Undertakings for collective investment. FA93 s17; FA94 s57(a); FA96 s38(1); FA97 s35 738.—(1) (a) In this section and in section 739—

“chargeable period” means an accounting period of an undertaking for collective investment which is a company or, as respects such an undertaking which is not a company, a year of assessment;

“designated assets” means—

(i) land, or

(ii) shares in a company resident in the State which are not shares—

(I) listed in the official list, or

(II) dealt in on the smaller companies market or the unlisted securities market,

of the Irish Stock Exchange;

“designated undertaking for collective investment” means an undertaking for collective investment which, on the 25th day of May, 1993, owned designated assets for which that undertaking gave consideration) the aggregate of which is not less than 80 per cent of the aggregate of the consideration (as so determined) which that undertaking gave for the total assets it owned at that date;

“distribution” has the same meaning as in the Corporation Tax Acts;

“guaranteed undertaking for collective investment” means an undertaking for collective investment all of the issued units of which, on the 25th day of May, 1993, are units in respect of each of which the undertaking will make one payment only, being a payment—

(i) to be made on a specified date in cancellation of those units, and

(ii) which is the aggregate of—

(I) a fixed amount, and

(II) an amount, which may be nil, determined by a stock exchange index or indices;

“relevant Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989);

“undertaking for collective investment” means, subject to paragraph (b)—

(i) a unit trust scheme, other than—

(I) a unit trust mentioned in section 731 (5)(a), or

(II) a special investment scheme),

which is or is deemed to be an authorised unit trust scheme) and has not had its authorisation under that Act revoked,

(ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations, or

(iii) any authorised investment company) which—

(I) has not had its authorisation under that Part of that Act revoked, and

(II) has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated,

which is neither a specified collective investment undertaking (1)) nor an offshore fund);

“unit” includes a share and any other instrument granting an entitlement—

(i) to a share of the investments or relevant profits of, or

(ii) to receive a distribution from,

an undertaking for collective investment;

“unit holder”, in relation to an undertaking for collective investment, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking;

“standard rate” has the same meaning as in section 3 (1);

“standard rate per cent” has the same meaning as in section 4 (1).

(b) For the purposes of this section and section 739, references to an undertaking for collective investment (other than in this paragraph) shall be construed so as to include a reference to a trustee, management company or other such person who—

(i) is authorised to act on behalf, or for the purposes, of the undertaking, and

(ii) habitually does so,

to the extent that such construction brings into account for the purposes of this section and section

739 any matter relating to the undertaking, being a matter which would not otherwise be brought into account for those purposes.

(c) For the purposes of this section—

(i) as respects an undertaking for collective investment which is a company, where an accounting period of the company begins before the 6th day of April, 1994, and ends on or after that day, it shall be divided into 2 parts, one beginning on the day on which the accounting period begins and ending on the 5th day of April, 1994, and the other beginning on the 6th day of April, 1994, and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods of the company, and

(ii) without prejudice to section 815 (2), any attribution of income or chargeable gains of such an undertaking to periods treated as separate accounting periods by virtue of subparagraph (i) shall be made—

(I) as respects such income, on the basis of the time that income arises to the undertaking, and

(II) as respects such capital gains, on the basis of the time of disposal of the assets concerned,

and section 4 (6) shall not apply for the purpose of such attribution.

(2) (a) Other than in the case of subsections (7) to (9) of section 734, that section shall not apply, and the following provisions of this section shall apply, to an undertaking for collective investment as respects the chargeable periods of the undertaking ending on or after—

(i) the 6th day of April, 1994, if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, or

(ii) the 25th day of May, 1993, if the undertaking was not carrying on such a business at that date.

(b) (i) As respects an undertaking for collective investment which is a company, the corporation tax which is chargeable on its profits on which corporation tax falls finally to be borne for a chargeable period shall be reduced for the purposes of the Tax Acts so that, before it is reduced by any credit, relief or other reduction under those Acts (other than under this section), it is the standard rate, for the year of assessment in which the chargeable period falls, of those profits.

