



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XVII

#### TAX AVOIDANCE

#### CHAPTER V

#### OFFSHORE FUNDS

#### *Charge to tax of offshore income gains*

#### **761 Charge to income tax or corporation tax of offshore income gain.**

<sup>M1</sup>(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 [<sup>F1</sup>or Schedule] 28 to an offshore income gain, then, subject to the provisions of this section, the amount [<sup>F2</sup>of that gain—

- (a) shall be treated for all the purposes of the Tax Acts as income arising at the time of the disposal to the person making the disposal, and
- (b) shall be charged—
  - (i) to income tax for the year of assessment in which the disposal is made, or
  - (ii) to corporation tax as a profit or gain under Case VI of Schedule D for the accounting period in which the disposal is made.]

[<sup>F3</sup>(1A) The income tax charged by virtue of subsection (1)(b)(i) above shall be charged on the full amount of the income treated as arising in the year of assessment.]

- (2) Subject to subsection (3) below, [<sup>F4</sup>sections 2(1), 10 and 10B][<sup>F5</sup>of the 1992 Act] (persons chargeable to tax in respect of chargeable gains) and [<sup>F6</sup>section 11(2A)(c)] shall have effect in relation to income tax or corporation tax in respect of offshore income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains.

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- (3) In the application of [F7sections 10 and 10B][F5of the 1992 Act] in accordance with subsection (2) above, paragraphs (a) and (b) of [F8subsection (1) of section 10] (which define the assets on the disposal of which chargeable gains are taxable) shall have effect with the omission of the words “situated in the United Kingdom and”[F9 and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom and”].
- <sup>F10</sup>(4) . . . . .
- [F11(5) Subsections (1)(b) and (1A) are subject to section 762ZB (income treated as arising: non-UK domiciled individuals to whom remittance basis applies).]
- (6) A [F12charitable company] shall be exempt from [F13corporation tax] in respect of an offshore income gain if the gain is applicable and applied for charitable purposes  
<sup>F14</sup> . . . . .
- [F15(6A) See section 535 of ITA 2007 for an exemption for income tax purposes for offshore income gains accruing to a charitable trust.
- (6B) If property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with Schedule 28) accruing being treated as an offshore income gain not accruing to a charity.
- (6C) In this section “charity” and “charitable company” have the same meaning as in section 506 and “market value” has the same meaning as in the 1992 Act.]
- (7) In any case where—
- (a) a disposal to which this Chapter applies is a disposal of settled property, within the meaning of the [F51992] Act, and
- [F16(b) at the time of the disposal referred to in paragraph (a) above the trustees of the settlement are neither resident nor ordinarily resident in the United Kingdom for the purposes of the 1992 Act,]
- subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.
- [F17(8) Nothing in subsection (7) affects the application of this section in relation to an offshore income gain treated as arising by virtue of section 762(3).]

#### Textual Amendments

- F1** 1990 s.89 and Sch.14 para.11 (*correction of errors*)—*deemed always to have had effect. Previously “and Schedule.”*
- F2** Words in s. 761(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 308(2)* (with Sch. 2)
- F3** S. 761(1A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by *Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 308(3)* (with Sch. 2)
- F4** Words in s. 761(2) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(a)(i)*
- F5** Words in s. 761(2)(3)(5)(6)(7)(a)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by *Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 14(47)* (with ss. 60, 101(1), 171, 201(3))

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- F6** Words in s. 761(2) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(1)(a)(ii)
- F7** Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(i)
- F8** Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(ii)
- F9** Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(iii)
- F10** S. 761(4) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)
- F11** S. 761(5) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 92(2)
- F12** Words in s. 761(6) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 179(2)(a) (with Sch. 2)
- F13** Words in s. 761(6) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 179(2)(b) (with Sch. 2)
- F14** Words in s. 761(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 179(2)(c), Sch. 3 Pt. 1 (with Sch. 2)
- F15** S. 761(6A)-(6C) inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 179(3) (with Sch. 2)
- F16** S. 761(7)(b) substituted (with effect in accordance with Sch. 12 para. 47(2) of the amending Act) by Finance Act 2006 (c. 25), Sch. 12 para. 47(1)
- F17** S. 761(8) inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 92(3)

#### Marginal Citations

- M1** Source—1984 s.96; 1987 Sch.15 16(1)

## 762 Offshore income gains accruing to persons resident or domiciled abroad.

<sup>M2</sup>(1) Section [<sup>F18</sup>13 of the 1992 Act] (chargeable gains accruing to certain non-resident companies) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to a chargeable gain there shall be substituted a reference to an offshore income gain;

[<sup>F19</sup>(aa) any reference to anything accruing is to be read as a reference to it arising (and similar references are to be read accordingly);]

(b) for the reference in subsection (7) to capital gains tax there shall be substituted a reference to income tax or corporation tax; and

(c) paragraphs (b) and (c) of subsection (5) and subsection (8) shall be omitted.

