



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III

#### INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES

### CHAPTER I

#### MISCELLANEOUS PROVISIONS

#### 58 [F1Spouses and civil partners].

(1) [F2If, in any year of assessment, —

- (a) an individual is living with his spouse or civil partner, and
- (b) one of them disposes of an asset to the other,

both] shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(2) This section shall not apply—

- (a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset, or
- (b) if the disposal is by way of donatio mortis causa,

but this section shall have effect notwithstanding the provisions of section 18 or 161, or of any other provisions of this Act fixing the amount of the consideration deemed to be given on a disposal or acquisition.

#### Textual Amendments

- F1** Words in s. 58 heading substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **107(3)**

*Status: Point in time view as at 08/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F2** Words in s. 58(1) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **107(2)**

## 59 Partnerships.

[<sup>F3</sup>(1)] Where 2 or more persons carry on a trade or business in partnership—

- (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them separately, and
- (b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such, <sup>F4</sup>...

<sup>F4</sup>(c) .....

[<sup>F5</sup>(2) Subsection (3) applies if—

- (a) a person resident in the United Kingdom (“the resident partner”) is a member of a partnership which resides outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated outside the United Kingdom, and
- (b) by virtue of any arrangements falling within section 788 of the Taxes Act (“the arrangements”) any of the capital gains of the partnership are relieved from capital gains tax in the United Kingdom.

(3) The arrangements do not affect any liability to capital gains tax in respect of the resident partner's share of any capital gains of the partnership.]

[<sup>F6</sup>(4) For the purposes of subsections (2) and (3) the members of a partnership include any person entitled to a share of capital gains of the partnership.]

### Textual Amendments

- F3** S. 59(1) renumbered (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 431(2)** (with Sch. 2)
- F4** S. 59(c) and preceding word repealed (with effect in accordance with Sch. 29 Pt. VIII(16) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 29 Pt. VIII(16)**
- F5** S. 59(2)(3) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 431(3)** (with Sch. 2)
- F6** S. 59(4) inserted (retrospective to 6.4.2005) by [Finance Act 2008 \(c. 9\)](#), **s. 58(2)(4)**

## [<sup>F7</sup>59A Limited liability partnerships.

(1) Where a limited liability partnership carries on a trade or business with a view to profit—

- (a) assets held by the limited liability partnership are treated for the purposes of tax in respect of chargeable gains as held by its members as partners, and
- (b) any dealings by the limited liability partnership are treated for those purposes as dealings by its members in partnership (and not by the limited liability partnership as such);

and tax in respect of chargeable gains accruing to the members of the limited liability partnership on the disposal of any of its assets shall be assessed and charged on them separately.

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- (2) For all purposes, except as otherwise provided, in the enactments relating to tax in respect of chargeable gains—
- (a) references to a partnership include a limited liability partnership in relation to which subsection (1) above applies,
  - (b) references to members of a partnership include members of such a limited liability partnership,
  - (c) references to a company do not include such a limited liability partnership, and
  - (d) references to members of a company do not include members of such a limited liability partnership.
- (3) Subsection (1) above continues to apply in relation to a limited liability partnership which no longer carries on any trade or business with a view to profit—
- (a) if the cessation is only temporary, or
  - (b) during a period of winding up following a permanent cessation, provided—
    - (i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and
    - (ii) the period of winding up is not unreasonably prolonged,but subject to subsection (4) below.
- (4) Subsection (1) above ceases to apply in relation to a limited liability partnership—
- (a) on the appointment of a liquidator or (if earlier) the making of a winding-up order by the court, or
  - (b) on the occurrence of any event under the law of a country or territory outside the United Kingdom corresponding to an event specified in paragraph (a) above.
- (5) Where subsection (1) above ceases to apply in relation to a limited liability partnership with the effect that tax is assessed and charged—
- (a) on the limited liability partnership (as a company) in respect of chargeable gains accruing on the disposal of any of its assets, and
  - (b) on the members in respect of chargeable gains accruing on the disposal of any of their capital interests in the limited liability partnership,
- it shall be assessed and charged on the limited liability partnership as if subsection (1) above had never applied in relation to it.
- (6) Neither the commencement of the application of subsection (1) above nor the cessation of its application in relation to a limited liability partnership shall be taken as giving rise to the disposal of any assets by it or any of its members.]

#### Textual Amendments

- F7** S. 59A inserted (6.4.2001) by [Limited Liability Partnerships Act 2000 \(c. 12\)](#), ss. 10(3), 19(1); [S.I. 2000/3316](#), art. 2; s. 59A substituted (retrospectively) (6.4.2001) by [Finance Act 2001 \(c. 9\)](#), s. [75\(2\)\(6\)](#) (with [Sch. 3](#))

## 60 Nominees and bare trustees.

- (1) In relation to [<sup>F8</sup>property] held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for

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2 or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the [<sup>F8</sup>property] were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

- (2) It is hereby declared that references in this Act to any [<sup>F9</sup>property] held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the [<sup>F9</sup>property] for payment of duty, taxes, costs or other outgoings, to direct how that [<sup>F9</sup>property] shall be dealt with.

#### Textual Amendments

- F8** Word in s. 60(1) substituted (with effect in accordance with Sch. 12 para. 10(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 10\(1\)](#)
- F9** Word in s. 60(2) substituted (with effect in accordance with Sch. 12 para. 10(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 10\(2\)](#)

#### Modifications etc. (not altering text)

- C1** S. 60(1) applied (27.7.1993) by [1993 c. 37, s. 12](#), [Sch. 2 Pt. I para. 21\(2\)\(d\)](#)

## 61 Funds in court.

- (1) For the purposes of section 60, funds in court held by the Accountant General shall be regarded as held by him as nominee for the persons entitled to or interested in the funds, or as the case may be for their trustees.
- (2) Where funds in court standing to an account are invested or, after investment, are realised, the method by which the Accountant General effects the investment or the realisation of investments shall not affect the question whether there is for the purposes of this Act an acquisition, or as the case may be a disposal, of an asset representing funds in court standing to the account, and in particular there shall for those purposes be an acquisition or disposal of shares in a court investment fund notwithstanding that the investment in such shares of funds in court standing to an account, or the realisation of funds which have been so invested, is effected by setting off, in the Accountant General's accounts, investment in one account against realisation of investments in another.
- (3) In this section “funds in court” means—
- (a) money in the Supreme Court, money in county courts and statutory deposits described in section 40 of the <sup>M1</sup>Administration of Justice Act 1982, and
  - (b) money in the Supreme Court of Judicature of Northern Ireland and money in a county court in Northern Ireland,

and investments representing such money; and references in this section to the Accountant General are references to the Accountant General of the Supreme Court of Judicature in England and, in relation to money within paragraph (b) above and investments representing such money, include references to the Accountant General of the Supreme Court of Judicature of Northern Ireland or any other person by whom such funds are held.

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#### Marginal Citations

M1 1982 c. 53.

## 62 Death: general provisions.

- (1) For the purposes of this Act the assets of which a deceased person was competent to dispose—
  - (a) shall be deemed to be acquired on his death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death, but
  - (b) shall not be deemed to be disposed of by him on his death (whether or not they were the subject of a testamentary disposition).
- (2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.
- [<sup>F10</sup>(2A) Amounts deductible from chargeable gains for any year in accordance with subsection (2) above shall not be so deductible from any such gains so far as they are gains that are brought into account for that year by virtue of section 2(5)(b).
- (2B) Where deductions under subsection (2) above fall to be made from the chargeable gains for any year, the provisions of this Act relating to taper relief shall have effect as if those deductions were deductions under section 2(2)(a) and (b) and, accordingly, as if—
  - (a) those deductions were to be made (before the application of the relief) in computing for that year the excess (if any) mentioned in section 2A(1); and
  - (b) for the purpose of determining the gains represented in that excess, the gains for that year from which those deductions are treated as made were to be ascertained in accordance with section 2A(6).]
  - (3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence, and domicile at the date of death.
  - (4) On a person acquiring any asset as legatee (as defined in section 64)—
    - (a) no chargeable gain shall accrue to the personal representatives, and
    - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.
  - (5) Notwithstanding section 17(1) no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.
  - (6) Subject to subsections (7) and (8) below, where within the period of 2 years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an

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instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—

- (a) the variation or disclaimer shall not constitute a disposal for the purposes of this Act, and
  - (b) this section shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.
- (7) Subsection (6) above does not apply to a variation [<sup>F11</sup>unless the instrument contains a statement by the persons making the instrument to the effect that they intend the subsection to apply to the variation.]
- (8) Subsection (6) above does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.
- (9) Subsection (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.
- (10) In this section references to assets of which a deceased person was competent to dispose are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

#### Textual Amendments

- F10** S. 62(2A)(2B) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 5](#)
- F11** Words in s. 62(7) substituted (with application in accordance with s. 52(2) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 52\(1\)](#)

### 63 Death: application of law in Scotland.

- (1) The provisions of this Act, so far as relating to the consequences of the death of <sup>F12</sup>... a proper liferenter of any property, shall have effect subject to the provisions of this section.
- (2) <sup>F13</sup>... on the death of any such <sup>F14</sup>... liferenter <sup>F15</sup>... the person (if any) who, on the death of the liferenter, becomes entitled to possession of the property as fiar shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.

#### Textual Amendments

- F12** Words in s. 63(1) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(a\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F13** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(b\)\(i\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F14** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 11\(1\)\(b\)\(ii\)](#), [Sch. 26 Pt. 3\(15\)](#)



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**F15** Words in s. 63(2) repealed (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by Finance Act 2006 (c. 25), Sch. 12 para. 11(1)(b)(iii), **Sch. 26 Pt. 3(15)**

## **[<sup>F16</sup>63A Death: application of law in Northern Ireland**

- (1) The provisions of this Act, so far as relating to the consequences of the death of a person to whom property in Northern Ireland stands limited for life (“the deceased”), shall have effect subject to the provisions of this section.
- (2) A person who acquires property in fee simple absolute or fee tail in possession as a consequence of the deceased's death shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.]

### **Textual Amendments**

**F16** S. 63A inserted (with effect in accordance with Sch. 12 para. 11(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 11(2)**

## **64 Expenses in administration of estates and trusts.**

- (1) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, [<sup>F17</sup>an asset held by another person as trustee, or as a personal representative of a deceased person, to which he became absolutely entitled as legatee or as against the trustee]—
  - (a) any expenditure within section 38(2) incurred by him in relation to the transfer of the asset to him by the [<sup>F18</sup>personal representative or trustee], and
  - (b) any such expenditure incurred in relation to the transfer of the asset by the [<sup>F19</sup>personal representative or trustee],shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.
- (2) In this Act, unless the context otherwise requires, “legatee” includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a person taking under a donatio mortis causa shall be treated (except for the purposes of section 62) as a legatee and his acquisition as made at the time of the donor's death.
- (3) For the purposes of the definition of “legatee” above, and of any reference in this Act to a person acquiring an asset “as legatee”, property taken under a testamentary disposition or on an intestacy or partial intestacy includes any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy.

### **Textual Amendments**

**F17** Words in s. 64(1) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 12(1)(a)**

**F18** Words in s. 64(1)(a) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 12(1)(b)**

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**F19** Words in s. 64(1)(b) substituted (with effect in accordance with Sch. 12 para. 12(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 12\(1\)\(b\)](#)

## 65 Liability for tax of trustees or personal representatives.

[<sup>F20</sup>(1) Subject to subsection (3) below, capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of the relevant trustees or the relevant personal representatives.]

