



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES

CHAPTER II

SETTLEMENTS

General provisions

68 Meaning of “settled property”.

In this Act, unless the context otherwise requires, “settled property” means any property held in trust other than property to which section 60 applies.

69 Trustees of settlements.

- (1) In relation to settled property, the trustees of the settlement shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom.
- (2) Notwithstanding subsection (1) above, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom, and if in such a case the trustees

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or a majority of them are or are treated in relation to that trust as not resident in the United Kingdom, the general administration of the trust shall be treated as ordinarily carried on outside the United Kingdom.

- (3) For the purposes of this section, and of sections 71(1) and 72(1), where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the ^{M1}Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.
- (4) If tax assessed on the trustees, or any one trustee, of a settlement in respect of a chargeable gain accruing to the trustees is not paid within 6 months from the date when it becomes payable by the trustees or trustee, and before or after the expiration of that period of 6 months the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, that person may at any time within 2 years from the time when the tax became payable be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

Marginal Citations

M1 1925 c. 18.

70 Transfers into settlement.

A transfer into settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the transferor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.

71 Person becoming absolutely entitled to settled property.

- (1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.
- [^{F1}(2) Where, in any case in which a person (“the beneficiary”) becomes absolutely entitled to any settled property as against the trustee, an allowable loss would (apart from this subsection) have accrued to the trustee on the deemed disposal under subsection (1) above of an asset comprised in that property—
- (a) that loss shall be treated, to the extent only that it cannot be deducted from pre-entitlement gains of the trustee, as an allowable loss accruing to the beneficiary (instead of to the trustee); but
 - (b) any allowable loss treated as accruing to the beneficiary under this subsection shall be deductible under this Act from chargeable gains accruing to the beneficiary to the extent only that it can be deducted from gains accruing to the beneficiary on the disposal by him of—

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- (i) the asset on the deemed disposal of which the loss accrued; or
 - (ii) where that asset is an estate, interest or right in or over land, that asset or any asset deriving from that asset.
- (2A) In subsection (2) above “pre-entitlement gain”, in relation to an allowable loss accruing to a trustee on the deemed disposal of any asset comprised in any settled property, means a chargeable gain accruing to that trustee on—
 - (a) a disposal which, on the occasion on which the beneficiary becomes absolutely entitled as against the trustee to that property, is deemed under subsection (1) above to have taken place; or
 - (b) any other disposal taking place before that occasion but in the same year of assessment.
- (2B) For the purposes of subsection (2)(b)(ii) above an asset (“the relevant asset”) derives from another if, in a case where—
 - (a) assets have merged,
 - (b) an asset has divided or otherwise changed its nature, or
 - (c) different rights or interests in or over any asset have been created or extinguished at different times,the value of the relevant asset is wholly or partly derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from the other asset.
- (2C) The rules set out in subsection (2D) below shall apply (notwithstanding any other rules contained in this Act or in section 113(2) of the Finance Act 1995 (order of deduction))
 - (a) for determining for the purposes of this section whether an allowable loss accruing to the trustee, or treated as accruing to the beneficiary, can be deducted from particular chargeable gains for any year of assessment; and
 - (b) for the making of deductions of allowable losses from chargeable gains in cases where it has been determined that such an allowable loss can be deducted from particular chargeable gains.
- (2D) Those rules are as follows—
 - (a) allowable losses accruing to the trustee on a deemed disposal under subsection (1) above shall be deducted before any deduction is made in respect of any other allowable losses accruing to the trustee in that year;
 - (b) allowable losses treated as accruing to the beneficiary under this section, so far as they cannot be deducted in a year of assessment as mentioned in subsection (2)(b) above, may be carried forward from year to year until they can be so deducted; and
 - (c) allowable losses treated as accruing to the beneficiary for any year of assessment under this section, and allowable losses carried forward to any year of assessment under paragraph (b) above—
 - (i) shall be deducted before any deduction is made in respect of any allowable losses accruing to the beneficiary in that year otherwise than by virtue of this section; and
 - (ii) in the case of losses carried forward to any year, shall be deductible as if they were losses actually accruing in that year.]
- (3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case

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where a person would become so entitled but for being an infant or other person under disability.

