

SCHEDULES

SCHEDULE 27

DISTRIBUTING FUNDS

PART I

THE DISTRIBUTION TEST

Requirements as to distributions

- 1 (1) For the purposes of this Chapter, an offshore fund pursues a full distribution policy with respect to an account period if—
- (a) a distribution is made for that account period or for some other period which, in whole or in part, falls within that account period; and
 - (b) subject to Part II of this Schedule, the amount of the distribution which is paid to the holders of material and other interests in the fund—
 - (i) represents at least 85 per cent. of the income of the fund for that period, and
 - (ii) is not less than 85 per cent. of the fund's United Kingdom equivalent profits for that period; and
 - (c) the distribution is made during that account period or not more than six months, or such longer period as the Board may in any particular case allow, after the expiry of it; and
 - (d) the form of the distribution is such that, if any sum forming part of it were received in the United Kingdom by a person resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under Case IV or V of Schedule D;
- and any reference in this sub-paragraph to a distribution made for an account period includes a reference to any two or more distributions so made or, in the case of paragraph (b), the aggregate of them.
- (2) Subject to sub-paragraph (3) below, with respect to any account period for which—
- (a) there is no income of the fund, and
 - (b) there are no United Kingdom equivalent profits of the fund,
- the fund shall be treated as pursuing a full distribution policy notwithstanding that no distribution is made as mentioned in sub-paragraph (1) above.
- (3) For the purposes of this Chapter, an offshore fund shall be regarded as not pursuing a full distribution policy with respect to an account period for which the fund does not make up accounts.
- (4) For the purposes of this paragraph—
- (a) where a period for which an offshore fund makes up accounts includes the whole or part of two or more account periods of the fund, then, subject to

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paragraph (c) below, income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the accounts are made up;

- (b) where a distribution is made for a period which includes the whole or part of two or more account periods of the fund, then, subject to sub-paragraph (5) below, the distribution shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the distribution is made;
 - (c) where a distribution is made out of specified income but is not made for a specified period, that income shall be attributed to the account period of the fund in which it in fact arose and the distribution shall be treated as made for that account period; and
 - (d) where a distribution is made neither for a specified period nor out of specified income, then, subject to sub-paragraph (5) below, it shall be treated as made for the last account period of the fund which ended before the distribution was made.
- (5) If, apart from this sub-paragraph, the amount of a distribution made, or treated by virtue of sub-paragraph (4) above as made, for an account period would exceed the income of that period, then, for the purposes of this paragraph—
- (a) if the amount of the distribution was determined by apportionment under sub-paragraph (4)(b) above, the excess shall be re-apportioned, as may be just and reasonable, to any other account period which, in whole or in part, falls within the period for which the distribution was made or, if there is more than one such period, between those periods; and
 - (b) subject to paragraph (a) above, the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distribution or, as the case may be, the aggregate distributions would otherwise be less than the income of the period, applying the excess to later account periods before earlier ones, until it is exhausted.
- (6) In any case where—
- (a) for a period which is or includes an account period, an offshore fund is subject to any restriction as regards the making of distributions, being a restriction imposed by the law of any territory outside the United Kingdom; and
 - (b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concepts of “profits” and “losses” in the sense in which and to the extent to which they are relevant for the purposes of the law in question);

then in determining for the purposes of the preceding provisions of this paragraph the amount of the fund’s income for that account period, there shall be allowed as a deduction any amount which, apart from this sub-paragraph, would form part of the income of the fund for that account period and which cannot be distributed by virtue of the restriction.

Funds operating equalisation arrangements

- 2 (1) In the case of an offshore fund which throughout any account period operates equalisation arrangements, on any occasion in that period when there is a disposal

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to which this sub-paragraph applies, the fund shall be treated for the purposes of this Part of this Schedule as making a distribution of an amount equal to so much of the consideration for the disposal as, in accordance with this paragraph, represents income accrued to the date of the disposal.

- (2) Sub-paragraph (1) above applies to a disposal—
 - (a) which is a disposal of a material interest in the offshore fund concerned; and
 - (b) which is a disposal to which this Chapter applies (whether by virtue of section 758(3) or otherwise) or is one to which this Chapter would apply if subsections (5) and (6) of that section applied generally and not only for the purpose of determining whether, by virtue of subsection (3) of that section, there is a disposal to which this Chapter applies; and
 - (c) which is not a disposal with respect to which the conditions in subsection (4) of that section are fulfilled; and
 - (d) which is a disposal to the fund itself or to the persons concerned in the management of the fund (“the managers”) in their capacity as such.
- (3) On a disposal to which sub-paragraph (1) above applies, the part of the consideration which represents income accrued to the date of the disposal is, subject to sub-paragraph (4) and paragraph 4(4) below, the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the material interest which is disposed of were acquired by another person by way of initial purchase.
- (4) If, after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (3) above is calculated, the material interest disposed of by a disposal to which sub-paragraph (1) above applies was acquired by way of initial purchase (whether or not by the person making the disposal)—
 - (a) there shall be deducted from the amount which, in accordance with sub-paragraph (3) above, would represent income accrued to the date of the disposal, the amount which on that acquisition was credited to the equalisation account of the fund in respect of accrued income; and
 - (b) if in that period there has been more than one such acquisition of that material interest by way of initial purchase, the deduction to be made under this sub-paragraph shall be the amount so credited to the equalisation account on the latest such acquisition prior to the disposal in question.
- (5) Where, by virtue of this paragraph, an offshore fund is treated for the purposes of this Part of this Schedule as making a distribution on the occasion of a disposal, the distribution shall be treated for those purposes—
 - (a) as complying with paragraph 1(1)(d) above; and
 - (b) as made out of the income of the fund for the account period in which the disposal occurs; and
 - (c) as paid, immediately before the disposal, to the person who was then the holder of the interest disposed of.
- (6) In any case where—
 - (a) a distribution in respect of an interest in an offshore fund is made to the managers of the fund, and
 - (b) their holding of that interest is in their capacity as such, and
 - (c) at the time of the distribution, the fund is operating equalisation arrangements,

