

Non-qualifying offshore funds. FA90 s66 744.—(1) For the purposes of this Chapter, an offshore fund shall be a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Revenue Commissioners as a distributing fund.

(2) An offshore fund shall not be certified as a distributing fund in respect of an account period unless with respect to that period the fund pursues a full distribution policy within the meaning of Part 1 of Schedule 19.

(3) Subject to Part 2 of Schedule 19, an offshore fund shall not be certified as a distributing fund in respect of any account period if at any time during that period—

(a) more than 5 per cent by value of the assets of the fund consists of interests in other offshore funds,

(b) subject to subsections (4) and (5), more than 10 per cent by value of the assets of the fund consists of interests in a single company,

(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), 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).

(4) For the purposes of subsection (3)(b), 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 in 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 584, including that section as applied by section 585 or 586, 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 section 584, including that section as so applied.

(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) if—

(a) the company carries on a banking business in the State or elsewhere which provides 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) any interests in an offshore fund which—

(a) are held solely by persons employed or engaged in or about the management of the assets of the fund,

(b) carry no right or expectation to participate directly or indirectly in any of the profits of the fund, and

(c) 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) Where in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interests shall not (for the purposes of subsection (3)(d)) 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 1 of Schedule 19.

(8) For the purposes of this Chapter and Schedule 19, an account period of an offshore fund shall begin—

(a) on the 6th day of April, 1990, or, if it is later, whenever the fund begins to carry on its activities, and

(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 and Schedule 19, 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;

(c) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter and Schedule 19—

(a) an account period of an offshore fund which is a company within section 743 (1)(a) shall end if and at the time when the company ceases to be resident outside the State, and

(b) an account period of an offshore fund which is a unit trust scheme within section 743 (1)(b) shall end if and at the time when the trustees of the scheme become resident in the State.

(11) Parts 3 and 4 of Schedule 19 shall apply with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund.