



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III U.K.

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES <sup>[F1]</sup>ETC]

### CHAPTER II U.K.

SETTLEMENTS

*General provisions*

#### 68 Meaning of “settled property”. U.K.

In this Act, unless the context otherwise requires, <sup>[F2]</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

**F2** Words in s. 68 substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 1\(1\)\(3\)](#)

#### <sup>[F3]</sup>68A Meaning of “settlor” U.K.

- (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*Status: Point in time view as at 15/03/2018.*

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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**

**F3** 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** **U.K.**

- (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

**F3** Ss. 68A, 68B inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 1\(2\)\(4\)](#)

## [<sup>F4</sup>68C Variation of will or intestacy, etc: identification of settlor U.K.

- (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

- F4** 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. **U.K.**

<sup>F5</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 <sup>F6</sup>... 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 <sup>F7</sup>... 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.

<sup>F8</sup>(2DA) A trustee who is resident in the United Kingdom for a tax year is to be treated for the purposes of subsections (2A) and (2B) as if he or she were not resident in the United Kingdom for that year if—

- (a) the trustee is an individual,

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- (b) the individual becomes or ceases to be a trustee of the settlement during the tax year,
  - (c) that year is a split year as respects the individual, and
  - (d) in that year, the only period when the individual is a trustee of the settlement falls wholly within the overseas part of the year.
- (2DB) Subsection (2DA) is subject to subsection (2D) and, accordingly, an individual who is treated under subsection (2DA) as not resident is, in spite of that, to be regarded as resident whenever the individual acts as mentioned in subsection (2D).]
- (2E) If the deemed person referred to in subsection (1) is not treated for the purposes of this Act as resident [F<sup>9</sup>in the United Kingdom, then for the purposes of this Act it is treated as being not resident in the United Kingdom].]
- [F<sup>10</sup>(2F) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (2B)(c).]
- (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

- F5** 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\(1\)](#)
- F6** Words in s. 69(2) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(2\)](#)
- F7** Words in s. 69(2B)(c) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(3\)](#)
- F8** S. 69(2DA)(2DB) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 102](#)
- F9** Words in s. 69(2E) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 82\(4\)](#)
- F10** S. 69(2F) inserted (with effect in accordance with Sch. 8 para. 6(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 6\(1\)](#)

#### Marginal Citations

- M1** 1925 c. 18.

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## [<sup>F11</sup>69A Sub-fund settlements **U.K.**

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

### Textual Amendments

**F11** 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. **U.K.**

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. **U.K.**

(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.

[<sup>F12</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

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- (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;
- (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

**F12** 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. **U.K.**

- (1) On the termination, on the death of the person entitled to it, of [<sup>F13</sup>an] interest in possession in all or any part of settled property—



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- (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>F13</sup>an] interest which is a right to part of the income of settled property shall be treated as [<sup>F13</sup>an] interest in a corresponding part of the settled property.

[<sup>F14</sup>(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, the first sentence of that subsection applies in relation to that interest only if—

- (a) immediately before the person's death, the interest falls within subsection (1B) below, or
- (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.

(1B) An interest falls within this subsection if—

- (a) the interest is—
  - (i) an immediate post-death interest, within the meaning given by section 49A of the Inheritance Tax Act 1984,
  - (ii) a transitional serial interest, within the meaning given by section 49B of that Act, or
  - (iii) a disabled person's interest [<sup>F15</sup>, within the meaning given by section 89B] of that Act, or
- (b) section 71A of that Act (trusts for bereaved minors) applies to the property in which the interest subsists.

(1C) Subsection (1A) above does not have effect in relation to the operation of subsection (1) above as applied by subsection (2) below (but see subsection (2A) below.)]

(2) Subsection (1) above shall apply where the person entitled to [<sup>F16</sup>an] interest in possession in all or any part of settled property dies (although the interest does not then terminate) as it applies on the termination of such [<sup>F16</sup>an] interest.

[<sup>F17</sup>(2A) Where the interest in possession mentioned in subsection (2) above is one to which the person becomes entitled on or after 22nd March 2006—

- (a) subsection (2) above, and
- (b) the first sentence of subsection (1) above as applied by subsection (2) above, apply in relation to that interest only if, immediately before the person's death, the interest falls within subsection (1B)(a) above.]

[<sup>F18</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

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is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.]

- (5) If there is [<sup>F19</sup>an] interest in a part of the settled property and, where that is [<sup>F19</sup>an] interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the <sup>F20</sup>... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.
- [<sup>F21</sup>(6) An interest which is a disabled person's interest by virtue of section 89B(1)(a) or (b) of the Inheritance Tax Act 1984 is to be treated as an interest in possession for the purposes of this section.]

#### Textual Amendments

- F13** 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)**
- F14** S. 72(1A)-(1C) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(2\)](#)
- F15** Words in s. 72(1B)(a)(iii) substituted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 60(2)(a)**
- F16** 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)**
- F17** S. 72(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(3\)](#)
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** S. 72(6) inserted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), **s. 60(2)(b)**

### 73 **Death of life tenant: exclusion of chargeable gain.** **U.K.**

- (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>F22</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 disponent, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than [<sup>F23</sup>31 March 1982], be deemed to be at that earlier date.

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- [<sup>F24</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>F25</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>F26</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>F27</sup>subsections (3) [<sup>F28</sup>to (6)]] of that section shall apply for the purposes of this section] as they apply for the purposes of section 72(1).

#### Textual Amendments

- F22** 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\(2\)](#)
- F23** 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](#)
- F24** 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](#)
- F25** 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\(4\)](#)
- F26** S. 73(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\)](#), [31](#)
- F27** 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\(4\)](#)
- F28** Words in s. 73(3) substituted (with effect in accordance with s. 60(4) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [s. 60\(3\)](#)

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

- (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).

*Status: Point in time view as at 15/03/2018.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Chapter II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.** **U.K.**

F29 .....

### Textual Amendments

- F29** 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.** **U.K.**

- (1) <sup>F30</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>F31</sup>(1A) Subject to subsection (3) below, subsection (1) above does not apply if—
- (a) the settlement falls within subsection (1B) below; or
  - (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.
- (1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—
- (a) were <sup>F32</sup>[<sup>F33</sup>not 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>F34</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.]

*Status: Point in time view as at 15/03/2018.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Chapter II is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

- F30** 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\(1\)\(a\)](#)
- F31** 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\(1\)\(b\)\(2\)](#)
- F32** 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\(1\)\(2\)\(a\)](#)
- F33** Words in s. 76(1B)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 83](#)
- F34** 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>F35</sup>**76A Disposal of interest in settled property: deemed disposal of underlying assets.** **U.K.**

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

**Textual Amendments**

- F35** 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>F36</sup>**76B Transfers of value by trustees linked with trustee borrowing.** **U.K.**

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

**Textual Amendments**

- F36** 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>F37</sup>**77 Charge on settlor with interest in settlement.** **U.K.**

.....

