

*Status: Point in time view as at 16/07/1992. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Income and Corporation Taxes Act 1988, PART XV is up to date with all changes known to be in force on or before 27 June 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)*



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART XV

#### SETTLEMENTS

##### Modifications etc. (not altering text)

- C1** See also—1970(M) s.31(3)—*appeals on application of ss.660 to 685 to go to Special Commissioners*. 1974 s.43—*development gains accruing to trustees to be charged at basic plus additional rates*. 1988 s.339(6), (7)—*treatment for corporation tax of covenanted donation to charity*. 1988 s.762—*offshore income gains*. 1989 s.110—*residence of trustees*.

VALID FROM 01/05/1995

#### [<sup>F1</sup>CHAPTER IA

##### LIABILITY OF SETTLOR

##### Textual Amendments

- F1** Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 17 para. 1](#)

##### Modifications etc. (not altering text)

- C2** Pt. 15 Ch. 1A excluded (with effect in accordance with s. 44(6) of the affecting Act) by [Finance Act 2000 \(c. 17\)](#), [s. 44\(1\)](#)
- C3** Pt. 15 Ch. 1A modified (with effect in accordance with s. 45(3) of the modifying Act) by [Finance Act 2000 \(c. 17\)](#), [s. 45\(1\)](#)

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### *Main provisions*

#### **660A Income arising under settlement where settlor retains an interest.**

- (1) Income arising under a settlement during the life of the settlor shall be treated for all purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person unless the income arises from property in which the settlor has no interest.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in property if that property or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever.
- (3) The reference in subsection (2) above to the spouse of the settlor does not include—
  - (a) a person to whom the settlor is not for the time being married but may later marry, or
  - (b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or
  - (c) the widow or widower of the settlor.
- (4) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as none of that property, and no derived property, can become payable or applicable as mentioned in that subsection except in the event of—
  - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or
  - (b) an assignment of or charge on the property or any derived property being made or given by some such person, or
  - (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
  - (d) the death of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (5) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as some person is alive and under the age of 25 during whose life that property, or any derived property, cannot become payable or applicable as mentioned in that subsection except in the event of that person becoming bankrupt or assigning or charging his interest in the property or any derived property.
- (6) The reference in subsection (1) above to a settlement does not include an outright gift by one spouse to the other of property from which income arises, unless—
  - (a) the gift does not carry a right to the whole of that income, or
  - (b) the property given is wholly or substantially a right to income.

For this purpose a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.

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- (7) The reference in subsection (1) above to a settlement does not include an irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).
- (8) Subsection (1) above does not apply to income arising under a settlement made by one party to a marriage by way of provision for the other—
  - (a) after the dissolution or annulment of the marriage, or
  - (b) while they are separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent,being income payable to or applicable for the benefit of that other party.
- (9) Subsection (1) above does not apply to income consisting of—
  - (a) annual payments made by an individual for bona fide commercial reasons in connection with his trade, profession or vocation; or
  - (b) covenanted payments to charity (as defined by section 347A(7)).
- (10) In this section “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.

#### **660B Payments to unmarried minor children of settlor.**

- (1) Income arising under a settlement which does not fall to be treated as income of the settlor under section 660A but which during the life of the settlor is paid to or for the benefit of an unmarried minor child of the settlor in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.
- (2) Where income arising under a settlement is retained or accumulated by the trustees, any payment whatsoever made thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of an unmarried minor child of the settlor shall be deemed for the purposes of subsection (1) above to be a payment of income if or to the extent that there is available retained or accumulated income.
- (3) There shall be taken to be available retained or accumulated income at any time when the aggregate amount of the income which has arisen under the settlement since it was made or entered into exceeds the aggregate amount of income so arising which has been—
  - (a) treated as income of the settlor or a beneficiary, or
  - (b) paid (whether as income or capital) to or for the benefit of a beneficiary other than an unmarried minor child of the settlor, or
  - (c) applied in defraying expenses of the trustees which were properly chargeable to income (or would have been so chargeable but for any express provisions of the trust).
- (4) Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a trustee holding them for a person who would be absolutely entitled as against the trustee but for being a minor, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this section be deemed to be paid to that person.

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(5) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for a year of assessment in which the aggregate amount paid to or for the benefit of that child which but for this subsection would be so treated does not exceed £100.

(6) In this section—

- (a) “child” includes a stepchild and an illegitimate child;
- (b) “minor” means a person under the age of 18 years, and “minor child” shall be construed accordingly; and
- (c) references to payments include payments in money or money’s worth.

#### **660C Nature of charge on settlor.**

- (1) Tax chargeable by virtue of this Chapter shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of a settlor chargeable by virtue of this Chapter the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of this Chapter had been received by him.
- (3) Subject to section 833(3), income which is treated by virtue of this Chapter as income of a settlor shall be deemed for the purposes of this section to be the highest part of his income.

#### **660D Adjustments between settlor and trustees, &c.**

- (1) Where by virtue of this Chapter income tax becomes chargeable on and is paid by a settlor, he is entitled—
  - (a) to recover from any trustee, or any other person to whom the income is payable by virtue or in consequence of the settlement, the amount of the tax so paid; and
  - (b) for that purpose to require an officer of the Board to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

A certificate so furnished is conclusive evidence of the facts stated therein.

- (2) Where a person obtains, in respect of an allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for this Chapter, have been entitled, an amount equal to the excess shall be paid by him to the trustee, or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of a payment or as to an apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision shall be final.

- (3) Nothing in this Chapter shall be construed as excluding a charge to tax on the trustees as persons by whom any income is received.

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### *Supplementary provisions]*

#### **660E Application to settlements by two or more settlors.**

- (1) In the case of a settlement where there is more than one settlor, this Chapter shall have effect in relation to each settlor as if he were the only settlor, as follows.
- (2) In this Chapter, in relation to a settlor—
  - (a) references to the property comprised in a settlement include only property originating from that settlor, and
  - (b) references to income arising under the settlement include only income originating from that settlor.
- (3) For the purposes of section 660B there shall be taken into account, in relation to a settlor, as income paid to or for the benefit of a child of the settlor only—
  - (a) income originating from that settlor, and
  - (b) in a case in which section 660B(2) applies, payments which are under that provision (as adapted by subsection (4) below) to be deemed to be payments of income.
- (4) In applying section 660B(2) to a settlor—
  - (a) the reference to income arising under the settlement includes only income originating from that settlor; and
  - (b) the reference to any payment made by virtue or in consequence of the settlement or any enactment relating thereto includes only a payment made out of property originating from that settlor or income originating from that settlor.
- (5) References in this section to property originating from a settlor are references to—
  - (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
  - (b) property representing that property; and
  - (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
  - (a) income from property originating from that settlor; and
  - (b) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) above—
  - (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

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**660F Power to obtain information.**

An officer of the Board may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

**660G Meaning of “settlement” and related expressions.**

(1) In this Chapter—

“settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets, and

“settlor”, in relation to a settlement, means any person by whom the settlement was made.

(2) A person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(3) References in this Chapter to income arising under a settlement include, subject to subsection (4) below, any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom.

(4) Where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in a year of assessment, references in this Chapter to income arising under a settlement do not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

But where such income is remitted to the United Kingdom in circumstances such that, if the settlor were actually entitled to that income when remitted, he would be chargeable to income tax by reason of his residence in the United Kingdom, it shall be treated for the purposes of this Chapter as arising under the settlement in the year in which it is remitted.

## CHAPTER I

### DISPOSITIONS FOR SHORT PERIODS

**660 Dispositions for period which cannot exceed six years.**

(1) <sup>M1</sup>Subject to subsection (2) below, any income which by virtue or in consequence of any disposition made, directly or indirectly, by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years shall be deemed for all the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made, and not to be the income of any other person.

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- (2) <sup>M2</sup>Subsection (1) above shall not apply in relation to income which is payable as a covenanted payment to charity.
- (3) <sup>M3</sup>In this Chapter, unless the context otherwise requires—  
“disposition” includes any trust, covenant, agreement or arrangement, and  
“a covenanted payment to charity” means a payment made under a covenant made otherwise than for consideration in money or money’s worth in favour of a body of persons or trust established for charitable purposes only whereby the like annual payments (of which the payment in question is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (4) <sup>M4</sup>For the purposes of subsection (3) above [<sup>F2</sup>the bodies mentioned in section 507] shall each be treated as a body of persons established for charitable purposes only.

#### Textual Amendments

- F2** 1989 s.60(3) *in respect of payments due on or after 14 March 1989. Previously*  
“the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England”.

#### Modifications etc. (not altering text)

- C4** *See—*1989 s.59—*rights of admission disregarded in the case of certain covenanted subscriptions.* 1990 s.25—*definition employed for purposes of s.25 (donations to charity by individuals).*

#### Marginal Citations

- M1** Source-1970 s.434(1); 1980 s.55(1)(a)  
**M2** Source-1970 s.434(1A); 1980 s.55(1)(b); 1987 Sch.15 2(16)  
**M3** Source-1970 s.434(2); 1980 s.55(1)(c)  
**M4** Source-1980 s.118(3); 1983 s.46(3)(a).

## 661 Adjustments between disporor and trustees.

- <sup>M5</sup>(1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a disposition was made, that person shall be entitled—
- to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid; and
  - for that purpose to require an inspector to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid;
- and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.
- (2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

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If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (3) Subject to section 833(3), any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

**Marginal Citations**

**M5** Source-1970 s.435.

**662 Application of Chapter I to dispositions by two or more disponors.**

<sup>M6</sup>(1) In the case of any disposition where there is more than one person who made the disposition, this Chapter shall, subject to the provisions of this section, have effect in relation to each person who made the disposition as if he were the only person who had made it.

(2) In the case of any such disposition, references in this Chapter to income payable or applicable by virtue or in consequence of the disposition include, in relation to any person making the disposition, only—

- (a) income from property which that person has provided directly or indirectly for the purposes of the disposition (“the settled property”); and
- (b) income from property representing the settled property; and
- (c) income from so much of any property which represents both the settled property and other property as, on a just apportionment, represents the settled property; and
- (d) income provided directly or indirectly by that person.

(3) In this section references to property which represents other property include references to property which represents accumulated income from that other property.

**Marginal Citations**

**M6** Source-1970 s.436.

## CHAPTER II

### SETTLEMENTS ON CHILDREN

**663 The general rule. E+W+N.I.**

- (1) <sup>M7</sup>Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and below the age of 18, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.



