



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III

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

### CHAPTER II

#### SETTLEMENTS

##### *General provisions*

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

In this Act, unless the context otherwise requires, “settled property” means any property held in trust other than property to which section 60 applies.

#### **69 Trustees of settlements.**

- (1) In relation to settled property, the trustees of the settlement 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 trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom.
- (2) Notwithstanding subsection (1) above, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom, and if in such a case the trustees

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or a majority of them are or are treated in relation to that trust as not resident in the United Kingdom, the general administration of the trust shall be treated as ordinarily carried on outside 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>M1</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.

#### **Marginal Citations**

**M1** 1925 c. 18.

## **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.
- (2) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, any allowable loss which has accrued to the trustee in respect of property which is, or is represented by, the property to which that person so becomes entitled (including any allowable loss carried forward to the year of assessment in which that occasion falls), being a loss which cannot be deducted from chargeable gains accruing to the trustee in that year, but before that occasion, shall be treated as if it were an allowable loss accruing at that time to the person becoming so entitled, instead of to the trustee.
- (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

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where a person would become so entitled but for being an infant or other person under disability.

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

**C1** 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 a life 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 a life interest which is a right to part of the income of settled property shall be treated as a life interest in a corresponding part of the settled property.

- (2) Subsection (1) above shall apply where the person entitled to a life 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 a life interest.
- (3) In this section “life interest” in relation to a settlement—
- (a) includes a right under the settlement to the income of, or the use or occupation of, settled property for the life of a person other than the person entitled to the right, or for lives,
  - (b) does not include any right which is contingent on the exercise of the discretion of the trustee or the discretion of some other person, and
  - (c) subject to subsection (4) below, does not include an annuity, notwithstanding that the annuity is payable out of or charged on settled property or the income of settled property.
- (4) In this section the expression “life interest” shall include entitlement to an annuity created by the settlement if—
- (a) some or all of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and
  - (b) there is no right of recourse to settled property not so appropriated, or to the income of settled property not so appropriated;

and, 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 annuitant, be treated for the purposes of this section as being settled property under a separate settlement.

- (5) If there is a life interest in a part of the settled property and, where that is a life 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 life 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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### **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 termination of a life interest (within the meaning of section 72) by the death of the person entitled to that interest—
  - (a) no chargeable gain shall accrue on the disposal, and
  - (b) if on the death the property reverts to the disponer, 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.
- (2) Where the life 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.
- (3) The last sentence of subsection (1) of section 72 and subsection (5) of that section shall apply for the purposes of subsection (2) above as they apply for the purposes of section 72(1).

### **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.**

Sections 71(1) and 72(1) shall apply, where an annuity which is not a life interest is terminated by the death of the annuitant, as they apply on the termination of a life interest by the death of the person entitled thereto.

In this section “life interest” has the same meaning as in section 72.

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## 76 Disposal of interests in settled property.

- (1) 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.
- (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)).

### Modifications etc. (not altering text)

C2 S. 76(1) excluded (27.7.1993) by 1993 c. 37, s. 12, Sch. 2 Pt. I para. 21(2)(e)

## 77 Charge on settlor with interest in settlement.

- (1) Subject to subsections (6), (7) and (8) below, subsection (2) below applies where—
  - (a) in a year of assessment chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
  - (b) after making any deductions provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees would, disregarding section 3 (and apart from this section), be chargeable to tax for the year in respect of those gains, and
  - (c) at any time during the year the settlor has an interest in the settlement.
- (2) Where this subsection applies, the trustees shall not be chargeable to tax in respect of the gains concerned but instead chargeable gains of an amount equal to that referred to in subsection (1)(b) above shall be treated as accruing to the settlor in the year.
- (3) Subject to subsections (4) and (5) below, for the purposes of subsection (1)(c) above a settlor has an interest in a settlement if—
  - (a) any property which may at any time be comprised in the settlement or any income which may arise under the settlement is, or will or may become, applicable for the benefit of or payable to the settlor or the spouse of the settlor in any circumstances whatsoever, or
  - (b) the settlor, or the spouse of the settlor, enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any income arising under the settlement.
- (4) A settlor does not have an interest in a settlement by virtue of subsection (3)(a) above if and so long as none of the property which may at any time be comprised in the settlement and none of the income which may arise under the settlement can become applicable or payable as mentioned in that subsection except in the event of—
  - (a) the bankruptcy of some person who is or may become beneficially entitled to that property or income;