Textual Amendments

F1 S. 71(2)-(2D) substituted for s. 71(2) (with application in accordance with s. 75(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 75(1)**

Modifications etc. (not altering text)

C1 S. 71 excluded (27.7.1993) by [1993 c. 37](#), s. 12, **Sch. 2 Pt. I para. 21(2)(d)**

72 Termination of life interest on death of person entitled.

(1) On the termination, on the death of the person entitled to it, of [^{F2}an] interest in possession in all or any part of settled property—

- (a) the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to the whole or a corresponding part of the market value of the asset; but
- (b) no chargeable gain shall accrue on that disposal.

For the purposes of this subsection [^{F2}an] interest which is a right to part of the income of settled property shall be treated as [^{F2}an] interest in a corresponding part of the settled property.

[^{F3}(1A) Where the interest in possession mentioned in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, the first sentence of that subsection applies in relation to that interest only if—

- (a) immediately before the person's death, the interest falls within subsection (1B) below, or
- (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.

(1B) An interest falls within this subsection if—

- (a) the interest is—
 - (i) an immediate post-death interest, within the meaning given by section 49A of the Inheritance Tax Act 1984,
 - (ii) a transitional serial interest, within the meaning given by section 49B of that Act, or
 - (iii) a disabled person's interest within section 89B(1)(c) or (d) of that Act, or
- (b) section 71A of that Act (trusts for bereaved minors) applies to the property in which the interest subsists.

(1C) Subsection (1A) above does not have effect in relation to the operation of subsection (1) above as applied by subsection (2) below (but see subsection (2A) below).]

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- (2) Subsection (1) above shall apply where the person entitled to [^{F4}an] interest in possession in all or any part of settled property dies (although the interest does not then terminate) as it applies on the termination of such [^{F4}an] interest.
- [^{F5}(2A) Where the interest in possession mentioned in subsection (2) above is one to which the person becomes entitled on or after 22nd March 2006—
- (a) subsection (2) above, and
 - (b) the first sentence of subsection (1) above as applied by subsection (2) above, apply in relation to that interest only if, immediately before the person's death, the interest falls within subsection (1B)(a) above.]
- [^{F6}(3) This section shall apply on the death of the person entitled to any annuity payable out of, or charged on, settled property or the income of settled property as it applies on the death of a person whose interest in possession in the whole or any part of settled property terminates on his death.
- (4) Where, in the case of any entitlement to an annuity created by a settlement some of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.]
- (5) If there is [^{F7}an] interest in a part of the settled property and, where that is [^{F7}an] interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the [^{F8}... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.

Textual Amendments

- F2** Word in s. 72(1) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F3** S. 72(1A)-(1C) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(2\)](#)
- F4** Word in s. 72(2) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F5** S. 72(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\), 30\(3\)](#)
- F6** S. 72(3)(4) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(3\)](#)
- F7** Word in s. 72(5) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#)
- F8** Word in s. 72(5) repealed (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 5\(2\)](#), [Sch. 41 Pt. VIII\(4\)](#)

73 Death of life tenant: exclusion of chargeable gain.

- (1) Where, by virtue of section 71(1), the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes (or would but for a disability become) absolutely entitled thereto as against

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the trustee, then, if that occasion is the [^{F9}death of a person entitled to an interest in possession in the settled property]—

- (a) no chargeable gain shall accrue on the disposal, and
- (b) if on the death the property reverts to the disponent, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than 6th April 1965, be deemed to be at that earlier date.

- (2) Where the ^{F10}... interest referred to in subsection (1) above is an interest in part only of the settled property to which section 71 applies, subsection (1)(a) above shall not apply but any chargeable gain accruing on the disposal shall be reduced by a proportion corresponding to that represented by the part.

[^{F11}(2A) Where the interest in possession referred to in subsection (1) above is one to which the person becomes entitled on or after 22nd March 2006, subsections (1) and (2) above apply in relation to that interest only if—

- (a) immediately before the person's death, the interest falls within section 72(1B), or
- (b) the person dies under the age of 18 years and, immediately before the person's death, section 71D of the Inheritance Tax Act 1984 (age 18-to-25 trusts) applies to the property in which the interest subsists.]

