



# Finance Act 2005

## 2005 CHAPTER 7

### PART 2

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 4

#### TRUSTS WITH VULNERABLE BENEFICIARY

##### *Vulnerable persons*

### 37 Vulnerable person election

- (1) Where [<sup>F1</sup>the trustees of a settlement] hold property on trusts for the benefit of a person, the trustees and that person may jointly make a vulnerable person election in relation to those trusts and that person if—
  - (a) the person in relation to whom the election is made is a vulnerable person, and
  - (b) the trusts in relation to which the election is made are qualifying trusts.
- (2) A vulnerable person election is an election in such form as the Board of Inland Revenue may require—
  - (a) specifying the date from which it is to have effect (“the effective date”),
  - (b) made by notice to the Inland Revenue no later than 12 months after 31st January next following the tax year in which the effective date falls, or within such further time, if any, as the Board of Inland Revenue may by notice have allowed, and
  - (c) containing the items specified in subsection (3).
- (3) Those items are—
  - (a) such information as the Board of Inland Revenue may require, including in particular information relating to the trusts, the trustees, the vulnerable person

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- and his entitlement under the trusts and any other person connected with the trusts,
- (b) a statement that the trusts in relation to which the election is made are qualifying trusts,
  - (c) a declaration that all the information contained in the election is correct to the best of the knowledge and belief of the trustees and vulnerable person,
  - (d) a declaration by the vulnerable person that he authorises the trustees to make any claim under this Chapter for any tax year as they consider appropriate, and
  - (e) such other declarations as the Board of Inland Revenue may reasonably require.
- (4) A vulnerable person election is irrevocable.
- (5) A vulnerable person election has effect from the effective date until one of the following events occurs—
- (a) the person in relation to whom the election is made ceases to be a vulnerable person,
  - (b) the trusts in relation to which the election is made cease to be qualifying trusts, and
  - (c) the trusts are terminated.
- (6) If the trustees become aware that an event mentioned in subsection (5) has occurred—
- (a) they must inform the Inland Revenue that the vulnerable person election has ceased to have effect, and
  - (b) they must do so by giving notice containing particulars of the event within the period of 90 days beginning on the date on which they first become aware that the event has occurred.
- [<sup>F2</sup>(7) Where—
- (a) a vulnerable person election has effect in relation to qualifying trusts,
  - (b) the property held on those trusts is treated for the purposes of TCGA 1992 and of the Tax Acts as comprised in a sub-fund settlement, and
  - (c) the vulnerable person election was not made by the trustees of the sub-fund settlement,
- the vulnerable person election shall have effect, in relation to the trusts mentioned in paragraph (a), in respect of matters arising at or after the time when the sub-fund election is treated as having taken effect, as if it had been made by the trustees of the sub-fund settlement and the vulnerable person.
- (8) In relation to matters arising before the time when the sub-fund election is treated as having taken effect, nothing in subsection (7)—
- (a) relieves the trustees of the settlement which is the principal settlement in relation to the sub-fund settlement of their obligation under subsection (6), or
  - (b) prevents a notice from being given to those trustees under section 40(1) or (3).
- (9) In this section—
- (a) “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
  - (b) “sub-fund election” has the meaning given by paragraph 2 of that Schedule,
  - (c) “sub-fund settlement” has the meaning given by paragraph 1 of that Schedule, and

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- (d) the time when a sub-fund election is treated as having taken effect shall be the time when it is treated as having taken effect under paragraph 2 of that Schedule.]

#### Textual Amendments

- F1** Words in s. 37(1) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 35\(2\)\(d\)\(7\)](#)
- F2** S. 37(7)-(9) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 48\(4\)\(5\)](#)

### 38 Meaning of “disabled person”

- (1) In this Chapter “disabled person” means—
- (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 (c. 20) is incapable of administering his property or managing his affairs, or
  - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (2) A person is to be treated as a disabled person under subsection (1)(b) if he satisfies the Inland Revenue—
- (a) that if he were to meet the prescribed conditions as to residence under section 64(1) of SSCBA 1992 or section 64(1) of SSCB(NI)A 1992 he would be entitled to receive attendance allowance, or
  - (b) that if he were to meet the prescribed conditions as to residence under section 71(6) of SSCBA 1992 or section 71(6) of SSCB(NI)A 1992 he would be entitled to receive a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.
- (3) A person who is (or is treated as) a disabled person under subsection (1)(b) is not to cease to be (or to be treated as) such a disabled person by reason only of provision made by—
- (a) regulations under section 67(1) or (2) of SSCBA 1992 or section 67(1) or (2) of SSCB(NI)A 1992 (non-satisfaction of conditions for attendance allowance where person is undergoing treatment for renal failure in a hospital or is provided with certain accommodation), or
  - (b) regulations under section 72(8) of SSCBA or section 72(8) SSCB(NI)A 1992 (no payment of disability allowance for persons for whom certain accommodation is provided).
- (4) In this section “attendance allowance” means an allowance under—
- (a) section 64 of SSCBA 1992, or
  - (b) section 64 of SSCB(NI)A 1992.
- (5) In this section “disability living allowance” means a disability living allowance under—
- (a) section 71 of SSCBA 1992, or
  - (b) section 71 of SSCB(NI)A 1992.
- (6) In this section—

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“SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4), and

“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

### **39 Meaning of “relevant minor”**

For the purposes of this Chapter a person is a “relevant minor” if—

- (a) he has not yet attained the age of 18, and
- (b) at least one of his parents has died.

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