
Changes to legislation: Finance Act 2008, Cross Heading: Attribution of gains to beneficiaries: commencement etc is up to date with all changes known to be in force on or before 08 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) View outstanding changes

SCHEDULES

SCHEDULE 7

REMITTANCE BASIS

PART 2

NON-RESIDENT COMPANIES AND TRUSTS ETC

Attribution of gains to beneficiaries: commencement etc

- 115 The amendments made by paragraphs 106 to 114 have effect for the tax year 2008-09 and subsequent tax years.
- 116 For the purposes of sections 87 and 87A of TCGA 1992, no account is to be taken of—
- (a) any capital payment received before 10 March 1981, or
 - (b) any capital payment received on or after that date but before 6 April 1984, so far as it represents a chargeable gain which accrued to the trustees before 6 April 1981.
- 117 In the application of section 87 of TCGA 1992 for a tax year by virtue of section 88, no account is to be taken of any capital payment received before 6 April 1991.
- 118 (1) This paragraph applies if—
- (a) section 87 of TCGA 1992 applies to a settlement for the tax year 2008-09 or any subsequent tax year (“the tax year”),
 - (b) the settlement was made before 17 March 1998,
 - (c) none of the settlors fulfilled the residence requirements when the settlement was made, and
 - (d) none of the settlors fulfils the residence requirements in the tax year.
- (2) For the purposes of that section as it applies to the settlement for the tax year, no account is to be taken of—
- (a) any gains or losses accruing to the trustees of the settlement before 17 March 1998, or
 - (b) any capital payments received before that date.
- (3) A settlor “fulfils the residence requirements” when the settlor is—
- (a) resident or ordinarily resident in the United Kingdom, and
 - (b) domiciled in any part of the United Kingdom.
- 119 Section 87C of TCGA 1992 does not apply in relation to any capital payment received before 6 April 2008.
- 120 (1) This paragraph applies to a settlement if section 87 or 89(2) of TCGA 1992 applied to it for the tax year 2007-08 or any earlier tax year.

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- (2) The following steps are to be taken for the purposes of calculating the section 2(2) amount for the settlement for the tax year 2007-08 and earlier tax years.
- Step 1*
- Calculate (in accordance with section 87 and, where appropriate, section 88) the section 2(2) amount for the settlement for the tax year 2007-08 and earlier tax years.
- For this purpose, references in section 87(4) and (5) of TCGA 1992 (as substituted) to section 87 of that Act applying to a settlement for a tax year are to be read as references to section 87 of that Act (as it had effect before that substitution) applying to a settlement for a tax year.
- Step 2*
- Find the total amount of chargeable gains treated under section 87 or 89(2) as accruing to beneficiaries of the settlement in the tax year 2007-08 or any earlier tax year (“the total deemed gains”).
- Step 3*
- Find the earliest tax year for which the section 2(2) amount is not nil.
- If the section 2(2) amount for that year is less than or equal to the total deemed gains, reduce that section 2(2) amount to nil.
- Otherwise, reduce that section 2(2) amount by the amount of the total deemed gains.
- Step 4*
- Reduce the total deemed gains by the amount by which the section 2(2) amount was reduced under Step 3.
- Step 5*
- If the total deemed gains is not nil, start again at Step 3.
- For this purpose, read references to the earliest tax year for which the section 2(2) amount is not nil as references to the earliest tax year—
- (a) which is after the last tax year for which Steps 3 and 4 have been undertaken, and
 - (b) for which the section 2(2) amount is not nil.
- (3) If, before 6 April 2008, the trustees of the settlement made a transfer of value to which Schedule 4B to TCGA 1992 applied, sub-paragraph (2) has effect subject to such modifications as are just and reasonable on account of Schedule 4C to that Act having applied in relation to the settlement.
- (4) This paragraph does not apply if section 90 of TCGA 1992 applied to a transfer of settled property by or to the trustees of the settlement that was made before 6 April 2008 (see paragraph 121).
- 121 (1) If section 90 of TCGA 1992 (as originally enacted) applied to a transfer of settled property made before 6 April 2008, this paragraph applies in relation to the transferor settlement and the transferee settlement.
- (2) In this paragraph “the year of transfer” means the tax year in which the transfer occurred.

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- (3) The following steps are to be taken for the purpose of calculating the section 2(2) amount for the transferor and transferee settlements for the tax year 2007-08 and earlier tax years.