(2) Subject to section 60 and any other express provision to the contrary, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of this Act as accruing to, or chargeable on, any other person, nor shall any trustee or personal representative be regarded for the purposes of this Act as an individual.

[<sup>F21</sup>(3) Where section 80 applies as regards the trustees of a settlement (“the migrating trustees”), nothing in subsection (1) above shall enable any person—

- (a) who ceased to be a trustee of the settlement before the end of the relevant period, and
- (b) who shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom,

to be assessed and charged to any capital gains tax which is payable by the migrating trustees by virtue of section 80(2).

(4) In this section—

“the relevant period” has the same meaning as in section 82;

“the relevant trustees”, in relation to any chargeable gains, means the trustees in the year of assessment in which the chargeable gains accrue and any subsequent trustees of the settlement, and “the relevant personal representatives” has a corresponding meaning.]

### Textual Amendments

**F20** S. 65(1) substituted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 114\(1\)](#)

**F21** S. 65(3)(4) inserted (with effect in accordance with s. 103(7) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 114\(2\)](#)

## 66 Insolvents’ assets.

(1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement this Act shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to him by the bankrupt or debtor being disregarded accordingly), and tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from him.



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- (2) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased and—
  - (a) subsection (1) above shall not apply after the death, and
  - (b) section 62(1) shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if he were a personal representative.
- (3) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased, and subsection (1) above shall not apply.
- (4) The definition of “settled property” in section 68 shall not include any property as being property held by a trustee or assignee in bankruptcy or under a deed of arrangement.
- (5) In this section—
  - “deed of arrangement” means a deed of arrangement to which the <sup>M2</sup>Deeds of Arrangement Act 1914 or any corresponding enactment forming part of the law of Scotland or Northern Ireland applies, and
  - “trustee in bankruptcy” includes a permanent trustee within the meaning of the <sup>M3</sup>Bankruptcy (Scotland) Act 1985.

#### Marginal Citations

**M2** 1914 c. 47.

**M3** 1985 c. 66.

### 67 Provisions applicable where section 79 of the Finance Act 1980 has applied.

- (1) In this section “a claim” means a claim under section 79 of the Finance Act 1980 (“section 79”) and “relief” means relief under that section (which provided general relief for gifts).
- (2) Where a disposal in respect of which a claim is or has been made is or proves to be a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
  - (a) the inheritance tax attributable to the value of the asset; and
  - (b) the amount of the chargeable gain as computed apart from this subsection;and in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.
- (3) Where an amount of inheritance tax—
  - (a) falls to be redetermined in consequence of the transferor’s death within 7 years of making the chargeable transfer in question; or
  - (b) is otherwise varied,

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after it has been taken into account under subsection (2) above (or under section 79(5)), all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

(4) Where—

- (a) a claim for relief has been made in respect of the disposal of an asset to a trustee, and
- (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a),

sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset, or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

(5) Subsection (4) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.

(6) Section 168 shall apply where relief has been given—

- (a) with the substitution for subsection (1) of the following—

“(1) If—

- (a) relief has been given under section 79 of the Finance Act 1980 in respect of a disposal made after 5th April 1981 to an individual (“the relevant disposal”); and
- (b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 67) on the relevant disposal.”; and

- (b) with the substitution in subsections (2), (6) and (10) for the references to section 165(4)(b) of references to section 79(1)(b).

(7) In this section “held-over gain”, in relation to a disposal, means the chargeable gain which would have accrued on that disposal apart from section 79, reduced where applicable in accordance with subsection (3) of that section, and references to inheritance tax include references to capital transfer tax.

## CHAPTER II

### SETTLEMENTS

#### *General provisions*

#### **68 Meaning of “settled property”.**

In this Act, unless the context otherwise requires, [F22]“settled property” means any property held in trust other than property to which section 60 applies (and references,

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however expressed, to property comprised in a settlement are references to settled property)].

#### Textual Amendments

**F22** Words in s. 68 substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(1\)\(3\)](#)

#### [<sup>F23</sup>68A Meaning of “settlor”

- (1) In this Act, unless the context otherwise requires—
  - (a) “settlor” in relation to a settlement means the person, or any of the persons, who has made, or is treated for the purposes of this Act as having made, the settlement, and
  - (b) a person is a settlor of property which—
    - (i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or
    - (ii) derives from property to which sub-paragraph (i) applies.
- (2) A person is treated for the purposes of this Act as having made a settlement if—
  - (a) he has made or entered into the settlement, directly or indirectly, or
  - (b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death, and the settlement arose on his death, whether by will, on his intestacy, or otherwise.
- (3) A person is, in particular, treated for the purposes of this Act as having made a settlement if—
  - (a) he has provided property directly or indirectly for the purposes of the settlement, or
  - (b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.
- (4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of this Act—
  - (a) B shall be treated as having made the settlement, and
  - (b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.
- (5) In subsection (2)(b) “property of which he was competent to dispose immediately before his death” shall be construed in accordance with section 62(10) (reading each reference to “assets” as a reference to “property”).
- (6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of this Act as having ceased to be a settlor in relation to the settlement if—
  - (a) no property of which he is a settlor is comprised in the settlement,
  - (b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and
  - (c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

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- (7) For the purpose of this section and sections 68B and 68C property is derived from other property—
- (a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.
- (8) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### **Textual Amendments**

**F23** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by **Finance Act 2006 (c. 25), Sch. 12 para. 1(2)(4)**

### **68B Transfer between settlements: identification of settlor**

- (1) This section applies in relation to a transfer of property from the trustees of one settlement (“Settlement 1”) to the trustees of another (“Settlement 2”) otherwise than—
- (a) for full consideration, or
  - (b) by way of a bargain made at arm's length.
- (2) In this section “transfer of property” means—
- (a) a disposal of property by the trustees of Settlement 1, and
  - (b) the acquisition by the trustees of Settlement 2 of—
    - (i) property disposed of by the trustees of Settlement 1, or
    - (ii) property created by the disposal;
 and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.
- (3) For the purposes of this Act, except where the context otherwise requires—
- (a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and
  - (b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.
- (4) For the purposes of this Act, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.
- (5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2 —
- (a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and
  - (b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of

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Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.

- (6) But subsections (3) and (4) do not apply in relation to a transfer of property—
- (a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,
  - (b) which occurs by reason only of the exercise of a general power of appointment, or
  - (c) to which section 68C(6) applies.
- (7) In determining whether this section applies in relation to a transfer of property between settlements, section 18(2) shall be disregarded.]

#### Textual Amendments

**F23** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

#### [<sup>F24</sup> 68C Variation of will or intestacy, etc: identification of settlor

- (1) This section applies where—
- (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) applies in respect of the variation.
- (2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of this Act, except where the context otherwise requires—
- (a) as having made the settlement, and
  - (b) as having provided the property for the purposes of the settlement.
- (3) Those persons are—
- (a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,
  - (b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,
  - (c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and
  - (d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.
- (4) In subsection (3) references to a person being entitled to property absolutely as legatee shall be construed in accordance with section 64(3) (reading the references to “an asset” and “any asset” as references to “property”).
- (5) Where—
- (a) property would have become comprised in a settlement—
    - (i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise), or

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- (ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but
- (b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,
- the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (6) Where—
- (a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and
- (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,
- the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of this Act he shall be treated as having made the settlement immediately before his death.
- (8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.]

#### Textual Amendments

**F24** S. 68C inserted (with effect in accordance with Sch. 12 para. 1(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)](#)

## 69 Trustees of settlements.

- [<sup>F25</sup>(1) For the purposes of this Act the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person (distinct from the persons who are trustees of the settlement from time to time).
- (2) The deemed person referred to in subsection (1) shall be treated for the purposes of this Act as resident and ordinarily resident in the United Kingdom at any time when a condition in subsection (2A) or (2B) is satisfied.
- (2A) Condition 1 is that all the trustees are resident in the United Kingdom.
- (2B) Condition 2 is that—
- (a) at least one trustee is resident in the United Kingdom,
- (b) at least one is not resident in the United Kingdom, and
- (c) a settlor in relation to the settlement was resident, ordinarily resident or domiciled in the United Kingdom at a time which is a relevant time in relation to him.
- (2C) In subsection (2B)(c) “relevant time” in relation to a settlor—
- (a) means, where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and
- (b) in any other case, means a time when the settlor made the settlement (or was treated for the purposes of this Act as making the settlement);



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and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 68B applies, “relevant time” in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.

- (2D) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (2A) and (2B) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.
- (2E) If the deemed person referred to in subsection (1) is not treated for the purposes of this Act as resident and ordinarily resident in the United Kingdom, then for the purposes of this Act it shall be treated as neither resident nor ordinarily resident in the United Kingdom.]
- (3) For the purposes of this section, and of sections 71(1) and 72(1), where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the <sup>M4</sup>Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.
- (4) If tax assessed on the trustees, or any one trustee, of a settlement in respect of a chargeable gain accruing to the trustees is not paid within 6 months from the date when it becomes payable by the trustees or trustee, and before or after the expiration of that period of 6 months the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, that person may at any time within 2 years from the time when the tax became payable be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

#### Textual Amendments

**F25** S. 69(1)-(2E) substituted for s. 69(1)(2) (with effect in accordance with Sch. 12 para. 2(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 2\(1\)](#)

#### Marginal Citations

**M4** 1925 c. 18.

### [<sup>F26</sup>69A Sub-fund settlements

Schedule 4ZA (which makes provision about sub-fund settlements) shall have effect.]

#### Textual Amendments

**F26** S. 69A inserted (with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 6\(1\)](#)

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## 70 Transfers into settlement.

A transfer into settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the transferor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.

## 71 Person becoming absolutely entitled to settled property.

- (1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.
- [<sup>F27</sup>(2) Where, in any case in which a person (“the beneficiary”) becomes absolutely entitled to any settled property as against the trustee, an allowable loss would (apart from this subsection) have accrued to the trustee on the deemed disposal under subsection (1) above of an asset comprised in that property—
- (a) that loss shall be treated, to the extent only that it cannot be deducted from pre-entitlement gains of the trustee, as an allowable loss accruing to the beneficiary (instead of to the trustee); but
  - (b) any allowable loss treated as accruing to the beneficiary under this subsection shall be deductible under this Act from chargeable gains accruing to the beneficiary to the extent only that it can be deducted from gains accruing to the beneficiary on the disposal by him of—
    - (i) the asset on the deemed disposal of which the loss accrued; or
    - (ii) where that asset is an estate, interest or right in or over land, that asset or any asset deriving from that asset.
- (2A) In subsection (2) above “pre-entitlement gain”, in relation to an allowable loss accruing to a trustee on the deemed disposal of any asset comprised in any settled property, means a chargeable gain accruing to that trustee on—
- (a) a disposal which, on the occasion on which the beneficiary becomes absolutely entitled as against the trustee to that property, is deemed under subsection (1) above to have taken place; or
  - (b) any other disposal taking place before that occasion but in the same year of assessment.
- (2B) For the purposes of subsection (2)(b)(ii) above an asset (“the relevant asset”) derives from another if, in a case where—
- (a) assets have merged,
  - (b) an asset has divided or otherwise changed its nature, or
  - (c) different rights or interests in or over any asset have been created or extinguished at different times,
- the value of the relevant asset is wholly or partly derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from the other asset.
- (2C) The rules set out in subsection (2D) below shall apply (notwithstanding any other rules contained in this Act or in section 113(2) of the Finance Act 1995 (order of deduction))

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- (a) for determining for the purposes of this section whether an allowable loss accruing to the trustee, or treated as accruing to the beneficiary, can be deducted from particular chargeable gains for any year of assessment; and
  - (b) for the making of deductions of allowable losses from chargeable gains in cases where it has been determined that such an allowable loss can be deducted from particular chargeable gains.
- (2D) Those rules are as follows—
- (a) allowable losses accruing to the trustee on a deemed disposal under subsection (1) above shall be deducted before any deduction is made in respect of any other allowable losses accruing to the trustee in that year;
  - (b) allowable losses treated as accruing to the beneficiary under this section, so far as they cannot be deducted in a year of assessment as mentioned in subsection (2)(b) above, may be carried forward from year to year until they can be so deducted; and
  - (c) allowable losses treated as accruing to the beneficiary for any year of assessment under this section, and allowable losses carried forward to any year of assessment under paragraph (b) above—
    - (i) shall be deducted before any deduction is made in respect of any allowable losses accruing to the beneficiary in that year otherwise than by virtue of this section; and
    - (ii) in the case of losses carried forward to any year, shall be deductible as if they were losses actually accruing in that year.]
- (3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case where a person would become so entitled but for being an infant or other person under disability.

