



# 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, [<sup>F1</sup>“settled property” means any property held in trust other than property to which section 60 applies (and references, however expressed, to property comprised in a settlement are references to settled property)].

#### Textual Amendments

F1 Words in s. 68 substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 1\(1\)\(3\)](#)

#### [<sup>F2</sup>68A Meaning of “settlor”

- (1) In this Act, unless the context otherwise requires—
- “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
  - a person is a settlor of property which—

*Status: Point in time view as at 21/07/2008.*

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- (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.
- (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**

**F2** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

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## **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 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.]

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### Textual Amendments

**F2** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

## [<sup>F3</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
    - (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,

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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

- F3** 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>F4</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);

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

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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>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.

#### Textual Amendments

- F4** 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

- M1** 1925 c. 18.

### [<sup>F5</sup>69A Sub-fund settlements

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

#### Textual Amendments

- F5** 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\(1\)](#)

### 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

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immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.

[<sup>F6</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))

- (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;

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- (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

- F6** 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)

- 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 [<sup>F7</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>F7</sup>an] interest which is a right to part of the income of settled property shall be treated as [<sup>F7</sup>an] interest in a corresponding part of the settled property.

- [<sup>F8</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—



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- (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 [F<sup>9</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 [F<sup>9</sup>an] interest.
- [F<sup>10</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.]

[F<sup>11</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 [F<sup>12</sup>an] interest in a part of the settled property and, where that is [F<sup>12</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 [F<sup>13</sup>... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.

#### Textual Amendments

- F7** 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\(2\)](#)
- F8** S. 72(1A)-(1C) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(2\)](#)
- F9** 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\(2\)](#)
- F10** S. 72(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(3\)](#)

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- F11** 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\(3\)](#)
- F12** 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\(2\)](#)
- F13** 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>F14</sup>death of a person entitled to an interest in possession in the settled property]—
- (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 [<sup>F15</sup>31 March 1982], be deemed to be at that earlier date.
- [<sup>F16</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) a sub-fund election is or has been made in respect of another sub-fund of the principal settlement, and
  - (b) 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>F17</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>F18</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—
- (a) immediately before the person's death, the interest falls within section 72(1B), 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.]
- (3) The last sentence of subsection (1) of section 72 and [<sup>F19</sup>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**

- F14** 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\(2\)](#)

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- F15** Words in s. 73(1) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 61](#)
- F16** 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](#)
- F17** 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\(4\)](#)
- F18** S. 73(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\)](#), [31](#)
- F19** 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.**

**F20** .....

##### **Textual Amendments**

- F20** S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(4\)](#)

#### **76 Disposal of interests in settled property.**

- (1) [<sup>F21</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>F22</sup>(1A) Subject to subsection (3) below, subsection (1) above does not apply if—
- (a) the settlement falls within subsection (1B) below; or

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- (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>F23</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>F24</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

- F21** 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\(1\)\(a\)](#)
- F22** 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\(1\)\(b\)\(2\)](#)
- F23** 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\(1\)\(2\)\(a\)](#)
- F24** 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)

- C2** S. 76(1) excluded (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 21\(2\)\(e\)](#)

#### [<sup>F25</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.]

#### Textual Amendments

- F25** 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>F26</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.]

*Status: Point in time view as at 21/07/2008.*

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**Textual Amendments**

**F26** 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>F27</sup>77 Charge on settlor with interest in settlement.**

.....

**Textual Amendments**

**F27** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**<sup>F27</sup>78 Right of recovery.**

.....

**Textual Amendments**

**F27** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**<sup>F27</sup>79 Provisions supplemental to sections 77 and 78.**

.....

**Textual Amendments**

**F27** Ss. 77-79 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008](#) (c. 9), [Sch. 2 para. 5](#)

**[<sup>F28</sup>79A Restriction on set-off of trust losses.**

- (1) This section applies to a chargeable gain accruing to the trustees of a settlement where—
- (a) 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;
  - (b) the transferor on that earlier disposal, or any person connected with the transferor, has at any time—
    - (i) acquired an interest in the settled property, or
    - (ii) entered into an arrangement to acquire such an interest; and
  - (c) 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**

**F28** 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>F29</sup>79B Attribution to trustees of gains of non-resident companies.**

- (1) This section applies where [<sup>F30</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

- F29** S. 79B inserted (with application in accordance with s. 94(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 94\(1\)](#)
- F30** 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)**

- C3** 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\(2\)\(b\)](#)
- C4** 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>F31</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>F32</sup>and ordinarily resident] in the United Kingdom and not Treaty non-resident, <sup>F33</sup> ...
  - <sup>F34</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>F35</sup>resident and ordinarily resident in the United Kingdom] but are Treaty non-resident.

