



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 9

#### SPECIAL RULES ABOUT SETTLEMENTS AND TRUSTEES

### CHAPTER 2

#### GENERAL PROVISION ABOUT SETTLEMENTS AND TRUSTEES

#### *Overview*

#### **465 Overview of Chapter and interpretation**

- (1) This Chapter contains general provision about settlements and trustees.
- (2) Section 466 explains what is meant by references to settled property.
- (3) Sections 467 to 473 explain what is meant by references to a settlor in relation to a settlement.
- (4) Sections 474 to 476 treat the trustees of a settlement as a single and distinct person and set out rules in relation to the residence and ordinary residence of that person.
- (5) Section 477 relates to sub-fund elections under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (6) Section 478 is about references to settled property etc in regulations.
- (7) For the purposes of this Chapter property is derived from other property if—
  - (a) it derives (directly or indirectly and wholly or partly) from that other property or any part of that other property, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that other property or any part of that other property.

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- (8) In this Chapter “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

### *Settled property*

#### **466 Meaning of “settled property” etc**

- (1) This section applies for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) “Settled property” means any property held in trust other than property excluded by subsection (3).
- (3) Property is excluded for the purposes of subsection (2) if—
  - (a) it is held by a person as nominee for another person,
  - (b) it is held by a person as trustee for another person who is absolutely entitled to the property as against the trustee, or
  - (c) it is held by a person as trustee for another person who would be absolutely entitled to the property as against the trustee if that other person were not an infant or otherwise lacking legal capacity.
- (4) References, however expressed, to property comprised in a settlement are references to settled property.
- (5) A person is absolutely entitled to property as against a trustee if the person has the exclusive right to direct how the property is to be dealt with (subject to the trustees' right to use the property for the payment of duty, taxes, costs or other outgoings).
- (6) References to a person who is or would be so entitled include references to two or more persons who are or would be jointly absolutely entitled as against the trustee.

### *Settlors*

#### **467 Meaning of “settlor” etc**

- (1) In the Income Tax Acts (except where the context otherwise requires) “settlor”, in relation to a settlement, means the person, or any of the persons, who has made the settlement.
- (2) In the Income Tax Acts (except where the context otherwise requires) a person is a settlor of property if—
  - (a) the property is settled property because of—
    - (i) the person's having made the settlement, or
    - (ii) an event which leads to the person being treated by this Chapter as having made the settlement, or
  - (b) the property derives from settled property within paragraph (a).
- (3) A person (“S”) is treated for the purposes of the Income Tax Acts as having made a settlement if—
  - (a) S has made or entered into the settlement (directly or indirectly), or
  - (b) the settled property, or property from which the settled property derives, is or includes property within subsection (4).

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- (4) Property is within this subsection if—
  - (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
  - (b) immediately before S's death, the property was property of S—
    - (i) which was disposable property (see section 468), or
    - (ii) which represented S's severable share in any property to which S was beneficially entitled as joint tenant.
- (5) In particular, S is treated for the purposes of the Income Tax Acts as having made a settlement if—
  - (a) S has provided property for the purposes of the settlement (directly or indirectly), or
  - (b) S has undertaken to do that.
- (6) If a person (“A”) makes or enters into a settlement in accordance with reciprocal arrangements with another person (“B”)—
  - (a) B is treated for the purposes of the Income Tax Acts as having made the settlement, and
  - (b) A is not to be treated for the purposes of the Income Tax Acts as having made the settlement just because of the reciprocal arrangements.
- (7) This section needs to be read with sections 469 to 473.
- (8) This section and sections 469 to 473 do not apply for the purposes of Chapter 5 of Part 5 of ITTOIA 2005 (amounts treated as income of settlors).

#### **468 Meaning of “disposable property”**

- (1) This section applies for the purposes of section 467(4)(b)(i).
- (2) Property is disposable if S could have disposed of it by S's will.
- (3) In working out whether any property could have been so disposed of—
  - (a) make the assumptions mentioned in subsection (4), and
  - (b) ignore the powers mentioned in subsection (5).
- (4) Assume that—
  - (a) S is of full age and capacity,
  - (b) the property is situated in England and Wales, and
  - (c) if S is not domiciled in the United Kingdom, S is domiciled in England and Wales.
- (5) The powers to be ignored are—
  - (a) any power of appointment giving S the right to dispose of the property, and
  - (b) any testamentary power conferred by statute to dispose of entailed interests.

