

## SCHEDULES

### SCHEDULE 17

#### PARTNERSHIPS

#### PART 3

##### ALTERNATIVE INVESTMENT FUND MANAGERS: DEFERRED REMUNERATION ETC

##### *Main provision*

15 At the end of Part 9 of ITTOIA 2005 (partnerships) insert—

*“Alternative investment fund managers*

##### **863H Election for special provision for alternative investment fund managers to apply**

- (1) Section 863I applies in relation to an AIFM trade of an AIFM firm if the AIFM firm elects for that section to apply.
- (2) An election under this section must be made within 6 months after the end of the first period of account for which the election is to have effect.
- (3) An “AIFM firm” is a firm—
  - (a) the regular business of which is managing one or more AIFs, or
  - (b) which carries out one or more functions of managing one or more AIFs—
    - (i) as the delegate of, or
    - (ii) as the sub-delegate of a delegate of,a person whose regular business is managing one or more AIFs.
- (4) An “AIFM trade” is a trade of an AIFM firm which involves the firm’s activities mentioned in subsection (3)(a) or (b).
- (5) Subsection (3)(a) and (b) is to be construed as if it were contained in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773).

##### **863I Allocation of profit to the AIFM firm**

- (1) This section applies for a period of account of the AIFM trade if—
  - (a) the calculation under section 849 in relation to a partner (“P”) in the AIFM firm produces a profit, and

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- (b) P's share of that profit determined under section 850, 850A or 850C would, apart from this section, be a profit consisting (wholly or partly) of relevant restricted profit (see subsections (6) to (9)) chargeable to income tax under Chapter 2 of Part 2.
- (2) P may allocate all or a part of the relevant restricted profit ("the allocated profit") to the AIFM firm itself.
- (3) If P does so—
  - (a) the allocated profit is to be excluded from P's share of the AIFM firm's profit mentioned in subsection (1)(b),
  - (b) the AIFM firm is to be treated in accordance with subsection (4) as if it were itself a person who is a partner in the AIFM firm (and for this purpose, in the case of a limited liability partnership, it is the body corporate which is to be treated as that person), and
  - (c) all enactments applying generally to income tax are to apply accordingly with any necessary modifications (subject to subsection (5)).
- (4) The AIFM firm is treated on the following basis—
  - (a) the calculation under section 849 in relation to the AIFM firm for the period of account produces the profit mentioned in subsection (1)(a),
  - (b) the AIFM firm's share of that profit determined under section 850 is the allocated profit (and sections 850A and 850C are to be ignored),
  - (c) that share is chargeable to tax under Chapter 2 of Part 2 for the tax year in which the period of account ends (with the person liable for the tax charged being the AIFM firm), and
  - (d) the tax is charged at the additional rate.
- (5) The Commissioners for Her Majesty's Revenue and Customs may make regulations modifying any of the following enactments applying to income tax as they apply by virtue of this section in relation to the AIFM firm—
  - (a) those relating to returns of information and supply of accounts, statements and reports,
  - (b) those relating to the assessing, collecting and receiving of income tax,
  - (c) those conferring or regulating a right of appeal, and
  - (d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (6) P's profit determined under section 850, 850A or 850C is "relevant restricted profit" so far as it represents variable remuneration awarded to P—
  - (a) as deferred remuneration (including deferred remuneration which, if it vests in P, will vest in the form of instruments), or
  - (b) as upfront remuneration which vests in P in the form of instruments with a retention period of at least 6 months.
- (7) In order for any variable remuneration to count for the purposes of subsection (6) it must be awarded to P in accordance with arrangements which are consistent with the AIFMD remuneration guidelines (see section 863L).

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- (8) In the case of a firm which is an AIFM firm by virtue of section 863H(3)(b) only, this section applies only in relation to partners who fall within a category of staff which is classified as identified staff.
- (9) Terms used in subsections (6) to (8) have the same meaning as in the AIFMD remuneration guidelines.

### **863J Vesting of remuneration represented by the allocated profit**

- (1) Subsection (2) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).
- (2) The amount given by subsection (5) is treated as a profit of the relevant tax year (see subsection (7)) made by P in the AIFM trade chargeable to income tax under Chapter 2 of Part 2.
- (3) Subsection (4) applies if all or a part of the variable remuneration represented by the allocated profit vests in P at a time when P is no longer carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).
- (4) If this subsection applies—
  - (a) P is treated as receiving, in the relevant tax year (see subsection (7)), income of the amount given by subsection (5),
  - (b) income tax is charged under this subsection on that income, and
  - (c) P is the person liable for that tax.
- (5) The amount to be treated as a profit or as income received by P is—
  - (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, net of the income tax for which the AIFM firm is liable by virtue of section 863I in respect of the allocated profit or the part of it, plus
  - (b) an amount equal to—
    - (i) so much of the income tax mentioned in paragraph (a) as is paid by the AIFM firm by the time the vesting occurs, or
    - (ii) if the vesting occurs in the tax year for which the allocated profit is chargeable to tax under Chapter 2 of Part 2 by virtue of section 863I, so much of the income tax mentioned in paragraph (a) as is paid by the AIFM firm.
- (6) Further—
  - (a) P is treated as paying, when the vesting occurs, an amount of income tax equal to the amount given by subsection (5)(b), and
  - (b) that amount is accordingly to be taken into account in determining the income tax payable by, or repayable to, P.
- (7) “The relevant tax year” is—
  - (a) if the variable remuneration or the part of it is deferred remuneration, the tax year in which the vesting occurs, or
  - (b) if the variable remuneration or the part of it is upfront remuneration, the tax year for which the allocated profit would have been chargeable to income tax under Chapter 2 of Part 2 as mentioned in section 863I(1)(b).

