

EXPLANATORY MEMORANDUM TO
THE CO-OWNERSHIP AUTHORISED CONTRACTUAL SCHEMES (TAX)
REGULATIONS 2017

2017 No. 1209

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs (“HMRC”) and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument introduces new legal requirements on the operator of a co-ownership authorised contractual scheme (“CoACS”) to provide certain tax information both to investors in the CoACS and to HMRC.
- 2.2 The instrument also introduces new legal requirements where a CoACS has made an investment in an offshore fund that certain amounts must be treated as the income of participants in the CoACS.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument represents the first use of powers introduced by sections 41 and 42 of the Finance (No 2) Act 2017. The Regulations impose information requirements on a co-ownership authorised contractual scheme by reference to accounting periods beginning on or after 1 April 2017, authority for this limited retrospective effect is provided by section 41 of that Act.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 41 of the Finance (No 2) Act 2017 introduced a new power for the Treasury to make regulations which specify what tax information the operator of a CoACS must provide to investors and to HMRC, when information must be provided and what the penalties are for failing to provide information. These regulations contain the detailed requirements.
- 4.2 Section 42 of the Finance (No 2) Act 2017 also introduced a new power for the Treasury to make regulations providing that where a CoACS has invested in an offshore fund, certain amounts will be treated as the income of the investors in the CoACS.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 CoACS are UK-resident funds which are transparent for income tax purposes – that is, income arising from CoACS’ investments is the income of the investors in the CoACS. Only large or professional investors (defined in section 261E(4) of the Financial Services and Markets Act 2000) are permitted to invest in a CoACS.
- 7.2 Currently the operator of a CoACS may have a contractual obligation to provide tax information to investors, but there is no statutory obligation to provide information to investors or to HMRC. This instrument introduces a new requirement on the operator of a CoACS to provide investors with sufficient information to enable them to complete their tax returns. This instrument also introduces new requirements to provide specified information to HMRC annually, and to provide further information to HMRC on request. Finally, there are penalties for non-compliance with the requirements.
- 7.3 Currently, if a CoACS has made an investment in an offshore fund, there are no specific requirements to treat certain accumulated amounts as the income of investors. This omission may allow income accumulated in an offshore fund to be received by the CoACS investor as a capital gain, which will be taxed at a later date and possibly at a lower rate of tax. Where the CoACS has invested in either a reporting or non-reporting offshore fund, this instrument treats such amounts as the income of investors and requires the CoACS to report the amount of this income to investors. These new rules broadly mirror existing rules which apply to transparent offshore funds which have invested in other offshore funds.

Consolidation

- 7.4 N/A.

8. Consultation outcome

- 8.1 HMRC consulted formally on the government’s proposal to introduce the tax information requirements. Nineteen organisations and one individual responded. Several respondents accepted the need for the new requirement to provide information to investors, but some thought that the operator’s contractual obligations mean this information is already provided. Most accepted the need to provide some information to HMRC, provided the requirements were not onerous. Some respondents said there was no need for penalties for non-compliance on the grounds that operators are already bound by regulatory and contractual obligations. The government published a summary of responses to the consultation on 5 December 2016.

8.2 The Tax Information and Impact Note “Co-ownership authorised contractual schemes: reducing tax complexity” published on 5 December 2016 announced that the government planned to legislate introducing the rules relating to CoACS’ investments in offshore funds and HMRC is consulting on draft legislation.

8.3 On 20 March 2017 the government published draft regulations for comment. A few minor technical comments were received which have been addressed in guidance.

9. Guidance

9.1 HMRC are publishing guidance to make clear what action an operator of a CoACS needs to take.

10. Impact

10.1 The impact on business is that administrators and advisers of CoACS will incur a one-off cost of the need to familiarise themselves with the new rules and may also need to make minor systems changes to provide information to investors and HMRC. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 5 December 2016 alongside draft Finance Bill clauses and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The basis for the final decision on what action to take to assist small businesses was that, although the changes do not discriminate between businesses few, if any, small businesses are affected. The impact on small businesses is negligible.

12. Monitoring & review

12.1 HMRC will monitor this measure through ongoing contact with the investment management industry.

13. Contact

13.1 Colin Strudwick at HM Revenue & Customs Telephone: 03000 585275 or email: colin.strudwick@hmrc.gsi.gov.uk can answer any queries regarding the instrument.