#### **469 Person ceasing to be a settlor**

- (1) A person (“S”) who is a settlor in relation to a settlement ceases to be so when the following condition is met.
- (2) The condition is that—

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- (a) no property of which S is the settlor is comprised in the settlement,
- (b) S has not undertaken to provide property (directly or indirectly) for the purposes of the settlement in the future, and
- (c) S has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

#### **470 Transfers between settlements**

- (1) Section 471 applies in relation to a transfer of property from the trustees of one settlement (“settlement 1”) to the trustees of another settlement (“settlement 2”) if the transfer—
  - (a) is not for full consideration,
  - (b) is not by way of a bargain made at arm's length, and
  - (c) is not excluded by subsection (2).
- (2) A transfer of property is excluded for the purposes of subsection (1) if—
  - (a) it occurs only because of the assignment by a beneficiary under settlement 1 of an interest in that settlement to the trustees of settlement 2,
  - (b) it occurs only because of the exercise of a general power of appointment, or
  - (c) section 473(4) applies in relation to it.
- (3) 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.
- (4) For the purposes of subsection (3) there is an acquisition or disposal of property if there would be an acquisition or disposal of property for the purposes of TCGA 1992.

#### **471 Identification of settlor following transfer covered by section 470**

- (1) If there is a transfer of property in relation to which this section applies, then the following subsections apply for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) The settlor (or each settlor) of the property disposed of by the trustees of settlement 1 (“the disposed property”) is treated from the time of the disposal as having made settlement 2.
- (3) If there is more than one settlor of the disposed property, each of them is treated in relation to settlement 2 as the settlor of a proportionate part of the property acquired by the trustees of settlement 2 on the disposal.
- (4) So far as the disposed property—
  - (a) was provided for the purposes of settlement 1, or
  - (b) was derived from property so provided,
 the property acquired by the trustees of settlement 2 on the disposal is treated from the time of the disposal as having been provided for the purposes of settlement 2.
- (5) If as a result of subsection (4), property (“the transferred property”) is treated as having been provided for the purposes of settlement 2—

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- (a) the person who provided the disposed property, or the property from which it was derived, for the purposes of settlement 1 is treated as having provided the transferred property for the purposes of settlement 2, and
- (b) if more than one person provided the disposed property, or the property from which it was derived, for the purposes of settlement 1, each of them is treated as having provided a proportionate part of the transferred property for the purposes of settlement 2.

#### **472 Settlor where property becomes settled because of variation of will etc**

- (1) This section applies if—
  - (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.
- (2) If property becomes settled property because of the variation (and would not, but for the variation, have become settled property), a person within subsection (3) is treated for the purposes of the Income Tax Acts (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) The persons within this subsection are—
  - (a) a person who immediately before the variation was entitled to the property, or to property from which it derived, absolutely as legatee,
  - (b) a person who immediately before the variation would have been so entitled if that person had not been an infant or otherwise lacking legal capacity,
  - (c) a person who, but for the variation, would have become so entitled, and
  - (d) a person who, but for the variation, would have become so entitled if that person had not been an infant or otherwise lacking legal capacity.
- (4) For the purposes of subsection (3)—
  - (a) “legatee” includes a person taking property—
    - (i) under a testamentary disposition or on an intestacy or partial intestacy, whether beneficially or as trustee, or
    - (ii) under a donatio mortis causa, and
  - (b) a person who is a legatee as a result of paragraph (a)(ii) is treated as acquiring the property when the donor dies.
- (5) For the purposes of subsection (4)(a) property taken under a testamentary disposition or on an intestacy or partial intestacy includes any property appropriated by the personal representatives in or towards satisfaction of—
  - (a) a pecuniary legacy, or
  - (b) any other interest or share in the property devolving under the disposition or intestacy.

#### **473 Deceased person as settlor where variation of will etc**

- (1) This section applies if—
  - (a) a disposition of property following the death of a person (“D”) is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.

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- (2) If—
- (a) property would have become comprised in a settlement within subsection (3), but
  - (b) as a result of the variation, the property, or property derived from it, becomes comprised in another settlement,
- D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.
- (3) A settlement is within this subsection if—
- (a) it arose on D's death (whether by D's will or on D's intestacy or in any other way), or
  - (b) it was in existence immediately before D's death (whether or not D was a settlor in relation to it).
- (4) If—
- (a) immediately before the variation property is comprised in a settlement and is property of which D is a settlor, and
  - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,
- D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.
- (5) A settlement treated as made by D as a result of this section is treated for the purposes of the Income Tax Acts as made by D immediately before D's death.
- (6) But subsection (5) does not apply in relation to a settlement which arose on D's death.

