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STATUTORY INSTRUMENTS

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**2011 No. 1211**

**The Offshore Funds (Tax) (Amendment) Regulations 2011**

**PART 3**

**Unlisted Trading Company Exception**

**Introduction**

**18.** This Part inserts a new exception to the charge to tax arising under regulation 17 of the principal Regulations.

**Insertion of regulations 31A to 31C (unlisted trading company exception)**

**19.** After regulation 31 insert—

**“Unlisted trading company exception**

**31A.**—(1) No liability to tax arises under regulation 17 if conditions A to D are met.

(2) Condition A is that the disposal is a disposal of an interest in an offshore fund.

(3) Condition B is that the sole or main purpose of the fund is to invest in qualifying companies.

(4) Condition C is that throughout the period starting with the date on which the interest was acquired and ending 12 months before the date of the disposal the fund met the investment condition.

This is subject to paragraph (6).

(5) Condition D is that participants in the fund have access to, and are able to obtain copies of, sufficient information to demonstrate that the fund intends to dispose of any holdings of shares or securities within regulation 31B(1)(b) or (d).

(6) Condition C is treated as met in relation to the period—

(a) starting at the beginning of the first period of account of the fund, and

(b) ending on the earlier of—

(i) the expiry of 3 months, and

(ii) the date the fund meets the investment condition,

if the only asset of the fund during that period is cash.

(7) For the purposes of this regulation and regulation 31B—

“cash” means cash deposited in a bank account or similar account, but not cash acquired wholly or partly for the purpose of realising a gain on its disposal;

“qualifying company” means a trading company or the holding company of a trading group or a trading subgroup, where—

- (a) the shares of the company are not listed on a recognised stock exchange or admitted to trading on a regulated market, and
- (b) the activities of the trading company or, in the case of a holding company, the activities of the members of the group or subgroup taken together, do not include to a substantial extent the carrying out of investment transactions undertaken in the course of a trade.

(8) In paragraph (7) in the definition of “qualifying company”, “holding company”, “trading company”, “trading group” and “trading subgroup” have the same meanings as in Schedule 7AC to TCGA 1992(1) (see paragraphs 20 to 24 and 26 and 27 of that Schedule).

### **Unlisted trading company exception: the investment condition**

**31B.**—(1) The investment condition is that at least 90% of the value of the assets of the fund consists of—

- (a) direct or indirect holdings in qualifying companies,
- (b) holdings of shares or securities listed on a recognised stock exchange or admitted to trading on a regulated market which the fund intends to dispose of as soon as reasonably practicable, taking into account market conditions and commercial and contractual constraints, and which—
  - (i) were acquired by the fund in exchange for shares or securities in a qualifying company, or
  - (ii) were shares in a qualifying company at the time of their acquisition by the fund,
- (c) holdings of shares or securities listed on a recognised stock exchange or admitted to trading on a regulated market, which are holdings in a company that would be a qualifying company if it were not so listed or admitted, where it is reasonable to believe that the shares or securities will cease to be so listed or admitted within 12 months,
- (d) shares or securities which have ceased to be within sub-paragraph (c) because it is no longer reasonable to believe that they will cease to be listed or admitted, which the fund intends to dispose of as soon as reasonably practicable taking into account market conditions and commercial and contractual constraints.

(2) For the purposes of the investment condition—

- (a) any holding of cash shall be disregarded, and
- (b) a holding in a qualifying company is held indirectly if it is held by a corporate body which is a 51% subsidiary of the fund.

(3) For the purposes of paragraph (2) section 1154 of CTA 2010 applies to determine whether a corporate body is a 51% subsidiary of a fund.

### **Unlisted trading company exception: further provision**

**31C.** No liability to tax arises under regulation 17 if—

- (a) the disposal is of an interest in an offshore fund whose business consists solely of holding an interest in another offshore fund (“X”), and
- (b) conditions B to D of regulation 31A apply in relation to X.”.

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(1) “TCGA 1992” is an abbreviation for the Taxation of Chargeable Gains Act 1992 (c. 12) given in Part 1 of Schedule 3 to the principal Regulations; Schedule 7AC was inserted by paragraph 1 of Schedule 8 to the Finance Act 2002 (c. 23).

**Amendment to regulation 81 (meaning of investment transaction)**

**20.** In regulation 81 (meaning of investment transaction) for “this Part” substitute “these Regulations”.