STATUTORY INSTRUMENTS

2017 No. 1209

INCOME TAX

CORPORATION TAX

CAPITAL GAINS TAX

The Co-ownership Authorised Contractual Schemes (Tax) Regulations 2017

Made - - - -	*5th December 2017*
Laid before the House of Commons	*6th December 2017*
Coming into force - -	*27th December 2017*

The Treasury, in exercise of the powers conferred by sections 41 and 42 of the Finance (No. 2) Act 2017(**a**), make the following Regulations:

PART 1

Preliminary

1.—(1) These Regulations may be cited as the Co-ownership Authorised Contractual Schemes (Tax) Regulations 2017 and come into force on 27th December 2017.

(2) Subject to paragraph (3), these Regulations have effect in relation to accounting periods of a CoACS beginning on or after that date.

(3) Part 2 (except for regulation 4(2)) and regulation 2 in so far as the defined terms are used in that Part have effect in relation to accounting periods of a CoACS beginning on or after 1st April 2017.

Interpretation

2. In these Regulations—

"CoACS" means co-ownership authorised contractual scheme(**b**);

"HMRC" means Her Majesty's Revenue and Customs.

(**a**) 2017 c. 32.
(**b**) "Co-ownership authorised contractual scheme" is defined in section 41(10) and 42(7) of the Finance (No. 2) Act 2017.

PART 2

Information requirements

Interpretation: Part 2

3. In this Part, "information reporting date", in relation to a CoACS, means the date 6 months after the end of the accounting period of the CoACS.

Information to be provided to participants

4.—(1) The operator of a CoACS must in relation to each accounting period provide sufficient information to participants(**a**) in the scheme to enable those participants to meet their tax obligations in the United Kingdom with respect to their interests in the scheme.

(2) The information provided must include details of any additional income treated as made to participants on the information reporting date.

(3) The information must be provided on or before the information reporting date.

Information to be provided to other CoACS

5.—(1) This regulation applies where an investment is made for the purposes of a CoACS (the "investor scheme") through one or more other CoACS (the "investee scheme").

(2) The operator of the investee scheme must in relation to each accounting period provide sufficient information to the operator of the investor scheme to enable that operator to meet its obligations under regulation 4.

(3) The information must be provided on or before the information reporting date.

Information to be provided to HMRC

6.—(1) The operator of a CoACS must in relation to each accounting period provide the following information to HMRC—

(a) the names and addresses of all the participants in the scheme,

(b) the number and classes of units in the scheme at the end of the period,

(c) the amount of income per unit for each class.

(2) The information required under paragraph (1) must be provided on or before the information reporting date.

Further information to be provided to HMRC

7. HMRC may give notice requiring the operator of a CoACS within such time, not being less than 42 days, as is specified in the notice, to provide to HMRC any information provided to the participants in the scheme in any accounting period which ended within five years of the notice being given.

Penalty for failing to provide information

8.—(1) An operator of a CoACS that fails to comply with regulation 4, 5 or 6 is liable to a penalty of £60 for each offence.

(2) But, in respect of offences connected with any accounting period, the total amount of any penalties imposed on a person under paragraph (1) will not exceed £600.

(**a**) "Participant" is defined in section 41(10) and 42(7) of the Finance (No. 2) Act 2017.

Penalty for failing to provide information following notice

9.—(1) An operator of a CoACS that fails to comply with regulation 7 is liable to a penalty not exceeding £3000 determined in accordance with section 100 of TMA 1970(**a**).

(2) Sections 100A, 100B, 102, 103(4) and 118(2) of TMA 1970(**b**) apply to a penalty determined in accordance with paragraph (1).

PART 3

Investments in offshore funds

Interpretation: Part 3

10. In this Part, "non-reporting fund", "reportable income", "reported income" and "reporting fund" have the same meanings as in the Offshore Funds (Tax) Regulations 2009(**c**).

Investments in reporting offshore funds

11.—(1) This regulation applies if a CoACS has made an investment for the purposes of the scheme in a reporting fund.

(2) The excess (if any) of the reported income of the reporting fund in respect of the investment over the amount distributed by the reporting fund in respect of that investment is treated for income tax and corporation tax purposes as additional income of the participants in the CoACS in proportion to their rights in the CoACS.

