

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1988, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 109.

GAINS ARISING FROM CERTAIN SETTLED PROPERTY

Modifications etc. (not altering text)

C1 Sch. 10 excluded (25.07.1991) by Finance Act 1991 (c. 31, SIF 63:2), s. 89(1), Sch. 16 para. 3(1)(b)

Charge on settlor with interest in settlement

- 1 (1) Subject to paragraphs 3 and 4 below, this paragraph applies where—
 - (a) in a year of assessment chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
 - (b) after making any deductions provided for by section 4(1) of the Capital Gains Tax Act 1979 in respect of disposals of the settled property there remains an amount on which the trustees would, disregarding section 5 (annual exemption) of that Act (and apart from this Schedule), be chargeable to tax for the year in respect of those gains, and
 - (c) at any time during the year the settlor has an interest in the settlement.
- (2) Where this paragraph applies, the trustees shall not be chargeable to tax in respect of the gains concerned but instead chargeable gains of an amount equal to that referred to in sub-paragraph (1)(b) above shall be treated as accruing to the settlor in the year.
- 2 (1) Subject to sub-paragraphs (2) and (3) below, for the purposes of paragraph 1(1)(c) above a settlor has an interest in a settlement if—
 - (a) any property which may at any time be comprised in the settlement or any income which may arise under the settlement is, or will or may become, applicable for the benefit of or payable to the settlor or the spouse of the settlor in any circumstances whatsoever, or
 - (b) the settlor, or the spouse of the settlor, enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any income arising under the settlement.
- (2) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above if and so long as none of the property which may at any time be comprised in the settlement and none of the income which may arise under the settlement can become applicable or payable as mentioned in that paragraph except in the event of—
 - (a) the bankruptcy of some person who is or may become beneficially entitled to that property or income;

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- (b) any assignment of or charge on that property or income being made or given by some such person;
 - (c) 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
 - (d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.
- (3) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above if and so long as some person is alive and under the age of 25 during whose life none of the property which may at any time be comprised in the settlement and none of the income which may arise under the settlement can become applicable or payable as mentioned in that paragraph except in the event of that person becoming bankrupt or assigning or charging his interest in that property or income.
- 3 (1) Paragraph 1 above does not apply where the settlor dies during the year.
- (2) In a case where the settlor has an interest in the settlement only for either or both of the following reasons, namely—
- (a) that property or income is, or will or may become, applicable for the benefit of or payable to the settlor’s spouse, and
 - (b) that the settlor’s spouse enjoys a benefit from property or income,
- paragraph 1 above does not apply where the spouse dies, or the settlor and the spouse cease to be married, during the year.
- 4 Paragraph 1 above does not apply unless the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year.

Right of recovery

- 5 (1) Where any tax becomes chargeable on and is paid by a person in respect of gains treated as accruing to him [^{F1}(or, if he is a married man, to his wife)] under paragraph 1 above he shall be entitled—
- (a) to recover the amount of the tax from any trustee of the settlement, and
 - (b) for that purpose to require an inspector to give him a certificate specifying—
 - (i) the amount of the gains accruing to the trustees in respect of which he has paid tax; and
 - (ii) the amount of tax paid;
 and any such certificate shall be conclusive evidence of the facts stated in it.
- (2) In order to ascertain for the purposes of sub-paragraph (1) above the amount of tax chargeable for any year by virtue of paragraph 1 above in respect of gains treated as accruing to any person, those gains shall be regarded as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.
- [^{F2}(3) Where for the year 1988–89 or 1989–90—
- (a) section 99(1) of this Act applies in relation to a husband and wife, and

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- (b) gains are treated by virtue of paragraph 1 above as accruing to either of them, and
- (c) tax at a rate equivalent to the higher rate of income tax is charged on the whole or part of the chargeable amount (within the meaning of section 99) of either of them,

sub-paragraphs (4) and (5) below shall have effect for ascertaining for the purposes of sub-paragraph (1) above the amount of tax chargeable for the year in respect of gains treated as accruing by virtue of paragraph 1 above.

- (4) Those gains shall be regarded as having been taxed at a rate equivalent to the higher rate of income tax so far as their amount does not exceed the amount (or the aggregate of the amounts) on which tax was charged as mentioned in sub-paragraph (3)(c) above, and otherwise as having been taxed at a rate equivalent to the basic rate of income tax.
- (5) In a case where—
 - (a) section 99(3) applies, and
 - (b) the chargeable amounts of both husband and wife include gains treated as accruing by virtue of paragraph 1 above,

the extent to which the gains treated as accruing to the husband and the gains treated as accruing to the wife are regarded as having been taxed at a rate equivalent to the higher rate of income tax shall be proportionate to the amounts of those gains.]

Textual Amendments

- F1** Words in Sch. 10 para. 5(1) repealed(*for 1990-91 and subsequent years of assessment*) by Finance Act 1988 (c. 39, SIF 63:1,2), s. 148, Sch. 14 Pt. VIII Note 6.
- F2** Sch. 10 para. 5(3)-(5) repealed(*for 1990-91 and subsequent years of assessment*) by Finance Act 1988 (c. 39, SIF 63:1,2), s. 148, Sch. 14 Pt. VIII Note 6.

Meaning of “settlor” etc.

- 6 (1) For the purposes of this Schedule a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.
- (2) In this Schedule—
 - (a) references to settled property (and to property comprised in a settlement), in relation to any settlor, are references only to property originating from that settlor, and
 - (b) references to income arising under a settlement, in relation to any settlor, are references only to income originating from that settlor.
- (3) References in this paragraph 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,
 - (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.

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- (4) References in this paragraph 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.
- (5) In sub-paragraphs (3) and (4) 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.

Information

- 7 (1) An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of this Schedule.
- (2) In the first column in the Table in section 98 of the ^{M1}Taxes Management Act 1970 (penalty for failure to give particulars etc.) there shall be added at the end— “ Paragraph 7(1) of Schedule 10 to the Finance Act 1988. ”

Marginal Citations

M1 1970 c. 9.

Shares in non-resident companies

- 8 The reference in paragraph 1(1)(a) above to gains accruing to trustees from the disposal of settled property includes a reference to gains treated as accruing to them under section 15 of the ^{M2}Capital Gains Tax Act 1979 (non-resident companies) and the reference in paragraph 1(1)(b) above to deductions in respect of disposals of the settled property includes a reference to deductions on account of losses treated under that section as accruing to the trustees.

Marginal Citations

M2 1979 c. 14.

Maintenance funds for historic buildings

- 9 Where the trustees of a settlement have elected that section 691(2) of the Taxes Act 1988 (certain income of maintenance funds for historic buildings not to be income

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of settlor etc.) shall have effect in the case of any settlement or part of a settlement in relation to a year of assessment, the preceding provisions of this Schedule shall not apply in relation to the settlement or part for the year.

Commencement

- 10 This Schedule shall have effect for the year 1988–89 and subsequent years of assessment.

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