#### Textual Amendments

**F27** S. 71(2)-(2D) substituted for s. 71(2) (with application in accordance with s. 75(2) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 75\(1\)](#)

#### Modifications etc. (not altering text)

**C2** S. 71 excluded (27.7.1993) by 1993 c. 37, s. 12, [Sch. 2 Pt. I para. 21\(2\)\(d\)](#)

## 72 Termination of life interest on death of person entitled.

- (1) On the termination, on the death of the person entitled to it, of [<sup>F28</sup>an] interest in possession in all or any part of settled property—
- (a) the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to the whole or a corresponding part of the market value of the asset; but
  - (b) no chargeable gain shall accrue on that disposal.

For the purposes of this subsection [<sup>F28</sup>an] interest which is a right to part of the income of settled property shall be treated as [<sup>F28</sup>an] interest in a corresponding part of the settled property.

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- [<sup>F29</sup>(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, the first sentence of that subsection applies in relation to that interest only if—
- (a) immediately before the person's death, the interest falls within subsection (1B) below, or
  - (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.
- (1B) An interest falls within this subsection if—
- (a) the interest is—
    - (i) an immediate post-death interest, within the meaning given by section 49A of the Inheritance Tax Act 1984,
    - (ii) a transitional serial interest, within the meaning given by section 49B of that Act, or
    - (iii) a disabled person's interest within section 89B(1)(c) or (d) of that Act, or
  - (b) section 71A of that Act (trusts for bereaved minors) applies to the property in which the interest subsists.
- (1C) Subsection (1A) above does not have effect in relation to the operation of subsection (1) above as applied by subsection (2) below (but see subsection (2A) below).]
- (2) Subsection (1) above shall apply where the person entitled to [<sup>F30</sup>an] interest in possession in all or any part of settled property dies (although the interest does not then terminate) as it applies on the termination of such [<sup>F30</sup>an] interest.
- [<sup>F31</sup>(2A) Where the interest in possession mentioned in subsection (2) above is one to which the person becomes entitled on or after 22nd March 2006—
- (a) subsection (2) above, and
  - (b) the first sentence of subsection (1) above as applied by subsection (2) above, apply in relation to that interest only if, immediately before the person's death, the interest falls within subsection (1B)(a) above.]

[<sup>F32</sup>(3) This section shall apply on the death of the person entitled to any annuity payable out of, or charged on, settled property or the income of settled property as it applies on the death of a person whose interest in possession in the whole or any part of settled property terminates on his death.

(4) Where, in the case of any entitlement to an annuity created by a settlement some of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.]

(5) If there is [<sup>F33</sup>an] interest in a part of the settled property and, where that is [<sup>F33</sup>an] interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the <sup>F34</sup>... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.

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### Textual Amendments

- F28** Word in s. 72(1) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F29** S. 72(1A)-(1C) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(2\)](#)
- F30** Word in s. 72(2) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F31** S. 72(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(3\)](#)
- F32** S. 72(3)(4) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(3\)](#)
- F33** Word in s. 72(5) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F34** Word in s. 72(5) repealed (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#), [Sch. 41 Pt. VIII\(4\)](#)

## 73 Death of life tenant: exclusion of chargeable gain.

- (1) Where, by virtue of section 71(1), the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes (or would but for a disability become) absolutely entitled thereto as against the trustee, then, if that occasion is the [<sup>F35</sup>death of a person entitled to an interest in possession in the settled property]—
- no chargeable gain shall accrue on the disposal, and
  - if on the death the property reverts to the disponent, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than 6th April 1965, be deemed to be at that earlier date.
- [<sup>F36</sup>(1A) Subsection (1)(b) above shall be treated as having effect in relation to a sub-fund settlement if the property does not revert to the trustees of the principal settlement in relation to that sub-fund settlement by reason only that—
- a sub-fund election is or has been made in respect of another sub-fund of the principal settlement, and
  - the property becomes comprised in that other sub-fund settlement on the death of the person entitled to the interest in possession.]
- (2) Where the [<sup>F37</sup>... interest referred to in subsection (1) above is an interest in part only of the settled property to which section 71 applies, subsection (1)(a) above shall not apply but any chargeable gain accruing on the disposal shall be reduced by a proportion corresponding to that represented by the part.
- [<sup>F38</sup>(2A) Where the interest in possession referred to in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, subsections (1) and (2) above apply in relation to that interest only if—
- immediately before the person's death, the interest falls within section 72(1B),  
or

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- (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.]
- (3) The last sentence of subsection (1) of section 72 and [F39 subsections (3) to (5) of that section shall apply for the purposes of this section] as they apply for the purposes of section 72(1).

#### Textual Amendments

- F35** Words in s. 73(1) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(2\)](#)
- F36** S. 73(1A) inserted (with effect in accordance with Sch. 12 para. 45 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 42](#)
- F37** Word in s. 73(2) repealed (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(3\)](#), [Sch. 41 Pt. VIII\(4\)](#)
- F38** S. 73(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\)](#), [31](#)
- F39** Words in s. 73(3) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(4\)](#)

#### 74 Effect on sections 72 and 73 of relief under section 165 or 260.

- (1) This section applies where—
- (a) a claim for relief was made under section 165 or 260 in respect of the disposal of an asset to a trustee, and
  - (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a).
- (2) Sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.
- (3) Subsection (2) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.
- (4) In this section “held-over gain” has the same meaning as in section 165 or, as the case may be, 260.

#### 75 Death of annuitant.

F40 .....

#### Textual Amendments

- F40** S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(4\)](#)



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## 76 Disposal of interests in settled property.

(1) [<sup>F41</sup>Subject to subsection (1A) below] No chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including, in particular, an annuity or life interest, and the reversion to an annuity or life interest) by the person for whose benefit the interest was created by the terms of the settlement or by any other person except one who acquired, or derives his title from one who acquired, the interest for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement.

[<sup>F42</sup>(1A) Subject to subsection (3) below, subsection (1) above does not apply if—

- (a) the settlement falls within subsection (1B) below; or
- (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.

(1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—

- (a) were [<sup>F43</sup>neither resident nor ordinarily resident in the United Kingdom]; or
- (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]

(2) Subject to subsection (1) above, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes, as the holder of that interest, absolutely entitled as against the trustee to any settled property, he shall be treated as disposing of the interest in consideration of obtaining that settled property (but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by him under section 71(1)).

[<sup>F44</sup>(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.]

### Textual Amendments

- F41** Words in s. 76(1) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 128\(1\)\(a\)](#)
- F42** S. 76(1A)(1B) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 128\(1\)\(b\)\(2\)](#)
- F43** Words in s. 76(1B)(a) substituted (with effect in accordance with Sch. 12 para. 30(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 30\(1\)\(2\)\(a\)](#)
- F44** S. 76(3) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 128\(1\)\(c\)\(3\)](#)

### Modifications etc. (not altering text)

- C3** S. 76(1) excluded (27.7.1993) by [1993 c. 37](#), [s. 12](#), [Sch. 2 Pt. I para. 21\(2\)\(e\)](#)

## [<sup>F45</sup>76A Disposal of interest in settled property: deemed disposal of underlying assets.

Schedule 4A to this Act has effect with respect to disposals for consideration of an interest in settled property.]

*Status: Point in time view as at 08/07/2008.*

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#### Textual Amendments

**F45** S. 76A inserted (with application in accordance with s. 91(3) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 91\(1\)](#)

### [<sup>F46</sup>76B] Transfers of value by trustees linked with trustee borrowing.

Schedule 4B to this Act has effect with respect to transfers of value by trustees that are, in accordance with the Schedule, treated as linked with trustee borrowing.]

#### Textual Amendments

**F46** S. 76B inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(1\)](#)

### [<sup>F47</sup>77] Charge on settlor with interest in settlement.

- (1) Where in a year of assessment—
- (a) chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
  - (b) after making any deduction provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees [<sup>F48</sup>would be chargeable to tax for the year in respect of those gains if—
    - (i) the gains were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied), and
    - (ii) section 3 were disregarded,
 and]
  - (c) at any time during the year the settlor has an interest in the settlement, the trustees shall not be chargeable to tax in respect of those [<sup>F49</sup>gains] but instead chargeable gains of an amount equal to that referred to in paragraph (b) shall be treated as accruing to the settlor in that year.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in a settlement if—
- (a) any property which [<sup>F50</sup>is or] may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse [<sup>F51</sup>or civil partner] in any circumstances whatsoever, or
  - (b) the settlor or his spouse [<sup>F52</sup>or civil partner] enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- [<sup>F53</sup>(2A) A settlor shall also be regarded as having an interest in a settlement (subject to the following provisions of this section) if—
- (a) any property which is or may at any time be comprised in the settlement, or any derived property, is, or will or may become, payable to or applicable for the benefit of a child of the settlor, at a time when that child is a dependent child of his, in any circumstances whatsoever, or

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- (b) a dependent child of the settlor enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.]
- (3) The references in subsection (2)(a) and (b) above to the spouse [<sup>F54</sup>or civil partner] of the settlor do not include—
  - (a) a person to whom the settlor is not for the time being married but may later marry, or
  - [<sup>F55</sup>(ab) a person of whom the settlor is not for the time being a civil partner but of whom he may later be a civil partner, or]
  - (b) a spouse [<sup>F56</sup>or civil partner] from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or
  - (c) the widow or widower [<sup>F57</sup>or surviving civil partner] of the settlor.
- [<sup>F58</sup>(3A) In this section—
  - (a) “dependent child” means a child who—
    - (i) is under the age of 18 years,
    - (ii) is unmarried, and
    - (iii) does not have a civil partner, and
  - (b) “child” includes a stepchild.
- (3B) For the purposes of subsection (2A) above no account shall be taken of a term of a settlement relating to dependent children of a settlor in respect of any time at which he has no dependent child.]
- (4) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
  - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or
  - (b) an assignment of or charge on the property or any derived property being made or given by some such person, or
  - [<sup>F59</sup>(c) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, or]
  - (d) the death of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- [<sup>F60</sup>(4A) In subsection (4) “child of the family”, in relation to parties to a marriage or civil partnership, means a child of one or both of them.]
- (5) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as some person is alive and under the age of 25 during whose life the property or any derived property cannot become payable or applicable as mentioned in that provision except in the event of that person becoming bankrupt or assigning or charging his interest in that property.
- (6) This section does not apply—
  - (a) where the settlor dies during the year; <sup>F61</sup> ...

