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Changes to legislation: Income and Corporation Taxes Act 1988, Cross Heading: . . . is up to date with all changes known to be in force on or before 26 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

[^{F1}CHAPTER 1C

LIABILITY OF TRUSTEES]

F1 . . .

Textual Amendments

- F1** Cross-heading before s. 686 replaced by Pt. 15 Ch. 1C heading (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 12](#)

VALID FROM 06/04/2006

[^{F2}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
 - (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.

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- (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

- F2** 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

[^{F2}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—
 - (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

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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

- F2** 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

[^{F2}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—
 - (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—

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- (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

- F2** 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

[^{F2}685D Variation of will or intestacy, etc: identification of settlor

- (1) This section applies where—
 - (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

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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.

(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.

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(8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.]

Textual Amendments

F2 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

[^{F2}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 purposes of the Tax Acts it shall be treated as neither resident nor ordinarily resident in the United Kingdom.

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- (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

- F2** 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

[^{F2}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

- F2** 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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[^{F2}685G Sub-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

- F2** 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 [^{F3}Accumulation and discretionary trusts: special rates of tax.]

- (1) ^{M1} So far as income arising to trustees is income to which this section applies it shall [^{F4}be chargeable to income tax [^{F5}at the rate applicable in accordance with subsection (1AA) below], instead of at the basic rate or, in accordance with [^{F6}section 1A], at the lower rate [^{F7}or the Schedule F ordinary rate].]

[^{F8}(1AA) The rate applicable in accordance with this subsection is—

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- (a) in the case of so much of any income to which this section applies as is Schedule F type income, the Schedule F trust rate; and
- (b) in the case of any other income to which this section applies, the rate applicable to trusts.]

[^{F9}(1A) [^{F10}In relation to any year of assessment for which income tax is charged—

- (a) the Schedule F trust rate shall be 25 per cent., and
- (b) the rate applicable to trusts shall be 34 per cent.,

or, in either case, such other rate as Parliament may determine.]

[^{F11}For the purposes of assessments] for the year 1993-94 and in relation to years of assessment for which tax at the basic rate and the additional rate was separately chargeable, references to the charging of income with tax at the rate applicable to trusts shall be taken to include references to the charging of income with tax both at the basic rate and at the additional rate.]

(2) This section applies to income arising to trustees in any year of assessment so far as it—

- (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

[^{F12}(b) is not, before being distributed, either—

- (i) the income of any person other than the trustees, or
- (ii) treated for any of the purposes of the Income Tax Acts as the income of a settlor; and]

[^{F13}(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; ^{F14}. . .]

(d) ^{F14}

[^{F15}(2AA) The rate at which income tax is chargeable on so much of any income arising to trustees in any year of assessment as—

- (a) is income to which this section applies, and
- (b) is treated in accordance with section 689B as 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),

shall be the rate at which it would be chargeable on that income apart from this section, instead of the rate applicable to trusts [^{F16}or the Schedule F trust rate (as the case may be)].]

[^{F17}(2A) For the purposes of this section where—

- (a) any trustees have expenses in any year of assessment (“management expenses”) which are properly chargeable to income or would be so chargeable but for any express provisions of the trust, and
- (b) there is income arising to them in that year (“the untaxed income”) which does not bear income tax for that year by reason wholly or partly of the trustees not having been resident in the United Kingdom or being deemed under any

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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, there shall be disregarded for the purposes of [^{F18}subsection (2AA)] above such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to all the income arising to the trustees in that year.]

[^{F19}(2B) For the purposes of subsection (2A) above where the income tax borne by any income arising to trustees is limited in accordance with section 128 of the ^{M2}Finance Act 1995 (limit on income chargeable on non-residents), the income arising to the trustees which shall be taken not to bear tax by reason wholly or partly of their not having been resident in the United Kingdom shall include so much of any income arising to them 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.]

(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^{F20}.*

(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^{F21}.*

(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.

[^{F22}(5A) In this section “Schedule F type income”, in relation to trustees, means—

- (a) income chargeable under Schedule F;
- (b) income to which section 1A applies by virtue of its being equivalent foreign income falling within subsection (3)(b) of that section and chargeable under Case V of Schedule D;
- (c) a qualifying distribution whose amount or value is determined in accordance with section 233(1A);
- (d) a non-qualifying distribution, within the meaning of section 233(1B);
- (e) income treated as arising to the trustees by virtue of section 249(6)(b);
- (f) income treated as received by the trustees by virtue of section 421(1)(a);
- (g) any amount which, by virtue of section 686A, is treated for the purposes of the Tax Acts as if it were income to which this section applies.]

