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SCHEDULES

SCHEDULE 27 **U.K.**

Section 760.

DISTRIBUTING FUNDS ^{M1}

Modifications etc. (not altering text)

- C1** [Sch. 27](#) applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Offshore Funds Regulations 2004 \(S.I. 2004/2572\)](#), [regs. 1\(1\), 4](#)

Marginal Citations

- M1** Source—[1984 Sch.19; 1986 s.50; 1987 (No.2) s.66]

PART I **U.K.**

THE DISTRIBUTION TEST

Requirements as to distributions

- 1 (1) For the purposes of this Chapter, an offshore fund pursues a full distribution policy with respect to an account period if—
- (a) a distribution is made for that account period or for some other period which, in whole or in part, falls within that account period; and
 - (b) subject to Part II of this Schedule, the amount of the distribution which is paid to the holders of material and other interests in the fund—
 - (i) represents at least 85 per cent. of the income of the fund for that period, and
 - (ii) is not less than 85 per cent. of the fund's United Kingdom equivalent profits for that period; and
 - (c) the distribution is made during that account period or not more than six months, or such longer period as the Board may in any particular case allow, after the expiry of it; and
 - (d) the form of the distribution is such that, if any sum forming part of it were received in the United Kingdom by a person resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under Case IV or V of Schedule D;
- and any reference in this sub-paragraph to a distribution made for an account period includes a reference to any two or more distributions so made or, in the case of paragraph (b), the aggregate of them.
- (2) Subject to sub-paragraph (3) below, with respect to any account period for which—
- (a) there is no income of the fund, and

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- (b) there are no United Kingdom equivalent profits of the fund,
the fund shall be treated as pursuing a full distribution policy notwithstanding that no distribution is made as mentioned in sub-paragraph (1) above.
- (3) For the purposes of this Chapter, an offshore fund shall be regarded as not pursuing a full distribution policy with respect to an account period for which the fund does not make up accounts.
- (4) For the purposes of this paragraph—
- (a) where a period for which an offshore fund makes up accounts includes the whole or part of two or more account periods of the fund, then, subject to paragraph (c) below, income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the accounts are made up;
 - (b) where a distribution is made for a period which includes the whole or part of two or more account periods of the fund, then, subject to sub-paragraph (5) below, the distribution shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the distribution is made;
 - (c) where a distribution is made out of specified income but is not made for a specified period, that income shall be attributed to the account period of the fund in which it in fact arose and the distribution shall be treated as made for that account period; and
 - (d) where a distribution is made neither for a specified period nor out of specified income, then, subject to sub-paragraph (5) below, it shall be treated as made for the last account period of the fund which ended before the distribution was made.
- (5) If, apart from this sub-paragraph, the amount of a distribution made, or treated by virtue of sub-paragraph (4) above as made, for an account period would exceed the income of that period, then, for the purposes of this paragraph—
- (a) if the amount of the distribution was determined by apportionment under sub-paragraph (4)(b) above, the excess shall be re-apportioned, as may be just and reasonable, to any other account period which, in whole or in part, falls within the period for which the distribution was made or, if there is more than one such period, between those periods; and
 - (b) subject to paragraph (a) above, the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distribution or, as the case may be, the aggregate distributions would otherwise be less than the income of the period, applying the excess to later account periods before earlier ones, until it is exhausted.
- (6) In any case where—
- (a) for a period which is or includes an account period, an offshore fund is subject to any restriction as regards the making of distributions, being a restriction imposed by the law of any territory outside the United Kingdom; and
 - (b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concepts of “profits” and “losses” in the sense in which

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and to the extent to which they are relevant for the purposes of the law in question);

then in determining for the purposes of the preceding provisions of this paragraph the amount of the fund's income for that account period, there shall be allowed as a deduction any amount which, apart from this sub-paragraph, would form part of the income of the fund for that account period and which cannot be distributed by virtue of the restriction.

