



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES [F<sup>1</sup>ETC]

### CHAPTER II

#### SETTLEMENTS

*Migration of settlements, non-resident settlements and dual resident settlements*

#### **80 Trustees ceasing to be resident in U.K.**

- (1) This section applies if the trustees of a settlement become at any time (“the relevant time”) [F<sup>1</sup>not resident] in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of this Act—
  - (a) to have disposed of the defined assets immediately before the relevant time, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—

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- (a) they are of a description specified in any double taxation relief arrangements, and
  - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 152 shall not apply where the trustees—
- (a) have disposed of the old assets, or their interest in them, before the relevant time, and
  - (b) acquire the new assets, or their interest in them, after that time,
- unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
- (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,
- the assets falling within paragraph (b) above shall be excepted from subsection (6) above.
- (8) In this section “the old assets” and “the new assets” have the same meanings as in section 152.

#### Textual Amendments

- F1** Words in s. 80(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 84](#)

#### Modifications etc. (not altering text)

- C1** S. 80(4)(a)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)
- C2** S. 80(7)(b) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [s. 153\(2\)\(b\)](#)

## 81 Death of trustee: special rules.

- (1) Subsection (2) below applies where—
- (a) section 80 applies as a result of the death of a trustee of the settlement, and
  - (b) within the period of 6 months beginning with the death, the trustees of the settlement become resident <sup>F2</sup>... in the United Kingdom.
- (2) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
  - (b) fall within subsection (3) or (4) below.
- (3) Assets fall within this subsection if they were disposed of by the trustees in the period which—
- (a) begins with the death, and
  - (b) ends when the trustees become resident <sup>F3</sup>... in the United Kingdom.

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- (4) Assets fall within this subsection if—
- (a) they are of a description specified in any double taxation relief arrangements,
  - (b) they constitute settled property of the settlement at the time immediately after the trustees become resident <sup>F4</sup>... in the United Kingdom, and
  - (c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) Subsection (6) below applies where—
- (a) at any time the trustees of a settlement become resident <sup>F5</sup>... in the United Kingdom as a result of the death of a trustee of the settlement, and
  - (b) section 80 applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of 6 months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
  - (b) fall within subsection (7) below.
- (7) Assets fall within this subsection if—
- (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
  - (b) they acquired them as a result of a disposal in respect of which relief is given under section 165 or in relation to which section 260(3) applies.

#### Textual Amendments

- F2** Words in s. 81(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(2\)](#)
- F3** Words in s. 81(3)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(3\)](#)
- F4** Words in s. 81(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(4\)](#)
- F5** Words in s. 81(5)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 85\(5\)](#)

## 82 Past trustees: liability for tax.

- (1) This section applies where—
- (a) section 80 applies as regards the trustees of a settlement (“the migrating trustees”), and
  - (b) any capital gains tax which is payable by the migrating trustees by virtue of section 80(2) is not paid within 6 months from the time when it became payable.
- (2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—

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- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
  - (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
  - (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within 30 days of the service of the notice.
- (3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—
- (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
  - (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might [<sup>F6</sup>cease to be resident] in the United Kingdom.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating trustees.
- (5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (6) For the purposes of this section—
- (a) where the relevant time (within the meaning of section 80) falls within the period of 12 months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;
  - (b) in any other case, the relevant period is the period of 12 months ending with the relevant time.

#### Textual Amendments

- F6** Words in s. 82(3)(b) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 86](#)

### 83 Trustees ceasing to be liable to U.K. tax.

- (1) This section applies if the trustees of a settlement, while continuing to be resident <sup>F7</sup>... in the United Kingdom, become at any time (“the time concerned”) trustees who fall to be regarded for the purposes of any double taxation relief arrangements—
- (a) as resident in a territory outside the United Kingdom, and
  - (b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets (“relevant assets”) which constitute settled property of the settlement and fall within descriptions specified in the arrangements.
- (2) The trustees shall be deemed for all purposes of this Act—
- (a) to have disposed of their relevant assets immediately before the time concerned, and
  - (b) immediately to have reacquired them, at their market value at that time.

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### Textual Amendments

- F7** Words in s. 83(1) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 87](#)

## [<sup>F8</sup>83A Trustees both resident and non-resident in a year of assessment

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
- (a) are within the charge to capital gains tax in that year of assessment, but
  - (b) are non-UK resident at the time of the disposal.
- (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.
- (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
- (a) if, during any part of that year of assessment, they are resident <sup>F9</sup>... in the United Kingdom and not Treaty non-resident, <sup>F10</sup>...
  - <sup>F11</sup>(b) .....
- (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
- (a) they are [<sup>F12</sup>not resident] in the United Kingdom, or
  - (b) they are [<sup>F13</sup>resident <sup>F14</sup>... in the United Kingdom] but are Treaty non-resident.
- <sup>F15</sup>(5) ..... ]

