

*Status: Point in time view as at 16/12/2010.*

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## SCHEDULES

### SCHEDULE 5

#### ATTRIBUTION OF GAINS TO SETTLORS WITH INTEREST IN NON-RESIDENT OR DUAL RESIDENT SETTLEMENT

##### *Qualifying settlements, and commencement*

- 9 (1) A settlement created on or after 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—
- (a) the year of assessment in which it is created, and
  - (b) subsequent years of assessment.

- [<sup>F1</sup>(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—
- (a) the year 1999-00, and
  - (b) subsequent years of assessment.

- (1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—
- (a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or
  - (b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.]

<sup>F2</sup>(2) .....

- (3) The first condition is that on or after 19th March 1991 property or income is provided directly or indirectly for the purposes of the settlement—
- (a) otherwise than under a transaction entered into at arm’s length, and
  - (b) otherwise than in pursuance of a liability incurred by any person before that date;

but if the settlement’s expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored for the purposes of this condition if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement’s income for the year.

- (4) The second condition is that—
- (a) the trustees become on or after 19th March 1991 neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 19th March 1991 trustees who fall to

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be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

- (5) The third condition is that on or after 19th March 1991 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.
- (6) The fourth condition is that—
- (a) on or after 19th March 1991 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and
  - (b) the person concerned is not one who (looking only at the terms of the settlement immediately before 19th March 1991) would be capable of enjoying a benefit from the settlement on or after that date.
- [<sup>F3</sup>(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.]
- (7) Each of the following persons falls within this sub-paragraph—
- (a) a settlor;
  - (b) the spouse [<sup>F4</sup>or civil partner] of a settlor;
  - (c) any child of a settlor or of a settlor's spouse [<sup>F4</sup>or civil partner];
  - (d) the spouse [<sup>F4</sup>or civil partner] of any such child;
  - [<sup>F5</sup>(da) any grandchild of a settlor or of a settlor's spouse [<sup>F4</sup>or civil partner];
  - (db) the spouse [<sup>F4</sup>or civil partner] of any such grandchild;]
  - (e) a company controlled by a person or persons falling within paragraphs (a) to [<sup>F6</sup>(db)] above;
  - (f) a company associated with a company falling within paragraph (e) above.
- [<sup>F7</sup>(8) . . . . .]
- (9) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with [<sup>F8</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>F9</sup>section 451(4) to (6) of CTA 2010] if he is not a participator in the company.
- (10) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with [<sup>F10</sup>section 449 of CTA 2010]; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under [<sup>F11</sup>section 451(4) to (6) of CTA 2010] if he is not a participator in the company.
- [<sup>F12</sup>(10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—
- (a) children of a settlor or of a spouse [<sup>F13</sup>or civil partner] of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;

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- (b) unborn children of a settlor, of a spouse [<sup>F13</sup>or civil partner] of a settlor, or of a future spouse [<sup>F13</sup>or civil partner] of a settlor;
  - (c) future spouses [<sup>F14</sup>or civil partners] of any children or future children of a settlor, a spouse [<sup>F13</sup>or civil partner] of a settlor or any future spouse [<sup>F13</sup>or civil partner] of a settlor;
  - (d) a future spouse [<sup>F13</sup>or civil partner] of a settlor;
  - (e) persons outside the defined categories.
- (10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.
- (10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—
- (a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
  - (b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;
  - (c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.
- (10D) In sub-paragraph (10C) above—
- “relevant property” means property originating from a settlor; and
- “relevant income” means income originating from a settlor.]
- [<sup>F15</sup>(11) In this paragraph—
- “child” includes a step-child;
- “grandchild” means a child of a child;
- “participator” has the meaning given by [<sup>F16</sup>section 454 of CTA 2010].]

### Textual Amendments

- F1** Sch. 5 para. 9(1A)(1B) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 132\(1\)](#)
- F2** Sch. 5 para. 9(2) repealed (for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment) by [Finance Act 1998 \(c. 36\), s. 132\(2\)](#), [Sch. 27 Pt. III\(30\)](#)
- F3** Sch. 5 para. 9(6A) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 132\(3\)](#)
- F4** Words in Sch. 5 para. 9(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\), 126\(5\)\(a\)](#)
- F5** Sch. 5 para. 9(7)(da)(db) inserted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 22 para. 4\(1\)\(a\)](#) (with [Sch. 22 para. 4\(3\)](#))
- F6** Word in Sch. 5 para. 9(7)(e) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 22 para. 4\(1\)\(b\)](#) (with [Sch. 22 para. 4\(3\)](#))
- F7** Sch. 5 para. 9(8) repealed (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. III\(30\)](#)
- F8** Words in Sch. 5 para. 9(9) 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. 266\(5\)\(a\)\(i\)](#) (with [Sch. 2](#))

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- F9** Words in Sch. 5 para. 9(9) 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. 266\(5\)\(a\)\(ii\)](#) (with Sch. 2)
- F10** Words in Sch. 5 para. 9(10) 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. 266\(5\)\(b\)\(i\)](#) (with Sch. 2)
- F11** Words in Sch. 5 para. 9(10) 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. 266\(5\)\(b\)\(ii\)](#) (with Sch. 2)
- F12** Sch. 5 para. 9(10A)-(10D) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 132\(4\)](#)
- F13** Words in Sch. 5 para. 9(10A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [126\(5\)\(b\)\(i\)](#)
- F14** Words in Sch. 5 para. 9(10A)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [126\(5\)\(b\)\(ii\)](#)
- F15** Sch. 5 para. 9(11) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 4\(2\)](#)
- F16** Words in Sch. 5 para. 9(11) 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. 266\(5\)\(c\)](#) (with Sch. 2)

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

- C1** Sch. 5 para. 9(10A)(a) applied (with modifications) (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [Sch. 23 para. 6\(3\)](#)

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