Funds operating equalisation arrangements

- 2 (1) In the case of an offshore fund which throughout any account period operates equalisation arrangements, on any occasion in that period when there is a disposal to which this sub-paragraph applies, the fund shall be treated for the purposes of this Part of this Schedule as making a distribution of an amount equal to so much of the consideration for the disposal as, in accordance with this paragraph, represents income accrued to the date of the disposal.
- (2) Sub-paragraph (1) above applies to a disposal—
- (a) which is a disposal of a material interest in the offshore fund concerned; and
 - (b) which is a disposal to which this Chapter applies (whether by virtue of section 758(3) or otherwise) or is one to which this Chapter would apply if subsections (5) and (6) of that section applied generally and not only for the purpose of determining whether, by virtue of subsection (3) of that section, there is a disposal to which this Chapter applies; and
 - (c) which is not a disposal with respect to which the conditions in subsection (4) of that section are fulfilled; and
 - (d) which is a disposal to the fund itself or to the persons concerned in the management of the fund (“the managers”) in their capacity as such.
- (3) On a disposal to which sub-paragraph (1) above applies, the part of the consideration which represents income accrued to the date of the disposal is, subject to sub-paragraph (4) and paragraph 4(4) below, 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 material interest which is disposed of were acquired by another person by way of initial purchase.
- (4) If, after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (3) above is calculated, the material interest disposed of by a disposal to which sub-paragraph (1) above applies was acquired by way of initial purchase (whether or not by the person making the disposal)—
- (a) there shall be deducted from the amount which, in accordance with sub-paragraph (3) above, would represent income accrued to the date of the disposal, the amount which on that acquisition was credited to the equalisation account of the fund in respect of accrued income; and
 - (b) if in that period there has been more than one such acquisition of that material interest by way of initial purchase, the deduction to be made under this sub-paragraph shall be the amount so credited to the equalisation account on the latest such acquisition prior to the disposal in question.

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- (5) Where, by virtue of this paragraph, an offshore fund is treated for the purposes of this Part of this Schedule as making a distribution on the occasion of a disposal, the distribution shall be treated for those purposes—
- (a) as complying with paragraph 1(1)(d) above; and
 - (b) as made out of the income of the fund for the account period in which the disposal occurs; and
 - (c) as paid, immediately before the disposal, to the person who was then the holder of the interest disposed of.
- (6) In any case where—
- (a) a distribution in respect of an interest in an offshore fund is made to the managers of the fund, and
 - (b) their holding of that interest is in their capacity as such, and
 - (c) at the time of the distribution, the fund is operating equalisation arrangements,
- the distribution shall not be taken into account for the purposes of paragraph 1(1) above except to the extent that the distribution is properly referable to that part of the period for which the distribution is made during which that interest has been held by the managers of the fund in their capacity as such.
- (7) Subsection (2) of section 758 applies for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case IV or Case V of Schedule D

- 3 (1) Sub-paragraph (2) below applies if any sums which form part of the income of an offshore fund falling within section 759(1)(b) or (c) are of such a nature that—
- (a) the holders of interests in the fund who are either companies resident in the United Kingdom or individuals domiciled and resident there—
 - (i) are chargeable to tax under Case IV or Case V of Schedule D in respect of such of those sums as are referable to their interests; or
 - (ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom; and
 - (b) the holders of interests who are not such companies or individuals would be chargeable as mentioned in sub-paragraph (i) or (ii) above if they were resident in the United Kingdom or, in the case of individuals, if they were domiciled and both resident and ordinarily resident there.
- (2) To the extent that sums falling within sub-paragraph (1) above do not actually form part of a distribution complying with paragraphs 1(1)(c) and (d) above, they shall be treated for the purposes of this Part of this Schedule—
- (a) as a distribution complying with those paragraphs and made out of the income of which they form part; and
 - (b) as paid to the holders of the interests to which they are referable.