### Textual Amendments

- F8** S. 83A inserted (with effect in accordance with s. 33(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 33\(1\)](#)
- F9** Words in s. 83A(3)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(2\)](#)
- F10** Word in s. 83A(3)(a) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(a\)\(ii\), 33, Sch. 26 Pt. 3\(15\)](#)
- F11** S. 83A(3)(b) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 32\(b\), 33, Sch. 26 Pt. 3\(15\)](#)
- F12** Words in s. 83A(4)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(a\)](#)
- F13** Words in s. 83A(4)(b) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(a\)](#)
- F14** Words in s. 83A(4)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 88\(3\)\(b\)](#)
- F15** S. 83A(5) repealed (with effect in accordance with s. 74(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 74\(4\)\(b\)](#), [Sch. 26 Pt. 3\(11\)](#)

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## 84 Acquisition by dual resident trustees.

- (1) Section 152 shall not apply where—
- (a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,
  - (b) at the time of the acquisition the trustees are resident <sup>F16</sup>... in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
  - (c) the assets are of a description specified in the arrangements, and
  - (d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (2) In this section “the new assets” has the same meaning as in section 152.

### Textual Amendments

**F16** Words in s. 84(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 89](#)

## 85 Disposal of interests in non-resident settlements.

- (1) Subsection (1) of section 76 shall not apply to the disposal of an interest in settled property, other than one treated under subsection (2) of that section as made in consideration of obtaining the settled property, if at the time of the disposal the trustees are [<sup>F17</sup>not resident] in the United Kingdom.
- (2) [<sup>F18</sup>Subject to subsections (4), (9) and (10) below,] subsection (3) below applies where—
- (a) section 80 applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying, and
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.
- (3) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the relevant time, and
  - (b) immediately reacquired it,
- at its market value at that time.
- (4) Subsection (3) above shall not apply if section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.
- (5) [<sup>F19</sup>Subject to subsection (10) below,] Subsection (7) below applies where—
- (a) section 80 applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying,

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- (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and
  - (d) section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.
- (6) The relevant period is the period which—
- (a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and
  - (b) ends with the relevant time.
- (7) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the time found under subsection (8) below, and
  - (b) immediately reacquired it,
- at its market value at that time.
- (8) The time is—
- (a) the time concerned (where there is only one such time), or
  - (b) the earliest time concerned (where there is more than one because section 83 applied more than once).
- (9) Subsection (3) above shall not apply where subsection (7) above applies.
- [<sup>F20</sup>(10) Subsection (3) or (7) above does not apply to the disposal of an interest created by or arising under a settlement which has relevant offshore gains at the material time.
- The material time is—
- (a) in relation to subsection (3) above, the relevant time within the meaning of section 80;
  - (b) in relation to subsection (7) above, the time found under subsection (8) above.
- (11) For the purposes of subsection (10) above, a settlement has relevant offshore gains at any time if, were the year of assessment to end at that time, [<sup>F21</sup>chargeable gains would be treated under section 89(2) or paragraph 8 of Schedule 4C as accruing in the following year of assessment to a beneficiary who received a capital payment from the trustees of the settlement in that year.]]

#### Textual Amendments

- F17** Words in s. 85(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 90](#)
- F18** Words in s. 85(2) substituted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(2\)](#)
- F19** Words in s. 85(5) inserted (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(3\)](#)
- F20** S. 85(10)(11) added (with effect in accordance with s. 95(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 95\(4\)](#)
- F21** Words in s. 85(11) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 107](#)

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## **[<sup>F22</sup>85A Transfers of value: attribution of gains to beneficiaries and treatment of losses**

(1) Schedule 4C to this Act has effect with respect to the attribution of gains to beneficiaries where there has been a transfer of value to which Schedule 4B applies.

(2) Sections 86A to 95 have effect subject to the provisions of Schedule 4C.

[<sup>F23</sup>(2A) For the purposes of sections 87 to 89, no account is to be taken of any section 2(2) amount in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

[<sup>F24</sup>(3) When calculating the section 2(2) amount for a settlement for a tax year (within the meaning of section 87), no account is to be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B.

Nothing in this subsection affects any increase in a section 2(2) amount by virtue of paragraph 1(3A) or 7B(2)(b) of Schedule 4C.]

(4) No account shall be taken of any chargeable gains or allowable losses to which sections 87 to 89 apply in computing the gains or losses accruing by virtue of Schedule 4B.]

