



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III

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

### CHAPTER II

#### SETTLEMENTS

##### *General provisions*

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

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

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

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

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

- (3) For the purposes of this section, and of sections 71(1) and 72(1), where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the <sup>M1</sup>Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.
- (4) If tax assessed on the trustees, or any one trustee, of a settlement in respect of a chargeable gain accruing to the trustees is not paid within 6 months from the date when it becomes payable by the trustees or trustee, and before or after the expiration of that period of 6 months the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, that person may at any time within 2 years from the time when the tax became payable be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

#### **Marginal Citations**

**M1** 1925 c. 18.

## **70 Transfers into settlement.**

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

## **71 Person becoming absolutely entitled to settled property.**

- (1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.
- (2) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, any allowable loss which has accrued to the trustee in respect of property which is, or is represented by, the property to which that person so becomes entitled (including any allowable loss carried forward to the year of assessment in which that occasion falls), being a loss which cannot be deducted from chargeable gains accruing to the trustee in that year, but before that occasion, shall be treated as if it were an allowable loss accruing at that time to the person becoming so entitled, instead of to the trustee.
- (3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case

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

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

**C1** S. 71 excluded (27.7.1993) by 1993 c. 37, s. 12, Sch. 2 Pt. I para. 21(2)(d)

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

- (1) On the termination, on the death of the person entitled to it, of [<sup>F1</sup>an] interest in possession in all or any part of settled property—
- (a) the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to the whole or a corresponding part of the market value of the asset; but
  - (b) no chargeable gain shall accrue on that disposal.

For the purposes of this subsection [<sup>F1</sup>an] interest which is a right to part of the income of settled property shall be treated as [<sup>F1</sup>an] interest in a corresponding part of the settled property.

- (2) Subsection (1) above shall apply where the person entitled to [<sup>F2</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>F2</sup>an] interest.
- [<sup>F3</sup>(3) This section shall apply on the death of the person entitled to any annuity payable out of, or charged on, settled property or the income of settled property as it applies on the death of a person whose interest in possession in the whole or any part of settled property terminates on his death.
- (4) Where, in the case of any entitlement to an annuity created by a settlement some of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.]
- (5) If there is [<sup>F4</sup>an] interest in a part of the settled property and, where that is [<sup>F4</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>F5</sup>... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.

**Textual Amendments**

- F1** 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)
- F2** 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)
- F3** 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)

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- F4** 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\(2\)](#)
- F5** Word in s. 72(5) repealed (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#), [Sch. 41 Pt. VIII\(4\)](#)

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

- (1) Where, by virtue of section 71(1), the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes (or would but for a disability become) absolutely entitled thereto as against the trustee, then, if that occasion is the [<sup>F6</sup>death of a person entitled to an interest in possession in the settled property] —
- (a) no chargeable gain shall accrue on the disposal, and
  - (b) if on the death the property reverts to the disponer, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than 6th April 1965, be deemed to be at that earlier date.
- (2) Where the <sup>F7</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.
- (3) The last sentence of subsection (1) of section 72 and [<sup>F8</sup>subsections (3) to (5) of that section shall apply for the purposes of this section] as they apply for the purposes of section 72(1).

#### **Textual Amendments**

- F6** 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\(2\)](#)
- F7** 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\(4\)](#)
- F8** Words in s. 73(3) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(4\)](#)

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

- (1) This section applies where—
- (a) a claim for relief was made under section 165 or 260 in respect of the disposal of an asset to a trustee, and
  - (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a).
- (2) Sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

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- (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.

#### **F<sup>9</sup>75 Death of annuitant.**

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##### **Textual Amendments**

- F<sup>9</sup>** S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(4\)](#)

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

- (1) [<sup>F10</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>F11</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 not resident or ordinarily resident in the United Kingdom; or
- (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]

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

[<sup>F12</sup>(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.]

##### **Textual Amendments**

- F10** 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\(1\)\(a\)](#)

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**F11** 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\(1\)\(b\)\(2\)](#)

**F12** 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>F13</sup>77 Charge on settlor with interest in settlement.**

- (1) Where in a year of assessment—
  - (a) chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
  - (b) after making any deduction provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees would, disregarding section 3, be chargeable to tax for the year in respect of those gains, and
  - (c) at any time during the year the settlor has an interest in the settlement,

the trustees shall not be chargeable to tax in respect of those [<sup>F14</sup>gains] but instead chargeable gains of an amount equal to that referred to in paragraph (b) shall be treated as accruing to the settlor in that year.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in a settlement if—
  - (a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever, or
  - (b) the settlor or his spouse enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- (3) The references in subsection (2)(a) and (b) above to the spouse of the settlor do not include—
  - (a) a person to whom the settlor is not for the time being married but may later marry, or
  - (b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or
  - (c) the widow or widower of the settlor.
- (4) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
  - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or
  - (b) an assignment of or charge on the property or any derived property being made or given by some such person, or
  - (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
  - (d) the death of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.

