



# Finance Act 1982

## 1982 CHAPTER 39

### PART IV

#### CAPITAL TRANSFER TAX

#### CHAPTER I

##### GENERAL

#### **90 Reduction of tax**

- (1) For the Tables in section 37(3) of the Finance Act 1975 there shall be substituted the Tables in Schedule 14 to this Act.
- (2) This section applies to any chargeable transfer made on or after 9th March 1982.

#### **91 Indexation of rate bands**

- (1) If the retail prices index for the month of December in 1982 or any later year is higher than it was for the previous December, then, unless Parliament otherwise determines, section 37 of the Finance Act 1975 shall apply to chargeable transfers made on or after 6th April in the following year with the substitution in subsection (3) of new Tables for the Tables applying (whether by virtue of this section or otherwise) to earlier chargeable transfers.
- (2) The new Tables shall differ from the Tables they replace in that for each of the amounts specified in the first and second columns there shall be substituted amounts arrived at by increasing the previous amounts by the same percentage as the percentage increase in the retail prices index and, if the result is not a multiple of £1,000, rounding it up to the nearest amount which is such a multiple.
- (3) The references in this section to the retail prices index are references to the general index of retail prices (for all items) published by the Department of Employment; and if that index is not published for a month of December those references shall be

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construed as references to any substituted index or index figures published by that Department.

- (4) The Treasury shall before 6th April 1983 and each subsequent 6th April make an order specifying the amounts which by virtue of this section will be treated, in relation to chargeable transfers on or after that date, as specified in the Tables in section 37(3) of the Finance Act 1975 ; and any such order shall be made by statutory instrument.
- (5) In section 85(3) of the Finance Act 1980 (transitional provisions on reduction of tax by that section or subsequent enactments) for the words " which reduces tax by substituting " there shall be substituted the words " by virtue of which tax is reduced by the substitution of ".

## **92 Exemptions**

- (1) In paragraph 1(2) of Schedule 6 to the Finance Act 1975 (exemption limit for transfers to non-domiciled spouses) for " £50,000 " there shall be substituted " £55,000 ".
- (2) In paragraph 10(1)(b) of that Schedule (limit on exempt gifts made to charities on or within one year of death) for " £200,000 " there shall be substituted " £250,000 ".
- (3) This section applies to any transfer of value made on or after 9th March 1982.

## **93 Maintenance funds: Treasury directions**

- (1) On a claim made for the purpose, the Treasury shall give a direction under this section in respect of property comprised in a settlement if the conditions mentioned in subsection (2) below are fulfilled.
- (2) The conditions are—
  - (a) that the Treasury are satisfied—
    - (i) that the trusts on which the property is held comply with the requirements mentioned in subsection (3) below, and
    - (ii) that the property is of a character and amount appropriate for the purposes of those trusts ; and
  - (b) that the trustees—
    - (i) are approved by the Treasury,
    - (ii) include a trust corporation (as defined in section 94(1) below) or a solicitor or an accountant (as so defined) or a member of such other professional body as the Treasury may allow in the case of the property concerned, and
    - (iii) are, at the time the direction is given, resident in the United Kingdom (as specified in section 94(1) below).
- (3) The requirements are—
  - (a) that none of the property held on the trusts can at any time in the period of six years beginning with the date on which it became so held be applied otherwise than—
    - (i) for the maintenance, repair or preservation of, or making provision for public access to, property which is for the time being qualifying property (as defined in section 94(2) below), for the maintenance, repair or preservation of property held on the trusts or for such improvement of property so held as is reasonable having regard to the

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- purposes of the trusts, or for defraying the expenses of the trustees in relation to the property so held;
- (ii) as respects income not so applied and not accumulated, for the benefit of a body mentioned in paragraph 12 of Schedule 6 to the Finance Act 1975 (museums etc.) or of a qualifying charity (as defined in section 94(4) below); and
- (b) that none of the property can, on ceasing to be held on the trusts at any time in that period or, if the settlor dies in that period, at any time before his death, devolve otherwise than on any such body or charity; and
- (c) that income arising from property held on the trusts cannot at any time after the end of that period be applied except as mentioned in paragraph (a)(i) or (ii) above.
- (4) Subject to subsection (5) below, paragraphs (a) and (b) of subsection (3) above do not apply to property which—
- (a) was previously comprised in another settlement; and
- (b) ceased to be comprised in that settlement and became comprised in the current settlement in circumstances such that by virtue of paragraph 3(1) of Schedule 16 to this Act there was no charge (or, but for paragraph 3(4) of that Schedule, there would have been no charge) to tax in respect of it;
- and in relation to any such property paragraph (c) of that subsection shall apply with the omission of the words " at any time after the end of that period ".
- (5) Subsection (4) above shall not have effect if the time when the property comprised in the previous settlement devolved otherwise than on any such body or charity as is mentioned in paragraph (a) of subsection (3) above fell before the expiration of the period of six years mentioned in that paragraph; but in such a case subsection (3) above shall apply to the current settlement as if for the references to the period of six years there mentioned there were substituted references to the period beginning with the date on which the property became comprised in the current settlement and ending six years after the date on which it became held on the relevant trusts of the previous settlement (or, where this subsection has already had effect in relation to the property, the date on which it became held on the relevant trusts of the first settlement in the series).
- (6) If in the Treasury's opinion the facts concerning any property or its administration cease to warrant the continuance of the effect of a direction given under this section in respect of the property, they may at any time by notice in writing to the trustees withdraw the direction on such grounds, and from such date, as may be specified in the notice; and the direction shall cease to have effect accordingly.
- (7) Where a direction under this section has effect in respect of property, the trustees shall from time to time furnish the Treasury with such accounts and other information relating to the property as the Treasury may reasonably require.
- (8) Where a direction under this section has effect in respect of property, the trusts on which the property is held shall be enforceable at the suit of the Treasury and the Treasury shall, as respects the appointment, removal and retirement of trustees, have the rights and powers of a beneficiary.
- (9) The Treasury may give a direction under this section in respect of property proposed to be comprised in a settlement or to be held on particular trusts, and the preceding provisions of this section shall be read accordingly.

