



SRD Tax Management

## **UK Taxation of Offshore Income Gains following the Offshore Funds (Tax) Regulations 2009**

With effect from 1<sup>st</sup> December 2009 the taxation of Offshore Income Gains (OIGs) arising to UK residents has changed dramatically and there is a new classification of reporting and non reporting funds with the former distributing status no longer being relevant. The implications for the Funds themselves and whether they achieve reporting or non reporting status are beyond the scope of this article which will confine itself to the UK tax position for individuals and trustees.

### **UK Residents**

If an offshore fund is not a reporting fund a UK resident investor who disposes of an interest in the fund is treated as having made an OIG and the gain will be subject to income tax at their highest income tax rate.

An investor in a reporting fund will pay capital gains tax on any gain at the current rate of 18% or 28% but will also be required to report their proportionate share of the total Fund income.

Any distributions by the funds will be treated as income in the normal way and will be subject to the dividend tax rate if the payment is from a Fund largely invested in equities. With effect from 22 April 2009 these types of distributions will attract a non-repayable tax credit. If the payment is from a Fund which is substantially invested in interest bearing assets, meaning more than 60% by asset value, then the payment will be treated as 'interest' and taxed at the individuals highest income tax rate. No tax credit is available.

### **Non Domiciled UK Residents**

OIGs are treated as Relevant Foreign Income for the purposes of the new Offshore Fund legislation so consequently non domiciled UK resident individuals can continue to benefit from that.

If the individual is investing in reporting funds any gain realised on the disposal of his interest will, subject to the remittance basis, be charged to capital gains tax. A gain on any disposal of a non reporting fund will be chargeable to income tax but again this is subject to the remittance basis being claimed.

**In some cases it may not be a concern as to whether the gain is an income gain or capital gain where the monies are not going to be remitted to the UK whilst resident there but where funds are needed in the UK then clearly it will. Where that is the case then careful consideration should be given to segregating OIGs and capital gains in order to be able to identify the source of any funds remitted to the UK.**

**The dividend tax rate is not applicable to non domiciled individuals on the remittance basis but where the remittance basis is claimed both the dividend tax rate and a tax credit apply.**

### **Offshore Trusts**

**Where an OIG arises to a non resident trust the trustees are not subject to UK tax on the gain as was the case under the old rules. As before beneficiaries who receive capital payments from Offshore Trusts are subject to income tax to the extent that the capital payment is represented by an OIG.**

**Non domiciled UK resident Settlers and Beneficiaries are able to benefit from the remittance basis of assessment on OIG's.**

### **Losses**

**The Offshore Funds legislation only applies where there is an offshore income gain so where a loss arises on a disposal there is no income tax relief. The loss will however be allowable for Capital Gains Tax purposes if the general CGT principles apply. If the loss is available it is computed on CGT principles and not under the OIG computation rules.**

**Non residents do not qualify for any loss relief but non domiciled individuals may if they make the appropriate loss election.**

**If you have any questions in relation to this article then please do not hesitate to get in touch with the author, Steve Dumper, at [steve@SRDTaxManagement.com](mailto:steve@SRDTaxManagement.com) or by phone on 01363 775365.**



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