references to a part of an umbrella fund which is regarded as a separate offshore fund by virtue of section 756B(2) of ICTA 1988.

Section 758 of ICTA 1988

3.—(1) Section 758 of ICTA 1988 applies to—

(a) a part of an umbrella fund which is regarded as a separate offshore fund by virtue of section 756B(2) of that Act, and

(a) 1988 c. 1. Section 758(7) and (8) was inserted by paragraph 5 of Schedule 26 to the Finance Act 2004 (c. 12). Paragraph 21 of Schedule 27 and paragraph 9 of Schedule 28 were inserted by paragraphs 8(4) and 9 respectively of Schedule 26 to the Finance Act 2004.

(b) 2004 c. 12.

(c) Sections 756A to 756C were inserted by paragraph 3 of Schedule 26 to the Finance Act 2004.

(d) 1988 c. 1.

- (b) a class of interest, within a main fund, which is regarded as separate offshore fund by virtue of section 756C(1) of that Act,

subject to the following modifications.

- (2) For subsection (1)(b) substitute—

“(b) the umbrella fund or main fund makes a distribution to—

- (i) a holder of units in a part of that fund which is regarded as a separate offshore fund by virtue of section 756B(2); or

- (ii) a holder of a class of interest in an offshore fund which is regarded as a separate offshore fund by virtue of section 756C(1);

for a period which begins before the date of his acquisition of those units or that interest;”.

- (3) After subsection (1) insert—

“(1A) In this section in the case of—

- (a) an umbrella fund, part of which is regarded as a separate offshore fund by virtue of section 756B(2), or

- (b) a main fund, a class of interest in which is regarded as a separate offshore fund by virtue of section 756C(1),

references to the equalisation arrangements or to the equalisation account of the offshore fund shall be construed respectively as references to the equalisation arrangements of, or to the equalisation account maintained by, the umbrella fund or the main fund in respect of the separate offshore fund in question.”.

- (4) For subsection (2)(a) substitute—

“(a) his acquisition is by way of subscription for, or allotment of new shares, units or other classes of interest issued or created—

- (i) by an umbrella fund;

- (ii) in a fund which is regarded as a separate offshore fund by virtue of section 756B(2);

- (iii) by a main fund; or

- (iv) in a class of interest which is regarded as a separate offshore fund by virtue of section 756C(1);”.

Modification of Schedule 27 to ICTA 1988

- 4.—(1) Schedule 27 to ICTA 1988 (distributing funds) applies to—

- (a) a part of a fund which is regarded as a separate offshore fund by virtue of section 756B(2) of that Act, and

- (b) a class of interest, within a main fund, which is regarded as a separate offshore fund by virtue of section 756C(1) of that Act,

subject to the following modifications.

- (2) In paragraph 1 (requirements as to distributions)—

- (a) after sub-paragraph (2) add—

“(2A) In the case of a class of interest which is regarded as a separate offshore fund the reference in sub-paragraph (2)(b) to the amount of the gross income shall be a reference to the amount of the gross income of the main fund (as defined in section 756C(1)).”;

- (b) after sub-paragraph (3) add—

“(3A) In the case of a part of a fund or a class of interest which is regarded as a separate offshore fund, the accounts referred to in sub-paragraph (3) shall be the accounts of the umbrella fund or the main fund, of which the part of the fund, or the class of interest forms part.”; and

(c) after sub-paragraph (6) add—

“(7) In sub-paragraph (6) references to—

(a) the offshore fund do not include—

(i) parts of an umbrella fund which are regarded as separate offshore funds by virtue of sections 756B(2); or

(ii) classes of interest which are regarded as separate offshore funds by virtue of section 756C(1); or

(b) the making of distributions, in relation to a part of an umbrella fund or to a class of interest in a main fund, are references to distributions made (as the case may be) by—

(i) the umbrella fund to persons having an interest in part of that fund which is regarded as a separate offshore fund by virtue of section 756B(2); and

(ii) the main fund to a person having an interest of that class which is regarded as a separate offshore fund by virtue of section 756C(1).”.

(3) In paragraph 2 (funds operating equalisation arrangements) after sub-paragraph (2) add—

“(2A) In this paragraph in the case of—

(a) an umbrella fund, part of which is regarded as a separate offshore fund by virtue of section 756B(2), or

(b) a main fund, a class of interest in which is regarded as a separate offshore fund by virtue of section 756C(1),

references to the equalisation arrangements or to the equalisation account of the offshore fund shall be construed respectively as references to the equalisation arrangements of, or to the equalisation account maintained by, the umbrella fund or the main fund in respect of the separate offshore fund in question.