**Textual Amendments**

- F37** 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](#)

*Status: Point in time view as at 15/03/2018.*

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**F3778 Right of recovery. U.K.**

.....

**Textual Amendments**

**F37** 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](#)

**F3779 Provisions supplemental to sections 77 and 78. U.K.**

.....

**Textual Amendments**

**F37** 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](#)

**[F3879A Restriction on set-off of trust losses. U.K.]**

- (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.
- (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.]

*Status: Point in time view as at 15/03/2018.*

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#### Textual Amendments

**F38** 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>F39</sup>**79B Attribution to trustees of gains of non-resident companies.** **U.K.**

- (1) This section applies where [<sup>F40</sup>the] trustees of a settlement are participators—
- in a close company, or
  - 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 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
  - 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
  - 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 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

**F39** S. 79B inserted (with application in accordance with s. 94(2) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 94\(1\)](#)

**F40** 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\(1\)](#)

*Status: Point in time view as at 15/03/2018.*

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

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

- (1) This section applies if the trustees of a settlement become at any time (“the relevant time”) [<sup>F41</sup>not resident] in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of the defined assets immediately before the relevant time, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—
  - (a) they are of a description specified in any double taxation relief arrangements, and
  - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 152 shall not apply where the trustees—
  - (a) have disposed of the old assets, or their interest in them, before the relevant time, and
  - (b) acquire the new assets, or their interest in them, after that time, unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall be excepted from subsection (6) above.
- (8) In this section “the old assets” and “the new assets” have the same meanings as in section 152.

**Textual Amendments**

**F41** Words in s. 80(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 84](#)



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#### 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\(2\)\(b\)](#)

### [<sup>F42</sup>**80A Deemed disposal of UK residential property interest under section 80** **U.K.**]

- (1) Subsection (2) applies if, ignoring subsections (2) to (4)—
- (a) a gain or loss would accrue to the trustees of a settlement on a disposal of a UK residential property interest deemed to have been made by virtue of section 80(2), and
  - (b) on the assumption that the disposal is a non-resident CGT disposal, that gain or loss would be a chargeable NRCGT gain or an allowable NRCGT loss (see section 57B and Schedule 4ZZB).
- (2) The trustees may elect for subsections (3) and (4) to have effect.
- (3) No gain or loss accrues to the trustees on that disposal.
- (4) But, on a subsequent disposal of the whole or part of the interest in UK land which is the subject of the disposal mentioned in subsection (1)(a), the whole or a corresponding part of the gain or loss which would have accrued to the trustees were it not for subsection (3)—
- (a) is deemed to accrue to the trustees (in addition to any gain or loss that actually accrues on that subsequent disposal), and
  - (b) (if that would not otherwise be the case) is to be treated as a chargeable NRCGT gain or an allowable NRCGT loss accruing on a non-resident CGT disposal.
- (5) In this section, “interest in UK land” has the meaning given by paragraph 2 of Schedule B1.]

#### Textual Amendments

- F42** S. 80A inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\), Sch. 7 para. 18](#)

### **81 Death of trustee: special rules.** **U.K.**

- (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 <sup>F43</sup>... 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.

*Status: Point in time view as at 15/03/2018.*

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- (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 <sup>F44</sup>... 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 <sup>F45</sup>... 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 <sup>F46</sup>... in the United Kingdom as a result of the death of a trustee of the settlement, and
  - (b) section 80 applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of 6 months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
  - (b) fall within subsection (7) below.
- (7) Assets fall within this subsection if—
- (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
  - (b) they acquired them as a result of a disposal in respect of which relief is given under section 165 or in relation to which section 260(3) applies.

#### Textual Amendments

- F43** Words in s. 81(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(2\)](#)
- F44** Words in s. 81(3)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(3\)](#)
- F45** Words in s. 81(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(4\)](#)
- F46** Words in s. 81(5)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(5\)](#)

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

- (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.

*Status: Point in time view as at 15/03/2018.*

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- (2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—
  - (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
  - (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
  - (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within 30 days of the service of the notice.
- (3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—
  - (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
  - (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might [<sup>F47</sup>cease to be 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.

#### Textual Amendments

**F47** Words in s. 82(3)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 86](#)

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

- (1) This section applies if the trustees of a settlement, while continuing to be resident <sup>F48</sup>... 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

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- (b) immediately to have reacquired them,  
 at their market value at that time.

#### Textual Amendments

**F48** Words in s. 83(1) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 87](#)

### [<sup>F49</sup>83A Trustees both resident and non-resident in a year of assessment **U.K.**

- (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>F50</sup>... in the United Kingdom and not Treaty non-resident, <sup>F51</sup>...
  - <sup>F52</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 [<sup>F53</sup>not resident] in the United Kingdom, or
  - (b) they are [<sup>F54</sup>resident <sup>F55</sup>... in the United Kingdom] but are Treaty non-resident.
- <sup>F56</sup>(5) ..... ]

#### Textual Amendments

- F49** 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\(1\)](#)
- F50** Words in s. 83A(3)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(2\)](#)
- F51** 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\(15\)](#)
- F52** S. 83A(3)(b) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(b\), 33](#), [Sch. 26 Pt. 3\(15\)](#)
- F53** Words in s. 83A(4)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(a\)](#)
- F54** 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\(1\)\(2\)\(a\)](#)
- F55** Words in s. 83A(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(b\)](#)
- F56** 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\(11\)](#)

*Status: Point in time view as at 15/03/2018.*

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

- (1) Section 152 shall not apply where—
- the new assets are, or the interest in them is, acquired by the trustees of a settlement,
  - at the time of the acquisition the trustees are resident <sup>F57</sup>... 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,
  - the assets are of a description specified in the arrangements, and
  - 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.

### Textual Amendments

**F57** Words in s. 84(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 89](#)

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

- (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 [<sup>F58</sup>not resident] in the United Kingdom.
- (2) [<sup>F59</sup>Subject to subsections (4), (9) and (10) below,] subsection (3) below applies where—
- section 80 applies as regards the trustees of a settlement,
  - 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
  - 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—
- disposed of it immediately before the relevant time, and
  - 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>F60</sup>Subject to subsection (10) below,] Subsection (7) below applies where—
- section 80 applies as regards the trustees of a settlement,
  - 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,

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- (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>F61</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>F62</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

- F58** Words in s. 85(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 90](#)
- F59** 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\(2\)](#)
- F60** 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\(3\)](#)
- F61** 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\(4\)](#)
- F62** 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>F63</sup>85A Transfers of value: attribution of gains to beneficiaries and treatment of losses U.K.]**

- (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>F64</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>F65</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**

- F63** S. 85A substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 163\(1\)](#) (with [s. 163\(4\)-\(6\)](#))
- F64** 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](#))
- F65** 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. U.K.]**

- (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 [<sup>F66</sup>resident in the United Kingdom for 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>F67</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.

