

SCHEDULE 19 Offshore Funds: Distributing Funds

Section 744.

FA90 Sch5

PART 1

The Distribution Test

Requirements as to distributions

1. (1) For the purposes of Chapter 2 of Part 27, an offshore fund pursues a full distribution policy with respect to an account period if—

(a) a distribution is made for the account period or for some other period which in whole or in part falls within that account period,

(b) subject to Part 2 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 the period, and

(ii) is not less than 85 per cent of the fund's Irish equivalent profits for the period,

(c) the distribution is made during the account period or not more than 6 months after the expiry of that period, and

(d) the form of the distribution is such that, if any sum forming part of it were received in the State by a person resident in the State and did not form part of the profits of a trade, profession or vocation, that sum would be chargeable to tax under Case III of Schedule D,

and any reference in this subparagraph to a distribution made for an account period includes a reference to any 2 or more distributions so made or, in the case of clause (b), the aggregate of those distributions.

(2) Subject to subparagraph (3), with respect to any account period for which—

(a) there is no income of the fund, and

(b) there are no Irish 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 subparagraph (1).

(3) For the purposes of Chapter 2 of Part 27, 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 2 or more account periods of the fund, then, subject to clause (c), income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each account period 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 2 or more account periods of the fund, then, subject to subparagraph (5), the distribution shall be apportioned between those account periods on a time basis according to the number of days in each account 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 subparagraph (5), the distribution shall be treated as made for the last account period of the fund which ended before the distribution was made.

(5) Where but for this subparagraph the amount of a distribution made, or treated by virtue of subparagraph (4) 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 subparagraph (4) (b), the excess shall be reapportioned, 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 clause (a), the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distributions or the aggregate distributions, as the case may be, 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, and

(b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concept of “profits” and “losses” in the sense in which, and to the extent to which, they are relevant for the purposes of the law in question),

then, in determining for the purposes of subparagraphs (1) to (5) the amount of the fund's income for that account period, there shall be allowed as a deduction any amount which apart from this subparagraph would form part of the income of the fund for that account period and which may not 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 subparagraph 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) Subparagraph (1) shall apply to a disposal which—

(a) is a disposal of a material interest in the offshore fund concerned,

(b) is a disposal to which Chapter 2 of Part 27 applies (whether by virtue of subsection (3) of section 742 or otherwise) or is one to which that 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 that Chapter applies,

(c) is not a disposal with respect to which the conditions in subsection (4) of section 742 are fulfilled, and

(d) is a disposal to the fund itself or to the persons concerned in the management of the fund (in this paragraph referred to as “the managers of the fund”) in their capacity as such.

(3) On a disposal to which subparagraph (1) applies, the part of the consideration which represents income accrued to the date of the disposal shall be, subject to subparagraph (4) and paragraph 4(4), 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 disposed of were acquired by another person by means of initial purchase.

(4) Where, after the beginning of the period by reference to which the accrued income referred to in subparagraph (3) is calculated, the material interest disposed of by a disposal to which subparagraph (1) applies was acquired by means of initial purchase (whether or not by the person making the disposal), then—

(a) the amount which on that acquisition was credited to the equalisation account in respect of accrued income shall be deducted from the amount which in accordance with subparagraph (3) would represent income accrued to the date of the disposal, and

(b) if in that period there has been more than one such acquisition of that material interest by means of initial purchase, the deduction to be made under this subparagraph shall be the amount so credited to the equalisation account on the latest such acquisition before the disposal in question.

(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 as—

- (a) complying with paragraph 1(1) (d),
- (b) made out of the income of the fund for the account period in which the disposal occurs, and
- (c) 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,
- (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,

then, the distribution shall not be taken into account for the purposes of paragraph 1(1) 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 742 shall apply for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case III of Schedule D

3. (1) Subparagraph (2) shall apply if any sums which form part of the income of an offshore fund within paragraph (b) or (c) of section 743 (1) are of such a nature that—

(a) the holders of interests in the fund who are either companies resident in the State or individuals domiciled and resident in the State—

(i) are chargeable to tax under Case III 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 in the State, would be so chargeable had the assets been outside the State,

and

(b) the holders of interests, who are not such companies or individuals, would be chargeable as mentioned in subclause (i) or (ii) of clause (a) if they were resident in the State or, in the case of individuals, if they were domiciled and both resident and ordinarily resident in the State.

(2) To the extent that sums within subparagraph (1) do not actually form part of a distribution complying with clauses (c) and (d) of paragraph 1(1), they shall be treated for the purposes of this Part of this Schedule—

(a) as a distribution complying with those clauses 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.