- (3) The last sentence of subsection (1) of section 72 and [^{F12}subsections (3) to (5) of that section shall apply for the purposes of this section] as they apply for the purposes of section 72(1).

Textual Amendments

- F9** Words in s. 73(1) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(2\)](#)
- F10** Word in s. 73(2) repealed (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(3\)](#), [Sch. 41 Pt. VIII\(4\)](#)
- F11** S. 73(2A) inserted (retrospective to 22.3.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 20 paras. 29\(2\)](#), [31](#)
- F12** Words in s. 73(3) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 39 para. 6\(4\)](#)

74 Effect on sections 72 and 73 of relief under section 165 or 260.

- (1) This section applies where—
- (a) a claim for relief was made under section 165 or 260 in respect of the disposal of an asset to a trustee, and
 - (b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a).
- (2) Sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

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- (3) Subsection (2) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.
- (4) In this section “held-over gain” has the same meaning as in section 165 or, as the case may be, 260.

75 Death of annuitant.

F13

Textual Amendments

F13 S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. VIII\(4\)](#)

76 Disposal of interests in settled property.

- (1) [F14 Subject to subsection (1A) below] No chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including, in particular, an annuity or life interest, and the reversion to an annuity or life interest) by the person for whose benefit the interest was created by the terms of the settlement or by any other person except one who acquired, or derives his title from one who acquired, the interest for a consideration in money or money’s worth, other than consideration consisting of another interest under the settlement.

[F15(1A) Subject to subsection (3) below, subsection (1) above does not apply if—

- (a) the settlement falls within subsection (1B) below; or
- (b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.

(1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—

- (a) were not resident or ordinarily resident in the United Kingdom; or
- (b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]

- (2) Subject to subsection (1) above, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes, as the holder of that interest, absolutely entitled as against the trustee to any settled property, he shall be treated as disposing of the interest in consideration of obtaining that settled property (but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by him under section 71(1)).

[F16(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.]

Textual Amendments

F14 Words in s. 76(1) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 128\(1\)\(a\)](#)

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F15 S. 76(1A)(1B) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 128\(1\)\(b\)\(2\)](#)

F16 S. 76(3) inserted (with effect in accordance with s. 128(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 128\(1\)\(c\)\(3\)](#)

Modifications etc. (not altering text)

C2 S. 76(1) excluded (27.7.1993) by [1993 c. 37, s. 12, Sch. 2 Pt. I para. 21\(2\)\(e\)](#)

[^{F17}76A Disposal of interest in settled property: deemed disposal of underlying assets.

Schedule 4A to this Act has effect with respect to disposals for consideration of an interest in settled property.]

Textual Amendments

F17 S. 76A inserted (with application in accordance with s. 91(3) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 91\(1\)](#)

[^{F18}76B Transfers of value by trustees linked with trustee borrowing.

Schedule 4B to this Act has effect with respect to transfers of value by trustees that are, in accordance with the Schedule, treated as linked with trustee borrowing.]

Textual Amendments

F18 S. 76B inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(1\)](#)

[^{F19}77 Charge on settlor with interest in settlement.

- (1) Where in a year of assessment—
- (a) chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
 - (b) after making any deduction provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees [^{F20}would be chargeable to tax for the year in respect of those gains if—
 - (i) the gains were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied), and
 - (ii) section 3 were disregarded,
 and]
 - (c) at any time during the year the settlor has an interest in the settlement, the trustees shall not be chargeable to tax in respect of those [^{F21}gains] but instead chargeable gains of an amount equal to that referred to in paragraph (b) shall be treated as accruing to the settlor in that year.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in a settlement if—

