

Status: Point in time view as at 01/12/2009.

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SCHEDULES

SCHEDULE 26 **U.K.**

Section 145

OFFSHORE FUNDS

Computation of UK equivalent profits: creditor relationships

- 1 ^{F1}(1)
- (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 [F2Part 5 of the Corporation Tax Act 2009]; and
 - “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

Textual Amendments

- F1** Sch. 26 para. 1(1) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), [Sch. 2](#)
- F2** Words in Sch. 26 para. 1(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 581\(2\)](#) (with [Sch. 2 Pts. 1, 2](#))

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Computation of UK equivalent profits: derivative contracts

- 2 ^{F3}(1)
- (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 [^{F4}Part 7 of the Corporation Tax Act 2009];
- “United Kingdom equivalent profits” has the meaning given in paragraph 5 of Schedule 27 to the Taxes Act 1988.

Textual Amendments

- F3** Sch. 26 para. 2(1) repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), [Sch. 2](#)
- F4** Words in Sch. 26 para. 2(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 581\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

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

General definition of offshore fund

- 756A) 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.

Treatment of umbrella funds

Treatment of umbrella funds

- 756B(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.

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Treatment of funds comprising more than one class of interest

Treatment of funds comprising more than one class of interest

756(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.
- (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.”.

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

F54

Textual Amendments

F5 Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F55

Textual Amendments

F5 Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F56

Textual Amendments

- F5** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F57

Textual Amendments

- F5** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F58

Textual Amendments

- F5** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F59

Textual Amendments

- F5** Sch. 26 paras. 4-9 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

- 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;”.

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

- 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 ”;

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(b) in paragraph (b), for “that section” substitute “ section 759 of that Act ”.

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

F⁶12

Textual Amendments

F6 Sch. 26 para. 12 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

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

F⁷13

Textual Amendments

F7 Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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

F⁷14

Textual Amendments

F7 Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

Exchange of interests of different classes

F⁷15

Textual Amendments

F7 Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

Correction of cross-reference

F⁷16

Textual Amendments

F7 Sch. 26 paras. 13-16 repealed (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), reg. 1(1), **Sch. 2**

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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.

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