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- (2) <sup>M8</sup>Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a person holding them as trustee for a person who would be absolutely entitled as against the trustee but for being an infant, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this Chapter be deemed to be paid to the infant; and in this subsection, in relation to Scotland, “infant” means pupil or minor.
- (3) <sup>M9</sup>This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 10 of Schedule 30 shall have effect as respects certain earlier settlements on children.

- (4) <sup>M10</sup>Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.
- (5) <sup>M11</sup>This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

#### Extent Information

- E1** This version of this provision extends to England and Wales and Northern Ireland only; a separate version has been created for Scotland only.

#### Modifications etc. (not altering text)

- C5** £100 for the year 1991-92 and subsequent years of assessment—see 1990 s.82.

#### Marginal Citations

- M7** Source-1970 s.437(1); 1971 s.16(2)(b)  
**M8** Source-1984 s.100(3)  
**M9** Source-1970 s.437(2)  
**M10** Source-1970 s.437(3); 1971 s.16(2)(d)  
**M11** Source-1970 s.437(5)

## 663 The general rule. **S**

- (1) <sup>M88</sup>Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and below the age of 18, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.
- (2) <sup>M89</sup>Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a person holding them as trustee for a person who would be absolutely entitled as against the trustee but for being an infant, the income which by virtue of section 761(1) is treated as arising by reference

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to that gain shall for the purposes of this Chapter be deemed to be paid to the infant; and in this subsection, in relation to Scotland, “infant” means [<sup>F34</sup>person under the age of eighteen years].

- (3) <sup>M90</sup>This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 10 of Schedule 30 shall have effect as respects certain earlier settlements on children.

- (4) <sup>M91</sup>Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.
- (5) <sup>M92</sup>This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

#### Textual Amendments

**F34** Words in s. 663(2) substituted (S.)(25.9.1991) by [Age of Legal Capacity \(Scotland\) Act 1991 \(c. 50, SIF 49:8\)](#), ss. 10(1), 11(2), [Sch. 1 para. 48](#) (with s. 1(3))

#### Modifications etc. (not altering text)

**C16** £100 for the year 1991-92 and subsequent years of assessment—see 1990 s.82.

#### Marginal Citations

**M88** Source-1970 s.437(1); 1971 s.16(2)(b)

**M89** Source-1984 s.100(3)

**M90** Source-1970 s.437(2)

**M91** Source-1970 s.437(3); 1971 s.16(2)(d)

**M92** Source-1970 s.437(5)

## 664 Accumulation settlements.

- (1) <sup>M12</sup>Subject to the provisions of this section, for the purposes of this Chapter—
- (a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
  - (b) any income so dealt with which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.

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- (2) <sup>M13</sup>Where any income is dealt with as mentioned in subsection (1) above by virtue or in consequence of a settlement to which this Chapter applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—
- (a) subsection (1) above shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which are allowable as deductions in computing his total income; and
  - (b) subject to subsection (3) below, any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the time of the payment is unmarried and below the age of 18, shall be deemed for the purposes of section 663 to be paid as income.
- (3) <sup>M14</sup>Subsection (2)(b) above shall not apply if and to the extent that the sum paid as mentioned in that paragraph together with any other sums previously so paid (whether to that child or to any other child who, at the time of the payment, was unmarried and below the age of 18) exceeds the aggregate amount of the income which, by virtue or in consequence of the settlement, has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (1) above, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

#### Marginal Citations

**M12** Source-1970 s.438(1)

**M13** Source-1970 s.438(2); 1971 s.16(2)(c)

**M14** Source-1970 s.438(2)(b); 1971 s.16(2)(c); 1987 Sch.15 2(17)

### 665 Meaning of “irrevocable”.

<sup>M15</sup>(1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if its terms provide—

- (a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of the settlor’s child; or
- (b) for the determination of the settlement by the act or on the default of any person; or
- (c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement.

In this section “the settlor’s child”, in relation to any settlement, means any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement.

- (2) For the purposes of this Chapter, a settlement shall not be deemed to be revocable by reason only—
- (a) that it contains a provision under which any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of the settlor’s child or in the event

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- of an assignment of or charge on that income or those assets being executed by the settlor's child; or
- (b) that it provides for the determination of the settlement by the act or on the default of any person in such a manner that the determination will not, during the lifetime of the settlor's child, benefit the settlor or the wife or husband of the settlor; or
  - (c) in the case of a settlement to which section 33 of the <sup>M16</sup>Trustee Act 1925 applies, that it directs income to be held for the benefit of the settlor's child on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive all or part of the income.

#### Marginal Citations

**M15** Source-1970 s.439(1).

**M16** 1925 c. 19.

### 666 Interest paid by trustees.

- (1) <sup>M17</sup>Where interest is paid by the trustees of a settlement to which this Chapter applies there shall be deemed for the purposes of this Chapter to be paid to or for the benefit of a child of the settlor who at the time of the payment is unmarried and below the age of 18 (in addition to any other amount deemed to be so paid) an amount equal to a fraction—

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

of the interest, where—

A is the whole of the income arising under the settlement in the year of assessment, less any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, and

B is such part of A as is paid to or for the benefit of any child of the settlor who is unmarried and below the age of 18.

- (2) <sup>M18</sup>This section shall not apply to interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).
- (3) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.
- (4) <sup>M19</sup>For the purpose of this section “income arising under the settlement” has the meaning given by section 681, which for that purpose shall be deemed to apply in relation to settlements to which this Chapter applies as it applies in relation to settlements to which Chapter III of this Part applies.
- (5) In this section the reference to the trustees' expenses excludes sums mentioned in section 682(1)(a).

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**Marginal Citations**

- M17** Source-1970 s.440(1); 1971 s.16(2)(c)  
**M18** Source-1970 s.440(2), (3)  
**M19** Source-1970 s.440(4)

**667 Adjustments between donor and trustees.**

<sup>M20</sup>(1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a settlement was made or entered into, that person shall be entitled—

- (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and
- (b) for that purpose to require an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid,

and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(3) Subject to section 833(3), any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

**Marginal Citations**

- M20** Source-1970 s.441

**668 Application of Chapter II to settlements by two or more settlors.**

(1) <sup>M21</sup>In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.

(2) <sup>M22</sup>In the case of any such settlement, only the following can, for the purposes of this Chapter, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say—

- (a) income originating from that settlor; and
- (b) in a case in which section 664(2)(b) applies, any sums which are under that paragraph to be deemed to be paid as income.

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- (3) In applying section 664(2)(b) to any settlor—
- (a) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor; and
  - (b) the reference to income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in section 664(1) includes only income originating from that settlor.
- (4) <sup>M23</sup>References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
  - (b) property representing that property; and
  - (c) so much of any property which represents both property provided as mentioned in paragraph (a) above and other property as, on a just apportionment, represents the property so provided.
- (5) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
  - (b) income provided directly or indirectly by that settlor.
- (6) In subsections (4) and (5) above—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

#### **Marginal Citations**

- M21** Source-1970 s.442(1)  
**M22** Source-1970 s.442(2)  
**M23** Source-1970 s.442(3)-(5)

### **669 Power to obtain information under Chapter II.**

<sup>M24</sup>An inspector may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

#### **Marginal Citations**

- M24** Source-1970 s.443; 1971 Sch.6 62

### **670 Interpretation of Chapter II.**

<sup>M25</sup>In this Chapter—

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“child” includes a stepchild and an illegitimate child;

“settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

“settlor”, in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the preceding words of this definition) includes any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

“income”, except in the phrase (occurring in section 663(1)) “be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person”, includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom.

**Marginal Citations**

M25 Source-1970 s.444(1), (2)

## CHAPTER III

### REVOCABLE SETTLEMENTS ETC.

#### 671 Revocable settlements allowing release of obligation.

- (1) <sup>M26</sup>If and so long as the terms of any settlement (wherever made) are such that—
- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or
  - (b) the settlor or the wife or husband of the settlor may, whether immediately or in the future, cease, on the payment of a penalty, to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement,

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

- (2) <sup>M27</sup>Where any such power as is referred to in subsection (1)(a) above cannot be exercised—
- (a) in the case of a covenanted payment to charity (as defined by section 660(3)), within the period of three years, or
  - (b) in any other case, within the period of six years,

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from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, subsection (1)(a) above shall not apply [<sup>F3</sup>in the case of a covenanted payment to charity so long as that power has not been exercised, and in any other case] so long as that power cannot be exercised.

(3) <sup>M28</sup>In subsections (1) and (2) above—

- (a) the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof and to any power to diminish the amount of any annual payments which the settlor or the wife or husband of the settlor is or may be liable to make by virtue or in consequence of any provision of the settlement;
- (b) the references to the settlor or the wife or husband of the settlor ceasing to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement shall be deemed to include references to a diminution of the amount of any such annual payments which the settlor or the wife or husband of the settlor is or may be liable to make;

but the sums to be treated under subsections (1) and (2) above as the income of the settlor for any year of assessment and not as the income of any other person shall, where those subsections would not apply but for paragraph (b) above, be such part only of the sums payable as mentioned in that paragraph by the settlor or the wife or husband of the settlor in that year as corresponds to the diminution mentioned in that paragraph.

#### Textual Amendments

**F3** Words in s. 671(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 27(1)(2)

#### Marginal Citations

**M26** Source-1970 s.445(1)

**M27** Source-1970 s.445(1)(1A); 1980 s.55(2)

**M28** Source-1970 s.445(2)

## 672 Revocable settlements allowing reversion of property.

(1) <sup>M29</sup>If and so long as the terms of any settlement (wherever made) are such that—

- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and
- (b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised,

any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall, subject to subsection (2) below, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.



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- (2) Where any such power cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, subsection (1) above shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.
- (3) <sup>M30</sup>In subsection (1) above the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to—
  - (a) any power to diminish the property comprised in the settlement; and
  - (b) any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof to any person other than the settlor and the wife or husband of the settlor.

