STATUTORY INSTRUMENTS

2013 No. 1411

INCOME TAX

CORPORATION TAX

The Offshore Funds (Tax) (Amendment No. 2) Regulations 2013

Made - - - -	*6th June 2013*
Laid before the House of Commons	*7th June 2013*
Coming into force - -	*28th June 2013*

The Treasury make the following Regulations in exercise of the powers conferred by section 354 of the Taxation (International and Other Provisions) Act 2010(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Offshore Funds (Tax) (Amendment No. 2) Regulations 2013 and come into force on 28th June 2013.

(2) These Regulations have effect from that date subject to paragraphs (3) and (4).

(3) The amendments made by regulations 3 to 8 and 12 do not apply in relation to a reporting period which ended before the date these Regulations come into force if—

(a) no report has previously been made available under regulation 90 of the Offshore Funds (Tax) Regulations 2009(**b**) for that reporting period, and

(b) the manager of the fund elects by notice in writing within 10 months of the end of that reporting period that those amendments should not apply.

(4) The amendments made by regulations 9 and 10 do not apply in relation to interests in offshore funds acquired in a reporting period which began before 28th June 2013.

(5) In this regulation, "reporting period" has the same meaning as in regulation 91 of the Offshore Funds (Tax) Regulations 2009.

Amendment of the Offshore Funds (Tax) Regulations 2009

2. The Offshore Funds (Tax) Regulations 2009 are amended as provided by regulations 3 to 12 and 14(b).

(**a**) 2010 c. 8.
(**b**) S.I. 2009/3001, amended by S.I. 2011/1211; there are other amending instruments but none is relevant.

Application for entry into reporting fund regime

3. In regulation 53 (contents of application), in paragraph (1)(**a**)—

(a) in sub-paragraphs (k)(i) and (l)(ii), for "reported income" substitute "reportable income" in each place,

(b) in sub-paragraph (k)(i), for "regulation 92A" substitute "regulation 72A",

(c) in sub-paragraph (k)(i), for "regulation 92B" substitute "regulation 72B",

(d) in sub-paragraph (k)(ii), for "regulation 92C" substitute "regulation 72C", and

(e) in sub-paragraph (l)(iii), for "regulation 92B(5)" substitute "regulation 72B(6)".

4. In regulation 55 (response by HMRC to application), in paragraph (3A)(**b**), for "reported income" substitute "reportable income" in each place.

Adjustments to reportable income

5. In regulation 63 (computation of reportable income: general), in paragraph (2) for sub-paragraph (c) substitute—

"(c) any arrangements to adjust income based on the number of units in issue (see regulations 72 to 72B).".

6. In Chapter 5 of Part 3, after regulation 72 insert—

"Adjustments where funds do not operate equalisation arrangements

Reporting Funds not operating equalisation: income adjustments based on reportable income for computation periods

72A.—(1) This regulation applies if a reporting fund does not operate equalisation arrangements and—

(a) the fund has given a statement under regulation 53(1)(k) that it intends to make income adjustments in a reporting period on the basis of reportable income, or

(b) regulation 72B(7) applies.

(2) The reportable income of the fund for a reporting period is the sum of the reportable income per unit for all the computation periods in the reporting period multiplied by the number of units in the fund in issue at the end of the reporting period.

(3) But if the sum results in a negative amount, the reportable income for that period is nil.

(4) Where a period of account consists of two reporting periods, the reportable income for the period of account is the sum of the reportable income for both those reporting periods.

(5) The reportable income per unit for a computation period is calculated by dividing the reportable income of the fund for the computation period by the average number of units in the fund in issue during the computation period.

(6) For the purposes of paragraph (5), the reportable income of the fund for a computation period means the reportable income of the fund for that period computed in accordance with this Chapter (ignoring regulation 63(5) and this regulation) and Chapter 6 of this Part.

(7) In the computation referred to in paragraph (6), this Chapter and Chapter 6 of this Part apply as if references to a period of account of the fund were references to a computation period.