<sup>F36</sup>(5) .....

#### Textual Amendments

- F31** 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\(1\)](#)
- F32** Words in s. 83A(3)(a) inserted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(a\)\(i\)](#), 33
- F33** 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\(15\)](#)
- F34** 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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- F35** 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\(1\)\(2\)\(a\)](#)
- F36** 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>F37</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>F38</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>F39</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, [<sup>F40</sup>chargeable gains would be treated under section 89(2) or paragraph 8 of Schedule 4C as accruing in the following year of assessment to a beneficiary who received a capital payment from the trustees of the settlement in that year.]]

#### Textual Amendments

- F37** 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\(2\)](#)
- F38** 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\(3\)](#)
- F39** 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\(4\)](#)
- F40** Words in s. 85(11) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 107](#)

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## **[<sup>F41</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.

[<sup>F42</sup>(2A) For the purposes of sections 87 to 89, no account is to be taken of any section 2(2) amount in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

[<sup>F43</sup>(3) When calculating the section 2(2) amount for a settlement for a tax year (within the meaning of section 87), no account is to be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B.

Nothing in this subsection affects any increase in a section 2(2) amount by virtue of paragraph 1(3A) or 7B(2)(b) of Schedule 4C.]

(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**

**F41** S. 85A substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 163\(1\)](#) (with [s. 163\(4\)-\(6\)](#))

**F42** S. 85A(2A) inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 129\(2\)](#) (with [Sch. 7 para. 155](#))

**F43** S. 85A(3) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 129\(3\)](#) (with [Sch. 7 para. 155](#))

## **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>F44</sup>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 [<sup>F45</sup>neither resident nor ordinarily resident in the United Kingdom] during any part of the year, or
- (b) the trustees are [<sup>F46</sup>resident and ordinarily resident in the United Kingdom during any part of the year], but at any time of [<sup>F47</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>F48</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>F49</sup>(4A) . . . . .

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

#### Textual Amendments

- F44** Words in s. 86(1)(e) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 30](#)
- F45** 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\(1\)\(2\)\(b\)](#)
- F46** 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
- F47** 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
- F48** 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\(1\)\(2\)\(c\)](#)
- F49** 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)

- C5** 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\(2\)\(3\)](#)
- C6** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 132\(5\)](#)
- C7** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 para. 4\(1\)](#)

#### <sup>F50</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>F51</sup>the amount falling within section 86(1)(e)] for the intervening year, or

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(b) if there is more than one intervening year, the aggregate of [<sup>F52</sup>the amounts falling within section 86(1)(e)] 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.

<sup>F53</sup>(2A) .....

<sup>F54</sup>(2B) .....

(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>F55</sup>the amount (or aggregate amount) falling in accordance with that section to be so attributed] shall be applied in reducing the amount carried forward to that year in accordance with section 87(2).

<sup>F56</sup>(7A) .....

(8) Where an amount <sup>F57</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



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of the references in subsection (5) above to property originating from the settlor as it applies for the purposes of that Schedule.]

#### Textual Amendments

- F50** S. 86A inserted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 129\(1\)](#)
- F51** Words in s. 86A(2)(a) substituted (with effect in accordance with Sch. 2 para. 56(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(2\)\(a\)](#)
- F52** Words in s. 86A(2)(b) substituted (with effect in accordance with Sch. 2 para. 56(1) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(2\)\(b\)](#)
- F53** S. 86A(2A) omitted (with effect in accordance with Sch. 2 para. 56(1) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(3\)](#)
- F54** S. 86A(2B) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(4\)](#)
- F55** Words in s. 86A(7) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(5\)](#)
- F56** S. 86A(7A) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 31\(6\)](#)
- F57** 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\(4\)](#)