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Commodity income

- 4 (1) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, one half of those profits shall be left out of account in determining for the purposes of paragraphs 1(1)(b) and 5 below—
- (a) the income of the fund for that period; and
 - (b) the fund's United Kingdom equivalent profits for that period;
- but in any account period in which an offshore fund incurs a loss in dealing in commodities the amount of that loss shall not be varied by virtue of this paragraph.
- (2) In this paragraph “dealing in commodities” shall be construed as follows—
- (a) “commodities” does not include currency, securities, debts or other assets of a financial nature but, subject to that, means tangible assets which are dealt with on a commodity exchange in any part of the world; and
 - (b) “dealing” includes dealing by way of futures contracts and traded options.
- (3) Where the income of an offshore fund for any account period consists of profits from dealing in commodities and other income, then—
- (a) in determining whether the condition in paragraph 1(1)(b) above is fulfilled with respect to that account period, the expenditure of the fund shall be apportioned in such manner as is just and reasonable between the profits from dealing in commodities and the other income; and
 - (b) in determining whether, and to what extent, any expenditure is deductible under section [75 ^{F1}] in computing the fund's United Kingdom equivalent profits for that period, so much of the business of the fund as does not consist of dealing in commodities shall be treated as a business carried on by a separate company.
- (4) Where there is a disposal to which paragraph 2(1) above applies, then, to the extent that any amount which was or would be credited to the equalisation account in respect of accrued income, as mentioned in sub-paragraph (3) or (4) of that paragraph, represents profits from dealing in commodities, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the part of the consideration for the disposal which represents income accrued to the date of the disposal.

Textual Amendments

F1 1988(F) s.146 and Sch.13 para.12 (*deemed always to have had effect*).

United Kingdom equivalent profits

- 5 (1) Any reference in this Schedule to the United Kingdom equivalent profits of an offshore fund for an account period is a reference to the amount which, on the assumptions in sub-paragraph (3) below, would be the total profits of the fund for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable.
- (2) In this paragraph the expression “profits” does not include chargeable gains.

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[^{F2}[^{F3}(2A) In applying sub-paragraph (1) above the effect of the following shall be ignored, namely—

- (a) sections 125 to 133 of the Finance Act 1993 (exchange gains and losses), and
- (b) sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994 (treatment of profits and losses on interest rate and currency contracts).]]

(3) The assumptions referred to in sub-paragraph (1) above are—

- (a) that the offshore fund is a company which, in the account period in question, but not in any other account period, is resident in the United Kingdom; and
- (b) that the account period is an accounting period of that company; and
- (c) that any dividends or distributions which, by virtue of section 208, should be left out of account in computing income for corporation tax purposes are nevertheless to be brought into account in that computation in like manner as if they were dividends or distributions of a company resident outside the United Kingdom.

(4) Without prejudice to any deductions available apart from this sub-paragraph, the deductions referred to in sub-paragraph (1) above include—

- (a) a deduction equal to any amount which, by virtue of paragraph 1(6) above, is allowed as a deduction in determining the income of the fund for the account period in question; and
- (b) a deduction equal to any amount of tax (paid under the law of a territory outside the United Kingdom) which was taken into account as a deduction in determining the income of the fund for the account period in question but which, because it is referable to capital rather than income, does not fall to be taken into account by virtue of section 811.

(5) For the avoidance of doubt it is hereby declared that, if any sums forming part of the offshore fund's income for any period have been received by the fund without any deduction of or charge to tax by virtue of section 47 or 48, the effect of the assumption in sub-paragraph (3)(a) above is that those sums are to be brought into account in determining the total profits referred to in sub-paragraph (1) above.

Textual Amendments

F2 Sch. 27 para. 5(2A) inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 170, Sch. 18 para.6

F3 Sch. 27 para. 5(2A) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 176(2)

PART II U.K.

MODIFICATIONS OF CONDITIONS FOR CERTIFICATION IN CERTAIN CASES

Exclusion of investments in distributing offshore funds

6 (1) In any case where—

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- (a) in an account period of an offshore fund (in this Part of this Schedule referred to as the “primary fund”), the assets of the fund consist of or include interests in another offshore fund; and
- (b) those interests (together with other interests which the primary fund may have) are such that, by virtue of subsection (3)(a) or, if the other fund concerned is a company, subsection (3)(b) or (c) of section 760, the primary fund could not, apart from this paragraph, be certified as a distributing fund in respect of that account period; and
- (c) without regard to the provisions of this paragraph, that other fund could be certified as a distributing fund in respect of its account period or, as the case may be, each of its account periods which comprises the whole or any part of the account period of the primary fund;

then, in determining whether anything in section 760(3)(a) to (c) prevents the primary fund being certified as mentioned in paragraph (b) above, the interests of the primary fund in that other fund shall be left out of account except for the purposes of determining the total value of the assets of the primary fund.

