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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 2**

**CHARGES TO TAX ON PARTICIPANTS IN NON-REPORTING FUNDS**

*Charge to tax on disposal of asset*

**The charge to tax**

**17.**—(1) There is a charge to tax if—

- (a) a person disposes of an asset,
  - (b) either condition A or condition B is met, and
  - (c) as a result of the disposal, an offshore income gain arises to the person making the disposal.
- (2) Condition A is that the asset is an interest in a non-reporting fund at the time of the disposal.
- (3) Condition B is that—
- (a) the asset is an interest in a reporting fund at the time of the disposal,
  - (b) the reporting fund was previously a non-reporting fund (becoming a reporting fund as the result of an application under regulation 52),
  - (c) the interest was an interest in a non-reporting fund during some or all of the material period,
  - (d) an election under regulation 48 was not prevented by paragraph (5) of that regulation, and
  - (e) no election has been made under regulation 48(2).

[<sup>F1</sup>(3A) Where the asset is an interest in a reporting fund acquired in consequence of an arrangement to which section 135 (exchange of securities for those in another company treated as not involving a disposal) or section 136 (scheme of reconstruction involving issue of securities treated as exchange not involving a disposal) of TCGA 1992 applied, the reporting fund referred to in sub-paragraph (b) of condition B is the fund that was company A for the purposes of either of those sections and the interest referred to in sub-paragraph (c) of condition B is the interest in that fund.]

(4) For the purposes of paragraph (3)(c) the “material period” means a period beginning with the day on which consideration was given for the acquisition of the asset or on 1st January 1984 (whichever is the later) and ending with the day on which the fund became a reporting fund.

[<sup>F2</sup>(4A) For the purposes of paragraph (4), where the asset was acquired on the vesting of variable remuneration represented by profit allocated under section 863I of ITTOIA 2005 (allocation of profit to the AIFM firm), the date on which the variable remuneration was awarded is treated as the date on which consideration was given for the acquisition of the asset.

(4B) Terms used in paragraph (4A) which are also used in section 863I of ITTOIA 2005 have the same meaning as in that section.]

(5) Chapter 5 of this Part deals with offshore income gains and the computation of offshore income gains.

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**Textual Amendments**

- F1** Reg. 17(3A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2013 \(S.I. 2013/661\)](#), regs. 1(1), **2(2)**
- F2** Reg. 17(4A)(4B) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2014 \(S.I. 2014/1931\)](#), regs. 1(1), **2(2)**
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**Modifications etc. (not altering text)**

- C1** Reg. 17 excluded by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), **reg. 14ZD(4)** (as inserted (1.10.2011) by [S.I. 2011/2192](#), regs. 1(1), **4**)

**Changes to legislation:**

There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, Section 17.