

SCHEDULES

SCHEDULE 24

Section 91(2).

NEW SCHEDULE 4A TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

The Schedule inserted after Schedule 4 to the Taxation of Chargeable Gains Act 1992 is as follows:

“SCHEDULE 4A

DISPOSAL OF INTEREST IN SETTLED PROPERTY: DEEMED DISPOSAL OF UNDERLYING ASSETS

Circumstances in which this Schedule applies

- 1 This Schedule applies where there is a disposal of an interest in settled property for consideration.

Meaning of “interest in settled property”

- 2 (1) For the purposes of this Schedule an “interest in settled property” means any interest created by or arising under a settlement.
(2) This includes any right to, or in connection with, the enjoyment of a benefit—
 - (a) created by or arising directly under a settlement, or
 - (b) arising as a result of the exercise of a discretion or power—
 - (i) by the trustees of a settlement, or
 - (ii) by any person in relation to settled property.

Meaning of “for consideration”

- 3 (1) For the purposes of this Schedule a disposal is “for consideration” if consideration is given or received by any person for, or otherwise in connection with, any transaction by virtue of which the disposal is effected.
(2) In determining for the purposes of this Schedule whether a disposal is for consideration there shall be disregarded any consideration consisting of another interest under the same settlement that has not previously been disposed of by any person for consideration.
(3) In this Schedule “consideration” means actual consideration, as opposed to consideration deemed to be given by any provision of this Act.

Deemed disposal of underlying assets

- 4 (1) Where this Schedule applies and the following conditions are met—
 - (a) the condition as to UK residence of the trustees (see paragraph 5),
 - (b) the condition as to UK residence of the settlor (see paragraph 6), and

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(c) the condition as to settlor interest in the settlement (see paragraph 7), the trustees of the settlement are treated for all purposes of this Act as disposing of and immediately reacquiring the relevant underlying assets.

This is referred to below in this Schedule as the “deemed disposal”.

(2) In paragraphs 5, 6 and 7 “the relevant year of assessment” means the year of assessment in which the disposal of the interest in settled property is made.

(3) The deemed disposal is treated as taking place when the disposal of the interest in settled property is made.

This is subject to paragraph 13(3)(a) where the beginning of the disposal and its effective completion fall in different years of assessment.

Condition as to UK residence of trustees

5 (1) The condition as to UK residence of the trustees is that the trustees of the settlement were either—

- (a) resident in the United Kingdom during the whole or part of the relevant year of assessment, or
- (b) ordinarily resident in the United Kingdom during that year.

(2) For this purpose the trustees shall not be regarded as resident or ordinarily resident in the United Kingdom at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(3) This paragraph has effect subject to paragraph 13(3)(b) where the beginning of the disposal and its effective completion fall in different years of assessment.

Condition as to UK residence of settlor

6 (1) The condition as to UK residence of the settlor is that in the relevant year of assessment, or any of the previous five years of assessment, a person who is a settlor in relation to the settlement either—

- (a) was resident in the United Kingdom during the whole or part of the year, or
- (b) was ordinarily resident in the United Kingdom during the year.

(2) Sub-paragraph (1) has effect subject to paragraph 13(3)(c) where the beginning of the disposal and its effective completion fall in different years of assessment.

(3) No account shall be taken for the purposes of this paragraph of any year of assessment before the year 1999-00.

Condition as to settlor interest in the settlement

7 (1) The condition as to settlor interest in the settlement is that at any time in the relevant period the settlement—

- (a) was a settlor-interested settlement, or
- (b) comprised property derived, directly or indirectly, from a settlement that at any time in that period was a settlor-interested settlement.

(2) The relevant period for this purpose is the period—

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- (a) beginning two years before the beginning of the relevant year of assessment, and
- (b) ending with the date of the disposal of the interest in settled property.

This is subject to paragraph 13(3)(d) where the beginning of the disposal and its effective completion fall in different years of assessment.

- (3) The relevant period shall not be treated as beginning before 6th April 1999.

If the rule in sub-paragraph (2) (or, where relevant, that in paragraph 13(3)(d)) would produce that result, the relevant period shall be treated as beginning on that date.

- (4) For the purposes of this paragraph a “settlor-interested settlement” means a settlement in which a person who is a settlor in relation to the settlement has an interest or had an interest at any time in the relevant period.

The provisions of section 77(2) to (5) and (8) apply to determine for the purposes of this paragraph whether a settlor has (or had) an interest in the settlement.

- (5) The condition as to settlor interest in the settlement is treated as not met in a year of assessment—

- (a) where the settlor dies during the year, or
- (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—
 - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or
 - (ii) the fact that a benefit is enjoyed by his spouse,where the spouse dies, or the settlor and the spouse cease to be married, during the year.

The relevant underlying assets

- 8 (1) Where the interest disposed of is a right in relation to a specific fund or other defined part of the settled property, the deemed disposal is of the whole or part of each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole or part of each of the assets comprised in the settled property.

- (2) Where the interest disposed of is an interest in a specific fraction or amount of the income or capital of—

- (a) the settled property, or
- (b) a specific fund or other defined part of the settled property,

the deemed disposal is of a corresponding part of each of the assets comprised in the settled property or, as the case may be, each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole of each of the assets so comprised.

