

Status: Point in time view as at 22/07/2020.

Changes to legislation: Finance Act 1998, SCHEDULE 23 is up to date with all changes known to be in force on or before 16 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 23

Section 132.

TRANSITIONAL PROVISION IN CONNECTION WITH SECTION 132

Pre-6th April 1999 gains and losses of settlements that become qualifying

- 1 (1) This paragraph applies to a settlement in the case of any person who is a settlor in relation to that settlement if that settlement—
- (a) is one created before 19th March 1991;
 - (b) is not a qualifying settlement in the year 1998-99; and
 - (c) is a qualifying settlement in the year 1999-00 without having been a protected settlement in relation to that settlor immediately after the beginning of 6th April 1999.
- (2) Subject to sub-paragraph (3) below, section 86 of the 1992 Act (attribution of gains to settlor of non-resident or dual resident trusts) shall have effect in relation to any settlement to which this paragraph applies—
- (a) as if any relevant gains or relevant losses accruing to the trustees of the settlement on or after 17th March 1998 and before 6th April 1999 were gains or losses accruing to those trustees on 6th April 1999; and
 - (b) where it is not the case, as if the trustees fulfilled the condition as to residence in the year 1999-00.
- (3) Where (apart from sub-paragraph (2)(b) above) the trustees of a settlement to which this paragraph applies do not fulfil the condition as to residence in the year 1999-00, section 86 of the 1992 Act shall have effect (without prejudice to any charge imposed otherwise than by virtue of that section) as if the only gains and losses accruing to the trustees of that settlement in that year were those which are treated as accruing to those trustees on 6th April 1999 by virtue of sub-paragraph (2)(a) above.
- (4) The gains and losses that are relevant gains or relevant losses for the purposes of this paragraph are those which (apart from this paragraph) accrue to the trustees of a settlement to which this paragraph applies in any year of assessment in which those trustees fulfil the condition as to residence.

Pre-6th April 1999 gains and losses where there is a transfer to another settlement

- 2 (1) This paragraph applies, subject to sub-paragraph (5) below, to any chargeable gain or loss accruing on the disposal of any asset by the trustees of a settlement ("the transferor settlement") if—
- (a) that settlement was created before 19th March 1991;
 - (b) the disposal on which the gain or loss accrues is one made—
 - (i) on or after 17th March 1998 and before 6th April 1999; and

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- (ii) in a year of assessment in which the trustees of the transferor settlement fulfil the condition as to residence but the settlement is not a qualifying settlement;
 - (c) a person who is a settlor in relation to the transferor settlement ("the chargeable settlor")—
 - (i) is domiciled in the United Kingdom at some time in the year 1999-00 and in the year of assessment in which the disposal is made;
 - (ii) is either resident in the United Kingdom during any part of each of those years or ordinarily resident in the United Kingdom during each of those years; and
 - (iii) is alive at the end of the year 1999-00;
 - (d) the asset disposed of is property originating from the chargeable settlor;
 - (e) the property comprised in another settlement ("the transferee settlement") at any time after the disposal and before 6th April 1999 is or includes (whether in consequence of the disposal or otherwise) the asset disposed of or any relevant property;
 - (f) the transferor settlement has a relevant connection with the transferee settlement; and
 - (g) the gain or loss in question is not one treated under paragraph 1 above as accruing on 6th April 1999 to the trustees of the transferor settlement.
- (2) If, in the case of the chargeable settlor, section 86 of the 1992 Act applies (apart from this paragraph) for the year 1999-00 in relation to the transferee settlement, that section shall apply for that year in relation to that settlement as if any chargeable gain or loss to which this paragraph applies—
- (a) were a gain or loss accruing on 6th April 1999 to the trustees of the transferee settlement; and
 - (b) so accrued on the disposal by those trustees of any asset that was property originating from the chargeable settlor.
- (3) Where sub-paragraph (2) above does not apply, section 86 of the 1992 Act shall have effect in relation to the chargeable settlor as if—
- (a) in the year 1999-00 the conditions specified in paragraphs (a) to (d) and (f) of subsection (1) of that section were fulfilled in his case in relation to the transferee settlement;
 - (b) any gain or loss to which this paragraph applies—
 - (i) were a gain or loss accruing on 6th April 1999 to the trustees of the transferee settlement; and
 - (ii) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor;
- and
- (c) any chargeable gains and losses accruing to the trustees of the transferee settlement which are not gains or losses to which this paragraph applies were to be disregarded for the purposes of that section.
- (4) Where (but for this sub-paragraph) the same gain or loss would fall to be treated by virtue of sub-paragraph (2) or (3) above as a gain or loss accruing to the trustees of more than one settlement—
- (a) that gain or loss shall be apportioned between those settlements in such manner as may be just and reasonable; and

