



Finance Act 1989

1989 CHAPTER 26

PART II **U.K.**

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I **U.K.**

GENERAL

Settlements etc.

108 **Outright gifts etc. between husband and wife. **U.K.****

- (1) Section 685 of the Taxes Act 1988 (provisions supplementary to sections charging settlor to tax in excess of basic rate on certain settlement income) shall be amended as follows.
- (2) In subsection (3), after the word “above” there shall be inserted the words “and subsection (4B) below”.
- (3) At the end of subsection (4) there shall be added the words “, but subject to subsections (4A) and (4C) below”.
- (4) After subsection (4) there shall be inserted—
 - “(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

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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 their 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) This section shall have effect for the year 1990-91 and subsequent years of assessment.

109 Settlements where settlor retains interest in settled property. U.K.

(1) After section 674 of the Taxes Act 1988 there shall be inserted—

“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”.

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- (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.”
- (2) In section 125(3) of the Taxes Act 1988, in paragraph (a), for the words “section 683(1) (a) or (c) or (6)” there shall be substituted the words “subsection (1)(a) or (c) of section 674A or 683 or subsection (6) of section 683 (including that subsection as it applies in relation to section 674A(1))”.
- (3) In sections 675(1), (4) and (5) and 676(1)(a) of that Act, for the words “or 674” there shall be substituted the words “674 or 674A”.
- (4) In section 677(2)(c) of that Act, after “674” there shall be inserted “674A”.

110 Residence of trustees. **U.K.**

- (1) Where the trustees of a settlement include at least one who is not resident in the United Kingdom as well as at least one who is, then for all the purposes of the Income Tax Acts—
 - (a) if the condition in subsection (2) below is satisfied, the trustee or trustees not resident in the United Kingdom shall be treated as resident there, and
 - (b) otherwise, the trustee or trustees resident in the United Kingdom shall be treated as not resident there (but as resident outside the United Kingdom).
- (2) The condition referred to in subsection (1) above is that the settlor or, where there is more than one, any of them is at any relevant time—
 - (a) resident in the United Kingdom,
 - (b) ordinarily resident there, or
 - (c) domiciled there.
- (3) For the purposes of subsection (2) above the following are relevant times in relation to a settlor—
 - (a) in the case of a settlement arising under a testamentary disposition of the settlor or on his intestacy, the time of his death, and
 - (b) in the case of any other settlement, the time or, where there is more than one, each of the times when he has provided funds directly or indirectly for the purposes of the settlement.
- (4) For the purposes of this section “settlor”, in relation to a settlement, includes any person who has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement.

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- (5) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words “or a United Kingdom trust (as defined in section 231),” there shall be substituted the words “the trustees of a settlement”.
- (6) Subject to subsections (7) to (9) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (7) For the purpose of determining the residence of trustees at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the trustees of the settlement is resident in the United Kingdom at any time during the period beginning with 1st October 1989 and ending with 5th April 1990.
- (8) This section shall not apply for any of the purposes of section 739 of the Taxes Act 1988 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 there referred to is received, or the right to receive it is acquired, before that date, and
 - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (9) This section shall not apply for any of the purposes of section 740 of the Taxes Act 1988 in relation to benefits received before 15th June 1989; and, in relation to benefits received on or after that date, “relevant income” for those purposes shall include income arising to trustees before 6th April 1989 notwithstanding that one or more of them was not resident outside the United Kingdom, unless they have been charged to tax in respect of it.

111 Residence of personal representatives. **U.K.**

- (1) Where the personal representatives of a deceased person include at least one who is not resident in the United Kingdom as well as at least one who is, then for all the purposes of the Income Tax Acts—
 - (a) if the condition in subsection (2) below is satisfied, the personal representative or representatives not resident in the United Kingdom shall be treated as resident there, and
 - (b) otherwise, the personal representative or representatives resident in the United Kingdom shall be treated as not resident there (but as resident outside the United Kingdom).
- (2) The condition referred to in subsection (1) above is that the deceased person is at his death—
 - (a) resident in the United Kingdom,
 - (b) ordinarily resident there, or
 - (c) domiciled there.
- (3) In this section “personal representatives” means—
 - (a) in relation to England and Wales, the deceased person’s personal representatives as defined by section 55 of the ^{M1}Administration of Estates Act 1925;
 - (b) in relation to Scotland, his executor or the judicial factor on his estate;

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- (c) in relation to Northern Ireland, his personal representatives as defined by section 45(1) of the ^{M2}Administration of Estates Act (Northern Ireland) 1955; and
 - (d) in relation to another country or territory, the persons having in relation to him under its law any functions corresponding to the functions for administration purposes of personal representatives under the law of England and Wales.
- (4) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words from “or, in” to “section 701” there shall be substituted the words “or personal representatives (within the meaning of section 111 of the Finance Act 1989)”.
- (5) Subject to subsections (6) to (8) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (6) For the purpose of determining the residence of personal representatives at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the personal representatives is resident in the United Kingdom at any time during the period beginning with 1st October 1989 and ending with 5th April 1990.
- (7) This section shall not apply for any of the purposes of section 739 of the Taxes Act 1988 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 there referred to is received, or the right to receive it is acquired, before that date, and
 - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (8) This section shall not apply for any of the purposes of section 740 of the Taxes Act 1988 in relation to benefits received before 15th June 1989 and, in relation to benefits received on or after that date, “relevant income” for those purposes shall include income arising to personal representatives before 6th April 1989 notwithstanding that one or more of them was not resident outside the United Kingdom, unless they have been charged to tax in respect of it.

Marginal Citations

M1 1925 c.23.

M2 1955 c. 24 (N.I.).

Status:

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

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