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(10) This section shall have effect in relation to events after 8th March 1982.

#### **94 Provisions supplementary to section 93**

(1) For the purposes of section 93(2) above—

- (a) "accountant" means a member of an incorporated society of accountants;
- (b) "trust corporation" means a person that is a trust corporation for the purposes of the Law of Property Act 1925 or for the purposes of Article 9 of the Administration of Estates (Northern Ireland) Order 1979;
- (c) trustees shall be regarded as resident in the United Kingdom at any particular time if the general administration of the trusts is ordinarily carried on in the United Kingdom and the trustees or a majority of them (and, where there is more than one class of trustees, a majority of each class) are resident in the United Kingdom ;

and, where a trustee is a trust corporation, the question whether the trustee is resident in the United Kingdom shall, for the purposes of paragraph (c) above, be determined as for the purposes of corporation tax.

(2) Property is qualifying property for the purposes of section 93(3) above if—

- (a) it has been designated under section 34(1) of the Finance Act 1975 or section 77(1)(b), (c),(d) or (e) of the Finance Act 1976; and
- (b) the requisite undertaking has been given with respect to it under the said section 34 or under section 76, 78(5) (b) or 82(3) of the Finance Act 1976 ; and
- (c) tax has not (since the last occasion on which such an undertaking was given) become chargeable with respect to it under the said section 34 or under section 78 or 82(3) of the Finance Act 1976.

(3) If it appears to the Treasury that provision is, or is to be, made by a settlement for the maintenance, repair or preservation of any such property as is mentioned in subsection (1) (b). (c), (d) or (e) of section 77 of the Finance Act 1976, they may, on a claim made for the purpose—

- (a) designate that property under this subsection ; and
- (b) accept with respect to it an undertaking such as is described in subsection (4) of that section ;

and, if they do so, subsection (2) above shall have effect as if the designation were under that section and the undertaking under section 76 of the Finance Act 1976 and as if the reference to tax becoming chargeable were a reference to the occurrence of an event on which tax would become chargeable under section 78 of that Act if there had been a conditionally exempt transfer of the property when the claim was made and the undertaking had been given under the said section 76.

(4) A charity is a qualifying charity for the purposes of section 93(3) above if it exists wholly or mainly for maintaining, repairing or preserving for the public benefit buildings of historic or architectural interest, land of scenic, historic or scientific interest or objects of national, scientific, historic or artistic interest; and in this subsection "national interest" includes interest within any part of the United Kingdom.

(5) Property comprised in a settlement by virtue of a transfer of value made before the coming into force of this section and exempt under section 84 of the Finance Act 1976 shall be treated as property in respect of which a direction has been given under section 93 above.

- (6) Designations, undertakings and acceptances made under section 84(6) of the Finance Act 1976 shall be treated as made under subsection (3) above and, in relation to them, subsections (2) and (3) above shall be treated as having been in force when they were made.

## **95 Maintenance funds: exempt transfers**

- (1) Subject to the provisions of Part II of Schedule 6 to the Finance Act 1975 as applied by this section, a transfer of value is an exempt transfer to the extent that the value transferred by it is attributable to property which by virtue of the transfer becomes, or immediately after the transfer remains, comprised in a settlement and in respect of which—
- (a) a direction under section 93 above has effect at the time of the transfer, or
  - (b) such a direction is given after the time of the transfer.
- (2) Sub-paragraphs (1), (2), (2A), (3)(a), (b) and (ba) and (4B) of paragraph 15 of Schedule 6 to the Finance Act 1975 shall apply to this section as they apply to paragraphs 10 to 13 of that Schedule, and for the purposes of the said sub-paragraph (4B) the trustees of a settlement in relation to which a direction under section 93 above has effect shall be treated as a body within paragraph 13 of that Schedule.
- (3) In paragraph 16 of Schedule 6 to the Finance Act 1975 for the words " sections 76 and 84 of the Finance Act 1976 " there shall be substituted the words " section 76 of the Finance Act 1976 and section 95 of the Finance Act 1982 ".
- (4) This section shall have effect in relation to events after 8th March 1982.

## **96 Non-residents' bank accounts**

- (1) In determining for the purposes of capital transfer tax the value of the estate immediately before his death of a person to whom this section applies there shall be left out of account the balance on—
- (a) any qualifying foreign currency account of his, and
  - (b) subject to subsection (3) below, any qualifying foreign currency account of the trustees of settled property in which he is beneficially entitled to an interest in possession.
- (2) This section applies to a person who is not domiciled in the United Kingdom immediately before his death, and is neither resident nor ordinarily resident there at that time.
- (3) Subsection (1)(b) above does not apply in relation to settled property if the settlor was domiciled in the United Kingdom when he made the settlement, or if the trustees are domiciled, resident or ordinarily resident in the United Kingdom immediately before the beneficiary's death.
- (4) For the purposes of this section—
- (a) the question whether a person is resident or ordinarily resident in the United Kingdom shall, subject to paragraph (b) below, be determined as for the purposes of income tax; but
  - (b) the trustees of a settlement shall be regarded as not resident or ordinarily resident in the United Kingdom unless the general administration of the

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settlement is ordinarily carried on in the United Kingdom and the trustees or a majority of them (and, where there is more than one class of trustees, a majority of each class) are resident and ordinarily resident there.

- (5) In this section "qualifying foreign currency account" means a foreign currency account with the Bank of England, the Post Office, a recognised bank or licensed institution; and for this purpose—
- (a) "foreign currency account" means any account other than one denominated in sterling, and
  - (b) "recognised bank" and "licensed institution" have the same meanings as in the Banking Act 1979.
- (6) This section has effect in relation to deaths occurring after 8th March 1982.