(**a**) Regulation 53(1) was amended by S.I. 2011/1211.
(**b**) Paragraph (3A) of regulation 55 was inserted by S.I. 2011/1211.

Reporting Funds not operating equalisation: income adjustments based on accounting income for computation periods

72B.—(1) This regulation applies if a reporting fund does not operate equalisation arrangements and the fund has given a statement under regulation 53(1)(k) that it intends to make income adjustments in a reporting period on the basis of accounting income.

(2) The reportable income of the fund for a reporting period is calculated as follows—

(AIU x RI / AI) x U

where—

AIU is the sum of the accounting income per unit for all the computation periods in the reporting period,

RI is the reportable income of the fund for the reporting period computed in accordance with this Chapter (ignoring this regulation), Chapter 6 of this Part and regulation 93,

AI is the sum of accounting income for all the computation periods in the reporting period, and

U is the number of units in the fund in issue at the end of the reporting period.

This is subject to paragraphs (6) and (7).

(3) Where a period of account consists of two reporting periods, the reportable income for the period of account is the sum of the reportable income for both those reporting periods.

(4) But if the sum results in a negative amount, the reportable income for that period is nil.

(5) The accounting income per unit for a computation period is calculated by dividing accounting income for the computation period by the average number of units in the fund in issue during the computation period.

(6) Where RI is zero the reportable income per unit of the fund for a reporting period is zero.

(7) Where the difference in the amount of reportable income per unit for any reporting period in a period of account calculated using this method and the amount of reportable income per unit for that reporting period calculated on the basis of reportable income is or is likely to be more than 10% of the latter of those amounts—

(a) the fund must make income adjustments in that and future periods of account on the basis of reportable income, and

(b) the manager must give notice to HMRC of the change in the method of income adjustment with the information provided to HMRC in relation to that period under regulation 106 (reporting requirements).

(8) In this Part "accounting income" means an amount proportionally related to the reportable income of the fund determined from the interim or management accounts of the fund, but this amount must not be less than zero.

Supplementary provisions: average number of units and computation period

72C.—(1) For the purposes of regulations 72A(5) and 72B(5), the average number of units in the fund in issue during the computation period is the sum of the units in the fund in issue during the period after each unit has been multiplied by the fraction of the period for which it is held.

(2) In this Part a "computation period" means a period determined by a fund in accordance with the following rules.

Rule 1

A new computation period must start—

(a) at the beginning of a reporting period, and

(b) immediately after the end of a previous computation period.

Rule 2

A computation period must end—

(a) at the end of a reporting period, and

(b) at the end of a period in relation to which income is allocated to participants for distribution or accumulation.

Rule 3

If a reporting period consists of more than one computation period those periods must be of approximately equal length.".

Reports to participants

7. In regulation 92 (contents of report to participants: non-transparent funds)—

(a) in paragraph (1)—

(i) for sub-paragraph (b) substitute—

"(b) the amount per unit of any excess treated as additional distributions made to participants in the fund in respect of the reporting period; ", and

(b) in paragraph (3), for sub-paragraph (a) substitute—

"(a) the amount in paragraph (b) is the amount of any excess specified in regulation 94(1) divided by the number of units in the fund in issue at the end of the reporting period.".

8. Omit regulations 92A, 92B and 92C(**a**).

Equalisation amounts not treated as distributions

9. In regulation 94A (equalisation amounts not treated as distributions), for paragraph (2) substitute—

"(2) Where this regulation applies, distributions are reduced in accordance with either option 1 or option 2.

Option 1

Under this option—

(a) the amount of any actual distributions to the participant in respect of the reporting period is reduced by the equalisation amount, and

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

Option 2

Under this option—

(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 is reduced by the amount, if any, by which the equalisation amount exceeds the excess.".

10. In regulation 99 (disposal of interests), in paragraph (2A)(**b**) for "under regulation 94A(2)(b)" substitute "in the actual distribution under regulation 94A(2)".

(**a**) Regulations 92A, 92B and 92C were inserted by S.I. 2011/1211.
(**b**) Paragraph (2A) was inserted by S.I. 2011/1211.

