
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 3

**REPORTING FUNDS AND THE TREATMENT
OF PARTICIPANTS IN REPORTING FUNDS**

CHAPTER 2

ENTRY INTO THE REPORTING FUND REGIME

Applications for this Part to apply

Who may make an application

51.—(1) The manager of an eligible offshore fund may make an application for this Part to apply to the fund.

(2) If it is proposed to establish an offshore fund which, on its establishment, is to be an eligible offshore fund, the person expected to become the manager of the fund on its establishment (the “applicant”) may make an application for this Part to apply to the fund on its establishment.

(3) In this Part—

the “applicant” means the person referred to in paragraph (2);

an “application” means an existing fund application or a future fund application;

an “eligible offshore fund” means an offshore fund which is not a guaranteed return fund;

an “existing fund application” means an application made under paragraph (1);

a “future fund application” means an application made under paragraph (2);

the “manager”, in relation to an offshore fund, includes the manager or other person who has or is expected to have day to day control of the property of the fund.

Conversion of non-reporting fund into reporting fund

52.—(1) The manager of a non-reporting fund may make an application for this Part to apply to a fund if the fund is an eligible offshore fund, and—

(a) has never been a reporting fund, or

(b) has been a reporting fund, but ceased to be such a fund because it gave notice under regulation 116.

(2) The provisions of this Part that apply to an existing fund application also apply to an application made under paragraph (1).

Contents of an application

- 53.**—(1) An application must include the following—
- (a) a statement of the first period of account for which it is proposed that this Part should apply to the fund;
 - (b) an undertaking that no period of account will exceed 18 months;
 - (c) a statement whether or not the fund intends to prepare its accounts in accordance with international accounting standards, and, if it does not, a statement of which generally accepted accounting practice it intends to use;
 - (d) in a case in which the fund does not intend to prepare its accounts in accordance with international accounting standards, a statement specifying the entries in the fund’s accounts that are considered to equate to “total comprehensive income for the period” as that expression is used in international accounting standards;
 - (e) in a case in which the fund does not intend to prepare its accounts in accordance with international accounting standards, a statement specifying how the fund intends—
 - (i) to comply with regulation 66(1)(b), or
 - (ii) to calculate the adjustment required by regulation 66(2);
 - (f) an undertaking to meet the requirements relating to reports to participants in the fund (see Chapter 7);
 - (g) an undertaking to meet the requirements relating to the provision of information to HMRC (see Chapter 9).
- (2) An existing fund application must be accompanied by the prospectus.
- (3) A future fund application must be accompanied by the proposed prospectus.
- (4) The application must be in English.
- (5) If the prospectus or the proposed prospectus (as the case may be) is not in English, it must be accompanied by an English translation.
- (6) In the case of an offshore fund constituted in the manner described in regulation 5 or 6, the requirements of this regulation may be met by providing material which is—
- (a) applicable to an entity which includes the fund, and
 - (b) relevant for the application for this Part to apply to the fund.

Form, timing and withdrawal of application

- 54.**—(1) An application must be made in writing to HMRC.
- (2) The application must be received by HMRC before the expiry of a period of three months beginning with the first day of the first period of account for which it is proposed that this Part should apply to the fund.
- (3) The application may be withdrawn at any time during a period beginning with the day the application is made and ending on the expiry of a period of 28 days beginning with the day on which HMRC give notice under regulation 55(1).
- (4) The application must be withdrawn—
- (a) by the manager (in the case of an existing fund application), or
 - (b) by the applicant (in the case of a future fund application).

Procedure on applications

Response by HMRC to application

55.—(1) Within 28 days beginning with the day on which HMRC receive the application, HMRC must give notice to the person who made the application—

- (a) accepting the application,
- (b) rejecting the application, or
- (c) asking for further information in order to consider the application.

(2) HMRC must not accept an application if any item mentioned in regulation 53 is not supplied.

(3) HMRC must not accept an application if they consider that there will be a significant difference, in computing reportable income (see Chapter 5), between—

- (a) the result given by the use of international accounting standards, and
- (b) the result given by the use of the accounting practice specified in the application and by the use of the entries in the fund's accounts, specified in the application, that are considered to equate to “total comprehensive income for the period” as that expression is used in international accounting standards (see regulation 63).

(4) Paragraph (5) applies if—

- (a) HMRC have given notice under paragraph (1)(c), and
- (b) the person who made the application provides further information within a period of 28 days beginning with the day on which HMRC ask for further information, or within such longer period as is agreed by HMRC.

(5) Within 28 days beginning with the day on which HMRC receive the further information, HMRC must give notice to the person who made the application—

- (a) accepting the application, or
- (b) rejecting the application.

Appeal against rejection of application

56.—(1) If HMRC reject an application, the person who made the application may appeal.

(2) The notice of appeal must be given to HMRC within a period of 42 days beginning with the day on which the notice rejecting the application is given.

(3) On an appeal, the tribunal may uphold or quash the rejection of the application.

(4) If the tribunal quashes the rejection of the application, this Part applies as if HMRC had accepted the application in the form in which it was considered by the tribunal.