



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XV

SETTLEMENTS

[^{F1}CHAPTER 1B

PROVISIONS AS TO CAPITAL SUMS PAID TO SETTLOR]

677 Sums paid to settlor otherwise than as income.

- (1) ^{M1}Any capital sum paid directly or indirectly in any year of assessment by the trustees of a settlement to which this section applies to the settlor shall—
- to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;
 - to the extent to which the amount of that sum is not by virtue of this subsection treated as his income for that year and falls within the amount of the income available up to the end of the next following year, be treated for those purposes as the income of the settlor for the next following year;
- and so on for each subsequent year up to a maximum of ten subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.
- (2) ^{M2}For the purposes of subsection (1) above, the amount of income available up to the end of any year shall, in relation to any capital sum paid as mentioned in that subsection, be taken to be the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less—
- the amount of that income taken into account under that subsection in relation to that sum in any previous year or years; and

Status: Point in time view as at 01/01/2005. This version of this provision has been superseded.

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- (b) ^{M3}the amount of [^{F1}that income taken into account under that subsection in relation to] any other capital sums paid to the settlor in any year before that sum was paid; and
 - (c) so much of any income arising under the settlement in that year and any previous year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 671, 672, 674 [^{F2}674A] or 683; and
 - (d) any income arising under the settlement in that year and any previous year which has been treated as the income of the settlor by virtue of section 673; and
 - (e) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 676, as deductions in computing the settlor's income for that year or any previous year; and
 - (f) ^{M4}any sums paid by virtue or in consequence of the settlement in that year or any previous year which have been treated as the income of the settlor by virtue of section 664(2)(b); and
 - [^{F3}(fa) any income arising under the settlement in that year or any previous year which has been treated as income of the settlor by virtue of section 660A or 660B; and]
 - (g) any sums included in the income arising under the settlement as amounts which have been or could have been apportioned to a beneficiary as mentioned in section 681(1)(b); and
 - (h) ^{M5}an amount equal to [^{F4}tax at the rate applicable to trusts] on—
 - (i) the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less
 - (ii) the aggregate amount of the income and sums referred to in [^{F5}each of paragraphs (c) to (g) above].
- (3) ^{M6}Where any amount is included in a person's income by virtue of section 421 in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.
- (4) ^{M7}Where the capital sum paid to the settlor is a sum paid by way of loan, then—
- (a) if the whole of it is repaid, no part of that sum shall by virtue of subsection (1) above be treated as the settlor's income for any year of assessment after that in which the repayment occurs; and
 - (b) if one or more capital sums have previously been paid to him by way of loan and wholly repaid, the amount of that capital sum shall be treated as equal to its excess, if any, over so much of the sum or sums previously paid as has already fallen to be treated as his income by virtue of that subsection.
- (5) Where the capital sum paid to the settlor is a sum paid by way of complete repayment of a loan, then, if an amount not less than that sum is thereafter lent by the settlor to the trustees of the settlement, no part of that sum shall by virtue of subsection (1) above be treated as his income for any year of assessment after that in which the further loan is made.
- (6) ^{M8}Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of [^{F6}tax at the rate applicable to trusts] for that year, would be equal to that sum or that part of that sum.

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(7) ^{M9}Tax chargeable by virtue of this section shall be charged under Case VI of Schedule D; and there shall be set off against the tax charged on any amount treated by virtue of this section as income of the settlor for any year an amount equal to—

- (a) [^{F4}tax at the rate applicable to trusts] for that year on the amount so treated as his income; or
- (b) so much of [^{F7}the amount of tax at that rate] as is equal to the tax [^{F8}charged; or
- (c) the amount of tax paid by the trustees on the grossed-up amount of so much of the amount of income available up to the end of the year, in relation to the capital sum, as is taken into account under subsection (1) above in relation to that sum in that year (see subsections (7A) to (7C) below),

whichever is the least.]

[^{F9}(7A) For the purposes of subsection (7)(c) above—

- (a) any reduction falling to be made under subsection (2)(h) above shall be treated as made against income arising under the settlement in an earlier year of assessment before income arising under the settlement in a later year of assessment; and
- (b) income arising under the settlement in an earlier year of assessment shall be regarded as being taken into account under subsection (1) above before income arising under the settlement in a later year of assessment.

