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Changes to legislation: Income and Corporation Taxes Act 1988, CHAPTER V is up to date with all changes known to be in force on or before 12 September 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)



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XVII

TAX AVOIDANCE

CHAPTER V

OFFSHORE FUNDS

VALID FROM 22/07/2004

[^{F1}Meaning of offshore fund

Textual Amendments

F1 Ss. 756A-756C and preceding cross-headings inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 3** (with Sch. 26 para. 17)

756A General definition of offshore fund

- (1) 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
 - (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).

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- (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.

VALID FROM 22/07/2004

Treatment of umbrella funds

756B Treatment of umbrella funds

- (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.

Modifications etc. (not altering text)

- C1** Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

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VALID FROM 22/07/2004

Treatment of funds comprising more than one class of interest

756C Treatment of funds comprising more than one class of interest

- (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.]

Modifications etc. (not altering text)

- C2** Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 489 (with Sch. 2 Pts. 1, 2)

Material interests in non-qualifying offshore funds

757 Disposal of material interests in non-qualifying offshore funds

- ^{M1}(1) This Chapter applies to a disposal by any person of an asset if—
- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or
 - (b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund;

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and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section [F²127 of the 1992] Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

- (2) M²Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the [F²1992] Act.
- (3) Notwithstanding anything in paragraph (b) of subsection (1) of section [F²62 of the 1992] Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—
 - (a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but
 - (b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.
- (4) Subject to subsection (3) above, section [F²62 of the 1992] Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.
- (5) Notwithstanding anything in section [F²135] of the [F²1992] Act (exchange of securities for those in another company) in any case where—
 - (a) the company which is company B for the purposes of subsection (1) of that section is or was at a material time a non-qualifying offshore fund and the company which is company A for those purposes is not such a fund, or
 - (b) under section [F²136] of that Act (reconstruction or amalgamation involving issue of securities) persons are to be treated, in consequence of an arrangement, as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund;

then, subsection (3) of section 85 of that Act (which applies provisions of that Act treating transactions as not being disposals and equating original shares with a new holding in certain cases) shall not apply for the purposes of this Chapter.
- (6) In any case where, apart from subsection (5) above, section [F²135(3) of the 1992] Act would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying offshore fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.
- (7) For the purposes of this section—
 - (a) a material time, in relation to the disposal of an asset, is [F³any time on or after] the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and
 - (b) “relevant consideration” means consideration which, assuming the application to the disposal of [F²Chapter III of Part II of the 1992] Act, would fall to be taken into account in determining the amount of the gain or loss

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accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

Textual Amendments

- F2** Words in s. 757(1)-(7) 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(43) (with ss. 60, 101(1), 171, 201(3))
- F3** 1990 s.89 and Sch.14 para.10 (correction of errors)—deemed always to have had effect.

Marginal Citations

- M1** Source—1984 s.92(1), (7)
- M2** Source—1984 s.92(2)-(6), (8)

758 Offshore funds operating equalisation arrangements

^{M3}(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

- (a) a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and
- (b) the fund makes a distribution for a period which begins before the date of his acquisition of that interest;

the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements (“the equalisation account”) and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.

(2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—

- (a) his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or
- (b) his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.

(3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—

- (a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and
- (b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and
- (c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.

(4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—

- (a) it takes place during such a period as is mentioned in subsection (1)(a) above; and

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- (b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.
- (5) An event which, apart from section [F4127 of the 1992] Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.
- (6) The reference in subsection (5) above to section [F4127 of the 1992] Act includes a reference to that section as applied by section [F4135] of that Act (exchange of securities) [F5] and a reference to section [F6127 as] applied by section [F4132] of that Act (conversion of securities).

Textual Amendments

- F4** Words in s. 758(5)(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\(44\)](#) (with ss. 60, 101(1), 171, 201(3))
- F5** 1989 s.81(1) and (2) in respect of conversion of securities occurring on or after 14 March 1989. Previously “but not”.
- F6** Words in s. 758(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by virtue of the [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 14\(44\)](#) (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

- M3** Source—1984 s.93

759 Material interests in offshore funds

^{M4}(1) In this Chapter references to a material interest in an offshore fund are references to such an interest in any [F7 collective investment scheme which is constituted by]—

- (a) a company which is resident outside the United Kingdom;
- (b) a unit trust scheme the trustees of which are not resident in the United Kingdom; [F8 or]
- (c) any arrangements which do not fall within paragraph (a) or (b) above, which take 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);

and any reference in this Chapter to an offshore fund is a reference to any such [F9 collective investment scheme] in which any person has an interest which is a material interest.

[F10(1A) In this section “collective investment scheme” has the same meaning as in the ^{M5}Financial Services Act 1986.]

- (2) Subject to the following provisions of this section, a person’s interest in a company, unit trust scheme or arrangements is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of

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seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).

