STATUTORY INSTRUMENTS

2009 No. 3001

The Offshore Funds (Tax) Regulations 2009

PART 3

REPORTING FUNDS AND THE TREATMENT OF PARTICIPANTS IN REPORTING FUNDS

CHAPTER 5

THE COMPUTATION OF REPORTABLE INCOME

General

Duty to provide computation

62.—(1) This Chapter explains how reportable income is computed.

(2) A reporting fund must provide a computation of its reportable income for a period of account.

Computation of reportable income: general

63.—(1) The starting point for computing the reportable income of a reporting fund for a period of account is—

(a) in a case in which the fund prepares its accounts in accordance with international accounting standards, the "total comprehensive income for the period" as that expression is used in international accounting standards, or

(b) in any other case, the entries in the fund's accounts that are considered to equate to "total comprehensive income for the period" as that expression is used in international accounting standards.

(2) The starting point specified in paragraph (1) must be adjusted having regard to—

(a) capital items (see regulations 64 and 65),

(b) special classes of income (see regulations 66 to 71), and

(c) equalisation arrangements (see regulation 72).

(3) In the case of any one item, an adjustment under paragraph (2) may be made only once (even if more than one of the regulations mentioned in that paragraph apply to that item).

(4) The reportable income of the reporting fund for the period of account is the amount computed in accordance with the provisions of this Chapter and of Chapter 6.

(5) But if the computation gives rise to a negative amount, the reportable income is nil.

Adjustments for capital items

Treatment of capital items following IMA SORP

64.—(1) The capital items for which an adjustment is required are such profits, gains or losses as would fall to be dealt with under the heading "net capital gains/losses" in the statement of total return for the period of account if the accounts for that period were to be prepared in accordance with the IMA SORP.

(2) The amount specified in regulation 63(1) must be adjusted by—

(a) deducting gains that fall within the heading specified in paragraph (1), and

(b) adding losses that fall within that heading.

(3) A profit or loss from a trade may not be treated as a capital item for the purposes of this regulation.

This paragraph is subject to regulation 80.

(4) For the purposes of paragraph (1) the IMA SORP applies to determine the "net capital gains/losses" of an offshore fund for a period of account in the same way that it applies to determine the "net capital gains/losses" of an authorised investment fund for an accounting period.

(5) In this regulation—

"authorised investment fund" has the meaning given in the Authorised Investment Funds (Tax) Regulations 2006(**1**);

"the IMA SORP" means, in relation to any period of account for which it is required or permitted to be used, the Statement of Recognised Practice relating to authorised investment funds issued by the Investment Management Association in November 2008, as from time to time modified, amended or revised.

Treatment of other capital items

65.—(1) The amount specified in regulation 63(1) must also be adjusted by adding the amounts specified in paragraph (2).

(2) Those amounts are—

(a) expenses directly related to acquisition or disposal of investments (other than those taken into account in arriving at the amounts specified in sub-paragraph (a) or (b) of regulation 64(2)), and

(b) costs relating to the setting up, merger or dissolution of the fund.

Adjustments for special classes of income

Effective interest income or comparable amounts

66.—(1) This regulation applies if the accounting practice used does not include—

(a) the effective interest method for computing interest income (as described in international accounting standard 39 and equivalent United Kingdom financial reporting standards), or

(b) another method of accounting for interest in such a way that the difference between the purchase price of an asset and the expected redemption price of the asset is taken into account as part of the interest income over the expected life of the asset.

(**1**) S.I. 2006/964, to which there are amendments not relevant to these Regulations.

(2) The amount specified in regulation 63(1) must be adjusted by the addition of the net income computed by taking into account the expected redemption price of any interest bearing assets over the expected life of the asset.

(3) The sum mentioned in paragraph (2) may be computed by any reasonable method which—

(a) takes into account the full expected gain or loss on the asset, and

(b) gives a reasonably comparable result to the effective interest method.

Income from wholly-owned subsidiaries

67.—(1) This regulation applies if a reporting fund has a wholly-owned subsidiary.

(2) For the purposes of this regulation, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—

(a) in the case of an offshore fund falling within paragraph (a) of the definition of "offshore fund" in section 40A(2) of FA 2008(**2**), directly and beneficially owned by the fund;

(b) in the case of an offshore fund falling within paragraph (b) of the definition of "offshore fund" in that enactment, directly owned by the trustees of the fund for the benefit of the fund;

(c) in the case of an offshore fund falling within paragraph (c) of the definition of "offshore fund" in that enactment, owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.

