STATUTORY INSTRUMENTS

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

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

The Treasury make the following Regulations in exercise of the powers conferred by section 103C of the Taxation of Chargeable Gains Act 1992(**1**) and section 354 of the Taxation (International and Other Provisions) Act 2010(**2**).

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.

(**1**) 1992 c. 12; section 103C was inserted by section 36(3) of the Finance Act 2012 (c. 14).
(**2**) 2010 c. 8.

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.

Offshore funds that are unit trust schemes

3. In section 99(**3**) (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(**4**) (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(**5**) and 103B(**6**) (which make provision in relation to offshore funds that are not unit trust schemes).

Co-ownership schemes etc

6. For section 103D substitute—

"**Application of Act to tax transparent funds**

103D.—(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(**7**), 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(**8**), and

"co-ownership scheme" has the meaning given by section 235A of that Act(**9**).

(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—

(**3**) 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.
(**4**) Section 99B was inserted by section 21 of the Finance (No. 2) Act 2005 (c. 22) and amended by S.I. 2006/964.
(**5**) 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.
(**6**) Section 103B was inserted by S.I. 2011/1211.
(**7**) Section 103D was inserted by S.I. 2013/1400.
(**8**) 2000 c. 8; the definition of "authorised contractual scheme" was inserted by S.I. 2013/1388.
(**9**) Section 235A was inserted by S.I. 2013/1388.

(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).

(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.

Tax transparent funds: share pooling etc

103DA. 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)."