

Material interest in offshore funds. FA90 s65 743.—(1) In this Chapter, references to a material interest in an offshore fund shall be construed as references to such an interest in any of the following—

(a) a company resident outside the State,

(b) a unit trust scheme the trustees of which are not resident in the State, and

(c) any arrangements not within paragraph (a) or (b) which take effect by virtue of the law of a territory outside the State and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of the State),

and any reference in this Chapter to an offshore fund shall be construed as a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

(2) Subject to subsections (3) to (9), a person's interest in a company, unit trust scheme or arrangements shall be a material interest if at the time when the person acquired the interest it could be reasonably expected that at some time during the period of 7 years beginning at the time of the acquisition the person 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), a person shall be deemed to be able to realise the value of an interest if the person can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value 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)—

(a) a person shall be deemed to be able to realise a particular amount if the person 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), 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 shall be deemed not to be a material interest if it is either—

(a) an interest in respect of any loan capital or debt issued or incurred for money which in the ordinary course of business of banking is loaned by a person carrying on that business, or

(b) a right arising under a policy of insurance.

(6) Shares in a company within subsection (1)(a) (in this section referred to as “the overseas company”) shall 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,

(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,

(c) not more than 10 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) by reason only of the existence of either or both—

(i) an arrangement under which, at some time within the period of 7 years beginning at the time of acquisition, that company may require the other participators to purchase its shares, and

(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),

and in this paragraph “participators” means the persons holding shares which are within paragraph (c).

(7) For the purposes of subsection (6)(a), a company shall be associated with another company if one company has control ) of the other company or both companies are under the control (within the meaning of that section) of the same person or persons.

(8) An interest in a company within subsection (1)(a) shall be deemed not to be a material interest at any time when the following conditions are satisfied—

(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 the holder 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 the like manner as it would be determined for the purposes of the Capital Gains Tax Acts except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 548 (5) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.