(ii) For the purposes of this paragraph, where part of the chargeable period falls in one year of assessment (in this subparagraph referred to as “the first-mentioned year”) and the other part falls in the year of assessment succeeding the first-mentioned year and different standard rates are in force for each of those years, “the standard rate” shall be deemed to be a rate per cent determined by the formula—

$$\frac{(A \times C)}{E} + \frac{(B \times D)}{E}$$

where—

A is the standard rate per cent in force for the first-mentioned year,

B is the standard rate per cent in force for the year of assessment succeeding the first-mentioned year,

C is the length of that part of the chargeable period falling in the first-mentioned year,

D is the length of that part of the chargeable period falling in the year of assessment succeeding the first-mentioned year, and

E is the length of the chargeable period.

(c) In computing profits for the purposes of paragraph (b), section 78 (2) shall apply as if the rate per cent of capital gains tax specified in section 28 (3), were the rate per cent of corporation tax specified in section 21 (1)(b).

(d) As respects an undertaking for collective investment which is not a company—

(i) the capital gains tax which is chargeable on the chargeable gains accruing in a year of assessment to the undertaking shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under any provision, other than under this section, of the Tax Acts or the Capital Gains Tax Acts, is the standard rate, for the year of assessment, of the chargeable gains accruing to the undertaking, and

(ii) only so much of income arising or gains accruing to the undertaking shall be chargeable to income tax or capital gains tax, as the case may be, as is or is to be—

(I) paid to, or

(II) accumulated or invested for the benefit of,

unit holders in the undertaking or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of subsection (4) were gains on an actual disposal of the assets concerned.

(3) (a) (i) Section 129 shall not apply as respects a distribution received by an undertaking for collective investment which is a company, and the income represented by the distribution shall be equal to the aggregate of the distribution and the amount of the tax credit in respect of the distribution.

(ii) Where an undertaking for collective investment which is a company is entitled to a tax credit in respect of a distribution which is chargeable to corporation tax by virtue of subparagraph (i)—

(I) it may set the credit against the corporation tax, as reduced by virtue of subsection (2)(b), chargeable on its profits for the chargeable period in which the distribution is made and where the credit exceeds that corporation tax the excess shall be paid to it, and

(II) notwithstanding sections 4 and 156, the income represented by the distribution shall not be franked

investment income for the purposes of sections 83 and 157.

(b) Where a company resident in the State makes a distribution to an undertaking for collective investment which is not a company, the tax credit, if any, attaching to the distribution shall be set against—

(i) the income tax chargeable in respect of income arising to, or

(ii) the capital gains tax, as reduced by subsection (2)(d)(i), chargeable in respect of chargeable gains accruing to,

the undertaking for the year of assessment in which the distribution is made, and—

(I) where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the undertaking, and

(II) a payment shall not be made in respect of the credit under section 136 (4).

(c) Notwithstanding Chapter 4 of Part 8, that Chapter shall apply to a deposit (within the meaning of that Chapter) which is for the time being beneficially owned by an undertaking for collective investment which is not a company as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

(4) (a) (i) Every asset of an undertaking for collective investment on the day on which a chargeable period of the undertaking ends shall, subject to subparagraph (ii) and paragraphs (b) to (e), be deemed to have been disposed of and immediately reacquired by the undertaking at the asset's market value on that day.

(ii) Subparagraph (i) shall not apply to—

(I) assets to which section 607 applies other than where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which that section does not apply, and

(II) assets which are strips within the meaning of section 55.

(b) Subject to paragraphs (c) and (d), chargeable gains or allowable losses, which would otherwise accrue to an undertaking for collective investment on disposals deemed by virtue of paragraph (a) to have been made in a chargeable period (other than a period in which the collective investment business of the undertaking concerned ceases) of the undertaking, shall be treated, subject to subparagraphs (ii) and (iii), as not accruing to it, and instead—

(i) there shall be ascertained the difference (in this subsection referred to as “the net amount”) between the aggregate of those gains and the aggregate of those losses,

(ii) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the undertaking on disposals of assets deemed

to be made in the chargeable period, and

(iii) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing on disposals of assets deemed to be made in each succeeding chargeable period until the whole amount has been accounted for.

(c) For any chargeable period of less than one year, the fraction of one-seventh referred to in paragraph (b)(iii) shall be proportionately reduced and, where this paragraph has applied in relation to any chargeable period before the last such period for which paragraph (b)(iii) applies, the fraction treated as accruing in that last chargeable period shall be reduced so as to secure that no more than the whole of the net amount has been accounted for.

(d) Where the collective investment business of the undertaking concerned ceases before the beginning of the last of the chargeable periods for which paragraph (b)(iii) would apply in relation to a net amount, the fraction of that amount that is treated as accruing in the chargeable period in which the business ceases shall be such as to secure that the whole of the net amount has been accounted for.

