Offshore Funds: Taxation of Income and Gains from EU, EEA and OECD member states

Part 27-04-01

This document should be read in conjunction with Chapters 2, 3 and 4 of Part 27 TCA 1997 and in conjunction with Tax and Duty Manual (TDM) Part 27-02-01

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The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Table of Contents

1. Introduction to the offshore funds' regime 3
2. 'Equivalent' and 'non-equivalent' offshore funds 3
2.1. 'Equivalent funds [s.747B(2A)] 3
2.1.1. 'Similar in all material respects' – criteria to consider 4
2.2. 'Non-equivalent' funds [s.747B(2A)] 5
3. Personal Portfolio Investment Undertaking [s.739BA] 5
4. Taxation of Investors 5
4.1. 'Equivalent' offshore funds in the EU/EEA/OECD 5
4.1.1. Inclusion on a tax return [s.747C] 5
4.1.2. Mandatory e-filing [S.I. No. 223 of 2011 Tax Returns & Payments (Mandatory Electronic Filing & Payment of Tax) Regulations 2011] 5
4.1.3. Death [s.747B(3)(a)(ii)] 6
4.1.4. Tax arising [s.747D & s.747E] 6
4.1.5. Calculating an 8 year deemed disposal [s747E(6)] 6
4.1.6. Losses on the disposal of an interest [s.747E(3) & (4)] 7
4.2. 'Non-equivalent' offshore funds in the EU/EEA/OECD [S.896(5), s.747AA, s.747B(2) & s.747B(2A)] 7
Appendix 1 – Schedule of material updates 11

1. Introduction to the offshore funds' regime

Tax and Duty Manual 27-02-01 sets out the background and history of the offshore funds' regime in general. It includes the main definitions relevant to the offshore funds' regime as well as practical advice on determining the correct tax treatment of an offshore investment. It should be read before, and in conjunction with, this manual.

In 2001 the offshore funds' regime was amended to provide for different rules to apply to funds located within the EU, EEA or an OECD member state with which Ireland has a DTA (referred to hereafter as "EU/EEA/OECD"). This Tax and Duty Manual sets out the taxation of income and gains arising from offshore funds in the EU/EEA/OECD.

This change coincided with the 2001 change to the taxation of domestic funds which saw the introduction of what is known as the 'gross roll-up regime' (refer to Tax and Duty Manual Part 27-1A-02 for more details).

2. 'Equivalent' and 'non-equivalent' offshore funds

From 2001 to 2007 all offshore funds in the EU/EEA/OECD were taxed in the same manner (issues such as distributing status are not relevant). In 2007 these funds were split into what are known as 'equivalent funds' and 'non-equivalent funds', with the income and gains from each subject to different rules.

2.1. 'Equivalent funds [s.747B(2A)]

An 'equivalent' fund is one which is similar in all material respects to an Irish regulated fund, that is, the funds which are taxed under the 'gross roll-up regime'. These are:

a) A unit trust which is similar to an authorised unit trust scheme authorised under the Unit Trusts Act 1990 (cross reference to paragraph (a) of the definition of 'investment undertaking' in s.739B for inclusion of domestic Unit Trusts in the gross roll-up regime),

b) A fund authorised as a UCITS (cross reference to paragraph (b) of the definition of 'investment undertaking' in s.739B for inclusion of domestic UCITS in the gross roll-up regime),

c) An investment company which is similar to a Part XIII company (cross reference to paragraph (c) of the definition of 'investment undertaking' in s.739B for inclusion of domestic Part XIII companies in the gross roll-up regime), and

d) Certain undertakings for collective investment which are similar to investment limited partnerships (Prior to the FA 2013 ILPs were included within paragraph (d) of the definition of 'investment undertaking' in s.739B. Post FA 2013 ILPs are dealt with under s.739J for taxation of domestic ILPs and are not equivalent funds as they are not taxed as part of 'gross roll up').

It is important to note that not every fund in the EU/EEA/OECD that is subject to local regulation (for example by the local Central Bank) will fall within this equivalent definition. It is only funds which are similar in all material respects to the Irish fund vehicles which are included.

2.1.1. 'Similar in all material respects' – criteria to consider

Determining whether an offshore fund is "similar in all material respects" to an Irish fund involves examining the legal and regulatory position. Below is a non-exhaustive list of general legal and regulatory criteria that should be considered to assist in establishing whether the threshold of 'similar in all material respects' is met:

(1) From a legal perspective, the question is whether the offshore fund is similar to a unit trust, to an investment company[1] or to an investment limited partnership. The type of questions that should be asked here will depend on the type of foreign fund vehicle.