**Marginal Citations**

- M29** Source-1970 s.446(1)  
**M30** Source-1970 s.446(2)

**673 Settlements where settlor retains an interest.**

- (1) <sup>M31</sup>If and so long as the settlor has an interest in any income arising under or property comprised in a settlement (wherever made), any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person except that—
  - (a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this paragraph, would be so treated as is proportionate to the extent of that interest; and
  - (b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of section 671 or 672, that amount shall be deducted from the amount of income which, but for this paragraph, would be treated as his for that year by virtue of this subsection.
- (2) <sup>M32</sup>Subject to subsection (3) below, the settlor shall, for the purpose of subsection (1) above, be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever.
- (3) The settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—
  - (a) if and so long as that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of—
    - (i) the bankruptcy of some person who is or may become beneficially entitled to that income or property; or
    - (ii) any assignment of or charge on that income or property being made or given by some such person; or

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- (iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
- (iv) the death under the age of 25 or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or
- (b) if and so long as some person is alive and under the age of 25 during whose life that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

#### **Marginal Citations**

**M31** Source-1970 s.447(1)

**M32** Source-1970 s.447(2)

#### **674 Settlements: discretionary power for benefit of settlor etc.**

- (1) <sup>M33</sup>This section applies to any settlement (wherever made) if and so long as the terms of the settlement are such that any person has or may have power, exercisable at his discretion, whether immediately or in the future, and whether with or without the consent of any person—
  - (a) to pay or apply to or for the benefit of the settlor or the wife or husband of the settlor the whole or any part of the income or property which may at any time arise under or be comprised in the settlement; or
  - (b) to secure the payment or application to or for the benefit of the settlor or the wife or husband of the settlor of the whole or any part of that income or property.
- (2) Subject to subsections (3) and (4) below, any income arising in any year of assessment under a settlement to which this section applies or, as the case may be, any income so arising from the property comprised in any such settlement or from a corresponding part of that property, or a corresponding part of any such income, shall (so far as it is not so treated apart from this section) be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.
- (3) <sup>M34</sup>Where the power mentioned in subsection (1) of this section cannot be exercised within six years from the time when any income or class of income first arises under the settlement or from the time when any particular property first becomes comprised in the settlement, then, so long as the power cannot be exercised, subsection (2) above shall not apply to any income arising under the settlement or, as the case may be, any income of that class or income from that property or property representing that property.
- (4) Where, under section 673(3), the settlor is not deemed to have an interest in any income arising under or property comprised in the settlement, subsection (2) above shall not apply to that income or, as the case may be, to income arising from that property.

#### **Marginal Citations**

**M33** Source-1970 s.448(1)

**M34** Source-1970 s.448(2), (3)

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**[<sup>F4</sup>674A Other settlements where settlor retains interest in settled property.**

(1) Where, during the life of the settlor, income arising under a settlement is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income—

- (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or
- (b) is of a kind excluded from subsection (1) of section 683 by subsection (6) or (9) of that section; or
- (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or
- (d) is income from property of which the settlor has divested himself absolutely by the settlement; or
- (e) consists of covenanted payments to charity (as defined by section 660(3)); or
- (f) is income which, by virtue of any provision of the Income Tax Acts other than this section, is to be treated for all the purposes of those Acts as income of the settlor;

the income shall be treated for all the purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person.

(2) Subsections (6) to (10) of section 683 shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of that section.

(3) Subsections (1), (2), (3) and (for the year 1990-91 and subsequent years of assessment) (4A) to (4C) of section 685 shall have effect for the purposes of this section as they have effect for the purposes of section 683, but with the omission from subsections (1) and (2) of the words “in the case of a settlement made after 6th April 1965”.

(4) For the year 1990-91 and subsequent years of assessment subsection (1)(a) above shall have effect with the insertion after the word “widow” of the word “widower”.

(5) This section applies in relation to income—

- (a) which arises on or after 14th March 1989 under a settlement made on or after that day, or
- (b) which arises on or after 6th April 1990 under a settlement made before 14th March 1989, so far as it is payable to or applicable for the benefit of the settlor’s husband or wife,

except income consisting of annual payments made under an obligation which is an existing obligation for the purposes of section 36(3) of the Finance Act 1988.]

**Textual Amendments**

**F4** 1989 s.109(1).

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## 675 Provisions supplementary to sections 671 to 674.

- <sup>M35</sup>(1) Tax chargeable by virtue of section 671, 672, 673 [<sup>F5</sup>674 or 674A] shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of a settlor chargeable by virtue of any of those sections the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that section had been received by him.
- (3) Where, by virtue of any of those sections, any income tax becomes chargeable on and is paid by a settlor, he shall be entitled—
- (a) to recover from any trustee, or other person to whom income arises under the settlement, the amount of the tax so paid; and
  - (b) for that purpose to require an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

Any certificate so furnished shall be conclusive evidence of the facts stated therein.

- (4) Where any person obtains, in respect of any allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for section 671, 672, 673 [<sup>F5</sup>674 or 674A], have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom income arises under the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (5) Subject to section 833(3), any income which is treated by virtue of section 671, 672, 673 [<sup>F6</sup>674 or 674A] as income of a settlor shall be deemed for the purpose of this section to be the highest part of his income.

### Textual Amendments

**F5** 1989 s.109(3).*Previously*  
 “or 674”.

**F6** 1989 s.109(3).*Previously*  
 “or 674”.

### Marginal Citations

**M35** Source-1970 s.449

## 676 Disallowance of deduction from total income of certain sums paid by settlor.

- <sup>M36</sup>(1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount of income arising under the settlement in that year which has not been distributed, less—

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- (a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of section 671, 672 [<sup>F7</sup>674 or 674A], and
  - (b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of section 673.
- (2) For the purposes of subsection (1) above, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.
- (3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.
- (4) This section shall apply to any settlement (wherever made) made after 26th April 1938, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of section 671 or 672 but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.
- (5) In this section, references to sums paid by a settlor include references to sums paid by the wife or husband of the settlor.

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**Textual Amendments**

**F7** 1989 s.109(3).*Previously*  
“or 674”.

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**Marginal Citations**

**M36** Source-1970 s.450

**677 Sums paid to settlor otherwise than as income.**

- (1) <sup>M37</sup> Any capital sum paid directly or indirectly in any year of assessment by the trustees of a settlement to which this section applies to the settlor shall—
- (a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;
  - (b) to the extent to which the amount of that sum is not by virtue of this subsection treated as his income for that year and falls within the amount of the income available up to the end of the next following year, be treated for those purposes as the income of the settlor for the next following year;
- and so on for each subsequent year up to a maximum of ten subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.
- (2) <sup>M38</sup> For the purposes of subsection (1) above, the amount of income available up to the end of any year shall, in relation to any capital sum paid as mentioned in that

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subsection, be taken to be the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less—

- (a) the amount of that income taken into account under that subsection in relation to that sum in any previous year or years; and
  - (b) <sup>M39</sup>the amount of any other capital sums paid to the settlor in any year before that sum was paid; and
  - (c) so much of any income arising under the settlement in that year and any previous year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 671, 672, 674 [<sup>F8</sup>674A] or 683; and
  - (d) any income arising under the settlement in that year and any previous year which has been treated as the income of the settlor by virtue of section 673; and
  - (e) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 676, as deductions in computing the settlor's income for that year or any previous year; and
  - (f) <sup>M40</sup>any sums paid by virtue or in consequence of the settlement in that year or any previous year which have been treated as the income of the settlor by virtue of section 664(2)(b); and
  - (g) any sums included in the income arising under the settlement as amounts which have been or could have been apportioned to a beneficiary as mentioned in section 681(1)(b); and
  - (h) <sup>M41</sup>an amount equal to the sum of tax at the basic rate and tax at the additional rate on—
    - (i) the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less
    - (ii) the aggregate amount of the income and sums referred to in paragraphs (c), (d), (e), (f) and (g) above.
- (3) <sup>M42</sup>Where any amount is included in a person's income by virtue of section 421 in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.
  - (4) <sup>M43</sup>Where the capital sum paid to the settlor is a sum paid by way of loan, then—
    - (a) if the whole of it is repaid, no part of that sum shall by virtue of subsection (1) above be treated as the settlor's income for any year of assessment after that in which the repayment occurs; and
    - (b) if one or more capital sums have previously been paid to him by way of loan and wholly repaid, the amount of that capital sum shall be treated as equal to its excess, if any, over so much of the sum or sums previously paid as has already fallen to be treated as his income by virtue of that subsection.
  - (5) Where the capital sum paid to the settlor is a sum paid by way of complete repayment of a loan, then, if an amount not less than that sum is thereafter lent by the settlor to the trustees of the settlement, no part of that sum shall by virtue of subsection (1) above be treated as his income for any year of assessment after that in which the further loan is made.
  - (6) <sup>M44</sup>Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of both tax at the basic rate and tax at the additional rate for that year, would be equal to that sum or that part of that sum.

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- (7) <sup>M45</sup> Tax chargeable by virtue of this section shall be charged under Case VI of Schedule D; and there shall be set off against the tax charged on any amount treated by virtue of this section as income of the settlor for any year an amount equal to—
- (a) the sum of tax at the basic rate and tax at the additional rate for that year on the amount so treated as his income; or
  - (b) so much of that sum as is equal to the tax charged,
- whichever is the less.
- (8) <sup>M46</sup> In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.
- (9) <sup>M47</sup> This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—
- (a) “capital sum” means, subject to subsection (10) below—
    - (i) any sum paid by way of loan or repayment of a loan; and
    - (ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money’s worth,but does not include any sum which could not have become payable to the settlor except in one of the events specified in section 673(3); and
  - (b) references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor or to the settlor (or the husband or wife of the settlor) jointly with another person.
- (10) <sup>M48</sup> For the purposes of this section there shall be treated as a capital sum paid to the settlor by the trustees of the settlement any sum which—
- (a) is paid by them to a third party at the settlor’s direction or by virtue of the assignment by him of his right to receive it where the direction or assignment was given or made on or after 6th April 1981; or
  - (b) is otherwise paid or applied by them for the benefit of the settlor,
- and which would not apart from this subsection be treated as a capital sum paid to him.

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#### Textual Amendments

**F8** 1989 s.109(4).

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#### Modifications etc. (not altering text)

**C6** See—s.161—*waiver of loans to directors or employees.*[s.421](#)—*loan by close company to participant.*

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#### Marginal Citations

**M37** Source-1970 s.451(1); 1981 s.42(2)(a), (b); 1982 s.63(3)  
**M38** Source-1970 s.451(2)(aa); 1981 s.42(3)(a)  
**M39** Source-1970 s.451(2)(a)-(d); 1981 s.42(3)(b)  
**M40** Source-1970 s.451(2)(dd), (ddd); 1981 s.42(3)(c)  
**M41** Source-1970 s.451(2)(e); 1971 Sch.6 64, 1973 s.16(7)(a); 1981 s.42(3)(d)  
**M42** Source-1970 s.451(3)  
**M43** Source-1970 s.451(3A), (3B); 1981 s.42(4)  
**M44** Source-1970 s.451(5); 1971 Sch.6 64; 1973 s.16(7)(b)  
**M45** Source-1970 s.451(6); 1981 s.42(5)  
**M46** Source-1970 s.451(7)

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**M47** Source-1970 s.451(8); 1981 s.42(6)

**M48** Source-1970 s.451(9); 1981 s.42(7), (8)

## **678 Capital sums paid by body connected with settlement.**

(1)<sup>M49</sup>Where—

- (a) a capital sum is paid after 5th April 1981 to the settlor in a year of assessment by any body corporate connected with the settlement in that year; and
- (b) an associated payment has been or is made directly or indirectly to that body by the trustees of the settlement,

the capital sum shall, in accordance with subsection (2) below, be treated for the purposes of section 677 as having been paid to the settlor by the trustees of the settlement.