Commodity income

4. (1) In this paragraph—

“commodities” means tangible assets (other than currency, securities, debts or other assets of a financial nature) dealt with on a commodity exchange in any part of the world;

“dealing”, in relation to dealing in commodities, includes dealing by means of futures contracts and traded options.

(2) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, 50 per cent of those profits shall be disregarded in determining for the purposes of paragraphs 1(1)(b) and 5—

(a) the income of the fund for that period, and

(b) the fund's Irish 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.

(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) 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 83 in computing the fund's Irish 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) 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 subparagraph (3) or (4) of paragraph 2, represents profits from dealing in commodities, 50 per cent of that accrued income shall be disregarded in determining under those subparagraphs the part of the consideration

for the disposal which represents income accrued to the date of the disposal.

Irish equivalent profits

5. (1) In this paragraph, “profits” does not include chargeable gains.

(2) A reference in this Schedule to the Irish equivalent profits of an offshore fund for an account period shall be construed as a reference to the amount which, on the assumptions in subparagraph (3), 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.

(3) The assumptions referred to in subparagraph (2) are that—

(a) the offshore fund is a company which in the account period is resident in the State,

(b) the account period is an accounting period of that company, and

(c) any dividends or distributions which by virtue of section 129 should be disregarded in computing income for corporation tax purposes are nevertheless to be taken into account in that computation in the like manner as if they were dividends or distributions of a company resident outside the State.

(4) Without prejudice to any deductions available apart from this subparagraph, the deductions referred to in subparagraph (2) include—

(a) a deduction equal to any amount which by virtue of paragraph 1(6) is allowed as a deduction in determining the income of the fund for the account period in question,

(b) a deduction equal to any amount of Irish income tax paid by deduction or otherwise by, and not repaid to, the offshore fund in respect of the income of the account period, and

(c) a deduction equal to any amount of tax (paid under the law of a territory outside the State) 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, is not to be taken into account by virtue of section 71 (1) or 77 (6);

but section 2 (4) shall be disregarded for the purposes of clause (b).

(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 43, 49, 50 or 63, the effect of the assumption in subparagraph (3) (a) is that those sums are to be taken into account in determining the total profits referred to in subparagraph (2).

PART 2

Modifications of Conditions for Certification in Certain Cases

Exclusion of investments in distributing offshore funds

6. (1) In this Part of this Schedule, an offshore fund within subparagraph (2) (c) is referred to as a “qualifying fund”.

(2) 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,

(b) those interests (together with other interests which the primary fund may have) are such that, by virtue of paragraph (a) of subsection (3) of section 744 or, if the other fund concerned is a company, paragraph (b) or (c) of that subsection, the primary fund could not apart from this paragraph be certified as a distributing fund in respect of the account period, and

(c) without regard to 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 in section 744 (3) (other than paragraph (d)) anything prevents the primary fund being certified as mentioned in clause (b), the interests of the primary fund in that other fund shall be disregarded except for the purposes of determining the total value of the assets of the primary fund.

(3) In a case within subparagraph (2)—

(a) section 744 (3) (other than paragraph (d)) shall apply in relation to the primary fund with the modification in paragraph 7 (in addition to that provided for by subparagraph (2)), and

(b) Part 1 of this Schedule shall apply in relation to the primary fund with the modification in paragraph 8.

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

(a) at any time in the account period referred to in paragraph 6(2), the assets of the primary fund include an interest in an offshore fund or in any company (whether an offshore fund or not),

(b) that interest is to be taken into account in determining whether in section 744 (3) (other than paragraph (d)) anything 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 clause (a),

then, for the purposes of the application in relation to the primary fund of section 744 (3) (other than paragraph (d)), at any time when the assets of the qualifying fund include the interest referred to in clause

(c), 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) is that, in determining whether the condition in paragraph 1(1) (b) (ii) is fulfilled with respect to the account period of the primary fund referred to in paragraph 6(2), the Irish equivalent profits of the primary fund for that account 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 account period.

(2) For the purposes of this paragraph, the excess income of the qualifying fund for any account period of that fund shall be the amount (if any) by which its Irish equivalent profits for that account period exceed the amount of the distributions made for that account period, as determined for the purposes of the application of paragraph 1(1) to the qualifying fund.

(3) Where an account period of the qualifying fund coincides with an account period of the primary fund, the excess income (if any) of the qualifying fund for that account period shall be the excess income which is attributable to that account period of the primary fund.

