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STATUTORY INSTRUMENTS

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**2009 No. 3001**

**The Offshore Funds (Tax) Regulations 2009**

**PART 2**

**THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS**

**CHAPTER 4**

**DISPOSALS OF INTERESTS IN NON-REPORTING FUNDS**

*Basic provisions*

**Application of this Chapter**

- 32.** This Chapter applies if a participant disposes of an asset and at the time of the disposal—
- (a) the asset is an interest in a non-reporting fund, or
  - (b) the asset is an interest in a reporting fund and the requirements specified in paragraph (3) of regulation 17 (read, as appropriate, with paragraphs (4) and (5) of that regulation) are met.

**Disposal of an asset: the basic rule**

- 33.—**(1) There is a disposal of an asset for the purposes of these Regulations if there would be a disposal of an asset for the purposes of TCGA 1992.
- (2) Paragraph (1) is subject to the following provisions of this Chapter.

*Further provisions*

**Provisions applicable on death**

**34.—**(1) Notwithstanding anything in paragraph (b) of subsection (1) of section 62 of TCGA 1992 (general provisions applicable on death: no deemed disposal by the deceased), where a person dies and the assets of which the deceased was competent to dispose at the time of death include an interest in a non-reporting fund, then, for the purposes of these Regulations—

- (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
- (b) nothing in this regulation affects the determination, in accordance with regulation 32, of the question whether that deemed disposal is one to which this Chapter applies.

(2) Subject to paragraph (1), section 62 of TCGA 1992 <sup>M1</sup> applies for the purposes of these Regulations as it applies for the purposes of that Act, and the reference in that paragraph to the assets of which a deceased person was competent to dispose are to be construed in accordance with subsection (10) of that section.

### Marginal Citations

- M1** Section 62 was amended by paragraph 5 of Schedule 21 to the [Finance Act 1998 \(c. 36\)](#), [section 52](#) of the [Finance Act 2002 \(c. 23\)](#) and paragraph 29 of Schedule 2 to the [Finance Act 2008 \(c. 9\)](#).

### [<sup>F1</sup>Exchanges and schemes of reconstruction

**36A.**—(1) The following sections of TCGA 1992 do not apply to the extent that an interest in a non-reporting fund is exchanged or treated as exchanged for an asset which is not an interest in a non-reporting fund.

(2) The sections are—

- (a) section 103G (exchange of units for those in another collective investment scheme),
- (b) section 103H (scheme of reconstruction involving issue of units),
- (c) section 135 (exchange of securities for those in another company), and
- (d) section 136 (scheme of reconstruction involving issue of securities).

(3) In a case where one of those sections would apply apart from paragraph (1), the exchange or deemed exchange shall for the purposes of this Part constitute a disposal of interests in the non-reporting fund for a consideration equal to their market value at the time of the exchange or deemed exchange.]

- F1** Reg. 36A substituted for regs. 35, 36 (8.6.2013) by [The Collective Investment Schemes \(Tax Transparent Funds, Exchanges, Mergers and Schemes of Reconstruction\) Regulations 2013 \(S.I. 2013/1400\)](#), regs. 1(1), **15(a)** (with reg. 1(2))

### Exchange of interests of different classes

**37.**—(1) If conditions A to D are met, section 127 of TCGA 1992 (equation of original shares and new holding) does not prevent an exchange from constituting a disposal for the purposes of these Regulations.

(2) Condition A is that an offshore fund is constituted by a class of interest (“class A”) in main arrangements.

(3) Condition B is that a participant exchanges an interest of class A for an interest in another offshore fund constituted by a different class of interest (“class B”) in those main arrangements.

(4) Condition C is that the interest of class A is at the time of the exchange an interest in a non-reporting fund.

(5) Condition D is that the interest of class B is at the time of the exchange an interest which is not an interest in a non-reporting fund.

(6) Any disposal to which this regulation applies is to be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

**Changes to legislation:**

There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, CHAPTER 4.