### **Textual Amendments**

**F22** S. 85A substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 163\(1\)](#) (with [s. 163\(4\)-\(6\)](#))

**F23** S. 85A(2A) inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 129\(2\)](#) (with [Sch. 7 para. 155](#))

**F24** S. 85A(3) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 129\(3\)](#) (with [Sch. 7 para. 155](#))

## **86 Attribution of gains to settlors with interest in non-resident or dual resident settlements.**

(1) This section applies where the following conditions are fulfilled as regards a settlement in a particular year of assessment—

- (a) the settlement is a qualifying settlement in the year;
- (b) the trustees of the settlement fulfil the condition as to residence specified in subsection (2) below;
- (c) a person who is a settlor in relation to the settlement (“the settlor”) is domiciled in the United Kingdom at some time in the year and is [<sup>F25</sup>resident in the United Kingdom for the year];
- (d) at any time during the year the settlor has an interest in the settlement;
- (e) by virtue of disposals of any of the settled property originating from the settlor, there is an amount on which the trustees would be chargeable to tax for the year under section 2(2) [<sup>F26</sup>if the assumption as to residence specified in subsection (3) below were made;]
- (f) paragraph 3, 4 or 5 of Schedule 5 does not prevent this section applying.

[<sup>F27</sup>(2) The condition as to residence is that—

- (a) there is no time in the year when the trustees are resident in the United Kingdom, or
- (b) there is such a time but, whenever the trustees are resident in the United Kingdom during the year, they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.]



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(3) Where subsection (2)(a) above applies, the assumption as to residence is that the trustees are [<sup>F28</sup>resident <sup>F29</sup>... in the United Kingdom] throughout the year; and where subsection (2)(b) above applies, the assumption as to residence is that the double taxation relief arrangements do not apply.

(4) Where this section applies—

- (a) chargeable gains of an amount equal to that referred to in subsection (1)(e) above shall be treated as accruing to the settlor in the year [<sup>F30</sup>or if, as respects the settlor, the year is a split year, in the UK part of that year], and
- (b) those gains shall be treated as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

<sup>F31</sup>(4A) . . . . .

(5) Schedule 5 (which contains provisions supplementary to this section) shall have effect.

#### Textual Amendments

- F25** Words in s. 86(1)(c) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(2\)](#)
- F26** Words in s. 86(1)(e) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 30](#)
- F27** S. 86(2) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(3\)](#)
- F28** Words in s. 86(3) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(c\)](#)
- F29** Words in s. 86(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 91\(4\)](#)
- F30** Words in s. 86(4)(a) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 100](#)
- F31** S. 86(4A) repealed (with effect in accordance with Sch. 11 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(4\)](#)

#### Modifications etc. (not altering text)

- C3** S. 86 modified (with effect in accordance with Sch. 23 paras. 1(1), 2(1)(5)(6), 3(1)(4)(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 paras. 1\(2\)\(3\), 2\(2\)-\(4\), 3\(2\)\(3\)](#)
- C4** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 132\(5\)](#)
- C5** S. 86(1)(e) modified (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 para. 4\(1\)](#)

#### [<sup>F32</sup>86A Attribution of gains to settlor in section 10A cases

(1) Subsection (3) applies if—

- (a) chargeable gains of an amount equal to the amount referred to in section 86(1)(e) for a tax year (“year A”) are treated under section 10A as accruing to a settlor under section 86 in the period of return,
- (b) there are amounts on which beneficiaries of the settlement are charged to tax under section 87 or 89(2) for one or more tax years, each of which is earlier than the year of return, and
- (c) those amounts are in respect of matched capital payments received by the beneficiaries.

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- (2) A “matched” capital payment is a capital payment, all or part of which is matched under section 87A with the section 2(2) amount for year A.
- (3) The amount of the chargeable gains mentioned in subsection (1)(a) for year A that are treated under section 10A as accruing to the settlor under section 86 in the period of return is to be reduced by the appropriate amount.
- (4) The appropriate amount is—
  - (a) the sum of the amounts mentioned in subsection (1)(c) to the extent that the matched capital payments are matched under section 87A with the section 2(2) amount for year A, or
  - (b) if the property comprised in the settlement has at any time included property not originating from the settlor, so much (if any) of that sum as, on a just and reasonable apportionment, is properly referable to the settlor.
- (5) If a reduction falls to be made under subsection (3) for the year of return, the deduction to be made in accordance with section 87(4)(b) for the settlement for that year must not be made until—
  - (a) all the reductions to be made under subsection (3) for that year for each settlor have been made, and
  - (b) those reductions are to be made starting with the year immediately preceding the year of return and working backwards.
- (6) Subsection (7) applies if, with respect to year A, an amount remains to be treated under section 10A as accruing to any of the settlors in the period of return after having made the reductions under subsection (3) with respect to year A.
- (7) The aggregate of the amounts remaining to be so treated (for all of the settlors) is to be applied in reducing so much of the section 2(2) amount for year A as has not already been matched with a capital payment under section 87A for any year prior to the year of return (but not so as to reduce the section 2(2) amount below zero).
- (8) In this section—
  - (a) “the settlement” means the settlement in relation to which the settlor mentioned in subsection (1)(a) is a settlor,
  - (b) a reference to “the settlors” or “each settlor” is to the settlors or each settlor in relation to the settlement,
  - (c) “period of return” and “year of return” have the same meanings as in section 10A, and
  - (d) paragraph 8 of Schedule 5 applies in construing the reference to property originating from the settlor.]