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- (8) Terms used in this section have the same meaning as in the AIFMD remuneration guidelines (see section 863L).
- (9) Section 850E (payment from B to other persons after application of section 850C(4) or 850D(4)) is to be ignored for the purposes of this section.

### **863K Vesting statements**

- (1) This section applies if all or a part of the variable remuneration represented by the allocated profit vests in P.
- (2) If P requests it in writing, the AIFM firm must provide P with a statement showing—
  - (a) the amount of the allocated profit, or the part of it representing the part of the variable remuneration, gross of the income tax for which the AIFM firm is liable by virtue of section 863I in respect of the allocated profit or the part of it,
  - (b) the amount of the income tax for which the AIFM firm is liable, and
  - (c) so much of that amount of income tax as is paid by the AIFM firm by the time the vesting occurs or, if section 863J(5)(b)(ii) applies, as is paid by the AIFM firm.
- (3) The duty to comply with a request under this section is enforceable by P.
- (4) In the case of a limited liability partnership, the duty is enforceable against the body corporate.

### **863L The AIFMD remuneration guidelines**

In sections 863I to 863K “the AIFMD remuneration guidelines” means the “Guidelines on Sound Remuneration Policies under the AIFMD” issued by the European Securities and Markets Authority on 3 July 2013 (ESMA/2013/232).”

#### *Supplementary provision*

- 16 (1) TMA 1970 is amended as follows.
- (2) In Part 2 (returns of income and gains) after section 12AD insert—

#### **“12ADA AIFM firms**

- (1) An officer of Revenue and Customs may by notice require a partnership which has made an election under section 863H of ITTOIA 2005 (whether or not the election has been revoked) to provide the officer with such information as the officer may reasonably require for purposes connected with the operation of sections 863H to 863K of ITTOIA 2005.
- (2) The information must be provided within such reasonable time as the officer may specify in the notice.”
- (3) In column 2 of the Table in section 98 (special returns etc), at the appropriate place, insert “section 12ADA of this Act”.

17 In Part 3 of TCGA 1992 (which makes special provision about partnerships etc) after section 59A insert—

**“59B Alternative investment fund managers (1)**

- (1) Subsection (2) applies if—
- (a) under section 863I of ITTOIA 2005, a partner (“P”) in a partnership allocates to the partnership an amount of profit (“the allocated profit”) representing variable remuneration which, if it vests in P, will vest in the form of instruments,
  - (b) there is a disposal to P of instruments which are partnership assets of the partnership for the purposes of section 59, and
  - (c) by virtue of that disposal the variable remuneration vests in P.
- (2) Both the persons making the disposal and P are to be treated as if the instruments were acquired by P from those persons for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863I of ITTOIA 2005 in respect of the allocated profit.
- (3) Terms used in this section which are also used in section 863I or 863J of ITTOIA 2005 have the same meaning as in that section.

**59C Alternative investment managers (2)**

- (1) Subsection (2) applies if—
- (a) under section 863I of ITTOIA 2005, a partner (“P”) in a partnership allocates to the partnership an amount of profit (“the allocated profit”) representing variable remuneration which, if it vests in P, will vest in the form of instruments,
  - (b) there is a disposal to P of instruments by a company which is a partner in the partnership,
  - (c) by virtue of that disposal the variable remuneration vests in P, and
  - (d) the company would, as a partner in the partnership, have been charged to tax on the allocated profit but for adjustments made in the case of the company under section 1264A(2) of CTA 2009 or section 850C(5) of ITTOIA 2005.
- (2) Both the company and P are to be treated as if the instruments were acquired by P from the company for a consideration of an amount equal to the allocated profit net of the income tax for which the partnership is liable by virtue of section 863I of ITTOIA 2005 in respect of the allocated profit.
- (3) Terms used in this section which are also used in section 863I or 863J of ITTOIA 2005 have the same meaning as in that section.”

18 In Part 4 of FA 2004 (pensions) in section 189 (relevant UK individual) after subsection (2A) insert—

- “(2B) The income covered by subsection (2)(b) includes—
- (a) an amount treated as a profit under section 863J(2) of ITTOIA 2005, and
  - (b) income treated as received under section 863J(4) of that Act.”

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- 19 In section 23 of ITA 2007 (calculation of income tax liability) at the end of Step 4 insert—
- “See also section 863I of ITTOIA 2005 which provides for certain partnership profits to be charged at the additional rate.”

*Power to apply amendments to other types of firms carrying on regulated activities*

- 20 (1) The Commissioners for Her Majesty’s Revenue and Customs may by regulations amend any Act—
- (a) so as to apply (with or without modifications), in relation to regulated firms of a specified description, the provision made by the amendments made by this Part, or
  - (b) so as to make, in relation to regulated firms of a specified description, provision corresponding to the provision made by the amendments made by this Part.
- (2) “Regulated firm” means a firm carrying on a regulated activity within the meaning of the Financial Services and Markets Act 2000 (see section 22 of that Act); and “firm” has the same meaning as in ITTOIA 2005 (see section 847 of that Act) (and includes a limited liability partnership in relation to which section 863(1) of that Act applies).
- (3) Regulations under this paragraph may—
- (a) make different provision for different cases or different purposes;
  - (b) make incidental, consequential, supplementary and transitional provision and savings.

*Commencement*

- 21 The amendments made by this Part have effect for the tax year 2014-15 and subsequent tax years.