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- (a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse [^{F22}or civil partner] in any circumstances whatsoever, or
 - (b) the settlor or his spouse [^{F23}or civil partner] enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- (3) The references in subsection (2)(a) and (b) above to the spouse [^{F24}or civil partner] of the settlor do not include—
- (a) a person to whom the settlor is not for the time being married but may later marry, or
 - [^{F25}(ab) a person of whom the settlor is not for the time being a civil partner but of whom he may later be a civil partner, or]
 - (b) a spouse [^{F26}or civil partner] 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 [^{F27}or surviving civil partner] of the settlor.
- (4) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision 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
 - [^{F28}(c) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, 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.
- [^{F29}(4A) In subsection (4) “child of the family”, in relation to parties to a marriage or civil partnership, means a child of one or both of them.]
- (5) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as some person is alive and under the age of 25 during whose life the property or any derived property cannot become payable or applicable as mentioned in that provision except in the event of that person becoming bankrupt or assigning or charging his interest in that property.
- (6) This section does not apply—
- (a) where the settlor dies during the year; or
 - (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—
 - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse [^{F30}or civil partner], or
 - (ii) the fact that a benefit is enjoyed by his spouse [^{F30}or civil partner], where the spouse [^{F30}or civil partner] dies, or the settlor and the spouse [^{F30}or civil partner] cease to be married [^{F31}or to be civil partners of each other], during the year.

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^{F32}(6A)

(7) This section 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.

[^{F33}(8) In this section “derived property”, in relation to any property, means—

- (a) income from that property,
- (b) property directly or indirectly representing—
 - (i) proceeds of that property, or
 - (ii) proceeds of income from that property, or
- (c) income from property which is derived property by virtue of paragraph (b) above.]]

Textual Amendments

- F19** S. 77 substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 17 para. 27](#)
- F20** Words in s. 77(1)(b) substituted (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 11 para. 3](#)
- F21** Word in s. 77(1) inserted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(1\)\(3\)](#)
- F22** Words in s. 77(2)(a) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(2\)\(a\)](#)
- F23** Words in s. 77(2)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(2\)\(b\)](#)
- F24** Words in s. 77(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(a\)](#)
- F25** S. 77(3)(ab) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(b\)](#)
- F26** Words in s. 77(3)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(c\)](#)
- F27** Words in s. 77(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(3\)\(d\)](#)
- F28** S. 77(4)(c) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(4\)](#)
- F29** S. 77(4A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(5\)](#)
- F30** Words in s. 77(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(6\)\(a\)](#)
- F31** Words in s. 77(6)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [108\(6\)\(b\)](#)
- F32** S. 77(6A) repealed (with effect in accordance with Sch. 11 paras. 7, 8, Sch. 40 Pt. 3(4) Note of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(4\)](#)
- F33** S. 77(8) substituted (retrospective to 1.5.1995) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 13\(2\)\(3\)](#)

Modifications etc. (not altering text)

- C3** S. 77(1) excluded (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 109\(2\)\(c\)](#)
- C4** S. 77(1) applied (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [s. 31\(2\)](#)

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78 Right of recovery.

- (1) Where any tax becomes chargeable on and is paid by a person in respect of gains treated as accruing to him under [^{F34}section 77] 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 subsection (1) above the amount of tax chargeable for any year by virtue of [^{F34}section 77] 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.
- (3) In a case where—
 - (a) gains are treated as accruing to a person in a year under section 86(4), and
 - (b) gains are treated as accruing to the same person under [^{F34}section 77] in the same year,subsection (2) above shall have effect subject to section 86(4)(b).

Textual Amendments

- F34** Words in s. 78(1)-(3) substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 28](#)

Modifications etc. (not altering text)

- C5** S. 78 applied (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\), s. 31\(2\)](#)

79 Provisions supplemental to sections 77 and 78.

- (1) For the purposes of this section and sections 77 and 78 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 section and sections 77 and 78—
 - (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, ^{F35}...
 - ^{F35}(b)
- (3) 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,
 - (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.

^{F36}(4)

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- (5) In [^{F37}subsection (3)] above—
- (a) references to property ^{F38}... which a settlor has provided directly or indirectly include references to property ^{F38}... 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 ^{F38}... 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.
- [^{F39}(5A) In subsection (5) above “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.]
- (6) An [^{F40}officer of the Board] 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 section and sections 77 and 78.
- (7) The reference in section 77(1)(a) to gains accruing to trustees from the disposal of settled property includes a reference to gains treated as accruing to them under section 13 and the reference in section 77(1)(b) to deductions in respect of disposals of the settled property includes a reference to deductions on account of losses treated under section 13 as accruing to the trustees.
- (8) Where the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of any settlement or part of a settlement in relation to a year of assessment, sections 77 and 78 and subsections (1) to (7) above shall not apply in relation to the settlement or part for the year.

