

2017 No. 1204

CAPITAL GAINS TAX

CORPORATION TAX

**The Collective Investment Schemes and Offshore Funds
(Amendment of the Taxation of Chargeable Gains Act 1992)
Regulations 2017**

<i>Made</i> - - - -	<i>4th December 2017</i>
<i>Laid before the House of Commons</i>	<i>5th December 2017</i>
<i>Coming into force</i> - -	<i>1st January 2018</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 103C of the Taxation of Chargeable Gains Act 1992^(a) and section 354 of the Taxation (International and Other Provisions) Act 2010^(b).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Collective Investment Schemes and Offshore Funds (Amendment of the Taxation of Chargeable Gains Act 1992) Regulations 2017 and come into force on 1st January 2018.

(2) The amendments made by these Regulations have effect in relation to disposals on or after that date.

(3) But, in the case of the new section 103D substituted by regulation 6, the amendments made by these Regulations do not have effect in relation to—

- (a) any expenditure that is incurred before that date,
- (b) any amount that is treated as a result of subsection (4) of that section as expenditure and arises before that date, or
- (c) any amount within subsection (7) of that section that arises or (as the case may be) is paid, transferred or received before that date.

Amendment of the Taxation of Chargeable Gains Act 1992

2. The Taxation of Chargeable Gains Act 1992 is amended as provided by regulations 3 to 10.

(a) 1992 c. 12; section 103C was inserted by section 36(3) of the Finance Act 2012 (c. 14).
(b) 2010 c. 8.

Offshore funds that are unit trust schemes

- 3.** In section 99(a) (application of Act to unit trust schemes), after subsection (1) insert—
- “(1A) Subsection (1) does not apply to an offshore fund that is a transparent fund within the meaning given by regulation 11 of the Offshore Funds (Tax) Regulations 2009 (see instead section 103D).”
- 4.** In section 99B(b) (calculation of the disposal cost of accumulation units), at the end insert—
- “(4) Subsection (1) does not apply to disposals in units of an offshore fund that is a transparent fund within the meaning given by regulation 11 of the Offshore Funds (Tax) Regulations 2009 (see instead section 103D).”

Offshore funds that are not unit trust schemes

- 5.** Omit sections 103A(c) and 103B(d) (which make provision in relation to offshore funds that are not unit trust schemes).

Co-ownership schemes etc

- 6.** For section 103D substitute—

“103D Application of Act to tax transparent funds

- (1) For the purposes of this section—
- “tax transparent fund” means—
- (a) an authorised contractual scheme which is a co-ownership scheme, or
 - (b) an offshore fund that is a transparent fund within the meaning given by regulation 11 of the Offshore Funds (Tax) Regulations 2009(e), and
- “fund property”, in relation to a tax transparent fund, means the property subject to the fund.
- (2) For the purposes of this Act—
- “authorised contractual scheme” has the meaning given by section 237(3) of the Financial Services and Markets Act 2000(f), and
- “co-ownership scheme” has the meaning given by section 235A of that Act(g).
- (3) A unit in a tax transparent fund is treated as an asset for the purposes of this Act, and, accordingly, a participant’s interest in the fund property is disregarded for those purposes.
- (4) In computing the gain accruing on a disposal by a participant of units in a tax transparent fund, an amount which—
- (a) represents income from the fund property, and
 - (b) is taken into account as a receipt or other credit of the participant in calculating an amount chargeable to income tax,
- is treated as expenditure falling within section 38(1)(b).

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- (a) Section 99 was amended by section 118 of the Finance Act 2004 (c. 12), paragraphs 198 and 199 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8), paragraphs 74 and 96 of Schedule 46 to the Finance Act 2013 (c. 29) and S.I. 2001/3629.
- (b) Section 99B was inserted by section 21 of the Finance (No. 2) Act 2005 (c. 22) and amended by S.I. 2006/964.
- (c) Section 103A was inserted by paragraph 8 of Schedule 22 to the Finance Act 2009 (c. 10) and amended by S.I. 2011/1211 and 2013/1400.
- (d) Section 103B was inserted by S.I. 2011/1211.
- (e) Section 103D was inserted by S.I. 2013/1400.
- (f) 2000 c. 8; the definition of “authorised contractual scheme” was inserted by S.I. 2013/1388.
- (g) Section 235A was inserted by S.I. 2013/1388.