(e) Where in a chargeable period an undertaking for collective investment incurs a loss on the disposal (in this paragraph referred to as “the first-mentioned disposal”) of an asset the gain or loss in respect of a deemed disposal of which was included in a net amount to which paragraph (b)(ii) applied for any preceding chargeable period, so much of the allowable loss on the first-mentioned disposal as is equal to the excess of the amount of the loss over the amount which but for paragraph (a) would have been the allowable loss on the first-mentioned disposal shall be treated for the purposes of paragraph (b) as an allowable loss which would otherwise accrue to the undertaking for collective investment on disposals deemed by virtue of paragraph (a) to have been made in the chargeable period.

(5) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains accruing to an undertaking for collective investment—

(a) (i) section 556, and

(ii) section 607,

shall not apply,

(b) section 581 shall as respects—

(i) subsections (1) and (2) of that section, and

(ii) subsection (3) of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

apply as if subsection (4), paragraph (a)(ii) and paragraph (c) had not been enacted, and

(c) if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, it

shall be deemed to have acquired each of the assets it holds on the 5th day of April, 1994, apart from assets to which section 607 applies, at the asset's market value on that date.

(6) Subject to subsection (4)(b), where an undertaking for collective investment incurs allowable losses on disposals or deemed disposals of assets in a chargeable period, the amount (if any) by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the chargeable period shall—

(a) be disregarded for the purposes of section 31,

(b) be treated as reducing the income chargeable to income tax or corporation tax arising to the undertaking in that chargeable period, and

(c) to the extent that it is not treated as reducing income arising to the undertaking in that chargeable period, be treated for the purposes of the Capital Gains Tax Acts and this subsection as an allowable loss incurred on a disposal of an asset deemed to be made in the next chargeable period.

(7) (a) In this subsection—

“the appropriate amount in respect of the interest” means the appropriate amount in respect of the interest which would be determined in accordance with Schedule 21 if the undertaking for collective investment was the first buyer and it carried on a trade to which section 749 (1) applies but, in determining the appropriate amount in respect of the interest in accordance with Schedule 21, paragraph 3(4) of that Schedule shall apply as if “in the opinion of the Appeal Commissioners” were deleted;

“securities” has the same meaning as in section 815.

(b) Where in a chargeable period an undertaking for collective investment disposes of any securities and in the following chargeable period or its basis period interest becoming payable in respect of the securities is receivable by the undertaking for collective investment, then, the gain or loss accruing on the disposal shall be computed as if the price paid by the undertaking for collective investment for the securities was reduced by the appropriate amount in respect of the interest.

(c) Where for a chargeable period paragraph (b) applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following chargeable period from the disposal of the securities.

(8) Notwithstanding any provision of the Tax Acts or the Capital Gains Tax Acts other than section 739, unit holders in an undertaking for collective investment shall not be entitled to any credit for or repayment of any income tax, capital gains tax or corporation tax paid in respect of income arising to, capital gains accruing to or profits of the undertaking.

(9) (a) Notwithstanding subsection (2) but subject to paragraph (b), subsections (1) to (8) and section 739 shall be construed as respects designated undertakings for collective investment and guaranteed undertakings for collective investment as if every reference in those subsections and in that section—

(i) to the 5th day of April, 1994, were a reference to the 5th day of April, 1998, and

(ii) to the 6th day of April, 1994, were a reference to the 6th day of April, 1998,

and, as respects such an undertaking, those subsections and section 739 shall not apply except as so construed.

(b) Where—

(i) the aggregate of the consideration) given for the designated assets owned at any time after the 25th day of May, 1993, and before the 5th day of April, 1997, by a designated undertaking for collective investment is less than 80 per cent of the aggregate of the consideration (as so determined) given for the total assets owned by the undertaking at that time, or

(ii) at any time before the 5th day of April, 1997, a guaranteed undertaking for collective investment makes any payment to unit holders in the undertaking which is not a payment in cancellation of those units,

paragraph (a) shall be construed as respects that undertaking as if each reference in that paragraph—

(I) to the 5th day of April, 1998, were a reference to the 5th day of April, and

(II) to the 6th day of April, 1998, were a reference to the 6th day of April,

subsequent to the time referred to in subparagraph (i) or (ii), as the case may be.