Draft Regulations laid before the House of Commons under section 42A(2)(c) of the Finance Act 2008 (c. 9) for approval by resolution of that House. (Section 42A of the Finance Act 2008 was inserted by paragraph 5 of Schedule 22 to the Finance Act 2009 (c. 10).)

DRAFT STATUTORY INSTRUMENTS

2009 No.

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Offshore Funds (Tax) Regulations 2009

Made - - - -	***
Coming into force - -	*1st December 2009*

The Treasury make the following Regulations in exercise of the powers conferred by sections 41(1) and 42 of the Finance Act 2008(**1**).

In accordance with section 42A(2)(c) of that Act(**2**), a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

PART 1

INTRODUCTION

Preliminary provisions

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Offshore Funds (Tax) Regulations 2009 and shall come into force on 1st December 2009.

(2) These Regulations have effect—

(a) for the purposes of income tax—

(i) for the tax year 2009-10 and subsequent tax years, and

(ii) for distributions made on or after 1st December 2009;

(**1**) 2008 c. 9; section 42 was amended by paragraph 4 of Schedule 22 to the Finance Act 2009 (c. 10).
(**2**) Section 42A was inserted by paragraph 5 of Schedule 22 to the Finance Act 2009.

(b) for the purposes of corporation tax—

(i) on income, for accounting periods ending on or after 1st December 2009 and for distributions made on or after that date, and

(ii) on chargeable gains, in relation to disposals made on or after 1st December 2009; and

(c) for the purposes of capital gains tax, in relation to disposals made on or after 1st December 2009.

(3) Paragraph (2) is subject to Schedule 1 to these Regulations (transitional provisions and savings).

Structure of these Regulations

2. The structure of these Regulations is as follows—

this Part contains introductory provisions;

Part 2 deals with the treatment of participants in non-reporting funds;

Part 3 deals with reporting funds and the treatment of participants in reporting funds;

Part 4 makes consequential amendments to primary legislation.

General provisions

Definition of "offshore fund"

3.—(1) In these Regulations "offshore fund" has the meaning given by section 40A(2) of FA 2008(**3**) (read with the provisions of the relevant group of sections).

(2) Paragraph (1) does not apply to the use of the words "offshore fund" in the expression "material interest in an offshore fund".

Classification of offshore funds

4.—(1) Offshore funds consist of—

(a) non-reporting funds (see Part 2 of these Regulations), and

(b) reporting funds (see Part 3 of these Regulations).

(2) An offshore fund is a non-reporting fund unless it is a fund to which Part 3 of these Regulations applies for a period of account.

Treatment of umbrella arrangements and of funds comprising more than one class of interest

Treatment of umbrella arrangements

5. In these Regulations, in relation to an offshore fund constituted by a part of umbrella arrangements (within the meaning of section 40C of FA 2008)—

(a) a reference to the assets of an offshore fund is to such of the assets of the umbrella arrangements as under the arrangements form part of the separate pool to which that part of the umbrella arrangements relates;

(b) a reference to the income of an offshore fund is to the income arising from those assets; and

(c) a reference to a participant in an offshore fund is to a person for the time being owning an interest in that separate pool.

(**3**) Sections 40A to 40G of the Finance Act 2008 were inserted by paragraph 2 of Schedule 22 to the Finance Act 2009.

Treatment of funds comprising more than one class of interest

6. In these Regulations, in relation to an offshore fund constituted by a class of interest in the main arrangements (within the meaning of section 40D of FA 2008)—

(a) a reference to the assets of an offshore fund is to the assets of the main arrangements;

(b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main arrangements; and

(c) a reference to a participant in an offshore fund is to a person for the time being owning an interest of that class.

Interpretation

Meaning of "participant"

7. In these Regulations references to a participant in a fund are to be read in accordance with section 40A(5) of FA 2008.

Meaning of "interest" (of a participant in an offshore fund)

8.—(1) For the purposes of these Regulations the interest of a participant in an offshore fund is the investment held by a participant taking part in arrangements (or arrangements constituting a fund) to which the relevant group of sections applies.

(2) Paragraph (1) does not apply to the use of the word "interest" in the expression "material interest in an offshore fund".

Meaning of "guaranteed return fund"

9.—(1) For the purposes of these Regulations an offshore fund is a guaranteed return fund if conditions A to C are met.

(2) Condition A is that the return on the shares or other interests in the fund is defined by reference to an index.

(3) Condition B is that the assets of the fund which are held to produce the return on the shares or other interests concerned cannot give rise to a return which, if it arose directly to an individual resident in the United Kingdom, would be chargeable to income tax.