(4) In a case where subparagraph (3) does not apply, the excess income of the qualifying fund attributable to an account period of the primary fund shall be 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 subparagraph (4), the appropriate fraction shall be determined by reference to the formula—

$$A \div B$$

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) to the primary fund's share of—

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

(b) the excess income (within the meaning of paragraph 8) of the qualifying fund,

shall be construed as references to the fraction specified in subparagraph (2) of that interest or excess income.

(2) In relation to any account period of the primary fund, the fraction referred to in subparagraph (1) shall be determined by reference to the formula—

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

where—

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

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

Offshore funds investing in trading companies

10. (1) In this paragraph—

“commodities” has the same meaning as in paragraph 4(1);

“dealing”, in relation to commodities, currency, securities, debts or other assets of a financial nature, includes dealing by means of futures contracts and traded options;

“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, currency, securities, debts or other assets of a financial nature, or

(b) banking or money-lending.

(2) In any case where the assets of an offshore fund for the time being include an interest in a trading company, section 744 (3) shall apply subject to the modifications in subparagraphs (3) and (4).

(3) In the application of section 744 (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, “20 per cent” shall be substituted for “10 per cent”.

(4) In the application of section 730 (3) (c) to an offshore fund, for “more than 10 per cent”, in so far as it would otherwise refer to the share capital of a trading company or to any class of such share capital, “50 per cent or more” shall be substituted.

Offshore funds with wholly-owned subsidiaries

11. (1) In relation to an offshore fund which has a wholly-owned subsidiary which is a company, section 744 (3) or Part 1 of this Schedule shall apply subject to the modifications in subparagraph (4).

(2) Subject to subparagraph (3), for the purposes of this paragraph, a company shall be 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 within section 743 (1) (a), directly and beneficially owned by the fund,

(b) in the case of an offshore fund within section 743 (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 within section 743 (1) (c), owned in a manner which as near as may be corresponds either to clause (a) or (b).

(3) In the case of a company which has only one class of issued share capital, the reference in subparagraph (2) 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 subparagraph (1) are that for the purposes of section 744 (3) and Part 1 of this Schedule—

(a) the 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 subparagraph (2) shall be regarded as the receipts, expenditure, assets and liabilities of the fund, and

(b) there shall be disregarded 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 744 (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 is within subparagraph (2), or

(b) a subsidiary management company of the fund (within the meaning of subparagraph (3)).

(2) A company which is a wholly-owned subsidiary of an offshore fund shall be one to which subparagraph (1) (a) 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 the company,

and paragraph 11(2) 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 (being a company in which an offshore fund has an interest) shall be a subsidiary management company of the fund for the purposes of subparagraph (1) (b) if—

(a) the company carries on no business other than providing services within subparagraph (4) 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 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 subparagraph (3) are—

(a) holding property (being property of any description) 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 subparagraph (3) 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,

(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 subparagraph (3) (b) to the company shall be taken to include a reference to a wholly-owned subsidiary of the company.

(6) A reference in subparagraph (5) to a wholly-owned subsidiary of a company shall be construed as 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-mentioned company.

Disregarding of certain investments forming less than 5 per cent of a fund

13. (1) In this paragraph, “excess holding” means any holding within subparagraph (2).

(2) 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 744 (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 subparagraph (3) is fulfilled, that holding shall be disregarded for the purposes of section 744 (3) (c).

(3) The condition referred to in subparagraph (2) 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 Revenue Commissioners to disregard certain breaches of conditions

14. Where in the case of any account period of an offshore fund it appears to the Revenue Commissioners that there has been a failure to comply with any of the conditions in paragraphs (a), (b) and (c) of section 744 (3) (as modified, where appropriate, by the preceding provisions of this Part of this Schedule) but they are satisfied that the failure—

- (a) occurred inadvertently, and
- (b) was remedied without unreasonable delay,

then, the Revenue Commissioners may disregard the failure for the purposes of determining whether to certify the fund as a distributing fund in respect of that account period.

PART 3

Certification Procedure

Application for certification

15. (1) The Revenue Commissioners shall, in such manner as they consider 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,
- (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,
- (c) such information as the Revenue Commissioners may reasonably require for the purpose of determining whether the fund should be so certified is furnished to the Revenue Commissioners, and
- (d) the Revenue Commissioners are satisfied that nothing in subsection (2) or (3) of section 744 prevents the fund being so certified.

(2) An application under this paragraph shall be made to the Revenue Commissioners by the fund or by a trustee or officer of the fund on behalf of the fund and may be so made before the expiry of the period of 6 months beginning at the end of the account period to which the application relates.