- (3) Sub-paragraphs (1) and (2) have effect subject to paragraph 13(4)(a) where the identity of the underlying assets changes during the period between the beginning of the disposal and its effective completion.

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- (4) Where part only of an asset is comprised in a specific fund or other defined part of the settled property, that part of the asset shall be treated for the purposes of this Schedule as if it were a separate asset.

Character of deemed disposal

- 9 (1) The deemed disposal shall be taken—
- (a) to be for a consideration equal to the whole or, as the case may be, a corresponding part of the market value of each of the assets concerned, and
 - (b) to be a disposal under a bargain at arm's length.
- (2) Sub-paragraph (1)(a) shall be read with paragraph 13(4)(b) where the value of the assets changes during the period between the beginning of the disposal and its effective completion.

Avoidance of double-counting

- 10 (1) The provisions of this paragraph have effect to prevent there being both a deemed disposal under this Schedule in relation to the disposal of an interest in settled property and a chargeable disposal of the interest itself.
- A “chargeable disposal” means one in relation to which section 76(1) does not apply.
- (2) If there would be a chargeable gain on the disposal of the interest in the settlement, then—
- (a) if—
 - (i) the chargeable gain on the disposal of the interest would be greater than the net chargeable gain on the deemed disposal, or
 - (ii) there would be no net chargeable gain on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and
 - (b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no chargeable gain is treated as accruing on the disposal of the interest in the settlement.
- (3) If there would be an allowable loss on the disposal of the interest in the settlement, then—
- (a) if there would be a greater net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and
 - (b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no allowable loss is treated as accruing on the disposal of the interest in the settlement.
- (4) If there would be neither a chargeable gain nor an allowable loss on the disposal of the interest in the settlement, then—
- (a) if there would be a net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and
 - (b) in any other case, the provisions of this Schedule as to a deemed disposal apply.
- (5) For the purposes of this paragraph—

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- (a) there is a net chargeable gain on a deemed disposal if the aggregate of the chargeable gains accruing to the trustees in respect of the assets involved exceeds the aggregate of the allowable losses so accruing; and
- (b) there is a net allowable loss on a deemed disposal if the aggregate of the allowable losses accruing to the trustees in respect of the assets involved exceeds the aggregate of the chargeable gains so accruing.

Recovery of tax from person disposing of interest

- 11 (1) This paragraph applies where chargeable gains accrue to the trustees on the deemed disposal and—
- (a) tax becomes chargeable on and is paid by the trustees in respect of those gains, or
 - (b) a person who is a settlor in relation to the settlement recovers from the trustees under section 78 an amount of tax in respect of those gains.
- (2) The trustees are entitled to recover the amount of the tax referred to in subparagraph (1)(a) or (b) from the person who disposed of the interest in the settlement.
- (3) For this purpose the trustees may require an inspector to give that person a certificate specifying—
- (a) the amount of the gains in question, and
 - (b) the amount of tax that has been paid.

Any such certificate shall be conclusive evidence of the facts stated in it.

Meaning of “settlor”

- 12 The provisions of section 79(1) and (3) to (5) (meaning of “settlor”) apply for the purposes of this Schedule as they apply for the purposes of sections 77 and 78.

Cases where there is a period between the beginning of the disposal and its effective completion

- 13 (1) This paragraph applies in a case where there is a period between the beginning of the disposal of an interest in settled property and the effective completion of the disposal.
- (2) For the purposes of this Schedule—
- (a) the beginning of the disposal is—
 - (i) in the case of a disposal involving the exercise of an option, when the option is granted, and
 - (ii) in any other case of a disposal under a contract, when the contract is entered into; and
 - (b) the effective completion of the disposal means the point at which the person acquiring the interest becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the disposal.
- (3) Where this paragraph applies and the beginning of the disposal and its effective completion fall in different years of assessment—
- (a) the deemed disposal is treated as taking place in the year of assessment in which the disposal is effectively completed;

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- (b) the condition in paragraph 5 (condition as to residence of trustees) is treated as met if it is met in relation to either of those years of assessment or any intervening year;
 - (c) the condition in paragraph 6 (condition as to residence of settlor) is treated as met if it is met in relation to either or both of those years of assessment or any intervening year; and
 - (d) the relevant period for the purposes of paragraph 7 (condition as to settlor interest) is the period—
 - (i) beginning two years before the beginning of the first of those years of assessment, and
 - (ii) ending with the effective completion of the disposal.
- (4) If the identity or value of the underlying assets changes during the period between the beginning of the disposal and its effective completion, the following provisions apply—
- (a) an asset is treated as comprised in the settled property and, where relevant, in any specific fund or other defined part of the settled property to which the deemed disposal relates if it is so comprised at any time in that period;
 - (b) the market value of any asset for the purposes of the deemed disposal is taken to be its highest market value at any time during that period.
- (5) The provisions in sub-paragraph (4) do not apply to an asset if during that period it is disposed of by the trustees under a bargain at arm's length and is not reacquired.

Exception: maintenance funds for historic buildings

- 14 If the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of a settlement or part of a settlement in relation to a year of assessment, this Schedule does not apply in relation to the settlement or part for that year.”.