



# Residence of Offshore Funds - extending the scope of Section 363A Taxation (International and Other Provisions) Act 2010

## **Consultation document**

Publication date: 22 July 2013

Closing date for comments: 14 October 2013

<b>Subject of this consultation:</b>	Section 363A Taxation (International and Other Provisions) Act 2010 ('TIOPA'), which treats certain offshore funds as not resident in the UK if they are resident under the law of a Member State.
<b>Scope of this consultation:</b>	The Government announced at Budget 2013 that it would consult on proposals to widen the scope of section 363A TIOPA. HM Revenue & Customs (HMRC) are asking for views on the scope of the extension.
<b>Who should read this:</b>	HMRC would like to hear in particular from tax practitioners, fund managers, representative bodies, administrators and other interested parties.
<b>Duration:</b>	22 July to 14 October 2013.
<b>Lead official:</b>	Wayne Strangwood
<b>How to respond or enquire about this consultation:</b>	Please send responses by email to: <a href="mailto:wayne.a.strangwood@hmrc.gsi.gov.uk">wayne.a.strangwood@hmrc.gsi.gov.uk</a> or by post to:  Wayne Strangwood CTIAA Financial Products & Services Team Room 3C/06 100 Parliament Street London SW1A 2BQ  Enquiries about this consultation should be directed to - Wayne Strangwood Tel 020 7147 2545 or John Buckeridge Tel 020 7147 2560
<b>Additional ways to be involved:</b>	HMRC will consider holding further meetings with interested parties to discuss the proposals in this consultation. The timing, format and venue of meetings will be informed by expressions of interest received.
<b>After the consultation:</b>	A summary of responses together with draft legislation and guidance will be published in autumn 2013, with a view to introducing legislation in the Finance Bill 2014.
<b>Getting to this stage:</b>	This consultation follows an announcement at Budget 2013. This is the first stage in the formal consultation process.
<b>Previous engagement:</b>	HMRC has held informal discussions with interested stakeholders to identify the key issues that need to be addressed, and the proposals for change.

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# 1. Introduction

1. This consultation is concerned with offshore funds that are managed from within the United Kingdom.
2. Existing legislation already ensures that, so far as an offshore fund authorised under the Undertakings for Collective Investment in Transferable Securities IV Directive (UCITS<sup>1</sup> funds) is concerned, locating fund management activities in the UK will not create any risk that the fund itself might be treated as tax resident in the UK (see section 363A of the Taxation (International and Other Provisions) Act 2010 ('TIOPA'), introduced in Finance Act 2011).
3. Section 363A TIOPA was introduced in response to the UCITS IV directive, which provided a "management company passport". The "passport" enabled more open competition by allowing a fund authorised under the directive to be managed by a manager authorised in any other Member State. The competitiveness of the UK's fund management industry would have been adversely affected without certainty that funds authorised and treated as resident in another Member State but managed from the UK would not be treated as resident in the UK for tax purposes.
4. This change was well received by industry, but the funds management industry and the regulatory environment have continued to evolve. The Government therefore announced at Budget 2013 that it would consult on proposals to widen the scope of section 363A to provide certainty that locating the management of certain offshore *non*-UCITS funds in the UK will not lead to a risk of such funds being treated as tax resident. Legislation will be introduced in Finance Bill 2014.
5. This consultation is seeking views on proposals for widening the scope of section 363A.

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<sup>1</sup> UCITS – Undertakings for Collective Investments in Transferable Securities, Directive 2009/65/EC of the European Parliament and of the Council.

## 2. The proposal

### Background to the proposal

6. The Government published “The UK investment management strategy<sup>2</sup>” at Budget 2013. The document made it clear that the Government is determined to protect the UK’s position as Europe’s leading centre for fund management and to improve its competitive position in the face of continued developments in the industry and the regulatory environment. These include the introduction of the Alternative Investment Fund Managers Directive (‘AIFMD<sup>3</sup>’) which is expected to provide additional opportunities for the UK’s fund management industry.
7. As part of its strategy, the Government is now consulting on proposals to widen the scope of section 363A TIOPA to encompass certain non-UCITS funds. Non-UCITS funds are used by the hedge fund industry, professional investors (such as pension funds), and for more sophisticated investment strategies generally.
8. Section 363A currently applies to offshore funds (as defined by section 355 TIOPA) which are, for the purposes of the UCITS Directive, undertakings for collective investment in transferable securities, and are authorised pursuant to Article 5 of the UCITS Directive in a Member State other than the United Kingdom. In such cases -
  - a body corporate which, under the law of the Member State in which it is authorised pursuant to Article 5 of the UCITS Directive, is treated as resident in that State for the purposes of any tax imposed under that law on income is treated as not resident in the UK for income tax, corporation tax or capital gains tax; and
  - an entity that is treated as a company for the purposes of the Taxation of Chargeable Gains Act (‘TCGA’) 1992 (by sections 99 or 103A TCGA) will be treated as not resident for the purposes of that Act.

notwithstanding that activities that could constitute “central management and control” of the fund might otherwise cause it to be treated as resident in the UK.