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- (b) only such part of the gain or loss as on that apportionment is attributable to a particular settlement shall be treated in accordance with that sub-paragraph as accruing to that settlement.
- (5) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if, for the year of assessment in which that disposal is made, section 86 of the 1992 Act would, on the relevant assumption, have been prevented by virtue of paragraph 3, 4 or 5 of Schedule 5 to that Act—
 - (a) from applying in the case of the chargeable settlor in relation to the transferor settlement; or
 - (b) from applying in his case in relation to the transferee settlement.
- (6) The relevant assumption for the purposes of sub-paragraph (5) above is that section 86 of the 1992 Act would have applied in the case of the chargeable settlor apart from paragraphs 3 to 5 of Schedule 5 to that Act.
- (7) In this paragraph “relevant property”, in relation to any disposal made by the trustees of the transferor settlement, means any property (not being the asset disposed of) which—
 - (a) is or represents property or income originating from the chargeable settlor;
 - (b) has been comprised in, or has arisen to, the transferor settlement at any time after the time of that disposal; and
 - (c) is property or income of the trustees of the transferee settlement acquired or otherwise deriving, directly or indirectly, from the trustees of the transferor settlement.
- (8) For the purposes of this paragraph the transferor settlement has, in relation to a disposal by its trustees, a relevant connection with the transferee settlement if—
 - (a) immediately before the time of the disposal, the beneficiaries of the transferor settlement are or include persons who are defined persons in relation to that settlement at that time;
 - (b) the transferor settlement is not a protected settlement at that time in relation to the chargeable settlor;
 - (c) at the beginning of 6th April 1999, the beneficiaries of the transferee settlement are or include persons who—
 - (i) have attained the age of eighteen; and
 - (ii) have been defined persons in relation to the transferor settlement;and
 - (d) the property comprised in the transferee settlement in respect of which some or all of the persons mentioned in paragraph (c) above are beneficiaries of that settlement at the beginning of 6th April 1999 is or includes anything which, in relation to either that settlement or the transferor settlement, is property or income originating from the chargeable settlor.
- (9) For the purposes of this paragraph a person is a defined person in relation to a settlement at a time if he would fall at that time to be treated, by reference to the chargeable settlor, as a defined person in relation to that settlement for the purposes of paragraph 2 of Schedule 5 to the 1992 Act.
- (10) Sub-paragraph (3)(c) above is without prejudice to any charge imposed otherwise than by virtue of this paragraph.

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Pre-6th April 1999 gains and losses where there is a transfer to a foreign institution

- 3 (1) This paragraph applies, subject to sub-paragraphs (4) and (6) below, to a chargeable gain or loss accruing on the disposal of any asset by the trustees of a settlement (“the transferor settlement”) if—
- (a) that settlement was created before 19th March 1991;
 - (b) the disposal on which the gain or loss accrues is one made—
 - (i) on or after 17th March 1998 and before 6th April 1999; and
 - (ii) in a year of assessment in which the trustees of the transferor settlement fulfil the condition as to residence but the settlement is not a qualifying settlement;
 - (c) a person who is a settlor in relation to the transferor settlement (“the chargeable settlor”)—
 - (i) is domiciled in the United Kingdom at some time in the year 1999-00 and in the year of assessment in which the disposal is made;
 - (ii) is either resident in the United Kingdom during any part of each of those years or ordinarily resident in the United Kingdom during each of those years; and
 - (iii) is alive at the end of the year 1999-00;
 - (d) the asset disposed of is property originating from the chargeable settlor;
 - (e) the property comprised in a foreign institution (“the transferee institution”) at any time after the disposal and before 6th April 1999 is or includes (whether in consequence of the disposal or otherwise) the asset disposed of or any relevant property;
 - (f) the transferor settlement has a relevant connection with the transferee institution; and
 - (g) the gain or loss in question is neither—
 - (i) a gain or loss treated under paragraph 1 above as accruing on 6th April 1999 to the trustees of any settlement; nor
 - (ii) a gain or loss to which paragraph 2 above applies.
- (2) If, in the case of the chargeable settlor, section 86 of the 1992 Act applies (apart from this paragraph) for the year 1999-00 in relation to the transferor settlement, that section shall apply for that year in relation to that settlement as if any chargeable gain or loss to which this paragraph applies—
- (a) were a gain or loss accruing on 6th April 1999 to the trustees of the transferor settlement; and
 - (b) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor.
- (3) Where sub-paragraph (2) above does not apply, section 86 of the 1992 Act shall have effect in relation to the chargeable settlor as if—
- (a) (where it is not the case) the transferor settlement existed in the year 1999-00;
 - (b) that settlement were a settlement in relation to which all the conditions specified in paragraphs (a) to (d) and (f) of subsection (1) of that section were fulfilled in the case of the chargeable settlor in that year;
 - (c) any gain or loss to which this paragraph applies—
 - (i) were a gain or loss accruing on 6th April 1999 to the trustees of the transferor settlement; and