- (2) In this Part of this Schedule an offshore fund falling within sub-paragraph (1)(c) above is referred to as a “qualifying fund”.
- (3) In a case falling within sub-paragraph (1) above—
 - (a) section 760(3)(a) to (c) shall have effect in relation to the primary fund with the modification in paragraph 7 below (in addition to that provided for by sub-paragraph (1) above); and
 - (b) Part I of this Schedule shall have effect in relation to the primary fund with the modification in paragraph 8 below.

7 The modification referred to in paragraph 6(3)(a) above is that, in any case where—

- (a) at any time in the account period referred to in paragraph 6(1) above, the assets of the primary fund include an interest in an offshore fund or in any company (whether an offshore fund or not); and
- (b) that interest falls to be taken into account in determining whether anything in section 760(3)(a) to (c) prevents the primary fund being certified as a distributing fund in respect of that account period; and
- (c) at any time in that account period the assets of the qualifying fund include an interest in the offshore fund or company referred to in paragraph (a) above;

for the purposes of the application in relation to the primary fund of section 760(3) (a) to (c), at any time when the assets of the qualifying fund include the interest referred to in paragraph (c) above, the primary fund’s share of that interest shall be treated as an additional asset of the primary fund.

- 8 (1) The modification referred to in paragraph 6(3)(b) above is that, in determining whether the condition in paragraph 1(1)(b)(ii) above is fulfilled with respect to the account period of the primary fund referred to in paragraph 6(1) above, the United Kingdom equivalent profits of the primary fund for that period shall be treated as increased by the primary fund’s share of the excess income (if any) of the qualifying fund which is attributable to that period.

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- (2) For the purposes of this paragraph, the excess income of the qualifying fund for any account period of that fund is the amount (if any) by which its United Kingdom equivalent profits for that account period exceed the amount of the distributions made for that period, as determined for the purposes of the application of paragraph 1(1) above to the qualifying fund.
- (3) If an account period of the qualifying fund coincides with an account period of the primary fund, then the excess income (if any) of the qualifying fund for that period is the excess income which is attributable to that period of the primary fund.
- (4) In a case where sub-paragraph (3) above does not apply, the excess income of the qualifying fund which is attributable to an account period of the primary fund is the appropriate fraction of the excess income (if any) of the qualifying fund for any of its account periods which comprises the whole or any part of the account period of the primary fund and, if there is more than one such account period of the qualifying fund, the aggregate of the excess income (if any) of each of them.
- (5) For the purposes of sub-paragraph (4) above, the appropriate fraction is—

$$\frac{A}{B}$$

where—

A is the number of days in the account period of the primary fund which are also days in an account period of the qualifying fund; and

B is the number of days in that account period of the qualifying fund or, as the case may be, in each of those account periods of that fund which comprises the whole or any part of the account period of the primary fund.

- 9 (1) The references in paragraphs 7 and 8(1) above to the primary fund's share of—
- an interest forming part of the assets of the qualifying fund, or
 - the excess income (as defined in paragraph 8 above) of the qualifying fund,
- shall be construed as references to the fraction specified in sub-paragraph (2) below of that interest or excess income.
- (2) In relation to any account period of the primary fund, the fraction referred to in sub-paragraph (1) above is—

$$\frac{C}{D}$$

where—

C is the average value of the primary fund's holding of interests in the qualifying fund during that period; and

D is the average value of all the interests in the qualifying fund held by any persons during that period.

