

SCHEDULES

SCHEDULE 22

OFFSHORE FUNDS

PART 1

MEANING OF “OFFSHORE FUND”

FA 2008

- 1 FA 2008 is amended as follows.
- 2 Before section 41 (tax treatment of participants in offshore funds) insert—

“40A Meaning of “offshore fund”

- (1) This section and sections 40B to 40G have effect for this group of sections.
- (2) “Offshore fund” means—
 - (a) a mutual fund constituted by a body corporate resident outside the United Kingdom,
 - (b) a mutual fund under which property is held on trust for the participants where the trustees of the property are not resident in the United Kingdom, or
 - (c) a mutual fund constituted by other arrangements that create rights in the nature of co-ownership where the arrangements take effect by virtue of the law of a territory outside the United Kingdom (but see subsection (3)).
- (3) Subsection (2)(c) does not include a mutual fund constituted by two or more persons carrying on a trade or business in partnership.
- (4) “This group of sections” means this section and sections 40B to 42A.
- (5) References to participants in arrangements (or a fund) are to persons taking part in the arrangements (or the arrangements constituting the fund), whether by becoming the owner of, or of any part of, the property that is the subject of the arrangements or otherwise (and references to participation in arrangements or a fund, however expressed, are to be read accordingly).
- (6) In this section—
 - “body corporate” does not include a limited liability partnership;
 - “co-ownership” is not restricted to the meaning of that term in the law of any part of the United Kingdom.

Status: This is the original version (as it was originally enacted).

40B Meaning of “mutual fund” etc

- (1) “Mutual fund” means arrangements with respect to property of any description, including money, that meet conditions A to C, subject to—
 - (a) sections 40C and 40D, and
 - (b) the exceptions made by or under sections 40E to 40G.
- (2) Condition A is that the purpose or effect of the arrangements is to enable the participants—
 - (a) to participate in the acquisition, holding, management or disposal of the property, or
 - (b) to receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (3) Condition B is that the participants do not have day-to-day control of the management of the property.
- (4) For the purpose of condition B a participant does not have day-to-day control of the management of property by virtue of having a right to be consulted or to give directions.
- (5) Condition C is that, under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis calculated entirely, or almost entirely, by reference to—
 - (a) the net asset value of the property that is the subject of the arrangements, or
 - (b) an index of any description.
- (6) The Treasury may by regulations amend condition C.

40C Umbrella arrangements

- (1) In the case of umbrella arrangements—
 - (a) each part of the umbrella arrangements is to be treated as separate arrangements (subject to section 40D), and
 - (b) the umbrella arrangements are to be disregarded.
- (2) “Umbrella arrangements” means arrangements which provide for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them.
- (3) References to a part of umbrella arrangements are to the arrangements relating to a separate pool.

40D Arrangements comprising more than one class of interest

- (1) Where there is more than one class of interest in arrangements (the “main arrangements”)—
 - (a) the arrangements relating to each class of interest are to be treated as separate arrangements, and

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- (b) the main arrangements are to be disregarded.
- (2) In relation to umbrella arrangements, “class of interest” does not include a part of the umbrella arrangements (but there may be more than one class of interest in a part of umbrella arrangements).

40E Meaning of “mutual fund”: exceptions

- (1) Arrangements are not a mutual fund if—
- (a) under the terms of the arrangements, a reasonable investor participating in the arrangements would expect to be able to realise all or part of an investment in the arrangements on a basis mentioned in condition C in section 40B only in the event of the winding up, dissolution or termination of the arrangements, and
 - (b) condition X or Y is met.
- (2) Condition X is that the arrangements are not designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.
- (3) Condition Y is that—
- (a) the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements, and
 - (b) condition Y1, Y2 or Y3 is met.
- (4) Condition Y1 is that none of the assets that are the subject of the arrangements are relevant income-producing assets.
- (5) Condition Y2 is that, under the terms of the arrangements, the participants in the arrangements are not entitled to the income from the assets that are the subject of the arrangements or any benefit arising from such income.
- (6) Condition Y3 is that—
- (a) under the terms of the arrangements, after deductions for reasonable expenses, any income produced by the assets that are the subject of the arrangements is required to be paid or credited to the participants, and
 - (b) a participant who is an individual resident in the United Kingdom would be charged to income tax on the amounts paid or credited.
- (7) Condition Y is not met if the arrangements are designed to produce a return for participants that equates, in substance, to the return on an investment of money at interest.
- (8) For the purposes of this section, the fact that arrangements provide for a vote or other action that may lead to the winding up, dissolution or termination of the arrangements does not, by itself, mean that the arrangements are designed to wind up, dissolve or terminate on a date stated in or determinable under the arrangements.