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- (ii) so accrued on the disposal by them of an asset that was property originating from the chargeable settlor;
 - and
 - (d) any chargeable gains and losses which are not gains or losses to which this paragraph applies were to be disregarded for the purposes of that section.
- (4) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if, for the year of assessment in which that disposal is made, section 86 of the 1992 Act would, on the relevant assumption, have been prevented by virtue of paragraph 3, 4 of 5 of Schedule 5 to that Act from applying in the case of the chargeable settlor in relation to the transferor settlement.
- (5) The relevant assumption for the purposes of sub-paragraph (4) above is that section 86 of the 1992 Act would have applied in the case of the chargeable settlor apart from paragraphs 3 to 5 of Schedule 5 to that Act.
- (6) This paragraph does not apply to any chargeable gain or loss accruing on any disposal if the chargeable settlor stands in such a relationship to the foreign institution that if—
- (a) that institution were a settlement,
 - (b) property of the institution were property comprised in the settlement, and
 - (c) income arising to the institution were income arising under the settlement,
- paragraph 4 or 5 of Schedule 5 to the 1992 Act would (assuming that nothing else did) prevent section 86 of that Act from applying in the case of the chargeable settlor in relation to that settlement for the year of assessment in which that disposal is made.
- (7) In this paragraph “relevant property”, in relation to any disposal made by the trustees of the transferor settlement, means any property which—
- (a) is or represents property or income originating from the chargeable settlor;
 - (b) has been comprised in, or has arisen to, the transferor settlement at any time after the time of that disposal; and
 - (c) is property or income of the transferee institution acquired or otherwise deriving, directly or indirectly, from the trustees of the transferor settlement.
- (8) For the purposes of this paragraph the transferor settlement has, in relation to a disposal by its trustees, a relevant connection with the transferee institution if—
- (a) immediately before the time of the disposal, the beneficiaries of the transferor settlement are or include persons who are defined persons in relation to that settlement at that time;
 - (b) the transferor settlement is not a protected settlement at that time in relation to the chargeable settlor; and
 - (c) the transferee institution is—
 - (i) one in which a relevant defined person is a participator at the beginning of 6th April 1999;
 - (ii) one which is under the control of a company in which, or two or more companies in any of which, a relevant defined person is a participator at that time; or
 - (iii) one whose relevant property or relevant income includes property or income in which a relevant defined person has an interest at that time.
- (9) For the purposes of this paragraph a person is a relevant defined person at any time if he—

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- (a) has attained the age of eighteen; and
 - (b) has been, by reference to the chargeable settlor, a defined person in relation to the transferor settlement.
- (10) For the purposes of this paragraph a person has an interest in any property or income of a foreign institution at any time if—
- (a) there are any circumstances whatever in which that property or income is or will or may become applicable for his benefit or payable to him;
 - (b) there are any circumstances whatever in which income which is or may arise from that property or income is or will or may become applicable for his benefit or payable to him;
 - (c) he enjoys a benefit directly or indirectly from that property or income or from any income arising from that property or income.
- (11) For the purposes of this paragraph a person is a defined person in relation to a settlement at a time if he would fall at that time to be treated, by reference to the chargeable settlor, as a defined person in relation to that settlement for the purposes of paragraph 2 of Schedule 5 to the 1992 Act.
- (12) In this paragraph—
- “foreign institution” means any company or other institution resident outside the United Kingdom;
 - “participator” has the meaning given (for the purposes of Part XI of the Taxes Act 1988 (close companies)) by section 417(1) of that Act;
 - “relevant income”, in relation to a foreign institution, means any income of that institution which, if that institution were a settlement, would be treated for the purposes of Schedule 5 to the 1992 Act as originating from the chargeable settlor;
 - “relevant property”, in relation to a foreign institution, means any property of that institution which, if that institution were a settlement, would be treated for the purposes of Schedule 5 to the 1992 Act as originating from the chargeable settlor.
- (13) Sub-paragraph (3)(d) above is without prejudice to any charge imposed otherwise than by virtue of this paragraph.

