
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 2

THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS

CHAPTER 2

CHARGES TO TAX ON PARTICIPANTS IN NON-REPORTING FUNDS

Application of TCGA 1992

Application of certain provisions of TCGA 1992

22.—(1) The following enactments have effect in relation to income tax or corporation tax in respect of offshore income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains—

- (a) section 2(1) of TCGA 1992 (persons chargeable to capital gains tax);
- (b) section 10 of TCGA 1992(1) (non-resident with a United Kingdom branch or agency);
- (c) section 10B of TCGA 1992(2) (non-resident company with United Kingdom permanent establishment).

(2) Paragraph (1) is subject to paragraphs (3) and (4).

(3) In the application of section 10 of TCGA 1992 in accordance with paragraph (1), paragraphs (a) and (b) of subsection (1) (assets on the disposal of which chargeable gains are taxable) have effect with the omission of the words “situated in the United Kingdom and”.

(4) In the application of section 10B of TCGA 1992 in accordance with paragraph (1), paragraphs (a) and (b) of subsection (1) (assets on the disposal of which chargeable profits arise for the purposes of corporation tax) have effect with the omission of the words “situated in the United Kingdom and”.

Application of section 10A of TCGA 1992

23.—(1) Section 10A of TCGA 1992(3) (temporary non-residents) applies for the purposes of this Part with the following modifications.

(2) The section applies as if, in subsection (2)—

- (a) the reference to section 86A were omitted;
- (b) for the reference to capital gains tax there were substituted a reference to income tax;

(1) Section 10 was amended by paragraph 2(2) of Schedule 27 to the Finance Act 2003 (c. 14).
(2) Section 10B was inserted by section 149(4) of the Finance Act 2003 and amended by paragraph 360 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).
(3) Section 10A was inserted by section 127(1) of the Finance Act 1998 (c. 36) and amended by section 32 of the Finance (No. 2) Act 2005 (c. 22), section 74(4)(a) of the Finance Act 2006 (c. 25) and paragraph 59 of Schedule 7 to the Finance Act 2008.

- (c) in paragraph (a), for the reference to chargeable gains and losses there were substituted a reference to offshore income gains;
 - (d) in paragraph (b)—
 - (i) for the reference to chargeable gains there were substituted a reference to offshore income gains;
 - (ii) for the reference to section 13 or 86 there were substituted a reference to regulation 24;
 - (e) paragraph (c) were omitted; and
 - (f) for the reference to gains or, as the case may be, losses there were substituted a reference to offshore income gains.
- (3) The section applies as if, in subsection (3)—
- (a) for the reference to gains and losses there were substituted a reference to offshore income gains; and
 - (b) for the reference to any gain or loss there were substituted a reference to any offshore income gains.
- (4) The section applies as if subsection (4) were omitted.
- (5) The section applies as if, in subsection (5)—
- (a) for the reference to gains and losses there were substituted a reference to offshore income gains;
 - (b) for the reference to any chargeable gain or allowable loss there were substituted a reference to an offshore income gain; and
 - (c) for the reference to section 10 or 16(3) there were substituted a reference to regulation 22(1)(b).
- (6) The section applies as if subsection (6) were omitted.
- (7) The section applies as if, in subsection (7), for the reference to capital gains tax there were substituted a reference to income tax.
- (8) The section applies as if, in subsection (9ZA)—
- (a) for the reference to foreign chargeable gains there were substituted a reference to offshore income gains to which regulation 19 applied; and
 - (b) the second sentence of that subsection were omitted.
- (9) The section applies as if, in subsection (9B)—
- (a) in paragraph (a)—
 - (i) for the reference to section 87 or 89(2) there were substituted a reference to regulation 20;
 - (ii) for the reference to chargeable gains there were substituted a reference to offshore income gains; and
 - (b) in paragraph (b) the references to subsections (2)(c) and (6) were omitted.
- (10) The section applies as if, in subsection (9C)—
- (a) for the reference to capital gains tax there were substituted a reference to income tax; and
 - (b) for the reference to chargeable gains there were substituted a reference to offshore income gains.

Application of section 13 of TCGA 1992

24.—(1) Section 13 of TCGA 1992(4) (chargeable gains accruing to certain non-resident companies) applies for the purposes of this Part with the following modifications.

(2) The section applies as if—

(a) for any reference to a chargeable gain there were substituted a reference to an offshore income gain; and

(b) for any reference to anything accruing there were substituted a reference to it arising (with similar references being read accordingly).

(3) The section applies as if, in subsection (5), paragraphs (b) and (c) were omitted.

(4) The section applies as if, in subsection (7), for the reference to capital gains tax there were substituted a reference to income tax or corporation tax.

(5) The section applies as if subsection (8) were omitted.

(6) If this regulation applies, the person to whom the offshore income gain arises is treated as the person making the disposal.

(7) To the extent that an offshore income gain is treated, by virtue of this regulation, as having accrued to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad).

(4) Section 13 was amended by section 174(1) to (9) of, and Part 5(30) of Schedule 41 to, the Finance Act 1996 (c. 8), section 122(4) of the Finance Act 1998, section 80 of the Finance Act 2001 (c. 9), Part 3(16) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 2(3) of Schedule 27 to the Finance Act 2003 (c. 14), paragraph 39 of Schedule 35 to the Finance Act 2004 (c. 12), paragraph 8 of Schedule 12 to the Finance Act 2006 and paragraphs 4 and 28 of Schedule 2 and paragraph 103 of Schedule 7 to the Finance Act 2008 (c. 9) and by S.I. 2009/56.