[<sup>F20</sup>(2) If—

(a) offshore income gains arise to the trustees of a settlement in a tax year, and

(b) section 87 of the 1992 Act (gains of non-resident settlements) applies to the settlement for that year,

the OIG amount for the settlement for that year is the amount of the offshore income gains.

(3) Sections 87, 87A, 87C to 90 and 96 to 98 of, and Schedule 4C to, the 1992 Act apply in relation to OIG amounts as if—

(a) references to section 2(2) amounts (except those in paragraph 7B(2)(b) and (4) of Schedule 4C) were to OIG amounts,

(b) references to chargeable gains (except the one in paragraph 1(5) of Schedule 4C) were to offshore income gains,

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- (c) references to anything accruing were to it arising (and similar references, except the one in paragraph 1(5) of Schedule 4C, were read accordingly), and
  - (d) sections 87(4), 88(2) to (5), 89(4) and 97(6) and paragraphs 1(3A), 3 to 7, 8AA, 12 and 13 of Schedule 4C were omitted.
- (4) Section 87A of the 1992 Act applies for a tax year by virtue of subsection (3) before it applies for that year otherwise than by virtue of that subsection.
- (5) If, by virtue of subsection (1) or (3), offshore income gains are treated as arising to a person, for the purposes of section 761 as it applies in relation to the offshore income gains treat the person as having made the disposal in question.]
- (6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or [F21(3)], as having [F22arisen] to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of F23. . . any provision of [F24Chapter 5 of Part 5 of ITTOIA 2005].

#### Textual Amendments

- F18** Words in s. 762(1)-(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(48)** (with ss. 60, 101(1), 171, 201(3))
- F19** S. 762(1)(aa) inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(2)**
- F20** S. 762(2)-(5) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(3)**
- F21** Word in s. 762(6) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(a)**
- F22** Word in s. 762(6) substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(b)**
- F23** Words in s. 762(6) omitted (with effect in accordance with Sch. 7 para. 98 of the repealing Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 93(4)(c)**
- F24** Words in s. 762(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 309(b)** (with Sch. 2)

#### Marginal Citations

- M2** Source—1984 s.97

#### [F25] 762Z Offshore income gains: application of transfer of assets abroad provisions

- (1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) applies in relation to an offshore income gain arising to a person resident or domiciled outside the United Kingdom as if the offshore income gain were income becoming payable to the person.
- (2) Income treated as arising under that Chapter by virtue of subsection (1) is regarded as “foreign” for the purposes of section 726, 730 or 735 of that Act.
- (3) Subsection (1) does not apply in relation to an offshore income gain if (and to the extent that) it is treated, by virtue of section 762(1), as arising to a person resident or ordinarily resident in the United Kingdom.
- (4) The following provisions apply if section 762(2) applies in relation to an offshore income gain (“the relevant offshore income gain”).

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- (5) If—
- (a) by virtue of section 762(3) an offshore income gain is treated as arising in a tax year to a person resident or ordinarily resident in the United Kingdom, and
  - (b) it is so treated by reason of the relevant offshore income gain (or part of it), for that and subsequent tax years subsection (1) does not apply in relation to the relevant offshore income gain (or that part).
- (6) If, by virtue of subsection (1) as it applies in relation to the relevant offshore income gain, income is treated under Chapter 2 of Part 13 of ITA 2007 as arising in a tax year, reduce (with effect from the following tax year) the OIG amount in question by the amount of the income.]

#### Textual Amendments

**F25** Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

#### [<sup>F25</sup>762ZB] Income treated as arising under section 761(1): remittance basis

- (1) This section applies to income treated as arising under section 761(1) to an individual in a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and
  - (b) the individual is not domiciled in the United Kingdom in that year.
- (2) Treat the income as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—
- (a) treat any consideration obtained on the disposal of the asset as deriving from the income, and
  - (b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the income.
- (4) In subsection (3)—
- (a) “the asset” means the asset the disposal of which causes the income to be treated as arising, and
  - (b) “the disposal” means the disposal mentioned in paragraph (a).]