## **97 Scottish agricultural leases**

- (1) Subject to subsections (2) and (3) below, where any part of the value of a person's estate immediately before his death is attributable to the value of the interest of a tenant of agricultural property in Scotland, being an interest held by virtue of tacit relocation; and
- (a) either he had been tenant of the said property continuously for a period of at least two years immediately preceding his death or he had become tenant of the said property by succession; and
  - (b) the said interest is acquired on his death by a new tenant,
- the value of the said interest shall be left out of account in determining the value transferred on the death.
- (2) The value to be left out of account under subsection (1) above shall not include the value of any rights to compensation in respect of tenant's improvements.
- (3) Subsections (1) and (2) above apply to deaths on or after 15th November 1976.
- (4) The Finance Act 1981 shall be amended as follows—
- (a) in section 98 at the beginning there shall be inserted " (1) ", and at the end there shall be inserted the following new subsection—
    - “(2) This section applies to deaths on or after 15th November 1976.”;
  - (b) section 99 and Schedule 15 shall cease to have effect.

## **98 Employee and newspaper trusts**

- (1) Paragraph 17 of Schedule 5 to the Finance Act 1975 shall be amended in accordance with subsections (2) to (5) below.
- (2) In sub-paragraph (1)(a) for the words "profession or undertaking" (where they first occur) there shall be substituted the words "or profession".
- (3) In sub-paragraph (1) the words "or (c) charities" shall be omitted.
- (4) After sub-paragraph (1) there shall be inserted—
- “(1A) Where settled property is held on trusts permitting the property to be applied for the benefit of persons within paragraph (a) or (b) of sub-paragraph (1) above, those trusts shall not be regarded as outside the

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description specified in that sub-paragraph by reason only that they also permit the settled property to be applied for charitable purposes.”

(5) For sub-paragraph (2) there shall be substituted—

“(2) Where any class mentioned in sub-paragraph (1) above is defined by reference to employment by or office with a particular body, this paragraph applies to the settled property only if—

- (a) the class comprises all or most of the persons employed by or holding office with the body concerned ; or
- (b) the trusts on which the settled property is held are those of a profit sharing scheme approved in accordance with Schedule 9 to the Finance Act 1978.”

(6) In paragraph 17A(1) of that Schedule for the words "to (c) " there shall be substituted the words " and (b) " .

(7) This section shall have effect in relation to events after 8th March 1982.

## **99 Close companies**

(1) Paragraph 24 of Schedule 5 to the Finance Act 1975 shall have effect with the following amendments in relation to events after 8th March 1982.

(2) In sub-paragraph (2), for paragraph (b) there shall be substituted—

“(b) if no qualifying interest in possession subsists in the settled property, Chapter II of Part IV of the Finance Act 1982 shall have effect as if on the making of the transfer the trustee had made a disposition as a result of which the value of the settled property had been reduced by an amount equal to the part so apportioned less the amount specified in sub-paragraph (3) below”;

and for the words " an interest in possession " in each place where they occur there shall be substituted the words " a qualifying interest in possession " .

(3) In sub-paragraph (5) for the words from " as " to " beneficially " there shall be substituted the words " and of Chapter II of Part IV of the Finance Act 1982 as being the persons " .

(4) After sub-paragraph (5) there shall be inserted—

“(5A) Where—

- (a) the participators mentioned in sub-paragraph (5) above include the trustees of a settlement, and
- (b) a person is beneficially entitled to an interest in possession in the whole or part of the settled property by virtue of which the trustees are participators,

that person shall be treated for the said purposes as beneficially entitled to the whole or a corresponding part of the interest to which the trustees would otherwise be treated as entitled under that sub-paragraph.”

(5) In sub-paragraph (6), at the end, there shall be added the words " and "qualifying interest in possession " has the meaning given by section 103 of the Finance Act 1982."

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## **100 Apsley House**

The enactments relating to capital transfer tax shall not apply in respect of the rights conferred by section 3 of the Wellington Museum Act 1947.

## **CHAPTER II**

### SETTLEMENTS WITHOUT INTERESTS IN POSSESSION

#### *Preliminary*

## **101 Preliminary**

This Chapter, which supersedes paragraphs 6 to 14 of Schedule 5 to the Finance Act 1975, shall have effect in relation to events after 8th March 1982, but subject, in the case of any settlement which commenced before 27th March 1974, to the provisions of Schedule 15 to this Act.

#### *Principal definitions*

## **102 Relevant property**

- (1) In this Chapter " relevant property " means settled property in which no qualifying interest in possession subsists, other than—
- (a) property held for charitable purposes only, whether for a limited time or otherwise ;
  - (b) property to which section 114 below applies ;
  - (c) property to which paragraph 2 of Schedule 16 to this Act applies;
  - (d) property which is part of or held for the purposes of a fund or scheme to which paragraph 16 of Schedule 5 to the Finance Act 1975 applies (superannuation schemes);
  - (e) property to which paragraph 17 of that Schedule applies (trusts for employees etc. and newspaper trusts);
  - (f) property which is held on trusts to the like effect as those specified in section 33(1)(ii) of the Trustee Act 1925 (protective trusts) and which became held on those trusts on the failure or determination before 12th April 1978 of trusts to the like effect as those specified in section 33(1)(i);
  - (g) property within paragraph 19 of Schedule 5 to the Finance Act 1975 (trusts for disabled persons), as it applies to property which was transferred into settlement before 10th March 1981 ;
  - (h) property comprised in a trade or professional compensation fund; and
  - (i) excluded property.
- (2) The reference in subsection (1)(d) above to property which is part of or held for the purposes of a fund or scheme does not include a reference to a benefit which, having become payable under the fund or scheme, becomes comprised in a settlement.



### **103 Qualifying interest in possession**

- (1) In this Chapter " qualifying interest in possession " means an interest in possession to which an individual, or where subsection (2) below applies a company, is beneficially entitled.
- (2) This subsection applies where—
  - (a) the business of the company consists wholly or mainly in the acquisition of interests in settled property, and
  - (b) the company has acquired the interest for full consideration in money or money's worth from an individual who was beneficially entitled to it.
- (3) Where the acquisition mentioned in paragraph (b) of subsection (2) above was before 14th March 1975—
  - (a) the condition set out in paragraph (a) of that subsection shall be treated as satisfied if the business of the company was at the time of the acquisition such as is described in that paragraph, and
  - (b) that condition need not be satisfied if the company is authorised to carry on long-term business under section 3 or 4 of the Insurance Companies Act 1981.

