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STATUTORY INSTRUMENTS

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**2009 No. 3001**

**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**

*Tax treatment of the reported income of the fund in the hands of participants*

**Reported income: general provisions**

**94.**—(1) In the case of a reporting fund which is not a transparent fund, the Tax Acts have effect as if the excess (if any) of the reported income of the fund in respect of a reporting period over the distributions made by the fund in respect of the reporting period were additional distributions made to the participants in the fund in proportion to their rights.

(2) In the case of a reporting fund which is a transparent fund, the Tax Acts have effect as if the excess (if any) of the reported income of the fund in respect of a reporting period over the income of the fund for the reporting period were additional income of the participants in the fund in proportion to their rights.

[<sup>F1</sup>(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 [<sup>F2</sup>paragraphs (1) and] (2) shall be reduced proportionately.]

(3) The excess specified in paragraphs (1) and (2) is treated as made, on the fund distribution date, [<sup>F3</sup>or on such earlier date as the reported income in respect of that reporting period is recognised in the participant's accounts,] to participants holding an interest in the fund at the end of the reporting period.

[<sup>F4</sup>(3A) If—

- (a) a participant disposes of an interest in a reporting fund in a reporting period (“the earlier period”), and
- (b) section 106A of TCGA 1992 (identification of securities: capital gains tax) applies to identify the whole or any part of that interest with an interest acquired in the next reporting period,

then, for the purposes of paragraph (3), the disposal of the interest so identified shall be ignored and the participant shall be treated as holding that interest at the end of the earlier period.]

(4) In these Regulations the “fund distribution date” for a reporting period of a reporting fund [<sup>F5</sup>means the date six months following the last day of the reporting period].

*Status: Point in time view as at 27/05/2011.*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: Tax treatment of the reported income of the fund in the hands of participants. (See end of Document for details)*

#### Textual Amendments

- F1** Reg. 94(2A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/3139\)](#), regs. 1(1), **4**
- F2** Words in [reg. 94\(2A\)](#) 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), **40(2)**
- F3** Words in [reg. 94\(3\)](#) 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), **40(3)**
- F4** [Reg. 94\(3A\)](#) 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), **40(4)**
- F5** Words in [reg. 94\(4\)](#) 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), **40(5)**

#### [<sup>F6</sup>Equalisation amounts not treated as distributions

**94A.**—(1) This regulation applies if—

- (a) a participant has acquired by way of initial purchase an interest in a reporting fund, and
- (b) the reporting fund operates full equalisation arrangements.

(2) Where this regulation applies—

- (a) the amount of any excess treated as additional distributions made to the participant is reduced by the equalisation amount, and
- (b) the amount of any actual distributions to the participant in respect of the reporting period shall be treated as reduced by the amount, if any, by which the equalisation amount exceeds the excess.

(3) But the amount of any excess treated as additional distributions or any actual distributions shall not be reduced to below nil.

(4) For the purposes of paragraph (2) the excess is the amount treated as additional distributions made to the participant in accordance with regulation 94(1) and (2).]

#### Textual Amendments

- F6** [Reg. 94A](#) 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), **12**

#### Participants chargeable to income tax: corporate funds

**95.**—(1) This regulation applies if—

- (a) a reporting fund makes a distribution to a participant chargeable to income tax in respect of a reporting period, and
- (b) the fund falls within section 40A(2)(a) of FA 2008 <sup>M1</sup>.

(2) This regulation also applies if some or all of the excess specified in regulation 94(1) is treated as made by such a fund to such a participant.

(3) If section 378A of ITTOIA 2005 <sup>M2</sup> (offshore fund distributions) applies to any amount falling within paragraph (1) or (2), the amount is charged to income tax in accordance with that section.

(4) If paragraph (3) does not apply to any amount falling within paragraph (1) or (2), but the participant is entitled to a tax credit on receiving a distribution falling within paragraph (1),

section 397A of ITTOIA 2005 <sup>M3</sup> (savings and investment income: dividends from non-UK resident companies) also applies to the excess falling within paragraph (2).

**Marginal Citations**

- M1** Section 40A was inserted by paragraph 2 of Schedule 22 to the [Finance Act 2009 \(c. 10\)](#).
- M2** Section 378A was inserted by section 39(3) of the Finance Act 2009.
- M3** Section 397A was inserted by paragraph 4 of Schedule 12 to the [Finance Act 2008 \(c. 9\)](#) and amended by paragraph 2 of Schedule 19 to the Finance Act 2009.

**Participants chargeable to income tax: other non-transparent funds**

**96.**—(1) This regulation applies if—

- (a) a reporting fund makes a distribution to a participant chargeable to income tax in respect of a reporting period,
- (b) the fund falls within paragraph (b) or (c) of section 40A(2) of FA 2008, and
- (c) the fund is not a transparent fund.

(2) This regulation also applies if some or all of the excess specified in regulation 94(1) is treated as made by such a fund to such a participant.

(3) Any amount to which paragraph (1) or (2) applies is charged to income tax—

- (a) under section 378A of ITTOIA 2005 (offshore fund distributions), or
- (b) (if that section does not apply) under Chapter 8 of Part 5 of ITTOIA 2005 (miscellaneous income: income not otherwise charged) for the year of assessment in which the distribution is made, but sections 688(1) and 689 of ITTOIA 2005 <sup>M4</sup> (income charged and person liable) do not apply.

**Marginal Citations**

- M4** Section 688(1) was amended by paragraph 22 of Schedule 12 to the Finance Act 2008.

**Participants chargeable to income tax: transparent funds**

**97.**—(1) This regulation applies if—

- (a) a reporting fund is a transparent fund, and
- (b) some or all of the excess specified in regulation 94(2) is treated as income of a participant by virtue of that provision.

(2) Any amount to which paragraph (1) applies is charged to income tax under Chapter 8 of Part 5 of ITTOIA 2005 as relevant foreign income within the meaning given by section 830 of ITTOIA 2005 <sup>M5</sup> for the year of assessment in which the distribution is made, but sections 688(1) and 689 of ITTOIA 2005 do not apply.

**Marginal Citations**

- M5** Section 830 was amended by paragraphs 51, 96, 156 and 162 of Schedule 7 to the Finance Act 2008.

*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: Tax treatment of the reported income of the fund in the hands of participants. (See end of Document for details)*

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### **Participants chargeable to corporation tax**

**98.**—(1) This regulation applies if some or all of the excess specified in regulation 94 is treated as made to a participant chargeable to corporation tax.

(2) The amount is exempt if it would be exempt if it were an actual distribution made by the fund.

**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: Tax treatment of the reported income of the fund in the hands of participants.