[<sup>F68</sup>(2) The condition as to residence is that—

- (a) there is no time in the year when the trustees are resident in the United Kingdom, or
- (b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any

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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>F69</sup>resident <sup>F70</sup>... 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.
- [<sup>F71</sup>(3A) Section 835BA of ITA 2007 (deemed domicile) applies for the purposes of subsection (1)(c).]
- (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 [<sup>F72</sup>or if, as respects the settlor, the year is a split year, in the UK part of that 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>F73</sup>(4ZA) Where a disposal of any settled property (which would apart from this subsection meet the condition in subsection (1)(e) with respect to the tax year) is a non-resident CGT disposal—
- (a) any chargeable gain or allowable loss accruing on the disposal, other than an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D, is to be treated as if it were a chargeable gain or (as the case requires) allowable loss falling to be taken into account in calculating the amount mentioned in subsection (1)(e) for the tax year, and
  - (b) the disposal is otherwise to be disregarded for the purposes of subsection (1)(e).]

[<sup>F74</sup>(4ZB) Where (apart from this subsection) the amount mentioned in subsection (1)(e) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of subsection (1)(e).]

<sup>F75</sup>(4A) .....

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

#### Textual Amendments

- F66** Words in s. 86(1)(c) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(2\)](#)
- F67** 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](#)
- F68** S. 86(2) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(3\)](#)
- F69** 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\(1\)\(2\)\(c\)](#)
- F70** Words in s. 86(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(4\)](#)
- F71** S. 86(3A) inserted (with effect in accordance with Sch. 8 para. 7(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 7\(1\)](#)



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- F72** Words in s. 86(4)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 100](#)
- F73** S. 86(4ZA) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 19](#)
- F74** S. 86(4ZB) inserted (with effect in accordance with s. 32(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(3\)](#)
- F75** 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>F76</sup>86A Attribution of gains to settlor in section 10A cases U.K.**

- (1) Subsection (3) applies if—
- (a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year (“year A”) are treated under section 10A as accruing to a settlor under section 86 in the period of return,
  - (b) there are amounts on which<sup>F77</sup>, in the case of the settlement, individuals] are charged to tax under section 87<sup>F78</sup>, 87K, 87L] or 89(2) for one or more tax years, each of which is earlier than the year of return, and
  - (c) those amounts are in respect of matched capital payments received<sup>F79</sup> ... .
- (2) A “matched” capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.
- (3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.
- (4) The appropriate amount is—
- (a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or
  - (b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.
- (5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until—
- (a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and
  - (b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.
- (6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.

*Status: Point in time view as at 15/03/2018.*

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- (7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).
- (8) In this section—
- (a) “the settlement” means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,
  - (b) a reference to “the settlors” or “each settlor” is to the settlors or each settlor in relation to the settlement,
  - (c) “period of return” and “year of return” have the same meanings as in section 10A, and
  - (d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor.]

#### Textual Amendments

- F76** S. 86A substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 120](#)
- F77** Words in s. 86A(1)(b) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(3\)\(a\)\(i\)](#)
- F78** Words in s. 86A(1)(b) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(3\)\(a\)\(ii\)](#)
- F79** Words in s. 86A(1)(c) omitted (15.3.2018) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(3\)\(b\)](#)

#### <sup>F80</sup>87 **Non-UK resident settlements: attribution of gains to beneficiaries** **U.K.**

- (1) This section applies to a settlement for a tax year (“the relevant tax year”) if [<sup>F81</sup>there is no time in that year when the trustees are resident in the United Kingdom].
- (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.
- [<sup>F82</sup>(2A) If the relevant tax year is a split year as respects the beneficiary, the gains are treated as accruing in the UK part of that 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 <sup>F83</sup>... 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.

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- [<sup>F84</sup>(5A) For the purpose of determining the section 2(2) amount for a settlement for a tax year—
- (a) any chargeable gain or allowable loss accruing in that tax year on a non-resident CGT disposal made (or treated as made) by the trustees, other than an NRCGT gain chargeable to, or an NRCGT loss allowable for the purposes of, capital gains tax by virtue of section 14D, is to be treated as if it were a chargeable gain or (as the case requires) allowable loss falling to be taken into account in calculating the amount mentioned in subsection (4)(a), and
  - (b) such a disposal is otherwise to be disregarded.]
- [<sup>F85</sup>(5B) Where (apart from this subsection) the amount mentioned in subsection (4)(a) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of determining the section 2(2) amount.]
- (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.

<sup>F86</sup>(7) . . . . . ]

**Textual Amendments**

- F80** 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](#))
- F81** Words in s. 87(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(2\)](#)
- F82** S. 87(2A) inserted (with effect in accordance with Sch. 10 para. 1(13) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(4\)\(a\)](#)
- F83** Words in s. 87(4)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(3\)](#)
- F84** S. 87(5A) inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 20](#)
- F85** S. 87(5B) inserted (with effect in accordance with s. 32(5) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [s. 32\(4\)](#)
- F86** S. 87(7) omitted (with effect in accordance with Sch. 10 para. 1(13) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(4\)\(b\)](#)

**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\(2\)](#)
- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 20\(3\)\(4\)](#)

[<sup>F80</sup>**87A Section 87: matching** **U.K.**

- (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*

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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—

- (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.]

*Status: Point in time view as at 15/03/2018.*

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### Textual Amendments

**F80** 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\(2\)](#)

**C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 20\(3\)\(4\)](#)

## [<sup>F80</sup> **87B** Section 87: remittance basis **U.K.**

- (1) This section applies if—
  - (a) chargeable gains are treated under section 87[<sup>F87</sup>, 87K or 87L] as accruing to an individual in a tax year, [<sup>F88</sup>and]
  - (b) section 809B, 809D or 809E [<sup>F89</sup>of ITA 2007] (remittance basis) applies to the individual for that year, <sup>F90</sup>...
  - <sup>F91</sup>(c) .....
- (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[<sup>F92</sup>, or onward payment (see section 87I(1)(c)),] 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.]