Step 1

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount (at the end of the year of transfer) for the transferor settlement for the year of transfer and earlier tax years.

For this purpose, read references there to the tax year 2007-08 as references to the year of transfer.

Step 2

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount (before the year of transfer) for the transferee settlement for the tax year before the year of transfer and earlier tax years.

For this purpose, read references there to the tax year 2007-08 as references to the tax year before the year of transfer.

Step 3

Calculate the section 2(2) amount for the transferee settlement for the year of transfer.

Step 4

Treat the section 2(2) amount for the transferee settlement for the year of transfer or any earlier tax year (as calculated under Step 2 or 3) as increased by—

- (a) the section 2(2) amount for the transferor settlement for that year (as calculated under Step 1), or
- (b) if part only of the settled property was transferred, the relevant proportion of the amount mentioned in paragraph (a).

“The relevant proportion” here has the same meaning as in section 90(4) of TCGA 1992 (as substituted by this Schedule).

Step 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 Step 4.

Step 6

Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount for the transferor settlement for the tax year 2007-08 and earlier tax years.

For this purpose—

- (a) treat the section 2(2) amount for the year of transfer or any earlier tax year as the amount calculated by taking Steps 1 and 5 above, and
- (b) reduce the total deemed gains by the amount of the total deemed gains calculated by taking Step 1 above.

Step 7

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Take the steps in paragraph 120(2) for the purpose of calculating the section 2(2) amount for the transferee settlement for the tax year 2007-08 and earlier tax years.

For this purpose—

- (a) treat the section 2(2) amount for the year of transfer or any earlier tax year as the amount calculated by taking Steps 2 to 4 above, and
- (b) reduce the total deemed gains by the amount of the total deemed gains calculated by taking Step 2 above.

- (4) This paragraph applies with any necessary modifications in relation to a settlement as respects which more than one relevant transfer was made.
 - (5) In sub-paragraph (4) “relevant transfer” means a transfer—
 - (a) made before 6 April 2008, and
 - (b) to which section 90 of TCGA 1992 applied.
 - (6) If, before 6 April 2008, the trustees of the transferor or transferee settlement made a transfer of value to which Schedule 4B to TCGA 1992 applied, this paragraph has effect subject to such modifications as are just and reasonable on account of Schedule 4C to that Act having applied in relation to the settlement.
- 122 (1) If all of a capital payment would (in the tax year 2008-09) have been left out of account by virtue of section 87(6) of TCGA 1992 as originally enacted, the amount of that capital payment is reduced to nil.
- (2) If part of a capital payment would (in the tax year 2008-09) have been left out of account by virtue of section 87(6) of TCGA 1992 as originally enacted, the amount of that capital payment is reduced by the amount of that part.
- (3) If—
- (a) chargeable gains were treated under section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing in the tax year 2007-08 or any earlier tax year to a beneficiary,
 - (b) more than one capital payment that the beneficiary had received was taken into account for the purposes of determining the amount of chargeable gains treated as accruing to the beneficiary, and
 - (c) the amount of those chargeable gains was less than the total amount of capital payments taken into account,
- for the purposes of this paragraph treat section 87(6) of TCGA 1992 as originally enacted as having effect in relation to earlier capital payments before later ones.
- (4) References in this paragraph to section 87(6) of TCGA 1992 include that provision as it would (but for the amendments made by this Schedule) have applied by virtue of section 762(3) of ICTA (offshore income gains).
- (5) References in this paragraph to chargeable gains include offshore income gains.
- 123 Section 89(2) of TCGA 1992 as substituted applies to a settlement for the tax year 2008-09 (and subsequent tax years) if section 89(2) of that Act as originally enacted would (but for the amendments made by this Schedule) have applied to the settlement for the tax year 2008-09.
- 124 (1) This paragraph applies if—

