
STATUTORY INSTRUMENTS

2009 No. 3001

The Offshore Funds (Tax) Regulations 2009

PART 3

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

CHAPTER 5

THE COMPUTATION OF REPORTABLE INCOME

Adjustments for special classes of income

Effective interest income or comparable amounts

- 66.**—(1) This regulation applies if the accounting practice used does not include—
- (a) the effective interest method for computing interest income (as described in international accounting standard 39 and equivalent United Kingdom financial reporting standards), or
 - (b) another method of accounting for interest in such a way that the difference between the purchase price of an asset and the expected redemption price of the asset is taken into account as part of the interest income over the expected life of the asset.
- (2) The amount specified in regulation 63(1) must be adjusted by the addition of the net income computed by taking into account the expected redemption price of any interest bearing assets over the expected life of the asset.
- (3) The sum mentioned in paragraph (2) may be computed by any reasonable method which—
- (a) takes into account the full expected gain or loss on the asset, and
 - (b) gives a reasonably comparable result to the effective interest method.

Income from wholly-owned subsidiaries

- 67.**—(1) This regulation applies if a reporting fund has a wholly-owned subsidiary.
- (2) For the purposes of this regulation, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—
- (a) in the case of an offshore fund falling within paragraph (a) of the definition of “offshore fund” in section 40A(2) of FA 2008 ^{M1}, directly [^{F1}or indirectly] owned by the fund;
 - (b) in the case of an offshore fund falling within paragraph (b) of the definition of “offshore fund” in that enactment, directly [^{F2}or indirectly] owned by the trustees of the fund for the benefit of the fund;
 - (c) in the case of an offshore fund falling within paragraph (c) of the definition of “offshore fund” in that enactment, owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.

Status: Point in time view as at 27/05/2011.

Changes to legislation: There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, Cross Heading: Adjustments for special classes of income. (See end of Document for details)

(3) But in the case of a company which has only one class of issued share capital, the reference in paragraph (2) to the whole of the issued share capital shall be construed as a reference to at least 95% of that share capital.

(4) That percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in paragraph (2) shall be regarded as the receipts, expenditure, assets and liabilities of the fund.

(5) There shall be left out of account—

- (a) the interest of the fund in the subsidiary, and
- (b) any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

(6) The adjustments required under regulations 64 and 65 must be made to the amount determined under paragraph (4).

Textual Amendments

- F1** Words in reg. 67(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\), regs. 1\(1\), 33\(a\)](#)
- F2** Words in reg. 67(2)(b) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\), regs. 1\(1\), 33\(b\)](#)

Marginal Citations

- M1** Section 40A was inserted by paragraph 2 of Schedule 22 to the [Finance Act 2009 \(c. 10\)](#).

Income from other reporting funds

68.—(1) This regulation applies if a reporting fund (“RF1”) has an interest in another reporting fund (“RF2”).

(2) The excess (if any) of the income reported by RF2 in respect of RF1's interest in RF2 over the amount distributed by RF2 to RF1 must be added by RF1 to the amount specified in regulation 63(1) after making the adjustments specified in regulations 64 and 65.

(3) The adjustment specified in paragraph (2) must be made in the computation of the reportable income of RF1 for the period of account [^{F3}in which the fund distribution date of RF2 falls or, if earlier, in which the date on which the reported income from RF2 in respect of that reporting period is recognised in the accounts of RF1].

^{F4}(4)

(5) If [^{F5}RF2 does not make a report available in accordance with regulation 90(5)], RF1 must—

- (a) include its best estimate of reported income from RF2 as an adjustment to the computation of its reportable income for the period of account in which the latest possible fund distribution date for RF2 falls (to the extent that any such amount has not already been recognised in the computation of RF1's reportable income for that or any earlier period of account), and
- (b) make any necessary corrections to its best estimate in its computation of reportable income for the first later period of account in which it has sufficient information to make those corrections.