### **104 Commencement of settlement**

In this Chapter references to the commencement of a settlement are references to the time when property first becomes comprised in it.

### **105 Ten-year anniversary**

- (1) In this Chapter " ten-year anniversary " in relation to a settlement means the tenth anniversary of the date on which the settlement commenced and subsequent anniversaries at ten-yearly intervals, but subject to subsections (2) to (4) below.
- (2) The ten-year anniversaries of a settlement treated as made under section 120 below shall be the dates that are (or would but for that section be) the ten-year anniversaries of the settlement first mentioned in that section.
- (3) No date falling before 1st April 1983 shall be a ten-year anniversary.
- (4) Where—
  - (a) the first ten-year anniversary of a settlement would apart from this subsection fall during the year ending with 31st March 1984, and
  - (b) during that year an event occurs in respect of the settlement which could not have occurred except as the result of some proceedings before a court, and
  - (c) the event is one on which tax is (or, apart from Part II of Schedule 15 to this Act, would be) chargeable under this Chapter,the first ten-year anniversary shall be taken to be 1st April 1984 (but without affecting the dates of later anniversaries).

### **106 Related settlements**

- (1) For the purposes of this Chapter two settlements are related if and only if—
  - (a) the settlor is the same in each case, and
  - (b) they commenced on the same day,

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but subject to subsection (2) below.

- (2) Two settlements are not related for the purposes of this Chapter if all the property comprised in one or both of them was immediately after the settlement commenced held for charitable purposes only without limit of time (defined by a date or otherwise).

*Principal charge to tax*

**107 Charge at ten-year anniversary**

Where immediately before a ten-year anniversary all or any part of the property comprised in a settlement is relevant property, tax shall be charged at the rate applicable under sections 109 and 110 below on the value of the property or part at that time.

**108 Charge at other times**

- (1) Subject to the following provisions of this section, there shall be a charge to tax under this section—
- (a) where the property comprised in a settlement or any part of that property ceases to be relevant property (whether because it ceases to be comprised in the settlement or otherwise); and
  - (b) in a case in which paragraph (a) above does not apply, where the trustees of the settlement make a disposition, as a result of which the value of relevant property comprised in the settlement is less than it would be but for the disposition.
- (2) The amount on which tax is charged under this section shall be—
- (a) the amount by which the value of relevant property comprised in the settlement is less immediately after the event in question than it would be but for the event, or
  - (b) where the tax payable is paid out of relevant property comprised in the settlement immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.
- (3) The rate at which tax is charged under this section shall be the rate applicable under section 111 or 112 below.
- (4) Subsection (1) above does not apply if the event in question occurs in a quarter beginning with the day on which the settlement commenced or with a ten-year anniversary.
- (5) Tax shall not be charged under this section in respect of—
- (a) a payment of costs or expenses (so far as they are fairly attributable to relevant property), or
  - (b) a payment which is (or will be) income of any person for any of the purposes of income tax or would for any of those purposes be income of a person not resident in the United Kingdom if he were so resident,
- or in respect of a liability to make such a payment.

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- (6) Tax shall not be charged under this section by virtue of subsection (1)(b) above if the disposition is such that, were the trustees beneficially entitled to the settled property, section 20(4) of the Finance Act 1975 (disposition not intended to confer gratuitous benefit) or section 97 of the Finance Act 1981 (grant of tenancies of agricultural property) would prevent the disposition from being a transfer of value.
- (7) Tax shall not be charged under this section by reason only that property comprised in a settlement ceases to be situated in the United Kingdom and thereby becomes excluded property by virtue of paragraph 2(1)(a) of Schedule 5 to the Finance Act 1975.
- (8) If the settlor of a settlement was not domiciled in the United Kingdom when the settlement was made, tax shall not be charged under this section by reason only that property comprised in the settlement is invested in securities issued as mentioned in paragraph 3 of Schedule 7 to the Finance Act 1975 and thereby becomes excluded property by virtue of sub-paragraph (2) of that paragraph; and section 45 of that Act (domicile) shall not apply to determine the settlor's domicile for the purposes of this subsection in relation to property which became comprised in a settlement before 10th December 1974.
- (9) For the purposes of this section trustees shall be treated as making a disposition if they omit to exercise a right (unless it is shown that the omission was not deliberate) and the disposition shall be treated as made at the time or latest time when they could have exercised the right.

#### *Rates of principal charge*

### **109 Rate of ten-yearly charge**

- (1) Subject to subsection (2) below, the rate at which tax is charged under section 107 above at any time shall be three tenths of the effective rate (that is to say the rate found by expressing the tax chargeable as a percentage of the amount on which it is charged) at which tax would be charged on the value transferred by a chargeable transfer of the description specified in subsection (3) below.
- (2) Where the whole or part of the value mentioned in section 107 above is attributable to property which was not relevant property, or was not comprised in the settlement, throughout the period of ten years ending immediately before the ten-year anniversary concerned, the rate at which tax is charged on that value or part shall be reduced by one-fortieth for each of the successive quarters in that period which expired before the property became, or last became, relevant property comprised in the settlement.
- (3) The chargeable transfer postulated in subsection (1) above is one—
  - (a) the value transferred by which is equal to an amount determined in accordance with subsection (4) below ;
  - (b) which is made immediately before the ten-year anniversary concerned by a transferor who has in the preceding ten years made chargeable transfers having an aggregate value determined in accordance with subsection (5) below; and
  - (c) for which the appropriate Table of rates is the second Table set out in section 37(3) of the Finance Act 1975.
- (4) The amount referred to in subsection (3)(a) above is equal to the aggregate of—
  - (a) the value on which tax is charged under section 107 above;

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- (b) the value immediately after it became comprised in the settlement of any property which was not then relevant property and has not subsequently become relevant property while remaining comprised in the settlement; and
  - (c) the value, immediately after a related settlement commenced, of the property then comprised in it.
- (5) The aggregate value referred to in subsection (3)(b) above is equal to the aggregate of—
- (a) the values transferred by any chargeable transfers made by the settlor in the period of ten years ending with the day on which the settlement commenced, disregarding transfers made on that day, and
  - (b) the amounts on which any charges to tax were imposed under section 108 above in respect of the settlement in the ten years before the anniversary concerned;
- but subject to section 110 below.