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- (a) chargeable gains are treated under section 87 or 89(2) of TCGA 1992 as accruing to an individual in the tax year 2008-09 or any subsequent tax year, and
 - (b) the individual is not domiciled in the United Kingdom in that year.
 - (2) The individual is not charged to capital gains tax on the chargeable gains if and to the extent that they are treated as accruing by reason of—
 - (a) a capital payment received (or treated as received) by the individual before 6 April 2008, or
 - (b) the matching of any capital payment with the section 2(2) amount for the tax year 2007-08 or any earlier tax year.
- 125 (1) This paragraph applies in relation to a settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”) if—
 - (a) an individual who was resident or ordinarily resident, but not domiciled, in the United Kingdom in the tax year 2007-08 received a capital payment from the trustees of the settlement on or after 12 March 2008 but before 6 April 2008, and
 - (b) the individual is resident or ordinarily resident, but not domiciled, in the United Kingdom in the relevant tax year.
- (2) For the purposes of sections 87 to 89 of TCGA 1992 as they apply in relation to the settlement for the relevant tax year, no account is to be taken of the capital payment.
- 126 (1) The following provisions apply to a settlement if—
 - (a) section 87 applies to the settlement for the tax year 2008-09, and
 - (b) the trustees of the settlement have made an election under this sub-paragraph.
- (2) An election under sub-paragraph (1) may only be made on or before the first 31 January to occur after the end of the first tax year (beginning with the tax year 2008-09) in which an event within either of the following paragraphs occurs—
 - (a) a capital payment is received (or treated as received) by a beneficiary of the settlement, and the beneficiary is resident in the United Kingdom in the tax year in which it is received, and
 - (b) the trustees transfer all or part of the settled property to the trustees of another settlement, and section 90 of TCGA 1992 applies in relation to the transfer.
- (3) For a tax year as respects which the settlement has a Schedule 4C pool, the reference in sub-paragraph (2)(a) above to a capital payment received (or treated as received) by a beneficiary of the settlement is to be read as a capital payment received (or treated as received) by a beneficiary of a relevant settlement from the trustees of a relevant settlement.
- (4) Paragraph 8A of that Schedule (relevant settlements) applies for the purposes of sub-paragraph (3) above.
- (5) An election under sub-paragraph (1) is irrevocable.
- (6) An election under that sub-paragraph must be made in the way and form specified by the Commissioners for Her Majesty’s Revenue and Customs.
- (7) Sub-paragraph (8) applies if—
 - (a) by virtue of the matching of a capital payment with the section 2(2) amount for the settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”), chargeable gains are treated under section 87 or 89(2) of,

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or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to an individual in a tax year, and

(b) the individual is resident, but not domiciled, in the United Kingdom in that year.

(8) The individual is not charged to capital gains tax on so much of the chargeable gains as exceeds the relevant proportion of those gains.

(9) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is what would be the section 2(2) amount for the settlement for the relevant tax year, if immediately before 6 April 2008 every relevant asset had been sold by the trustees (or the company concerned) and immediately re-acquired by them (or it) at the market value at that time, and

B is the section 2(2) amount for the settlement for the relevant tax year.

(10) For the purposes of sub-paragraph (9) an asset is a “relevant asset” if—

(a) by reason of the asset, a chargeable gain or allowable loss accrues to the trustees in the relevant tax year, and

(b) the asset has been comprised in the settlement from the beginning of 6 April 2008 until the time of the event giving rise to the chargeable gain or allowable loss.

(11) For those purposes, an asset is also a “relevant asset” if—

(a) by reason of the asset, chargeable gains are treated under section 13 of TCGA 1992 as accruing to the trustees in the relevant tax year,

(b) the company to which the chargeable gains actually accrue has owned the asset from the beginning of 6 April 2008 until the time of the event giving rise to those chargeable gains, and

(c) had the company disposed of the asset at any time in the relevant period, part of the chargeable gains (if any) accruing on the disposal would have been treated under section 13 of TCGA 1992 as accruing to the trustees.

(12) In sub-paragraph (11)(c) “the relevant period” means the period beginning at the beginning of 6 April 2008 and ending immediately before the event giving rise to the chargeable gains.

(13) If—

(a) by reason of an asset which would not otherwise be a relevant asset (“the new asset”), chargeable gains or allowable losses accrue, or are treated under section 13 as accruing, to the trustees in the relevant tax year,

(b) the value of the new asset derives wholly or in part from another asset (“the original asset”), and

(c) section 43 of TCGA 1992 applies in relation to the calculation of the chargeable gains or allowable losses,

the new asset (or part of that asset) is a “relevant asset” if the condition in sub-paragraph (10)(b) or the conditions in sub-paragraph (11)(b) and (c) would be met were the references there to the asset to be read as references to the new asset or the original asset.