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Offshore funds investing in trading companies

- 10 (1) In any case where the assets of an offshore fund for the time being include an interest in a trading company, as defined in sub-paragraph (2) below, the provisions of section 760(3) have effect subject to the modifications in sub-paragraphs (3) and (4) below.
- (2) In this paragraph “trading company” means a company whose business consists wholly of the carrying on of a trade or trades and does not to any extent consist of—
- (a) dealing in commodities, as defined in paragraph 4(2) above, or dealing, as so defined, in currency, securities, debts or other assets of a financial nature; or
 - (b) banking or money-lending.
- (3) In the application of section 760(3)(b) to so much of the assets of an offshore fund as for the time being consists of interests in a single trading company, for the words “10 per cent.” there shall be substituted the words “20 per cent.”.
- (4) In the application of section 760(3)(c) to an offshore fund the assets of which for the time being include any issued share capital of a trading company or any class of that share capital, for the words “more than 10 per cent.” there shall be substituted the words “50 per cent. or more”.

Offshore funds with wholly-owned subsidiaries

- 11 (1) In relation to an offshore fund which has a wholly-owned subsidiary which is a company the provisions of section 760(3) and Part I of this Schedule shall have effect subject to the modifications in sub-paragraph (3) below.
- (2) Subject to sub-paragraph (3) below, for the purposes of this paragraph, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—
- (a) in the case of an offshore fund falling within section 759(1)(a), directly and beneficially owned by the fund; and
 - (b) in the case of an offshore fund falling within section 759(1)(b), directly owned by the trustees of the fund for the benefit of the fund; and
 - (c) in the case of an offshore fund falling within section 759(1)(c), owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.
- (3) In the case of a company which has only one class of issued share capital, the reference in sub-paragraph (2) above to the whole of the issued share capital shall be construed as a reference to at least 95 per cent. of that share capital.
- (4) The modifications referred to in sub-paragraph (1) above are that, for the purposes of section 760(3) and Part I of this Schedule—
- (a) that percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in sub-paragraph (2) above shall be regarded as the receipts, expenditure, assets and liabilities of the fund; and

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- (b) there shall be left out of account the interest of the fund in the subsidiary and any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

Offshore funds with interests in dealing and management companies

- 12 (1) Section 760(3)(c) shall not apply to so much of the assets of an offshore fund as consists of issued share capital of a company which is either—
- (a) a wholly-owned subsidiary of the fund which falls within sub-paragraph (2) below; or
 - (b) a subsidiary management company of the fund, as defined in sub-paragraph (3) below.
- (2) A company which is a wholly-owned subsidiary of an offshore fund is one to which sub-paragraph (1)(a) above applies if—
- (a) the business of the company consists wholly of dealing in material interests in the offshore fund for the purposes of and in connection with the management and administration of the business of the fund; and
 - (b) the company is not entitled to any distribution in respect of any material interest for the time being held by it;
- and paragraph 11(2) above shall apply to determine whether a company is, for the purposes of this paragraph, a wholly-owned subsidiary of an offshore fund.
- (3) A company in which an offshore fund has an interest is for the purposes of sub-paragraph (1)(b) above a subsidiary management company of the fund if—
- (a) the company carries on no business other than providing services falling within sub-paragraph (4) below either for the fund alone or for the fund and for any other offshore fund which has an interest in the company; and
 - (b) the company's remuneration for the services which it provides to the fund is not greater than it would be if it were determined at arm's length between the fund and a company in which the fund has no interest.
- (4) The services referred to in sub-paragraph (3) above are—
- (a) holding property (of any description) which is occupied or used in connection with the management or administration of the fund; and
 - (b) providing administrative, management and advisory services to the fund.
- (5) In determining, in accordance with sub-paragraph (3) above, whether a company in which an offshore fund has an interest is a subsidiary management company of that fund—
- (a) every business carried on by a wholly-owned subsidiary of the company shall be treated as carried on by the company; and
 - (b) no account shall be taken of so much of the company's business as consists of holding its interests in a wholly-owned subsidiary; and
 - (c) any reference in sub-paragraph (3)(b) above to the company shall be taken to include a reference to a wholly-owned subsidiary of the company.
- (6) Any reference in sub-paragraph (5) above to a wholly-owned subsidiary of a company is a reference to another company the whole of the issued share capital of which is for the time being directly and beneficially owned by the first company.