9. For the purposes of determining UK residence for corporation tax purposes, one of the tests looks at the place where central management and control takes place (broadly, where the highest level of control of the business of a company is to be found). Currently, UK fund managers of non-UCITS funds that are established in foreign jurisdictions must consider the possibility that their activities in the UK may cause a fund to be resident for UK tax purposes. This leads to additional and unnecessary burdens for the fund management industry.

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<sup>2</sup> see

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/188368/uk\\_investment\\_management\\_strategy.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/188368/uk_investment_management_strategy.pdf.pdf)

<sup>3</sup> Directive 2011/61/EU of the European Parliament and of the Council

10. Large numbers of offshore non-UCITS funds are currently managed from the UK without the fund being treated as resident here. Extending the additional comfort provided by section 363A would have the advantage of reinforcing the UK's role as a centre for asset management without imposing any cost on the exchequer. Such a change would also be in line with recent developments in other European jurisdictions.
11. At the same time, the Government wishes to guard against any risk that avoidance opportunities might arise if the scope of section 363A was extended without properly defining its limits.
12. The Government is now consulting on its proposals and is seeking views on whether they strike the right balance and achieve the objectives set out above.

## The proposal

13. The Government's proposal is straightforward: section 363A should be extended to include those entities that are -
  - non-UCITS funds which are within the definition of an offshore fund for UK tax purposes (section 355 TIOPA), and
  - which have a UK-based manager that is either an AIF manager ('AIFM') authorised by the FCA or a branch of an AIFM authorised in another member State<sup>4</sup>.
14. Such an extension would enhance the UK fund management industry's competitive position post-AIFMD but would also provide a clear ring-fence around section 363A. Views are sought on the proposal, which will help to inform a draft clause to be published for further consultation at Autumn Statement 2013.

## Questions

**Question 1: Do respondents consider that the proposed widening of the scope of section 363A TIOPA will achieve the aims set out in paragraphs 10 and 11? If not, please explain why.**

**Question 2: Do respondents wish to propose an alternative formulation for the extension? If so please provide full details and explain why the alternative being proposed would better achieve the aims set out in paragraphs 10 and 11.**

**Question 3: Do you have any comments on the assessment of the impacts of these proposals in the Tax Impact Assessment on page 7, including but not limited to equality impacts, small firms impacts and burden reductions generally?**

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<sup>4</sup> "AIF" means Alternative Investment Fund, "AIFM" means Alternative Investment Fund Manager, (each as defined in Article 4(1) of the AIFM Directive), and "FCA" means Financial Conduct Authority.

### 3. Assessment of Impacts

#### Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	Negligible	Negligible	Negligible	Negligible	Negligible
<b>Economic impact</b>	The measure is not expected to have any significant economic impacts.				
<b>Impact on individuals and households</b>	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.				
<b>Equalities impacts</b>	There is no evidence to suggest that the measure will have any adverse equalities impacts for any particular groups.				
<b>Impact on businesses and Civil Society Organisations</b>	This measure is expected to have some positive impact in reducing burdens for those fund managers affected by the proposals.				
<b>Impact on HMRC or other public sector delivery organisations</b>	It is not anticipated that implementing this change will incur any significant costs for HMRC.				
<b>Other impacts</b>	<p>Small firms impact test: small firms will be positively affected to the extent that they form part of the population of affected fund managers.</p> <p>Other impacts have been considered and none have been identified.</p>				

## 4. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals (although views are sought on the formulation of the proposed change).

### How to respond

The questions in this consultation are included at chapter 2.

Responses should be sent by 14 October 2013, by e-mail to [wayne.a.strangwood@hmrc.gsi.gov.uk](mailto:wayne.a.strangwood@hmrc.gsi.gov.uk) or by post to Wayne Strangwood, CTIAA Financial Products & Services Team, Room 3C/06, 100 Parliament Street, London SW1A 2BQ. [

Any enquiries should be directed to Wayne Strangwood on Tel 020 7147 2545 ([wayne.a.strangwood@hmrc.gsi.gov.uk](mailto:wayne.a.strangwood@hmrc.gsi.gov.uk)) or John Buckeridge on Tel 020 7147 2560 ([john.buckeridge@hmrc.gsi.gov.uk](mailto:john.buckeridge@hmrc.gsi.gov.uk)).

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.



If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.

# Annex A: Relevant (current) Government Legislation

Section 363A of the Taxation (International and Other Provisions) Act 2010 ('TIOPA'):  
See paragraph 8 above.