(2) A capital sum to which subsection (1) above applies shall—

- (a) to the extent to which the amount of that sum falls within the total of the associated payment or payments made up to the end of the year of assessment in which it is paid, be treated as having been paid to the settlor in that year;
- (b) to the extent to which the amount of that sum is not treated as paid to the settlor in that year and falls within the total of the associated payment or payments made up to the end of the next following year (less what was taken into account under this subsection in relation to that sum in the previous year), be treated as having been paid to the settlor in the next following year,

and so on for each subsequent year, taking the references in paragraph (b) to the year mentioned in paragraph (a) as references to that and any other year before the subsequent year in question.

(3) In this section “associated payment”, in relation to any capital sum paid to the settlor by a body corporate, means—

- (a) any capital sum paid to that body by the trustees of the settlement; and
- (b) any other sum paid or asset transferred to that body by those trustees which is not paid or transferred for full consideration in money or money’s worth,

being a sum paid or asset transferred in the five years ending or beginning with the date on which the capital sum is paid to the settlor.

(4) For the purposes of this section any capital sum paid by a body corporate, and any associated payment made to a body corporate, at a time when it is, within the meaning of section 416, associated with another body corporate may be treated as paid by or made to that other body corporate.

(5) In this section “capital sum” has the same meaning as in section 677; and any question whether a capital sum has been paid to the settlor by a body corporate or to a body corporate by the trustees shall be determined in the same way as any question under that section whether a capital sum has been paid to the settlor by the trustees.

(6) Subsection (1) above does not apply to any sum paid to the settlor by way of loan or repayment of a loan if—

- (a) the whole of the loan is repaid within 12 months of the date on which it was made; and
- (b) the period for which amounts are outstanding in respect of loans made to the settlor by that or any other body corporate connected with the settlement, or



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by him to that or any other such body, in any period of five years does not exceed 12 months.

- (7) Where a capital sum is paid to the settlor in a year of assessment by a body corporate connected with the settlement in that year it shall be assumed until the contrary is shown that an associated payment of an amount not less than that of the capital sum has been made to that body by the trustees of the settlement.

#### Marginal Citations

**M49** Source-1970 s.451A; 1981 s.43(2)

### 679 Application of Chapter III to settlements by two or more settlors.

- <sup>M50</sup>(1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.
- (2) In this Chapter—
- (a) references to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor, and
  - (b) references to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.
- (3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.
- (4) References in sections 671(1) and 676 to sums payable by virtue or in consequence of any provision of the settlement or sums paid by virtue or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.
- (5) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
  - (b) property representing that property; and
  - (c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
  - (b) so much of any such income of a body corporate as is mentioned in section 681(1)(b) as corresponds to property originating from the settlor which is comprised in the settlement; and
  - (c) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) above—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or

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income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and

- (b) references to property which represents other property include references to property which represents accumulated income from that other property.

**Marginal Citations**

**M50** Source-1970 s.452

**680 Power to obtain information for purposes of Chapter III.**

<sup>M51</sup>An inspector may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of any of the provisions of this Chapter.

**Marginal Citations**

**M51** Source-1970 s.453; 1971 Sch.6 65

**681 Interpretation of Chapter III.**

- (1) <sup>M52</sup>In this Chapter, “income arising under a settlement” includes—
- (a) any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom; *and*
  - (b) *where the amount of the income of any body corporate has been apportioned under section 423 for any year or period, or could have been so apportioned if the body corporate were incorporated and resident in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement*<sup>F9</sup>.

but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

- (2) *Where the income of a body corporate has been, or could have been, apportioned under section 423 any amount of that income which by virtue of subsection (1)(b) above is to be included in the income arising under a settlement shall be increased by such proportion thereof as corresponds to the rate of advance corporation tax applicable to a distribution made at the end of the accounting period to which the apportionment relates*<sup>F10</sup>.
- (3) <sup>M53</sup>*In subsections (1) and (2) above references to income that could have been apportioned to a person if a body corporate were incorporated and resident in any part of the United Kingdom include references to income that could have been apportioned to that person indirectly through any other body corporate if that other body had also been so incorporated and resident*<sup>F10</sup>.

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- (4) <sup>M54</sup>In this Chapter—
- “settlement” includes any disposition, trust, covenant, agreement or arrangement, and
- “settlor”, in relation to a settlement, means any person by whom the settlement was made;
- and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.
- (5) <sup>M55</sup>For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—
- (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of the settlement; or
- (b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.
- (6) <sup>M56</sup>The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act.

#### Textual Amendments

- F9** Repealed by 1989 s.187 and Sch.17 Part V in relation to income of bodies corporate for accounting periods beginning after 31 March 1989.
- F10** Repealed by 1989 s.187 and Sch.17 Part V in relation to income of bodies corporate for accounting periods beginning after 31 March 1989.

#### Modifications etc. (not altering text)

- C7** Definition applied for purposes of—1970(M) s.27—return of particulars of settled property for purposes of 1979(C).1979(C) s.17—chargeable gains accruing to non-resident trusts.1979(C) s.63—connected persons (capital gains tax).1988 s.417—close companies.1988 s.745—information.1988 s.839—connected persons.
- C8** See s.454(6)—Underwriter's special reserve funds excluded from treatment as settlement.

#### Marginal Citations

- M52** Source-1970 s.454(1); 1972 Sch.24 26; 1981 s.44(1)
- M53** Source-1970 s.454(1A); 1981 s.44(1)
- M54** Source-1970 s.454(3)
- M55** Source-1970 s.454(4); 1981 s.44(2)
- M56** Source-1970 s.454(6)

## 682 Ascertainment of undistributed income.

- (1) <sup>M57</sup>For the purposes of this Chapter, income arising under a settlement in any year of assessment shall be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—
- (a) the sums, excluding all payments of interest, paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with

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the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of section 677, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them there, and

- (b) subject to subsections (2) to (5) below, any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, in so far as such expenses are not included in the sums mentioned in paragraph (a) above, and
  - (c) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section 505 exceeds the aggregate amount of any such sums or expenses as are mentioned in paragraphs (a) and (b) above paid in that year which are properly chargeable to that income.
- (2) <sup>M58</sup>Subsection (1)(b) above shall apply to any interest paid by the trustees of the settlement subject to subsections (3) to (6) below.
- (3) If no sums within subsection (1)(a) were paid to any person other than the settlor, or the wife or husband of the settlor, the whole of any interest paid by the trustees of the settlement shall be excluded from subsection (1)(b) above.
- (4) If any sum was so paid, there shall be excluded from subsection (1)(b) above a fraction—

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

of any interest paid by the trustees of the settlement where—

A is the whole of the income arising under the settlement in the year of assessment, less the sums referred to in subsection (1)(b) above apart from subsections (2), (3) and (5) of this section; and

B is so much of the sums within subsection (1)(a) above as is paid to persons other than the settlor, or the wife or husband of the settlor.

- (5) Subsections (2) to (4) above shall not apply to interest in respect of which relief from tax is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor if living with the settlor.
- (6) Nothing in subsections (2) to (5) above shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.

#### **Marginal Citations**

**M57** Source-1970 s.455

**M58** Source-1970 s.456

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**[<sup>F11</sup>682A Supplementary provisions.**

- (1) The provisions of sections 660E to 660G apply for the purposes of this Chapter as they apply for the purposes of Chapter IA.
- (2) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—
  - (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of the settlement; or
  - (b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.]

**Textual Amendments**

- F11** S. 682A inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 11

**CHAPTER IV**

**LIABILITY TO HIGHER RATE AND ADDITIONAL RATE TAX**

*Liability of settlors*

**683 Settlements made after 6th April 1965.**

- (1) <sup>M59</sup>Where, during the life of the settlor, income arising under a settlement made after 6th April 1965 is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income either—
  - (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow [<sup>F12</sup>, widower] or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or
  - (b) is excluded by subsection (3), (6) or (9) below; or
  - (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or
  - (d) is income from property of which the settlor has divested himself absolutely by the settlement; or
  - (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;

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the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.

(2) In subsection (1) above “excess liability” means the excess of liability to income tax over what it would be if all income tax [<sup>F13</sup>not chargeable at the lower rate] were charged at the basic rate to the exclusion of any higher rate.

(3) <sup>M60</sup>Subject to subsection (4) below, subsection (1) above shall not apply to so much of an individual’s income as consists of covenanted payments to charity.

(4) <sup>M61</sup>If at least £1,000 of an individual’s income for any year of assessment consists of covenanted payments to charity which, in the hands of the charities receiving them, constitute income for which, by virtue of subsection (3) of section 505, relief is not available under subsection (1) of that section, so much of the individual’s income as consists of those payments shall not be excluded from the operation of subsection (1) above by virtue of subsection (3) above.

(5) If, for any chargeable period of a charity—

- (a) the income of the charity includes two or more covenanted payments to charity; and
- (b) only a part of the aggregate of those payments constitutes income for which, by virtue of subsection (3) of section 505 relief is not available under subsection (1) of that section,

each of the payments which make up the aggregate shall be treated for the purposes of subsection (4) above as apportioned rateably between the part of the aggregate referred to in paragraph (b) above and the remainder.

(6) <sup>M62</sup>Subsection (1) above shall not apply to income consisting of annual payments made by an individual, in connection with the acquisition by him of the whole or part of a business—

- (a) to or for the benefit of the individual from whom it is acquired or, if [<sup>F14</sup>that individual is dead, to or for the benefit of that individual’s widow, widower] or dependants, or
- (b) if the acquisition was from a partnership, to or for the benefit of a former member, or the widow [<sup>F14</sup>, widower] or dependants of a deceased former member, of that or any preceding partnership, or to or for the benefit of an individual from whom the business or part was acquired by that or any preceding partnership or, if [<sup>F15</sup>such an individual is dead, to or for the benefit of that individual’s widow, widower or dependants];

being payments made under a liability incurred for full consideration.

