

SCHEDULE 1

Regulation 1(3) and 13(1)

Transitional Provisions and Savings

1. In this Schedule—

“distributing fund” means a fund which, immediately before 1st December 2009, was a distributing fund for the purposes of Chapter 5 of Part 17 of ICTA [^{F1}or a fund treated as a distributing fund in accordance with paragraph 3(3A)];

“existing fund” means a fund to which, immediately before 1st December 2009, section 756A of ICTA ^{M1} applied;

“non-qualifying fund” means a fund which, immediately before 1st December 2009, was a non-qualifying fund for the purposes of Chapter 5 of Part 17 of ICTA; the “overlap period” means the period of account of an existing fund which has begun, but not ended, on the day these Regulations come into force; the “succeeding period” means the period of account of the fund immediately following the overlap period.

F1 Words in Sch. 1 para. 1 inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Offshore Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/3139\)](#), regs. 1(1), 5(2)

Marginal Citations

M1 Section 756A was inserted by paragraph 3 of Schedule 26 to the [Finance Act 2004 \(c. 12\)](#) and amended by section 57(2) of the [Finance Act 2007 \(c. 11\)](#). Section 756A is repealed by these Regulations (see [regulation 13\(2\)](#) and Schedule 2) subject to the saving contained in paragraph 3(4) of this Schedule (see [regulation 13\(3\)](#)).

2.—(1) This paragraph applies in the case of an existing fund which, on 1st December 2009, becomes a non-reporting fund.

(2) A participant begins to have an interest in the non-reporting fund at the beginning of the accounting period of the non-reporting fund current on 1st December 2009.

(3) An offshore income gain arising to a person on the disposal of an asset must be computed in accordance with Part 2, but is to have regard to the entirety of the period of the person's ownership of the asset.

3.—(1) This paragraph applies in the case of an existing fund [^{F2}and umbrella arrangements but is subject to paragraph (3B)].

[^{F3}(2) The fund or any person within paragraph 18(1) of Schedule 27 to ICTA may apply in writing to HMRC for the fund to be treated as a distributing fund in respect of the overlap period or any earlier period of account.

(3) If the fund or any person within paragraph 18(1) of Schedule 27 to ICTA has made a successful application under sub-paragraph (2), the fund or that person may apply in writing to HMRC for the fund to be continued to be treated as a distributing fund in respect of the succeeding period.

(3ZA) But no application may be made under paragraph (3) if HMRC have accepted an application for Part 3 to apply to the fund.]

[^{F4}(3A) Where an existing fund is part of umbrella arrangements (within the meaning of section 40C of FA 2008) or is part of arrangements comprising more than one class of interest (within the meaning of section 40D of FA 2008), separate arrangements under the umbrella arrangements, and each class of interest under the main arrangements, established on or after 1st December 2009, may apply in writing to HMRC to be treated as a distributing fund in respect of a period of account if—

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- (a) that period has the same accounting reference date as the overlap period or succeeding period of the existing fund, and
- (b) the existing fund is treated as a distributing fund in respect of the contemporaneous overlap period or succeeding period.

(3B) This paragraph does not apply in respect of any period of account which ends after 31st May [^{F5}2012].]

(4) The repeal by these Regulations of the enactments specified in Schedule 2 does not affect the continued operation of those provisions for the purposes of this paragraph.

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| F2 | Words in Sch. 1 para. 3(1) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/3139) , regs. 1(1), 5(3)(a) |
| F3 | Sch. 1 para. 3(2)-(3ZA) substituted for Sch. 1 para. 3(2)(3) (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2011 (S.I. 2011/1211) , regs. 1(1), 42(2) |
| F4 | Sch. 1 para. 3(3A)(3B) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/3139) , regs. 1(1), 5(3)(b) |
| F5 | Words in Sch. 1 para. 3(3B) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2011 (S.I. 2011/1211) , regs. 1(1), 42(3) |

[^{F6}**3A.** In the case of a reporting fund which has an interest in a distributing fund, income from the distributing fund is treated as income from a reporting fund but no adjustment shall be made to that income under regulation 68 (income from other reporting funds).