(2B) In this paragraph references to making a distribution, in relation to a part of an umbrella fund or to a class of interest in a main fund, is a reference to a distribution made (as the case may be) by—

(a) the umbrella fund to persons having an interest in part of that fund which is regarded as a separate offshore fund by virtue of section 756B(2); and

(b) the main fund to a person having an interest of that class which is regarded as a separate offshore fund by virtue of section 756C(1).”.

(4) After paragraph 4(3) insert—

“(3A) For the purposes of sub-paragraph (3), in determining the relevant amount of expenditure attributable to—

(a) each part of a fund which is regarded as a separate offshore fund by virtue of section 756B(2), or

(b) each class of interest which is regarded as a separate offshore fund by virtue of section 756C(1),

any expenditure shall be apportioned in such manner as is just and reasonable.”.

(5) At the end of paragraph 5 (United Kingdom equivalent profits) add—

“(6) In sub-paragraph (5) references to the offshore fund do not include—

(a) a part of a fund, within an umbrella fund, where that part is regarded as a separate offshore fund by virtue of section 756B(2); or

(b) a class of interest, within a main fund which is regarded as a separate offshore fund by virtue of section 756C(1).

(7) For the purposes of sub-paragraph (5) if an offshore fund has within it—

(a) any part which is regarded as a separate offshore fund by virtue of section 756B(2); or

(b) any class of interest which is regarded as a separate offshore fund by virtue of section 756C(1),

the relevant amount of income attributable to each part, or each class of interest, within the fund, shall be apportioned between them in such manner as is just and reasonable.”.

(6) At the end of paragraph 11 (offshore funds with wholly-owned subsidiaries) add—

“(5) In sub-paragraphs (1) to (2) references to the offshore fund do not include a class of interest which is regarded as a separate offshore fund by virtue of section 756C(1).

(6) In the case of a class of interest, references to the offshore fund in sub-paragraphs (1), (2) and (4)(b) shall be to the main fund.

(7) For the purposes of sub-paragraph (4) if—

(a) there are parts of an umbrella fund which are regarded as separate offshore funds by virtue of section 756B(2); or

(b) there are classes of interest in a main fund which are regarded as separate offshore funds by virtue of section 756C(1),

the receipts and expenditure shall be apportioned in such manner as is just and reasonable.”.

(7) In paragraph 15 (application for certification) for sub-paragraph (1)(b) substitute—

“(b) the application is accompanied by—

(i) the accounts of the fund for, or for a period which includes, the account period to which the application relates; or

(ii) in the case of—

(aa) part of an umbrella fund, or

(bb) a class of interest in a main fund,

which is regarded as a separate offshore fund, the accounts of the umbrella fund or the main fund (as the case may be) for, or for a period which includes, the account period to which the application relates; and”.

Modification of Schedule 28 to ICTA 1988

5.—(1) Schedule 28 to ICTA 1988 (computation of offshore income gains) applies to—

(a) a part of a fund which is regarded as a separate offshore fund by virtue of section 756B(2) of that Act, and

(b) a class of interest, within a main fund, which is regarded as a separate offshore fund by virtue of section 756C(1) of that Act,

subject to the following modifications.

(2) At the end of paragraph 6 add—

“(7) In this paragraph in the case of—

(a) an umbrella fund, part of which is regarded as a separate offshore fund by virtue of section 756B(2), or

(b) a main fund, a class of interest in which is regarded as a separate offshore fund by virtue of section 756C(1),

references to the equalisation account of the offshore fund shall be construed as references to the equalisation account maintained by the umbrella fund or the main fund in respect of the separate offshore fund in question.”.

Modification of Schedule 26 to the Finance Act 2004: new funds within existing umbrella funds

6.—(1) This regulation applies to an umbrella fund established on or before 22nd July 2004 and which has not made an election under paragraph 1(3) or paragraph 2(3) of Schedule 26 to the Finance Act 2004(a) (elections in respect of computation of UK equivalent profits from creditor relationships and derivative contracts).

