

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 22

Section 44

OFFSHORE FUNDS

PART 1

MEANING OF “OFFSHORE FUND”

FA 2008

- 1 FA 2008 is amended as follows.
- 2 Before section 41 (tax treatment of participants in offshore funds) insert—

Meaning of “offshore fund”

“40A(1) This section and sections 40B to 40G have effect for this group of sections.

- (2) “Offshore fund” means—
 - (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
 - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
 - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom (but see subsection (3)).
- (3) Subsection (2)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (4) “This group of sections” means this section and sections 40B to 42A.
- (5) References to participants in arrangements (or a fund) are to persons taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise (and references to participation in arrangements or a fund, however expressed, are to be read accordingly).
- (6) In this section—
 - “body corporate” does not include a limited liability partnership;
 - “co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Meaning of “mutual fund” etc

- 40B (1) “Mutual fund” means arrangements with respect to property of any description, including money, that meet conditions A to C, subject to—
- (a) sections 40C and 40D, and
 - (b) the exceptions made by or under sections 40E to 40G.
- (2) Condition A is that the purpose or effect of the arrangements is to enable the participants—
- (a) to participate in the acquisition, holding, management or disposal of the property, or
 - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) Condition B is that the participants do not have day-to-day control of the management of the property.
- (4) For the purpose of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (5) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
- (a) the net asset value of the property that is the subject of the arrangements, or
 - (b) an index of any description.
- (6) The Treasury may by regulations amend condition C.

Umbrella arrangements

- 40C (1) In the case of umbrella arrangements—
- (a) each part of the umbrella arrangements is to be treated as separate arrangements (subject to section 40D), and
 - (b) the umbrella arrangements are to be disregarded.
- (2) “Umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (3) References to a part of umbrella arrangements are to the arrangements relating to a separate pool.

Arrangements comprising more than one class of interest

- 40D (1) Where there is more than one class of interest in arrangements (the “main arrangements”)—
- (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) the main arrangements are to be disregarded.
- (2) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

Meaning of “mutual fund”: exceptions

40E (1) Arrangements are not a mutual fund if—

- (a) under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in condition C in section 40B only in the event of the winding up, dissolution or termination of the arrangements, and
 - (b) condition X or Y is met.
- (2) Condition X is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (3) Condition Y is that—
- (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements, and
 - (b) condition Y1, Y2 or Y3 is met.
- (4) Condition Y1 is that none of the assets that are the subject of the arrangements are relevant income-producing assets.
- (5) Condition Y2 is that, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (6) Condition Y3 is that—
- (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
 - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (7) Condition Y is not met if the arrangements are designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (8) For the purposes of this section, the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

Meaning of “relevant income-producing assets”

40F (1) “Relevant income-producing assets” means assets that produce income on which, if they were held directly by an individual resident in the United

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Kingdom, the individual would be charged to income tax (subject to the following provisions of this section).

- (2) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—
 - (a) the asset (taking account of the hedging), or
 - (b) any product of the hedging arrangements.
- (3) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets.

Meaning of “mutual fund”: powers to vary exceptions

40G(1) The Treasury may by regulations amend or repeal any provision of section 40E or 40F.

- (2) The Treasury may by regulations provide that arrangements are not a mutual fund—
 - (a) in specified circumstances, or
 - (b) if they are of a specified description.
- (3) Regulations under this section may include provision having effect in relation to the tax year and accounting periods current on the day on which the regulations are made.”

- 3 (1) Section 41 (tax treatment of participants in offshore funds) is amended as follows.
 - (2) In subsection (2), omit the definition of “offshore fund” (and the “and” before it).
 - (3) Omit subsections (3) to (9).
- 4 (1) Section 42 (regulations under section 41: supplementary) is amended as follows.
 - (2) In subsection (2), for paragraphs (a) and (b) substitute—
 - “(a) an offshore fund comprising a part of umbrella arrangements, and
 - (b) an offshore fund comprising arrangements relating to a class of interest in other arrangements (see section 40D).”
 - (3) In subsection (3), for the words from “may” to the end substitute “, in particular—
 - (a) repeal Chapter 5 of Part 17 of ICTA (offshore funds), and
 - (b) make provision consequential on the repeal of provisions of that Chapter.”
 - (4) In subsection (4)(e), insert at the end “and savings”.
 - (5) For subsection (5) substitute—
 - “(5) Regulations under section 41 may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.”
 - (6) In subsection (6), for “and “offshore fund” have” substitute “ has ”.
- 5 After that section insert—

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

“42A Regulations: procedure

- (1) Regulations under this group of sections are to be made by statutory instrument.
- (2) The following regulations may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons—
 - (a) regulations under section 40B(6),
 - (b) regulations under section 40G(1), and
 - (c) the first regulations under section 41(1).
- (3) A statutory instrument containing any other regulations under this group of sections is subject to annulment in pursuance of a resolution of the House of Commons, unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

Restriction on regulation-making power under section 41 of FA 2008

F16

.....

