

Status: Point in time view as at 01/02/1991.

Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: Exclusion of investments in distributing offshore funds is up to date with all changes known to be in force on or before 15 July 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 27 **U.K.**

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 II **U.K.**

MODIFICATIONS OF CONDITIONS FOR CERTIFICATION IN CERTAIN CASES

Exclusion of investments in distributing offshore funds

- 6 (1) In any case where—
- (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—

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- (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.
- (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—

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

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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—
- (a) an interest forming part of the assets of the qualifying fund, or
 - (b) 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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