#### **110 Added property etc.**

- (1) This subsection applies where, after the settlement commenced and after 8th March 1982, but before the anniversary concerned, the settlor made a chargeable transfer as a result of which the value of the property comprised in the settlement was increased.
- (2) For the purposes of subsection (1) above, it is immaterial whether the amount of the property so comprised was increased as a result of the transfer, but a transfer as a result of which the value increased but the amount did not shall be disregarded if it is shown that the transfer—
- (a) was not primarily intended to increase the value, and
  - (b) did not result in the value being greater immediately after the transfer by an amount exceeding five per cent, of the value immediately before the transfer.
- (3) Where subsection (1) above applies, section 109(5)(a) above shall have effect as if it referred to the greater of—
- (a) the aggregate of the values there specified, and
  - (b) the aggregate of the values transferred by any chargeable transfers made by the settlor in the period of ten years ending with the day on which the chargeable transfer falling within subsection (1) above was made, disregarding transfers made on that day and excluding the values mentioned in subsection (4) below ;
- and where the settlor made two or more chargeable transfers falling within subsection (1) above, paragraph (b) above shall be taken to refer to the transfer in relation to which the aggregate there mentioned is the greatest.
- (4) The values are—
- (a) any value attributable to property whose value is taken into account in determining the amount mentioned in section 109(4) above ; and
  - (b) any value attributable to property in respect of which a charge to tax has been made under section 108 above and by reference to which an amount mentioned in section 109(5)(b) above is determined.
- (5) Where the property comprised in a settlement immediately before the ten-year anniversary concerned, or any part of that property, had on any occasion within the preceding ten years ceased to be relevant property then, if on that occasion tax was

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charged in respect of the settlement under section 108 above, the aggregate calculated under section 109(5) above shall be reduced by an amount equal to the lesser of—

- (a) the amount on which tax was charged under section 108 (or so much of that amount as is attributable to the part in question), and
- (b) the value on which tax is charged under section 107 above (or so much of that value as is attributable to the part in question);

and if there were two or more such occasions relating to the property or the same part of it, this subsection shall have effect in relation to each of them.

- (6) References in subsection (5) above to the property comprised in a settlement immediately before an anniversary shall, if part only of the settled property was then relevant property, be construed as references to that part.
- (7) In relation to the first ten-year anniversary of a settlement which commenced after 26th March 1974 and before 9th March 1982, section 109(5) above shall have effect with the addition after paragraph (b) of the words “and
  - (c) the amounts of any distribution payments (determined in accordance with the rules applicable before 9th March 1982 under paragraph 11 of Schedule 5 to the Finance Act 1975) made out of the settled property after 26th March 1974 but before 9th March 1982 and within the period of ten years before the anniversary concerned”.

#### **111 Rate before first ten-year anniversary**

- (1) The rate at which tax is charged under section 108 above on an occasion preceding the first ten-year anniversary after the settlement's commencement shall be the appropriate fraction of the effective rate at which tax would be charged on the value transferred by a chargeable transfer of the description specified in subsection (4) below.
- (2) For the purposes of this section the appropriate fraction is three tenths multiplied by so many fortieths as there are complete successive quarters in the period beginning with the day on which the settlement commenced and ending with the day before the occasion of the charge, but subject to subsection (3) below.
- (3) Where the whole or part of the amount on which tax is charged is attributable to property which was not relevant property, or was not comprised in the settlement, throughout the period referred to in subsection (2) above, then in determining the appropriate fraction in relation to that amount or part—
  - (a) no quarter which expired before the day on which the property became, or last became, relevant property comprised in the settlement shall be counted, but
  - (b) if that day fell in the same quarter as that in which the period ends, that quarter shall be counted whether complete or not.
- (4) The chargeable transfer postulated in subsection (1) above is one—
  - (a) the value transferred by which is equal to an amount determined in accordance with subsection (5) below ;
  - (b) which is made at the time of the charge to tax under section 108 by a transferor who has in the period of ten years ending with the day of the occasion of the charge made chargeable transfers having an aggregate value equal to that of any chargeable transfers made by the settlor in the period of ten years ending with the day on which the settlement commenced, disregarding transfers made on that day ; and

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- (c) for which the appropriate Table of rates is the second Table set out in section 37(3) of the Finance Act 1975.
- (5) The amount referred to in subsection (4)(a) above is equal to the aggregate of—
- (a) the value, immediately after the settlement commenced, of the property then comprised in it;
  - (b) the value, immediately after a related settlement commenced, of the property then comprised in it; and
  - (c) the value, immediately after it became comprised in the settlement, of any property which became so comprised after the settlement commenced and before the occasion of the charge under section 108 (whether or not it has remained so comprised).

## **112 Rate between ten-year anniversaries**

- (1) Subject to subsection (2) below, the rate at which tax is charged under section 108 above on an occasion following one or more ten-year anniversaries after the settlement's commencement shall be the appropriate fraction of the rate at which it was last charged under section 107 (or would have been charged apart from section 109(2)).
- (2) If at any time before the occasion of the charge under section 108 and on or after the most recent ten-year anniversary—
- (a) property has become comprised in the settlement; or
  - (b) property which was comprised in the settlement immediately before the anniversary, but was not then relevant property, has become relevant property,
- then, whether or not the property has remained comprised in the settlement or has remained relevant property, the rate at which tax is charged under section 108 shall be the appropriate fraction of the rate at which it would last have been charged under section 107 (apart from section 109(2)) if immediately before that anniversary the property had been relevant property comprised in the settlement with a value determined in accordance with subsection (3) below.
- (3) In the case of property within subsection (2) (a) above which either—
- (a) was relevant property immediately after it became prised in the settlement; or
  - (b) was not then relevant property and has not subsequently become relevant property while remaining comprised in the settlement,
- the value to be attributed to it for the purposes of subsection (2) above is its value immediately after it became comprised in the settlement; and in any other case the value to be so attributed is the value of the property when it became (or last became) relevant property.
- (4) For the purposes of this section the appropriate fraction is so many fortieths as there are complete successive quarters in the period beginning with the most recent ten-year anniversary and ending with the day before the occasion of the charge; but subsection (3) of section 111 above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) of that section.