Textual Amendments

- F3** Words in [reg. 68\(3\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), [regs. 1\(1\)](#), [34\(2\)](#)
- F4** [Reg. 68\(4\)](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by virtue of [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), [regs. 1\(1\)](#), [34\(3\)](#)
- F5** Words in [reg. 68\(5\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), [regs. 1\(1\)](#), [34\(4\)](#)

[^{F6}Index tracking funds

- 68A.**—(1) This regulation applies if—
- (a) a reporting fund has an interest in a non-reporting fund, and
 - (b) the conditions in paragraph (2) are met for a period of account.
- (2) The conditions are that—
- (a) in accordance with the reporting fund’s rule or the instrument constituting the reporting fund, the aim of the fund’s investment policy is to replicate the performance of a qualifying index,
 - (b) the main purpose of the investment in the non-reporting fund is to represent the composition of the qualifying index, and
 - (c) the capital and income returns of the reporting fund replicate as closely as practicable the returns of the investments comprised in the qualifying index.
- (3) For the purposes of paragraph (2) an index is a “qualifying index” if—
- (a) it is based solely on the value of securities listed on a recognised stock exchange or admitted to trading on a regulated market,
 - (b) an authority responsible for regulating offshore funds recognises the index on the basis that—
 - (i) its composition is sufficiently diverse,
 - (ii) it represents an adequate benchmark for the market to which it refers, and
 - (iii) it is published in such a way that it is widely available, and
 - (c) it is calculated and published by a body which is managed independently from the management of the reporting fund.
- (4) Regulations 69 to 71 do not apply in respect of the interest in the non-reporting fund.]

Textual Amendments

- F6** [Reg. 68A](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), [regs. 1\(1\)](#), [35](#)

Income from non-reporting funds: first case

- 69.**—(1) This regulation applies if—
- (a) a reporting fund has an interest in a non-reporting fund, and
 - (b) the conditions in paragraph (2) are met for a period of account.
- (2) The conditions are that—

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- F7(a)
- (b) the reporting fund has access to the accounts of the non-reporting fund;
- (c) the reporting fund has sufficient information about the non-reporting fund to enable it to prepare a computation of reportable income for the non-reporting fund; and
- (d) the reporting fund can reasonably expect to be able to rely on continued access to that information for the period in which it will hold the investment in the non-reporting fund.

(3) Regulation [F8 68(1) to (3)] applies as if the reporting fund were RF1 and the non-reporting fund were RF2.

(4) For the purposes of the computation mentioned in paragraph (2)(c), regulation 80 applies if (and only if) the non-reporting fund is a UCITS fund.

[F9(5) For the purposes of applying regulation 68, “fund distribution date” means the date six months after the end of the period of account in which the income arose.

(6) If the period of account referred to in paragraph (5) is more than 12 months, there shall be two periods of account and two fund distribution dates for the purposes of applying regulation 68.

The first fund distribution date is the date six months after the end of the first 12 months in the period of account.

The second fund distribution date is the date six months after the end of the period of account in which the income arose.]

Textual Amendments

- F7 Reg. 69(2)(a) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), **36(2)**
- F8 Words in reg. 69(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), **36(3)**
- F9 Reg. 69(5)(6) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2011 \(S.I. 2011/1211\)](#), regs. 1(1), **36(4)**

Income from non-reporting funds: second case

70.—(1) This regulation applies if a reporting fund has an interest in a non-reporting fund, but the conditions in regulation 69(2) are not met for a period of account.

(2) No adjustments may be made under regulations 64 and 65 in respect of the interest in the non-reporting fund.

(3) But if the condition specified in paragraph (4) is met, losses made by a reporting fund in earlier periods of account on an investment in a non-reporting fund may be set against gains made on the investment in the non-reporting fund to reduce the reportable income of the reporting fund, but only to the extent that the losses—

- (a) have not previously had the effect of reducing income for the period of account in which they were incurred, or
- (b) have not been used previously to reduce gains arising to the non-reporting fund.

(4) The condition specified is that the losses in earlier periods of account were all made during periods in which this Part applied continuously to the reporting fund.

Income from non-reporting funds if first case ceases to apply

71.—(1) This regulation applies if—

- (a) a reporting fund has an interest in a non-reporting fund, and
 - (b) the conditions in regulation 69(2) have been met for an earlier period of account but are no longer met for a later period of account.
- (2) Regulation 70 applies for the later period of account and for all subsequent periods of account.

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Changes to legislation:

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