(7) Payments made in respect of any individual under a liability incurred in connection with an acquisition from a partnership shall only be excluded from the operation of subsection (1) above by virtue of subsection (6)(b) above if, and to the extent that, they are made in substitution for, or matched by reductions in, other payments which would themselves be excluded from its operation.

(8) Where the right of a former member of a partnership to payments falling due not more than ten years after he ceased to be a member of that partnership has devolved on his death, subsections (1)(a) and (6) above shall apply to the payments as they would apply if he had not died.

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- (9) <sup>M63</sup> Where for any year of assessment there is made to or for the benefit of a former member, or the widow [<sup>F15</sup>, widower] or a dependant of a deceased former member, of a partnership an annual payment which—
- (a) is excluded from the operation of subsection (1) above by virtue of paragraph (a) of that subsection or by virtue of subsection (6) above; and
  - (b) falls short of the limit applying for that year under section 628;
- any additional annual payment made to or for the benefit of that person shall, notwithstanding that it is not made under a liability incurred for full consideration, be excluded from the operation of subsection (1) above to the extent to which it makes good that shortfall.
- (10) <sup>M64</sup> For the purposes of this section—
- (a) “former member”, in relation to a partnership, means an individual who has ceased to be a member of that partnership on retirement or death;
  - (b) a partnership becomes a “preceding partnership” of another if it transfers its business or part of its business to another and one or more individuals are members of both, and any preceding partnership of the transferor by reference to any part of the business transferred shall also become a preceding partnership of the transferee;
  - (c) “covenanted payments to charity” has the meaning given by section 660(3).

#### Textual Amendments

**F12** 1988(F) s.35 and Sch.3 para.20(2) for 1990-91 and subsequent years.

**F13** Words in s. 683(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 19(3)(7)

**F14** 1988(F) s.35 and Sch.3 para.20(3), (4) for 1990-91 and subsequent years. Previously “he is dead, to or for the benefit of his widow”  
in subs.6(a).

**F15** 1988(F) s.35 and Sch.3 para.20(4), (5) for 1990-91 and subsequent years. Previously “he is dead, to or for the benefit of the widow or dependants of such an individual”  
in subs.(6).

#### Modifications etc. (not altering text)

**C9** See s.125(3)—annual payments for non taxable consideration.

**C10** See s.628—certain partnership retirement annuities not to reduce investment income.

**C11** See s.125(3)—annual payments for non taxable consideration.

#### Marginal Citations

**M59** Source-1970 s.457(1); 1971 Sch.6 67; 1978 Sch.2 12; 1980 s.56(1); 1986 s.32(1)

**M60** Source-1970 s.457(1A); 1980 s.56(2); 1985 s.49(1); 1986 s.32(1)

**M61** Source-1970 s.457(1B), (1C); 1986 s.32(2)

**M62** Source-1970 s.457(2)-(4)

**M63** Source-1970 s.457(4A); 1980 s.34(4)

**M64** Source-1970 s.457(5); 1980 s.56(3)

### 684 Settlements made before 7th April 1965 but after 9th April 1946.

<sup>M65</sup>(1) Where, during the life of the settlor, income arising under a settlement made before 7th April 1965, but after 9th April 1946, is, under the settlement and in the events that

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occur, payable to or applicable for the benefit of any person other than the settlor, then, unless under the settlement and in those events, the income either—

- (a) is payable to an individual for his own use; or
- (b) is applicable for the benefit of an individual named in that behalf in the settlement or of two or more individuals so named; or
- (c) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement; or
- (d) is income from property of which the settlor has divested himself absolutely by the settlement; or
- (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;

the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.

- (2) In subsection (1) above “excess liability” means the excess of liability to income tax over what it would be if all income tax [<sup>F16</sup>not chargeable at the lower rate] were charged at the basic rate to the exclusion of any higher rate.
- (3) The exceptions provided for by paragraphs (a), (b) and (c) of subsection (1) above shall not apply where the named individual or individuals or, in the case of paragraph (c), either the named individual or the child or any of the children in question, is in the service of the settlor or accustomed to act as the solicitor or agent of the settlor.

#### Textual Amendments

**F16** Words in s. 684(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 19(3)(7)

#### Marginal Citations

**M65** Source-1970 s.458(1); 1971 Sch.6 68; 1978 Sch.2 13

### 685 Provisions supplementary to sections 683 and 684.

- (1) <sup>M66</sup>For the purposes of sections 683 and 684, the settlor shall not be deemed to have divested himself absolutely of any property if that property or any derived property is, or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the settlor or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor.
- (2) For those purposes, the settlor shall not be deemed not to have divested himself absolutely of any property by reason only that the property or any derived property may become payable to or applicable for the benefit of the settlor, or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor, in the event of—
  - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any of the derived property; or
  - (b) an assignment of or charge on the property or any of the derived property being made or given by some such person; or
  - (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage; or



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- (d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property or the derived property on attaining that age.
- (3) In subsections (1) and (2) above [<sup>F17</sup>and subsection (4B) below] “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom.
- (4) <sup>M67</sup>In sections 683 and 684 and this section “income arising under a settlement”, “settlement” and “settlor” have the meanings assigned to them for the purposes of Chapter III of this Part by section 681 [<sup>F17</sup>but subject to subsections (4A) and (4C) below].
- [<sup>F17</sup>(4A) References in section 683 to a settlement do not include references to an outright gift by one spouse to the other of property from which income arises unless—
- (a) the gift does not carry a right to the whole of that income, or
  - (b) the property given is wholly or substantially a right to income.
- (4B) For the purposes of subsection (4A) above a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.
- (4C) References in section 683 to a settlement do not include references to the irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).]
- (5) Section 679 shall have effect in relation to sections 683 and 684 and this section as it has effect in relation to Chapter III of this Part.

#### Textual Amendments

**F17** 1989 s.108 for 1990-91 and subsequent years.

#### Marginal Citations

**M66** Source-1970 ss.457(6), 458(2)

**M67** Source-1970 s.459

### *Liability of trustees*

VALID FROM 06/04/2006

#### [<sup>F18</sup>685A Meaning of “settled property”

- (1) For the purposes of the Tax Acts, unless the context otherwise requires,
- (a) “settled property” means any property held in trust other than—
    - (i) property held by a person as nominee for another,
    - (ii) property held by a person as trustee for another person who is absolutely entitled as against the trustee, and

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- (iii) property held by a person as trustee for another person who would be absolutely entitled as against the trustee if he were not an infant or otherwise under a disability, and
  - (b) references, however expressed, to property comprised in a settlement are references to settled property.
- (2) For the purposes of the Tax Acts, a reference to a person who is or would be absolutely entitled to property as against the trustee—
- (a) means a person who has the exclusive right (subject to satisfying the right of the trustees to resort to the property for the payment of duty, taxes, costs or other outgoings) to direct how the property shall be dealt with, and
  - (b) includes two or more persons who are or would be jointly absolutely entitled as against the trustee.]

#### Textual Amendments

**F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), Sch. 13 para. 1(1)

VALID FROM 06/04/2006

#### <sup>F18</sup>685B Meaning of “settlor”

- (1) In the Tax Acts, unless the context otherwise requires—
- (a) “settlor” in relation to a settlement means the person, or any of the persons, who has made or is treated for the purposes of the Tax Acts as having made the settlement, and
  - (b) a person is a settlor of property which—
    - (i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or
    - (ii) derives from property to which sub-paragraph (i) applies.
- (2) A person is treated for the purposes of the Tax Acts as having made a settlement if—
- (a) he has made or entered into the settlement, directly or indirectly, or
  - (b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death and the settlement arose on his death, whether by will, on his intestacy, or otherwise.
- (3) A person is, in particular, treated for the purposes of the Tax Acts as having made a settlement if—
- (a) he has provided property directly or indirectly for the purposes of the settlement, or
  - (b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.
- (4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of the Tax Acts—

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- (a) B shall be treated as having made the settlement, and
  - (b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.
- (5) In subsection (2)(b) the reference to property of which a deceased person was competent to dispose is a reference to property of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the property were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and includes references to his severable share in any property to which, immediately before his death, he was beneficially entitled as a joint tenant.
- (6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of the Tax Acts as having ceased to be a settlor in relation to the settlement if—
- (a) no property of which he is the settlor is comprised in the settlement,
  - (b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and
  - (c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.
- (7) For the purpose of this section and sections 685C and 685D property is derived from other property—
- (a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.
- (8) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.]

### Textual Amendments

- F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), Sch. 13 para. 1(1)

VALID FROM 06/04/2006

### <sup>F18</sup>685C Transfer between settlements: identification of settlor

- (1) This section applies in relation to a transfer of property from the trustees of one settlement (“Settlement 1”) to the trustees of another (“Settlement 2”) otherwise than—
- (a) for full consideration, or
  - (b) by way of a bargain made at arm's length.
- (2) 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—

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- (i) property disposed of by the trustees of Settlement 1, or  
(ii) property created by the disposal;
- and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.
- (3) For the purposes of the Tax Acts, except where the context otherwise requires—
- (a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and
  - (b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.
- (4) For the purposes of the Tax Acts, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.
- (5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2—
- (a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and
  - (b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.
- (6) But subsections (3) and (4) do not apply in relation to a transfer of property—
- (a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,
  - (b) which occurs by reason only of the exercise of a general power of appointment, or
  - (c) to which section 685D(6) applies.
- (7) There is an acquisition or disposal of property for the purposes of this section if there would be an acquisition or disposal of property for the purposes of the 1992 Act.]

#### Textual Amendments

**F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with [Sch. 13 para. 1\(2\)-\(6\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 1\(1\)](#)

VALID FROM 06/04/2006

#### [<sup>F18</sup>685D Variation of will or intestacy, etc: identification of settlor

- (1) This section applies where—

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- (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) of the 1992 Act applies in respect of the variation.
- (2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of the 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) Those persons are—
  - (a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,
  - (b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,
  - (c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and
  - (d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.
- (4) For the purposes of this section—
  - (a) “legatee” includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee,
  - (b) 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 pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy, and
  - (c) a person taking under a donatio mortis causa shall be treated as a legatee and his acquisition as made at the time of the donor's death.
- (5) Where—
  - (a) property would have become comprised in a settlement—
    - (i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise, or
    - (ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but
  - (b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.
- (6) Where—
  - (a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and
  - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.

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- (7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of the Tax Acts he shall be treated as having made the settlement immediately before his death.
- (8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.]

