
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Offshore Funds (Tax) Regulations 2009

PART 3

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

CHAPTER 6

**TRANSACTIONS BY CERTAIN REPORTING
FUNDS WHICH ARE NOT TREATED AS TRADING**

Clearances in relation to the equivalence and genuine diversity of ownership conditions

Who may apply for clearance

77.—(1) The following may apply for clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition—

- (a) the manager of an eligible offshore fund;
- (b) the manager of a non-reporting fund who makes an application under regulation 52.

(2) If it is proposed to establish an offshore fund which, on its establishment, is to be an eligible offshore fund, the applicant may apply for clearance that the fund will meet the equivalence condition and the genuine diversity of ownership condition on its establishment.

Procedure for obtaining clearance

78.—(1) The relevant person specified in regulation 77 (the “relevant person”) must apply in writing to HMRC for clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition.

(2) A document submitted in accordance with paragraph (1) must be accompanied by the documents specified in regulation 75(2).

(3) HMRC may require the relevant person to provide further particulars if HMRC believe that full particulars of the fund have not been provided.

(4) HMRC must notify the relevant person within 28 days beginning with the day on which HMRC receive the documents mentioned in paragraphs (1) and (2) (or, as the case may be, the further particulars mentioned in paragraph (3))—

- (a) giving clearance that the fund meets the equivalence condition and the genuine diversity of ownership condition,
- (b) giving that clearance subject to conditions, or
- (c) refusing to give that clearance.

Circumstances in which clearance may not be relied upon

79.—(1) An offshore fund (and investors in that fund) may not rely on a clearance given under regulation 78 if any of conditions A to D is met.

(2) Condition A is that at the beginning of the first period of account of the fund to which the clearance relates (and at the beginning of each subsequent period of account), a relevant statement in the instrument constituting the fund or in its prospectus in issue for the time being is not in accordance with a relevant statement in the documents considered by HMRC before giving clearance.

(3) Condition B is that the fund is operated otherwise than in accordance with condition C of the genuine diversity of ownership condition (see regulations 75 and 76).

(4) Condition C is that the fund acts or is operated in contravention of a relevant statement in the instrument constituting the fund or in its prospectus.

(5) Condition D is that the documents specified in regulation 75(2) are materially amended.

(6) Condition D does not apply if the relevant person specified in regulation 77 has obtained a clearance given under regulation 78 which applies to the documents in their amended form.

(7) For the purposes of condition D, a material amendment is one that may reasonably be construed as causing, or likely to cause, the fund to fail to meet the equivalence condition or the genuine diversity of ownership condition in relation to any period of account.