



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XV

SETTLEMENTS

[^{F1}CHAPTER IA

LIABILITY OF SETTLOR

[^{F1} Main provisions]

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

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

Status: Point in time view as at 27/07/1999.

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- (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.
- (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.

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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—

- [^{F2}(a)] is paid to or for the benefit of an unmarried minor child of the settlor [^{F3}, or
 (b) would otherwise be treated (apart from this section) as income 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—

- [^{F4}(a) treated as income of the settlor, or
 (b) paid (whether as income or capital) to or for the benefit of, or otherwise treated as the income of, a beneficiary other than an unmarried minor child of the settlor, or
 (bb) treated as the income of an unmarried minor child of the settlor, and subject to tax, in any of the years 1995-96, 1996-97 or 1997-98, 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).

[^{F5}(3A) For the purposes of subsection (3)(bb) above—

- (a) the amount of a child's income that is subject to tax in a year of assessment is the amount ("the taxable amount") by which the child's total income for income tax purposes exceeds the aggregate amount of allowances that may be set against it; and
 (b) income arising under the settlement that is treated as income of the child is subject to tax to the extent that it does not exceed the taxable amount.

In this subsection "allowance" includes any deduction allowed against total income.]

(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.

[^{F6}(5) If in any year of assessment the aggregate amount of a child's relevant settlement income does not exceed £100, subsection (1) does not apply in relation to that income.

A child's 'relevant settlement income' means income paid to or for the benefit of, or otherwise treated as income of, that child which apart from this subsection would be treated as income of the settlor under subsection (1).]

(6) In this section—

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- (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.

Textual Amendments

- F2** Words in s. 660B(1) renumbered as s. 660B(1)(a) (with effect in accordance with s. 64(5) of the amending Act) by virtue of Finance Act 1999 (c. 16), s. 64(1)
- F3** S. 660B(1)(b) and preceding word inserted (with effect in accordance with s. 64(5) of the amending Act) by Finance Act 1999 (c. 16), s. 64(1)
- F4** S. 660B(3)(a)(b)(bb) substituted for s. 660B(3)(a)(b) (with effect in accordance with s. 64(6) of the amending Act) by Finance Act 1999 (c. 16), s. 64(2)
- F5** S. 660B(3A) inserted (with effect in accordance with s. 64(6) of the amending Act) by Finance Act 1999 (c. 16), s. 64(3)
- F6** S. 660B(5) substituted (with effect in accordance with s. 64(5) of the amending Act) by Finance Act 1999 (c. 16), s. 64(4)

660C Nature of charge on settlor.

(1) Tax chargeable by virtue of this Chapter shall be charged—

- [^{F7}(a) in the case of income falling within subsection (1A) below, as if it were income to which section 1A applies by virtue of subsection (2)(b) of that section; and
- (b) in the case of any other income, under Case VI of Schedule D].

[^{F8}(1A) Income falls within this subsection if it is—

- (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 distribution in relation to which section 233(1) applies;
- (d) a qualifying distribution whose amount or value is determined in accordance with section 233(1A);
- (e) a non-qualifying distribution, within the meaning of section 233(1B);
- (f) income treated as arising by virtue of section 249;
- (g) income treated as received by virtue of section 421(1)(a).]

(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.

Textual Amendments

- F7** S. 660C(1)(a)(b) substituted for words in s. 660C(1) (with effect in accordance with Sch. 4 para. 14(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 14(2)

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F8 S. 660C(1A) inserted (with effect in accordance with Sch. 4 para. 14(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 14(3)

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.

Status:

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