



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

### CHAPTER V

#### OFFSHORE FUNDS

##### *Material interests in non-qualifying offshore funds*

#### **757 Disposal of material interests in non-qualifying offshore funds**

- (1) This Chapter applies to a disposal by any person of an asset if—
- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or
  - (b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund;

and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section 78 of the 1979 Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

- (2) Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the 1979 Act.
- (3) Notwithstanding anything in paragraph (b) of subsection (1) of section 49 of the 1979 Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an

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asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—

- (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
  - (b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.
- (4) Subject to subsection (3) above, section 49 of the 1979 Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.
- (5) Notwithstanding anything in section 85 of the 1979 Act (exchange of securities for those in another company) in any case where—
- (a) the company which is company B for the purposes of subsection (1) of that section is or was at a material time a non-qualifying offshore fund and the company which is company A for those purposes is not such a fund, or
  - (b) under section 86 of that Act (reconstruction or amalgamation involving issue of securities) persons are to be treated, in consequence of an arrangement, as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund;
- then, subsection (3) of section 85 of that Act (which applies provisions of that Act treating transactions as not being disposals and equating original shares with a new holding in certain cases) shall not apply for the purposes of this Chapter.
- (6) In any case where, apart from subsection (5) above, section 85(3) of the 1979 Act would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying offshore fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.
- (7) For the purposes of this section—
- (a) a material time, in relation to the disposal of an asset, is the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and
  - (b) “relevant consideration” means consideration which, assuming the application to the disposal of Chapter II of Part II of the 1979 Act, would fall to be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

## **758 Offshore funds operating equalisation arrangements**

- (1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

- (a) a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and
  - (b) the fund makes a distribution for a period which begins before the date of his acquisition of that interest;
- the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (“the equalisation account”) and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.
- (2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—
- (a) his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or
  - (b) his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.
- (3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—
- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and
  - (b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and
  - (c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.
- (4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—
- (a) it takes place during such a period as is mentioned in subsection (1)(a) above; and
  - (b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.
- (5) An event which, apart from section 78 of the 1979 Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.
- (6) The reference in subsection (5) above to section 78 of the 1979 Act includes a reference to that section as applied by section 85 of that Act (exchange of securities) but not as applied by section 82 of that Act (conversion of securities).

## **759 Material interests in offshore funds**

- (1) In this Chapter references to a material interest in an offshore fund are references to such an interest in any of the following, namely—
- (a) a company which is resident outside the United Kingdom;
  - (b) a unit trust scheme the trustees of which are not resident in the United Kingdom; and
  - (c) any arrangements which do not fall within paragraph (a) or (b) above, which take 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

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restricting that expression to its meaning in the law of any part of the United Kingdom);

and any reference in this Chapter to an offshore fund is a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

- (2) Subject to the following provisions of this section, a person's interest in a company, unit trust scheme or arrangements is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).
- (3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.
- (4) For the purposes of subsections (2) and (3) above—
  - (a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and
  - (b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.
- (5) An interest in a company, scheme or arrangements is not a material interest if—
  - (a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or
  - (b) it is a right arising under a policy of insurance.
- (6) Shares in a company falling within subsection (1)(a) above (an ("overseas company")) do not constitute a material interest if—
  - (a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and
  - (b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and
  - (c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and
  - (d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—
    - (i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or

- (ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or
  - (iii) both such an arrangement and such provisions;and in this paragraph “participators” means the persons holding shares falling within paragraph (c) above.
- (7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control, within the meaning of that section, of the same person or persons.
- (8) An interest in a company falling within subsection (1)(a) above is not a material interest at any time when the following conditions are satisfied, namely—
  - (a) that the holder of the interest has the right to have the company wound up; and
  - (b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.
- (9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the 1979 Act except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 150(4) of that Act (meaning of “market value” in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

## **760 Non-qualifying offshore funds**

- (1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.
- (2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.
- (3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—
  - (a) more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; or
  - (b) subject to subsections (4) and (5) below, more than 10 per cent. by value of the assets of the fund consists of interests in a single company; or
  - (c) the assets of the fund include more than 10 per cent. of the issued share capital of any company or of any class of that share capital; or
  - (d) subject to subsection (6) below, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits, within the meaning of subsection (7) below.
- (4) For the purposes of subsection (3)(b) above, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the

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assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or money's worth; but for this purpose there shall be disregarded any occasion—

- (a) on which the interest acquired constituted the “new holding” for the purposes of section 78 of the 1979 Act (equation of original shares and new holding), including that section as applied by any later provision of Chapter II of Part IV of that Act (reorganisation of share capital etc.); and
  - (b) on which no consideration fell to be given for the interest acquired, other than the interest which constituted the “original shares” for the purposes of that section.
- (5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of subsection (3)(b) above if—
- (a) the company carries on (in the United Kingdom or elsewhere) a banking business providing current or deposit account facilities in any currency for members of the public and bodies corporate; and
  - (b) the interest consists of a current or deposit account provided in the normal course of the company's banking business.
- (6) There shall be disregarded for the purposes of subsection (3)(d) above any interests in an offshore fund—
- (a) which are held solely by persons employed or engaged in or about the management of the assets of the fund; and
  - (b) which carry no right or expectation to participate, directly or indirectly, in any of the profits of the fund; and
  - (c) which, on a winding up or on redemption, carry no right to receive anything other than the return of the price paid for the interests.
- (7) If in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interest do not, for the purposes of subsection (3) (d) above, all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would, with respect to that period, pursue a full distribution policy, within the meaning of Part I of Schedule 27.
- (8) For the purposes of this Chapter, an account period of an offshore fund shall begin—
- (a) whenever the fund begins to carry on its activities; and
  - (b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.
- (9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—
- (a) the expiration of 12 months from the beginning of the period;
  - (b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and
  - (c) the fund ceasing to carry on its activities.
- (10) For the purposes of this Chapter—
- (a) an account period of an offshore fund which is a company falling within section 759(1)(a) shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and

- (b) an account period of an offshore fund which is a unit trust scheme falling within section 759(1)(b) shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.
- (11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.