Textual Amendments

- F35** S. 79(2)(b) and preceding word repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(2\)](#), **Sch. 29 Pt. VIII(8)**
- F36** S. 79(4) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(3\)](#), **Sch. 29 Pt. VIII(8)**
- F37** Words in s. 79(5) substituted (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(a\)](#)
- F38** Words in s. 79(5)(a) repealed (with effect in accordance with s. 74(2) of the amending Act) by [Finance Act 1995 \(c. 4\), Sch. 17 para. 29\(4\)\(b\)](#), **Sch. 29 Pt. VIII(8)**
- F39** S. 79(5A) inserted (with effect in accordance with Sch. 21 para. 10(2) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 2\(2\)](#)
- F40** Words in s. 79(6) substituted (with effect in accordance with Sch. 21 para. 10(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 21 para. 2\(3\)](#)

Modifications etc. (not altering text)

- C6** S. 79 applied in part (with effect in accordance with s. 45 of the amending Act) by [Finance Act 2005 \(c. 7\), s. 31\(2\)](#)

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[^{F41}79A Restriction on set-off of trust losses.

- (1) This section applies to a chargeable gain accruing to the trustees of a settlement where—
 - (a) in computing the gain, the allowable expenditure is reduced in consequence, directly or indirectly, of a claim to gifts relief in relation to an earlier disposal to the trustees;
 - (b) the transferor on that earlier disposal, or any person connected with the transferor, has at any time—
 - (i) acquired an interest in the settled property, or
 - (ii) entered into an arrangement to acquire such an interest; and
 - (c) in connection with that acquisition or arrangement any person has at any time received, or become entitled to receive, any consideration.
- (2) Where this section applies to a chargeable gain, no allowable losses accruing to the trustees (in the year in which the gain accrues or any earlier year) may be set against the gain.

This applies to the whole of the chargeable gain (and not just the element deferred as a result of the claim to gifts relief).
- (3) In this section—
 - (a) “gifts relief” means relief under section 165 or 260; and
 - (b) references to losses not being allowed to be set against a chargeable gain are to the losses not being allowed as a deduction against chargeable gains to the extent that they include that gain.
- (4) The references in subsection (1)(b) above to an interest in settled property have the same meaning as in Schedule 4A.]

Textual Amendments

F41 S. 79A inserted (with application in accordance with s. 93(2) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 93\(1\)](#)

[^{F42}79B Attribution to trustees of gains of non-resident companies.

- (1) This section applies where trustees of a settlement are participators—
 - (a) in a close company, or
 - (b) in a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom.

For this purpose “participator” has the same meaning as in section 13.
- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing a charge to tax arising by virtue of the attribution to the trustees under section 13, by reason of their participation in the company mentioned in subsection (1) above, of any part of a chargeable gain accruing to a company that is not resident in the United Kingdom.
- (3) Where this section applies and—

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- (a) a chargeable gain accrues to a company that is not resident in the United Kingdom but would be a close company if it were resident in the United Kingdom, and
 - (b) all or part of the chargeable gain is treated under section 13(2) as accruing to a close company which is not chargeable to corporation tax in respect of the gain by reason of double taxation relief arrangements, and
 - (c) had the company mentioned in paragraph (b) (and any other relevant company) not been resident in the United Kingdom, all or part of the chargeable gain would have been attributed to the trustees by reason of their participation in the company mentioned in subsection (1) above,
section 13(9) shall apply as if the company mentioned in paragraph (b) above (and any other relevant company) were not resident in the United Kingdom.
- (4) The references in subsection (3) above to “any other relevant company” are to any other company which if it were not resident in the United Kingdom would be a company in relation to which section 13(9) applied with the result that all or part of the chargeable gain was attributed to the trustees as mentioned in that subsection.]

Textual Amendments

F42 S. 79B inserted (with application in accordance with s. 94(2) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 94\(1\)](#)

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Changes to legislation:

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