

SCHEDULES

SCHEDULE 27

DISTRIBUTING FUNDS

PART IV

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 above, in any case where no application has been made under paragraph 15 above in respect of an account period of an offshore fund, any person who is assessed to tax for which he would not be liable if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Board to take action under this paragraph with a view to determining whether the fund should be so certified.
- (2) Subject to sub-paragraphs (3) and (5) below, if the Board receive a notice under sub-paragraph (1) above, they shall by notice invite the offshore fund concerned to make an application under paragraph 15 above in respect of the period in question.
- (3) Where sub-paragraph (2) above applies, the Board shall not be required to give notice under that sub-paragraph before the expiry of the account period to which the notice is to relate nor if an application under paragraph 15 above has already been made; but where notice is given under that sub-paragraph, an application under paragraph 15 above shall not be out of time under paragraph 15(2)(a) above if it is made within 90 days of the date of that notice.
- (4) If an offshore fund to which notice is given under sub-paragraph (2) above does not, within the time allowed by sub-paragraph (3) above or, as the case may be, paragraph 15(2)(a) above, make an application under paragraph 15 above in respect of the account period in question, the Board shall proceed to determine the question of certification in respect of that period as if such an application had been made.
- (5) Where the Board receive more than one notice under sub-paragraph (1) above with respect to the same account period of the same offshore fund, their obligations under sub-paragraphs (2) and (4) above shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any one of them.
- (6) Notwithstanding anything in sub-paragraph (5) above, for the purpose of a determination under sub-paragraph (4) above with respect to an account period of an offshore fund, the Board shall have regard to accounts and other information furnished by all persons who have given notice under sub-paragraph (1) above with

Status: This is the original version (as it was originally enacted).

respect to that account period; and paragraph 15 above shall apply as if accounts and information so furnished had been furnished in compliance with sub-paragraph (1) of that paragraph.

- (7) Without prejudice to sub-paragraph (5) above, in any case where—
- (a) at a time after the Board have made a determination under sub-paragraph (4) above that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under sub-paragraph (1) above with respect to that period; and
 - (b) the person giving that notice furnishes the Board with accounts or information which had not been furnished to the Board at the time of the earlier determination;

the Board 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 Board under sub-paragraph (1) above with respect to an account period of an offshore fund and no application has been made under paragraph 15 above with respect to that period—
- (a) the Board shall notify that person of their determination with respect to certification under sub-paragraph (4) above; and
 - (b) paragraph 16 above shall not apply in relation to that determination.

Postponement of tax pending determination of question as to certification

- 19 (1) In any case where—
- (a) an application has been made under paragraph 15 above with respect to an account period of an offshore fund and that application has not been finally determined; or
 - (b) paragraph (a) above does not apply but notice has been given under paragraph 18(1) above in respect of an account period of an offshore fund and the Board have not yet given notice of their decision as to certification under paragraph 18(4) above;

any person who has been assessed to tax and considers that, if the offshore fund were to be certified as a distributing fund in respect of the account period in question, he would be overcharged to tax by the assessment may, by notice given to the inspector within 30 days after the date of the issue of the notice of assessment, apply to the General Commissioners for a determination of the amount of tax the payment of which should be postponed pending the determination of the question whether the fund should be so certified.

- (2) A notice of application under sub-paragraph (1) above shall state the amount in which the applicant believes that he is over-charged to tax and his grounds for that belief.
- (3) Subsections (3A) onwards of section 55 of the Management Act (recovery of tax not postponed) shall apply with any necessary modifications in relation to an application under sub-paragraph (1) above as if it were an application under subsection (3) of that section and as if the determination of the question as to certification (whether by the Board or on appeal) were the determination of an appeal.

Status: This is the original version (as it was originally enacted).

Information as to decisions on certification etc.

- 20 No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an inspector from disclosing to any person appearing to have an interest in the matter—
- (a) any determination of the Board or (on appeal) the Special Commissioners 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 Board under paragraph 15(4) above.