#### Textual Amendments

**F25** Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), Sch. 7 para. 94

#### [<sup>F26</sup>762A] Exchange of interests of different classes

- (1) This section applies where—
- (a) classes of interest in an offshore fund (the “main fund”) are treated as separate offshore funds under section 756C; and
  - (b) as the result of—

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- (i) a reorganisation within the meaning of section 126 of the 1992 Act, or  
(ii) a conversion of securities within the meaning of section 132 of that Act,  
a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.
- (2) Where—
- (a) the interest of class A—
- (i) is at the time of the exchange an interest in a non-qualifying offshore fund, or
- (ii) has been an interest in such a fund at any material time, and
- (b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,
- section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.
- (3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.
- (4) In this section—
- “class of interest” has the same meaning as in section 756C(1);
- “material time” has the same meaning as in section 757.]

#### Textual Amendments

**F26** S. 762A inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 26 para. 15(1) (with Sch. 26 para. 17)

### 763 Deduction of offshore income gain in determining capital gain.

- <sup>M3</sup>(1) The provisions of this section apply where a disposal to which this Chapter applies gives rise to an offshore income gain; and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the [F27 1992] Act, then that disposal is in the following provisions of this section referred to as [F27 the 1992 Act disposal].
- (2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of Part I of Schedule 28), subsections (3) and (4) below shall have effect in relation to [F27 the 1992 Act disposal] in substitution for section [F27 37(1)] of that Act (deduction of consideration chargeable to tax on income).
- (3) Subject to the following provisions of this section, in the [F27 computation of the gain] accruing on [F27 the 1992 Act disposal], a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.
- (4) Where [F27 the 1992 Act disposal] is of such a nature that, by virtue of section [F27 42] of that Act (part disposals) an apportionment falls to be made of certain expenditure, no deduction shall be made by virtue of subsection (3) above in determining, for the purposes of the fraction in subsection (2) of that section, the amount or value of the consideration for the disposal.

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- (5) If <sup>F27</sup>the 1992 Act disposal] forms part of a transfer to which section <sup>F27</sup>162] of that Act applies (roll-over relief on transfer of business in exchange wholly or partly for shares) then, for the purposes of subsection (4) of that section (determination of the amount of the deduction from the gain on the old assets) “B” in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) shall be taken to be what it would be if the value of the consideration other than shares so received by the transferor were reduced by a sum equal to the offshore income gain.
- (6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of <sup>F28</sup>section 757(5) or (6)] or 758(5), the <sup>F27</sup>1992] Act shall have effect as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding, within the meaning of section <sup>F27</sup>128] of that Act (consideration given or received for new holding on a reorganisation).
- <sup>F29</sup>(6A) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 762A (exchange of interests of different classes), the 1992 Act shall have effect as if an amount equal to the offshore income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).]
- (7) In any case where—
- (a) a disposal to which this Chapter applies by virtue of subsection (3) of section 758 is made otherwise than to the offshore fund concerned or the persons referred to in subsection (2)(b) of that section; and
  - (b) subsequently, a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with him; and
  - (c) the disposal gives rise (in accordance with Part II of Schedule 28) to an offshore income gain;
- then, for the purposes of the Tax Acts, the amount of the first distribution falling within paragraph (b) above shall be taken to be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the offshore income gain referred to in paragraph (c) above and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any later distribution falling within paragraph (b) above, until the balance is exhausted.
- <sup>F30</sup>(8) For the purposes of subsection (7)(b) above, whether the person who made the disposal is connected with another person is determined in accordance with section 839.]

#### Textual Amendments

- F27** Words in s. 763(1)–(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(49)** (with ss. 60, 101(1), 171, 201(3))
- F28** Words in s. 763(6) substituted (with retrospective effect in accordance with **Sch. 26 para. 16(2)** of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 16(1)** (with **Sch. 26 para. 17**)
- F29** S. 763(6A) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 15(2)** (with **Sch. 26 para. 17**)

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**F30** S. 763(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 181** (with Sch. 2)

**Marginal Citations**

**M3** Source—1984 s.98

**764 Offshore income gains of trustees.**

**F31** .....

**Textual Amendments**

**F31** S. 764 repealed (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 23, 27(1), **Sch. 26 Pt. 3(15)**, Note



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