
STATUTORY INSTRUMENTS

2009 No. 3001

The Offshore Funds (Tax) Regulations 2009

PART 2

THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS

CHAPTER 3

EXCEPTIONS ETC. FROM THE CHARGE TO TAX

Exceptions from the charge

25.—(1) No liability to tax arises under regulation 17 if any of conditions A to E is met.

(2) Condition A is that the participant is required to treat the interest in the fund as a loan relationship under Chapter 3 of Part 6 of CTA 2009.

(3) Condition B is that the participant is required to treat the interest in the fund as a derivative contract to which the provisions of Part 7 of CTA 2009 apply.

(4) Condition C is that the asset is an intangible fixed asset to which the provisions of Part 8 of CTA 2009 apply.

(5) Condition D is that the asset consists of excluded indexed securities as defined in section 433 of ITTOIA 2005.

(6) Condition E is that the asset is a right arising under a policy of insurance.

Trading stock etc.

26.—(1) No liability to tax arises under regulation 17 if condition A or B is met.

(2) Condition A is that the interest in the fund is held as trading stock.

(3) Condition B is that the disposal of the interest is taken into account in computing the profits of a trade.

Long-term insurance funds of insurance companies

27.—(1) No liability to tax arises under regulation 17 in respect of disposals of assets of an insurance company's long-term insurance fund.

(2) In paragraph (1) “insurance company” and “long-term insurance fund” have the same meaning as in section 431(2) of ICTA ^{M1}.

Marginal Citations

M1 In section 431(2), the definition of “insurance company” was substituted by [S.I. 2001/3629](#) and amended by [S.I. 2006/3270](#). As regards the expression “long-term insurance fund”, a definition of “long term business fund” was inserted by paragraph 1(2) of the [Finance Act 1990 \(c. 29\)](#) and

amended by Part 5(26) of Schedule 41 to the Finance Act 1996. The definition was re-labelled as a definition of “long-term insurance fund” and further amended by [S.I. 2001/3629](#).

Loans other than participating loans

28.—(1) No liability to tax arises under regulation 17 if the asset is a loan which is not a participating loan.

(2) For the purposes of paragraph (1) a “participating loan” means a loan where the amount payable on redemption exceeds the issue price by an amount which is determined in whole or in part by reference to the income of the non-reporting fund.

Interests in transparent funds

29.—(1) No liability to tax arises under regulation 17 if—

- (a) the disposal is the disposal of an interest in an offshore fund falling within paragraph (b) or (c) of section 40A(2) of FA 2008 ^{M2}, and
- (b) the fund is a transparent fund.

This is subject to paragraphs (2) and (3).

(2) But there is a charge to tax under regulation 17 if—

- (a) there is a disposal of an interest in a transparent fund, and
- (b) during a period beginning with the date the interest (or any part of it) was acquired and ending with the date of the disposal, the offshore fund has at any time held interests in other non-reporting funds which amounted in total to more than 5% by value of the offshore fund's assets.

(3) And there is a charge to tax under regulation 17 if—

- (a) there is a disposal of an interest in a transparent fund,
- (b) the fund is a non-reporting fund, and
- (c) the fund fails to make sufficient information available to participants in the fund to enable those participants to meet their tax obligations in the United Kingdom with respect to their shares of the income of the fund.

(4) If, on the disposal by an offshore fund of an interest in another non-reporting fund, no liability would arise under regulation 17 by virtue of this regulation, that interest is not taken into account for the purposes of paragraph (2)(b).

Marginal Citations

M2 Section 40A was inserted by paragraph 2 of Schedule 22 to the [Finance Act 2009 \(c. 10\)](#).

Rights in certain existing holdings

30.—(1) No liability to tax arises under regulation 17 in respect of any rights in an offshore fund to which this regulation applies if the rights are acquired by a person—

- (a) before 1st December 2009, or
- (b) in accordance with paragraph (2).

(2) Rights are acquired in accordance with this paragraph if—

- (a) the rights are acquired by the participant in accordance with a legally enforceable agreement in writing that was entered into by the participant before 30th April 2009,
 - (b) in the case of an agreement which was conditional, the conditions are met before that date, and
 - (c) the agreement is not varied on or after that date.
- (3) Rights of a person in a fund are rights in an offshore fund to which this regulation applies if, on the date on which the person acquired the rights, those rights did not constitute a material interest in an offshore fund within the meaning of that expression given by section 759 of ICTA ^{M3}.

Marginal Citations

M3 Section 759 is repealed by these Regulations (see regulation 13(2) and Schedule 2) subject to the saving contained in paragraph 3(4) of Schedule 1 (see regulation 13(3) of these Regulations).