#### **Textual Amendments**

**F32** S. 86A substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 120](#)

#### **[<sup>F33</sup>87 Non-UK resident settlements: attribution of gains to beneficiaries**

- (1) This section applies to a settlement for a tax year (“the relevant tax year”) if [<sup>F34</sup>there is no time in that year when the trustees are resident in the United Kingdom].

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- (2) Chargeable gains are treated as accruing in the relevant tax year to a beneficiary of the settlement who has received a capital payment from the trustees in the relevant tax year or any earlier tax year if all or part of the capital payment is matched (under section 87A as it applies for the relevant tax year) with the section 2(2) amount for the relevant tax year or any earlier tax year.
- (3) The amount of chargeable gains treated as accruing is equal to—
  - (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that part.
- (4) The section 2(2) amount for a settlement for a tax year for which this section applies to the settlement is—
  - (a) the amount upon which the trustees of the settlement would be chargeable to tax under section 2(2) for that year if they were resident <sup>F35</sup>... in the United Kingdom in that year, or
  - (b) if section 86 applies to the settlement for that year, the amount mentioned in paragraph (a) minus the total amount of chargeable gains treated under that section as accruing in that year.
- (5) The section 2(2) amount for a settlement for a tax year for which this section does not apply to the settlement is nil.
- (6) For the purposes of this section a settlement arising under a will or intestacy is treated as made by the testator or intestate at the time of death.
- [<sup>F36</sup>(7) If the relevant tax year is a split year as respects a beneficiary of the settlement—
  - (a) the amount on which the beneficiary is chargeable to capital gains tax by virtue of this section for that year (in respect of the settlement) is a portion of the amount on which the beneficiary would have been so chargeable if the relevant tax year had not been a split year, and
  - (b) the portion is the portion attributable to the UK part of the relevant tax year calculated on a time apportionment basis.]]

#### Textual Amendments

- F33** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))
- F34** Words in s. 87(1) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(2\)](#)
- F35** Words in s. 87(4)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 92\(3\)](#)
- F36** S. 87(7) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 101](#)

#### Modifications etc. (not altering text)

- C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\), 20\(3\)\(4\)](#)

*Status: Point in time view as at 01/01/2014.*

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### **[<sup>F33</sup>87A Section 87: matching**

- (1) This section supplements section 87.
- (2) The following steps are to be taken for the purposes of matching capital payments with section 2(2) amounts.

*Step 1*

Find the section 2(2) amount for the relevant tax year.

*Step 2*

Find the total amount of capital payments received by the beneficiaries from the trustees in the relevant tax year.

*Step 3*

The section 2(2) amount for the relevant tax year is matched with—

- (a) if the total amount of capital payments received in the relevant tax year does not exceed the section 2(2) amount for the relevant tax year, each capital payment so received, and
- (b) otherwise, the relevant proportion of each of those capital payments.

“The relevant proportion” is the section 2(2) amount for the relevant tax year divided by the total amount of capital payments received in the relevant tax year.

*Step 4*

If paragraph (a) of Step 3 applies—

- (a) reduce the section 2(2) amount for the relevant tax year by the total amount of capital payments referred to there, and
- (b) reduce the amount of those capital payments to nil.

If paragraph (b) of that Step applies—

- (a) reduce the section 2(2) amount for the relevant tax year to nil, and
- (b) reduce the amount of each of the capital payments referred to there by the relevant proportion of that capital payment.

*Step 5*

Start again at Step 1 (unless subsection (3) applies).

If the section 2(2) amount for the relevant tax year (as reduced under Step 4) is not nil, read references to capital payments received in the relevant tax year as references to capital payments received in the latest tax year which—

- (a) is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) is a tax year in which capital payments (the amounts of which have not been reduced to nil) were received by beneficiaries.

If the section 2(2) amount for the relevant tax year (as so reduced) is nil, read references to the section 2(2) amount for the relevant tax year as the section 2(2) amount for the latest tax year—

- (a) which is before the last tax year for which Steps 1 to 4 have been undertaken, and
- (b) for which the section 2(2) amount is not nil.

- (3) This subsection applies if—

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- (a) all of the capital payments received by beneficiaries from the trustees in the relevant tax year or any earlier tax year have been reduced to nil, or
  - (b) the section 2(2) amounts for the relevant tax year and all earlier tax years have been reduced to nil.
- (4) The effect of any reduction under Step 4 of subsection (2) is to be taken into account in any subsequent application of this section.]

