

**2009 No. 3139**

**INCOME TAX**

**CORPORATION TAX**

**CAPITAL GAINS TAX**

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

<i>Made</i> - - - -	<i>1st December 2009</i>
<i>Laid before the House of Commons</i>	<i>1st December 2009</i>
<i>Coming into force</i> - -	<i>22nd December 2009</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 41(1) and 42 of the Finance Act 2008<sup>(a)</sup>.

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Offshore Funds (Tax) (Amendment) Regulations 2009 and shall come into force on 22nd December 2009.

(2) These Regulations have effect—

- (a) for the purposes of income tax—
  - (i) for the tax year 2009-10 and subsequent tax years, and
  - (ii) for distributions made on or after 1st December 2009;
- (b) for the purposes of corporation tax—
  - (i) on income, for accounting periods ending on or after 1st December 2009 and for distributions made on or after that date,
  - (ii) on chargeable gains, in relation to disposals made on or after 1st December 2009; and
- (c) for the purposes of capital gains tax, in relation to disposals made on or after 1st December 2009.

**Amendment of the Offshore Funds (Tax) Regulations 2009**

**2.** The Offshore Funds (Tax) Regulations 2009<sup>(b)</sup> are amended as follows.

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(a) 2008 c. 9; section 42 was amended by paragraph 4 of Schedule 22 to the Finance Act 2009 (c. 10).  
(b) S.I. 2009/3001, which are referred to in the footnotes to these Regulations as “the principal Regulations”.

### **Amendment to regulation 54 (form, timing and withdrawal of application)**

3. In regulation 54 (form, timing and withdrawal of application), in paragraph (2) for the words after “with” to the end substitute—

“the last of—

- (a) the first day of the first period of account for which it is proposed that this Part should apply to the fund,
- (b) the day on which the first interests in the fund are issued to participants, and
- (c) in the case of an existing fund (as defined in Schedule 1), the first day on which interests in the fund are made available to investors resident in the United Kingdom.”.

### **Amendment to regulation 94 (reported income: general provisions)**

4. In regulation 94 (reported income: general provisions) after paragraph (2) insert—

“(2A) But to the extent that the participant’s rights in the fund are rights to which regulation 30 (rights in certain existing holdings) applies, the excess specified in paragraph (2) shall be reduced proportionately.”.

### **Amendment to Schedule 1 (transitional provisions and savings)**

5.—(1) Amend Schedule 1 (transitional provisions and savings) as follows.

(2) In paragraph 1, in the definition of “distributing fund” at the end insert “or a fund treated as a distributing fund in accordance with paragraph 3(3A)”.

(3) In paragraph 3—

- (a) in sub-paragraph (1) at the end insert “and umbrella arrangements but is subject to paragraph (3B)”;
- (b) after sub-paragraph (3) insert—

“(3A) Where an existing fund is part of umbrella arrangements (within the meaning of section 40C of FA 2008<sup>(a)</sup>) or is part of arrangements comprising more than one class of interest (within the meaning of section 40D of FA 2008), separate arrangements under the umbrella arrangements, and each class of interest under the main arrangements, established on or after 1st December 2009, may apply in writing to HMRC<sup>(b)</sup> to be treated as a distributing fund in respect of a period of account if—

- (a) that period has the same accounting reference date as the overlap period or succeeding period of the existing fund, and
- (b) the existing fund is treated as a distributing fund in respect of the contemporaneous overlap period or succeeding period.

(3B) This paragraph does not apply in respect of any period of account which ends after 31st May 2011.”.

(4) After paragraph 3 insert—

“**3A.** In the case of a reporting fund which has an interest in a distributing fund, income from the distributing fund is treated as income from a reporting fund but no adjustment shall be made to that income under regulation 68 (income from other reporting funds).

**3B.**—(1) This paragraph applies in the case of a distributing fund which has an interest in a reporting fund.

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(a) “FA 2008” is defined in regulation 12 of the principal Regulations as the Finance Act 2008; sections 40C and 40D were inserted by paragraph 2 of Schedule 22 to the Finance Act 2009.

(b) “HMRC” is defined in regulation 12 of the principal Regulations as Her Majesty’s Revenue and Customs.

(2) The reporting fund is treated as a qualifying fund for the purposes of Part 2 of Schedule 27 of ICTA<sup>(a)</sup> (modifications of conditions for certification in certain cases).

(3) The amount of the adjustment required by paragraph 8(1) of Schedule 27 in respect of the excess income of the qualifying fund for any account period is the amount of the excess of the income reported by the reporting fund in respect of the distributing fund's interest in the reporting fund over the amount distributed by the reporting fund to the distributing fund.

**3C.** In the case of an exchange of an interest in a distributing fund for an interest in a reporting fund, regulation 37 (exchange of interests of different classes) shall not apply.”.

*Tony Cunningham*  
*Dave Watts*

1st December 2009

Two of the Lords Commissioners of Her Majesty's Treasury

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(a) “ICTA” is defined in regulation 12 of the principal Regulations as the Income and Corporation Taxes Act 1988 (c. 1).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Offshore Funds (Tax) Regulations 2009 which make provision for the tax treatment of participants in offshore funds. These Regulations have effect from the same days as the Offshore Funds (Tax) Regulations 2009 have effect. Authority for this limited retrospective effect is provided by section 42(5) of the Finance Act 2009.

Regulation 1 deals with citation, commencement and effect. Regulation 2 introduces the amendments.

Regulation 3 amends regulation 54 (form, timing and withdrawal of application) to extend the time allowed to a fund to make an application to become a reporting fund.

Regulation 4 amends regulation 94 (reported income: general provisions) so that the exception from the charge to tax in regulation 17 applies in relation to the excess of the reported income of a fund over the income of the fund attributed to a participant where regulation 30 (rights in certain holdings) applies to the participant's rights in the fund.

Regulation 5 amends Schedule 1 (transitional provisions and savings). The amendment to paragraph 3 permits new funds launched on or after 1st December 2009 which are under the same umbrella arrangements as existing distributing funds or part of arrangements comprising more than one class of interest and with the same accounting dates to apply for the same treatment as a distributing fund as the existing fund. This regulation also inserts three new paragraphs into Schedule 1. New paragraph 3A makes provision for the treatment of income of a reporting fund in relation to an interest in a distributing fund. New paragraph 3B makes provision for the treatment of income of a distributing fund in relation to an interest in a reporting fund. New paragraph 3C makes provision in relation to an exchange of an interest in a distributing fund for an interest in a reporting fund.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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