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the distribution shall not be taken into account for the purposes of paragraph 1(1) above except to the extent that the distribution is properly referable to that part of the period for which the distribution is made during which that interest has been held by the managers of the fund in their capacity as such.

- (7) Subsection (2) of section 758 applies for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case IV or Case V of Schedule D

- 3 (1) Sub-paragraph (2) below applies if any sums which form part of the income of an offshore fund falling within section 759(1)(b) or (c) are of such a nature that—
- (a) the holders of interests in the fund who are either companies resident in the United Kingdom or individuals domiciled and resident there—
 - (i) are chargeable to tax under Case IV or Case V of Schedule D in respect of such of those sums as are referable to their interests; or
 - (ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom; and
 - (b) the holders of interests who are not such companies or individuals would be chargeable as mentioned in sub-paragraph (i) or (ii) above if they were resident in the United Kingdom or, in the case of individuals, if they were domiciled and both resident and ordinarily resident there.
- (2) To the extent that sums falling within sub-paragraph (1) above do not actually form part of a distribution complying with paragraphs 1(1)(c) and (d) above, they shall be treated for the purposes of this Part of this Schedule—
- (a) as a distribution complying with those paragraphs and made out of the income of which they form part; and
 - (b) as paid to the holders of the interests to which they are referable.

Commodity income

- 4 (1) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, one half of those profits shall be left out of account in determining for the purposes of paragraphs 1(1)(b) and 5 below—
- (a) the income of the fund for that period; and
 - (b) the fund's United Kingdom equivalent profits for that period;
- but in any account period in which an offshore fund incurs a loss in dealing in commodities the amount of that loss shall not be varied by virtue of this paragraph.
- (2) In this paragraph “dealing in commodities” shall be construed as follows—
- (a) “commodities” does not include currency, securities, debts or other assets of a financial nature but, subject to that, means tangible assets which are dealt with on a commodity exchange in any part of the world; and
 - (b) “dealing” includes dealing by way of futures contracts and traded options.
- (3) Where the income of an offshore fund for any account period consists of profits from dealing in commodities and other income, then—
- (a) in determining whether the condition in paragraph 1(1)(b) above is fulfilled with respect to that account period, the expenditure of the fund shall be

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apportioned in such manner as is just and reasonable between the profits from dealing in commodities and the other income; and

- (b) in determining whether, and to what extent, any expenditure is deductible under section 416 in computing the fund's United Kingdom equivalent profits for that period, so much of the business of the fund as does not consist of dealing in commodities shall be treated as a business carried on by a separate company.

- (4) Where there is a disposal to which paragraph 2(1) above applies, then, to the extent that any amount which was or would be credited to the equalisation account in respect of accrued income, as mentioned in sub-paragraph (3) or (4) of that paragraph, represents profits from dealing in commodities, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the part of the consideration for the disposal which represents income accrued to the date of the disposal.

United Kingdom equivalent profits

- 5 (1) Any reference in this Schedule to the United Kingdom equivalent profits of an offshore fund for an account period is a reference to the amount which, on the assumptions in sub-paragraph (3) below, would be the total profits of the fund for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable.
- (2) In this paragraph the expression “profits” does not include chargeable gains.
- (3) The assumptions referred to in sub-paragraph (1) above are—
- (a) that the offshore fund is a company which, in the account period in question, but not in any other account period, is resident in the United Kingdom; and
- (b) that the account period is an accounting period of that company; and
- (c) that any dividends or distributions which, by virtue of section 208, should be left out of account in computing income for corporation tax purposes are nevertheless to be brought into account in that computation in like manner as if they were dividends or distributions of a company resident outside the United Kingdom.
- (4) Without prejudice to any deductions available apart from this sub-paragraph, the deductions referred to in sub-paragraph (1) above include—
- (a) a deduction equal to any amount which, by virtue of paragraph 1(6) above, is allowed as a deduction in determining the income of the fund for the account period in question; and
- (b) a deduction equal to any amount of tax (paid under the law of a territory outside the United Kingdom) which was taken into account as a deduction in determining the income of the fund for the account period in question but which, because it is referable to capital rather than income, does not fall to be taken into account by virtue of section 811.
- (5) For the avoidance of doubt it is hereby declared that, if any sums forming part of the offshore fund's income for any period have been received by the fund without any deduction of or charge to tax by virtue of section 47 or 48, the effect of the assumption in sub-paragraph (3)(a) above is that those sums are to be brought into account in determining the total profits referred to in sub-paragraph (1) above.