#### [<sup>F58</sup>87 **Non-UK resident settlements: attribution of gains to beneficiaries**

- (1) This section applies to a settlement for a tax year (“the relevant tax year”) if the trustees are neither resident nor ordinarily resident in the United Kingdom in that year.
- (2) Chargeable gains are treated as accruing in the relevant tax year to a beneficiary of the settlement who has received a capital payment from the trustees in the relevant tax year or any earlier tax year if all or part of the capital payment is matched (under section 87A as it applies for the relevant tax year) with the section 2(2) amount for the relevant tax year or any earlier tax year.
- (3) The amount of chargeable gains treated as accruing is equal to—
  - (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that part.
- (4) The section 2(2) amount for a settlement for a tax year for which this section applies to the settlement is—
  - (a) the amount upon which the trustees of the settlement would be chargeable to tax under section 2(2) for that year if they were resident and ordinarily resident in the United Kingdom in that year, or
  - (b) if section 86 applies to the settlement for that year, the amount mentioned in paragraph (a) minus the total amount of chargeable gains treated under that section as accruing in that year.
- (5) The section 2(2) amount for a settlement for a tax year for which this section does not apply to the settlement is nil.
- (6) For the purposes of this section a settlement arising under a will or intestacy is treated as made by the testator or intestate at the time of death.]



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### Textual Amendments

**F58** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

### Modifications etc. (not altering text)

**C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

**C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

## [<sup>F58</sup> 87A Section 87: matching

- (1) This section supplements section 87.
- (2) The following steps are to be taken for the purposes of matching capital payments with section 2(2) amounts.

### *Step 1*

Find the section 2(2) amount for the relevant tax year.

### *Step 2*

Find the total amount of capital payments received by the beneficiaries from the trustees in the relevant tax year.

### *Step 3*

The section 2(2) amount for the relevant tax year is matched with—

- (a) if the total amount of capital payments received in the relevant tax year does not exceed the section 2(2) amount for the relevant tax year, each capital payment so received, and
- (b) otherwise, the relevant proportion of each of those capital payments.

“The relevant proportion” is the section 2(2) amount for the relevant tax year divided by the total amount of capital payments received in the relevant tax year.

### *Step 4*

If paragraph (a) of Step 3 applies—

- (a) reduce the section 2(2) amount for the relevant tax year by the total amount of capital payments referred to there, and
- (b) reduce the amount of those capital payments to nil.

If paragraph (b) of that Step applies—

- (a) reduce the section 2(2) amount for the relevant tax year to nil, and
- (b) reduce the amount of each of the capital payments referred to there by the relevant proportion of that capital payment.

### *Step 5*

Start again at Step 1 (unless subsection (3) applies).

If the section 2(2) amount for the relevant tax year (as reduced under Step 4) is not nil, read references to capital payments received in the relevant tax year as references to capital payments received in the latest tax year which—

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- (a) is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) is a tax year in which capital payments (the amounts of which have not been reduced to nil) were received by beneficiaries.

If the section 2(2) amount for the relevant tax year (as so reduced) is nil, read references to the section 2(2) amount for the relevant tax year as the section 2(2) amount for the latest tax year—

- (a) which is before the last tax year for which Steps 1 to 4 have been undertaken, and
  - (b) for which the section 2(2) amount is not nil.
- (3) This subsection applies if—
- (a) all of the capital payments received by beneficiaries from the trustees in the relevant tax year or any earlier tax year have been reduced to nil, or
  - (b) the section 2(2) amounts for the relevant tax year and all earlier tax years have been reduced to nil.
- (4) The effect of any reduction under Step 4 of subsection (2) is to be taken into account in any subsequent application of this section.]

#### **Textual Amendments**

**F58** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

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

**C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

**C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

### **[<sup>F58</sup>87B Section 87: remittance basis**

- (1) This section applies if—
- (a) chargeable gains are treated under section 87 as accruing to an individual in a tax year,
  - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for that year, and
  - (c) the individual is not domiciled in the United Kingdom in that year.
- (2) The chargeable gains are foreign chargeable gains within the meaning of section 12 (non-UK domiciled beneficiaries to whom remittance basis applies).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat relevant property or benefits as deriving from the chargeable gains.
- (4) For the purposes of subsection (3) property or a benefit is “relevant” if the capital payment by reason of which the chargeable gains are treated as accruing consists of—
- (a) the payment or transfer of the property or its becoming property to which section 60 applies, or
  - (b) the conferring of the benefit.]