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- (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—
- (i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse [<sup>F62</sup>or civil partner], or
  - (ii) the fact that a benefit is enjoyed by his spouse [<sup>F62</sup>or civil partner], where the spouse [<sup>F62</sup>or civil partner] dies, or the settlor and the spouse [<sup>F62</sup>or civil partner] cease to be married [<sup>F63</sup>or to be civil partners of each other], during the year [<sup>F64</sup>; or
- (c) in a case where the settlor is regarded as having an interest in a settlement by reason only of—
- (i) the fact that property is, or will or may become, payable to or applicable for the benefit of a dependent child of his, or
  - (ii) the fact that a benefit is enjoyed by such a child,
- where the settlor ceases during the year to have (and does not in that year subsequently come to have) any dependent child in relation to whom subsection (2A)(a) or (b) above applies].

<sup>F65</sup>(6A) . . . . .

- (7) This section does not apply unless [<sup>F66</sup>—
- (a) the settlor is either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, and
  - (b) the trustees are resident and ordinarily resident in the United Kingdom during any part of the year.]

[<sup>F67</sup>(8) In this section “derived property”, in relation to any property, means—

- (a) income from that property,
- (b) property directly or indirectly representing—
  - (i) proceeds of that property, or
  - (ii) proceeds of income from that property, or
- (c) income from property which is derived property by virtue of paragraph (b) above.]

[<sup>F68</sup>(9) This section shall have effect subject to the provisions of section 30 of the Finance Act 2005.]]

#### Textual Amendments

- F47** S. 77 substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 17 para. 27](#)
- F48** Words in s. 77(1)(b) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 3](#)
- F49** Word in s. 77(1) inserted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(1\)\(3\)](#)
- F50** Words in s. 77(2)(a) inserted (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(a\)](#)
- F51** Words in s. 77(2)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [108\(2\)\(a\)](#)
- F52** Words in s. 77(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [108\(2\)\(b\)](#)

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- F53** S. 77(2A) inserted (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(b\)](#)
- F54** Words in s. 77(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(a\)](#)
- F55** S. 77(3)(ab) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(b\)](#)
- F56** Words in s. 77(3)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(c\)](#)
- F57** Words in s. 77(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(d\)](#)
- F58** S. 77(3A)(3B) inserted (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(c\)](#)
- F59** S. 77(4)(c) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(4\)](#)
- F60** S. 77(4A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(5\)](#)
- F61** Word in s. 77(6)(a) repealed (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(d\)\(i\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F62** Words in s. 77(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(6\)\(a\)](#)
- F63** Words in s. 77(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(6\)\(b\)](#)
- F64** S. 77(6)(c) and preceding word inserted (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(d\)\(ii\)](#)
- F65** S. 77(6A) repealed (with effect in accordance with Sch. 11 paras. 7, 8, Sch. 40 Pt. 3(4) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(4\)](#)
- F66** Words in s. 77(7) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 31, 33](#)
- F67** S. 77(8) substituted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(2\)\(3\)](#)
- F68** S. 77(9) inserted (with effect in accordance with Sch. 12 para. 3(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 3\(1\)\(e\)](#)

**Modifications etc. (not altering text)**

- C4** S. 77(1) excluded (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 109\(2\)\(c\)](#)
- C5** S. 77(1) applied (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 31\(2\)](#)

**78 Right of recovery.**

- (1) Where any tax becomes chargeable on and is paid by a person in respect of gains treated as accruing to him under [<sup>F69</sup>section 77] he shall be entitled—
- (a) to recover the amount of the tax from any trustee of the settlement, and
  - (b) for that purpose to require an inspector to give him a certificate specifying—
    - (i) the amount of the gains accruing to the trustees in respect of which he has paid tax; and
    - (ii) the amount of tax paid;
- and any such certificate shall be conclusive evidence of the facts stated in it.
- (2) In order to ascertain for the purposes of subsection (1) above the amount of tax chargeable for any year by virtue of [<sup>F69</sup>section 77] in respect of gains treated as accruing to any person, those gains shall be regarded as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

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- (3) In a case where—
- (a) gains are treated as accruing to a person in a year under section 86(4), and
  - (b) gains are treated as accruing to the same person under [<sup>F69</sup>section 77] in the same year,
- subsection (2) above shall have effect subject to section 86(4)(b).

**Textual Amendments**

**F69** Words in s. 78(1)-(3) substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 28](#)

**Modifications etc. (not altering text)**

**C6** S. 78 applied (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\), s. 31\(2\)](#)

**79 Provisions supplemental to sections 77 and 78.**

- (1) For the purposes of this section and sections 77 and 78 a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.
- (2) In this section and sections 77 and 78—
- (a) references to settled property (and to property comprised in a settlement), in relation to any settlor, are references only to property originating from that settlor, <sup>F70</sup>...
  - <sup>F70</sup>(b) .....
- (3) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement,
  - (b) property representing that property, and
  - (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.
- <sup>F71</sup>(4) .....
- (5) In [<sup>F72</sup>subsection (3)] above—
- (a) references to property <sup>F73</sup>... which a settlor has provided directly or indirectly include references to property <sup>F73</sup>... which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property <sup>F73</sup>... which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person, and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.
- [<sup>F74</sup>(5A) In subsection (5) above “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.]
- (6) An [<sup>F75</sup>officer of the Board] may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within



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such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of this section and sections 77 and 78.

- (7) The reference in section 77(1)(a) to gains accruing to trustees from the disposal of settled property includes a reference to gains treated as accruing to them under section 13 and the reference in section 77(1)(b) to deductions in respect of disposals of the settled property includes a reference to deductions on account of losses treated under section 13 as accruing to the trustees.
- (8) Where the trustees of a settlement have elected that section [F76508 of ITA 2007 (trustees' election in respect of income arising from heritage maintenance property)] shall have effect in the case of any settlement or part of a settlement in relation to a year of assessment, sections 77 and 78 and subsections (1) to (7) above shall not apply in relation to the settlement or part for the year.

#### Textual Amendments

- F70** S. 79(2)(b) and preceding word repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(2\)](#), [Sch. 29 Pt. VIII\(8\)](#)
- F71** S. 79(4) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(3\)](#), [Sch. 29 Pt. VIII\(8\)](#)
- F72** Words in s. 79(5) substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(a\)](#)
- F73** Words in s. 79(5)(a) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(b\)](#), [Sch. 29 Pt. VIII\(8\)](#)
- F74** S. 79(5A) inserted (with effect in accordance with Sch. 21 para. 10(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 2\(2\)](#)
- F75** Words in s. 79(6) substituted (with effect in accordance with Sch. 21 para. 10(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 2\(3\)](#)
- F76** Words in s. 79(8) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\)](#), [Sch. 1 para. 301](#) (with Sch. 2)

#### Modifications etc. (not altering text)

- C7** S. 79 applied in part (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\), s. 31\(2\)](#)

#### [F7779A Restriction on set-off of trust losses.

- (1) This section applies to a chargeable gain accruing to the trustees of a settlement where—
- in computing the gain, the allowable expenditure is reduced in consequence, directly or indirectly, of a claim to gifts relief in relation to an earlier disposal to the trustees;
  - the transferor on that earlier disposal, or any person connected with the transferor, has at any time—
    - acquired an interest in the settled property, or
    - entered into an arrangement to acquire such an interest; and
  - in connection with that acquisition or arrangement any person has at any time received, or become entitled to receive, any consideration.

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- (2) Where this section applies to a chargeable gain, no allowable losses accruing to the trustees (in the year in which the gain accrues or any earlier year) may be set against the gain.

This applies to the whole of the chargeable gain (and not just the element deferred as a result of the claim to gifts relief).

- (3) In this section—
- (a) “gifts relief” means relief under section 165 or 260; and
  - (b) references to losses not being allowed to be set against a chargeable gain are to the losses not being allowed as a deduction against chargeable gains to the extent that they include that gain.
- (4) The references in subsection (1)(b) above to an interest in settled property have the same meaning as in Schedule 4A.]

#### **Textual Amendments**

**F77** S. 79A inserted (with application in accordance with s. 93(2) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 93\(1\)](#)

#### **[<sup>F78</sup>79B Attribution to trustees of gains of non-resident companies.**

- (1) This section applies where [<sup>F79</sup>the] trustees of a settlement are participators—
- (a) in a close company, or
  - (b) in a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom.

For this purpose “participator” has the same meaning as in section 13.

- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing a charge to tax arising by virtue of the attribution to the trustees under section 13, by reason of their participation in the company mentioned in subsection (1) above, of any part of a chargeable gain accruing to a company that is not resident in the United Kingdom.
- (3) Where this section applies and—
- (a) a chargeable gain accrues to a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom, and
  - (b) all or part of the chargeable gain is treated under section 13(2) as accruing to a close company which is not chargeable to corporation tax in respect of the gain by reason of double taxation relief arrangements, and
  - (c) had the company mentioned in paragraph (b) (and any other relevant company) not been resident in the United Kingdom, all or part of the chargeable gain would have been attributed to the trustees by reason of their participation in the company mentioned in subsection (1) above,
- section 13(9) shall apply as if the company mentioned in paragraph (b) above (and any other relevant company) were not resident in the United Kingdom.
- (4) The references in subsection (3) above to “any other relevant company” are to any other company which if it were not resident in the United Kingdom would be a

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company in relation to which section 13(9) applied with the result that all or part of the chargeable gain was attributed to the trustees as mentioned in that subsection.]

#### Textual Amendments

- F78** S. 79B inserted (with application in accordance with s. 94(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 94\(1\)](#)
- F79** Word in s. 79B(1) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 14\(1\)](#)

#### *Migration of settlements, non-resident settlements and dual resident settlements*

### **80 Trustees ceasing to be resident in U.K.**

- (1) This section applies if the trustees of a settlement become at any time (“the relevant time”) neither resident nor ordinarily resident in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of the defined assets immediately before the relevant time, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—
  - (a) they are of a description specified in any double taxation relief arrangements, and
  - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 152 shall not apply where the trustees—
  - (a) have disposed of the old assets, or their interest in them, before the relevant time, and
  - (b) acquire the new assets, or their interest in them, after that time, unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,

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the assets falling within paragraph (b) above shall be excepted from subsection (6) above.

(8) In this section “the old assets” and “the new assets” have the same meanings as in section 152.

**Modifications etc. (not altering text)**

- C8** S. 80(4)(a)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(2\)\(b\)](#)
- C9** S. 80(7)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(2\)\(b\)](#)

**81 Death of trustee: special rules.**

- (1) Subsection (2) below applies where—
- (a) section 80 applies as a result of the death of a trustee of the settlement, and
  - (b) within the period of 6 months beginning with the death, the trustees of the settlement become resident and ordinarily resident in the United Kingdom.
- (2) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
  - (b) fall within subsection (3) or (4) below.
- (3) Assets fall within this subsection if they were disposed of by the trustees in the period which—
- (a) begins with the death, and
  - (b) ends when the trustees become resident and ordinarily resident in the United Kingdom.
- (4) Assets fall within this subsection if—
- (a) they are of a description specified in any double taxation relief arrangements,
  - (b) they constitute settled property of the settlement at the time immediately after the trustees become resident and ordinarily resident in the United Kingdom, and
  - (c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) Subsection (6) below applies where—
- (a) at any time the trustees of a settlement become resident and ordinarily resident in the United Kingdom as a result of the death of a trustee of the settlement, and
  - (b) section 80 applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of 6 months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and

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(b) fall within subsection (7) below.