### Textual Amendments

**F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), Sch. 13 para. 1(1)

VALID FROM 06/04/2006

### [<sup>F18</sup>685E Trustees of settlements

- (1) For the purposes of the Tax Acts the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).
- (2) The deemed person referred to in subsection (1) shall be treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom at any time when a condition in subsection (3) or (4) is satisfied.
- (3) Condition 1 is that all the trustees are resident in the United Kingdom.
- (4) Condition 2 is that—
- (a) at least one trustee is resident in the United Kingdom,
  - (b) at least one is not resident in the United Kingdom, and
  - (c) a settlor in relation to the settlement was resident, ordinarily resident or domiciled in the United Kingdom at a time which is a relevant time in relation to him.
- (5) In subsection (4)(c) “relevant time” in relation to a settlor means—
- (a) where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and
  - (b) in any other case, a time when the settlor made the settlement (or was treated for the purposes of the Tax Acts as making the settlement);
- and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 685C applies, “relevant time” in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.
- (6) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (3) and (4) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.
- (7) If the deemed person referred to in subsection (1) is not treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom, then for the

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purposes of the Tax Acts it shall be treated as neither resident nor ordinarily resident in the United Kingdom.

- (8) If part of the settled property in relation to a settlement is vested in one trustee or body of trustees and another part of the settled property in relation to that settlement is vested in another trustee or body of trustees (and in particular where settled land within the meaning of the Settled Land Act 1925 (c. 18) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement) they shall together be treated for the purposes of this section as constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.
- (9) If the trustees of a settlement are carrying on a trade, profession or vocation, a change in the trustees of the settlement by reason of the coming into force of this section and section 685A shall not result in—
- (a) any of the trustees before the change permanently ceasing to carry on the trade, profession or vocation, or
  - (b) any of the trustees after the change starting to carry on the trade, profession or vocation.]

#### Textual Amendments

**F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), Sch. 13 para. 1(1)

VALID FROM 06/04/2006

#### [<sup>F18</sup>685F Application of section 739 and 740

- (1) Section 685E(2) and (7) shall not apply for any of the purposes of section 739 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—
- (a) the capital sum mentioned in that subsection was received, or the right to receive it was acquired, before that date, and
  - (b) the sum was wholly repaid, or the right to it waived, before 1st October 1989.
- (2) Section 685E shall not apply for any of the purposes of section 740 in relation to benefits received before 15th June 1989; and, in relation to benefits received on or after that date, “relevant income” includes income arising to the trustees of a settlement before 6 April 1989, notwithstanding that one or more trustees was not resident outside the United Kingdom, unless the trustees have been charged to tax in relation to that income.]

#### Textual Amendments

**F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), Sch. 13 para. 1(1)

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VALID FROM 06/04/2006

### **[<sup>F18</sup>685GSub-funds**

- (1) If the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to the 1992 Act, then for the purposes of the Tax Acts, unless the context otherwise requires—
  - (a) the sub-fund settlement shall be treated as a settlement,
  - (b) the sub-fund settlement shall be treated as having been created at the time when the sub-fund election is treated as having taken effect,
  - (c) each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement,
  - (d) a person who is a trustee of the sub-fund settlement shall be treated, from the time when the election is to be treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held,
  - (e) a person who is a trustee of the principal settlement shall not be treated as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held, and
  - (f) the trustees of the sub-fund settlement shall be treated as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.
- (2) References in subsection (1) to the time when the sub-fund election is treated as having taken effect are references to the time when the sub-fund election is treated as having taken effect under paragraph 2 of Schedule 4ZA to the 1992 Act.
- (3) In this section—
 

“principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to the 1992 Act,

“sub-fund election” has the meaning given by paragraph 2 of that Schedule, and

“sub-fund settlement” has the meaning given by paragraph 1 of that Schedule.]

#### **Textual Amendments**

- F18** Ss. 685A-685G inserted (coming into force and with effect in accordance with [Sch. 13 para. 1\(2\)-\(6\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 para. 1\(1\)](#)

### **686 Liability to additional rate tax of certain income of discretionary trusts.**

- (1) <sup>M68</sup> So far as income arising to trustees is income to which this section applies it shall, in addition to being chargeable to income tax at the basic rate, be chargeable at the additional rate.
- (2) This section applies to income arising to trustees in any year of assessment so far as it—



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- (a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person (whether or not the trustees have power to accumulate it); and
- (b) is neither (before being distributed) the income of any person other than the trustees nor treated for any of the purposes of the Income Tax Acts as the income of a settlor; and
- <sup>F19</sup>(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held—
- (i) for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; or
- (ii) for the purposes of a personal pension scheme (within the meaning of section 630) which makes provision only for benefits such as are mentioned in section 633; and]
- (d) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income (or would be so chargeable but for any express provisions of the trust).
- (3) *This section also applies to sums apportioned to the trustees under section 423 and treated, under 426(2) as applied by subsection (4) below, as income received by the trustees<sup>F20</sup>.*
- (4) *Sections 426(1) and (2), 427 and 428 shall, with the omission in section 426(2)(a) of the words following “the apportionment relates”, the substitution of “income” for “total income” and all other necessary modifications, apply to a sum apportioned to trustees as they apply to sums apportioned to an individual; and section 429 shall apply accordingly<sup>F21</sup>.*
- (5) For the purposes of this section sums paid or credited to trustees in any year of assessment in respect of dividends or interest payable in respect of shares in or deposits with or loans to a building society being sums in respect of which the society is required to account for and pay an amount in accordance with regulations under section 476(1) shall be treated as income for that year received by the trustees after deduction of income tax from a corresponding gross amount.

In this subsection expressions used in section 476 have the same meanings as in that section.

- (6) In this section “trustees” does not include personal representatives; but where personal representatives, on or before the completion of the administration of the estate, pay to trustees any sum representing income which, if personal representatives were trustees within the meaning of this section, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the basic rate.

This subsection shall be construed as if it were contained in Part XVI.

### Textual Amendments

**F19** 1988(F) s.55(3)—from 1 July 1988. *Previously*

“(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; and”.

**F20** *Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.*

**Status:** Point in time view as at 16/07/1992. This version of this part contains provisions that are not valid for this point in time.

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**F21** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.

#### Modifications etc. (not altering text)

**C12** See—s.186(11)—approved profit sharing schemes. s.454—underwriter's special reserve fund not to be treated as settlement. s.469(1)—unit trusts. s.832—“additional rate” defined. 1990 s.56 and Sch.10 para.19—convertible securities. Vol.1. Table D(2).

**C13** See 1990 s.30 and Sch.5 para.13 and s.132 and Sch.19 Part IV—subs.(5) repealed as regards a sum paid or credited on or after 6 April 1991.

#### Marginal Citations

**M68** Source-1973 s.16(1)-(6); 1986 s.47(4)(a)

VALID FROM 31/07/1997

### [<sup>F22</sup> 686A Certain distributions to be treated as income to which section 686 applies.

- (1) This section applies where—
  - (a) a qualifying distribution is made to trustees;
  - (b) the trustees are not the trustees of a unit trust scheme; and
  - (c) the qualifying distribution falls within subsection (2) below.
- (2) A qualifying distribution falls within this subsection if it is a payment made by a company—
  - (a) on the redemption, repayment or purchase of its own shares; or
  - (b) on the purchase of rights to acquire its own shares.
- (3) The relevant part of the distribution shall be treated for the purposes of the Tax Acts as if it were income to which section 686 applies.
- (4) In subsection (3) above the reference to the relevant part of the distribution is a reference to so much (if any) of the distribution as—
  - (a) is not income falling within paragraph (a) of section 686(2);
  - (b) does not fall to be treated for the purposes of the Income Tax Acts as income of a settlor;
  - (c) is not income arising under a trust established for charitable purposes; and
  - (d) is not income from investments, deposits or other property held for any such purposes as are mentioned in sub-paragraph (i) or (ii) of section 686(2)(c).
- (5) Subsection (6) of section 686 shall apply for the purposes of this section as it applies for the purposes of that section.]

#### Textual Amendments

**F22** S. 686A inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(9)

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VALID FROM 06/04/2003

### **[<sup>F23</sup>686B Share incentive plans: distributions in respect of unappropriated shares**

- (1) This section applies to income of the trustees of an approved share incentive plan consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met.
- (2) Income to which this section applies is income to which section 686 applies only if and when—
  - (a) the period applicable to the shares under the following provisions of this section comes to an end without the shares being awarded to a participant in accordance with the plan, or
  - (b) if earlier, the shares are disposed of by the trustees.
- (3) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to subsection (5).

- (4) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the period applicable to the shares is—
  - (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to subsection (5).

- (5) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA (deduction for contribution to plan trust), the period applicable to the shares is the period of ten years beginning with the date of acquisition.
- (6) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (7) For the purposes of this section shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.
- (8) In relation to shares acquired by the trustees before 11th May 2001 this section has effect with the substitution—
  - (a) in subsection (3), of “Subject to subsection (4)” for the words before “the period applicable”, and

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- (b) in subsection (4)(b), of “the shares in question” for “any of the shares in that company”.]

#### Textual Amendments

**F23** Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

VALID FROM 06/04/2003

#### [<sup>F23</sup> 686C Interpretation of section 686B

- (1) Section 686B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Accordingly, expressions used in section 686B or this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.
- (3) References in section 686B to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.
- (4) In section 686B, “readily convertible assets” has the meaning given by sections 701 and 702 of ITEPA 2003, but this is subject to subsection (5).
- (5) In determining for the purposes of section 686B whether shares are readily convertible assets, any market for the shares that—
  - (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
 shall be disregarded.]

#### Textual Amendments

**F23** Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

VALID FROM 07/04/2005

#### [<sup>F24</sup> 686D Special trust rates not to apply to first slice of trust income

- (1) This section applies where income arising (or treated as arising) to the trustees of a trust in a year of assessment consists of or includes income subject to a special trust tax rate (“the special trust tax rate income”).
- (2) “Income subject to a special trust tax rate” means any income which is (or apart from this section would be) chargeable to income tax at—
  - (a) the dividend trust rate, or

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(b) the rate applicable to trusts.

(3) So much of the special trust tax rate income as does not exceed £500 is not chargeable to income tax at the dividend trust rate or the rate applicable to trusts (but is instead chargeable to income tax at the basic rate, the lower rate or the dividend ordinary rate, depending on the nature of the income).