- (3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.
- (4) For the purposes of subsections (2) and (3) above—
- (a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and
 - (b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.
- (5) An interest in a company, scheme or arrangements is not a material interest if—
- (a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or
 - (b) it is a right arising under a policy of insurance.
- (6) Shares in a company falling within subsection (1)(a) above (an “overseas company”) do not constitute a material interest if—
- (a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and
 - (b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and
 - (c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and
 - (d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—
 - (i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or
 - (ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or
 - (iii) both such an arrangement and such provisions;and in this paragraph “participators” means the persons holding shares falling within paragraph (c) above.

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- (7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control, within the meaning of that section, of the same person or persons.
- (8) An interest in a company falling within subsection (1)(a) above is not a material interest at any time when the following conditions are satisfied, namely—
- (a) that the holder of the interest has the right to have the company wound up; and
 - (b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.
- (9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the [F11 1992] Act except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section [F11 272(5)] of that Act (meaning of “market value” in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

Textual Amendments

- F7** Words in s. 759(1) substituted (with application in accordance with s. 134(8) of the amending Act) by Finance Act 1995 (c. 4), s. 134(2)(a)
- F8** Word in s. 759(1) substituted (with application in accordance with s. 134(8) of the amending Act) by Finance Act 1995 (c. 4), s. 134(2)(b)
- F9** Words in s. 759(1) substituted (with application in accordance with s. 134(8) of the amending Act) by Finance Act 1995 (c. 4), s. 134(2)(c)
- F10** S. 759(1A) inserted (with application in accordance with s. 134(8) of the amending Act) by Finance Act 1995 (c. 4), s. 134(3)
- F11** Words in s. 759(9) 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(45) (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

- M4** Source—1984 s.94
- M5** 1986 c. 60.

760 Non-qualifying offshore funds

- ^{M6}(1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.
- (2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.
- (3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—

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- (a) more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; or
 - (b) subject to subsections (4) and (5) below, more than 10 per cent. by value of the assets of the fund consists of interests in a single company; or
 - (c) the assets of the fund include more than 10 per cent. of the issued share capital of any company or of any class of that share capital; or
 - (d) subject to subsection (6) below, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits, within the meaning of subsection (7) below.
- (4) For the purposes of subsection (3)(b) above, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or money's worth; but for this purpose there shall be disregarded any occasion—
 - (a) on which the interest acquired constituted the “new holding” for the purposes of section [F¹²127 of the 1992] Act (equation of original shares and new holding), including that section as applied by any later provision of Chapter II of Part IV of that Act (reorganisation of share capital etc.); and
 - (b) on which no consideration fell to be given for the interest acquired, other than the interest which constituted the “original shares” for the purposes of that section.
- (5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of subsection (3)(b) above if—
 - (a) the company carries on (in the United Kingdom or elsewhere) a banking business providing current or deposit account facilities in any currency for members of the public and bodies corporate; and
 - (b) the interest consists of a current or deposit account provided in the normal course of the company's banking business.
- (6) There shall be disregarded for the purposes of subsection (3)(d) above any interests in an offshore fund—
 - (a) which are held solely by persons employed or engaged in or about the management of the assets of the fund; and
 - (b) which carry no right or expectation to participate, directly or indirectly, in any of the profits of the fund; and
 - (c) which, on a winding up or on redemption, carry no right to receive anything other than the return of the price paid for the interests.
- (7) If in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interest do not, for the purposes of subsection (3) (d) above, all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would, with respect to that period, pursue a full distribution policy, within the meaning of Part I of Schedule 27.
- (8) For the purposes of this Chapter, an account period of an offshore fund shall begin—
 - (a) whenever the fund begins to carry on its activities; and

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- (b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.
- (9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—
- (a) the expiration of 12 months from the beginning of the period;
 - (b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and
 - (c) the fund ceasing to carry on its activities.
- (10) For the purposes of this Chapter—
- (a) an account period of an offshore fund which is a company falling within section 759(1)(a) shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and
 - (b) an account period of an offshore fund which is a unit trust scheme falling within section 759(1)(b) shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.
- (11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.

Textual Amendments

F12 Words in s. 760(4)(a) 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(46)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M6 Source—1984 s.95

Charge to tax of offshore income gains

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

- ^{M7}(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 [^{F13} or Schedule] 28 to an offshore income gain, then, subject to the provisions of this section, the amount of that gain shall be treated for all the purposes of the Tax Acts as—
- (a) income arising at the time of the disposal to the person making the disposal, and
 - (b) constituting profits or gains chargeable to tax under Case VI of Schedule D for the chargeable period in which the disposal is made.
- (2) Subject to subsection (3) below, sections [^{F14}2(1) and 10 of the 1992 Act] (persons chargeable to tax in respect of chargeable gains) and section 11(2)(b) 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.
- (3) In the application of section [^{F14}10 of the 1992 Act] in accordance with subsection (2) above, paragraphs (a) and (b) of subsection (1) of that section (which define the assets

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on the disposal of which chargeable gains are taxable) shall have effect with the omission of the words “situated in the United Kingdom and”^{F15} and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom”].