(7) Assets fall within this subsection if—

- (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
- (b) they acquired them as a result of a disposal in respect of which relief is given under section 165 or in relation to which section 260(3) applies.

## **82 Past trustees: liability for tax.**

(1) This section applies where—

- (a) section 80 applies as regards the trustees of a settlement (“the migrating trustees”), and
- (b) any capital gains tax which is payable by the migrating trustees by virtue of section 80(2) is not paid within 6 months from the time when it became payable.

(2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—

- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
- (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
- (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within 30 days of the service of the notice.

(3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—

- (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
- (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom.

(4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating trustees.

(5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(6) For the purposes of this section—

- (a) where the relevant time (within the meaning of section 80) falls within the period of 12 months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;
- (b) in any other case, the relevant period is the period of 12 months ending with the relevant time.

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### 83 Trustees ceasing to be liable to U.K. tax.

- (1) This section applies if the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (“the time concerned”) trustees who fall to be regarded for the purposes of any double taxation relief arrangements—
  - (a) as resident in a territory outside the United Kingdom, and
  - (b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets (“relevant assets”) which constitute settled property of the settlement and fall within descriptions specified in the arrangements.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of their relevant assets immediately before the time concerned, and
  - (b) immediately to have reacquired them, at their market value at that time.

### <sup>F80</sup> 83A Trustees both resident and non-resident in a year of assessment

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
  - (a) are within the charge to capital gains tax in that year of assessment, but
  - (b) are non-UK resident at the time of the disposal.
- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.
- (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
  - (a) if, during any part of that year of assessment, they are resident <sup>F81</sup>and ordinarily resident] in the United Kingdom and not Treaty non-resident, <sup>F82</sup>...
  - <sup>F83</sup>(b) .....
- (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
  - (a) they are neither resident nor ordinarily resident in the United Kingdom, or
  - (b) they are <sup>F84</sup>resident and ordinarily resident in the United Kingdom] but are Treaty non-resident.

<sup>F85</sup>(5) .....

#### Textual Amendments

- F80** S. 83A inserted (with effect in accordance with s. 33(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 33\(1\)](#)
- F81** Words in s. 83A(3)(a) inserted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(a\)\(i\)](#), 33
- F82** Word in s. 83A(3)(a) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(a\)\(ii\)](#), 33, [Sch. 26 Pt. 3\(15\)](#)
- F83** S. 83A(3)(b) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(b\)](#), 33, [Sch. 26 Pt. 3\(15\)](#)

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- F84** Words in s. 83A(4)(b) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 34\(1\)\(2\)\(a\)](#)
- F85** S. 83A(5) repealed (with effect in accordance with s. 74(6) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 74\(4\)\(b\), Sch. 26 Pt. 3\(11\)](#)

#### **84 Acquisition by dual resident trustees.**

- (1) Section 152 shall not apply where—
- (a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,
  - (b) at the time of the acquisition the trustees are resident and ordinarily resident in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
  - (c) the assets are of a description specified in the arrangements, and
  - (d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (2) In this section “the new assets” has the same meaning as in section 152.

#### **85 Disposal of interests in non-resident settlements.**

- (1) Subsection (1) of section 76 shall not apply to the disposal of an interest in settled property, other than one treated under subsection (2) of that section as made in consideration of obtaining the settled property, if at the time of the disposal the trustees are neither resident nor ordinarily resident in the United Kingdom.
- (2) [<sup>F86</sup>Subject to subsections (4), (9) and (10) below,] subsection (3) below applies where—
- (a) section 80 applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying, and
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.
- (3) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the relevant time, and
  - (b) immediately reacquired it,
- at its market value at that time.
- (4) Subsection (3) above shall not apply if section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.
- (5) [<sup>F87</sup>Subject to subsection (10) below,] Subsection (7) below applies where—
- (a) section 80 applies as regards the trustees of a settlement,



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- (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying,
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and
  - (d) section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.
- (6) The relevant period is the period which—
- (a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and
  - (b) ends with the relevant time.
- (7) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the time found under subsection (8) below, and
  - (b) immediately reacquired it, at its market value at that time.
- (8) The time is—
- (a) the time concerned (where there is only one such time), or
  - (b) the earliest time concerned (where there is more than one because section 83 applied more than once).
- (9) Subsection (3) above shall not apply where subsection (7) above applies.
- [<sup>F88</sup>(10) Subsection (3) or (7) above does not apply to the disposal of an interest created by or arising under a settlement which has relevant offshore gains at the material time.
- The material time is—
- (a) in relation to subsection (3) above, the relevant time within the meaning of section 80;
  - (b) in relation to subsection (7) above, the time found under subsection (8) above.
- (11) For the purposes of subsection (10) above, a settlement has relevant offshore gains at any time if, were the year of assessment to end at that time, there would be an amount of trust gains which by virtue of section 89(2) or paragraph 8(3) of Schedule 4C would be available to be treated as chargeable gains accruing to any beneficiaries of the settlement receiving capital payments in the following year of assessment.]

#### Textual Amendments

- F86** Words in s. 85(2) substituted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 95\(2\)](#)
- F87** Words in s. 85(5) inserted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 95\(3\)](#)
- F88** S. 85(10)(11) added (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 95\(4\)](#)

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## **[<sup>F89</sup>85A Transfers of value: attribution of gains to beneficiaries and treatment of losses**

- (1) Schedule 4C to this Act has effect with respect to the attribution of gains to beneficiaries where there has been a transfer of value to which Schedule 4B applies.
- (2) Sections 86A to 95 have effect subject to the provisions of Schedule 4C.
- (3) No account shall be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B in computing the trust gains for a year of assessment in accordance with sections 87 to 89, except in computing for the purposes of paragraph 7A(2) of Schedule 4C the amount on which the trustees would have been chargeable to tax under section 2(2) if they had been [<sup>F90</sup>resident and ordinarily resident in the United Kingdom].
- (4) No account shall be taken of any chargeable gains or allowable losses to which sections 87 to 89 apply in computing the gains or losses accruing by virtue of Schedule 4B.]

### **Textual Amendments**

- F89** S. 85A substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), s. 163(1) (with s. 163(4)-(6))
- F90** Words in s. 85A(3) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), para. 34(1)(2)(b)

## **86 Attribution of gains to settlors with interest in non-resident or dual resident settlements.**

- (1) This section applies where the following conditions are fulfilled as regards a settlement in a particular year of assessment—
  - (a) the settlement is a qualifying settlement in the year;
  - (b) the trustees of the settlement fulfil the condition as to residence specified in subsection (2) below;
  - (c) a person who is a settlor in relation to the settlement (“the settlor”) is domiciled in the United Kingdom at some time in the year and is either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year;
  - (d) at any time during the year the settlor has an interest in the settlement;
  - (e) by virtue of disposals of any of the settled property originating from the settlor, there is an amount on which the trustees would be chargeable to tax for the year under section 2(2) [<sup>F91</sup>if—
    - (i) the assumption as to residence specified in subsection (3) below were made, and
    - (ii) any chargeable gains on the disposals were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied);]
  - (f) paragraph 3, 4 or 5 of Schedule 5 does not prevent this section applying.
- (2) The condition as to residence is that—
  - (a) the trustees are [<sup>F92</sup>neither resident nor ordinarily resident in the United Kingdom] during any part of the year, or
  - (b) the trustees are [<sup>F93</sup>resident and ordinarily resident in the United Kingdom during any part of the year], but at any time of [<sup>F94</sup>such residence and ordinary

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residence] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

- (3) Where subsection (2)(a) above applies, the assumption as to residence is that the trustees are [<sup>F95</sup>resident and ordinarily resident in the United Kingdom] throughout the year; and where subsection (2)(b) above applies, the assumption as to residence is that the double taxation relief arrangements do not apply.
- (4) Where this section applies—
- (a) chargeable gains of an amount equal to that referred to in subsection (1)(e) above shall be treated as accruing to the settlor in the year, and
  - (b) those gains shall be treated as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

<sup>F96</sup>(4A) . . . . .

- (5) Schedule 5 (which contains provisions supplementary to this section) shall have effect.

#### Textual Amendments

- F91** Words in s. 86(1)(e) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 11 para. 4**
- F92** Words in s. 86(2)(a) substituted (with effect in accordance with Sch. 12 para. 30(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 30(1)(2)(b)**
- F93** Words in s. 86(2)(b) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 paras. 35(1)(a)(2)(a), 41**
- F94** Words in s. 86(2)(b) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 paras. 35(1)(b)(2)(a), 41**
- F95** Words in s. 86(3) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 34(1)(2)(c)**
- F96** S. 86(4A) repealed (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 40 Pt. 3(4)**

#### Modifications etc. (not altering text)

- C10** S. 86 modified (with effect in accordance with Sch. 23 paras. 1(1), 2(1)(5)(6), 3(1)(4)(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 23 paras. 1(2)(3), 2(2)-(4), 3(2)(3)**
- C11** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **s. 132(5)**
- C12** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **Sch. 23 para. 4(1)**

#### <sup>F97</sup>**86A Attribution of gains to settlor in section 10A cases.**

- (1) Subsection (2) below applies in the case of a person who is a settlor in relation to any settlement ("the relevant settlement") where—
- (a) by virtue of section 10A, amounts falling within section 86(1)(e) for any intervening year or years would (apart from this section) be treated as accruing to the settlor in the year of return; and
  - (b) there is an excess of the relevant chargeable amounts for the non-residence period over the amount of the section 87 pool at the end of the year of departure.
- (2) Only so much (if any) of—
- (a) [<sup>F98</sup>the tapered section 86(1)(e) amount] for the intervening year, or

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(b) if there is more than one intervening year, the aggregate of [<sup>F99</sup>the tapered section 86(1)(e) amounts] for those years,

as exceeds the amount of the excess mentioned in subsection (1)(b) above shall fall in accordance with section 10A to be attributed to the settlor for the year of return.

[ In subsection (2) above “tapered section 86(1)(e) amount” means an amount falling <sup>F100</sup>(2A) within section 86(1)(e) as it would apply with the omission of sub-paragraph (ii).

(2B) Where subsection (2) above has effect to reduce an amount that is treated by virtue of section 86 as accruing to the settlor for a year of assessment—

(a) the reduced amount shall be treated as falling within paragraph (b) of section 2(5) and not paragraph (aa);

(b) section 86(1)(e) shall have effect in relation to that amount with the omission of sub-paragraph (ii).]

(3) In subsection (1) above, the reference to the relevant chargeable amounts for the non-residence period is (subject to subsection (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax under section 87 or 89(2) for the intervening year or years in respect of any capital payments received by them.

(4) In subsection (1) above, the reference to the section 87 pool at the end of the year of departure is (subject to subsection (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of that section, fell in relation to the relevant settlement to be carried forward from the year of departure to be included in the amount of the trust gains for the year of assessment immediately following the year of departure.

(5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or amount carried forward in accordance with section 87(2) as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of subsections (3) and (4) above.

(6) Where any reduction falls to be made by virtue of subsection (2) above in any amount to be attributed in accordance with section 10A to any settlor for any year of assessment, the reduction to be treated as made for that year in accordance with section 87(3) in the case of the settlement in question shall not be made until—

(a) the reduction (if any) falling to be made by virtue of that subsection has been made in the case of every settlor to whom any amount is so attributed; and

(b) effect has been given to any reduction required to be made under subsection (7) below.