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#### Textual Amendments

**F58** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

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

**C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

### [<sup>F58</sup>87C Sections 87 and 87A: disregard of certain capital payments

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2).
- (2) A capital payment is within this subsection if (and to the extent that) it is received (or treated as received) in a tax year from the trustees of the settlement by a company that—
  - (a) is not resident in the United Kingdom in that year, and
  - (b) would be a close company if it were resident in the United Kingdom,(and is not treated under any of subsections (3) to (5) of section 96 as received by another person).]

#### Textual Amendments

**F58** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

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

**C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

**C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

### 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>F59</sup>resident and ordinarily resident in the United Kingdom during any part of the year], [<sup>F60</sup>and]
  - (b) at any time of [<sup>F61</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>F62</sup>...
  - <sup>F62</sup>(c) .....
- [<sup>F63</sup>(2) The section 2(2) amount for a tax year for which section 87 applies by virtue of this section is what it would be if the amount mentioned in section 87(4)(a) were the assumed chargeable amount.]
- (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—

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- (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.

F64(6) .....

F65(7) .....

#### Textual Amendments

- F59** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(a\)\(2\)\(b\)](#), 41
- F60** 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\(2\)\(a\)](#)
- F61** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(b\)\(2\)\(b\)](#), 41
- F62** 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\(30\)](#)
- F63** S. 88(2) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 109\(2\)](#)
- F64** S. 88(6) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 2 para. 6](#)
- F65** S. 88(7) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 109\(3\)](#)

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

- C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 125\(2\)](#)

## 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

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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 [F66sections 87 and 87A if] it was not made in anticipation of a disposal made by the trustees in the non-resident period.

[F67(1A) Subsection (2) applies to a settlement if—

- (a) a non-resident period is succeeded by a resident period, and
  - (b) in relation to the last tax year in the non-resident period (“the last non-resident tax year”), section 87A(3) applied by virtue of paragraph (a) of that provision (exhaustion of capital payments).
- (2) Chargeable gains are treated as accruing in a tax year (in the resident period) to a beneficiary of the settlement who receives a capital payment from the trustees in that year if all or part of the capital payment is matched (under section 87A as it applies for that year) with the section 2(2) amount for the last non-resident tax year or any earlier tax year.
- (3) Section 87(3) and (4) and sections 87A to 87C apply for the purposes of subsection (2) as if the relevant tax year were the tax year mentioned in subsection (2).
- (4) Section 87B (remittance basis) applies in relation to chargeable gains treated under subsection (2) as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.]

#### Textual Amendments

- F66** Words in s. 89(1) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 110\(2\)](#)
- F67** S. 89(1A)-(4) substituted for s. 89(2)(3) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 110\(3\)](#) (with [Sch. 7 para. 123](#))

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

- C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C9** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

#### [F6890 Sections 87 and 89(2): transfers between settlements

- (1) This section applies if 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”).
- (2) In this section “the year of transfer” means the tax year in which the transfer occurs.
- (3) Treat the section 2(2) amount for the transferee settlement for any tax year (not later than the year of transfer) as increased by—
  - (a) the section 2(2) amount for the transferor settlement for that year (as reduced under section 87A as it applies in relation to that settlement for the year of transfer and all earlier tax years), or
  - (b) if part only of the settled property is transferred, the relevant proportion of the amount mentioned in paragraph (a).

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- (4) “The relevant proportion” is—
- (a) the market value of the property transferred, divided by
  - (b) the market value of the property comprised in the transferor settlement immediately before the transfer.
- (5) Treat the section 2(2) amount for the transferor settlement for any tax year as reduced by the amount by which the section 2(2) amount for the transferee settlement for that year is increased under subsection (3).
- (6) If neither section 87 nor section 89(2) would otherwise apply to the transferee settlement for the year of transfer—
- (a) section 89(2) to (4) apply to the settlement for that year (and subsequent tax years), and
  - (b) for this purpose, references there to the last non-resident tax year are to be read as the year of transfer.
- (7) The increase under subsection (3) has effect for the year of transfer and subsequent tax years.
- (8) The reduction under subsection (5) has effect for tax years after the year of transfer.
- (9) When calculating the market value of property for the purposes of this section or section 90A in a case where the property is subject to a debt, reduce the market value by the amount of the debt.
- (10) This section does not apply to—
- (a) a transfer to which Schedule 4B applies, or
  - (b) any section 2(2) amount that is in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

