

## SCHEDULES

### SCHEDULE 28

#### COMPUTATION OF OFFSHORE INCOME GAINS

##### PART I

##### DISPOSALS OF INTERESTS IN NON-QUALIFYING FUNDS

###### *Interpretation*

- 1 In this Part of this Schedule “material disposal” means a disposal to which this Chapter applies, otherwise than by virtue of section 758.

###### *Calculation of unindexed gain*

- 2 (1) Where there is a material disposal, there shall first be determined for the purposes of this Part of this Schedule the amount (if any) which, in accordance with the provisions of this paragraph, is the unindexed gain accruing to the person making the disposal.
- (2) Subject to section 757(3) to (6) and paragraph 3 below, the unindexed gain accruing on a material disposal is the amount which would be the gain on that disposal for the purposes of the 1979 Act if it were computed—
- (a) without regard to any charge to income tax or corporation tax by virtue of section 761; and
  - (b) without regard to any indexation allowance on the disposal under Chapter III of Part III of the Finance Act 1982.
- 3 (1) If the amount of any chargeable gain or allowable loss which (apart from section 763) would accrue on the material disposal would fall to be determined in a way which, in whole or in part, would take account of the indexation allowance on an earlier disposal to which paragraph 2 of Schedule 13 to the Finance Act 1982 (disposals on a no gain/no loss basis) applies, the unindexed gain on the material disposal shall be computed as if—
- (a) no indexation allowance had been available on any such earlier disposal; and
  - (b) subject to that, neither a gain nor a loss had accrued to the person making such an earlier disposal.
- (2) If the material disposal forms part of a transfer to which section 123 of the 1979 Act (roll-over relief on transfer of business) applies, the unindexed gain accruing on the disposal shall be computed without regard to any deduction which falls to be made under that section in computing a chargeable gain.
- (3) If the material disposal is made otherwise than under a bargain at arm’s length and a claim for relief is made in respect of that disposal under section 79 of the Finance Act 1980 (relief for gifts), that section shall not affect the computation of the unindexed gain accruing on the disposal.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Where, in the case of an insurance company carrying on life assurance business, a profit arising from general annuity business and attributable to a material disposal falls (or would but for the reference to offshore income gains in section 437(2) fall) to be taken into account in the computation under section 436, the unindexed gain, if any, accruing to the company on the disposal shall be computed as if section 31(1) of the 1979 Act (exclusion of certain sums in computing chargeable gain) did not apply.
- (5) Notwithstanding section 29 of the 1979 Act (losses determined in like manner as gains) if, apart from this sub-paragraph, the effect of any computation under the preceding provisions of this Part of this Schedule would be to produce a loss, the unindexed gain on the material disposal shall be treated as nil; and accordingly for the purposes of this Part of this Schedule no loss shall be treated as accruing on a material disposal.
- (6) Section 431 has effect in relation to sub-paragraph (4) above as if it were included in Chapter I of Part XII.

*Gains since 1st January 1984*

- 4 (1) This paragraph applies where—
  - (a) the interest in the offshore fund which is disposed of by the person making a material disposal was acquired by him before 1st January 1984; or
  - (b) he is treated by virtue of any provision of sub-paragraphs (3) and (4) below as having acquired the interest before that date.
- (2) Where this paragraph applies, there shall be determined for the purposes of this Part of this Schedule the amount which would have been the gain on the material disposal—
  - (a) on the assumption that, on 1st January 1984, the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time; and
  - (b) subject to that, on the basis that the gain is computed in like manner as, under paragraphs 2 and 3 above, the unindexed gain on the material disposal is determined;

and that amount is in paragraph 5 below referred to as the “post-1983 gain” on the material disposal.
- (3) Where the person making the material disposal acquired the interest disposed of—
  - (a) on or after 1st January 1984, and
  - (b) in such circumstances that, by virtue of any enactment other than section 86(5) of or Schedule 13 to the Finance Act 1982 (indexation provisions), he and the person from whom he acquired it (“the previous owner”) fell to be treated for the purposes of the 1979 Act as if his acquisition were for a consideration of such an amount as would secure that, on the disposal under which he acquired it, neither a gain nor a loss accrued to the previous owner,

the previous owner’s acquisition of the interest shall be treated as his acquisition of it.
- (4) If the previous owner acquired the interest disposed of on or after 1st January 1984 and in circumstances similar to those referred to in sub-paragraph (3) above, his predecessor’s acquisition of the interest shall be treated for the purposes of this paragraph as the previous owner’s acquisition, and so on back through previous

acquisitions in similar circumstances until the first such acquisition before 1st January 1984 or, as the case may be, until an acquisition on a material disposal on or after that date.

*The offshore income gain*

- 5 (1) Subject to sub-paragraph (2) below, a material disposal gives rise to an offshore income gain of an amount equal to the unindexed gain on that disposal.
- (2) In any case where—
- (a) paragraph 4 above applies, and
  - (b) the post-1983 gain on the material disposal is less than the unindexed gain on the disposal,
- the offshore income gain to which the disposal gives rise is an amount equal to the post-1983 gain.