### Textual Amendments

**F80** 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](#))

**F87** Words in s. 87B(1)(a) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(5\)\(a\)](#)

**F88** Word in s. 87B(1)(a) inserted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(a\)](#) (with [Sch. 46 para. 26](#))

**F89** Words in s. 87B(1)(b) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(5\)\(b\)](#)

**F90** Word in s. 87B(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(b\)](#) (with [Sch. 46 para. 26](#))

**F91** S. 87B(1)(c) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(c\)](#) (with [Sch. 46 para. 26](#))

**F92** Words in s. 87B(4) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(5\)\(c\)](#)

### Modifications etc. (not altering text)

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

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**C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)(4)**

**[<sup>F80</sup>87C Sections 87 and 87A: disregard of certain capital payments U.K.]**

- (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**

**F80** 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)**
- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)(4)**

**[<sup>F93</sup>87D Sections 87 and 87A: disregard of capital payments to non-residents U.K.]**

- (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), but this—
  - (a) is subject to subsection (3) and section 87E, and
  - (b) does not affect the operation of sections 87I to 87L (see, in particular, sections 87K(2) and 87L(2) which apply sections 87 and 87A by reference to the payment mentioned in section 87I(1)(a)).
- (2) A capital payment is within this subsection if (and to the extent that) it is in a tax year received from the trustees of the settlement by a beneficiary who at all times in that year is not resident in the United Kingdom, but this is subject to section 87F.
- (3) Subsection (1) does not apply in relation to a capital payment (or a part of a capital payment) if—
  - (a) the recipient beneficiary is a close member of the settlor's family (see section 87H) when the beneficiary receives (or is treated as receiving) the payment (or part),
  - (b) the payment (or part) is received on or after 6 April 2018, and

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- (c) the settlor is resident in the United Kingdom in the tax year in which the payment (or part) is received.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### 87E Sections 87 and 87A: disregarded payments to temporary non-resident **U.K.**

(1) If—

- (a) as a result of section 87D, no account is taken of a capital payment (or a part of a capital payment) for the purposes of sections 87 and 87A,  
(b) the recipient beneficiary is an individual who is temporarily non-resident, and  
(c) the payment (or part) is received in the beneficiary's temporary period of non-residence,

the payment (or part) is treated for the purposes of sections 87 and 87A as received (by the beneficiary) in the beneficiary's period of return, and account is to be taken of it accordingly for those purposes.

(2) Part 4 of Schedule 45 to FA 2013 explains—

- (a) when an individual is to be regarded as “temporarily non-resident”, and  
(b) what “the temporary period of residence” and “the period of return” mean.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### 87F Sections 87 and 87A: disregarded payments in year settlement ends **U.K.**

(1) This section applies in relation to a settlement if—

- (a) in a particular tax year, the settlement ceases to exist,  
(b) two or more beneficiaries (“the recipients”) in the year receive capital payments from the trustees, and  
(c) at least one of the recipients is, and at least one is not, a non-resident beneficiary.

(2) Those capital payments, so far as received by such of the recipients as are non-resident beneficiaries, are not within section 87D(2).

(3) In this section “non-resident beneficiary” means a beneficiary who at all times in the year is not resident in the United Kingdom.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

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## 87G Settlor liable if capital payment received by close family member **U.K.**

- (1) Subsection (2) applies if in the case of a settlement—
  - (a) a beneficiary of the settlement receives a capital payment from the trustees in a tax year,
  - (b) the settlor is resident in the United Kingdom at any time in that year, and
  - (c) the beneficiary (“the original recipient”) is a close member of the settlor’s family (see section 87H) at the time of receipt.
- (2) Sections 87 and 87A have effect as if the capital payment—
  - (a) was received from the trustees by the settlor—
    - (i) as a beneficiary of the settlement (whether or not the settlor is otherwise a beneficiary of the settlement), and
    - (ii) at the time it was received by the original recipient, and
  - (b) was not received by the original recipient.
- (3) Where any tax is chargeable on the settlor as a result of subsection (2) and is paid, the settlor is entitled to recover the full amount of the tax from the original recipient.
- (4) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
  - (a) the amount of tax paid, and
  - (b) the amount of the gains on which the tax is paid,
 and any such certificate is conclusive evidence of the facts stated in it.

### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(1\)](#)

## 87H Meaning of “close member of the settlor’s family” **U.K.**

- (1) For the purposes of sections 87D, 87G and 87L as they apply in relation to a settlement, a person is a close member of the settlor’s family at any time if the settlor is living at that time and—
  - (a) the person is the settlor’s spouse or civil partner at that time, or
  - (b) the person—
    - (i) is a child of the settlor, or of a person who at that time is the settlor’s spouse or civil partner, and
    - (ii) at that time has not reached the age of 18.
- (2) For the purposes of subsection (1)—
  - (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.



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### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

## 87I Non-UK resident settlements: recipients of onward gifts **U.K.**

- (1) Sections 87J and 87K apply if in the case of a settlement—
- (a) a capital payment (“the original payment”) is received in a tax year (“the payment year”) by a person (“the original beneficiary”) from the trustees of the settlement,
  - (b) at the time of receipt—
    - (i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole or part of the original payment, and
    - (ii) it is reasonable to expect that, in the event of the whole or part of the original payment being passed on to another person as envisaged by the arrangements or intention, that other person will be resident in the United Kingdom when they receive at least part of what is passed on to them,
  - (c) the original beneficiary makes, directly or indirectly, a gift (“the onward payment”) to a person (“the subsequent recipient”)—
    - (i) at the time the original payment is received, or at any later time in the 3 years beginning with the day containing the start time, or
    - (ii) at any time before the original payment is received and, it is reasonable to assume, in anticipation of receipt of the original payment,
  - (d) the gift is of or includes—
    - (i) the whole or part of the original payment,
    - (ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of the original payment, or
    - (iii) any other property, but only if the original payment is made with a view to enabling or facilitating, or otherwise in connection with, the making of the gift of the property to the subsequent recipient,
  - (e) the subsequent recipient is resident in the United Kingdom in the tax year in which the onward payment is received by the subsequent recipient (“the gift year”, but see subsection (4)), and
  - (f) in the period beginning with the start of the payment year and ending with the end of the gift year, there is at least one tax year—
    - (i) for which the otherwise-liable person is not resident in the United Kingdom, or
    - (ii) for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the otherwise-liable person.
- (2) Where—
- (a) there is a series of two or more gifts,
  - (b) the first gift in the series is made, directly or indirectly, by the original beneficiary—