(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

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sum shall be deemed to be paid to the trustees as income and to have borne income tax at the [^{F23}applicable rate].

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

Textual Amendments

- F3** S. 686 sidenote substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(8)
- F4** Words in s. 686(1) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(1), 25(1)
- F5** Words in s. 686(1) substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(2)(a)
- F6** Words in s. 686(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 13
- F7** Words in s. 686(1) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(2)(b)
- F8** S. 686(1AA) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(3)
- F9** S. 686(1A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(2), 25(1)
- F10** Words in s. 686(1A) substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(4)
- F11** Words in s. 686(1A) substituted (6.4.1999) by Finance (No. 2) Act 1997 (c. 58), s. 32(5)(10)
- F12** S. 686(2)(b) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 13
- F13** 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”.
- F14** S. 686(2)(d) and preceding word repealed (with effect in accordance with Sch. 7 para. 12(4) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, 12(1), Sch. 18 Pt. 6(7), Note 1
- F15** S. 686(2AA) inserted (with effect in accordance with Sch. 7 para. 12(4) of the amending Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, 12(1)
- F16** Words in s. 686(2AA) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(6)
- F17** S. 686(2A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(3), 25(1)
- F18** Words in s. 686(2A) substituted (with effect in accordance with Sch. 7 para. 12(4) of the amending Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, 12(2)
- F19** S. 686(2B) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), Sch. 6 para. 15
- F20** Repealed by 1989 s.187 and Sch.17 Part Vin relation to accounting periods beginning after 31 March 1989.
- F21** Repealed by 1989 s.187 and Sch.17 Part Vin relation to accounting periods beginning after 31 March 1989.
- F22** S. 686(5A) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 32(7)
- F23** Words in s. 686(6) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(4), 25(1)

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Modifications etc. (not altering text)

- C1** S. 686 extended (with effect in accordance with Sch. 7 para. 3(5) of the extending Act) by [Finance Act 1997 \(c. 16\), Sch. 7 paras. 1, 3\(2\)](#)
- C2** 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.56and Sch.10 para.19—*convertible securities*.Vol.1. Table D(2).
- C3** See 1990 s.30and Sch.5 para.13and s.132and Sch.19 Part IV—subs.(5)*repealed as regards a sum paid or credited on or after 6April 1991.*
- C4** S. 686(6) applied (with effect in accordance with Sch. 7 para. 3(5) of the affecting Act) by [Finance Act 1997 \(c. 16\), Sch. 7 paras. 1, 3\(4\)](#)

Marginal Citations

- M1** Source-1973 s.16(1)-(6); 1986 s.47(4)(a)
- M2** 1995 c. 4.

[^{F24}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

- F24** 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

[^{F25}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

F25 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

[^{F25} 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

F25 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

[^{F26} 686DSpecial 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

F26 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

[^{F27}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

F27 S. 686E inserted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 para. 4(2)(3)

687 Payments under discretionary trusts.

- [^{F28}(1) Where in any year of assessment trustees make a payment to any person in the exercise of a discretion, whether a discretion exercisable by them or by any other person, then if the payment—
- (a) is for all the purposes of the Income Tax Acts income of the person to whom it is made (but would not be his income if it were not made to him), or
 - (b) is treated for those purposes as the income of the settlor by virtue of section 660B,
- the following provisions of this section 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 [^{F29}the rate applicable to trusts] 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 [^{F30}or, as the case may be, the settlor]; and
 - (b) so far as not set off under the following provisions of this section, as income tax assessable on the trustees.
 - (3) ^{M3}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—
 - [^{F31}(a) the amount of any tax on income arising to the trustees which (not being income the tax on which falls within paragraphs (a1) to (bc) below) is charged