(3) If the reporting fund does not make a report available in accordance with regulation 90(5) of the Offshore Funds (Tax) Regulations 2009—

(a) the operator of the CoACS must estimate the amount of excess (if any) of the reportable income of the reporting fund in respect of the investment over the amount distributed by the reporting fund in respect of that investment, and

(b) the estimated amount is treated for income tax and corporation tax purposes as additional income of the participants in the CoACS in proportion to their rights in the CoACS.

(4) Where paragraph (3) applies, in the first accounting period in which the operator has sufficient information to accurately determine the amount of any excess estimated under that paragraph, the operator must make any necessary corrections by adjusting the estimated amount for that accounting period.

(5) The additional income is treated as arising on the information reporting date in respect of the accounting period in which the excess is treated as made under the Offshore Funds (Tax) Regulations 2009.

Investments in non-reporting offshore funds: first case

12.—(1) This regulation applies if—

(a) a CoACS has made an investment for the purposes of the scheme in a non-reporting fund, and

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(**a**) 1970 c. 9. Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26) and amended by paragraph 3(2) of Schedule 11 to the Finance Act 1990 (c. 29), paragraph 38 of the Finance Act 1998 (c. 36), section 315(2) of the Finance Act 2004 (c. 12), section 18 of the Finance Act 2015 (c. 11) and S.I. 1994/1813 and 2011/702.

(**b**) Sections 100A and 100B were inserted and section 103 was substituted by section 169 of the Finance Act 1989. Section 100A was amended by paragraph 29(b) of Schedule 24 and Part 5(5) of Schedule 27 to the Finance Act 2007 (c. 11). Section 100B was amended by S.I. 2009/56 and 2011/702. Section 102 was amended by section 168(4) of the Finance Act 1989. Section 103(4) was amended by paragraph 48 of Schedule 38 to the Finance Act 2012 (c. 14) and S.I. 2009/56. Section 118(2) was amended by Part 8 of Schedule 8 to the Finance Act 1970 (c. 24), section 94 of the Finance (No. 2) Act 1987 (c. 51) and S.I. 2009/56.

(**c**) S.I. 2009/3001; relevant amending instruments are S.I. 2011/1211 and 2013/1411. Part 2 of Schedule 3 to those Regulations contains an index of defined expressions.

(b) the conditions in paragraph (2) are met for an accounting period.

(2) The conditions are that—

(a) the CoACS has access to the accounts of the non-reporting fund,

(b) the CoACS has sufficient information about the non-reporting fund to enable it to prepare a computation of reportable income for the fund, and

(c) the CoACS can reasonably expect to rely on continued access to that information for the period in which it will hold the investment in the fund.

(3) The amount that would be the excess (if any) of the reportable income of the non-reporting fund in respect of the investment over the amount distributed by the non-reporting fund in respect of that investment is treated for income tax and corporation tax purposes as additional income of the participants in the CoACS in proportion to their rights in the CoACS.

(4) The additional income is treated as arising on the information reporting date in respect of the accounting period to which the excess relates.

Investments in non-reporting funds: second case

13.—(1) This regulation applies if a CoACS has made an investment for the purposes of the scheme in a non-reporting fund, but the conditions in regulation 12(2) are not met for an accounting period.

(2) The increase in fair value of the investment in the non-reporting fund in that period is treated for income tax and corporation tax purposes as additional income of the participants in the scheme in proportion to their rights in the scheme.

(3) Decreases in the fair value of that interest in earlier accounting periods may be set against the increase referred to in paragraph (2) to reduce the amount of the increase, but—

(a) not to below zero, and

(b) only to the extent that the decreases in fair value have not previously had the effect of reducing the amount of a fair value increase.

(4) The additional income is treated as arising on the information reporting date in respect of the accounting period in which the fair value increase arises.

(5) In this regulation "fair value" in relation to an interest in a non-reporting fund means the amount which, at the time the value is to be determined, is the amount for which the interest could be exchanged between knowledgeable and willing parties dealing at arm's length.

David Evennett
Mark Spencer

5th December 2017 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to co-ownership authorised contractual schemes ("CoACS").

Authority for the retrospective effect of Part 2 is provided by section 41(6) of the Finance (No. 2) Act 2017.

Part 2 makes provision for an operator of a CoACS to provide information to participants in the scheme, other CoACS and HMRC and for penalties for failure to provide the specified information.

Part 3 makes provision to treat any accumulated income of an offshore fund in which the CoACS has invested as the income of participants in the CoACS.

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.

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