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- (i) at the time the original payment is received, or at any later time in the 3 years beginning with the day containing the start time, or
    - (ii) at any time before the original payment is received and, it is reasonable to assume, in anticipation of receipt of the original payment,
  - (c) the recipient of a gift in the series is the person who makes, directly or indirectly, the next gift in the series,
  - (d) the recipient of the last gift in the series is resident in the United Kingdom in the tax year in which that gift is received,
  - (e) as regards each earlier gift in the series, its recipient is not resident in the United Kingdom at any time in the tax year in which it is received, and
  - (f) the condition in subsection (1)(d) is met in relation to each gift in the series, the last gift in the series is treated for the purposes of subsection (1)(c) as if its maker were the original beneficiary (and not its actual maker).
- (3) For the purposes of subsections (1)(c)(i) and (2)(b)(i)—
- (a) if the original payment is a capital payment other than one that is treated as received by section 87M, “the start time” is the time the original payment is received, and
  - (b) if the original payment is a capital payment that is treated as received by section 87M in connection with the operation of this section, and sections 87J and 87K, on a previous occasion, “the start time” is the time given by this subsection as the start time on that occasion
- (4) Where the onward payment is made as mentioned in subsection (1)(c)(ii), the onward payment is to be treated—
- (a) for the purposes of the provisions of this section following subsection (1)(c), and
  - (b) for the purposes of sections 87K to 87M,
- as made and received immediately after the original payment is received (and in the payment year).
- (5) Where this section provides for section 87K to apply in relation to two or more gifts received from the original beneficiary in the gift year by reference to the original payment—
- (a) treat that section as applying in relation to a single gift equal in amount to the total of the amount or value of each of the gifts (and as not applying in relation to each gift separately), and
  - (b) apportion between the gifts (in proportion to their amounts or values)—
    - (i) any capital payments given by section 87K(2), and
    - (ii) any gains given by section 87K(3),
 as a result of applying section 87K in accordance with paragraph (a).
- (6) Where this section provides for sections 87J and 87K to apply in relation to a gift received in a tax year—
- (a) take the steps required by section 87J before applying section 87K in relation to the gift, but
  - (b) in taking the steps required by section 87J, have regard to the application of section 87K in relation to gifts made in earlier tax years.
- (7) In this section—

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“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

“gift” includes any benefit,

“make”, in relation to a gift that is a benefit, means confer, and

“the otherwise-liable person” means the original beneficiary unless section 87G(2) applies in relation to the original payment in which event the settlor is “the otherwise-liable person”.

- (8) Where subsection (1)(c) and (d) are met in any case, it is to be presumed (unless the contrary is shown) that subsection (1)(b) is also met in that case.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### 87J Relevant parts of payment from which onward gift derived **U.K.**

- (1) Where this section applies (see section 87I), for the purposes of section 87K treat the original payment as divided into slices as follows—
- (a) a slice consisting of the taxed part (if any) of each matched amount (if any),
  - (b) a slice (“U”) consisting of the untaxed part (if any) of each matched amount (if any), and
  - (c) a slice (“R”) consisting of the rest (if any) of the original payment.
- (2) For the purposes of this section, if all or part of the original payment is, in a tax year (“the matching year”) not later than the gift year, matched under section 87A with the section 2(2) amount for the matching year or any earlier tax year, so much of the original payment as is so matched is a “matched amount”.
- (3) For the purposes of subsection (1), if—
- (a) as a result of there being a matched amount, gains are treated by section 87 as accruing to the otherwise-liable person,
  - (b) the otherwise-liable person is resident in the United Kingdom for the matching year, and
  - (c) none of sections 809B, 809D and 809E of ITA 2007 applies to the otherwise-liable person for the matching year,
- the whole of the matched amount is its “taxed part” (and it has no “untaxed part”).
- (4) For the purposes of subsection (1), if—
- (a) as a result of there being a matched amount, gains are treated by section 87 as accruing to the otherwise-liable person,
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the otherwise-liable person for the matching year, and
  - (c) the whole or part of those gains is remitted to the United Kingdom in a tax year—
    - (i) that is not later than the gift year, and
    - (ii) in which the otherwise-liable person is resident in the United Kingdom,

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so much of the matched amount as is equal to so much of the gains as is remitted as mentioned in paragraph (c) is the matched amount's "taxed part", and the rest of the matched amount is its "untaxed part".

- (5) For the purposes of subsection (1), if all or part of the original payment is in a tax year ("the pool-matching year") not later than the gift year matched, under section 87A as applied by paragraph 8 of Schedule 4C, with the section 2(2) amount in the Schedule 4C pool for the pool-matching year or any earlier tax year—
- (a) so much of the original payment as is so matched is a "matched amount", and
  - (b) the whole of the matched amount is its "taxed part" (and it has no "untaxed part").

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(1\)](#)

### **87K Attribution of gains or payments to recipient of onward gift** U.K.

- (1) Where this section applies (see section 87I), G is—
- (a) the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 87I(1)(d), or
  - (b) if lower, the amount of the original payment.
- (For the meaning of R and U, see section 87J.)
- (2) If R is greater than nil, sections 87 and 87A have effect for the gift year and later tax years—
- (a) as if a capital payment was received from the trustees by the subsequent recipient—
    - (i) as a beneficiary of the settlement (whether or not the subsequent recipient is otherwise a beneficiary of the settlement), and
    - (ii) at the time the subsequent recipient received the onward payment,
  - (b) as if that capital payment consisted of—
    - (i) R, if G is greater than R, or
    - (ii) so much of R as is equal to G, if G is not greater than R, and
  - (c) as if so much of the original payment as is equal to that capital payment was not received by the otherwise-liable person.
- (3) If G is greater than R, and if U is greater than nil—
- (a) chargeable gains are treated as accruing to the subsequent recipient in the gift year (but see section 87L(3) and (4)),
  - (b) the amount of those gains is—
    - (i) U, if  $(G - R)$  is greater than U, or
    - (ii) so much of U as is equal to  $(G - R)$ , if  $(G - R)$  is not greater than U, and
  - (c) the chargeable gains treated by section 87 as accruing to the otherwise-liable person by reason of the original payment are treated as from the end of the gift year as reduced by that amount, with that reduction being made from so much

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of those gains as has not by then been remitted to the United Kingdom in a tax year in which the otherwise-liable person is resident in the United Kingdom.