(4) In the following provisions “the relevant purposes” means the purposes of—

- (a) determining (in accordance with section 1A(5)) which of the special trust tax rate income is not chargeable to income tax at the dividend trust rate, or the rate applicable to trusts, by virtue of subsection (3), and
- (b) determining at which of the basic rate, the lower rate and the dividend ordinary rate that special trust tax rate income is chargeable to income tax.

(5) For the relevant purposes the fact that any amount forming part of the special trust tax rate income is subject to a special trust tax rate is to be disregarded if, in any circumstances, an amount of that description is chargeable on trustees at the basic rate, the lower rate or the dividend ordinary rate.

(6) For the relevant purposes any of the special trust tax rate income that consists of—

- (a) an amount which, by virtue of section 686A, is treated for the purposes of the Tax Acts as if it were income to which section 686 applies, or
- (b) income treated as arising under Chapter 5 of Part 4 of ITTOIA 2005 (stock dividends from UK resident companies),

is to be regarded as income to which section 1A applies and which is chargeable at the dividend ordinary rate.

(7) For the relevant purposes any of the special trust tax rate income that consists of—

- (a) income treated as arising under section 761(1) (offshore income gains),
- (b) income treated as received under section 68 of FA 1989 (employee share ownership trusts), or
- (c) profits or gains which are treated as income under Chapter 12 of Part 4 of ITTOIA 2005 (guaranteed returns on disposals of futures and options) and in relation to which section 568 of that Act applies (profits or gains not meeting conditions of that section),

is or are to be regarded as chargeable at the basic rate.

(8) For the relevant purposes any of the special trust tax rate income that consists of—

- (a) income treated as received under section 714(2) or 716(3) (transfers of securities),
- (b) profits taken to be income arising under Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities), or
- (c) gains which are treated as arising under Chapter 9 of that Part and on which tax is charged at the rate applicable to trusts under section 467(7)(b) of that Act (gains from contracts for life assurance),

is or are chargeable at the lower rate.]

### Textual Amendments

**F24** S. 686D inserted (with effect in accordance with s. 14(5) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 14\(1\)](#)

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VALID FROM 06/04/2006

**[<sup>F25</sup>686E Application of section 686D where settlor has made more than one settlement**

- (1) If a settlor in relation to a settlement has made more than one settlement, section 686D shall have effect in relation to each settlement made by him with the following modification.
- (2) The reference in subsection (3) to £1000 shall be treated as a reference to—
  - (a) £200, or
  - (b) such amount as may be obtained by dividing £1000 by the total number of settlements in the class, provided that the amount is not less than £200.
- (3) If there is more than one settlor in relation to a settlement, the amount shall be the amount obtained under subsection (2)(b) in relation to the largest class of settlements.
- (4) In this section a reference to a class of settlements is a reference to the class of settlements which were made by a settlor and which are in existence during any part of the year of assessment.]

**Textual Amendments**

**F25** S. 686E inserted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 para. 4(2)(3)

**687 Payments under discretionary trusts.**

- (1) <sup>M69</sup>Where, in any year of assessment, trustees make a payment to any person in the exercise of a discretion exercisable by them or any person other than the trustees, then, if the sum paid is for all the purposes of the Income Tax Acts income of the person to whom it is paid (but would not be his income apart from the payment), the following provisions of this section shall apply with respect to the payment in lieu of section 348 or 349(1).
- (2) The payment shall be treated as a net amount corresponding to a gross amount from which tax has been deducted at a rate equal to the sum of the basic rate and the additional rate in force for the year in which the payment is made; and the sum treated as so deducted shall be treated—
  - (a) as income tax paid by the person to whom the payment is made; and
  - (b) so far as not set off under the following provisions of this section, as income tax assessable on the trustees.
- (3) <sup>M70</sup>The following amounts, so far as not previously allowed, shall be set against the amount assessable (apart from this subsection) on the trustees in pursuance of subsection (2)(b) above—
  - (a) the amount of any tax on income arising to the trustees and charged at the additional as well as at the basic rate in pursuance of section 686;
  - (b) *the amount of tax at the additional rate on any sum treated, under section 426(2) as applied by section 686(4) or under section 249(6), as income of the trustees;*

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- (c) the amount of tax at the basic rate on any amount taken for the purposes of sections 426 to 428 as applied by section 686(4) to be the amount to be excluded from the income of the trustees in accordance with section 427(4) <sup>F26</sup>;
- (d) an amount of tax in respect of income found on a claim made by the trustees to have been available to them for distribution at the end of the year 1972-73, which shall be taken to be two-thirds of the net amount of that income;
- (e) the amount of any tax on income arising to the trustees by virtue of section 761(1) and charged at a rate equal to the sum of the basic rate and the additional rate by virtue of section 764; and
- (f) the amount of any tax on annual profits or gains treated as received by trustees by virtue of section 714(2) or 716(3) of this Act or paragraph 2(2) or (3) of Schedule 22 to the Finance Act 1985 and charged at a rate equal to the sum of the basic rate and the additional rate by virtue of section 720(5) of this Act or paragraph 8(1) of Schedule 23 to that Act;
- (g) the amount of any tax on income which arose to the trustees by virtue of section 38(2) of the Finance Act 1974 (development gains) and charged at a rate equal to the basic rate and the additional rate in pursuance of section 43(1) of that Act;
- <sup>F27</sup>(h) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 4 of Schedule 4 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 17 of that Schedule;
- (i) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 11 of that Schedule;]
- <sup>F28</sup>(j) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 12 of Schedule 10 to the <sup>M71</sup>Finance Act 1990 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 19 of that Schedule;]

but tax on any income represented by amounts paid or credited as mentioned in section 686(5) shall be taken into account under paragraph (a) above only on production of a certificate from the building society concerned specifying those amounts and stating that an amount representing income tax on that income calculated at the basic rate has been or will be accounted for.

- (4) <sup>M72</sup>In this section “trustees” does not include personal representatives within the meaning of section 701(4).

#### Textual Amendments

- F26** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.
- F27** 1989 s.96(2) in relation to certain deep discount securities and certain deep gain securities from 14 March 1989.
- F28** S. 687(3)(j) inserted (retrospectively s. 687(3) has effect, and is deemed always to have had effect, as if s. 687(3) included para. (j)) by 1993 c. 34, s. 79(2)

#### Modifications etc. (not altering text)

- C14** See 1990 s.30 and Sch.5 para.14 and s.132 and Sch.19 Part IV—words following paragraph (i) repealed as regards an amount paid or credited on or after 6 April 1991.

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### Marginal Citations

**M69** Source-1973 s.17(1), (2)

**M70** Source-1973 s.17(3)(a)-(d), (f), (g); 1975 (No.2) s.34 (6); 1984 s.100(2); 1985 Sch.23 8(3); 1974 Sch.7 8

**M71** 1990 c. 29.

**M72** Source-1973 s.17(5)

VALID FROM 31/07/1997

### [<sup>F29</sup>687A Payments to companies under section 687.

- (1) This section applies where—
  - (a) trustees make a payment to a company;
  - (b) section 687 applies to the payment; and
  - (c) the company is chargeable to corporation tax and does not fall within subsection (2) below.
- (2) A company falls within this subsection if it is—
  - (a) a charity, as defined in section 506(1);
  - (b) a body mentioned in section 507 (heritage bodies); or
  - (c) an Association of a description specified in section 508 (scientific research organisations).
- (3) Where this section applies—
  - (a) none of the following provisions, namely—
    - (i) section 7(2),
    - (ii) section 11(3),
    - (iii) paragraph 5(1) of Schedule 16,
 shall apply in the case of the payment;
  - (b) the payment shall be left out of account in calculating the profits of the company for the purposes of corporation tax; and
  - (c) no repayment shall be made of the amount treated under section 687(2) as income tax paid by the company in the case of the payment.
- (4) If the company is not resident in the United Kingdom, this section applies only in relation to so much (if any) of the payment as is comprised in the company's chargeable profits for the purposes of corporation tax.]

### Textual Amendments

**F29** S. 687A inserted (with effect in accordance with s. 27(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 27(1)

### 688 Schemes for employees and directors to acquire shares.

<sup>M73</sup>Where under a scheme set up to comply with section 153(4)(b) of the <sup>M74</sup>Companies Act 1985 or Article 163(4)(b) of the <sup>M75</sup>Companies (Northern Ireland) Order 1986 (financial assistance for company employees and salaried directors acquiring shares)



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trustees receive interest from such employees or directors then, if and so far as the scheme requires an equivalent amount to be paid by way of interest by the trustees to the company, the trustees shall be exempt from tax under Case III of Schedule D on that interest received by them.

#### Marginal Citations

**M73** Source-1970 s.64A; 1970(F) Sch.4 9(5)

**M74** 1985 c. 6.

**M75** S.I. 1986/1032 (N.I. 6).

### 689 Recovery from trustees of discretionary trusts of higher rate tax due from beneficiaries.

- (1) <sup>M76</sup> The provisions of this section shall have effect in relation to the excess amount of the income tax due from any person (“the beneficiary”) to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.
- (2) In this section “the excess amount” means so much of the income tax payable in respect of the beneficiary’s income as exceeds what would be the amount thereof if all income tax [<sup>F30</sup>not chargeable at the lower rate] were chargeable at the basic rate to the exclusion of any higher rate.
- (3) If the whole or part of the excess amount of the income tax charged in respect of the income of the beneficiary is not paid before the expiry of six months from the date when it became due and payable, the Board may at any time thereafter, so long as the excess amount or any part thereof remains unpaid, cause to be served on the trustees of the trust a notice that the excess amount or any part thereof remains unpaid.
- (4) Where such a notice is served in accordance with the provisions of this section on the trustees of the trust, it shall be the duty of the trustees, as soon as may be, and if necessary from time to time, to pay to the Board in or towards satisfaction of the excess amount or any part thereof from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.
- (5) Any payments made out of income by trustees on account of tax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.
- (6) Any sum which the trustees are liable to pay by virtue of this section shall be recoverable from them as a debt due to the Crown.
- (7) Where there are two or more trustees under the trust, a notice under this section shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.