40F Meaning of “relevant income-producing assets”

- (1) “Relevant income-producing assets” means assets that produce income on which, if they were held directly by an individual resident in the United

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Kingdom, the individual would be charged to income tax (subject to the following provisions of this section).

- (2) An asset is not a relevant income-producing asset if the asset is hedged, provided that no income is expected to arise from—
 - (a) the asset (taking account of the hedging), or
 - (b) any product of the hedging arrangements.
- (3) Cash awaiting investment is not a relevant income-producing asset, provided that the cash, and any income that it produces while awaiting investment, is invested as soon as reasonably practicable in assets that are not relevant income-producing assets.

40G Meaning of “mutual fund”: powers to vary exceptions

- (1) The Treasury may by regulations amend or repeal any provision of section 40E or 40F.
- (2) The Treasury may by regulations provide that arrangements are not a mutual fund—
 - (a) in specified circumstances, or
 - (b) if they are of a specified description.
- (3) Regulations under this section may include provision having effect in relation to the tax year and accounting periods current on the day on which the regulations are made.”

- 3 (1) Section 41 (tax treatment of participants in offshore funds) is amended as follows.
 - (2) In subsection (2), omit the definition of “offshore fund” (and the “and” before it).
 - (3) Omit subsections (3) to (9).
- 4 (1) Section 42 (regulations under section 41: supplementary) is amended as follows.
 - (2) In subsection (2), for paragraphs (a) and (b) substitute—
 - “(a) an offshore fund comprising a part of umbrella arrangements, and
 - (b) an offshore fund comprising arrangements relating to a class of interest in other arrangements (see section 40D).”
 - (3) In subsection (3), for the words from “may” to the end substitute “, in particular—
 - (a) repeal Chapter 5 of Part 17 of ICTA (offshore funds), and
 - (b) make provision consequential on the repeal of provisions of that Chapter.”
 - (4) In subsection (4)(e), insert at the end “and savings”.
 - (5) For subsection (5) substitute—
 - “(5) Regulations under section 41 may, in particular, provide for provisions to have effect in relation to the tax year, or accounting periods, current on the day on which the regulations are made.”
 - (6) In subsection (6), for “and “offshore fund” have” substitute “has”.
- 5 After that section insert—

“42A Regulations: procedure

- (1) Regulations under this group of sections are to be made by statutory instrument.
- (2) The following regulations may not be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, the House of Commons—
 - (a) regulations under section 40B(6),
 - (b) regulations under section 40G(1), and
 - (c) the first regulations under section 41(1).
- (3) A statutory instrument containing any other regulations under this group of sections is subject to annulment in pursuance of a resolution of the House of Commons, unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

Restriction on regulation-making power under section 41 of FA 2008

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- (1) Regulations under section 41 of FA 2008 may not make provision about the treatment of a person in respect of any rights in an affected offshore fund that are acquired by the person—
 - (a) before 1 December 2009, or
 - (b) in accordance with sub-paragraph (2),(but see sub-paragraph (4)).
 - (2) Rights are acquired in accordance with this sub-paragraph if—
 - (a) the rights are acquired by the participant in accordance with a legally enforceable agreement in writing that was entered into by the participant before 30 April 2009,
 - (b) if the agreement was conditional, the conditions are satisfied before that date, and
 - (c) the agreement is not varied on or after that date.
 - (3) Rights of a person in a fund are rights in an affected offshore fund if—
 - (a) the fund is an offshore fund within the meaning of section 40A of FA 2008, but
 - (b) on the date on which the person acquired them, the fund was not an offshore fund within the meaning of Chapter 5 of Part 17 of ICTA.
 - (4) Sub-paragraph (1) does not prevent regulations under section 41 of FA 2008 making—
 - (a) provision for a person to elect to be treated in accordance with the regulations in respect of rights referred to in that sub-paragraph, or
 - (b) provision that does not increase the person’s liability to tax in respect of such rights.