(7) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with subsection (2) above) any amount or amounts falling in accordance with section 10A to be attributed for any year of assessment to settlors of the settlement, [<sup>F101</sup>the tapered section 10A amount] shall be applied in reducing the amount carried forward to that year in accordance with section 87(2).

[ In subsection (7) above “the tapered section 10A amount” means the amount, or <sup>F102</sup>(7A) aggregate of the amounts, falling to be attributed as mentioned in that subsection, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).

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Where section 86A(2) has effect to reduce that amount or aggregate, the words from “minus” to “section 86(1)(e)(ii)” above do not apply.]

- (8) Where an amount <sup>F103</sup>... has been applied, in accordance with subsection (7) above, in reducing the amount which in the case of any settlement is carried forward to any year in accordance with section 87(2), that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year for making the reduction under section 87(3) in the case of that settlement.
- (9) Expressions used in this section and section 10A have the same meanings in this section as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in subsection (5) above to property originating from the settlor as it applies for the purposes of that Schedule.]

#### Textual Amendments

- F97** S. 86A inserted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(1\)](#)
- F98** Words in s. 86A(2)(a) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 11 para. 5\(2\)\(a\)](#)
- F99** Words in s. 86A(2)(b) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 11 para. 5\(2\)\(b\)](#)
- F100** S. 86A(2A)(2B) inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 11 para. 5\(3\)](#)
- F101** Words in s. 86A(7) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 11 para. 5\(4\)](#)
- F102** S. 86A(7A) inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 11 para. 5\(5\)](#)
- F103** Words in s. 86A(8) repealed (with effect in accordance with Sch. 11 paras. 7, 8, Sch. 40 Pt. 3(4) Note of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 40 Pt. 3\(4\)](#)

#### 87 Attribution of gains to beneficiaries.

- (1) This section applies to a settlement for any year of assessment during which the trustees are [<sup>F104</sup>at no time resident and ordinarily resident in the United Kingdom]<sup>F105</sup>... .
- (2) There shall be computed in respect of every year of assessment for which this section applies the amount on which the trustees would have been chargeable to tax under section 2(2) if they had been [<sup>F106</sup>resident and ordinarily resident in the United Kingdom] in the year; and that amount, together with the corresponding amount in respect of any earlier such year so far as not already treated under subsection (4) below or section 89(2) as chargeable gains accruing to beneficiaries under the settlement, is in this section and sections 89 and 90 referred to as the trust gains for the year.
- (3) Where as regards the same settlement and for the same year of assessment—
- (a) chargeable gains, whether of one amount or of 2 or more amounts, are treated as accruing by virtue of section 86(4), and
  - (b) an amount falls to be computed under subsection (2) above,
- the amount so computed shall be treated as [<sup>F107</sup>reduced by the tapered section 86(4) amount].

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- [<sup>F108</sup>(3A) In subsection (3) above “the tapered section 86(4) amount” means the amount, or aggregate of the amounts, treated as accruing as mentioned in subsection (3)(a) above, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).]
- (4) Subject to the following provisions of this section, the trust gains for a year of assessment shall be treated as chargeable gains accruing in that year to beneficiaries of the settlement who receive capital payments from the trustees in that year or have received such payments in any earlier year.
- (5) The attribution of chargeable gains to beneficiaries under subsection (4) above shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.
- (6) A capital payment shall be left out of account for the purposes of subsections (4) and (5) above to the extent that chargeable gains have by reason of the payment been treated as accruing to the recipient in an earlier year.
- [<sup>F109</sup>(6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of the amount of the trust gains for any year of assessment, chargeable gains that are treated as accruing to beneficiaries under this section shall not be eligible for taper relief.]
- (7) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of subsection (4) above as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.
- (8) In computing an amount under subsection (2) above in respect of the year 1991-92 or a subsequent year of assessment, the effect of sections 77 to 79 shall be ignored.
- (9) For the purposes of this section a settlement arising under a will or intestacy shall be treated as made by the testator or intestate at the time of his death.
- (10) Subsection (1) above does not apply in relation to any year beginning before 6th April 1981; and the reference in subsections (4) and (5) to capital payments received by beneficiaries do not include references to any payment received before 10th March 1981 or any payment received on or after that date and before 6th April 1984 so far as it represents a chargeable gain which accrued to the trustees before 6th April 1981.

#### Textual Amendments

- F104** Words in s. 87(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 36\(1\)\(2\)\(a\)](#), 41
- F105** Words in s. 87(1) repealed (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 130(1), [Sch. 27 Pt. III\(30\)](#)
- F106** Words in s. 87(2) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(d\)](#)
- F107** Words in s. 87(3) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 6\(2\)](#)
- F108** S. 87(3A) inserted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 6\(3\)](#)
- F109** S. 87(6A) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 6\(3\)](#)



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**Modifications etc. (not altering text)**

- C13** S. 87 modified (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 130\(4\)](#)  
**C14** S. 87(2) modified (31.7.1998) by [Finance Act 1998 \(c. 36\), Sch. 23 para. 5\(1\)](#)  
**C15** S. 87(3) modified (31.7.1998) by [Finance Act 1998 \(c. 36\), Sch. 23 paras. 4\(6\), 5\(2\)](#)

**88 Gains of dual resident settlements.**

- (1) Section 87 also applies to a settlement for any year of assessment beginning on or after 6th April 1991 if—
- (a) the trustees are [<sup>F110</sup>resident and ordinarily resident in the United Kingdom during any part of the year], [<sup>F111</sup>and]
  - (b) at any time of [<sup>F112</sup>such residence and ordinary residence] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, <sup>F113</sup> ...
  - <sup>F113</sup>(c) .....
- (2) In respect of every year of assessment for which section 87 applies by virtue of this section, section 87 shall have effect as if the amount to be computed under section 87(2) were the assumed chargeable amount; and the reference in section 87(2) to the corresponding amount in respect of an earlier year shall be construed as a reference to the amount computed under section 87(2) apart from this section or (as the case may be) the amount computed under section 87(2) by virtue of this section.
- (3) For the purposes of subsection (2) above the assumed chargeable amount in respect of a year of assessment is the lesser of the following 2 amounts—
- (a) the amount on which the trustees would be chargeable to tax for the year under section 2(2) on the assumption that the double taxation relief arrangements did not apply;
  - (b) the amount on which, by virtue of disposals of protected assets, the trustees would be chargeable to tax for the year under section 2(2) on the assumption that those arrangements did not apply.
- (4) For the purposes of subsection (3)(b) above assets are protected assets if—
- (a) they are of a description specified in the double taxation relief arrangements, and
  - (b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) For the purposes of subsection (4) above—
- (a) the assumption specified in subsection (3)(b) above shall be ignored;
  - (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
  - (c) if different assets are identified by reference to different relevant times, all of them are protected assets.
- (6) In computing the assumed chargeable amount in respect of a particular year of assessment, the effect of sections 77 to 79 shall be ignored.
- (7) For the purposes of section 87 as it applies by virtue of this section, capital payments received before 6th April 1991 shall be disregarded.



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#### Textual Amendments

- F110** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(a\)\(2\)\(b\)](#), 41
- F111** Word in s. 88(1)(a) inserted (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 130\(2\)\(a\)](#)
- F112** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(b\)\(2\)\(b\)](#), 41
- F113** S. 88(1)(c) and preceding word repealed (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 130\(2\)\(b\)](#), [Sch. 27 Pt. III\(30\)](#)

### 89 Migrant settlements etc.

- (1) Where a period of one or more years of assessment for which section 87 applies to a settlement (“a non-resident period”) succeeds a period of one or more years of assessment for each of which section 87 does not apply to the settlement (“a resident period”), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of section 87 if it was not made in anticipation of a disposal made by the trustees in the non-resident period.
- (2) Where—
- a non-resident period is succeeded by a resident period, and
  - the trust gains for the last year of the non-resident period are not (or not wholly) treated as chargeable gains accruing in that year to beneficiaries,
- then, subject to subsection (3) below, those trust gains (or the outstanding part of them) shall be treated as chargeable gains accruing in the first year of the resident period to beneficiaries of the settlement who receive capital payments from the trustees in that year; and so on for the second and subsequent years until the amount treated as accruing to beneficiaries is equal to the amount of the trust gains for the last year of the non-resident period.
- (3) Subsections (5)<sup>F114</sup>, (6A)] and (7) of section 87 shall apply in relation to subsection (2) above as they apply in relation to subsection (4) of that section.

#### Textual Amendments

- F114** Word in s. 89(3) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 6\(4\)](#)

### 90 Transfers between settlements.

- (1) If in a year of assessment for which section 87 or 89(2) applies to a settlement (“the transferor settlement”) the trustees transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”) then, subject to the following provisions—
- if section 87 applies to the transferee settlement for the year, its trust gains for the year shall be treated as increased by an amount equal to the outstanding trust gains for the year of the transferor settlement or, where part only of the settled property is transferred, to a proportionate part of those trust gains;
  - if subsection (2) of section 89 applies to the transferee settlement for the year (otherwise than by virtue of paragraph (c) below), the trust gains referred to

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in that subsection shall be treated as increased by the amount mentioned in paragraph (a) above;

- (c) if (apart from this paragraph) neither section 87 nor section 89(2) applies to the transferee settlement for the year, subsection (2) of section 89 shall apply to it as if the year were the first year of a resident period succeeding a non-resident period and the trust gains referred to in that subsection were equal to the amount mentioned in paragraph (a) above.

(2) Subject to subsection (3) below, the reference in subsection (1)(a) above to the outstanding trust gains for the year of the transferor settlement is a reference to the amount of its trust gains for the year so far as they are not treated under section 87(4) as chargeable gains accruing to beneficiaries in that year.

(3) Where section 89(2) applies to the transferor settlement for the year, the reference in subsection (1)(a) above to the outstanding trust gains of the settlement is a reference to the trust gains referred to in section 89(2) so far as not treated as chargeable gains accruing to beneficiaries in that or an earlier year.

(4) This section shall not apply to a transfer so far as it is made for consideration in money or money's worth.

[<sup>F115</sup>(5) This section does not apply—

- (a) to a transfer to which Schedule 4B applies, or  
 (b) to gains to which Schedule 4C applies (that is, to “Schedule 4C gains” within the meaning of that Schedule).]

#### **Textual Amendments**

**F115** S. 90(5) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [s. 163\(3\)](#) (with [s. 163\(4\)-\(6\)](#))

### **91 Increase in tax payable under section 87 or 89(2).**

(1) This section applies where—

- (a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,  
 (b) the payment is made in a year of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payment,  
 (c) the whole payment is, in accordance with sections 92 to 95, matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, and  
 (d) a beneficiary is charged to tax in respect of the payment by virtue of section 87 or 89(2).

(2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under subsection (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

(3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this section) carried interest for the chargeable period at the rate of 10 per cent. per annum.

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- (4) The chargeable period is the period which—
  - (a) begins with the later of the 2 days specified in subsection (5) below, and
  - (b) ends with 30th November in the year of assessment following that in which the capital payment is made.
- (5) The 2 days are—
  - (a) 1st December in the year of assessment following that for which the qualifying amount mentioned in subsection (1)(c) above is the qualifying amount, and
  - (b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.
- (6) The Treasury may by order substitute for the percentage specified in subsection (3) above (whether as originally enacted or as amended at any time under this subsection) such other percentage as they think fit.
- (7) An order under subsection (6) above may provide that an alteration of the percentage is to have effect for periods beginning on or after a day specified in the order in relation to interest running for chargeable periods beginning before that day (as well as interest running for chargeable periods beginning on or after that day).
- (8) Sections 92 to 95 have effect for the purpose of supplementing subsections (1) to (5) above.

