



Asset management: offshore non-UCITS funds

Who is likely to be affected?

Alternative investment funds (AIFs), as defined in regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) which transposes the Alternative Investment Fund Managers Directive (AIFMD)¹ into UK law.

General description of the measure

The measure will extend the scope of section 363A Taxation (International and Other Provisions) Act 2010 (TIOPA) so that it also applies to AIFs.

Policy objective

This measure will provide greater certainty on the tax residence of AIFs. In particular, this will provide comfort to managers who wish to operate AIFs under the AIFMD.

Background to the measure

This measure was announced as part of the UK's Investment Management Strategy (IMS) at Budget 2013. The IMS included a range of measures to improve the competitive position of the UK investment management industry.

A consultation document entitled *Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010* was published on 22 July 2013 setting out the Government's proposals. The consultation closed on 14 October 2013.

Detailed proposal

Operative date

This measure will be included in Finance Bill 2014. It is wholly relieving and will have effect on and after 5 December 2013.

Current law

Section 363A TIOPA treats offshore funds (as defined at section 355 TIOPA) that are undertakings for collective investment in transferable securities (UCITS) for the purposes of the UCITS Directive², as not being resident in the United Kingdom if they are resident in another Member State for the purposes of any tax imposed under the law of that State on income.

Proposed revisions

The scope of section 363A will be extended to include entities within the definition of an AIF, where they are established in a State other than the United Kingdom and treated as resident in that state for the purposes of any tax imposed on income.

This will address the two main concerns expressed in the responses to the consultation document, which were that the original proposal to extend the scope only to entities within

¹ Article 4 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, OJ L 174/16, 1.7.2011, p.16.

² Directive 2009/65/EC of the European Parliament and of the Council

the tax definition of an offshore fund was unnecessarily limiting, as was the reference to a requirement for the funds in scope to be managed by a UK AIF manager (AIFM).

Extending the scope to AIFs will encompass closed-ended entities (such as offshore investment trusts), funds that are carved out from the definition of an offshore fund, and umbrella funds with multiple subfunds or share classes.

Removing the requirement for a UK AIFM is consistent with the approach taken in the existing provisions for UCITS funds, and will provide certainty where entities undertaking management functions are branches of non-EU AIFMs or not within the definition of an AIFM at all, and for self-managed funds.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	negligible	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	It is not expected that there will be any significant direct impact on individuals and households generally, as relatively few individuals invest in the sorts of funds that are within the scope of this measure.					
Equalities impacts	There is no evidence to suggest that the measure will have any adverse equalities impacts for any particular groups.					
Impact on business including civil society organisations	This measure is expected to have some positive negligible impact in reducing burdens for those fund managers affected by the proposals. There will be a negligible one off cost associated with familiarisation with the legislation change, but the businesses affected are relatively few in number and increasing the certainty on the tax residency of AIFs will reduce associated costs of compliance. This measure is not expected to have any impact on civil society organisations.					
Operational impact (£m) (HMRC or other)	It is not anticipated that implementing this measure will incur any significant costs for HM Revenue & Customs (HMRC).					
Other impacts	<p><u>Small and micro business assessment</u>: there will be negligible costs and savings for small businesses as they form part of the population of affected fund managers.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

HMRC and HM Treasury will keep the measure under review and continue to liaise with industry from time to time to discuss the implementation of the proposed amendments, as part of ongoing engagement.

Further advice

If you have any questions about this change, please contact Wayne Strangwood on 03000 585493 (email: wayne.a.strangwood@hmrc.gsi.gov.uk).

