

[27.04.01] Offshore Funds

Taxation of Income and Gains

Created September 2015

1. Offshore Funds

The purpose of this manual and that at 27.02.01, 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, under the relevant legislation, Irish resident investors are taxed on income and gains from their investment in such funds.

2. 2001 Legislation

Section 72 of Finance Act 2001 introduced a new taxation regime for investors in offshore funds to mirror the “gross roll-up” regime for Irish resident investors in domestic funds (see 27.1A.02). The legislation is contained in sections 747B to 747F TCA 1997 and applies to both distributing and non-distributing funds but **only** if the fund is located in a country (other than Ireland) in the EU, EEA or an OECD country with which Ireland has a DTA. The 1990 legislation continues to have application to funds located outside the EU, EEA or an OECD country with which Ireland has a DTA.

3. 2007 Legislation

Section 39 of Finance Act 2007 further refined the 2001 legislation to provide that the taxation regime will apply to **certain** offshore funds. The offshore fund must be structured and authorised in a **similar** manner to an Irish domiciled fund – i.e. under the UCITS regulations, under Part XIII of the Companies Act 1990 or under the Unit Trusts Act 1990.

An offshore fund that is domiciled in the EU, EEA or an OECD country with which Ireland has a DTA but is not structured and authorised in a **similar** manner to an Irish domiciled fund – i.e. under the UCITS regulations, under Part XIII of the Companies Act 1990 or under the Unit Trusts Act 1990, **does not qualify for offshore fund treatment of any sort. Instead, income and gains are taxed under general taxation principles**, similar to the treatment of income and gains in the case of Irish entities that fall outside the gross roll-up regime.

3.1. Personal Portfolio Investment Undertaking

Section 40 of Finance Act 2007 introduced specific rates of tax in respect of payments received from a Personal Portfolio Investment Undertaking (PPIU). A PPIU is a fund where the selection of the property of the fund

was, or can be, influenced by the investor i.e. the investor, or certain connected persons, places personal investments within a fund. The gross roll-up regime was designed for genuine collective investment funds. There is no element of collective investment in a personal portfolio product; rather, it is a contrived product to gain access to the gross roll-up regime which allows the income and gains to roll-up within a fund without suffering tax. By placing selected personal assets in a PPIU, an investor could limit the taxation of income and gains from those assets to, what was at one time, a flat 23%. On the other hand, if the investor had invested directly, the tax charge on the income arising from the investment could be 41% plus PRSI and levies. Consequently, in 2007, specific rates applicable to a PPIU were introduced as an anti-avoidance measure.

4. Taxation of Investors

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

4.1. Where the payment is correctly included in the investor's tax return, the following rates apply:

Payment received -	Regular payment (i.e. made annually or at shorter intervals)	Non-regular payment including on disposal	PPIU – see <i>section 739BA</i> – applicable from 20 February 2007
Before 1 January 2009	Standard rate of income tax (20%)	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 23%
Between 1 January 2009 and 7 April 2009	Standard rate of income tax (20%) plus 3%	Standard rate of income tax (20%) plus 6%	Standard rate of income tax (20%) plus 26%
Between 8 April 2009 and 31 December 2010	25%	28%	Standard rate of income tax (20%) plus 28%
Between 1 January 2011 and 31 December 2011	27%	30%	Standard rate of income tax (20%) plus 30%
Between 1 January 2012 and 31 December 2012	30%	33%	Standard rate of income tax (20%) plus 33%
Between 1 January 2013 and 31 December 2013	33%	36%	Standard rate of income tax (20%) plus 36%
Between 1 January 2014 and 31 December 2014	41%	41%	60%
On or after 1 January 2015 *	41%	41%	60%

* See additional Note following the table at 4.2 below.

4.2. Where the payment is *not correctly* included in the investor's tax return:

Payment received -	Not a PPIU	PPIU – see <i>section 739BA</i> – applicable from 20 February 2007
Before 1 January 2009	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 20%
Between 1 January 2009 and 7 April 2009	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 23%
Between 8 April 2009 and 31 December 2010	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 25%
Between 1 January 2011 and 31 December 2011	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 27%
Between 1 January 2012 and 31 December 2012	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 30%
Between 1 January 2013 and 31 December 2013	Marginal rate (i.e. 20% or 41% as appropriate)	Marginal rate (i.e. 20% or 41% as appropriate) plus 33%
Between 1 January 2014 and 31 December 2014	41%	80%
On or after 1 January 2015	41%	80%

Note: With effect from 1 January 2015, the distinction between 'correctly included' and 'not correctly included' is removed for other than a PPIU, and, any payment, whether regular or non-regular, (excluding from a PPIU), will be liable to income tax at the rate of 41% (i.e. one percentage point higher than the higher rate of income tax (40%) that comes into effect from that same date).