

## SCHEDULE 1

## UNAUTHORISED UNIT TRUSTS

*Amendments of Chapter 13 of Part 15 of ITA 2007*

- 1 (1) Chapter 13 of Part 15 of ITA 2007 (deduction of income tax at source: unauthorised unit trusts) is amended as follows.
- (2) In section 941(6) (deemed payments to unit holders and deemed deductions of income tax), after the definition of “deemed deduction”, insert—
  - ““deemed income” means the gross amount of income treated as received as mentioned in subsection (1),”.
- (3) In section 942 (income tax to be collected from trustees) after subsection (5) insert—
  - “(6) No relief under section 788 or 790(1) of ICTA (double tax relief) is allowed against income tax to be collected by virtue of this section.”
- (4) After section 943 (calculation of trustees’ income pool) insert—

**“943A Treatment of cases involving double tax relief**

- (1) This section applies where—
  - (a) the trustees of an unauthorised unit trust are treated as making deemed payments to unit holders in a tax year (“the current tax year”),
  - (b) there is a reduction in the income pool in the current tax year, and
  - (c) the amount of the trustees’ double tax relief pool as at the start of the current tax year is greater than zero.
- (2) Section 848 (income tax deducted at source treated as income tax paid by recipient) does not apply to the foreign element of the deemed deduction treated as made from any of the deemed payments.
- (3) Instead, for the purposes of the Tax Acts—
  - (a) the foreign element of the deemed deduction is treated as if it were tax payable under the law of a territory outside the United Kingdom with which there are not in force any arrangements under section 788 of ICTA (relief by agreement with other territories), and
  - (b) the foreign element of the deemed income represented by the deemed payment is treated as if it were income that—
    - (i) arises in a territory of the kind mentioned in paragraph (a), and
    - (ii) is income by reference to which the tax treated under paragraph (a) as payable was computed.
- (4) A reference in this Chapter to a reduction in the income pool in a tax year is to the amount (if any) by which—
  - (a) the amount of the income pool at the start of the tax year, exceeds

(b) the amount of the income pool at the start of the following tax year.

(5) See—

section 943B for provision about references to the “foreign element” of a deemed deduction or deemed income, and section 943C for provision about the calculation of the trustees’ double tax relief pool as at the beginning of a tax year.

#### **943B The “foreign element” of a deemed deduction or deemed income**

(1) References in this Chapter to the “foreign element” of—

(a) a deemed deduction treated as made in a tax year, or

(b) deemed income treated as received in a tax year,

are to the deemed deduction or deemed income multiplied by the relevant fraction.

(2) For this purpose “the relevant fraction” means—

$$\frac{A}{B}$$

where—

A is—

(a) the reduction in the income pool in the tax year multiplied by the basic rate for the year, or

(b) if lower, the amount of the trustees’ double tax relief pool as at the start of the tax year;

B is the total of the deemed deductions treated as made in the tax year.

#### **943C Calculation of trustees’ double tax relief pool**

(1) This is how the amount of the trustees’ double tax relief pool as at the start of a tax year (“the current tax year”) is calculated.

(2) The trustees’ double tax relief pool as at the start of the current tax year is—

$$A + B - C$$

where—

A is—

(a) the amount of the trustees’ double tax relief pool as at the start of the previous tax year, or

(b) if the current tax year is the tax year during which the unauthorised unit trust is established, or the trustees have been UK resident for no tax year prior to the current tax year, nil;

B is the amount of the reduction, if any, in the liability of the trustees to income tax under section 788 or 790(1) of ICTA (double tax relief) in the previous tax year;

C is the sum of the foreign elements (if any) of deemed deductions from deemed payments treated as made in the previous tax year.

- (3) If the trustees were non-UK resident for the previous tax year, references in subsection (2) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.

#### **943D Information: payment statements and annual statements**

- (1) This section applies in relation to any tax year in which the trustees of an unauthorised unit trust are treated as making a deemed payment to a unit holder.
- (2) The trustees must give the unit holder –
  - (a) a statement (a “payment statement”) in relation to each deemed payment treated as made in the tax year, and
  - (b) a statement (an “annual statement”) in relation to the tax year.
- (3) A payment statement must include –
  - (a) an estimate of the foreign element (if any) of the deemed deduction treated as made from the deemed payment, and
  - (b) an estimate of the foreign element (if any) of the deemed income represented by the deemed payment.
- (4) The estimates of the foreign elements required under subsection (3) are the amounts that those foreign elements would be –
  - (a) disregarding any other deemed payment that the trustees are treated as making in the tax year (and any deemed deduction treated as made from such a deemed payment), and
  - (b) disregarding any income received by the trustees at a time not within the statement period.
- (5) For this purpose “the statement period” means the period –
  - (a) beginning with the beginning of the tax year or, if the deemed payment is not the first deemed payment treated as made in the tax year, the day after that on which the last deemed payment was treated as made, and
  - (b) ending with the date on which the deemed payment is treated as made.
- (6) A payment statement must be given as soon as reasonably practicable after the deemed payment is treated as made.
- (7) An annual statement must specify –
  - (a) the total of the foreign elements (if any) of deemed deductions from deemed payments treated as made to the unit holder in the tax year, and
  - (b) the total of the foreign elements (if any) of amounts of deemed income represented by deemed payments treated as made to the unit holder in the tax year.
- (8) An annual statement must be given as soon as reasonably practicable after the end of the tax year.
- (9) The duties imposed by this section are enforceable by the unit holder.”

*Consequential amendments*

- 2 (1) In section 550 of ITTOIA 2005 (distributions from unauthorised unit trusts: income tax treated as paid), after “is” insert “, subject to section 943A of that Act (treatment of cases involving double tax relief),”.
- (2) In section 848 of ITA 2007 (income tax deducted at source treated as income tax paid by the recipient), at the end insert –
  - “(4) In relation to income tax deducted at source under section 941 (unauthorised unit trusts), this section is subject to section 943A (treatment of cases involving double tax relief).”
- (3) In section 971 of CTA 2009 (distributions from unauthorised unit trusts: overview of Chapter), in subsection (2)(a), after “is” insert “, subject to section 943A of that Act (treatment of cases involving double tax relief),”.

*Commencement*

- 3 The amendments made by this Schedule have effect in relation to payments treated under section 941(2) of ITA 2007 as made on or after 21 October 2009 (“the commencement date”).

*Transitional provision: opening value of trustees’ double tax relief pool*

- 4 (1) This paragraph applies, and section 943C of ITA 2007 does not apply, in relation to the determination of the amount of the trustees’ double tax relief pool as at the start of the tax year 2009-10.
- (2) That amount is –
  - (a) the lower of amounts A and B, or
  - (b) if there is no amount A or B, nil.
- (3) Amount A is the sum of –
  - (a) any amount by which the liability of the trustees to income tax for the tax year 2007-08 is reduced under section 788 or 790(1) of ICTA, and
  - (b) any amount by which the liability of the trustees to income tax for the following tax year is so reduced.
- (4) Amount B is 20% of the amount (if any) of the trustees’ income pool as at the start of the tax year 2009-10 (calculated in accordance with section 943 of ITA 2007).

*Transitional provision: payment statements*

- 5 (1) This paragraph applies to any deemed payment that is treated as made during the transitional period.
- (2) Section 943D(6) of CTA 2009 is treated as if it required the payment statement in relation to the deemed payment to be given as soon as reasonably practicable after the end of the transitional period.
- (3) In this paragraph “the transitional period” means –
  - (a) beginning with the commencement date, and
  - (b) ending with the coming into force of the amendments made by this Schedule.