1 Undertakings for collective investment in transferable securities and alternative investment funds

- (1) Section 363A of TIOPA 2010 (residence of offshore funds which are undertakings for collective investment in transferable securities) is amended as follows.
- (2) For subsections (1) and (2) substitute –
 - “(1) This section applies to –
 - (a) a UCITS which is authorised in a foreign state pursuant to Article 5 of the UCITS Directive, and
 - (b) an AIF which is authorised or registered in a foreign state, or is not authorised or registered but has its registered office in a foreign state,
 unless the UCITS or AIF is an authorised unit trust or resident in the United Kingdom by virtue of section 14 of CTA 2009.
 - (2) If –
 - (a) the UCITS or AIF is a body corporate which, under the law of a foreign state, is treated as resident in that state for the purposes of any tax imposed under that law on income, and
 - (b) (apart from this section) the body corporate would be treated as resident in the United Kingdom for the purposes of any enactment (within the meaning of section 354) relating to income tax, corporation tax, or capital gains tax,
 the body corporate is instead to be treated as if it were not resident in the United Kingdom.”
- (3) In subsection (3), for “offshore fund” substitute “UCITS or AIF”.
- (4) In subsection (4), for the words after “section” substitute “ –

“AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013,

“authorised unit trust” has the meaning given by section 616 of CTA 2010,

“foreign state” means a State other than the United Kingdom,

“UCITS” means an undertaking for collective investment in transferable securities, and

“the UCITS Directive” means Directive 2009/65/EC of the European Parliament and of the Council.”
- (5) Accordingly, in TIOPA 2010 –
 - (a) in section 1 (overview of Act), in subsection (1)(e) after “funds” insert “etc”,
 - (b) in the heading for Part 8, after “FUNDS” insert “ETC”, and
 - (c) for the heading of section 363A substitute “**Residence of undertakings for collective investment in transferable securities and alternative investment funds**”.
- (6) The amendments made by this section are treated as having come into force on 5 December 2013.

EXPLANATORY NOTE

UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES AND ALTERNATIVE INVESTMENT FUNDS

SUMMARY

1. Clause X extends the application of section 363A Taxation (International and Other Provisions) Act 2010 (TIOPA) to Alternative Investment Funds (AIFs).

DETAILS OF THE CLAUSE

2. Subsection 2 substitutes subsections (1) and (2) of section 363A.

3. New subsection (1) removes the requirement for a fund within the scope of section 363A to come within the definition of an offshore fund at section 355 TIOPA, and extends the application of section 363A to AIFs. As a consequence of those changes, subsection (1) provides that section 363A does not apply to undertakings for collective investment in transferable securities (UCITS) or AIFs that are either authorised unit trusts or are resident by virtue of section 14 Corporation Tax Act (CTA) 2009 (companies incorporated in the United Kingdom).

4. New subsection (2) applies the provisions of existing subsection (2) to entities within the extended scope of section 363A.

5. Subsection (3) replaces the reference in subsection (3) of section 363A to “offshore fund” with “UCITS or AIF”, and subsection (4) defines those and other terms used in the clause.

6. Subsection 5 makes various consequential amendments to TIOPA.

7. Subsection 6 provides for the changes, which are wholly relieving, to come into force from 5 December 2013. Entities within the extended scope of amended section 363A will therefore be treated as not resident (as provided by that section) from that date.

BACKGROUND NOTE

8. Currently, section 363A treats offshore funds (as defined at section 355 TIOPA) that are UCITS for the purposes of the UCITS Directive (Directive 2009/65/EC of the European Parliament and of the Council), as not being resident in the United Kingdom if they are resident in another Member State for the purposes of any tax imposed under the law of that State on income.

9. Section 363A was introduced in Finance Act 2011, with effect from 19 July 2011, to maintain the competitiveness of the UK fund management industry following the introduction of the UCITS IV Directive, which provided a “management company passport”. The UCITS IV Directive has the effect, for example, that managing a fund within the scope of section 363A from the UK will not cause the fund to be treated as resident in the UK as a result of central management and control being deemed to be located here.

10. The amendments made by this clause follow the announcement of the UK’s Investment Management Strategy (IMS) at Budget 2013. The IMS included a range of measures to improve the competitive position of the UK investment management industry.

11. A consultation document entitled ‘Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010’ was published on 22 July 2013 setting out the Government’s proposals. This clause takes account of the two main concerns expressed in responses, as set out in the Tax Information and Impact Note.

12. If you have any questions about this change, or comments on the legislation, please contact Wayne Strangwood on 03000 585493 (email wayne.a.strangwood@hmrc.gsi.gov.uk).