(3) But in the case of a company which has only one class of issued share capital, the reference in paragraph (2) to the whole of the issued share capital shall be construed as a reference to at least 95% of that share capital.

(4) That percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in paragraph (2) shall be regarded as the receipts, expenditure, assets and liabilities of the fund.

(5) There shall be left out of account—

(a) the interest of the fund in the subsidiary, and

(b) any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

(6) The adjustments required under regulations 64 and 65 must be made to the amount determined under paragraph (4).

Income from other reporting funds

68.—(1) This regulation applies if a reporting fund ("RF1") has an interest in another reporting fund ("RF2").

(2) The excess (if any) of the income reported by RF2 in respect of RF1's interest in RF2 over the amount distributed by RF2 to RF1 must be added by RF1 to the amount specified in regulation 63(1) after making the adjustments specified in regulations 64 and 65.

(3) The adjustment specified in paragraph (2) must be made in the computation of the reportable income of RF1 for the period of account specified in paragraphs (4) and (5).

(4) The basic rule is that the period of account specified for the purposes of this regulation is the period of account in which the fund distribution date of RF2 falls.

The basic rule is subject to paragraph (5).

(**2**) Section 40A was inserted by paragraph 2 of Schedule 22 to the Finance Act 2009 (c. 10).

(5) If the fund distribution date of RF2 is determined in accordance with regulation 94(4)(b), RF1 must—

(a) include its best estimate of reported income from RF2 as an adjustment to the computation of its reportable income for the period of account in which the latest possible fund distribution date for RF2 falls (to the extent that any such amount has not already been recognised in the computation of RF1'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.

Income from non-reporting funds: first case

69.—(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) the main purpose or one of the main purposes of the investment in the non-reporting fund is not the deferral or avoidance of United Kingdom tax;

(b) the reporting fund has access to the accounts of the non-reporting fund;

(c) the 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

(d) the reporting fund can reasonably expect to be able 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 68 applies as if the reporting fund were RF1 and the non-reporting fund were RF2.

(4) For the purposes of the computation mentioned in paragraph (2)(c), regulation 80 applies if (and only if) the non-reporting fund is a UCITS fund.

Income from non-reporting funds: second case

70.—(1) This regulation applies if a reporting fund has an interest in a non-reporting fund, but the conditions in regulation 69(2) are not met for a period of account.

(2) No adjustments may be made under regulations 64 and 65 in respect of the interest in the non-reporting fund.

(3) But if the condition specified in paragraph (4) is met, losses made by a reporting fund in earlier periods of account on an investment in a non-reporting fund may be set against gains made on the investment in the non-reporting fund to reduce the reportable income of the reporting fund, but only to the extent that the losses—

(a) have not previously had the effect of reducing income for the period of account in which they were incurred, or

(b) have not been used previously to reduce gains arising to the non-reporting fund.

(4) The condition specified is that the losses in earlier periods of account were all made during periods in which this Part applied continuously to the reporting fund.

Income from non-reporting funds if first case ceases to apply

71.—(1) This regulation applies if—

(a) a reporting fund has an interest in a non-reporting fund, and

(b) the conditions in regulation 69(2) have been met for an earlier period of account but are no longer met for a later period of account.

(2) Regulation 70 applies for the later period of account and for all subsequent periods of account.

Adjustments for equalisation arrangements

Treatment of reporting funds operating equalisation arrangements

72.—(1) This regulation applies if, in a period of account—

(a) a reporting fund operates equalisation arrangements, and

(b) a participant disposes of an interest in the fund.

(2) For the purposes of this regulation, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

(a) a person ("X") acquires by way of initial purchase an interest in the fund at some time during a period relevant to the arrangements, and

(b) the fund makes a distribution for a period which begins before the date of X's acquisition of that interest,

the amount of that distribution which is paid to X (assuming X still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (the "equalisation account") and which is determined by reference to the income which had accrued to the fund at the date of X's acquisition.

(3) For the purposes of this regulation, a person ("X") acquires an interest in an offshore fund by way of initial purchase if—

(a) X's acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund, or

(b) X's acquisition is by way of direct purchase from the managers of the fund and their sale to X is made in their capacity as managers of the fund.

(4) For the purposes of calculating reportable income, there must be a deduction of an amount equal to so much of the consideration for the disposal as represents the amount which would be credited to the equalisation account of the offshore fund if, on the same date, a holding of the same size were to be acquired by another person by way of initial purchase.

(5) But if the disposal mentioned in paragraph (4) is of a holding of units or shares which were issued within the same period of account as that in which the disposal takes place, the deduction must be limited to the income accrued or arising to those units or shares since issue.