*Special cases*

**113 Property leaving temporary charitable trusts**

- (1) This section applies to settled property held for charitable purposes only until the end of a period (whether defined by a date or in some other way).
- (2) Subject to subsections (3) and (4) below, there shall be a charge to tax under this section—
  - (a) where settled property ceases to be property to which this section applies, otherwise than by virtue of an application for charitable purposes, and
  - (b) in a case in which paragraph (a) above does not apply, where the trustees make a disposition (otherwise than by an application of property for charitable purposes) as a result of which the value of settled property to which this section applies is less than it would be but for the disposition.
- (3) Tax shall not be charged under this section in respect of—
  - (a) a payment of costs or expenses (so far as they are fairly attributable to property to which this section applies), or
  - (b) a payment which is (or will be) income of any person for any of the purposes of income tax or would for any of those purposes be income of a person not resident in the United Kingdom if he were so resident,or in respect of a liability to make such a payment.
- (4) Tax shall not be charged under this section by virtue of subsection (2)(b) above if the disposition is such that, were the trustees beneficially entitled to the settled property, section 20(4) of the Finance Act 1975 (disposition not intended to confer gratuitous benefit) or section 97 of the Finance Act 1981 (grant of tenancies of agricultural property) would prevent the disposition from being a transfer of value.
- (5) The amount on which tax is charged under this section shall be—
  - (a) the amount by which the value of property which is comprised in the settlement and to which this section applies is less immediately after the event giving rise to the charge than it would be but for the event, or
  - (b) where the tax payable is paid out of settled property to which this section applies immediately after the event, the amount which, after deducting the tax, is equal to the amount on which tax would be charged by virtue of paragraph (a) above.
- (6) The rate at which tax is charged under this section shall be the aggregate of the following percentages—
  - (a) 025 per cent, for each of the first forty complete successive quarters in the relevant period,
  - (b) 0-20 per cent, for each of the next forty,
  - (c) 015 per cent, for each of the next forty,
  - (d) 010 per cent, for each of the next forty, and
  - (e) 005 per cent, for each of the next forty.
- (7) In subsection (6) above " the relevant period " means the period beginning with the later of—
  - (a) the day on which the property in respect of which tax is chargeable became (or last became) property to which this section applies, and

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- (b) 13th March 1975,  
and ending with the day before the event giving rise to the charge.
- (8) Where the property in respect of which tax is chargeable—
  - (a) was relevant property immediately before 10th December 1981, and
  - (b) became (or last became) property to which this section applies on or after that day and before 9th March 1982,
 subsection (7) above shall have effect as if the day referred to in paragraph (a) of that subsection were the day on which the property became (or last became) relevant property before 10th December 1981.
- (9) For the purposes of this section trustees shall be treated as making a disposition if they omit to exercise a right (unless it is shown that the omission was not deliberate) and the disposition shall be treated as made at the time or latest time when they could have exercised the right.

#### **114 Accumulation and maintenance trusts**

- (1) Subject to subsection (2) below, this section applies to settled property if—
  - (a) one or more persons (in this section referred to as beneficiaries) will, on or before attaining a specified age not exceeding twenty-five, become beneficially entitled to it or to an interest in possession in it, and
  - (b) no interest in possession subsists in it and the income from it is to be accumulated so far as not applied for the maintenance, education or benefit of a beneficiary.
- (2) This section does not apply to settled property unless either—
  - (a) not more than twenty-five years have elapsed since the commencement of the settlement or, if it was later, since the time (or latest time) when the conditions stated in paragraphs (a) and (b) of subsection (1) above became satisfied with respect to the property, or
  - (b) all the persons who are or have been beneficiaries are or were either—
    - (i) grandchildren of a common grandparent, or
    - (ii) children, widows or widowers of such grandchildren who were themselves beneficiaries but died before the time when, had they survived, they would have become entitled as mentioned in subsection (1)(a) above.
- (3) Subject to subsections (4) and (5) below, there shall be a charge to tax under this section—
  - (a) where settled property ceases to be property to which this section applies, and
  - (b) in a case in which paragraph (a) above does not apply, where the trustees make a disposition as a result of which the value of settled property to which this section applies is less than it would be but for the disposition.
- (4) Tax shall not be charged under this section—
  - (a) on a beneficiary's becoming beneficially entitled to, or to an interest in possession in, settled property on or before attaining the specified age, or
  - (b) on the death of a beneficiary before attaining the specified age.
- (5) Subsections (3) to (7) and (9) of section 113 above shall apply for the purposes of this section as they apply for the purposes of that section (with the substitution



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of a reference to subsection (3)(b) above for the reference in section 113(4) to section 113(2)(b)).

- (6) Where the conditions stated in paragraphs (a) and (b) of subsection (1) above were satisfied on 15th April 1976 with respect to property comprised in a settlement which commenced before that day, subsection (2)(a) above shall have effect with the substitution of a reference to that day for the reference to the commencement of the settlement, and the condition stated in subsection (2)(b) above shall be treated as satisfied if—
- (a) it is satisfied in respect of the period beginning with 15th April 1976, or
  - (b) it is satisfied in respect of the period beginning with 1st April 1977 and either there was no beneficiary living on 15th April 1976 or the beneficiaries on 1st April 1977 included a living beneficiary, or
  - (c) there is no power under the terms of the settlement whereby it could have become satisfied in respect of the period beginning with 1st April 1977, and the trusts of the settlement have not been varied at any time after 15th April 1976.
- (7) In subsection (1) above " persons " includes unborn persons ; but the conditions stated in that subsection shall be treated as not satisfied unless there is or has been a living beneficiary.
- (8) For the purposes of this section a person's children shall be taken to include his illegitimate children, his adopted children and his stepchildren.