#### Textual Amendments

**F33** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

#### Modifications etc. (not altering text)

**C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

**C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)

**C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [20\(3\)\(4\)](#)

### [<sup>F33</sup>87B Section 87: remittance basis

- (1) This section applies if—
- (a) chargeable gains are treated under section 87 as accruing to an individual in a tax year, [<sup>F37</sup>and]
  - (b) section 809B, 809D or 809E (remittance basis) applies to the individual for that year, <sup>F38</sup>...
  - <sup>F39</sup>(c) .....
- (2) The chargeable gains are foreign chargeable gains within the meaning of section 12 (non-UK domiciled beneficiaries to whom remittance basis applies).
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat relevant property or benefits as deriving from the chargeable gains.
- (4) For the purposes of subsection (3) property or a benefit is “relevant” if the capital payment by reason of which the chargeable gains are treated as accruing consists of—
- (a) the payment or transfer of the property or its becoming property to which section 60 applies, or
  - (b) the conferring of the benefit.]

#### Textual Amendments

**F33** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

**F37** Word in s. 87B(1)(a) inserted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(a\)](#) (with [Sch. 46 para. 26](#))

**F38** Word in s. 87B(1)(b) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(b\)](#) (with [Sch. 46 para. 26](#))

**F39** S. 87B(1)(c) omitted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 18\(c\)](#) (with [Sch. 46 para. 26](#))

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**Modifications etc. (not altering text)**

- C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

**[<sup>F33</sup>87C Sections 87 and 87A: disregard of certain capital payments**

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2).
- (2) A capital payment is within this subsection if (and to the extent that) it is received (or treated as received) in a tax year from the trustees of the settlement by a company that—
- (a) is not resident in the United Kingdom in that year, and
  - (b) would be a close company if it were resident in the United Kingdom,
- (and is not treated under any of subsections (3) to (5) of section 96 as received by another person).]

**Textual Amendments**

- F33** Ss. 87-87C substituted for s. 87 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 108](#) (with [Sch. 7 paras. 116-119](#))

**Modifications etc. (not altering text)**

- C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 125\(2\)](#)
- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

**88 Gains of dual resident settlements.**

- (1) Section 87 also applies to a settlement for any year of assessment beginning on or after 6th April 1991 if—
- (a) the trustees are [<sup>F40</sup>resident <sup>F41</sup>... in the United Kingdom during any part of the year], [<sup>F42</sup>and]
  - (b) at any time of [<sup>F43</sup>such residence <sup>F44</sup>...] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, <sup>F45</sup>...
- <sup>F45</sup>(c) .....

[<sup>F46</sup>(2) The section 2(2) amount for a tax year for which section 87 applies by virtue of this section is what it would be if the amount mentioned in section 87(4)(a) were the assumed chargeable amount.]

- (3) For the purposes of subsection (2) above the assumed chargeable amount in respect of a year of assessment is the lesser of the following 2 amounts—

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- (a) the amount on which the trustees would be chargeable to tax for the year under section 2(2) on the assumption that the double taxation relief arrangements did not apply;
  - (b) the amount on which, by virtue of disposals of protected assets, the trustees would be chargeable to tax for the year under section 2(2) on the assumption that those arrangements did not apply.
- (4) For the purposes of subsection (3)(b) above assets are protected assets if—
- (a) they are of a description specified in the double taxation relief arrangements, and
  - (b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) For the purposes of subsection (4) above—
- (a) the assumption specified in subsection (3)(b) above shall be ignored;
  - (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
  - (c) if different assets are identified by reference to different relevant times, all of them are protected assets.

F47(6) .....

F48(7) .....

#### Textual Amendments

- F40** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(a\)\(2\)\(b\)](#), 41
- F41** Words in s. 88(1)(a) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 93\(a\)](#)
- F42** Word in s. 88(1)(a) inserted (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 130\(2\)\(a\)](#)
- F43** Words in s. 88(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\), Sch. 12 paras. 35\(1\)\(b\)\(2\)\(b\)](#), 41
- F44** Words in s. 88(1)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 93\(b\)](#)
- F45** S. 88(1)(c) and preceding word repealed (with effect in accordance with s. 130(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 130\(2\)\(b\), Sch. 27 Pt. III\(30\)](#)
- F46** S. 88(2) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 109\(2\)](#)
- F47** S. 88(6) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 2 para. 6](#)
- F48** S. 88(7) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 7 para. 109\(3\)](#)

#### Modifications etc. (not altering text)

- C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 125\(2\)](#)

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- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)(4)**

## 89 Migrant settlements etc.

- (1) Where a period of one or more years of assessment for which section 87 applies to a settlement (“a non-resident period”) succeeds a period of one or more years of assessment for each of which section 87 does not apply to the settlement (“a resident period”), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of [F49sections 87 and 87A if] it was not made in anticipation of a disposal made by the trustees in the non-resident period.