Textual Amendments

- F1 Sch. 22 para. 6 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 174, 10 Pt. 5](#) (with Sch. 9 paras. 1-9, 22)

PART 2

APPLICATION OF TCGA 1992 TO OFFSHORE FUNDS

TCGA 1992

7 TCGA 1992 is amended as follows.

8 In Chapter 3 of Part 3 (collective investment schemes), insert at the end—

Application of Act to certain offshore funds

- “103A(1) This Act applies in relation to a relevant offshore fund as if—
- (a) the fund were a company, and
 - (b) the rights of the participants in the fund were shares in the company.
- (2) An offshore fund is a relevant offshore fund if—
- (a) it is not constituted by a company, and
 - (b) it is not a unit trust scheme (see section 99).
- (3) In this section “offshore fund” and “participant”, in relation to a fund, have the meanings given in section 40A of the Finance Act 2008.”

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

- C1** Sch. 22 para. 8 having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), **art. 2**

- 9 Accordingly, in the title of Part 3 and in the title of Chapter 3 of that Part, insert at the end “etc”.

Modifications etc. (not altering text)

- C2** Sch. 22 para. 9 having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), **art. 2**

- 10 In section 288(1) (interpretation), in the definition of “company”, for “section 99” substitute “ sections 99 and 103A ”.

Modifications etc. (not altering text)

- C3** Sch. 22 para. 10 having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), **art. 2**

Consequential provision

- 11 (1) In TMA 1970, in—
- (a) section 25(9) (issuing houses, stockbrokers, auctioneers, etc), and
 - (b) section 28(2) (non-resident companies and trusts),
- after “sections 99” insert “ , 103A ”.
- [^{F2}(2) In section 1165 of CTA 2010—
- (a) in subsection (1) for “section 99 of TCGA 1992 (application of that Act to unit trust schemes)” substitute “ sections 99 and 103A of TCGA 1992 (application of that Act to unit trust schemes and to certain offshore funds) ”, and
 - (b) in subsection (3) for “section 99 of TCGA 1992” substitute “ sections 99 and 103A of TCGA 1992 ”.]
- (3) In ITTOIA 2005—
- (a) in section 149(4) (taxation of amounts taken to reserves), at the end of paragraph (b) (before the “and”) insert—
 - “(ba) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,”, and
 - (b) in section 150(8) (conversion etc of securities held as circulating capital), after paragraph (c) insert—
 - “(ca) rights of participants in certain offshore funds to which TCGA 1992 applies as a result of section 103A of TCGA 1992,”.

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) In section 834(5) of the Companies Act 2006 (investment company: condition as to holdings in other companies), in the definition of “company” and “shares”, after “sections 99” insert “, 103A ”.
- (5) In section 332 of ITA 2007 (venture capital trusts: minor definitions), in the definition of “company”—
- (a) for “section 99” substitute “ sections 99 and 103A ”, and
 - (b) after “schemes” insert “ and certain offshore funds ”.

Textual Amendments

- F2** Sch. 22 para. 11(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 716(2)** (with Sch. 2)

Modifications etc. (not altering text)

- C4** Sch. 22 para. 11(1)(b)(3) having effect as specified (1.4.2010) by [Finance Act 2009, Paragraph 12\(2\)\(b\) of Schedule 22 \(Appointed Day\) Order 2010 \(S.I. 2010/670\)](#), **art. 2**

Commencement: general

- 12 (1) The amendments made by this Part of this Schedule have effect in relation to the acquisition, holding and disposal of rights in a relevant offshore fund on or after the commencement day, subject to paragraphs 13 and 15.
- (2) In this paragraph and paragraphs 15 to 18 “the commencement day” means—
- (a) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to capital gains tax, 1 December 2009, and
 - (b) in relation to the acquisition, holding and disposal of rights by a person subject to the charge to corporation tax, such day as the Treasury may by order appoint.