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Disregard of certain investments forming less than 5 per cent. of a fund

- 13 (1) In any case where—
- (a) in any account period of an offshore fund, the assets of the fund include a holding of issued share capital (or any class of issued share capital) of a company; and
 - (b) that holding is such that by virtue of section 760(3)(c) the fund could not (apart from this paragraph) be certified as a distributing fund in respect of that account period;
- then, if the condition in sub-paragraph (3) below is fulfilled, that holding shall be disregarded for the purposes of section 760(3)(c).
- (2) In this paragraph any holding falling within sub-paragraph (1) above is referred to as an “excess holding”.
- (3) The condition referred to in sub-paragraph (1) above is that at no time in the account period in question does that portion of the fund which consists of—
- (a) excess holdings, and
 - (b) interests in other offshore funds which are not qualifying funds,
- exceed 5 per cent. by value of all the assets of the fund.

Power of Board to disregard certain breaches of conditions

- 14 If, in the case of any account period of an offshore fund ending after the passing of the ^{M2}Finance (No. 2) Act 1987 (23rd July 1987), it appears to the Board that there has been a failure to comply with any of the conditions in paragraphs (a) to (c) of section 760(3) (as modified, where appropriate, by the preceding provisions of this Part of this Schedule) but the Board are satisfied—
- (a) that the failure occurred inadvertently; and
 - (b) that the failure was remedied without unreasonable delay,
- the Board may disregard the failure in determining whether to certify the fund as a distributing fund in respect of that account period.

Marginal Citations

M2 1987 c. 51.

PART III U.K.

CERTIFICATION PROCEDURE

Application for certification

- 15 (1) The Board shall, in such manner as they think appropriate, certify an offshore fund as a distributing fund in respect of an account period if—
- (a) an application in respect of that period is made under this paragraph; and

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- (b) the application is accompanied by the accounts of the fund for, or for a period which includes, the account period to which the application relates; and
 - (c) there is furnished to the Board such information as they may reasonably require for the purpose of determining whether the fund should be so certified; and
 - (d) they are satisfied that nothing in section 760(2) or (3) prevents the fund being so certified.
- (2) An application under this paragraph shall be made to the Board by the fund or by a trustee or officer thereof on behalf of the fund and may be so made—
- (a) before the expiry of the period of six months beginning at the end of the account period to which the application relates; or
 - (b) at such later time as the Board may in any particular case allow.
- (3) In any case where, on an application under this paragraph, the Board determine that the offshore fund concerned should not be certified as a distributing fund in respect of the account period to which the application relates, they shall give notice of that fact to the fund.
- (4) If at any time it appears to the Board that the accounts accompanying an application under this paragraph in respect of any account period of an offshore fund or any information furnished to the Board in connection with such an application is or are not such as to make full and accurate disclosure of all facts and considerations relevant to the application, they shall give notice to the fund accordingly, specifying the period concerned.
- (5) Where a notice is given by the Board under sub-paragraph (4) above, any certification by them in respect of the account period in question shall be void.

Appeals

- 16 (1) An appeal to the Special Commissioners—
- (a) against such a determination as is referred to in paragraph 15(3) above, or
 - (b) against a notification under paragraph 15(4) above,
- may be made by the offshore fund or by a trustee or officer thereof on behalf of the fund, and shall be so made by notice specifying the grounds of appeal and given to the Board within 90 days of the date of the notice under paragraph 15(3) or (4), as the case may be.
- (2) The jurisdiction of the Special Commissioners on an appeal under this paragraph shall include jurisdiction to review any decision of the Board which is relevant to a ground of the appeal.

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PART IV U.K.