[F50(1A) Subsection (2) applies to a settlement if—

- (a) a non-resident period is succeeded by a resident period, and
  - (b) in relation to the last tax year in the non-resident period (“the last non-resident tax year”), section 87A(3) applied by virtue of paragraph (a) of that provision (exhaustion of capital payments).
- (2) Chargeable gains are treated as accruing in a tax year (in the resident period) to a beneficiary of the settlement who receives a capital payment from the trustees in that year if all or part of the capital payment is matched (under section 87A as it applies for that year) with the section 2(2) amount for the last non-resident tax year or any earlier tax year.
- (3) Section 87(3) and (4) and sections 87A to 87C apply for the purposes of subsection (2) as if the relevant tax year were the tax year mentioned in subsection (2).
- (4) Section 87B (remittance basis) applies in relation to chargeable gains treated under subsection (2) as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.]

### Textual Amendments

- F49** Words in s. 89(1) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 110(2)**
- F50** S. 89(1A)-(4) substituted for s. 89(2)(3) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 110(3)** (with [Sch. 7 para. 123](#))

### Modifications etc. (not altering text)

- C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), **s. 762(3)** (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 93(3)**)
- C7** Ss. 87-89 modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 125(2)**
- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)(4)**

## [F5190 Sections 87 and 89(2): transfers between settlements

- (1) This section applies if the trustees of a settlement (“the transferor settlement”) transfer all or part of the settled property to the trustees of another settlement (“the transferee settlement”).



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- (2) In this section “the year of transfer” means the tax year in which the transfer occurs.
- (3) Treat the section 2(2) amount for the transferee settlement for any tax year (not later than the year of transfer) as increased by—
  - (a) the section 2(2) amount for the transferor settlement for that year (as reduced under section 87A as it applies in relation to that settlement for the year of transfer and all earlier tax years), or
  - (b) if part only of the settled property is transferred, the relevant proportion of the amount mentioned in paragraph (a).
- (4) “The relevant proportion” is—
  - (a) the market value of the property transferred, divided by
  - (b) the market value of the property comprised in the transferor settlement immediately before the transfer.
- (5) Treat the section 2(2) amount for the transferor settlement for any tax year as reduced by the amount by which the section 2(2) amount for the transferee settlement for that year is increased under subsection (3).
- (6) If neither section 87 nor section 89(2) would otherwise apply to the transferee settlement for the year of transfer—
  - (a) section 89(2) to (4) apply to the settlement for that year (and subsequent tax years), and
  - (b) for this purpose, references there to the last non-resident tax year are to be read as the year of transfer.
- (7) The increase under subsection (3) has effect for the year of transfer and subsequent tax years.
- (8) The reduction under subsection (5) has effect for tax years after the year of transfer.
- (9) When calculating the market value of property for the purposes of this section or section 90A in a case where the property is subject to a debt, reduce the market value by the amount of the debt.
- (10) This section does not apply to—
  - (a) a transfer to which Schedule 4B applies, or
  - (b) any section 2(2) amount that is in a Schedule 4C pool (see paragraph 1 of Schedule 4C).]

#### Textual Amendments

- F51** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 111](#)

#### Modifications etc. (not altering text)

- C6** Ss. 87, 87A, 87C-90 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), [s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))
- C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), [regs. 1\(1\)](#), [20\(3\)\(4\)](#)

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**[<sup>F51</sup>90A Section 90: transfers made for consideration in money or money's worth**

- (1) Section 90 does not apply to a transfer of settled property made for consideration in money or money's worth if the amount (or value) of that consideration is equal to or exceeds the market value of the property transferred.
- (2) The following provisions apply if—
  - (a) section 90 applies to a transfer of settled property made for consideration in money or money's worth, and
  - (b) the amount (or value) of that consideration is less than the market value of the property transferred.
- (3) If the transfer is of all of the settled property, for the purposes of section 90 treat the transfer as being of part only of the settled property.
- (4) Deduct the amount (or value) of the consideration from the amount of the market value referred to in section 90(4)(a).]

**Textual Amendments**

**F51** Ss. 90, 90A substituted for s. 90 (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 111](#)

**Modifications etc. (not altering text)**

**C8** Ss. 87-90A applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), [20\(3\)\(4\)](#)

**91 Increase in tax payable under section 87 or 89(2).**

- [<sup>F52</sup>(1) This section applies if—**
- (a) chargeable gains are treated under section 87 or 89(2) as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”),
  - (b) the beneficiary is charged to tax by virtue of that matching, and
  - (c) the capital payment was made more than one year after the end of the relevant tax year.
- (1A) Where part of a capital payment is matched, references in subsections (2) and (3) to the capital payment are to the part matched.]
- (2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under subsection (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.
  - (3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this section) carried interest for the chargeable period at the rate of 10 per cent. per annum.
  - (4) The chargeable period is the period which—
    - (a) begins with the later of the 2 days specified in subsection (5) below, and

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- (b) ends with 30th November in the year of assessment following that in which the capital payment is made.
- (5) The 2 days are—
  - (a) 1st December in the [<sup>F53</sup>tax year immediately after the relevant tax year,] and
  - (b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.
- (6) The Treasury may by order substitute for the percentage specified in subsection (3) above (whether as originally enacted or as amended at any time under this subsection) such other percentage as they think fit.
- (7) An order under subsection (6) above may provide that an alteration of the percentage is to have effect for periods beginning on or after a day specified in the order in relation to interest running for chargeable periods beginning before that day (as well as interest running for chargeable periods beginning on or after that day).