(2) From a regulatory perspective, the type of questions that should be asked are:

- Is the offshore fund regulated as an AIF or under a regime that is comparable to AIFMD in its home jurisdiction?
- Is the offshore fund regulated by a regulatory authority in its home jurisdiction that corresponds to the Central Bank of Ireland?
- Is the offshore fund required to have a regulated depositary / administrator / investment manager?
- Is the offshore fund required to issue a prospectus?

(3) In using these questions to determine if the offshore fund is similar in all material respects to an Irish fund, consideration should be given to factors such as:

- Objectives and purpose of the vehicle;
- Diversification Rules;
- Nature of governance & oversight;
- Headline Regulations & Regulatory Bodies;
- Nature of Regulatory Oversight;
- Approval Requirements;
- Restrictions/Eligible Investments;
- Sanction Mechanisms for Non-Compliance;
- Mechanism for trading shares/ units; and
- Accessibility by public of shares/units.

[1] Note that an ICAV is not included as an Irish vehicle to which an offshore fund should be compared because an investment in an ICAV would be considered to be similar, in all material respects, to an investment in an investment company.

Not all characteristics will have equal weighting and there will be an element of subjectivity in forming a view in cases where there is not a strong pattern of indicators to one particular conclusion.

2.2. 'Non-equivalent' funds [s.747B(2A)]

'Non-equivalent' funds essentially means any offshore fund located in the EU/EEA/OECD which is not an 'equivalent' fund.

3. Personal Portfolio Investment Undertaking [s.739BA][2]

A Personal Portfolio Investment Undertaking (PPIU) is a fund, either domestic or offshore, where the selection of the property of the fund was, or can be, influenced by an individual who is the investor i.e. the investor, or certain connected persons, who places personal investments within a fund. PPIUs were created to gain access to the gross roll-up regime which allows the income and gains to roll-up within a fund without suffering tax.

4. Taxation of Investors

4.1. 'Equivalent' offshore funds in the EU/EEA/OECD

4.1.1. Inclusion on a tax return [s.747C]

Where a person acquires a material interest in an 'equivalent' offshore fund in the EU/EEA/OECD, that person is a chargeable person for that period. This means that they must file a Form 11 / CT1 as appropriate and must include details of the offshore fund in that return. It should be noted that the onus is on the individual and not the offshore fund to make a return.

Where there is a payment from, or a disposal of an interest in, an offshore fund (including an 8 year deemed disposal under section 747E) that amount must be included in the Form 11 or Form CT1 as appropriate (refer to 4.1.4 below for an interaction with the deemed disposal and actual disposals).

For the Form 11, the information must be included under "Offshore Funds (Part 27 Ch 4)" in Panel E under the heading "Foreign Life Policies / Offshore Funds / Other Offshore Products".

For the Form CT1, section 5 ("Offshore Funds, Part 27 Chapter 4") should be updated accordingly.

4.1.2. Mandatory e-filing [S.I. No. 223 of 2011 Tax Returns & Payments (Mandatory Electronic Filing & Payment of Tax) Regulations 2011]

Since 1 June 2011 self-employed individuals benefiting from or acquiring offshore funds which are taxed under Chapter 4 of Part 27 (being 'equivalent' offshore funds in the EU/EEA/OECD) have been mandatory e-filers.

[2] For more information please refer to section 3.1 of TDM 27-01A-02

4.1.3. Death [s.747B(3)(a)(ii)]

On death, a person who held a material interest in an offshore fund is deemed to have disposed of and reacquired that interest immediately before death for its market value on that date.

4.1.4. Tax arising [s.747D & s.747E]

The income tax treatment of payments received from [s.747D(a)], or amounts arising on the disposal of an interest in [s.747E(1)(b)] are set out below.

Any **income** from an offshore fund is taxable at 38%, unless that offshore fund is a Personal Portfolio Investment Undertaking (refer to 3. above) in which case tax at 60% applies. This income is taxable under Case III[3].

The gain on a **disposal** of a material interest is taxed at 38% (or 60% if it's a Personal Portfolio Investment Undertaking) under Case IV. As both the income and gain are determined in accordance with Chapter 4 of Part 27, USC and PRSI do not apply [s.531AM(1)(b)(iii)(VII)]. The income and gain are ring fenced income for the purposes of the High Income Earner Restriction (refer to Tax and Duty Manual Part 15-02A-05 for more details).