## **92 Qualifying amounts and matching.**

- (1) If section 87 applies to a settlement for the year 1992-93 or a subsequent year of assessment the settlement shall have a qualifying amount for the year, and the amount shall be the amount computed for the settlement in respect of the year concerned under section 87(2).
- (2) The settlement shall continue to have the same qualifying amount (if any) for the <sup>M5</sup>year 1990-91 or 1991-92 as it had for that year by virtue of paragraph 2 of Schedule 17 to the Finance Act 1991 (subject to subsection (3) below).
- (3) Where—
  - (a) capital payments are made by the trustees of a settlement on or after 6th April 1991, and
  - (b) the payments are made in a year or years of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payments,the payments shall be matched with qualifying amounts of the settlement for the year 1990-91 and subsequent years of assessment (so far as the amounts are not already matched with payments by virtue of this subsection).
- (4) In applying subsection (3) above—
  - (a) earlier payments shall be matched with earlier amounts;
  - (b) payments shall be carried forward to be matched with future amounts (so far as not matched with past amounts);
  - (c) a payment which is less than an unmatched amount (or part) shall be matched to the extent of the payment;
  - (d) a payment which is more than an unmatched amount (or part) shall be matched, as to the excess, with other unmatched amounts.

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- (5) Where part only of a capital payment is taxable, the part which is not taxable shall not fall to be matched until taxable parts of other capital payments (if any) made in the same year of assessment have been matched; and subsections (3) and (4) above shall have effect accordingly.
- (6) For the purposes of subsection (5) above a part of a capital payment is taxable if the part results in chargeable gains accruing under section 87 or 89(2).

#### Marginal Citations

M5 1991 c. 31.

### 93 Matching: special cases.

- (1) Subsection (2) or (3) below applies (if the case permits) where—
- (a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,
  - (b) the payment is made in a year of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payment, and
  - (c) a beneficiary is charged to tax in respect of the payment by virtue of section 87 or 89(2).
- (2) If the whole payment is matched with qualifying amounts of the settlement for different years of assessment, each falling at some time before that immediately preceding the one in which the payment is made, then—
- (a) the capital payment (“the main payment”) shall be treated as being as many payments (“subsidiary payments”) as there are qualifying amounts,
  - (b) a qualifying amount shall be attributed to each subsidiary payment and each payment shall be quantified accordingly, and
  - (c) the tax in respect of the main payment shall be divided up and attributed to the subsidiary payments on the basis of a just and reasonable apportionment, and section 91 shall apply in the case of each subsidiary payment, the qualifying amount attributed to it and the tax attributed to it.
- (3) If part of the payment is matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, or with qualifying amounts of the settlement for different years of assessment each so falling, then—
- (a) only tax in respect of so much of the payment as is so matched shall be taken into account, and references below to the tax shall be construed accordingly,
  - (b) the capital payment shall be divided into 2, the first part representing so much as is matched as mentioned above and the second so much as is not,
  - (c) the second part shall be ignored, and
  - (d) the first part shall be treated as a capital payment, the whole of which is matched with the qualifying amount or amounts mentioned above, and the whole of which is charged to the tax,
- and section 91, or that section and subsections (1) and (2) above (as the case may be), shall apply in the case of the capital payment arrived at under this subsection, the qualifying amount or amounts, and the tax.

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- (4) Section 91 and subsections (1) to (3) above shall apply (with appropriate modifications) where a payment or part of a payment is to any extent matched with part of an amount.

#### **94 Transfers of settled property where qualifying amounts not wholly matched.**

- (1) This section applies if—
- (a) in the year 1990-91 or a subsequent year of assessment the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”), and
  - (b) looking at the state of affairs at the end of the year of assessment in which the transfer is made, there is a qualifying amount of the transferor settlement for a particular year of assessment (“the year concerned”) and the amount is not (or not wholly) matched with capital payments.
- (2) If the whole of the settled property is transferred—
- (a) the transferor settlement’s qualifying amount for the year concerned shall be treated as reduced by so much of it as is not matched, and
  - (b) so much of that amount as is not matched shall be treated as (or as an addition to) the transferee settlement’s qualifying amount for the year concerned.
- (3) If part of the settled property is transferred—
- (a) so much of the transferor settlement’s qualifying amount for the year concerned as is not matched shall be apportioned on such basis as is just and reasonable, part being attributed to the transferred property and part to the property not transferred,
  - (b) the transferor settlement’s qualifying amount for the year concerned shall be treated as reduced by the part attributed to the transferred property, and
  - (c) that part shall be treated as (or as an addition to) the transferee settlement’s qualifying amount for the year concerned.
- (4) If the transferee settlement did not in fact exist in the year concerned, it shall be treated as having been made at the beginning of that year.
- (5) If the transferee settlement did in fact exist in the year concerned, this section shall apply whether or not section 87 applies to the settlement for that year or for any year of assessment falling before that year.

#### **95 Matching after transfer.**

- (1) This section applies as regards the transferee settlement in a case where section 94 applies.
- (2) Matching shall be made under section 92 by reference to the state of affairs existing immediately before the beginning of the year of assessment in which the transfer is made, and the transfer shall not affect matching so made.
- (3) Subject to subsection (2) above, payments shall be matched with amounts in accordance with section 92 and by reference to amounts arrived at under section 94.

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## 96 Payments by and to companies.

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 [<sup>F116</sup>and Schedule 4C] it shall be treated as received from the trustees.
  - (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90 [<sup>F116</sup>and Schedule 4C].
  - (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person.
  - (4) If the company is controlled by 2 or more persons (taking each one separately) at the time the payment is received, then—
    - (a) if one of them is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person;
    - (b) if 2 or more of them are then resident or ordinarily resident in the United Kingdom (“the residents”) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.
  - (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received <sup>F117</sup> ... —
    - (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
    - (b) each such participator (whatever his residence or ordinary residence) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment,

but where (by virtue of the preceding provisions of this subsection and apart from this provision) a participator would be treated as receiving less than one-twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of this subsection.
  - (6) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
  - (7) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (8) below.
  - (8) A person falls within this subsection if—
    - (a) he is a settlor in relation to the settlement, or
    - (b) he is connected with a person falling within paragraph (a) above.
  - (9) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- <sup>F118</sup>(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment which in his case is an intervening year for the purposes of section 10A.

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- (9B) If—
- (a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and
  - (b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,
- nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).]
- (10) For the purposes of this section—
- (a) the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act, but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company;
  - (b) “participator” has the meaning given by section 417(1) of the Taxes Act.
- (11) This section shall apply to payments received on or after 19th March 1991.

#### Textual Amendments

- F116** Words in s. 96(1)(2) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\), Sch. 26 para. 3](#)
- F117** Words in s. 96(5) omitted (with application in accordance with s. 96(2) of the amending Act) by virtue of [Finance Act 2000 \(c. 17\), s. 96\(1\)](#)
- F118** S. 96(9A)(9B) inserted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 127\(3\)](#)

## 97 Supplementary provisions.

- (1) In <sup>F119</sup>sections 86A] to 96 <sup>F120</sup>and Schedule 4C] and this section “capital payment”—
- (a) means any payment which is not chargeable to income tax on the recipient or, in the case of a recipient who is neither resident nor ordinarily resident in the United Kingdom, any payment received otherwise than as income, but
  - (b) does not include a payment under a transaction entered into at arm’s length if it is received on or after 19th March 1991.
- (2) In subsection (1) above references to a payment include references to the transfer of an asset and the conferring of any other benefit, and to any occasion on which settled property becomes property to which section 60 applies.
- (3) The fact that the whole or part of a benefit is by virtue of <sup>F121</sup>section 733 of ITA 2007] treated as the recipient’s income for a year of assessment after that in which it is received—
- (a) shall not prevent the benefit or that part of it being treated for the purposes of <sup>F119</sup>sections 86A] to 96 <sup>F122</sup>and Schedule 4C] as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but
  - (b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.



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- (4) For the purposes of [F<sup>119</sup>sections 86A] to 96 [F<sup>123</sup>and Schedule 4C] the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it.
- (5) For the purposes of [F<sup>119</sup>sections 86A] to 90 [F<sup>124</sup>and Schedule 4C] a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—
- (a) he receives it from them directly or indirectly, or
  - (b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or
  - (c) it is received by a third person at the beneficiary's direction.
- (6) Section 16(3) shall not prevent losses accruing to trustees in a year of assessment for which section 87 of this Act or section 17 of the 1979 Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).
- (7) In [F<sup>125</sup>sections 86A] to 96 [F<sup>126</sup>and Schedule 4C] and in F<sup>127</sup>... this section—
- [F<sup>128</sup>“settlement” has the meaning given by section 620 of ITTOIA 2005, and
- “settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly].
- [F<sup>129</sup>(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).]
- (8) In a case where—
- (a) at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 96(1),
  - (b) it is received by a person, or treated as received by a person by virtue of section 96(2) to (5),
  - (c) at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and
  - (d) subsection (9) or (10) below does not prevent this subsection applying,
- for the purposes of [F<sup>125</sup>sections 86A] to 90 [F<sup>130</sup>and Schedule 4C] the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.
- (9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.
- (10) Subsection (8) above shall not apply so as to treat—
- (a) the trustees of the settlement referred to in that subsection, or
  - (b) the trustees of any other settlement,
- as beneficiaries of the settlement referred to in that subsection.

*Status: Point in time view as at 08/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F119** Words in s. 97(1)-(5) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F120** Words in s. 97(1) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F121** Words in s. 97(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 302](#) (with [Sch. 2](#))
- F122** Words in s. 97(3)(a) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F123** Words in s. 97(4) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F124** Words in s. 97(5) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)
- F125** Words in s. 97(7)(8) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F126** Words in s. 97(7) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F127** Words in s. 97(7) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(a\)\(3\), Sch. 26 Pt. 3\(15\)](#)
- F128** Words in s. 97(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(b\)\(3\)](#)
- F129** S. 97(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(2\)\(3\)](#)
- F130** Words in s. 97(8) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)

## 98 Power to obtain information for purposes of sections 87 to 90.

- (1) The Board may by notice require any person to furnish them within such time as they may direct, not being less than 28 days, with such particulars as they think necessary for the purposes of sections 87 to 90.
- (2) [<sup>F131</sup>Sections 748(3) to (5), 749 and 750 of ITA 2007 shall have effect in relation to subsection (1) above as they have effect in relation to section 748(1) and (2) of that Act], but in their application by virtue of this subsection—
- (a) references to [<sup>F132</sup>Chapter 2 of Part 13 of that Act] shall be construed as references to sections 87 to 90; <sup>F133</sup>...
- <sup>F134</sup>(b) .....
- [<sup>F135</sup>(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.]

### Textual Amendments

- F131** Words in s. 98(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 303\(a\)](#) (with [Sch. 2](#))
- F132** Words in s. 98(2)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 303\(b\)](#) (with [Sch. 2](#))
- F133** Word in s. 98(2)(a) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 16\(1\)\(b\)\(2\), Sch. 26 Pt. 3\(15\)](#)
- F134** S. 98(2)(b) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 16\(1\)\(c\)\(2\), Sch. 26 Pt. 3\(15\)](#)

*Status: Point in time view as at 08/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F135** S. 98(3) added (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 92(4)(b), [Sch. 26 para. 5](#)

**[<sup>F136</sup>98A Settlements with foreign element: information.**

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.]

