



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 9

#### SPECIAL RULES ABOUT SETTLEMENTS AND TRUSTEES

### CHAPTER 2

#### GENERAL PROVISION ABOUT SETTLEMENTS AND TRUSTEES

#### *Settlers*

#### **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).
- (4) Property is within this subsection if—

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- (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—
  - (a) no property of which S is the settlor is comprised in the settlement,

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- (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.

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