Where a **payment** from an offshore fund is received by a company other than in the course of a trade, it is taxable under Case III [s.747D(b)]. Where a company **disposes** of an interest in an offshore fund other than in the course of a trade, it will be taxed under Case IV [s.747E(1)]. In both instances tax will therefore be chargeable at 25%.

There is also a deemed disposal of the interest in the offshore fund every 8 years [s.747E(6)]. Provision is made so that if no taxable gain arises on an actual disposal of an interest, account is taken of any deemed disposals on which tax has already been paid [s.747E(3)(b)]. The total tax liability (between deemed and actual disposals) should not exceed the tax liability that arises on the actual disposal. The original cost of acquisition should be used in carrying out the calculation of the taxable gain in such circumstances i.e. where the disposal occurs after the deemed disposal.

4.1.5. Calculating an 8 year deemed disposal [s747E(6)]

The taxable gain arising on the 8 year deemed disposal (the chargeable event) is the value of the units at the time less their cost of acquisition.

While an individual may receive increases in their unit holdings in the fund this will be reflected in the rolled up value of the fund on the 8th anniversary. Where there has been a movement in units, the gain should be calculated on a FIFO basis. This means that individuals need to track their original units to ascertain whether any units have switched between other funds.

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[3] Section 747D(a) TCA 1997 provides for the rate of tax applicable to payments in respect of offshore funds but does not specify the particular Case. However, Section 18(1)(f) and section 18(1)(e) TCA 1997 provides that income arising from securities/possessions outside the State are charged to tax under Case III Schedule D.

While an investor in an umbrella fund is entitled to switch the investment between sub-funds of the umbrella fund without triggering a gain, it is necessary to track the original cost of the units when such a switch occurs.

4.1.6. Losses on the disposal of an interest [s.747E(3) & (4)]

Trading losses or other Case IV losses cannot be used to shelter any income chargeable on the disposal, or deemed disposal, of an interest in an offshore fund [s.747E(4)].

Where a loss arises on the disposal of a material interest in an offshore fund, no CGT or other loss relief is available [s.747E(3)].

4.2. 'Non-equivalent' offshore funds in the EU/EEA/OECD [S.896(5), s.747AA, s.747B(2) & s.747B(2A)]

Where a person acquires a material interest in a 'non-equivalent' offshore fund in the EU/EEA/OECD, that person is a chargeable person for that period. This means that they must file a Form 11 / CT1 / Form 1 as appropriate and must include details of the offshore fund in that return.

For Form 11 this information must be included in Panel E under "Other Offshore Products".

For Form CT1, Section 5 "Other Offshore Products" should be updated accordingly.

Income and gains relating to a 'non-equivalent' offshore fund located in the EU/EEA/OECD are taxed under the general principles of taxation, and included in the Form 11 / CT1 as normal; that is, outside of the offshore funds' regime. For the avoidance of doubt, there are no special rules which apply on death meaning that there is no deemed disposal on death.

These funds are brought into Chapter 4 by s.747B(2) and then excluded from Chapter 4 by s.747B(2A). As these funds are brought into and then specifically excluded from Chapter 4, s.747AA specifically provides that they are not to be taxed as offshore funds under Chapter 2.

Therefore, income payments (dividends) will be subject to income tax at the standard or higher rate as appropriate and taxed under Case III. Gains on disposals will be subject to capital gains tax.

Table 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 *section 739BA* – 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%
Between 1 January 2015* and 31 December 2025	41%	41%	60%
On or after 1 January 2026	38%	38%	60%

* See additional Note following the table 2 below.

Table 2: Where the payment is not correctly* included in the investor's tax return:

Payment received -	**Not a PPIU**	**PPIU – see *section 739BA* – 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%
Between 1 January 2015* and 31 December 2025	41%	80%
On or after 1 January 2026	38%	80%

Note: With effect from 1 January 2015, the distinction between 'correctly included' and 'not correctly included' is removed other than for a PPIU, and, any payment, whether regular or non-regular, (excluding from a PPIU), will be liable to income tax at the rate of 38% (with effect from 1 January 2026).

Appendix 1 – Schedule of material updates

March 2023	Paragraph 2.1.1 setting out the criteria for evaluating if an offshore fund is ‘similar in all material respects’ was added.
January 2026	Section 4 was updated to take account of the reduction in the rate of tax from 41% to 38% in section 37 Finance Act 2025.