Modifications etc. (not altering text)

- C5** Sch. 22 para. 12(2)(b): 1.4.2010 appointed by [S.I. 2010/670](#), art. 2

Commencement: certain consequential amendments

- 13 (1) The amendment made by sub-paragraph (1)(a) of paragraph 11 comes into force on 1 December 2009 (and has effect as if section 103A of TCGA 1992 had effect from that date in relation to the issue, placing, acquisition, holding and disposal of rights in relevant offshore funds by any person).
- (2) The amendments made by sub-paragraphs (2), (4) and (5) of paragraph 11 come into force in accordance with an order made by the Treasury.

Commencement orders

- 14 (1) An order under paragraph 12(2)(b) or 13(2)—
- (a) may make different provision for different cases or different purposes, and
 - (b) may include transitional provision and savings.

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) [^{F3}Section 1171(4) of CTA 2010], section 287(3) of TCGA 1992 and section 1014(4) of ITA 2007 (orders etc subject to annulment) do not apply in relation to such an order.

Textual Amendments

- F3** Words in Sch. 22 para. 14(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 716(3)** (with Sch. 2)

Election modifying commencement

- 15 (1) This paragraph applies if a person makes an election—
- for capital gains tax purposes, in respect of a relevant tax year, or
 - for corporation tax purposes, in respect of a relevant accounting period.
- (2) The amendments made by this Part of this Schedule (other than the amendments made by paragraph 11(1)(a), (2), (4) and (5)) have effect, and are to be treated as always having had effect, in relation to the acquisition, holding and disposal by the person of rights in a relevant offshore fund on or after the first day of that tax year or accounting period (“the election day”).
- (3) Sub-paragraph (4) applies if, in respect of any time on or after the election day but before the commencement day, the relevant offshore fund was not certified as a distributing fund under Part 3 of Schedule 27 to ICTA (distributing funds: certification procedure).
- (4) The acquisition, holding or disposal by the person of rights in the fund at that time is to be treated as the acquisition, holding or disposal of rights in an offshore fund that is so certified.
- (5) In this paragraph and paragraph 16—
- “relevant accounting period” means an accounting period beginning on or after 1 April 2003 but before the day appointed under paragraph 12(2)(b);
- “relevant tax year” means the tax year 2003-04 and any subsequent tax year up to and including the tax year 2009-2010.

Making an election

- 16 (1) An election under paragraph 15 must be made—
- for capital gains tax purposes, by being included in a relevant return under TMA 1970, and
 - for corporation tax purposes, by being included in a relevant company tax return.
- (2) A return under TMA 1970 is relevant if it is for—
- the tax year in respect of which the election is made, or
 - a subsequent relevant tax year.
- (3) A company tax return is relevant if it is for—
- the accounting period in respect of which the election is made, or
 - a subsequent relevant accounting period.

Status: Point in time view as at 01/04/2010.

Changes to legislation: Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) The references in sub-paragraph (1) to an election being included in a return include an election being included by virtue of an amendment of the return.
- (5) An election under paragraph 15 is irrevocable.

Giving effect to elections

- 17 If, in order to give effect to an election under paragraph 15, any adjustments are required, whether by the discharge or repayment of tax, the making of assessments or otherwise—
- (a) the adjustments must be made, and
 - (b) any time limit for making the adjustments is to be disregarded.

Modification of acquisition cost

- 18 (1) This paragraph applies where a participant in a relevant offshore fund—
- (a) holds rights in a relevant offshore fund immediately before the effective date, and
 - (b) disposes of those rights on or after that date.
- (2) For the purposes of TCGA 1992 the participant is to be treated as if the acquisition cost for those rights were the pre-commencement acquisition cost.
- (3) “The effective date” means—
- (a) if the participant has made an election under paragraph 15, the election day, or
 - (b) otherwise, the commencement day.
- (4) “Acquisition cost” means the total of the consideration, costs and expenditure described in section 38(1)(a) and (b) of TCGA 1992 (acquisition and disposal costs etc).
- (5) “Pre-commencement acquisition cost” means the total of the consideration, costs and expenditure that would have been allowable as a deduction under section 38(1) (a) and (b) of TCGA 1992 if the participant had disposed of the rights immediately before the effective date.

Status:

Point in time view as at 01/04/2010.

Changes to legislation:

Finance Act 2009, SCHEDULE 22 is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.