(5) In computing the gain accruing on a disposal by a participant of units in a tax transparent fund—

- (a) the sums that would otherwise be allowable under section 38(1) as a deduction from the consideration in the computation of the gain are reduced (but not below nil) by the amounts within subsection (7), and
- (b) if those amounts exceed the sums that would otherwise be so allowable, the consideration is treated as increased by the amount of the excess.

(6) So far as an amount within subsection (7) is dealt with under subsection (5)(a), it is not also dealt with under section 39.

(7) An amount is within this subsection if it is—

- (a) any amount arising to the participant from the fund property which is taken into account as an expense or other debit of the participant in calculating an amount chargeable to income tax, or
- (b) anything paid or transferred to the participant, or anything else of value received by the participant, which is referable to the holding of the units (whenever paid, transferred or received) unless section 22 applies to whatever is paid, transferred or received.

(8) In the case of any asset transferred as mentioned in subsection (7)(b), the value of the asset on the date of the transfer is taken to be its market value on that date.

(9) If a participant has incurred expenditure in relation to any fund property in respect of which a capital allowance or renewals allowance (as defined by section 41(4) or (5)) has been or may be made, that expenditure is excluded from the sums allowable as a deduction in computing the amount of a loss accruing to the participant on a disposal of the units in the fund.

(10) In this section—

“participant”—

- (a) in relation to a collective investment scheme, is to be read in accordance with section 235 of the Financial Services and Markets Act 2000, and
- (b) in relation to an offshore fund (which is not a collective investment scheme), has the meaning given in section 362(1) of TIOPA 2010, and

“units”, in relation to a tax transparent fund, means the rights or interests (however described) of the participants in the fund.

103DA Tax transparent funds: share pooling etc

A unit in a transparent fund is to be regarded as a security for the purposes of sections 104, 105, 107, 110 and 114 (share pooling, identification of securities and indexation).”

Insurance companies: disposals to connected manager

7. In section 210C(a) (losses on disposal of authorised investment fund assets to connected manager), in subsection (2)—

- (a) in the definition of “authorised investment fund assets”, for the words from “rights” to “investment company” substitute—

“—

- (a) rights under an authorised unit trust,
- (b) rights under an authorised contractual scheme which is a co-ownership scheme, or
- (c) shares in an open-ended investment company,”; and

(a) Section 210C was inserted by paragraph 3 of Schedule 10 to the Finance Act 2007 (c. 11) and amended by paragraphs 72 and 82 of Schedule 16 to the Finance Act 2012 (c. 14).

- (b) in the definition of “the manager of the authorised investment fund”—
 - (i) at the end of paragraph (a) omit “and”; and
 - (ii) after that paragraph insert—
 - “(aa) in the case of an authorised contractual scheme which is a co-ownership scheme, means the person who is the operator of the scheme for the purposes of that Part, and”.

Insurance companies: transfers of assets to certain collective investment schemes

- 8.** In section 211B(a) (transfers of assets to certain collective investment schemes)—
 - (a) in subsection (5), for the words from “has the same meaning” to the end substitute “means an offshore fund that is a transparent fund within the meaning given by regulation 11 of the Offshore Funds (Tax) Regulations 2009.”; and
 - (b) omit subsection (6).

Insurance companies: spreading of gains etc

- 9.**—(1) Section 213(b) (spreading of gains and losses in relation to deemed disposal of holdings of unit trust schemes etc) is amended as follows.
 - (2) In subsection (4ZC) before paragraph (a) insert—
 - “(za) units in a collective investment scheme acquired as mentioned in subsection (4ZB)(a) at any time are treated as constituting a class of securities different from all other units in the scheme and from all other classes of securities arising as a result of this paragraph in respect of units acquired at different times.”.
 - (3) Omit subsections (4ZD) and (4ZE).

Interpretation of TCGA 1992

- 10.** In section 288 (interpretation)—
 - (a) in subsection (1), in the definition of “company”(c), for “sections 99 and 103A” substitute “section 99”; and
 - (b) in subsection (8), in the entries for “authorised contractual scheme” and “co-ownership scheme”(d), for “s 103D(5)” substitute “s 103D(2)”.

