

Budget 2009



BN24

22 April 2009

CHARGEABLE GAINS AND OFFSHORE FUNDS

Who is likely to be affected?

1. Investors in offshore funds that are transparent for the purposes of tax on income and gains.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to provide similar treatment to that given by section 99 of the Taxation of Chargeable Gains Act 1992 (TCGA) for investments in unit trusts to investments in other types of offshore funds which are not companies, unit trusts or partnerships.
3. The effect of this change will be that an interest in a transparent offshore fund will be an asset for the purpose of calculating capital gains tax on chargeable gains (as is already the case for shares in a company or units in a unit trust). Investors will no longer be required to consider disposals of the underlying assets for calculating capital gains tax on chargeable gains.
4. The Government will also discuss with industry how to make similar changes to the tax treatment of chargeable gains for investors subject to corporation tax.
5. There will be no effect on interests in tax transparent foreign partnerships which will continue to be treated as transparent for both income and gains in the same way as United Kingdom partnerships.

Operative date

6. The new treatment will apply to investments in contract-based offshore funds on and after 1 December 2009.
7. Elections into the new treatment can be made on and after 22 April 2009 and can be applied retrospectively back to the tax year 2003-04 (see para 12 below).

Current law and proposed revisions

8. Under current legislation, for the purpose of tax on chargeable gains, units in a unit trust are treated as if they were shares in a company. However rights in funds in foreign jurisdictions which are not companies, unit trusts or partnerships (mostly those constituted by contractual arrangements) are often treated differently depending on the structure.
9. Where such a fund comes within the new definition of an offshore fund (see BN25) then a new section of TCGA will apply similar treatment to rights in such funds.
10. Partnerships that are transparent for tax purposes will not be affected as they will be specifically excluded from the definition of offshore funds.
11. There will be transitional rules covering the timing and other aspects of the effect of this measure for existing investments in contract-based funds.
12. These will allow investors to elect to apply the new rules retrospectively, where they consider this will be an advantage. Elections can be made by capital gains taxpayers from the tax year 2003-04. Once made, an election will be irrevocable and will apply for all relevant tax years after the date of election. Investors making such an election will be treated as having been invested in an offshore fund that is certified by HM Revenue & Customs as a qualifying fund.
13. Investors subject to corporation tax will continue to treat their gains as transparent for the purposes of tax until discussions have taken place with industry about how similar changes can be made.

Further advice

14. If you have any questions about this change, please contact John Buckeridge on 020 7147 2560 (email: John.Buckeridge@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk