

SCHEDULES

SCHEDULE 26

Section 145

OFFSHORE FUNDS

Computation of UK equivalent profits: creditor relationships

- 1 (1) In paragraph 5(3) of Schedule 27 to the Taxes Act 1988 (offshore funds: assumptions to be made in computing UK equivalent profits), after paragraph (c) insert—
- “; and
- (d) that the provisions of the Corporation Tax Acts relating to profits, gains or losses arising from a creditor relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) apply as if the offshore fund were an authorised unit trust;”.
- (2) Paragraph 3 of Schedule 10 to the Finance Act 1996 (c. 8) (assumptions to be made in relation to creditor relationships) shall cease to have effect.
- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.
- (4) Any such election—
- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and
- (b) is irrevocable.
- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—
- (a) any profits, gains or losses arising from a creditor relationship that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and
- (b) any profits, gains or losses arising from a creditor relationship that—
- (i) arose in, or in respect of, the preceding account period, but
- (ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,
- shall be taken into account.
- (6) In this paragraph—
- “creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996; and
- “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

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Computation of UK equivalent profits: derivative contracts

- 2 (1) In paragraph 5(3) of Schedule 27 to the Taxes Act 1988 (offshore funds: assumptions to be made in computing UK equivalent profits), after paragraph (d) (inserted by paragraph 1 above) insert—
- “and
- (e) that the provisions of the Corporation Tax Acts relating to profits or losses arising from a derivative contract (within the meaning of Schedule 26 to the Finance Act 2002) apply as if the offshore fund were an authorised unit trust.”
- (2) Paragraph 35 of Schedule 26 to the Finance Act 2002 (c. 23) (assumptions to be made in relation to derivative contracts) shall cease to have effect.
- (3) In relation to a fund established on or before the day on which this Act is passed, this paragraph only has effect if an election that it should have effect has been made by or on behalf of the fund.
- (4) Any such election—
- (a) must be made by notice to an officer of the Board, in such form and within such time as the Board may determine, and
- (b) is irrevocable.
- (5) For the purpose of determining the United Kingdom equivalent profits of an offshore fund for the first account period of the fund in relation to which this paragraph has effect—
- (a) any profits or losses arising from a derivative contract that were taken into account in determining the United Kingdom equivalent profits of the fund for the preceding account period shall be disregarded, and
- (b) any profits or losses arising from a derivative contract that—
- (i) arose in, or in respect of, the preceding account period, but
- (ii) were not taken into account in determining the United Kingdom equivalent profits of the fund for that period,
- shall be taken into account.
- (6) In this paragraph—
- “derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;
- “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

Treatment of umbrella funds and funds comprising more than one class of interest

- 3 At the beginning of Chapter 5 of Part 17 of that Act (offshore funds) insert—

“Meaning of offshore fund

756A General definition of offshore fund

- (1) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—
- (a) a company that is resident outside the United Kingdom, or

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- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or
 - (c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).
- (2) Subsection (1) has effect subject to—
- section 756B (treatment of umbrella funds), and
 - section 756C (treatment of funds comprising more than one class of interest).
- (3) In this section “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000.

756B Treatment of umbrella funds

- (1) In this Chapter, an “umbrella fund” means an offshore fund—
- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another;
- and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.
- (2) For the purposes of this Chapter (except subsection (1))—
- (a) each part of an umbrella fund shall be regarded as a separate offshore fund, and
 - (b) the umbrella fund as a whole shall not be regarded as an offshore fund.
- (3) In this Chapter, in relation to a part of an umbrella fund—
- (a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;
 - (b) a reference to the income of an offshore fund is to the income arising from those assets;
 - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and
 - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

756C Treatment of funds comprising more than one class of interest

- (1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the “main fund”)—
- (a) each class of interest shall be regarded as a separate offshore fund, and
 - (b) the main fund shall not be regarded as an offshore fund.

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- (2) In this section, references to a class of interest in an offshore fund do not include—
- (a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or
 - (b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.
- (3) In this Chapter, in relation to a class of interest in an offshore fund—
- (a) a reference to the assets of an offshore fund is to the assets of the main fund;
 - (b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;
 - (c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and
 - (d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.”.
- 4 (1) Section 757 of that Act (disposal of material interests in offshore funds) is amended as follows.
- (2) In subsection (1)(b) for the words from “the company or unit trust scheme” to the end substitute “the interest was a material interest in a non-qualifying offshore fund”.
- (3) In subsection (5)—
- (a) for the words from “if the company that is company A” to the end of the first sentence substitute “to the extent that—
 - (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
 - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.”;
 - (b) in the second sentence, for the words in brackets substitute “(of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)”.
- (4) In subsection (6)—
- (a) for the words from “so as to require persons” to the end of the first sentence substitute “to the extent that—
 - (a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and
 - (b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.”;
 - (b) in the second sentence, for the words in brackets substitute “(of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)”.
- 5 In section 758 of that Act (offshore funds operating equalisation arrangements), after subsection (6) insert—

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- “(7) The Treasury may make provision by regulations as to the application of the provisions of this section in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (8) Regulations under subsection (7) may—
- (a) make different provision for different cases, and
 - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

6 (1) Section 759 of that Act (material interests in offshore funds) is amended as follows.

(2) Omit subsections (1) and (1A).

(3) In subsection (2) for “a company, unit trust scheme or arrangements” substitute “an offshore fund”.

(4) In subsection (3) for the words from “the assets of” to the end substitute “the assets of the fund”.

(5) In subsection (5) for “a company, scheme or arrangements” substitute “an offshore fund”.

(6) In subsections (6) and (8)—

 - (a) for “falling within subsection (1)(a) above” substitute “that is not resident in the United Kingdom”;
 - (b) after “material interest” insert “in an offshore fund”.

7 (1) Section 760 of that Act (non-qualifying offshore funds) is amended as follows.

(2) In subsection (10)—

 - (a) in paragraph (a) for “falling within section 759(1)(a)” substitute “that is not resident in the United Kingdom”, and
 - (b) in paragraph (b) for “falling within section 759(1)(b)” substitute “of which the trustees are not resident in the United Kingdom”.

(3) After subsection (10) insert—

“(10A) For the purposes of this Chapter, in relation to—

 - (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C,

references to an account period of the offshore fund are to an account period of the umbrella fund or the main fund (as the case may be).”.

8 (1) Schedule 27 to that Act (distributing funds: supplementary) is amended as follows.

(2) In paragraph 3 (1) for “section 759(1)(b) or (c)” substitute “section 756A(1)(b) or (c)”.

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(3) In paragraph 11—

- (a) in sub-paragraph (2)(a) for “section 759(1)(a)” substitute “section 756A(1)(a)”;
- (b) in sub-paragraph (2)(b) for “section 759(1)(b)” substitute “section 756A(1)(b)”;
- (c) in sub-paragraph (2)(c) for “section 759(1)(c)” substitute “section 756A(1)(c)”.

(4) After paragraph 20 insert—

“Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

- 21 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (2) Regulations under this paragraph may—
- (a) make different provision for different cases, and
 - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

9 In Schedule 28 to that Act (computation of offshore income gains) after paragraph 8 insert—

“PART 3

SUPPLEMENTARY

Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

- 9 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (2) Regulations under this paragraph may—
- (a) make different provision for different cases, and
 - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.”.

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- 10 In section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc.) in subsection (9), for the definition of “offshore fund” substitute—
““offshore fund” has the same meaning as in Chapter 5 of Part 17;”.
- 11 In section 212 of the Taxation of Chargeable Gains Act 1992 (c. 12) (annual deemed disposal of holdings of unit trusts etc.) in subsection (6A)—
(a) in paragraph (a), for “paragraphs (a) to (c) of subsection (1) of section 759” substitute “paragraphs (a) to (c) of subsection (1) of section 756A”;
(b) in paragraph (b), for “that section” substitute “section 759 of that Act”.
- 12 (1) Schedule 10 to the Finance Act 1996 (c. 8) (loan relationships: collective investment schemes) is amended as follows.
(2) In paragraph 7, for “paragraphs (b) and (c) of subsection (1) of section 759” substitute “paragraphs (b) and (c) of subsection (1) of section 756A”.
(3) In paragraph 8 after sub-paragraph (7E) insert—
“(7F) In this paragraph “offshore fund” has the same meaning as in Chapter 5 of Part 17 of the Taxes Act 1988 and references to the assets of an offshore fund shall be construed in accordance with that Chapter.”.

Investment conditions to be met by funds seeking certification as distributing fund

- 13 (1) Section 760 of the Taxes Act 1988 (non-qualifying offshore funds) is amended as follows.
(2) In subsection (3) omit paragraphs (b) to (d) and the word “or” preceding paragraph (b).
(3) Omit subsections (4) to (7).
- 14 (1) In Schedule 27 to the Taxes Act 1988 (distributing funds), Part 2 (modifications of conditions for certification in certain cases) is amended as follows.
(2) In paragraph 6—
(a) in sub-paragraph (1)(b) for the words from the beginning to “section 760” substitute “those interests are such that, by virtue of section 760(3)(a)”;
(b) in the words following paragraph (c) of sub-paragraph (1), for “section 760(3)(a) to (c)” substitute “section 760(3)(a)”;
(c) in sub-paragraph (3)(a) for “section 760(3)(a) to (c)” substitute “section 760(3)(a)”.
(3) In paragraph 7 for “section 760(3)(a) to (c)” (in both places) substitute “section 760(3)(a)”.
(4) Omit paragraph 10.
(5) In paragraph 11—
(a) in sub-paragraphs (1) and (4), omit “section 760(3) and”, and
(b) in sub-paragraph (1) for “sub-paragraph (3)” substitute “sub-paragraph (4)”.
(6) Omit paragraphs 12 and 13.
(7) In paragraph 14, for “any of the conditions in paragraphs (a) to (c) of section 760(3)” substitute “the condition in section 760(3)(a)”.

Status: This is the original version (as it was originally enacted).

(8) In paragraph 16(1), omit “by a trustee or officer thereof”.

Exchange of interests of different classes

15 (1) After section 762 of the Taxes Act 1988 insert—

“762A Exchange of interests of different classes

(1) This section applies where—

(a) classes of interest in an offshore fund (the “main fund”) are treated as separate offshore funds under section 756C; and

(b) as the result of—

(i) a reorganisation within the meaning of section 126 of the 1992 Act, or

(ii) a conversion of securities within the meaning of section 132 of that Act,

a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

(2) Where—

(a) the interest of class A—

(i) is at the time of the exchange an interest in a non-qualifying offshore fund, or

(ii) has been an interest in such a fund at any material time, and

(b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,

section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.

(3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

(4) In this section—

“class of interest” has the same meaning as in section 756C(1);

“material time” has the same meaning as in section 757.”

(2) In section 763 of the Taxes Act 1988 (deduction of offshore income gain in determining capital gain), after subsection (6) insert—

“(6A) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 762A (exchange of interests of different classes), the 1992 Act shall have effect as if an amount equal to the offshore income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).”

Correction of cross-reference

- 16 (1) In section 763(6) of the Taxes Act 1988 (offshore income gain treated as consideration given on certain disposals), for “section 757(6)” substitute “section 757(5) or (6)”.
- (2) Sub-paragraph (1) has effect, and shall be deemed always to have had effect, in relation to disposals on or after 17th April 2002.

Transitional provision

- 17 (1) This paragraph applies for the purposes of determining whether an offshore fund that is—
- (a) a part of an umbrella fund (which is treated as an offshore fund under section 756B of the Taxes Act 1988), or
 - (b) a class of interest in a part of an umbrella fund (which is treated as an offshore fund under section 756C of that Act),
- may be certified as a distributing fund under Chapter 5 of Part 17 of that Act in respect of an account period ending on or after the day on which this Act is passed and on or before 31st December 2005.
- (2) Where this paragraph applies—
- (a) subsection (3) of section 760 of the Taxes Act 1988 shall not have effect, and
 - (b) the fund shall not be certified as a distributing fund in respect of a period if at any time in that period—
 - (i) more than 5 per cent by value of the assets of that offshore fund consists of interests in other offshore funds, and
 - (ii) more than 5 per cent by value of the assets of the umbrella fund consists of interests in other offshore funds.
- (3) Where this paragraph applies, references to subsection (3) of section 760 of the Taxes Act 1988 shall have effect as references to sub-paragraph (2)(b) above.
- (4) Words used in Chapter 5 of Part 17 of the Taxes Act 1988 have the same meaning in this paragraph as they have in that Chapter.