
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 3

**REPORTING FUNDS AND THE TREATMENT
OF PARTICIPANTS IN REPORTING FUNDS**

CHAPTER 8

THE TAX TREATMENT OF PARTICIPANTS IN REPORTING FUNDS

Anti-avoidance provisions

Meaning of “financial trader”

105.—(1) In this Chapter “financial trader” means a person who is carrying on a business which is—

- (a) a banking business,
- (b) an insurance business, or
- (c) a business consisting wholly or in part of dealing in trading assets such that any profit on such assets would form part of the trading profits of that business.

This is subject to paragraphs (2) and (3).

(2) For the purposes of paragraph (1)(b) an insurance business does not include life assurance business carried on by an insurance company and if such a company carries on both life assurance business and any other insurance business the company must not be treated as a financial trader in respect of the life assurance business.

(3) If—

- (a) a financial trader (“A”) directly or indirectly transfers trading assets to a diversely owned fund under, or as part of, an arrangement which has an unallowable purpose, and
- (b) a connected person (“B”)—
 - (i) holds an interest in the diversely owned fund at the time of the transfer, or
 - (ii) directly or indirectly acquires an interest in the diversely owned fund at a later time,

B is treated as being a financial trader in relation to that interest.

(4) In this regulation “trading assets” means—

- (a) stocks or shares;
- (b) a relevant contract (construed in accordance with regulations 82 to 86);
- (c) a loan relationship (construed in accordance with regulation 87);
- (d) units in a collective investment scheme (construed in accordance with regulation 88);
- (e) securities of any description not falling within any of sub-paragraphs (a) to (d);

- (f) foreign currency; or
 - (g) a carbon emission trading product (construed in accordance with regulation 89);
- a profit on the sale of which would form part of the trading profits of the financial trader.
- (5) An arrangement includes any scheme, understanding or transaction of any kind, whether or not legally enforceable and whether involving a single transaction or two or more transactions.
- (6) An arrangement has an unallowable purpose if the main purpose or one of the main purposes for either A or B being party to the arrangement is to obtain a tax advantage or an income tax advantage for any person.
- (7) In paragraph (6)—
- “tax advantage” has the meaning given by section of 840ZA of ICTA(1);
 - “income tax advantage” has the meaning given by section 683 of ITA 2007.

(1) Section 840ZA was inserted by paragraph 225 of Schedule 1 to the Income Tax Act 2007 (c. 3).