(3) In any case where on an application under this paragraph the Revenue Commissioners 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 determination to the fund.

(4) Where at any time it appears to the Revenue Commissioners that—

(a) the accounts accompanying an application under this paragraph in respect of any account period of an offshore fund are not such, or

(b) any information furnished to them in connection with such an application is not such,

as to make full and accurate disclosure of all facts and considerations relevant to the application, the Revenue Commissioners shall give notice to the fund accordingly, specifying the period concerned.

(5) Where a notice is given by the Revenue Commissioners under subparagraph (4), they shall be deemed never to have certified the offshore fund in respect of the account period in question.

Appeals

16. (1) An appeal to the Appeal Commissioners—

(a) against a determination referred to in paragraph 15(3), or

(b) against a notification under paragraph 15(4),

may be made by the offshore fund or by a trustee or officer of the fund on behalf of the fund, and shall be so made by notice specifying the grounds of appeal and given to the Revenue Commissioners within 30 days of the date of the notice under subparagraph (3) or (4) of paragraph 15 as the case may be.

(2) The Appeal Commissioners shall hear and determine an appeal under subparagraph (1) in accordance with the principles to be followed by the Revenue Commissioners in determining applications under paragraph 15 and, subject to those principles, in the like manner as in the case of an appeal to the Appeal Commissioners against an assessment to income tax, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

(3) The jurisdiction of the Appeal Commissioners on an appeal under this paragraph shall include jurisdiction to review any decision of the Revenue Commissioners relevant to a ground of the appeal.

PART 4

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, in any case where no application has been made under paragraph 15 in respect of an account period of an offshore fund, any person liable to pay tax which that person would not be liable to pay if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Revenue Commissioners to take action under this paragraph for the purposes of determining whether the fund should be so certified.

(2) Subject to subparagraphs (3) and (5), where the Revenue Commissioners receive a notice under subparagraph (1) they shall by notice, given in such manner as they consider appropriate in the circumstances, invite the offshore fund concerned to make an application under paragraph 15 in respect of the period in question.

(3) Where subparagraph (2) applies, the Revenue Commissioners shall not be required to give notice under that subparagraph before the expiry of the account period to which the notice is to relate nor if an application under paragraph 15 has already been made; but where notice is given under subparagraph (2), an application under paragraph 15 shall not be out of time under paragraph 15(2) if it is made within 90 days of the date of that notice.

(4) Where an offshore fund to which notice is given under subparagraph (2) does not make an application under paragraph 15 in respect of the account period in question within the time allowed by subparagraph (3) or paragraph 15(2), as the case may be, the Revenue Commissioners shall proceed to determine the question of certification in respect of that period as if such an application had been made.

(5) Where the Revenue Commissioners receive more than one notice under subparagraph (1) with respect to the same account period of the same offshore fund, their obligations under subparagraphs (2) and (4) shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any of them.

(6) Notwithstanding anything in subparagraph (5), for the purpose of a determination under subparagraph (4) with respect to an account period of an offshore fund, the Revenue Commissioners shall have regard to accounts and other information furnished by all persons who have given notice under subparagraph (1) with respect to that account period, and paragraph 15 shall apply as if accounts and information so furnished had been furnished in compliance with subparagraph (1) of that paragraph.

(7) Without prejudice to subparagraph (5), in any case where—

(a) at a time after the Revenue Commissioners have made a determination under subparagraph (4) that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under subparagraph (1) with respect to that period, and

(b) the person giving that notice furnishes the Revenue Commissioners with accounts or information which had not been furnished to them at the time of the earlier determination,

then, the Revenue Commissioners 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 Revenue Commissioners under subparagraph (1) with respect to an account period of an offshore fund and no application has been made under paragraph 15 with respect to that period, then—

(a) the Revenue Commissioners shall notify that person of their determination with respect to certification under subparagraph (4), and

(b) paragraph 16 shall not apply in relation to that determination.

Information as to decisions on certification etc.

19. Any obligation on the Revenue Commissioners to maintain secrecy or any other restriction upon the disclosure of information by them shall not preclude them from disclosing to any person appearing to them to have an interest in the matter—

a) any determination of the Revenue Commissioners or (on appeal) the Appeal Commissioners as to whether an offshore fund should or should not be certified as a distributing fund in respect of any account period, or

(b) the content and effect of any notice given by the Revenue Commissioners under paragraph 15(4).

20. The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this Schedule to be performed or discharged by the Revenue Commissioners, and references in this Schedule to the Revenue Commissioners shall, with any necessary modifications, be construed as including references to an officer so nominated.