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- (5) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as some person is alive and under the age of 25 during whose life the property or any derived property cannot become payable or applicable as mentioned in that provision except in the event of that person becoming bankrupt or assigning or charging his interest in that property.
- (6) This section does not apply—
- (a) where the settlor dies during the year; or
  - (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—
    - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or
    - (ii) the fact that a benefit is enjoyed by his spouse, where the spouse dies, or the settlor and the spouse cease to be married, during the year.
- [<sup>F15</sup>(6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of any amount that is treated under this section as an amount of chargeable gains accruing to the settlor, chargeable gains that are treated as accruing to the settlor under this section shall not be eligible for taper relief.]
- (7) This section does not apply unless the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year.
- [<sup>F16</sup>(8) In this section “derived property”, in relation to any property, means—
- (a) income from that property,
  - (b) property directly or indirectly representing—
    - (i) proceeds of that property, or
    - (ii) proceeds of income from that property, or
  - (c) income from property which is derived property by virtue of paragraph (b) above.]]

#### Textual Amendments

- F13** S. 77 substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 17 para. 27](#)
- F14** Word in s. 77(1) inserted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(1\)\(3\)](#)
- F15** S. 77(6A) inserted (with effect in accordance with s. 121(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 21 para. 6\(1\)](#)
- F16** S. 77(8) substituted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(2\)\(3\)](#)

## 78 Right of recovery.

- (1) Where any tax becomes chargeable on and is paid by a person in respect of gains treated as accruing to him under [<sup>F17</sup>section 77] he shall be entitled—
- (a) to recover the amount of the tax from any trustee of the settlement, and
  - (b) for that purpose to require an inspector to give him a certificate specifying—

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- (i) the amount of the gains accruing to the trustees in respect of which he has paid tax; and
  - (ii) the amount of tax paid;
- and any such certificate shall be conclusive evidence of the facts stated in it.
- (2) In order to ascertain for the purposes of subsection (1) above the amount of tax chargeable for any year by virtue of [<sup>F17</sup>section 77] in respect of gains treated as accruing to any person, those gains shall be regarded as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.
- (3) In a case where—
- (a) gains are treated as accruing to a person in a year under section 86(4), and
  - (b) gains are treated as accruing to the same person under [<sup>F17</sup>section 77] in the same year,
- subsection (2) above shall have effect subject to section 86(4)(b).

**Textual Amendments**

**F17** Words in s. 78(1)-(3) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 28**

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

- (1) For the purposes of this section and sections 77 and 78 a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.
- (2) In this section and sections 77 and 78—
- (a) references to settled property (and to property comprised in a settlement), in relation to any settlor, are references only to property originating from that settlor, <sup>F18</sup>...
  - <sup>F18</sup>(b) .....
- (3) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement,
  - (b) property representing that property, and
  - (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.
- <sup>F19</sup>(4) .....
- (5) In [<sup>F20</sup>subsection (3)] above—
- (a) references to property <sup>F21</sup>... which a settlor has provided directly or indirectly include references to property <sup>F21</sup>... which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property <sup>F21</sup>... which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person, and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.



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- (6) An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of this section and sections 77 and 78.
- (7) The reference in section 77(1)(a) to gains accruing to trustees from the disposal of settled property includes a reference to gains treated as accruing to them under section 13 and the reference in section 77(1)(b) to deductions in respect of disposals of the settled property includes a reference to deductions on account of losses treated under section 13 as accruing to the trustees.
- (8) Where the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of any settlement or part of a settlement in relation to a year of assessment, sections 77 and 78 and subsections (1) to (7) above shall not apply in relation to the settlement or part for the year.

#### Textual Amendments

- F18** S. 79(2)(b) and preceding word repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(2\)](#), **Sch. 29 Pt. VIII(8)**
- F19** S. 79(4) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(3\)](#), **Sch. 29 Pt. VIII(8)**
- F20** Words in s. 79(5) substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(a\)](#)
- F21** Words in s. 79(5)(a) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(b\)](#), **Sch. 29 Pt. VIII(8)**

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