#### **Textual Amendments**

**F68** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 111](#)

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

**C8** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

### **[<sup>F68</sup>90A Section 90: transfers made for consideration in money or money's worth**

- (1) Section 90 does not apply to a transfer of settled property made for consideration in money or money's worth if the amount (or value) of that consideration is equal to or exceeds the market value of the property transferred.
- (2) The following provisions apply if—
- (a) section 90 applies to a transfer of settled property made for consideration in money or money's worth, and
  - (b) the amount (or value) of that consideration is less than the market value of the property transferred.



*Status: Point in time view as at 21/07/2008.*

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- (3) If the transfer is of all of the settled property, for the purposes of section 90 treat the transfer as being of part only of the settled property.
- (4) Deduct the amount (or value) of the consideration from the amount of the market value referred to in section 90(4)(a).]

#### Textual Amendments

**F68** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 111](#)

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

- [<sup>F69</sup>(1) This section applies if—
- (a) chargeable gains are treated under section 87 or 89(2) as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”),
  - (b) the beneficiary is charged to tax by virtue of that matching, and
  - (c) the capital payment was made more than one year after the end of the relevant tax year.
- (1A) Where part of a capital payment is matched, references in subsections (2) and (3) to the capital payment are to the part matched.]
- (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 [<sup>F70</sup>tax year immediately after the relevant tax year,] 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).

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F71(8) .....

**Textual Amendments**

- F69** S. 91(1)(1A) substituted for s. 91(1) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(2\)](#)
- F70** Words in s. 91(5)(a) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(3\)](#)
- F71** S. 91(8) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(4\)](#)

**F7292 Qualifying amounts and matching.**

.....

**Textual Amendments**

- F72** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

**F7293 Matching: special cases.**

.....

**Textual Amendments**

- F72** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

**F7294 Transfers of settled property where qualifying amounts not wholly matched.**

.....

**Textual Amendments**

- F72** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

**F7295 Matching after transfer.**

.....

**Textual Amendments**

- F72** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)



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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>F73</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>F73</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>F74</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>F75</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**

**F73** 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](#)

**F74** 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\(1\)](#)

**F75** 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\(3\)](#)

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

**C10** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), Sch. 7 para. 93(3))

## **97 Supplementary provisions.**

- (1) In [<sup>F76</sup>sections 86A] to 96 [<sup>F77</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>F78</sup>section 733 of ITA 2007] treated as the recipient’s income for a year of assessment after that in which it is received—

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- (a) shall not prevent the benefit or that part of it being treated for the purposes of [F76sections 86A] to 96 [F79and 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.
- (4) For the purposes of [F76sections 86A] to 96 [F80and 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 [F76sections 86A] to 90 [F81and 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 [F82sections 86A] to 96 [F83and Schedule 4C] and in F84... this section—  
[F85“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].
- [F86(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 [F82sections 86A] to 90 [F87and 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

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- (b) the trustees of any other settlement,  
as beneficiaries of the settlement referred to in that subsection.

**Textual Amendments**

- F76** 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\(2\)](#)
- F77** 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\(a\)](#)
- F78** 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](#))
- F79** 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\(a\)](#)
- F80** 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\(a\)](#)
- F81** 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\(b\)](#)
- F82** 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\(2\)](#)
- F83** 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\(a\)](#)
- F84** 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\(15\)](#)
- F85** Words in s. 97(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(b\)\(3\)](#)
- F86** S. 97(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(2\)\(3\)](#)
- F87** 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\(b\)](#)

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

- C10** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with [Sch. 7 para. 98](#) of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))

**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>F88</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>F89</sup>Chapter 2 of Part 13 of that Act] shall be construed as references to sections 87 to 90; <sup>F90</sup>...
  - <sup>F91</sup>(b) .....
- [<sup>F92</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.]

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#### Textual Amendments

- F88** 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](#))
- F89** 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](#))
- F90** 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\(15\)](#)
- F91** 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\(15\)](#)
- F92** 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](#)

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

- C10** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), Sch. 7 para. 93(3))

#### [<sup>F93</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

- F93** S. 98A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. 97(2)

**Status:**

Point in time view as at 21/07/2008.

**Changes to legislation:**

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