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- (14) If—
- (a) on or after 6 April 2008, a company (“company A”) disposes of an asset to another company (“company B”), and
 - (b) section 171 of TCGA (transfers within groups) (as applied by section 14(2) of that Act) applies in relation to the disposal,
- for the purposes of sub-paragraph (11) (and this sub-paragraph) treat company B as having owned the asset throughout the period when company A owned it.
- (15) If an asset is a relevant asset by virtue of sub-paragraph (14), for the purposes of sub-paragraph (9)—
- (a) treat the chargeable gains as having accrued to the company which owned the asset at the beginning of 6 April 2008, and
 - (b) treat the proportion of those chargeable gains attributable under section 13 of TCGA 1992 to the trustees as being the proportion of the chargeable gains actually accruing that are so attributable.
- (16) If—
- (a) an asset would otherwise be a “relevant asset” within sub-paragraph (11), and
 - (b) the proportion of chargeable gains treated under section 13 of TCGA 1992 as accruing to the trustees by reason of the asset (“the relevant proportion”) is greater than the minimum proportion,
- for the purposes of sub-paragraph (9) treat the appropriate proportion of the asset as a relevant asset and the rest of the asset as if it were not a relevant asset.
- (17) “The minimum proportion” is the smallest proportion of chargeable gains (if any) that would have been attributable to the trustees on a disposal of the asset at any time in the relevant period (as defined by sub-paragraph (12)).
- (18) “The appropriate proportion” is the minimum proportion divided by the relevant proportion.
- 127 (1) This paragraph applies if—
- (a) in the tax year 2008-09 or any subsequent tax year, 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”),
 - (b) section 90 of TCGA 1992 applies in relation to the transfer,
 - (c) the trustees of the transferor settlement have made an election under paragraph 126(1),
 - (d) by virtue of the matching of a capital payment with the section 2(2) amount for the transferee settlement for the tax year 2008-09 or any subsequent tax year (“the relevant tax year”), chargeable gains are treated under section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to an individual in a tax year, and
 - (e) the individual is resident, but not domiciled, in the United Kingdom in that year.
- (2) If the trustees of the transferee settlement have made an election under paragraph 126(1), paragraph 126(7) to (9) have effect in relation to the transferee settlement for that year as if the reference in paragraph 126(9) to relevant assets included relevant assets within the meaning of this paragraph.

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- (3) If the trustees of the transferee settlement have not made an election under paragraph 126(1), the individual is not charged to capital gains tax on so much of the chargeable gains mentioned in sub-paragraph (1)(d) above as exceeds the relevant proportion of those gains.
- (4) The relevant proportion is—

$$\frac{A}{B}$$

where—

A is what would be the section 2(2) amount for the transferee settlement for the relevant tax year, if immediately before 6 April 2008 every relevant asset had been sold by the company concerned and immediately re-acquired by it at the market value at that time, and

B is the section 2(2) amount for the transferee settlement for the relevant tax year.

- (5) For the purposes of this paragraph an asset is a “relevant asset” if—
- (a) by reason of the asset, chargeable gains are treated under section 13 of TCGA 1992 as accruing to the trustees of the transferee settlement in the relevant tax year,
 - (b) the company to which the chargeable gains actually accrue has owned the asset from the beginning of 6 April 2008 until the time of the event giving rise to those chargeable gains,
 - (c) had the company disposed of the asset at any time in the relevant period, part of the chargeable gains (if any) accruing on the disposal would have been treated under section 13 of TCGA 1992 as accruing to—
 - (i) the trustees of the transferor settlement (if the disposal had been made before the transfer), or
 - (ii) the trustees of the transferee settlement (if it had not).
- (6) In sub-paragraph (5)(c) “the relevant period” means the period beginning at the beginning of 6 April 2008 and ending immediately before the event giving rise to the chargeable gains.
- (7) Sub-paragraphs (13) to (18) of paragraph 126 apply for the purposes of this paragraph (with such modifications as are necessary) as they apply for the purposes of that paragraph.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 41 para. 6(1A) inserted by [2015 c. 11 Sch. 20 para. 10\(2\)](#)
- Sch. 41 para. 6A(A1)(1) substituted for Sch. 41 para. 6A(1) by [2015 c. 11 Sch. 20 para. 11\(2\)](#)