Consequential amendments

- 11.** In the Income Tax (Trading and Other Income) Act 2005(e)—
 - (a) in section 149(4)(ba) (taxation of amounts taken to reserves), for the words from “in certain” to the end substitute “in schemes or funds to which TCGA 1992 applies as a result of section 103D of TCGA 1992.”; and

(a) Section 211B was inserted by S.I. 2013/1400.
 (b) Section 213 was amended by section 91(4) of, and Part 3(8) of Schedule 23 to, the Finance Act 1993 (c. 34), paragraph 4 of Schedule 9 to the Finance Act 1995 (c. 4), section 137(3) of the Finance Act 1998 (c. 36), section 153(1)(b) of, paragraph 16 of Schedule 33 and Part 3(12) of Schedule 43 to, the Finance Act 2003 (c. 14), paragraph 9(3) of Schedule 7 to the Finance Act 2004 (c. 12), paragraph 20(6) of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22), section 70(5) of the Finance Act 2006 (c. 25), paragraph 64 of Schedule 7, paragraph 3(4) of Schedule 9 and Part 2(7) of Schedule 27 to the Finance Act 2007 (c. 11), paragraph 86 of Schedule 16 to the Finance Act 2012 (c. 14) and S.I. 2001/3629, 2008/381, 2009/56 and 2013/1400.
 (c) The definition of company was amended by paragraph 10 of Schedule 22 to the Finance Act 2009.
 (d) The entries for “authorised contractual scheme” and “co-ownership scheme” were inserted by S.I. 2013/1400.
 (e) 2005 c. 5; section 149(4)(ba) and section 150(8)(ca) were inserted by paragraph 11(3) of Schedule 22 to the Finance Act 2009.

- (b) in section 150(8)(ca) (conversion etc of securities held as circulating capital), for the words from “in certain” to the end substitute “in schemes or funds to which TCGA 1992 applies as a result of section 103D of TCGA 1992.”.

12. In section 332 of the Income Tax Act 2007(a) (minor definitions etc), in the definition of “company”—

- (a) for “sections 99 and 103A” substitute “section 99”; and
- (b) omit “and certain offshore funds”.

13. In Schedule 22 to the Finance Act 2009, omit paragraphs 8 and 11(5).

14. In section 363A(3) of the Taxation (International and Other Provisions) Act 2010(b) (residence of UCITS and AIFs), omit “or 103A”.

15. In paragraph 47 of Schedule 23 to the Finance Act 2011 (data-gathering powers), in the definition of “shares”, for “sections 99 and 103A” substitute “section 99”.

Amendment to the Offshore Funds (Tax) Regulations 2009

16. In the Offshore Funds (Tax) Regulations 2009(c) in regulation 99 (disposals of interests)—

- (a) in paragraph (1), for “If a participant” substitute “Subject to paragraph (7), if a participant”; and
- (b) after paragraph (6) insert—

“(7) This regulation does not apply where section 103D of TCGA 1992 (application of Act to tax transparent funds) applies.”

*Andrew Griffiths
Heather Wheeler*

4th December 2017

Two of the Lords Commissioners of Her Majesty’s Treasury
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Taxation of Chargeable Gains Act 1992 (“TCGA 1992”) so as to clarify how investors in co-ownership authorised contractual schemes (“CoACS”) or offshore transparent funds (“OTF”) who dispose of units should compute the chargeable gain.

Regulations 3, 4 and 5 amend existing provisions of TCGA 1992 so as to exclude OTF from their scope.

New provisions applying to both CoACS and OTF are then introduced by regulation 6 as new sections 103D and 103DA of TCGA 1992 (replacing existing section 103D of that Act). The effect of these provisions is that the same rules will apply to OTF as currently apply to CoACS. In particular, the provisions set out how to establish the amount of allowable expenses in the chargeable gains computation, including the treatment of loan relationship and derivative contract debits and credits, and also clarify the interaction with expenditure which qualifies for capital allowances.

Regulations 7 to 9 amend TCGA 1992 so as to clarify the capital gains treatment of insurers’ seed investments in collective investment schemes (by separating them from other investments).

Regulations 10 to 15 make consequential amendments to other primary legislation and regulation 16 makes a related amendment to the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001).

(a) 2007 c. 3; section 332 was amended by paragraph 11(5) of Schedule 22 to the Finance Act 2009.

(b) 2010 c. 8. Section 363A was inserted by section 59 of the Finance Act 2011 (c. 11) and was amended by paragraph 146 of Schedule 46 to the Finance Act 2013 (c. 29) and section 289 of the Finance Act 2014 (c. 26).

(c) S.I. 2009/3001. Regulation 99 has been amended but none of the amendments are relevant.

A Tax Information and Impact Note covering this instrument was published on 5 December 2016 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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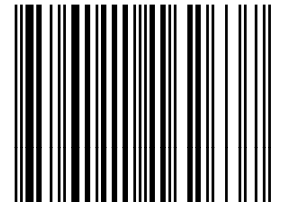
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201712041006 12/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/1204>

ISBN 978-0-11-116263-7



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