^{F16}(4)

(5) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, section [^{F14}12 of the 1992 Act] (which provides for taxation on a remittance basis) shall have effect in relation to income tax chargeable by virtue of subsection (1) above on an offshore income gain as it has effect in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the United Kingdom.

(6) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but 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.

In this subsection “charity” has the same meaning as in section 506 and “market value” has the same meaning as in the [^{F14}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 [^{F14}1992] Act, and
- (b) for the purposes of the [^{F14}1992] Act, the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom,

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

Textual Amendments

F13 1990 s.89 and Sch.14 para.11 (*correction of errors*)—*deemed always to have had effect. Previously “and Schedule.”*

F14 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))

F15 Words in s. 761(3) inserted (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)(b)** (with ss. 60, 101(1), 171, 201(3))

F16 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)

Marginal Citations

M7 Source—1984 s.96; 1987 Sch.15 16(1)

Status: Point in time view as at 02/09/1996. This version of this chapter contains provisions that are not valid for this point in time.

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

- ^{M8}(1) Section [F1713 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;
 - (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.
- (2) Subject to subsections (3) and (4) below, sections [F1787 to 90 and 96 to 98 of the 1992 Act] (gains of non-resident settlements) shall have effect in relation to offshore income gains subject to the following modifications—
- (a) for any reference to chargeable gains, other than the reference in section [F1787(6)], there shall be substituted a reference to offshore income gains;
 - (b) [F17in section 87(2) of the 1992 Act for the words “tax under section 2(2)”] there shall be substituted the words “ income tax by virtue of section 761 of the Taxes Act ”;
 - (c) in section [F1787(7)] the reference to tax shall be construed as a reference to income tax or corporation tax; and
 - (d) sections [F1787(10) and 97(6)] shall be omitted.
- (3) In section [F1787(6) of the 1992 Act], both as it applies apart from subsection (2) above and as applied by subsection (2) above, the reference to chargeable gains shall be construed as including a reference to offshore income gains.
- (4) If, in any year of assessment—
- (a) under subsection (3) of section [F1787 of the 1992 Act], as it applies apart from subsection (2) above, a chargeable gain falls to be attributed to a beneficiary, and
 - (b) under that subsection, as applied by subsection (2) above, an offshore income gain also falls to be attributed to him,
- subsection (4) of that section (gains attributed in proportion to capital payments received) shall have effect as if it required offshore income gains to be attributed before chargeable gains.
- (5) Subject to subsection (6) below, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of an offshore income gain which arises on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled outside the United Kingdom—
- (a) sections 739 and 740 shall apply as if the offshore income gain arising to the person resident or domiciled outside the United Kingdom constituted income becoming payable to him, and
 - (b) any reference in those sections to income of (or payable or arising to) such a person accordingly includes a reference to the offshore income gain arising to him by reason of the disposal to which this Chapter applies.
- (6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or subsection (2) above, as having accrued 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 section 739 or 740 or any provision of Part XV.

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Textual Amendments

F17 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))

Marginal Citations

M8 Source—1984 s.97

VALID FROM 21/07/2008

[^{F18}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”).
- (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

F18 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**

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VALID FROM 21/07/2008

[^{F18}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

F18 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

VALID FROM 22/07/2004

[^{F19}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—
 - (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

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- (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

- F19** 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.

- ^{M9}(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 [F²⁰1992] Act, then that disposal is in the following provisions of this section referred to as [F²⁰the 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 [F²⁰the 1992 Act disposal] in substitution for section [F²⁰37(1)] of that Act (deduction of consideration chargeable to tax on income).
- (3) Subject to the following provisions of this section, in the [F²⁰computation of the gain] accruing on [F²⁰the 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 [F²⁰the 1992 Act disposal] is of such a nature that, by virtue of section [F²⁰42] 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.
- (5) If [F²⁰the 1992 Act disposal] forms part of a transfer to which section [F²⁰162] 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 section 757(6) or 758(5), the [F²⁰1992] 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

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meaning of section [F²⁰128] 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.

(8) Section 839 shall apply for the purposes of subsection (7)(b) above.

Textual Amendments

F20 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))

Marginal Citations

M9 Source—1984 s.98

764 Offshore income gains of trustees.

^{M10}Income arising in a year of assessment by virtue of section 761(1) to trustees shall be chargeable to income tax [F²¹at the rate applicable to trusts] for that year.

Textual Amendments

F21 Words in s. 764 substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, **Sch. 6 paras.13, 25(1)**

Marginal Citations

M10 Source—1984 s.100(1)

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