- (4) If this section applies by reference to the original payment also in relation to a gift received from the original beneficiary in a tax year earlier than the gift year, this section applies in relation to the onward payment as if—
- (a) the amount given by section 87J for R were reduced by the amount of any capital payment given by subsection (2) in relation to that earlier year, and
  - (b) the amount given by section 87J for U were reduced by the amount of any gains given by subsection (3) in relation to that earlier year.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### 87L Cases where settlor liable following onward gift **U.K.**

- (1) Subsection (2) applies where—
- (a) ignoring this section and section 87M, a person is treated by section 87K(2) as receiving a capital payment from the trustees of a settlement at a time (“the time of receipt”) in a tax year,
  - (b) the settlor is resident in the United Kingdom at any time in that year, and
  - (c) the person mentioned in paragraph (a) is a close member of the settlor's family (see section 87H) at the time of receipt.
- (2) Sections 87 and 87A have effect for that year, and later tax years, as if the capital payment—
- (a) was received from the trustees by the settlor—
    - (i) as a beneficiary of the settlement (whether or not the settlor is otherwise a beneficiary of the settlement), and
    - (ii) at the time of receipt, and
  - (b) was not received by the person mentioned in subsection (1)(a).
- (3) Subsection (4) applies where—
- (a) in the case of a settlement, chargeable gains are (ignoring this section and section 87M) treated by section 87K(3) as accruing to a person in a tax year (“the subsequent recipient”),
  - (b) the settlor is resident in the United Kingdom at any time in that year, and
  - (c) the subsequent recipient is a close member of the settlor's family when the subsequent recipient receives the onward payment (see section 87I(1)(c)) by reference to which the chargeable gains are treated as accruing.
- (4) Section 87K(3)(a) has effect as if its reference to the subsequent recipient were a reference to the settlor, and references (however expressed) to chargeable gains treated as accruing by this section are to chargeable gains treated by section 87K(3)(a) as accruing to the settlor as a result of the operation of this subsection.
- (5) Where, in the case of a settlement, any tax is chargeable on the settlor as a result of this section and is paid, the settlor is entitled to recover the full amount of the tax from the person mentioned in subsection (1)(a) or (3)(a), as the case may be.

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- (6) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
- (a) the amount of tax paid, and
  - (b) the amount of the gains on which the tax is paid,
- and any such certificate is conclusive evidence of the facts stated in it.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### 87M Cases where recipient of onward gift is user of remittance basis **U.K.**

- (1) Subsection (2) applies where—
- (a) ignoring this section, a person is treated by section 87K(2) as receiving a capital payment from the trustees of a settlement at a time (“the time of receipt”) in a tax year,
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for that tax year, and
  - (c) the payment is not treated by section 87L(2) as received by the settlor.
- (2) Section 87I(1)(a) has effect as if the capital payment were received from the trustees by the person at the time of receipt, and section 87K(2)(a) and (b) do not have effect for the purposes of sections 87 and 87A in the case of the payment.
- (3) The rules in subsection (4) apply where—
- (a) in the case of a settlement, chargeable gains are (ignoring this section) treated by section 87K(3), but not as a result of the operation of section 87L(4), as accruing to a person in a tax year by reference to a gift within section 87I(1)(d) made to the person,
  - (b) section 809B, 809D or 809E of ITA 2007 applies to the person for that tax year, and
  - (c) none, or part only, of the gains is remitted to the United Kingdom in that tax year.
- (4) The rules are—
- (a) section 87I(1)(a) has effect—
    - (i) as if a capital payment were received from the trustees by the person at the time the gift is made, and
    - (ii) as if the capital payment were equal in amount to so much of the gains as is not remitted in the tax year mentioned in subsection (3)(a) of this section,
  - (b) for the purposes of section 87J—
    - (i) the whole of the capital payment is a “matched amount”, and
    - (ii) the whole of the matched amount is its “untaxed part” (and the matched amount has no “taxed part”), and
  - (c) the amount of the gains treated by section 87K(3)(a) and (b) as accruing to the person by reference to the gift is reduced by the amount of the capital payment.

*Status: Point in time view as at 15/03/2018.*

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- (5) Where the capital payment mentioned in section 87I(1)(a) is one treated as received by subsection (2) or (4) of this section in connection with the operation of sections 87I to 87K on a previous occasion, section 87I(1) has effect—
- (a) with the omission of its paragraph (b),
  - (b) as if the reference in its paragraph (c) to the original payment were, instead, to what was the onward payment on that previous occasion, and
  - (c) as if the references in its paragraph (d) to the original payment were, instead, to so much of that onward payment as was on that previous occasion within any of sub-paragraphs (i) to (iii) of that paragraph.
- (6) Section 87I(4) and (7) (interpretation of references to gifts and their making) apply also for the purposes of subsections (3) and (4) of this section.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### **87N Sections 87 and 87A: disregard of payments to migrating beneficiary** **U.K.**

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement for a particular tax year, no account is to be taken of a capital payment (or part of a capital payment) within subsection (2), but this is subject to section 87P.
- (2) A capital payment is within this subsection—
- (a) if it is received by a beneficiary of the settlement before the particular tax year,
  - (b) if the relevant person is resident in the United Kingdom in the tax year in which it is received,
  - (c) if the relevant person is not resident in the United Kingdom in the particular tax year, and
  - (d) so far as it has not been matched (under section 87A as it applies for tax years before the particular tax year) with—
    - (i) the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2018-19, in which the relevant person is resident in the United Kingdom, or
    - (ii) the section 2(2) amount for any tax year earlier than the tax year 2018-19.
- (3) For the purposes of subsection (2), the beneficiary is “the relevant person” unless section 87G(2) applies in relation to the capital payment in which event the settlor is “the relevant person”.

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 10 para. 1(1)**

### **87P Sections 87 and 87A: temporary migration after payment disregarded** **U.K.**

- (1) If—

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- (a) as a result of section 87N, no account is taken of a capital payment (or a part of a capital payment) for the purposes of sections 87 and 87A as they apply in relation to a settlement for a particular tax year,
- (b) the recipient beneficiary (where section 87G(2) does not apply in relation to the capital payment), or the settlor (where section 87G(2) does apply in relation to the capital payment), is an individual who is temporarily non-resident,
- (c) the whole or part of the particular tax year constitutes, or forms part of, that individual's temporary period of non-residence,
- (d) either—
  - (i) that individual's temporary period of non-residence begins with the start of a tax year and the payment (or part) is received before that tax year, or
  - (ii) that individual's temporary period of non-residence begins otherwise than at the start of a tax year and the payment (or part) is received before, or at any time in, the tax year in which that individual's temporary period of non-residence begins, and
- (e) the payment (or part) has not been matched (under section 87A as it applies for tax years before the particular tax year) with—
  - (i) the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2018-19, in which that individual is resident in the United Kingdom, or
  - (ii) the section 2(2) amount for any tax year earlier than the tax year 2018-19,

the payment (or part) is treated for the purposes of sections 87 and 87A as received (by that individual) in that individual's period of return, and account is to be taken of it accordingly for those purposes.

(2) Part 4 of Schedule 45 to FA 2013 explains—

- (a) when an individual is to be regarded as “temporarily non-resident”, and
- (b) what “the temporary period of residence” and “the period of return” mean.]

