

## [27.02.01] Offshore Funds

### Taxation of Income and Gains

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#### 1. Offshore Funds

The purpose of this manual and that at [Part 27-04-01](#), is to (i) distinguish between offshore funds domiciled (i.e. authorised and regulated) **outside** the EU, EEA and OECD countries with which Ireland has a Double Taxation Agreement (DTA) and those domiciled **within** the EU, EEA and OECD countries with which Ireland has a DTA and (ii) outline how Irish resident investors are taxed on income and gains from their investment in such funds under the relevant legislation.

#### 2. Background

Prior to 1990 there was no specific taxation regime for the taxation of income and gains from offshore funds. An Irish resident investor could avoid liability to income tax by allowing an offshore investment to accumulate over a period of years as profits were reinvested. When the investment was eventually realised, the profit element was a capital gain. Capital Gains Tax (CGT) treatment was more advantageous to the investor than income tax treatment, as payment of tax was deferred until the realisation of the investment. Additionally, indexation and the annual CGT exemption were also available.

#### 3. 1990 Legislation

##### 3.1. Distributing Funds and Non-Distributing Funds

Finance Act 1990 introduced anti-avoidance legislation in respect of Irish resident individuals investing in offshore funds and introduced the concept of “distributing” and “non-distributing” funds, to counter the particular types of fund used to convert income into capital gains. **The default position is that unless a fund applies to, and is certified by, Revenue, as a distributing fund, it is a non-distributing fund.** The legislation is contained in sections 740 to 747 and Schedules 19 and 20 of the Taxes Consolidation Act (TCA) 1997.

To secure approval as a distributing fund and capital gains tax treatment for any Irish resident investors, the fund must apply to Revenue for “distributor” status. The fund has to satisfy a range of conditions for the accounting period in question, one of which is that it distributes at least 85% of its income to its unit holders. While the approval applies only in respect of the accounting period for which the application is made, in practice, once a fund is a distributing fund it will not normally become a non-distributing fund.

As the name suggests, a non-distributing fund accumulates rather than distributes its profits to its unit holders from year to year.

### **3.2. Taxation of Investors**

#### **3.2.1. Distributing Fund**

Income payments from a distributing fund are subject to income tax and payments in respect of disposals are subject to capital gains tax (40% rate for disposals on or after 12/2/1998).

The individual accounts for any tax due under self-assessment.

#### **3.2.2. Non-Distributing Fund**

Payments on disposals from a non-distributing fund are subject to income tax and consequently indexation relief does not apply.

The individual accounts for any tax due under self-assessment.

### **4. List of Distributing Funds**

Since 1 January 2001, the necessity to apply for “distributor” status is of relevance **only** to funds located outside the EU, EEA or an OECD country with which Ireland has a DTA. Although publication is not a requirement of the legislation, Revenue has published a List of Distributing Offshore Funds - see [www.revenue.ie](http://www.revenue.ie) - business and self-assessment – financial services - for the most up to date list.