Charitable companies and charitable trusts

31.—(1) A charitable company shall be exempt from corporation tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes.

(2) See section 535 of ITA 2007 for an exemption for income tax purposes for offshore income gains accruing to a charitable trust.

(3) Paragraphs (4) and (5) apply if—

- (a) property held on charitable trusts ceases to be subject to charitable trusts, and
- (b) that property represents directly or indirectly an offshore income gain.

(4) The trustees are treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value.

(5) An offshore income gain accruing on the disposal arising under paragraph (4) is treated as an offshore income gain not accruing to a charity.

(6) In this regulation “charity” and “charitable company” have the same meaning as in section 506 of ICTA ^{M4}.

Modifications etc. (not altering text)

C1 Reg. 31 excluded (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 492\(2\)\(3\)\(b\), 1184\(1\)](#) (with Sch. 2)

Marginal Citations

M4 Section 506 was amended by section 55(2) of the [Finance Act 2006 \(c. 25\)](#) and paragraph 95 of Schedule 1 to the [Income Tax Act 2007 \(c. 3\)](#).

[^{F1}Unlisted trading company exception

31A.—(1) No liability to tax arises under regulation 17 if conditions A to D are met.

(2) Condition A is that the disposal is a disposal of an interest in an offshore fund.

(3) Condition B is that the sole or main purpose of the fund is to invest in qualifying companies.

(4) Condition C is that throughout the period starting with the date on which the interest was acquired and ending 12 months before the date of the disposal the fund met the investment condition.

This is subject to paragraph (6).

(5) Condition D is that participants in the fund have access to, and are able to obtain copies of, sufficient information to demonstrate that the fund intends to dispose of any holdings of shares or securities within regulation 31B(1)(b) or (d).

(6) Condition C is treated as met in relation to the period—

- (a) starting at the beginning of the first period of account of the fund, and
- (b) ending on the earlier of—
 - (i) the expiry of 3 months, and
 - (ii) the date the fund meets the investment condition,

if the only asset of the fund during that period is cash.

(7) For the purposes of this regulation and regulation 31B—

“cash” means cash deposited in a bank account or similar account, but not cash acquired wholly or partly for the purpose of realising a gain on its disposal;

“qualifying company” means a trading company or the holding company of a trading group or a trading subgroup, where—

- (a) the shares of the company are not listed on a recognised stock exchange or admitted to trading on a regulated market, and
- (b) the activities of the trading company or, in the case of a holding company, the activities of the members of the group or subgroup taken together, do not include to a substantial extent the carrying out of investment transactions undertaken in the course of a trade.

(8) In paragraph (7) in the definition of “qualifying company”, “holding company”, “trading company”, “trading group” and “trading subgroup” have the same meanings as in Schedule 7AC to TCGA 1992 (see paragraphs 20 to 24 and 26 and 27 of that Schedule).]

F1 Regs. 31A-31C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), 19

[^{F1}Unlisted trading company exception: the investment condition

31B.—(1) The investment condition is that at least 90% of the value of the assets of the fund consists of—

- (a) direct or indirect holdings in qualifying companies,
- (b) holdings of shares or securities listed on a recognised stock exchange or admitted to trading on a regulated market which the fund intends to dispose of as soon as reasonably practicable, taking into account market conditions and commercial and contractual constraints, and which—
 - (i) were acquired by the fund in exchange for shares or securities in a qualifying company, or
 - (ii) were shares in a qualifying company at the time of their acquisition by the fund,
- (c) holdings of shares or securities listed on a recognised stock exchange or admitted to trading on a regulated market, which are holdings in a company that would be a qualifying company if it were not so listed or admitted, where it is reasonable to believe that the shares or securities will cease to be so listed or admitted within 12 months,
- (d) shares or securities which have ceased to be within sub-paragraph (c) because it is no longer reasonable to believe that they will cease to be listed or admitted, which the

fund intends to dispose of as soon as reasonably practicable taking into account market conditions and commercial and contractual constraints.

(2) For the purposes of the investment condition—

(a) any holding of cash shall be disregarded, and

(b) a holding in a qualifying company is held indirectly if it is held by a corporate body which is a 51% subsidiary of the fund.

(3) For the purposes of paragraph (2) section 1154 of CTA 2010 applies to determine whether a corporate body is a 51% subsidiary of a fund.]

F1 Regs. 31A-31C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), **19**

[^{F1}Unlisted trading company exception: further provision

31C. No liability to tax arises under regulation 17 if—

(a) the disposal is of an interest in an offshore fund whose business consists solely of holding an interest in another offshore fund (“X”), and

(b) conditions B to D of regulation 31A apply in relation to X.]

F1 Regs. 31A-31C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), **19**

Changes to legislation:

There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, CHAPTER 3.