#### Textual Amendments

**F93** Ss. 87D-87P inserted (with effect in accordance with Sch. 10 para. 1(12)-(15) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 10 para. 1\(1\)](#)

## 88 Gains of dual resident settlements. **U.K.**

(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>F94</sup>resident <sup>F95</sup>... in the United Kingdom during any part of the year], [<sup>F96</sup>and]
- (b) at any time of [<sup>F97</sup>such residence <sup>F98</sup>...] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, <sup>F99</sup>...

<sup>F99</sup>(c) .....



*Status: Point in time view as at 15/03/2018.*

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- [<sup>F100</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—
- (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.

<sup>F101</sup>(6) .....

<sup>F102</sup>(7) .....

#### Textual Amendments

- F94** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(a\)\(2\)\(b\)](#), 41
- F95** Words in s. 88(1)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 93\(a\)](#)
- F96** 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\(2\)\(a\)](#)
- F97** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(b\)\(2\)\(b\)](#), 41
- F98** Words in s. 88(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 93\(b\)](#)
- F99** 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\(30\)](#)
- F100** 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\(2\)](#)
- F101** 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](#)
- F102** 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\(3\)](#)

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#### 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\(2\)](#)
- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)\(4\)](#)

## 89 Migrant settlements etc. U.K.

- (1) Where a period of one or more years of assessment for which section 87 applies to a settlement (“a non-resident period”) succeeds a period of one or more years of assessment for each of which section 87 does not apply to the settlement (“a resident period”), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of <sup>[F103]</sup>sections 87 and 87A if] it was not made in anticipation of a disposal made by the trustees in the non-resident period.

<sup>[F104]</sup>(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 <sup>[F105]</sup>87P] 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

- F103** 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\(2\)](#)
- F104** 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](#))
- F105** Word in s. 89(3) substituted (with effect in accordance with Sch. 10 para. 1(16) of the amending Act) by [Finance Act 2018 \(c. 3\), Sch. 10 para. 1\(6\)](#)

#### 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\(2\)](#)
- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)\(4\)](#)

*Status: Point in time view as at 15/03/2018.*

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**[<sup>F106</sup>90 Sections 87 and 89(2): transfers between settlements U.K.]**

- (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).
- (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**

**F106** 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](#)

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**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\(3\)](#))
- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

**[<sup>F106</sup>90A Section 90: transfers made for consideration in money or money's worth U.K.]**

- (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.
- (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**

- F106** 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)**

- C10** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

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

- [<sup>F107</sup>(1) This section applies if—
- (a) chargeable gains are treated under section 87[<sup>F108</sup>, 87K, 87L] or 89(2) as accruing to [<sup>F109</sup>an individual directly, or indirectly,] 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 [<sup>F110</sup>individual] 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 [<sup>F111</sup>individual] 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.

*Status: Point in time view as at 15/03/2018.*

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- (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 <sup>F112</sup>[individual] 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>F113</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).

<sup>F114</sup>(8) .....

#### Textual Amendments

**F107** 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)**

**F108** Words in s. 91(1)(a) inserted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 1(7)(a)(i)**

**F109** Words in s. 91(1)(a) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 1(7)(a)(ii)**

**F110** Word in s. 91(1)(b) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 1(7)(b)**

**F111** Word in s. 91(2) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 1(7)(b)**

**F112** Word in s. 91(3) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\)](#), **Sch. 10 para. 1(7)(b)**

**F113** 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)**

**F114** 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)**

#### <sup>F115</sup>92 Qualifying amounts and matching. **U.K.**

.....

#### Textual Amendments

**F115** 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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**F11593 Matching: special cases. U.K.**

.....

**Textual Amendments**

**F115** 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](#)

**F11594 Transfers of settled property where qualifying amounts not wholly matched. U.K.**

.....

**Textual Amendments**

**F115** 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](#)

**F11595 Matching after transfer. U.K.**

.....

**Textual Amendments**

**F115** 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](#)

**96 Payments by and to companies. U.K.**

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 [<sup>F116</sup>and Schedule 4C] it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90 [<sup>F116</sup>and Schedule 4C].
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident <sup>F117</sup>... 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 <sup>F118</sup>... 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 <sup>F118</sup>... in the United Kingdom (“the residents”) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.

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- (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received <sup>F119</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 <sup>F120</sup>... ) 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>F121</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 [<sup>F122</sup>for which he or she was not so resident if—
- (a) section 10A applies to him or her, and
  - (b) the year falls within the temporary period of non-residence.]
- (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 [<sup>F123</sup>sections 450 and 451 of CTA 2010], 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 [<sup>F124</sup>section 451(4) to (6) of CTA 2010] if he is not a participator in the company;
  - [<sup>F125</sup>(aa) a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital

*Status: Point in time view as at 15/03/2018.*

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or income of the company solely by virtue of an interest which the person has under the settlement;]

(b) “participator” has the meaning given by [F126section 454 of CTA 2010].

(11) This section shall apply to payments received on or after 19th March 1991.

#### Textual Amendments

- F116** Words in s. 96(1)(2) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 92(4), [Sch. 26 para. 3](#)
- F117** Words in s. 96(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 94\(2\)](#)
- F118** Words in s. 96(4)(a)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 94\(3\)](#)
- F119** 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\(1\)](#)
- F120** Words in s. 96(5)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 94\(4\)](#)
- F121** 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\(3\)](#)
- F122** Words in s. 96(9A) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 121](#)
- F123** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 230\(a\)\(i\)](#) (with [Sch. 2](#))
- F124** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 230\(a\)\(ii\)](#) (with [Sch. 2](#))
- F125** S. 96(10)(aa) inserted (with effect in accordance with art. 6 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2017 \(S.I. 2017/495\)](#), arts. 1, 4
- F126** Words in s. 96(10)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 230\(b\)](#) (with [Sch. 2](#))

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

- C11** 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))
- C12** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)](#)

## 97 Supplementary provisions. **U.K.**

(1) In [F127sections 86A] to 96 [F128and Schedule 4C] and this section “capital payment”—

- (a) means any payment which is [F129neither—
- (i) chargeable to income tax on the recipient, nor
  - (ii) chargeable to income tax on another person under any of sections 643A, 643J and 643L of ITTOIA 2005 and sections 733A, 733C and 733E of ITA 2007,
- or,] in the case of a recipient who is [F130not 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.