(7B) For the purposes of subsection (7)(c) above—

- (a) the grossed-up amount of any sum is such amount as, after the deduction of tax at the appropriate rate for each part of that sum, would be equal to that sum; and
- (b) the amount of tax paid by the trustees on that grossed-up amount is the amount of tax falling to be deducted under paragraph (a) above.

(7C) For the purposes of subsection (7B) above—

- (a) the appropriate rate for any part of a sum is 0% if—
 - (i) the income that falls to be regarded in accordance with subsection (7A) above as representing that part of the sum is income from a source outside the United Kingdom, and
 - (ii) the trustees were not resident in the United Kingdom for the relevant year of assessment;
- (b) the appropriate rate for any part of a sum in relation to which paragraph (a) above does not apply is—
 - (i) 34%, if the relevant year of assessment is the year 2003-04 or any earlier year of assessment,
 - (ii) 40%, if the relevant year of assessment is the year 2004-05 or any subsequent year of assessment.

For the purposes of this subsection the relevant year of assessment in relation to any part of a sum is the year of assessment in which the income to be regarded in accordance with subsection (7A) above as representing that part of the sum arose under the settlement.]

(8) ^{M10}In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.

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- (9) ^{M11}This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—
- (a) “capital sum” means, subject to subsection (10) below—
- (i) any sum paid by way of loan or repayment of a loan; and
- (ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money’s worth,
- but does not include any sum which could not have become payable to the settlor except in one of the events specified in section 673(3) [^{F10}or, in the case of a sum paid on or after 6th April 1995, in one of the events specified in section 660A(4) or on the death under the age of 25 of any such person as is mentioned in section 660A(5)]; and
- (b) references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor or to the settlor (or the husband or wife of the settlor) jointly with another person.
- (10) ^{M12}For the purposes of this section there shall be treated as a capital sum paid to the settlor by the trustees of the settlement any sum which—
- (a) is paid by them to a third party at the settlor’s direction or by virtue of the assignment by him of his right to receive it where the direction or assignment was given or made on or after 6th April 1981; or
- (b) is otherwise paid or applied by them for the benefit of the settlor,
- and which would not apart from this subsection be treated as a capital sum paid to him.

Textual Amendments

- F1** Words in s. 677(2)(b) inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 9(2)**
- F2** 1989 s.109(4).
- F3** S. 677(2)(fa) inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 9(3)**
- F4** Words in s. 677(2)(h)(7)(a) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(1), **25(1)**
- F5** Words in s. 677(2)(h)(ii) substituted (with effect in accordance with Sch. 4 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 4 para. 1(2)**
- F6** Words in s. 677(6) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(2), **25(1)**
- F7** Words in s. 677(7)(b) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 7(3), **25(1)**
- F8** Words in s. 677(7) substituted (with effect in accordance with Sch. 4 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 4 para. 1(3)**
- F9** S. 677(7A)-(7C) inserted (with effect in accordance with Sch. 4 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 4 para. 1(4)**
- F10** Words in s. 677(9)(a) inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 9(4)**

Marginal Citations

- M1** Source-1970 s.451(1); 1981 s.42(2)(a), (b); 1982 s.63(3)
- M2** Source-1970 s.451(2)(aa); 1981 s.42(3)(a)
- M3** Source-1970 s.451(2)(a)-(d); 1981 s.42(3)(b)
- M4** Source-1970 s.451(2)(dd), (ddd); 1981 s.42(3)(c)
- M5** Source-1970 s.451(2)(e); 1971 Sch.6 64, 1973 s.16(7)(a); 1981 s.42(3)(d)

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- M6** Source-1970 s.451(3)
- M7** Source-1970 s.451(3A), (3B); 1981 s.42(4)
- M8** Source-1970 s.451(5); 1971 Sch.6 64; 1973 s.16(7)(b)
- M9** Source-1970 s.451(6); 1981 s.42(5)
- M10** Source-1970 s.451(7)
- M11** Source-1970 s.451(8); 1981 s.42(6)
- M12** Source-1970 s.451(9); 1981 s.42(7), (8)

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