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| F6 | Sch. 1 paras. 3A-3C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/3139) , regs. 1(1), 5(4) |
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3B.—(1) This paragraph applies in the case of a distributing fund which has an interest in a reporting fund.

(2) The reporting fund is treated as a qualifying fund for the purposes of Part 2 of Schedule 27 of ICTA (modifications of conditions for certification in certain cases).

(3) The amount of the adjustment required by paragraph 8(1) of Schedule 27 in respect of the excess income of the qualifying fund for any account period is the amount of the excess of the income reported by the reporting fund in respect of the distributing fund's interest in the reporting fund over the amount distributed by the reporting fund to the distributing fund.

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| F6 | Sch. 1 paras. 3A-3C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/3139) , regs. 1(1), 5(4) |
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3C. In the case of an exchange of an interest in a distributing fund for an interest in a reporting fund, regulation 37 (exchange of interests of different classes) shall not apply.]

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| F6 | Sch. 1 paras. 3A-3C inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Offshore Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/3139) , regs. 1(1), 5(4) |
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4.—(1) This paragraph applies in the case of an existing fund which does not become a reporting fund immediately following its last account period as a distributing fund.

(2) A participant in the fund may make an election to be treated for the purposes of TCGA 1992—

- (a) as disposing of an interest in the distributing fund at the end of that fund's last account period, and
 - (b) as acquiring an interest in the non-reporting fund immediately following the disposal treated as made by paragraph (a).
- (3) The disposal referred to in paragraph (a) of sub-paragraph (2) is treated as made for a consideration equal to the net asset value of the participant's interest in the fund at the end of the final accounting period.
- (4) The acquisition referred to in paragraph (b) of sub-paragraph (2) is treated as made for the same amount as the disposal referred to in paragraph (a) of that sub-paragraph.
- (5) If the participant is chargeable to income tax, the election mentioned in sub-paragraph (2) must be made by being included in a return made for the tax year which includes the disposal date.
- (6) If the participant is chargeable to corporation tax, the election mentioned in sub-paragraph (2) must be made by being included in the participant's company tax return for the accounting period which includes the disposal date.
- (7) In this paragraph—
- “company tax return” has the same meaning as in Schedule 18 to the Finance Act 1998 ^{M2};
 - “disposal date” means the final day of the distributing fund's final accounting period.

Marginal Citations
M2 1998 c. 36.

- 5.—(1) This paragraph applies in the case of an existing fund which—
- (a) immediately before 1st December 2009 was a non-qualifying fund, and
 - (b) on 1st December 2009 becomes a reporting fund.
- (2) Regulation 48 applies as if, for references to the non-reporting fund, there were substituted references to the existing fund.
- (3) Chapter 5 of Part 17 of ICTA applies to determine the offshore income gain arising by virtue of the application of regulation 48.
- 6.—(1) This paragraph applies in the case of an existing fund which—
- (a) makes a successful application under paragraph 3 to continue to be treated as a distributing fund after 1st December 2009, and
 - (b) becomes a reporting fund immediately following the end of the overlap period or the succeeding period.
- (2) For the purposes of regulations 17 and 99 the fund is treated as a reporting fund for the entirety of a continuous period—
- (a) beginning with the day the fund becomes a distributing fund, and
 - (b) ending on the last day of the overlap period or the succeeding period (as the case may be).
- (3) If for any part of the period specified in sub-paragraph (2) the fund is not a distributing fund, the period is not continuous for the purposes of that sub-paragraph.
- 7.—(1) This paragraph applies in the case of an arrangement (“Fund X”) which, immediately before 1st December 2009, did not fall to be classified as an offshore fund, but which, on 1st December 2009, falls to be classified as an offshore fund.

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(2) Fund X may make an application, in accordance with Part 3, in relation to the period of account that is current on 1st December 2009.

(3) The application must be received by HMRC on or before 31st May 2010.

Changes to legislation:

There are currently no known outstanding effects for the The Offshore Funds (Tax) Regulations 2009, SCHEDULE 1.