(2) Paragraph (3) applies to a part of a fund which—

- (a) is regarded as a separate offshore fund by virtue of section 756B(2) of ICTA 1988; and
- (b) is established after 22nd July 2004.

(3) In relation to a part of a fund to which this paragraph applies, the repeals contained in paragraph 1(2) or 2(2) of Schedule 26 to the Finance Act 2004 (as the case requires) shall be disregarded, and accordingly—

- (a) paragraph 3 of Schedule 10 to the Finance Act 1996(b), (assumptions to be made in relation to creditor relationships for the purposes of Schedule 27 to ICTA 1988), or
- (b) paragraph 35 of Schedule 26 to the Finance Act 2002(c) (assumptions to be made in relation to derivative contracts for those purposes),

(as the case requires) shall apply in relation to that part of the umbrella fund as they would have applied had those repeals not been enacted.

Modification of Schedule 26 to the Finance Act 2004: new classes of interest within existing main funds

7.—(1) This regulation applies in relation to a main fund established on or before 22nd July 2004 and which has not made an election under paragraph 1(3) or paragraph 2(3) of Schedule 26 to the Finance Act 2004.

(2) Paragraph (3) applies to a class of interest within a main fund which—

- (a) is regarded as a separate offshore fund by virtue of section 756C(1) of ICTA 1988; and
- (b) is established after 22nd July 2004.

(3) In relation to a class of interest to which this paragraph applies, the repeals contained in paragraph 1(2) or 2(2) of Schedule 26 to the Finance Act 2004 (as the case requires) shall be disregarded, and accordingly—

- (a) paragraph 3 of Schedule 10 to the Finance Act 1996, (assumptions to be made in relation to creditor relationships for the purposes of Schedule 27 to ICTA 1988), or
- (b) paragraph 35 of Schedule 26 to the Finance Act 2002 (assumptions to be made for the purposes of the Schedule in relation to derivative contracts for those purposes),

(as the case requires) shall apply in relation to that class of interest as they would have applied but for those repeals.

*Joan Ryan
John Heppell*

30th September 2004

Two of the Lords Commissioners of Her Majesty's Treasury

(a) 2004 c. 12.

(b) 1996 c. 8. Paragraph 3 was substituted by paragraph 39 of Part 1 of Schedule 25 to the Finance Act 2002 (c. 23).

(c) 2002 c. 23.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the application of provisions of Chapter 5 of Part 17 of the Income and Corporation Taxes Act 1988 (c. 1: “ICTA 1988”) in respect of offshore funds.

Offshore funds are collective investment schemes which are not resident in the United Kingdom. The Finance Act 2004 (c. 12) introduced changes to the definition of “offshore fund” for the purposes of qualifying for “distributor status”. This allows parts of a fund and classes of interest within a fund to qualify independently of other parts of the fund or other classes of interest in the same fund. These Regulations modify the relevant primary legislation and deal with administrative, procedural and transitional matters arising from the 2004 changes.

Regulation 1 provides for the citation, commencement and effect of the Regulations. Section 145(2)(b) of the Finance Act 2004 provides that regulations made under a power conferred by virtue of any of the amendments contained in Schedule 26 to that Act may be made so as to have effect in relation to an account period ending on or after the day on which that Act was passed.

Regulation 2 provides for the interpretation of some terms used in the Regulations.

Regulations 3, 4 and 5 respectively modify section 758 of ICTA 1988 and Schedules 27 and 28 to that Act in relation to—

- a part of an umbrella fund (as defined in section 756B(1)) which is regarded as a separate offshore fund by virtue of section 756B(2); and
- a class of interest within a main fund (as defined in section 756C(1)) which is regarded as a separate offshore fund by virtue of section 756C(1)(b).

Regulation 6 and 7 consequentially modify other enactments in relation to the operation of Schedules 27 and 28 to ICTA 1988 as they apply for the purposes of Chapter 5 of Part 17.

Regulation 6 provides modifications, where an existing umbrella fund has not made an election under either or both of paragraph 1(3) or 2(3) of Schedule 26 to the Finance Act 2004, in respect of new parts of the fund which are treated as separate offshore funds for the purposes of Chapter 5 of Part 17.

Regulation 7 provides modifications, where an existing main fund has not made an election under those provisions, in respect of new classes of interest which are treated as separate offshore funds for the purposes of that Chapter.

These Regulations do not impose new costs on business.

STATUTORY INSTRUMENTS

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