## **115 Property becoming subject to employee trusts**

- (1) Tax shall not be charged under section 108 above in respect of shares in or securities of a company which cease to be relevant property on becoming held on trusts of the description specified in paragraph 17(1) of Schedule 5 to the Finance Act 1975 if the conditions in subsection (2) below are satisfied.
- (2) The conditions referred to in subsection (1) above are—
- (a) that the persons for whose benefit the trusts permit the settled property to be applied include all or most of the persons employed by or holding office with the company;
  - (b) that, at the date when the shares or securities cease to be relevant property or at a subsequent date not more than one year thereafter, both the conditions mentioned in subsection (2) of section 67 of the Finance Act 1978 (read with subsections (3) and (6)) are satisfied, without taking account of shares or securities held on other trusts; and
  - (c) that the trusts do not permit any of the settled property to be applied at any time (whether during any such period as is referred to in the said paragraph 17(1) or later) for the benefit of any of the persons mentioned in subsection (4) of the said section 67 (read with subsections (5) and (6)) or for the benefit of the settlor or of any person connected with him.
- (3) In its application for the purposes of subsection (2)(c) above, section 67(4) of the Finance Act 1978 shall be construed as if—
- (a) references to section 67(1) were references to subsection (2) above; and
  - (b) references to the time of the transfer of value were references to the time when the property ceases to be relevant property.

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## **116 Property leaving employee trusts and newspaper trusts**

- (1) This section applies to settled property to which paragraph 17 of Schedule 5 to the Finance Act 1975 applies if no qualifying interest in possession subsists in it.
- (2) Subject to subsections (4) and (5) below, there shall be a charge to tax under this section—
  - (a) where settled property ceases to be property to which this section applies, otherwise than by virtue of a payment out of the settled property, and
  - (b) where a payment is made out of settled property to which this section applies for the benefit of a person within subsection (3) below, or a person connected with such a person, and
  - (c) in a case in which paragraphs (a) and (b) above do not apply, where the trustees make a disposition (otherwise than by way of a payment out of the settled property) as a result of which the value of settled property to which this section applies is less than it would be but for the disposition.
- (3) A person is within this subsection if—
  - (a) he has directly or indirectly provided any of the settled property otherwise than by additions not exceeding in value £1,000 in any one year; or
  - (b) in a case where the employment in question is employment by a close company, he is a participator in relation to that company and either—
    - (i) is beneficially entitled to, or to rights entitling him to acquire, not less than 5 per cent, of, or of any class of the shares comprised in, its issued share capital, or
    - (ii) would, on a winding-up of the company, be entitled to not less than 5 per cent, of its assets ; or
  - (c) he has acquired an interest in the settled property for a consideration in money or money's worth.
- (4) If the trusts are those of a profit sharing scheme approved in accordance with Schedule 9 to the Finance Act 1978, tax shall not be chargeable under this section by virtue of subsection (3)(b) above on an appropriation of shares in pursuance of the scheme.
- (5) Subsections (3) to (9) of section 113 above shall apply for the purposes of this section as they apply for the purposes of that section (with the substitution of a reference to subsection (2)(c) above for the reference in section 113(4) to section 113(2)(b)).
- (6) In this section—
  - (a) "close company" and "participator" have the same meanings as in section 39 of the Finance Act 1975; and
  - (b) "year" means the period beginning with 26th March 1974 and ending with 5th April 1974, and any subsequent period of twelve months ending with 5th April;

and a person shall be treated for the purposes of this section as acquiring an interest for a consideration in money or money's worth if he becomes entitled to it as a result of transactions which include a disposition for such consideration (whether to him or another) of that interest or of other property.

## **117 Maintenance funds for historic buildings**

Schedule 16 to this Act shall have effect.

## **118 Protective trusts and trusts for disabled persons**

- (1) This section applies to—
  - (a) settled property which is held on trusts to the like effect as those specified in section 33(1)(ii) of the Trustee Act 1925 and which became held on those trusts on the failure or determination before 12th April 1978 of trusts to the like effect as those specified in section 33(1)(i). and
  - (b) settled property within paragraph 19 of Schedule 5 to the Finance Act 1975, as it applies to property which was transferred into settlement before 10th March 1981.
- (2) Subject to subsection (3) below, there shall be a charge to tax under this section—
  - (a) where settled property ceases to be property to which this section applies, otherwise than by virtue of a payment out of the settled property for the benefit of the relevant beneficiary, and
  - (b) in a case in which paragraph (a) above does not apply, where the trustees make a disposition (otherwise than by way of such a payment) as a result of which the value of settled property to which this section applies is less than it would be but for the disposition.
- (3) Subsections (3) to (9) of section 113 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (4) In this section " the relevant beneficiary " means—
  - (a) where this section applies by virtue of subsection (1)(a) above, the principal beneficiary within the meaning of section 33 of the Trustee Act 1925 :
  - (b) where this section applies by virtue of subsection (1)(b) above, the person mentioned in paragraph 19(1) of Schedule 5 to the Finance Act 1975.

## **119 Property becoming held for charitable purposes or by exempt bodies**

- (1) Subject to the following provisions of this section, tax shall not be charged under this Chapter in respect of property which ceases to be relevant property, or ceases to be property to which section 113, 114, 116 or 118 above or paragraph 2 of Schedule 16 to this Act applies, on becoming—
  - (a) property held for charitable purposes only without limit of time (defined by a date or otherwise);
  - (b) the property of a political party qualifying for exemption under paragraph 11 of Schedule 6 to the Finance Act 1975;
  - (c) the property of a body mentioned in paragraph 12 of that Schedule (national purposes etc.); or
  - (d) the property of a body not established or conducted for profit.
- (2) Subsection (1)(d) above shall not apply unless the Treasury so direct, whether before or after the time when the property becomes the property of the body in question, and the property is within sub-paragraph (2) of paragraph 13 of Schedule 6 to the Finance Act 1975; and sub-paragraphs (3) to (8) of that paragraph shall apply for the purposes of this subsection as they apply for the purposes of that paragraph.
- (3) If the amount on which tax would be charged apart from this section in respect of any property exceeds the value of the property immediately after it becomes property of a description specified in paragraphs (a) to (d) of subsection (1) above (less the amount

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of any consideration for its transfer received by the trustees), that subsection shall not apply but the amount on which tax is charged shall be equal to the excess.