Rule to prevent a double charge

- 4 (1) This paragraph applies, in the case of a person who is a settlor in relation to any settlement (“the relevant settlement”), to so much (if any) of the amount falling in his case within section 86(1)(e) of the 1992 Act for the year 1999-00 as (apart from this paragraph) would be treated by virtue only of the preceding provisions of this Schedule, as gains accruing to him in that year.
- (2) Where there is an excess of the relevant chargeable amounts for the transitional period over the amount of the section 87 pool on 17th March 1998, only so much (if any) of the amount to which this paragraph applies as exceeds that excess shall fall in accordance with this Schedule to be, or (as the case may be) to be included in, the amount treated as accruing to the settlor in the year 1999-00.
- (3) In sub-paragraph (2) above, the reference to the relevant chargeable amounts for the transitional period is (subject to sub-paragraph (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax

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under section 87 or 89(2) of the 1992 Act for any year of assessment ending after 17th March 1998 and before 6th April 1999 in respect of capital payments received by them.

- (4) In sub-paragraph (2) above, the reference to the section 87 pool on 17th March 1998 is (subject to sub-paragraph (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of section 87 of the 1992 Act, would have fallen in relation to the relevant settlement to be carried forward from the year 1997-98 to be included in the amount of the trust gains for the year 1998-99 if—
- (a) the year 1997-98 had ended with 16th March 1998; and
 - (b) the year 1998-99 had begun with 17th March 1998.
- (5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or of any amount that would have been carried forward in accordance with section 87(2) of the 1992 Act as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of sub-paragraphs (3) and (4) above.
- (6) Where any reduction falls to be made by virtue of sub-paragraph (2) above in the amount to be attributed in accordance with this Schedule to any settlor for the year 1999-00, the reduction to be treated as made for that year in accordance with section 87(3) of the 1992 Act in the case of the settlement in question shall not be made until—
- (a) the reduction (if any) falling to be made by virtue of that sub-paragraph has been made in the case of every settlor to whom any amount is so attributed; and
 - (b) effect has been given to any reduction required to be made under paragraph 5(1) below.
- (7) In this paragraph “the transitional period” means the period beginning with 17th March 1998 and ending with 5th April 1999.
- 5 (1) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with paragraph 4(2) above) any amount or amounts falling in accordance with this Schedule to be attributed for the year 1999-00 to settlors of the settlement, the amount or (as the case may be) aggregate amount falling in accordance with this Schedule to be so attributed shall be applied in reducing the amount which (after any reductions in accordance with section 86A(6A) of that Act) is carried forward to that year in accordance with section 87(2) of that Act.
- (2) Where an amount or aggregate amount has been applied, in accordance with sub-paragraph (1) above, in reducing the amount which in the case of any settlement is carried forward to the year 1999-00 in accordance with section 87(2) of the 1992 Act, that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year in the case of that settlement for making the reduction under section 87(3) of that Act.

Interpretation of Schedule

- 6 (1) In this Schedule—
- “the 1992 Act” means the ^{M1}Taxation of Chargeable Gains Act 1992;

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“qualifying settlement”, in relation to any year of assessment, means a settlement that is a qualifying settlement in that year for the purposes of section 86 of and Schedule 5 to the 1992 Act;

“settlor”, in relation to a settlement, has the same meaning as in Schedule 5 to the 1992 Act.

- (2) In this Schedule “protected settlement”, in relation to any time and any settlor, means (subject to sub-paragraph (3) below)—
- (a) a settlement that is a protected settlement at that time, within the meaning given by sub-paragraph (10A) of paragraph 9 of Schedule 5 to the 1992 Act, or
 - (b) a settlement that would be such a settlement at that time if that settlor were the only settlor of the settlement.
- (3) For the purposes of construing, in accordance with sub-paragraph (2) above, the references in paragraphs 2(8) and 3(8) above to a protected settlement, paragraph 9(10A)(a) of Schedule 5 to the 1992 Act shall be deemed to have effect with the omission of the words “or who were under that age at the end of the immediately preceding year of assessment”.
- (4) References in this Schedule to the condition as to residence are references to the condition set out in section 86(2) of the 1992 Act.
- (5) For the purposes of this Schedule a person is a beneficiary of a settlement if—
- (a) there are any circumstances whatever in which 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 income which arises or may arise from property comprised in 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 property comprised in the settlement or any income arising from any such property;
- and references in this paragraph to the property comprised in the settlement in respect of which a person is a beneficiary shall be construed accordingly.
- (6) For the purposes of this paragraph, paragraph 8 of Schedule 5 to the 1992 Act shall apply for determining if property is property originating from any person as it applies for the purposes of that Schedule.
- (7) Expressions used in this Schedule and in the 1992 Act have the same meanings in this Schedule as in that Act.

Marginal Citations

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