### *Trustees*

#### **474 Trustees of settlement to be treated as a single and distinct person**

- (1) For the purposes of the Income Tax Acts (except where the context otherwise requires), the trustees of a settlement are together treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).
- (2) If different parts of the settled property in relation to a settlement are vested in different bodies of trustees, subsection (1) and sections 475 and 476 apply in relation to the different bodies as if they were all one body.
- (3) The cases covered by subsection (2) include cases where settled land (within the meaning of the Settled Land Act 1925 (c. 18)) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement.

#### **475 Residence of trustees**

- (1) This section applies for income tax purposes and explains how to work out, in relation to the trustees of a settlement—
  - (a) whether or not the single person mentioned in section 474(1) is UK resident, and
  - (b) whether or not that person is ordinarily UK resident.

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- (2) If at a time either condition A or condition B is met, then at that time the single person is both UK resident and ordinarily UK resident.
- (3) If at a time neither condition A nor condition B is met, then at that time the single person is both non-UK resident and not ordinarily UK resident.
- (4) Condition A is met at a time if, at that time, all the persons who are trustees of the settlement are UK resident.
- (5) Condition B is met at a time if at that time—
  - (a) at least one person who is a trustee of the settlement is UK resident and at least one such person is non-UK resident, and
  - (b) a settlor in relation to the settlement meets condition C (see section 476).
- (6) If at a time a person (“T”) who is a trustee of the settlement acts as trustee in the course of a business which T carries on in the United Kingdom through a branch, agency or permanent establishment there, then for the purposes of subsections (4) and (5) assume that T is UK resident at that time.

#### **476 How to work out whether settlor meets condition C**

- (1) This section applies for the purpose of working out whether a settlor (“S”) in relation to a settlement meets condition C at a time.
- (2) If—
  - (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
  - (b) immediately before S's death, S was UK resident, ordinarily UK resident or domiciled in the United Kingdom,then S meets condition C from the time of S's death until S ceases to be a settlor in relation to the settlement.
- (3) If—
  - (a) the settlement is not within subsection (2)(a), and
  - (b) at a time when S made the settlement (or is treated for the purposes of the Income Tax Acts as making the settlement), S was UK resident, ordinarily UK resident or domiciled in the United Kingdom,then S meets condition C from that time until S ceases to be a settlor in relation to the settlement.
- (4) Further, if—
  - (a) there is a transfer of property in relation to which section 471 applies,
  - (b) S is a settlor in relation to settlement 2 as a result of that section, and
  - (c) immediately before the disposal by the trustees of settlement 1, S meets condition C as a settlor in relation to settlement 1 as a result of subsection (2) or (3) or this subsection,then S meets condition C as a settlor in relation to settlement 2 from the time S becomes such a settlor until S ceases to be such a settlor.
- (5) “Settlement 1” and “settlement 2” are to be read in accordance with section 470(1).

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### *Sub-funds*

#### **477 Sub-fund elections under Schedule 4ZA to TCGA 1992**

- (1) This section applies for the purposes of the Income Tax Acts (except so far as, in those Acts, the context otherwise requires) if the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (2) The sub-fund settlement is treated as a settlement that is created at the relevant time.
- (3) Each trustee of the trusts on which property comprised in the sub-fund settlement is held is treated as a trustee of the sub-fund settlement.
- (4) A person (“T”) who is a trustee of the sub-fund settlement is treated, from the relevant time, as having ceased to be a trustee of the principal settlement unless T is also a trustee of trusts on which property comprised in the principal settlement is held.
- (5) A person (“T”) who is a trustee of the principal settlement is not to be treated as a trustee of the sub-fund settlement unless T is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- (6) The trustees of the sub-fund settlement are treated as having become, at the relevant time, absolutely entitled to the property comprised in that settlement as against the trustees of the principal settlement.
- (7) In this section—
  - “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
  - “the relevant time” means the time when the sub-fund election is treated as having taken effect under paragraph 2 of that Schedule,
  - “sub-fund election” has the meaning given by paragraph 2 of that Schedule, and
  - “sub-fund settlement” has the meaning given by paragraph 1 of that Schedule.

### *Regulations*

#### **478 References to settled property etc in regulations**

For the purposes of regulations (whenever made) made under a provision of the Income Tax Acts—

- (a) references to settled property, a settlor or trustees are to be read in accordance with this Chapter, and
- (b) references to the trustees of a trust are to be read as references to the trustees of a settlement.



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