#### Textual Amendments

**F30** Words in s. 689(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s.19(3)(7)

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### Marginal Citations

**M76** Source-1970 s.36; 1971 Sch.6 16; 1978 Sch.2 3

VALID FROM 29/04/1996

## [<sup>F31</sup>CHAPTER 1D

### TRUST MANAGEMENT EXPENSES

#### Textual Amendments

**F31** Pt. 15 Ch. 1D (ss. 689A, 689B) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 16

#### **689A Disregard of expenses where beneficiary non-resident.**

- (1) This section applies where—
  - (a) there is income (“the distributed income”) arising to trustees in any year of assessment which (before being distributed) is income of a person (“the beneficiary”) other than the trustees;
  - (b) the trustees have any expenses in that year (“the management expenses”) which are properly chargeable to that income or would be so chargeable but for any express provisions of the trust; and
  - (c) the beneficiary is not liable to income tax on an amount of the distributed income (“the untaxed income”) by reason wholly or partly of—
    - (i) his not having been resident in the United Kingdom, or
    - (ii) his being deemed under any arrangements under section 788, or any arrangements having effect by virtue of that section, to have been resident in a territory outside the United Kingdom.
- (2) Where this section applies, there shall be disregarded in computing the income of the beneficiary for the purposes of the Income Tax Acts such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to the distributed income.
- (3) For the purpose of computing the proportion mentioned in subsection (2) above, the amounts of the distributed income and of the untaxed income shall not, in either case, include so much (if any) of the income as is equal to the amount of income tax, or of any foreign tax, chargeable on the trustees (by way of deduction or otherwise) in respect of that income.
- (4) In subsection (3) above, “foreign tax” means any tax which is—
  - (a) of a similar character to income tax; and
  - (b) imposed by the laws of a territory outside the United Kingdom.
- (5) For the purposes of this section, where the income tax chargeable on any person is limited in accordance with section 128 of the <sup>M77</sup>Finance Act 1995 (limit on income chargeable on non-residents), the income of that person on which he is not liable to

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tax by reason of not having been resident in the United Kingdom shall be taken to include so much of any income of his as—

- (a) is excluded income within the meaning of that section; and
- (b) is not income which is treated for the purposes of subsection (1)(b) of that section as income the tax on which is deducted at source.

#### Marginal Citations

M77 1995 c. 4.

### 689B Order in which expenses to be set against income.

- (1) The expenses of any trustees in any year of assessment, so far as they are properly chargeable to income (or would be so chargeable but for any express provisions of the trust), shall be treated—
  - (a) as set against so much (if any) of any income as is income falling within subsection (2) or (3) below before being set against other income; and
  - (b) as set against so much (if any) of any income as is income falling within subsection (2) below before being set against income falling within subsection (3) below.
- (2) Income falls within this subsection if it is—
  - (a) so much of the income of the trustees as is income the amount or value of which is determined in accordance with section 233(1A);
  - (b) income which is treated as having arisen to the trustees by virtue of section 246D(4) or 249(6); or
  - (c) income which is treated as received by the trustees by virtue of section 421(1) (a).
- (3) Income falls within this subsection if it is income to which section 1A applies but which does not fall within subsection (2) above.
- (4) This section has effect—
  - (a) subject to sections 686(2A) and 689A, but
  - (b) notwithstanding anything in section 1A(5) and (6).]

## CHAPTER V

### MAINTENANCE FUNDS FOR HISTORIC BUILDINGS

#### 690 Schedule 4 directions.

In this Chapter “a Schedule 4 direction” means a direction under paragraph 1 of Schedule 4 to the <sup>M78</sup>Inheritance Tax Act 1984 (maintenance funds for historic buildings); and any reference in this Chapter to paragraph 1 or Schedule 4 is a reference to that paragraph or that Schedule, as the case may be.

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**Modifications etc. (not altering text)**

**C15** See Inheritance Tax Acts.

**Marginal Citations**

**M78** 1984 c. 51.

**691 Certain income not to be income of settlor etc.**

- (1) <sup>M79</sup>This section applies to any settlement in relation to which a Schedule 4 direction has effect.
- (2) <sup>M80</sup>The trustees of the settlement may elect that this subsection shall have effect in relation to any year of assessment, and if they do so—
  - (a) any income arising in that year from the property comprised in the settlement which, apart from this subsection, would be treated by virtue of this Part as income of the settlor shall not be so treated; and
  - (b) no sum applied in that year out of the property for the purposes mentioned in paragraph 3(1)(a)(i) of Schedule 4 (maintenance etc. of qualifying property) shall be treated for any purposes of the Income Tax Acts as the income of any person—
    - (i) by virtue of any interest of that person in, or his occupation of, the qualifying property in question; or
    - (ii) by virtue of section 677.
- (3) <sup>M81</sup>Where income arising from the property comprised in the settlement in a year of assessment for which no election is made under subsection (2) above is treated by virtue of this Part as income of the settlor, paragraph (b) of that subsection shall have effect in relation to any sums in excess of that income which are applied in that year as mentioned in that paragraph.
- (4) Any election under subsection (2) above shall be by notice to the Board in such form as the Board may require and shall be made within two years of the end of the year of assessment to which it relates.
- (5) <sup>M82</sup>Where—
  - (a) for part of a year of assessment a Schedule 4 direction has effect and circumstances obtain by virtue of which income arising from property comprised in the settlement is treated as income of a settlor under this Part; and
  - (b) for the remainder of that year either no such direction has effect, or no such circumstances obtain, or both,
 subsections (1) to (4) above shall apply as if each of those parts were a separate year of assessment and separate elections may be made accordingly.

**Marginal Citations**

**M79** Source-1977 s.38(1); 1982 Sch.10 1; ITA Sch.8 8

**M80** Source-1977 s.38(2); 1980 s.88(7); 1987 Sch.15 10

**M81** Source-1977 s.38(3), (4)

**M82** Source-1977 s.38(5); 1982 Sch.10 1(3); ITA Sch.8 8

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## 692 Reimbursement of settlor.

- (1) <sup>M83</sup>This section applies to income arising from settled property in respect of which a Schedule 4 direction has effect if the income—
- (a) is treated by virtue of this Part as income of the settlor, and
  - (b) is applied in reimbursing the settlor for expenditure incurred by him for a purpose within paragraph 3(1)(a)(i) of Schedule 4,
- and if that expenditure is (or would apart from the reimbursement be) deductible in computing the profits of a trade carried on by the settlor.
- (2) Income to which this section applies shall not be treated as reducing the expenditure deductible in computing the profits referred to in subsection (1) above, and shall not be regarded as income of the settlor otherwise than by virtue of this Part.

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### Marginal Citations

**M83** Source-1982 s.61; ITA Sch.8 21

## 693 Severance of settled property for certain purposes.

<sup>M84</sup>Where settled property in respect of which a Schedule 4 direction has effect constitutes part only of the property comprised in a settlement, it and the other property shall be treated as comprised in separate settlements for the purposes of sections 27 and 380 to 387 and this Part.

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### Marginal Citations

**M84** Source-1982 s.62(1), (2); ITA Sch.8 22

## 694 Trustees chargeable to income tax at 30 per cent. in certain cases.

- (1) <sup>M85</sup>If in the case of a settlement in respect of which a Schedule 4 direction has effect—
- (a) any of the property comprised in the settlement (whether capital or income) is applied otherwise than as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4; or
  - (b) any of that property on ceasing to be comprised in the settlement devolves otherwise than on any such body or charity as is mentioned in paragraph 3(1)(a)(ii) of that Schedule; or
  - (c) the direction ceases to have effect;
- then, unless subsection (6) below applies, income tax shall be charged under this section in respect of the settlement.
- (2) Subject to subsection (3) below, tax chargeable under this section shall be charged *at the rate of 30 per cent.* <sup>F32</sup> on the whole of the income which has arisen in the relevant period from the property comprised in the settlement and has not been applied (or accumulated and then applied) as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4.

In this subsection “the relevant period” means, if tax has become chargeable under this section in respect of the settlement on a previous occasion, the period

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since the last occasion and, in any other case, the period since the settlement took effect.

[<sup>F33</sup>(2A) The rate at which tax is charged under this section shall be equivalent to the higher rate of income tax for the year of assessment during which the charge arises, reduced by the sum of the basic and additional rates for that year.]

(3) <sup>M86</sup>Tax shall not be chargeable under this section in respect of income which by virtue of Chapters I to IV of this Part is treated as income of the settlor; but where income arising in any year of assessment is exempted by this subsection any sums applied in that year as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4 shall be treated as paid primarily out of that income and only as to the excess, if any, out of income not so exempted.

(4) Tax charged under this section shall be in addition to any tax chargeable apart from this section and—

- (a) the persons assessable and chargeable with tax under this section shall be the trustees of the settlement; and
- (b) all the provisions of the Income Tax Acts relating to assessments and to the collection and recovery of income tax shall, so far as applicable, apply to the charge, assessment, collection and recovery of tax under this section.

(5) Tax shall also be chargeable in accordance with subsections (1) to (4) above if—

- (a) any of the property comprised in a settlement to which subsection (1) above applies, on ceasing at any time to be comprised in the settlement, devolves on any such body or charity as is referred to in paragraph (b) of that subsection, and
- (b) at or before that time an interest under the settlement is or has been acquired for a consideration in money or money's worth by that or another such body or charity;

but for the purposes of this subsection any acquisition from another such body or charity shall be disregarded.

(6) Tax shall not be chargeable under this section in respect of a settlement on an occasion when the whole of the property comprised in it is transferred tax-free into another settlement; but on the first occasion on which tax becomes chargeable under this section in respect of a settlement (“the current settlement”) comprising property which was previously comprised in another settlement or settlements and has become comprised in the current settlement as a result of, or of a series of, tax-free transfers, the relevant period for the purposes of subsection (2) above shall, as respects that property, be treated as having begun—

- (a) on the last occasion on which tax became chargeable under this section in respect of the other settlement or any of the other settlements; or
- (b) if there has been no such occasion, when the other settlement or the first of the other settlements took effect.

(7) <sup>M87</sup> For the purposes of subsection (6) above, property is transferred tax-free from one settlement into another if either—

- (a) it ceases to be comprised in the first-mentioned settlement and becomes comprised in the other settlement in circumstances such that by virtue of paragraph 9(1) of Schedule 4 there is (or, but for paragraph 9(4), there would be) no charge to capital transfer tax or inheritance tax in respect of the property; or

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- (b) both immediately before and immediately after the transfer it is property in respect of which a Schedule 4 direction has effect.

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**Textual Amendments**

**F32** Repealed by 1988(F) s.24(3) for 1988-89 and subsequent years.

**F33** 1988(F) s.24(3).

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**Marginal Citations**

**M85** Source-1980 s.52(1), (2); 1982 Sch.10 2(2) (3); ITA Sch.8 17

**M86** Source-1980 s.52(3)-(6); ITA Sch.8 17

**M87** Source-1980 s.52(7); 1982 Sch.10 2(4); ITA Sch.8 17

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