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- (b) any assignment of or charge on that property or income being made or given by some such person;
  - (c) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
  - (d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.
- (5) A settlor does not have an interest in a settlement by virtue of subsection (3)(a) above if and so long as some person is alive and under the age of 25 during whose life none of the property which may at any time be comprised in the settlement and none of the income which may arise under the settlement can become applicable or payable as mentioned in subsection (3)(a) above except in the event of that person becoming bankrupt or assigning or charging his interest in that property or income.
- (6) Subsection (2) above does not apply where the settlor dies during the year.
- (7) In a case where the settlor has an interest in the settlement only for either or both of the following reasons, namely—
- (a) that property or income is, or will or may become, applicable for the benefit of or payable to the settlor's spouse, and
  - (b) that the settlor's spouse enjoys a benefit from property or income,
- subsection (2) above does not apply where the spouse dies, or the settlor and the spouse cease to be married, during the year.
- (8) Subsection (2) above does not apply unless the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year.

## **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 section 77(2) 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 section 77(2) 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.
- (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 section 77(2) in the same year,
- subsection (2) above shall have effect subject to section 86(4)(b).

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## **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, and
  - (b) references to income arising under a settlement, in relation to any settlor, are references only to income originating from that settlor.
- (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.
- (4) References in this section to income originating from a settlor are references to—
  - (a) income from property originating from that settlor, and
  - (b) income provided directly or indirectly by that settlor.
- (5) In subsections (3) and (4) above—
  - (a) references to property or income which a settlor has provided directly or indirectly include references to property or income 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 or income 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.
- (6) An inspector 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 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 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) 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.

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*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, 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.

**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



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- (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
  - (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.

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- (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.

### **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.

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#### **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) Subject to subsections (4) and (9) 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) Subsection (7) 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,
  - (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—

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- (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.

## **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) if the assumption as to residence specified in subsection (3) below were made;
  - (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 not resident or ordinarily resident in the United Kingdom during any part of the year, or
  - (b) the trustees are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, but at any time of such residence or 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.
- (3) Where subsection (2)(a) above applies, the assumption as to residence is that the trustees are resident or 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—

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

## **87 Attribution of gains to beneficiaries.**

- (1) This section applies to a settlement for any year of assessment during which the trustees are at no time resident or ordinarily resident in the United Kingdom if the settlor or one of the settlors is at any time during that year, or was when he made his settlement, domiciled and either resident or ordinarily resident in the United Kingdom.
- (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 resident or 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 reduced by the amount, or aggregate of the amounts, mentioned in paragraph (a) above.
- (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.
- (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

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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.

## **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 resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year,
  - (b) at any time of such residence or 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, and
  - (c) the settlor or one of the settlors is at any time during that year, or was when he made his settlement, domiciled and either resident or ordinarily resident in the United Kingdom.
- (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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## **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) a non-resident period is succeeded by a resident period, and
  - (b) 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) and (7) of section 87 shall apply in relation to subsection (2) above as they apply in relation to subsection (4) of that section.

## **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—
  - (a) 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;
  - (b) 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 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.

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

## **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.
- (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.



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## 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>M2</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.
- (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

M2 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).

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- (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.
- (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—

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- (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.

## **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 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.
- (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.

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- (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received and each of them is then resident or ordinarily resident in the United Kingdom—
- (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.
- (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.

## 97 Supplementary provisions.

- (1) In sections 87 to 96 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.

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- (3) The fact that the whole or part of a benefit is by virtue of section 740(2)(b) of the Taxes Act 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 sections 87 to 96 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.
- (4) For the purposes of sections 87 to 96 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 sections 87 to 90 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 sections 87 to 96 and in the preceding provisions of this section—

“settlement” and “settlor” have the meaning given by section 681(4) of the Taxes Act and “settlor” includes, in the case of a settlement arising under a will or intestacy, the testator or intestate, and

“settled property” shall be construed accordingly.
- (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 sections 87 to 90 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.

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**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) Subsections (2) to (5) of section 745 of the Taxes Act shall have effect in relation to subsection (1) above as they have effect in relation to section 745(1), but in their application by virtue of this subsection—
  - (a) references to Chapter III of Part XVII of the Taxes Act shall be construed as references to sections 87 to 90; and
  - (b) the expressions “settlement” and “settlor” have the same meanings as in those sections.

**Status:**

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