<sup>F54</sup>(8) .....

**Textual Amendments**

- F52** S. 91(1)(1A) substituted for s. 91(1) (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(2\)](#)
- F53** Words in s. 91(5)(a) substituted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(3\)](#)
- F54** S. 91(8) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 112\(4\)](#)

<sup>F55</sup>**92 Qualifying amounts and matching.**

.....

**Textual Amendments**

- F55** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

<sup>F55</sup>**93 Matching: special cases.**

.....

**Textual Amendments**

- F55** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 113](#)

<sup>F55</sup>**94 Transfers of settled property where qualifying amounts not wholly matched.**

.....

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#### Textual Amendments

**F55** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 113**

### <sup>F55</sup>95 Matching after transfer.

.....

#### Textual Amendments

**F55** Ss. 92-95 omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 113**

### 96 Payments by and to companies.

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 [<sup>F56</sup>and Schedule 4C] it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90 [<sup>F56</sup>and Schedule 4C].
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident <sup>F57</sup>... in the United Kingdom, it shall be treated as a capital payment received by that person.
- (4) If the company is controlled by 2 or more persons (taking each one separately) at the time the payment is received, then—
  - (a) if one of them is then resident <sup>F58</sup>... in the United Kingdom, it shall be treated as a capital payment received by that person;
  - (b) if 2 or more of them are then resident <sup>F58</sup>... in the United Kingdom (“the residents”) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.
- (5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received <sup>F59</sup>... —
  - (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
  - (b) each such participator (whatever his residence <sup>F60</sup>... ) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment,

but where (by virtue of the preceding provisions of this subsection and apart from this provision) a participator would be treated as receiving less than one-twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of this subsection.

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- (6) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (7) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (8) below.
- (8) A person falls within this subsection if—
- (a) he is a settlor in relation to the settlement, or
  - (b) he is connected with a person falling within paragraph (a) above.
- (9) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- [<sup>F61</sup>(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment [<sup>F62</sup>for which he or she was not so resident if—
- (a) section 10A applies to him or her, and
  - (b) the year falls within the temporary period of non-residence.]
- (9B) If—
- (a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and
  - (b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,
- nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).]
- (10) For the purposes of this section—
- (a) the question whether a company is controlled by a person or persons shall be construed in accordance with [<sup>F63</sup>sections 450 and 451 of CTA 2010], but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under [<sup>F64</sup>section 451(4) to (6) of CTA 2010] if he is not a participator in the company;
  - (b) “participator” has the meaning given by [<sup>F65</sup>section 454 of CTA 2010].
- (11) This section shall apply to payments received on or after 19th March 1991.

#### Textual Amendments

- F56** Words in s. 96(1)(2) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\), Sch. 26 para. 3](#)
- F57** Words in s. 96(3) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(2\)](#)
- F58** Words in s. 96(4)(a)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(3\)](#)
- F59** Words in s. 96(5) omitted (with application in accordance with s. 96(2) of the amending Act) by virtue of [Finance Act 2000 \(c. 17\), s. 96\(1\)](#)

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- F60** Words in s. 96(5)(b) omitted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 94\(4\)](#)
- F61** S. 96(9A)(9B) inserted (with effect in accordance with s. 127(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 127\(3\)](#)
- F62** Words in s. 96(9A) substituted (with effect in accordance with Sch. 45 para. 153(3) of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 45 para. 121](#)
- F63** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(a\)\(i\)](#) (with [Sch. 2](#))
- F64** Words in s. 96(10)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(a\)\(ii\)](#) (with [Sch. 2](#))
- F65** Words in s. 96(10)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 230\(b\)](#) (with [Sch. 2](#))

**Modifications etc. (not altering text)**

- C9** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C10** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)](#)

