
STATUTORY INSTRUMENTS

2009 No. 3139

The Offshore Funds (Tax) (Amendment) Regulations 2009

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(1)) 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(2) 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.

(2) The reporting fund is treated as a qualifying fund for the purposes of Part 2 of Schedule 27 of ICTA(3) (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.

(1) “FA 2008” is defined in Schedule 3 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.

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

(3) “ICTA” is defined in Schedule 3 of the principal Regulations as the [Income and Corporation Taxes Act 1988](#) (c. 1).

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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.”.