(4) Condition C is that it is reasonable to assume that the main purpose, or one of the main purposes, of the arrangements constituting the offshore fund is or was the production for participants of a return that equates, in substance, to the return on an investment of money at interest.

Meaning of "market value"

10.—(1) For the purposes of these Regulations the market value of any asset is to be determined in like manner as it would be determined for the purposes of TCGA 1992.

(2) But, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 272(5) of that Act (meaning of "market value" in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of these Regulations.

Meaning of "transparent fund"

11. For the purposes of these Regulations a fund is a "transparent fund" if, in the case of holders of interests in the fund who are individuals resident in the United Kingdom, any sums which form part of the income of the fund are of such a nature that those holders—

(a) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests, or

(b) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom.

General interpretation

12. In these Regulations—

"HMRC" means Her Majesty's Revenue and Customs;

"period of account", in relation to an offshore fund, means any period for which accounts of the offshore fund are drawn up;

"proposed prospectus" includes—

(a) any document supplementing or amending the proposed prospectus, and

(b) any document fulfilling the same function as a proposed prospectus;

"prospectus" includes—

(c) any document supplementing or amending the prospectus, and

(d) any document fulfilling the same function as a prospectus;

the "relevant group of sections" means sections 40A to 42A of FA 2008(**4**);

"tax year"—

(e) in relation to income tax, has the meaning given by section 4(2) of ITA 2007, and

(f) in relation to capital gains tax, has the meaning given by section 288(1ZA) of TCGA 1992(**5**);

"tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

"UCITS fund" means a fund which is an undertaking for collective investments in transferable securities that is authorised by a European Union Member State in accordance with Article 4 of Council Directive 85/611/EEC(**6**).

Transitional provisions etc.

Transitional provisions and savings, repeals, abbreviations and general index

13.—(1) Schedule 1 to these Regulations (which contains transitional provisions and savings) has effect.

(2) Schedule 2 to these Regulations (which contains repeals) has effect.

(3) The repeals contained in Schedule 2 have effect subject to the saving contained in paragraph 3(4) of Schedule 1.

(**4**) Sections 40A to 40G were inserted by paragraph 2 of Schedule 22 to the Finance Act 2009 (c. 10), section 41 was amended by paragraph 3 of that Schedule, section 42 was amended by paragraph 4 of that Schedule and section 42A was inserted by paragraph 5 of that Schedule.
(**5**) Section 288(1ZA) was inserted by paragraph 101(3) of Schedule 2 to the Finance Act 2008 (c. 9).
(**6**) OJ No L 375, 20.12.85, p3.

(4) Schedule 3 to these Regulations (which contains abbreviations and defined expressions that apply for the purposes of these Regulations) has effect.

(5) Part 1 of Schedule 3 gives the meaning of the abbreviated references to Acts used in these Regulations.

(6) Part 2 of Schedule 3 lists the places where expressions used in these Regulations are defined or otherwise explained—

(a) in these Regulations for the purposes of these Regulations, or

(b) in these Regulations for the purposes of a Part or Chapter of these Regulations.

PART 2

THE TREATMENT OF PARTICIPANTS IN NON-REPORTING FUNDS

CHAPTER 1

PRELIMINARY PROVISIONS

Structure of this Part

14. The structure of this Part is as follows—

(a) this Chapter contains preliminary provisions;

(b) Chapter 2 deals with charges to tax on participants in non-reporting funds;

(c) Chapter 3 deals with exceptions from the charge to tax;

(d) Chapter 4 deals with disposals of interests in non-reporting funds;

(e) Chapter 5 deals with offshore income gains and the computation of offshore income gains;

(f) Chapter 6 deals with the deduction of offshore income gains in computing chargeable gains;

(g) Chapter 7 deals with the conversion of a non-reporting fund into a reporting fund.

Meaning of "material disposal"

15. In these Regulations a "material disposal" means a disposal to which this Part applies.

CHAPTER 2

CHARGES TO TAX ON PARTICIPANTS IN NON-REPORTING FUNDS

Charge to tax on certain amounts treated as distributions

Treatment of certain amounts as distributions

16.—(1) This regulation applies if a non-reporting fund which is a transparent fund has an interest in a reporting fund.

(2) In the case of any excess specified in regulation 94(2) which is treated, under that regulation, as made to the non-reporting fund, the Tax Acts have effect as if the excess were additional income of the participants in the non-reporting fund in proportion to their rights.

(3) The additional income is treated as arising on the same date as the excess is treated as made to the non-reporting fund.