**97 Supplementary provisions.**

- (1) In [<sup>F66</sup>sections 86A] to 96 [<sup>F67</sup>and Schedule 4C] and this section “capital payment”—
- (a) means any payment which is not chargeable to income tax on the recipient or, in the case of a recipient who is [<sup>F68</sup>not resident] in the United Kingdom, any payment received otherwise than as income, but
  - (b) does not include a payment under a transaction entered into at arm’s length if it is received on or after 19th March 1991.
- (2) In subsection (1) above references to a payment include references to the transfer of an asset and the conferring of any other benefit, and to any occasion on which settled property becomes property to which section 60 applies.
- (3) The fact that the whole or part of a benefit is by virtue of [<sup>F69</sup>section 733 of ITA 2007] treated as the recipient’s income for a year of assessment after that in which it is received—
- (a) shall not prevent the benefit or that part of it being treated for the purposes of [<sup>F66</sup>sections 86A] to 96 [<sup>F70</sup>and Schedule 4C] as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but
  - (b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.
- (4) For the purposes of [<sup>F66</sup>sections 86A] to 96 [<sup>F71</sup>and Schedule 4C] the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it.
- (5) For the purposes of [<sup>F66</sup>sections 86A] to 90 [<sup>F72</sup>and Schedule 4C] a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—
- (a) he receives it from them directly or indirectly, or
  - (b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or

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- (c) it is received by a third person at the beneficiary's direction.
- (6) Section 16(3) shall not prevent losses accruing to trustees in a year of assessment for which section 87 of this Act or section 17 of the 1979 Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).
- (7) In [<sup>F73</sup>sections 86A] to 96 [<sup>F74</sup>and Schedule 4C] and in <sup>F75</sup>... this section—  
[<sup>F76</sup>“settlement” has the meaning given by section 620 of ITTOIA 2005, and “settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly].
- [<sup>F77</sup>(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).]
- (8) In a case where—
- at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 96(1),
  - it is received by a person, or treated as received by a person by virtue of section 96(2) to (5),
  - at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and
  - subsection (9) or (10) below does not prevent this subsection applying,
- for the purposes of [<sup>F73</sup>sections 86A] to 90 [<sup>F78</sup>and Schedule 4C] the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.
- (9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.
- (10) Subsection (8) above shall not apply so as to treat—
- the trustees of the settlement referred to in that subsection, or
  - the trustees of any other settlement,
- as beneficiaries of the settlement referred to in that subsection.

#### Textual Amendments

- F66** Words in s. 97(1)-(5) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F67** Words in s. 97(1) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F68** Words in s. 97(1)(a) substituted (with effect in accordance with Sch. 46 para. 112 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 95](#)
- F69** Words in s. 97(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 302](#) (with Sch. 2)
- F70** Words in s. 97(3)(a) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)

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- F71** Words in s. 97(4) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F72** Words in s. 97(5) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)
- F73** Words in s. 97(7)(8) substituted (with effect in accordance with s. 129(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 129\(2\)](#)
- F74** Words in s. 97(7) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(a\), Sch. 26 para. 4\(a\)](#)
- F75** Words in s. 97(7) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(a\)\(3\), Sch. 26 Pt. 3\(15\)](#)
- F76** Words in s. 97(7) substituted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(1\)\(b\)\(3\)](#)
- F77** S. 97(7A) inserted (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 15\(2\)\(3\)](#)
- F78** Words in s. 97(8) inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 4\(b\)](#)

#### Modifications etc. (not altering text)

- C9** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\), s. 762\(3\)](#) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\), Sch. 7 para. 93\(3\)](#))
- C10** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 20\(3\)](#)

## 98 Power to obtain information for purposes of sections 87 to 90.

- (1) The Board may by notice require any person to furnish them within such time as they may direct, not being less than 28 days, with such particulars as they think necessary for the purposes of sections 87 to 90.
- (2) [<sup>F79</sup>Sections 748(3) to (5), 749 and 750 of ITA 2007 shall have effect in relation to subsection (1) above as they have effect in relation to section 748(1) and (2) of that Act], but in their application by virtue of this subsection—
- (a) references to [<sup>F80</sup>Chapter 2 of Part 13 of that Act] shall be construed as references to sections 87 to 90; <sup>F81</sup>...
- <sup>F82</sup>(b) .....

[<sup>F83</sup>(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.]

#### Textual Amendments

- F79** Words in s. 98(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 303\(a\)](#) (with [Sch. 2](#))
- F80** Words in s. 98(2)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 303\(b\)](#) (with [Sch. 2](#))
- F81** Word in s. 98(2)(a) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 16\(1\)\(b\)\(2\), Sch. 26 Pt. 3\(15\)](#)
- F82** S. 98(2)(b) repealed (retrospective to 6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 12 para. 16\(1\)\(c\)\(2\), Sch. 26 Pt. 3\(15\)](#)
- F83** S. 98(3) added (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(4\)\(b\), Sch. 26 para. 5](#)



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**Modifications etc. (not altering text)**

- C9** Ss. 96-98 applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), Sch. 7 para. 93(3))
- C10** Ss. 96-98 applied (with modifications) (with effect in accordance with art. 1(2)(3), Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\)](#), regs. 1(1), **20(3)**

[<sup>F84</sup>**98A Settlements with foreign element: information.**

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.]

**Textual Amendments**

- F84** S. 98A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. **97(2)**

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**Changes to legislation:**

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