(4) The reference in subsection (3) above to the amount on which tax would be charged is a reference to the amount on which it would be charged—

- (a) assuming (if it is not in fact so) that the tax is not paid out of settled property, and
- (b) apart from Schedule 10 to the Finance Act 1976 (business property) and Schedule 14 to the Finance Act 1981 (agricultural property);

and the reference in that subsection to the amount on which tax is charged is a reference to the amount on which it would be charged on that assumption and apart from those Schedules.

(5) Subsection (1) above shall not apply in relation to any property if the disposition by which it becomes property of the relevant description is defeasible; but for this purpose a disposition which has not been defeated at a time twelve months after the property concerned becomes property of the relevant description and is not defeasible after that time shall be treated as not being defeasible, whether or not it was capable of being defeated before that time.

(6) Subsection (1) above shall not apply in relation to any property if it or any part of it may become applicable for purposes other than charitable purposes or purposes of a body mentioned in subsection (1)(b), (c) or (d) above.

(7) Subsection (1) above shall not apply in relation to any property if, at or before the time when it becomes property of the relevant description, an interest under the settlement is or has been acquired for a consideration in money or money's worth by an exempt body otherwise than from a charity or a body mentioned in subsection (1)(b) or (c) above.

(8) In subsection (7) above " exempt body " means a charity or a body mentioned in subsection (1)(b), (c) or (d) above ; and for the purposes of subsection (7) above a body shall be treated as acquiring an interest for a consideration in money or money's worth if it becomes entitled to the interest as a result of transactions which include a disposition for such consideration (whether to that body or to another person) of that interest or of other property.

### *Miscellaneous*

#### **120 Initial interest of settlor or spouse**

(1) Where a settlor or his spouse is beneficially entitled to an interest in possession in property immediately after it becomes comprised in the settlement, the property shall for the purposes of this Chapter be treated as not having become comprised in the settlement on that occasion ; but when the property or any part of it becomes held on trusts under which neither of those persons is beneficially entitled to an interest in possession, the property or part shall for those purposes be treated as becoming comprised in a separate settlement made by that one of them who ceased (or last ceased) to be beneficially entitled to an interest in possession in it.

(2) References in subsection (1) above to the spouse of a settlor include references to the widow or widower of a settlor.

- (3) This section applies whether the occasion first referred to in subsection (1) above occurred before or after the passing of this Act, but not if it occurred before 27th March 1974.

### **121 Property moving between settlements**

- (1) Where property which ceases to be comprised in one settlement becomes comprised in another then, unless in the meantime any person becomes beneficially entitled to the property (and not merely to an interest in possession in the property), it shall for the purposes of this Chapter be treated as remaining comprised in the first settlement.
- (2) Subsection (1) above applies only if the date on which property ceases to be comprised in a settlement falls after 9th December 1981; but where property ceased to be comprised in one settlement before 10th December 1981 and after 26th March 1974 and, by the same disposition, became comprised in another settlement, it shall for the purposes of this Chapter be treated as remaining comprised in the first settlement.

### **122 Excluded property**

- (1) For the purposes of this Chapter property to which section 120 or 121 above applies shall not be taken to be excluded property by virtue of paragraph 2(1)(a) of Schedule 5 to the Finance Act 1975 unless the condition in subsection (3) below is satisfied (in addition to the conditions in that paragraph that the property is situated outside the United Kingdom and that the settlor was not domiciled there when the settlement was made).
- (2) Section 108(8) above shall not have effect in relation to property to which section 120 or 121 above applies unless the condition in subsection (3) below is satisfied (in addition to the condition in section 108(8) that the settlor was not domiciled in the United Kingdom when the settlement was made).
- (3) The condition referred to in subsections (1) and (2) above is—
- (a) in the case of property to which section 120 above applies, that the person who is the settlor in relation to the settlement first mentioned in that section, and
  - (b) in the case of property to which subsection (1) or (2) of section 121 above applies, that the person who is the settlor in relation to the second of the settlements mentioned in the subsection concerned,
- was not domiciled in the United Kingdom when that settlement was made.
- (4) In determining for the purposes of section 108(8) whether the condition in subsection (3) above is satisfied in relation to property which became comprised in the settlement before 10th December 1974, section 45 of the Finance Act 1975 shall be disregarded.

### **123 Property becoming settled on a death**

Property which becomes comprised in a settlement in pursuance of a will or intestacy shall for the purposes of this Chapter be taken to have become comprised in it on the death of the testator or intestate (whether it occurred before or after the passing of this Act).

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#### **124 Income applied for charitable purposes**

For the purposes of this Chapter, where the trusts on which settled property is held require part of the income of the property to be applied for charitable purposes, a corresponding part of the settled property shall be regarded as held for charitable purposes.

#### **125 Annual charges under Finance Act 1975**

No charge to tax shall be imposed under paragraph 12(2) of Schedule 5 to the Finance Act 1975 by reference to any year ending after 31st December 1981 ; and any tax charged under that provision and not already allowed as a credit under paragraph 12(3) of that Schedule or under this section shall be allowed as a credit against tax chargeable under this Chapter in respect of the settled property or part concerned.

#### **126 Minor interpretative provisions**

- (1) In this Chapter, unless the context otherwise requires—
  - " payment" includes a transfer of assets other than money; and
  - " quarter " means a period of three months.
- (2) In this Chapter " trade or professional compensation fund " means a fund which is maintained or administered by a representative association of persons carrying on a trade or profession and the only or main objects of which are compensation for or relief of losses or hardship that, through the default or alleged default of persons carrying on the trade or profession or of their agents or servants, are incurred or likely to be incurred by others.

#### **127 Amendments**

Schedule 17 to this Act (which makes amendments relating to the preceding provisions of this Chapter) shall have effect.