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- (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>F131</sup>section 643A or 643J or 643L of ITTOIA 2005, or sections 731 to 733E of ITA 2007, treated as an individual's] income for a year of assessment after that in which it is received—
  - (a) shall not prevent the benefit or that part of it being treated for the purposes of <sup>F127</sup>sections 86A] to 96 <sup>F132</sup>and Schedule 4C] as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but
  - (b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.
- (4) For the purposes of <sup>F127</sup>sections 86A] to 96 <sup>F133</sup>and Schedule 4C] the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it <sup>F134</sup>(see sections 97A to 97C for the value of benefits conferred by a capital payment made by way of loan or by way of making movable property or land available)].
- (5) For the purposes of <sup>F127</sup>sections 86A] to 90 <sup>F135</sup>and Schedule 4C] a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—
  - (a) he receives it from them directly or indirectly, or
  - (b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or
  - (c) it is received by a third person at the beneficiary's direction.
- (6) Section 16(3) shall not prevent losses accruing to trustees in a year of assessment for which section 87 of this Act or section 17 of the 1979 Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).
- (7) In <sup>F136</sup>sections 86A] to 96 <sup>F137</sup>and Schedule 4C] and in <sup>F138</sup>... this section—
  - <sup>F139</sup>“settlement” has the meaning given by section 620 of ITTOIA 2005, and
  - “settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly].
- <sup>F140</sup>(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).]
- (8) In a case where—
  - (a) at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 96(1),
  - (b) it is received by a person, or treated as received by a person by virtue of section 96(2) to (5),
  - (c) at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and

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- (d) subsection (9) or (10) below does not prevent this subsection applying, for the purposes of <sup>F136</sup>sections 86A] to 90 <sup>F141</sup>and Schedule 4C] the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.
- (9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.
- (10) Subsection (8) above shall not apply so as to treat—
- (a) the trustees of the settlement referred to in that subsection, or
  - (b) the trustees of any other settlement,
- as beneficiaries of the settlement referred to in that subsection.

#### Textual Amendments

- F127** 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\(2\)](#)
- F128** 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\(a\)](#)
- F129** Words in s. 97(1)(a) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\), Sch. 10 para. 20\(2\)](#) (with [Sch. 10 para. 20\(5\)](#))
- F130** Words in s. 97(1)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 95](#)
- F131** Words in s. 97(3) substituted (15.3.2018) by [Finance Act 2018 \(c. 3\), Sch. 10 para. 20\(3\)](#) (with [Sch. 10 para. 20\(5\)](#))
- F132** 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\(a\)](#)
- F133** 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\(a\)](#)
- F134** Words in s. 97(4) inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 9 para. 1\(1\)](#)
- F135** 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\(b\)](#)
- F136** 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\(2\)](#)
- F137** 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\(a\)](#)
- F138** 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\(15\)](#)
- F139** Words in s. 97(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(b\)\(3\)](#)
- F140** S. 97(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(2\)\(3\)](#)
- F141** 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)

- C11** 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\(3\)](#))
- C12** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)](#)

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**[<sup>F142</sup>97A Value of benefit conferred by capital payment made by way of loan U.K.]**

- (1) For the purposes of section 97(4), the value of the benefit conferred on a person (P) by a capital payment made by way of loan to P is, for each tax year in which the loan is outstanding, the amount (if any) by which—
- (a) the amount of interest that would have been payable in that year on the loan if interest had been payable on the loan at the official rate, exceeds
  - (b) the amount of interest (if any) actually paid by P in that year on the loan.
- (2) In this section and section 97B the “official rate”, in relation to interest, means the rate applicable from time to time under section 178 of the Finance Act 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003.

**Textual Amendments**

**F142** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

**97B Value of benefit conferred by capital payment made by way of making movable property available U.K.**

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making movable property available, without any transfer of the property in it, to a person (P) is, for each tax year in which the benefit is conferred on P—

$$(CC \times R \times D Y) - T$$

where—

CC is the capital cost of the movable property on the date when the property is first made available to P in the tax year,

D is the number of days in the tax year on which the property is made available to P (the relevant period),

R is the official rate of interest for the relevant period (but see subsection (3)),

T is the total of the amounts (if any) paid in the tax year by P—

- (a) to the person conferring the benefit, in respect of the availability of the movable property, or
- (b) so far as not within paragraph (a), in respect of the repair, insurance, maintenance or storage of the movable property, and

Y is the number of days in the tax year.

- (2) In subsection (1), in the meaning of CC, the “capital cost” of movable property means an amount equal to the total of—
- (a) the amount which is the greater of—
    - (i) the amount or value of the consideration given for the acquisition of the movable property by, or on behalf of, the person (A) conferring the benefit, and
    - (ii) its market value at the time of that acquisition, and

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- (b) the amount of any expenditure wholly and exclusively incurred by, or on behalf of, A for the purpose of enhancing the value of the movable property.
- (3) If the official rate of interest changes during the relevant period, then in subsection (1) R is the average official rate of interest for the period calculated as follows.
  - Step 1* Multiply each official rate of interest in force during the relevant period by the number of days when it is in force.
  - Step 2* Add together the products found in Step 1.
  - Step 3* Divide the total found in Step 2 by the number of days in the relevant period.
- (4) In subsections (1) and (2), “movable property” means any tangible movable property other than money.

#### **Textual Amendments**

**F142** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

### **97C Value of benefit conferred by capital payment made by way of making land available U.K.**

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making land available for the use of a person (P) is, for each tax year in which the benefit is conferred on P, the amount by which—
  - (a) the rental value of the land for the period of the tax year during which the land is made available to P, exceeds
  - (b) the total of the amounts (if any) paid in the tax year by P—
    - (i) to the person conferring the benefit, in respect of the availability of the land, or
    - (ii) so far as not within sub-paragraph (i), in respect of costs of repair, insurance or maintenance relating to the land.
- (2) Subsection (1) does not apply in the case where the person conferring the benefit transfers the whole of the person's interest in the land to P.
- (3) In subsection (1) “the rental value” of the land for a period means the rent which would have been payable for the period if the land had been let to P at an annual rent equal to the annual value.
- (4) For the purposes of subsection (3) “the annual value” of land is the rent that might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (5) For the purposes of subsection (4) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and

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- (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the costs to the landlord of providing any relevant services.
- (6) In subsection (5) “relevant service” means a service other than the repair, insurance or maintenance of the property.]

#### Textual Amendments

**F142** Ss. 97A-97C inserted (with effect in accordance with Sch. 9 para. 3 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 9 para. 1\(2\)](#)

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

- (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>F143</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>F144</sup>Chapter 2 of Part 13 of that Act] shall be construed as references to sections 87 to 90; <sup>F145</sup>...
- <sup>F146</sup>(b) .....
- [<sup>F147</sup>(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.]

#### Textual Amendments

- F143** 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](#))
- F144** 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](#))
- F145** 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\(15\)](#)
- F146** 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\(15\)](#)
- F147** 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)

- C11** 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))
- C12** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)](#)

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[<sup>F148</sup>**98A Settlements with foreign element: information. U.K.**

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

**Textual Amendments**

**F148** S. 98A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 97\(2\)](#)

**Status:**

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**Changes to legislation:**

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