

Status: Point in time view as at 01/02/1991. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: Income and Corporation Taxes Act 1988, SCHEDULE 28 is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 28

Section 761(1).

COMPUTATION OF OFFSHORE INCOME GAINS ^{M1}

Marginal Citations

M1 Source—[1984 Sch.20.]

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

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- (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 [126 or 147A of the Capital Gains Tax Act 1979 (relief for gifts), the claim ^{F1}] shall not affect the computation of the unindexed gain accruing on the disposal.
- (4) Where, in the case of an insurance company carrying on [life assurance business,—
- (a) 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, or
- (b) a profit arising from overseas life assurance business and attributable to a material disposal falls to be taken into account in the computation under section 441,
- the unindexed gain ^{F2},] 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.

Textual Amendments

- F1** 1989 s.124(2) and (3) and Sch.14 para.6(6) in relation to disposals on or after 14 March 1989 (except where relief given under 1980 s.79 in respect of a disposal before that date). Previously “79 of the Finance Act 1980 (relief for gifts), that section”.
- F2** 1990 s.42 and Sch.7 para.7 for accounting periods beginning on or after 1 January 1990 (see para.10). Previously “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,”.

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

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(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.

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PART II

DISPOSALS INVOLVING AN EQUALISATION ELEMENT

- 6 (1) Subject to paragraph 7 below, a disposal to which this Chapter applies by virtue of section 758(3) gives rise to an offshore income gain of an amount equal to the equalisation element relevant to the asset disposed of.
- (2) Subject to sub-paragraphs (4) to (6) below, the equalisation element relevant to the asset disposed of by a disposal falling within sub-paragraph (1) above is the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the asset which is disposed of were acquired by another person by way of initial purchase.
- (3) In the following provisions of this Part of this Schedule, a disposal falling within sub-paragraph (1) above is referred to as a “disposal involving an equalisation element”.
- (4) Where the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the following amount, that is to say—
- (a) if that acquisition took place on or after 1st January 1984, the amount which, on that acquisition, was credited to the equalisation account of the offshore fund concerned in respect of accrued income or, as the case may be, would have been so credited if that acquisition had been an acquisition by way of initial purchase; and
 - (b) in any other case, the amount which would have been credited to that account in respect of accrued income if that acquisition had been an acquisition by way of initial purchase taking place on 1st January 1984.
- (5) In any case where—
- (a) the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal at or before the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, and
 - (b) that period began before 1st January 1984 and ends after that date,
- the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the amount which would have been credited to the equalisation account of the offshore fund concerned in respect of accrued income if the acquisition referred to in paragraph (a) above had been an acquisition by way of initial purchase taking place on 1st January 1984.
- (6) Where there is a disposal involving an equalisation element, then, to the extent that any amount which was or would be credited to the equalisation account of the offshore fund in respect of accrued income, as mentioned in any of sub-paragraphs (2) to (5) above, represents profits from dealing in commodities, within the meaning of paragraph 4 of Schedule 27, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the equalisation element relevant to the asset disposed of by that disposal.

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- 7 (1) For the purposes of this Part of this Schedule, there shall be determined, in accordance with paragraph 8 below, the Part I gain (if any) on any disposal involving an equalisation element.
- (2) Notwithstanding anything in paragraph 6 above—
- (a) if there is no Part I gain on a disposal involving an equalisation element, that disposal shall not give rise to an offshore income gain; and
 - (b) if, apart from this paragraph, the offshore income gain on a disposal involving an equalisation element would exceed the Part I gain on that disposal, the offshore income gain to which that disposal gives rise shall be reduced to an amount equal to that Part I gain.
- 8 (1) On a disposal involving an equalisation element, the Part I gain is the amount (if any) which, by virtue of Part I of this Schedule (as modified by sub-paragraphs (2) to (5) below), would be the offshore income gain on that disposal if it were a material disposal within the meaning of that Part.
- (2) For the purposes only of the application of Part I of this Schedule to determine the Part I gain (if any) on a disposal involving an equalisation element, subsections (5) and (6) of section 758 shall have effect as if, in subsection (5), the words “by virtue of subsection (3) above” were omitted.
- (3) If a disposal involving an equalisation element is one which, by virtue of any enactment other than section 86(5)(b) of or Schedule 13 to the Finance Act 1982, is treated for the purposes of the 1979 Act as one on which neither a gain nor a loss accrues to the person making the disposal, then, for the purpose only of determining the Part I gain (if any) on the disposal, that enactment shall be deemed not to apply to it (but without prejudice to the application of that enactment to any earlier disposal).
- (4) In any case where a disposal involving an equalisation element is made by a company which has made an election under Schedule 6 to the Finance Act 1983 (indexation: election for pooling) and the asset disposed of consists of or includes securities which, by virtue of paragraph 3(3) of that Schedule, are to be treated for the purposes of the 1979 Act as a single asset or part of a single asset, then, for the purpose only of determining the Part I gain (if any) on the disposal—
- (a) the reference in paragraph 2(2)(b) above to an indexation allowance under Chapter III of Part III of the Finance Act 1982 shall be construed as including a reference to an indexation allowance under Schedule 6 to the Finance Act 1983; and
 - (b) if some of the securities comprised in the asset disposed of were acquired by the company making the disposal before 1st January 1984 and some were not, paragraph 4(2) above shall not apply and paragraph 5 above shall have effect with the omission of sub-paragraph (2) (together with the reference to it in sub-paragraph (1)).
- (5) The reference in sub-paragraph (4)(b) above to securities acquired before 1st January 1984 includes a reference to securities which, by virtue of any provision of paragraph 4 above, are treated as so acquired.

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VALID FROM 22/07/2004

PART 3

SUPPLEMENTARY

*Application of this Schedule in relation to umbrella funds
and funds comprising more than one class of interest*

- 9 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—
- (a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or
 - (b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.
- (2) Regulations under this paragraph may—
- (a) make different provision for different cases, and
 - (b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.

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