Reports to HMRC

11. In regulation 106 (reporting requirements), in paragraph (3)(a)(**a**), for the words after "impossible" to the end substitute "to provide audited accounts or unreasonable to expect them to be provided, and".

Index of defined expressions

12. In Part 2 of Schedule 3 (index of expressions defined or otherwise explained in these Regulations), for the definition of "accounting income (in Part 4)"(**b**) substitute—

"Accounting income (in Part 3)	Regulation 72B(8)"

Miscellaneous amendments relating to offshore funds

13. In CTA 2009—

(a) in section 587(3)(a)(iii) (contract relating to holding in OEIC, unit trust or offshore fund) for "a material interest in an offshore fund within the meaning of Chapter 3 of Part 6 (see section 489)" substitute "an interest in an offshore fund (within the meaning of section 355 of TIOPA 2010)", and

(b) in Schedule 4 (index of defined expressions)—

(i) in the definition of "offshore fund" for "section 489(1) and (2)" substitute "section 489", and

(ii) omit the definition of "material interest (in an offshore fund) (in Chapter 3 of Part 6)".

14. In the following places for "a material interest" substitute "an interest"—

(a) regulation 52D(5)(b) of the Authorised Investment Funds (Tax) Regulations 2009(**c**) (shares and units not within regulation 52C, meaning of "relevant holding"), and

(b) regulation 104(5)(b) of the Offshore Funds (Tax) Regulations 2009 (interests not within regulation 103, meaning of "relevant holding").

15. In the Offshore Funds (Tax) (Amendment) Regulations 2011(**d**), in regulation 15 (transitional provisions: general provisions), in paragraph (2) for ", full" substitute "or full".

Robert Goodwill
Mark Lancaster

6th June 2013 — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) Regulation 106(3) was inserted by S.I. 2011/1211.
(**b**) This definition was inserted by S.I. 2001/1211.
(**c**) S.I. 2006/964, amended by S.I. 2009/2036; there are other amending instruments but none is relevant.
(**d**) S.I. 2011/1211.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001, "the principal Regulations") which make provision for the tax treatment of participants in offshore funds and make other miscellaneous amendments.

Regulation 1 deals with citation, commencement and effect. Provision is made to allow a manager of an offshore fund to elect that the amendments made by regulations 3 to 8 and 12 should not apply in relation to a reporting period of the fund which has ended before the Regulations come into force.

Regulation 2 introduces the amendments to the principal Regulations.

Regulations 3 to 5 make consequential amendments.

Regulation 6 inserts regulations 72A, 72B and 72C which provide how the reportable income of a fund for a reporting period is to be calculated in the case of funds which do not operate equalisation arrangements.

Regulation 7 amends regulation 92 in relation to the information to be provided in the report to participants in respect of the amount of any excess treated as additional distributions made to participants in the fund and makes provision as to how those amounts to be reported are to be determined.

Regulation 8 makes consequential amendments omitting regulations 92A, 92B and 92C. Equivalent provision is now made in regulations 72A, 72B and 72C.

Regulation 9 amends regulation 94A to reverse the order in which equalisation amounts reduce actual distributions and amounts treated as additional distributions.

Regulation 10 makes a consequential amendment to regulation 99.

Regulation 11 makes a minor amendment for clarification to regulation 106 (reporting requirements).

Regulation 12 makes a consequential amendment to the index of defined expressions.

Regulations 13 to 15 make miscellaneous minor amendments relating to offshore funds. Regulations 13 and 14 update the reference to "material interest" to "an interest" which is now the appropriate term and up-date cross-references to other statutory provisions. Regulation 15 makes a minor amendment for clarification to the Offshore Funds (Tax) (Amendment) Regulations 2011 (S.I. 2001/1211).

A Tax Information and Impact Note covering this instrument was published on 20 March 2013 alongside Budget 2013 and can be found on the HMRC website at http://www.hmrc.gov.uk/budget2013/tiins.htm#2. It remains an accurate summary of the impacts that apply to this instrument.

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