SUPPLEMENTARY

Assessment: effect of non-certification

- 17 No appeal may be brought against an assessment to tax on the ground that an offshore fund should have been certified as a distributing fund in respect of an account period of the fund.
- 18 (1) Without prejudice to paragraph 17 above, in any case where no application has been made under paragraph 15 above in respect of an account period of an offshore fund, any person who is assessed to tax for which he would not be liable if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Board to take action under this paragraph with a view to determining whether the fund should be so certified.
- (2) Subject to sub-paragraphs (3) and (5) below, if the Board receive a notice under sub-paragraph (1) above, they shall by notice invite the offshore fund concerned to make an application under paragraph 15 above in respect of the period in question.
- (3) Where sub-paragraph (2) above applies, the Board shall not be required to give notice under that sub-paragraph before the expiry of the account period to which the notice is to relate nor if an application under paragraph 15 above has already been made; but where notice is given under that sub-paragraph, an application under paragraph 15 above shall not be out of time under paragraph 15(2)(a) above if it is made within 90 days of the date of that notice.
- (4) If an offshore fund to which notice is given under sub-paragraph (2) above does not, within the time allowed by sub-paragraph (3) above or, as the case may be, paragraph 15(2)(a) above, make an application under paragraph 15 above in respect of the account period in question, the Board shall proceed to determine the question of certification in respect of that period as if such an application had been made.
- (5) Where the Board receive more than one notice under sub-paragraph (1) above with respect to the same account period of the same offshore fund, their obligations under sub-paragraphs (2) and (4) above shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any one of them.
- (6) Notwithstanding anything in sub-paragraph (5) above, for the purpose of a determination under sub-paragraph (4) above with respect to an account period of an offshore fund, the Board shall have regard to accounts and other information furnished by all persons who have given notice under sub-paragraph (1) above with respect to that account period; and paragraph 15 above shall apply as if accounts and information so furnished had been furnished in compliance with sub-paragraph (1) of that paragraph.
- (7) Without prejudice to sub-paragraph (5) above, in any case where—
- (a) at a time after the Board have made a determination under sub-paragraph (4) above that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under sub-paragraph (1) above with respect to that period; and

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- (b) the person giving that notice furnishes the Board with accounts or information which had not been furnished to the Board at the time of the earlier determination;

the Board shall reconsider their previous determination in the light of the new accounts or information and, if they consider it appropriate, may determine to certify the fund accordingly.

- (8) Where any person has given notice to the Board under sub-paragraph (1) above with respect to an account period of an offshore fund and no application has been made under paragraph 15 above with respect to that period—
- (a) the Board shall notify that person of their determination with respect to certification under sub-paragraph (4) above; and
- (b) paragraph 16 above shall not apply in relation to that determination.

Postponement of tax pending determination of question as to certification

- 19 (1) In any case where—
- (a) an application has been made under paragraph 15 above with respect to an account period of an offshore fund and that application has not been finally determined; or
- (b) paragraph (a) above does not apply but notice has been given under paragraph 18(1) above in respect of an account period of an offshore fund and the Board have not yet given notice of their decision as to certification under paragraph 18(4) above;

any person who has been assessed to tax and considers that, if the offshore fund were to be certified as a distributing fund in respect of the account period in question, he would be overcharged to tax by the assessment may, by notice given to the inspector within 30 days after the date of the issue of the notice of assessment, apply to the General Commissioners for a determination of the amount of tax the payment of which should be postponed pending the determination of the question whether the fund should be so certified.

- (2) A notice of application under sub-paragraph (1) above shall state the amount in which the applicant believes that he is over-charged to tax and his grounds for that belief.
- (3) Subsections (3A) onwards of section 55 of the Management Act (recovery of tax not postponed) shall apply with any necessary modifications in relation to an application under sub-paragraph (1) above as if it were an application under subsection (3) of that section and as if the determination of the question as to certification (whether by the Board or on appeal) were the determination of an appeal.

Information as to decisions on certification etc.

- 20 No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an inspector from disclosing to any person appearing to have an interest in the matter—
- (a) any determination of the Board or (on appeal) the Special Commissioners whether an offshore fund should or should not be certified as a distributing fund in respect of any account period; or

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- (b) the content and effect of any notice given by the Board under paragraph 15(4) above.

VALID FROM 22/07/2004

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

- 21 (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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