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- in pursuance of section 686 at the rate applicable to trusts or the Schedule F trust rate;
- (a1) the amount of tax at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate on any income of the trustees chargeable under Schedule F;
 - (a2) the amount of tax which, by virtue of section 233(1A), is charged, at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate, on the amount or value of the whole or any part of any qualifying distribution included in the income arising to the trustees;
 - (aa) the amount of tax which, by virtue of section 233(1B), is charged, at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate, on the amount or value of the whole or any part of any non-qualifying distribution included in the income arising to the trustees;]
 - [^{F32}(aaa) ^{F33}]
 - [^{F34}(b) the amount of tax at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate on any sum treated, under section 249(6), as income of the trustees;]
 - [^{F35}(bb) the amount of tax at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate on any sum treated under section 421(1)(a) as income of the trustees;
 - (bc) the amount of tax at a rate equal to the difference between the Schedule F ordinary rate and the Schedule F trust rate on any sum treated under section 686A as income of the trustees;]
 - (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)* ^{F36};
 - (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 [^{F37}at the rate applicable to trusts] 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 [^{F37}at the rate applicable to trusts] 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;
 - [^{F38}(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 [^{F37}at the rate applicable to trusts] 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 [^{F37}at the rate applicable to trusts] by virtue of paragraph 11 of that Schedule;]
 - [^{F39}(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 ^{M4}Finance Act 1990 and is

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charged to tax [^{F37}at the rate applicable to trusts] by virtue of paragraph 19 of that Schedule;]

[^{F40}(k) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 1 of Schedule 13 to the Finance Act 1996 and is charged to tax at the rate applicable to trusts by virtue of paragraph 6 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) ^{M5}In this section “trustees” does not include personal representatives within the meaning of section 701(4).

[^{F41}(5) References in this section to payments include payments in money or money’s worth.]

Textual Amendments

- F28** S. 687(1) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(2)**
- F29** Words in s. 687(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, **Sch. 6 paras. 9(1), 25(1)**
- F30** Words in s. 687(2)(a) inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(3)**
- F31** S. 687(3)(a)(a1)(a2)(aa) substituted for s. 687(3)(a)(aa) (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(2)**
- F32** S. 687(3)(aaa) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 15**
- F33** S. 687(3)(aaa) repealed (with effect in accordance with Sch. 6 para. 10(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 6 para. 10(1), Sch. 8 Pt. 2(11)**, Note
- F34** S. 687(3)(b) substituted (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(3)**
- F35** S. 687(3)(bb)(bc) inserted (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(4)**
- F36** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989
- F37** Words in s. 687(3)(e)(f)(h)(i) and (j), as it so has effect, substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, **Sch. 6 paras. 9(2)(d), 25(1)**
- F38** 1989 s.96(2) in relation to certain deep discount securities and certain deep gain securities from 14 March 1989.
- F39** 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)
- F40** S. 687(3)(k) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 35** (with Sch. 15)
- F41** S. 687(5) added (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(4)**

Modifications etc. (not altering text)

- C5** 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.
- C6** S. 687(3) amended (*retrospectively*) by 1993 c. 34, s. 79(1)(2), **Sch. 6 para. 9(2)(d)**

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Marginal Citations

- M3** 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
- M4** 1990 c. 29.
- M5** Source-1973 s.17(5)

[^{F42}687A Payments to companies under section 687.

- (1) This section applies where—
- trustees make a payment to a company;
 - section 687 applies to the payment; and
 - 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 charity, as defined in section 506(1);
 - a body mentioned in section 507 (heritage bodies); or
 - an Association of a description specified in section 508 (scientific research organisations).
- (3) Where this section applies—
- none of the following provisions, namely—
 - section 7(2),
 - section 11(3),
 - paragraph 5(1) of Schedule 16,shall apply in the case of the payment;
 - the payment shall be left out of account in calculating the profits of the company for the purposes of corporation tax; and
 - 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

- F42** 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.

^{M6}Where under a scheme set up to comply with section 153(4)(b) of the ^{M7}Companies Act 1985 or Article 163(4)(b) of the ^{M8}Companies (Northern Ireland) Order 1986 (financial assistance for company employees and salaried directors acquiring shares) 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.

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Marginal Citations

M6 Source-1970 s.64A; 1970(F) Sch.4 9(5)

M7 1985 c. 6.

M8 S.I. 1986/1032 (N.I. 6).

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

F43

Textual Amendments

F43 S. 689 repealed (with effect in accordance with s. 74(2), Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), Sch. 17 para. 15, **Sch. 29 Pt. 8(8)**

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