

SCHEDULE 20 Offshore Funds: Computation of Offshore Income Gains

Section 745.

FA90 Sch6

PART 1

Disposal of Interests in non-qualifying funds

Interpretation

1. In this Part of this Schedule, “material disposal” means a disposal to which Chapter 2 of Part 27 applies otherwise than by virtue of section 742.

Calculation of unindexed gain

2. (1) Where there is a material disposal, there shall first be determined for the purposes of this Part of this Schedule the amount (if any) which in accordance with this paragraph is the unindexed gain accruing to the person making the disposal.

(2) Subject to subsections (2) to (6) of section 741 and paragraph 3, the unindexed gain accruing on a material disposal shall be the amount which would be the gain on that disposal for the purposes of the Capital Gains Tax Acts if it were computed without regard to—

(a) any charge to income tax or corporation tax by virtue of section 745, and

(b) any adjustment (in this Part of this Schedule referred to as “the indexation allowance”) made under section 556 (2) to sums allowable as deductions in the computation of chargeable gains.

3. (1) Where the material disposal forms part of a transfer to which section 600 applies, the unindexed gain accruing on the disposal shall be computed without regard to any deduction to be made under that section in computing a chargeable gain.

(2) Notwithstanding sections 538 and 546, where apart from this subparagraph the effect of any computation under the preceding provisions of this Part of this Schedule would be to produce a loss, the unindexed gain on the material disposal shall be treated as nil, and accordingly for the purposes of this Part of this Schedule no loss shall be treated as accruing on a material disposal.

Gains since the 6th day of April, 1990

4. (1) This paragraph shall apply where—

(a) the interest in the offshore fund which is disposed of by the person making a material disposal was acquired by that person before the 6th day of April, 1990, or

(b) that person is treated by virtue of any provision of subparagraphs (3) and (4) as having acquired the interest before that date.

(2) Where this paragraph applies, the amount which would have been the gain on the material disposal shall be determined for the purposes of this Part of this Schedule—

(a) on the assumption that on the 6th day of April, 1990, the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time, and

(b) subject to that assumption, on the basis that the gain is computed in the like manner as the unindexed gain on the material disposal is determined under paragraphs 2 and 3,

and that amount is in paragraph 5(2) referred to as “the gain since the 6th day of April, 1990”.

(3) Where the person making the material disposal acquired the interest disposed of—

(a) on or after the 6th day of April, 1990, and

(b) in such circumstances that by virtue of any enactment other than section 556 (4) that person and the person (in this subparagraph and subparagraph (4) referred to as “the previous owner”) from whom that person acquired the interest disposed of were to be treated for the purposes of the Capital Gains Tax Acts as if that person's acquisition were for a consideration of such an amount as would secure that, on the disposal under which that person acquired the interest disposed of, neither a gain or a loss accrued to the previous owner,

then, the previous owner's acquisition of the interest shall be treated as that person's acquisition of the interest.

(4) Where the previous owner acquired the interest disposed of—

(a) on or after the 6th day of April, 1990, and

(b) in circumstances similar to those referred to in subparagraph (3),

then, the acquisition of the interest by the predecessor of the previous owner shall be treated for the purposes of this paragraph as the previous owner's acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before the 6th day of April, 1990, or, as the case may be, until an acquisition on a material disposal on or after that date.

The offshore income gain

5. (1) Subject to subparagraph (2), a material disposal shall give rise to an offshore income gain of an

amount equal to the unindexed gain on that disposal.

(2) In any case where—

(a) paragraph 4 applies, and

(b) the gain since the 6th day of April, 1990 (within the meaning of paragraph 4(2)) is less than the unindexed gain on the disposal,

the offshore income gain to which the disposal gives rise shall be an amount equal to the income gain since the 6th day of April, 1990 (within the meaning of that paragraph).

PART 2

Disposals involving an equalisation element

6. (1) Subject to paragraph 7, a disposal to which Chapter 2 of Part 27 applies by virtue of section 742 (3) shall give rise to an offshore income gain of an amount equal to the equalisation element relevant to the asset disposed of.

(2) Subject to subparagraphs (4) to (6), the equalisation element relevant to the asset disposed of by a disposal within subparagraph (1) shall be 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 asset disposed of were acquired by another person by means of initial purchase.

(3) In the following provisions of this Part of this Schedule, a disposal within subparagraph (1) is referred to as a “disposal involving an equalisation element”.

(4) Where the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal after the beginning of the period by reference to which the accrued income referred to in subparagraph (2) is calculated, the amount which apart from this subparagraph would be the equalisation element relevant to that asset shall be reduced by the following amount, that is—

(a) if that acquisition took place on or after the 6th day of April, 1990, the amount which on that acquisition was credited to the equalisation account of the offshore fund concerned in respect of accrued income or, as the case may be, would have been so credited if that acquisition had been an acquisition by means of initial purchase, and

(b) in any other case, the amount which would have been credited to that account in respect of accrued income if that acquisition had been an acquisition by means of initial purchase taking place on the 6th day of April, 1990.

(5) In any case where—

(a) the asset disposed of by a disposal involving an equalisation element was acquired by the person

making the disposal at or before the beginning of the period by reference to which the accrued income referred to in subparagraph (2) is calculated, and

(b) that period began before the 6th day of April, 1990, and ends after that date,

the amount which apart from this subparagraph would be the equalisation element relevant to that asset shall be reduced by the amount which would have been credited to the equalisation account of the offshore fund concerned in respect of accrued income if the acquisition referred to in clause (a) had been an acquisition by means of initial purchase taking place on the 6th day of April, 1990.

(6) Where there is a disposal involving an equalisation element, then, to the extent that any amount which was or would be credited to the equalisation account of the offshore fund in respect of accrued income (as mentioned in subparagraph (2), (3), (4) or (5)) represents profits from dealing in commodities, 50 per cent of that accrued income shall be disregarded in determining under those subparagraphs the equalisation element relevant to the asset disposed of by that disposal.

7. (1) For the purposes of this Part of this Schedule, the Part 1 gain (if any) on any disposal involving an equalisation element shall be determined in accordance with paragraph 8.

(2) Notwithstanding anything in paragraph 6—

(a) where there is no Part 1 gain on a disposal involving an equalisation element, that disposal shall not give rise to an offshore income gain, and

(b) where apart from this paragraph the offshore income gain on a disposal involving an equalisation element would exceed the Part 1 gain on that disposal, the offshore income gain to which that disposal gives rise shall be reduced to an amount equal to that Part 1 gain.

8. (1) On a disposal involving an equalisation element, the Part 1 gain shall be the amount (if any) which, by virtue of Part 1 of this Schedule (as modified by subparagraphs (2) and (3)), would be the offshore income gain on that disposal if it were a material disposal within the meaning of that Part.

(2) For the purposes only of the application of Part 1 of this Schedule to determine the Part 1 gain (if any) on a disposal involving an equalisation element, subsections (5) and (6) of section 742 shall apply as if in subsection (5) of that section “by virtue of subsection (3)” were deleted.

(3) Where a disposal involving an equalisation element is one which by virtue of any enactment other than section 556 (4) is treated for the purposes of the Capital Gains Tax Acts as one on which neither a gain nor a loss accrues to the person making the disposal, then, for the purpose only of determining the Part 1 gain (if any) on the disposal, that enactment shall be deemed not to apply to such a disposal (but without prejudice to the application of that enactment to any earlier disposal).