**Textual Amendments**

**F136** S. 98A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. 97(2)

## CHAPTER III

### COLLECTIVE INVESTMENT SCHEMES AND INVESTMENT TRUSTS

**99 Application of Act to unit trust schemes.**

- (1) This Act shall apply in relation to any unit trust scheme as if—
- (a) the scheme were a company,
  - (b) the rights of the unit holders were shares in the company, and
  - (c) in the case of an authorised unit trust, the company were resident and ordinarily resident in the United Kingdom,
- except that nothing in this section shall be taken to bring a unit trust scheme within the charge to corporation tax on chargeable gains.
- (2) Subject to subsection (3) [<sup>F137</sup> and section 99A] below, in this Act—
- (a) “unit trust scheme” has the [<sup>F138</sup> meaning given by section 237(1) of the Financial Services and Markets Act 2000],
  - [<sup>F139</sup>(aa) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme;
  - (b) “authorised unit trust” means, as respects an accounting period, a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force during the whole or part of that period.]
  - [<sup>F140</sup>(c) “open-ended investment company” has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly references in subsections (11) to (16) of that section to “the Tax Acts” shall be construed as if they included references to this Act.]
- (3) The Treasury may by regulations provide that any scheme of a description specified in the regulations shall be treated as not being a unit trust scheme for the purposes of this Act; and regulations under this section may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

*Status: Point in time view as at 08/07/2008.*

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#### Textual Amendments

- F137** Words in s. 99(2) inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 118\(2\)\(a\)](#)
- F138** Words in s. 99(2)(a) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\), arts. 1\(2\)\(a\), 62\(1\)](#)
- F139** S. 99(2)(aa)(b) substituted for s. 99(2)(b) (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 118\(2\)\(b\)](#)
- F140** S. 99(2)(c) added (28.4.1997) by [The Open-ended Investment Companies \(Tax\) Regulations 1997 \(S.I. 1997/1154\), regs. 1\(1\), 20](#)

#### Modifications etc. (not altering text)

- C16** S. 99 extended (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 22\(2\)](#)

### [<sup>F141</sup>99A Authorised unit trusts: treatment of umbrella schemes

- (1) In this section an “umbrella scheme” means an authorised unit trust—
- (a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another,
- and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.
- (2) For the purposes of this Act (except subsection (1))—
- (a) each of the parts of an umbrella scheme shall be regarded as an authorised unit trust, and
  - (b) the scheme as a whole shall not be regarded as an authorised unit trust or as any other form of collective investment scheme.
- (3) In this Act, in relation to a part of an umbrella scheme, any reference to a unit holder is to a person for the time being having rights in the separate pool to which the part of the umbrella scheme relates.
- (4) Nothing in subsections (2) or (3) shall prevent—
- (a) gains accruing to an umbrella scheme being regarded as gains accruing to an authorised unit trust for the purposes of section 100(1) (exemption for authorised unit trusts etc);
  - (b) a transfer of business to an umbrella scheme being regarded as a transfer to an authorised unit trust for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc);
  - <sup>F142</sup>(c) . . . . . ]

#### Textual Amendments

- F141** S. 99A inserted (with effect in accordance with s. 118(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 118\(3\)](#)
- F142** S. 99A(4)(c) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3](#) (with Sch. 36)

*Status: Point in time view as at 08/07/2008.*

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### **[<sup>F143</sup>99B Calculation of the disposal cost of accumulation units**

- (1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1)(b) if—
  - (a) it represents income from the investments subject to the unit trust scheme,
  - (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
  - (c) it is either—
    - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
    - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.
- (2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—
  - (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
  - (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.
- (3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by [<sup>F144</sup>regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 15 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964)].]

#### **Textual Amendments**

**F143** S. 99B inserted (with effect in accordance with s. 21(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 21\(1\)](#)

**F144** Words in s. 99B(3) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [regs. 1\(1\), 89\(2\)](#)

### **100 Exemption for authorised unit trusts etc.**

- (1) Gains accruing to an authorised unit trust, an investment trust [<sup>F145</sup>a venture capital trust] or a court investment fund shall not be chargeable gains.
  - (2) If throughout a year of assessment all the issued units in a unit trust scheme (other than an authorised unit trust) are assets such that any gain accruing if they were disposed of by the unit holder would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence) gains accruing to the unit trust scheme in that year of assessment shall not be chargeable gains.
- [<sup>F146</sup>(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—
- (a) have been disposed of by a unit holder, and
  - (b) are held by the managers of the scheme (in that capacity) pending disposal.

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- (2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—
- (a) an insurance company (within the meaning given by section 431 of the Taxes Act), or
  - (b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act).]
- (3) In this Act “court investment fund” means a fund established under section 42 of the <sup>M6</sup>Administration of Justice Act 1982.

#### Textual Amendments

- F145** Words in s. 100(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 72\(2\)](#)
- F146** S. 100(2A)(2B) inserted (with effect in accordance with s. 20(3) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 20\(2\)](#)

#### Modifications etc. (not altering text)

- C17** S. 100(1) modified (with effect in accordance with reg. 1(2)(a) of the amending S.I.) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\), regs. 1\(1\), 5](#)

#### Marginal Citations

- M6** 1982 c. 53.

### 101 Transfer of company’s assets to investment trust.

- (1) Where section 139 has applied on the transfer of a company’s business (in whole or in part) to a company which at the time of the transfer was not an investment trust, then if—
- (a) at any time after the transfer the company becomes for an accounting period an investment trust, and
  - (b) at the beginning of that accounting period the company still owns any of the assets of the business transferred,
- the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.
- [<sup>F147</sup>(1A) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the end of the last accounting period to end before the beginning of the accounting period mentioned in that subsection.]
- [<sup>F148</sup>(1B) This section does not apply if at the time at which the company becomes an investment trust there has been an event by virtue of which it falls by virtue of section 101B(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.]
- (2) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of subsection (1) above may be made at any time within 6 years after the end of the accounting period referred to in subsection (1)

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above, and where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

#### **Textual Amendments**

- F147** S. 101(1A) inserted (29.4.1996 with effect as specified in s. 140(2) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 140\(1\)](#)
- F148** S. 101(1B) inserted (with application in accordance with s. 134(5) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 134\(3\)](#)

#### **[<sup>F149</sup>101A] Transfer within group to investment trust.**

- (1) This section applies where—
  - (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not an investment trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.
- (2) Those conditions are satisfied by the acquiring company if—
  - (a) it becomes an investment trust for an accounting period beginning not more than 6 years after the time of the disposal,
  - (b) at the beginning of that accounting period, it owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been an investment trust for any earlier accounting period beginning after the time of the disposal, and
  - (d) at the time at which it becomes an investment trust, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101C(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the end of the last accounting period to end before the beginning of the accounting period for which the acquiring company becomes an investment trust.
- (5) For the purposes of this section a chargeable gain is carried forward from an asset to other property on a replacement of business assets if—



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- (a) by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and
  - (b) as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.
- (6) For the purposes of this section an asset acquired by the acquiring company shall be treated as the same as an asset owned by it at a later time if the value of the second asset is derived in whole or in part from the first asset; and, in particular, assets shall be so treated where—
  - (a) the second asset is a freehold and the first asset was a leasehold; and
  - (b) the lessee has acquired the reversion.
- (7) Where under this section a company is to be treated as having disposed of and reacquired an asset—
  - (a) all such recomputations of liability in respect of other disposals, and
  - (b) all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax,as may be required in consequence of the provisions of this section shall be carried out.
- (8) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years after the end of the accounting period referred to in subsection (2)(a) above.]

#### Textual Amendments

**F149** S. 101A inserted (with application in accordance with s. 133(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 133\(1\)](#)

#### [<sup>F150</sup>101B] **Transfer of company's assets to venture capital trust.**

- (1) Where section 139 has applied on the transfer of a company's business (in whole or in part) to a company which at the time of the transfer was not a venture capital trust, then if—
  - (a) at any time after the transfer the company becomes a venture capital trust by virtue of an approval for the purposes of [<sup>F151</sup>Part 6 of ITA 2007]; and
  - (b) at the time as from which the approval has effect the company still owns any of the assets of the business transferred,the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.
- (2) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the time mentioned in subsection (1)(b) above.
- (3) This section does not apply if at the time mentioned in subsection (1)(b) above there has been an event by virtue of which the company falls by virtue of section 101(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.

*Status: Point in time view as at 08/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the approval mentioned in subsection (1)(a) above has effect as from the beginning of an accounting period, be made at any time within 6 years after the end of that accounting period.
- (5) Where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.]

#### Textual Amendments

**F150** S. 101B inserted (with application in accordance with s. 134(5) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 134(2)

**F151** Words in s. 101B(1)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 304](#) (with [Sch. 2](#))

#### [<sup>F152</sup>101C] **Transfer within group to venture capital trust.**

- (1) This section applies where—
- (a) an asset has been disposed of to a company (the “acquiring company”) and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,
  - (b) at the time of the disposal the acquiring company was not a venture capital trust, and
  - (c) the conditions set out in subsection (2) below are satisfied by the acquiring company.
- (2) Those conditions are satisfied by the acquiring company if—
- (a) it becomes a venture capital trust by virtue of an approval having effect as from a time (the “time of approval”) not more than 6 years after the time of the disposal,
  - (b) at the time of approval the company owns, otherwise than as trading stock—
    - (i) the asset, or
    - (ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
  - (c) it has not been a venture capital trust at any earlier time since the time of the disposal, and
  - (d) at the time of approval, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101A(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.
- (3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.
- (4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the time of approval.

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- (5) Subsections (5) to (7) of section 101A apply for the purposes of this section as they apply for the purposes of that section.
- (6) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the time of approval is the time at which an accounting period of the company begins, be made at any time within 6 years after the end of that accounting period.
- (7) Any reference in this section to an approval is a reference to an approval for the purposes of [<sup>F153</sup>Part 6 of ITA 2007].]

#### Textual Amendments

- F152** S. 101C inserted (with application in accordance with s. 135(5) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 135\(2\)](#)
- F153** Words in s. 101C(7) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 305](#) (with [Sch. 2](#))

### 102 Collective investment schemes with property divided into separate parts.

- (1) Subsection (2) below applies in the case of arrangements which constitute a collective investment scheme and under which—
  - (a) the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled in relation to separate parts of the property in question, and
  - (b) the participants are entitled to exchange rights in one part for rights in another.
- (2) If a participant exchanges rights in one such part for rights in another, section 127 shall not prevent the exchange constituting a disposal and acquisition for the purposes of this Act.
- (3) The reference in subsection (2) above to section 127—
  - (a) includes a reference to that section as applied by section 132, but
  - (b) does not include a reference to section 127 as applied by section 135 [<sup>F154</sup>or 136];and in this section “participant” shall be construed in accordance with [<sup>F155</sup>section 235 of the Financial Services and Markets Act 2000].

#### Textual Amendments

- F154** Words in s. 102(3)(b) inserted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\), Sch. 9 para. 5\(4\)](#)
- F155** Words in s. 102(3) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments\) \(Taxes\) Order 2001 \(S.I. 2001/3629\), arts. 1\(2\)\(a\), 62\(2\)](#)

### <sup>F156</sup>103 Restriction on availability of indexation allowance.

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**Status:** Point in time view as at 08/07/2008.

**Changes to legislation:** *Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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#### **Textual Amendments**

**F156** S. 103 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994](#) (c. 9), s. 93(7), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

**Status:**

Point in time view as at 08/07/2008.

**Changes to legislation:**

Taxation of Chargeable Gains Act 1992, Part III is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.