

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, SCHEDULE 25. (See end of Document for details)

SCHEDULES

SCHEDULE 25

Section 92(2).

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

The Schedule inserted after Schedule 4A to the ^{M1}Taxation of Chargeable Gains Act 1992 is as follows:

“SCHEDULE 4B

TRANSFERS OF VALUE BY TRUSTEES LINKED WITH TRUSTEE BORROWING

General scheme of this Schedule

- 1 (1) This Schedule applies where trustees of a settlement—
 - (a) make a transfer of value (see paragraph 2) in a year of assessment in which the settlement is within section 77, 86 or 87 (see paragraph 3), and
 - (b) in accordance with this Schedule the transfer of value is treated as linked with trustee borrowing (see paragraphs 4 to 9).
- (2) Where this Schedule applies the trustees are treated as disposing of and immediately reacquiring the whole or a proportion of each of the chargeable assets that continue to form part of the settled property (see paragraphs 10 to 13).

Transfers of value

- 2 (1) For the purposes of this Schedule trustees of a settlement make a transfer of value if they—
 - (a) lend money or any other asset to any person,
 - (b) transfer an asset to any person and receive either no consideration or a consideration whose amount or value is less than the market value of the asset transferred, or
 - (c) issue a security of any description to any person and receive either no consideration or a consideration whose amount or value is less than the value of the security.
- (2) References in this Schedule to “the material time”, in relation to a transfer of value, are to the time when the loan is made, the transfer is effectively completed or the security is issued.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

- (3) In the case of a loan, the amount of value transferred is taken to be the market value of the asset.
- (4) In the case of a transfer, the amount of value transferred is taken to be—

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- (a) if any part of the value of the asset is attributable to trustee borrowing, the market value of the asset;
- (b) if no part of the value of the asset is attributable to trustee borrowing, the market value of the asset reduced by the amount or value of any consideration received for it.

Paragraph 12 below explains what is meant by the value of an asset being attributable to trustee borrowing.

- (5) In the case of the issue of a security, the amount of value transferred shall be taken to be the value of the security reduced by the amount or value of any consideration received by the trustees for it.
- (6) References in this paragraph to the value of an asset are to its value immediately before the material time, unless the asset does not exist before that time in which case its value immediately after that time shall be taken.

Settlements within section 77, 86 or 87

- 3 (1) This paragraph explains what is meant in this Schedule by a settlement being “within section 77, 86 or 87” in a year of assessment.

- (2) A settlement is “within section 77” in a year of assessment if, assuming—
 - (a) that there were chargeable gains accruing to the trustees from the disposal of any or all of the settled property, and
 - (b) that the condition in subsection (1)(b) of that section was met,
 chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 77.

- (3) A settlement is “within section 86” in a year of assessment if, assuming—
 - (a) that there were chargeable gains accruing to the trustees by virtue of disposals of any of the settled property originating from the settlor, and
 - (b) that the other elements of the condition in subsection (1)(e) of that section were met,
 chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 86.

- (4) A settlement is “within section 87” in a year of assessment if, assuming—
 - (a) there were trust gains for the year within the meaning of subsection (2) of that section, and
 - (b) that beneficiaries of the settlement received capital payments from the trustees in that year or had received such payments in an earlier year,
 chargeable gains would, under that section or section 89(2), be treated as accruing to the beneficiaries in that year.

Expressions used in this sub-paragraph have the same meaning as in section 87.

Trustee borrowing

- 4 (1) For the purposes of this Schedule trustees of a settlement are treated as borrowing if—

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- (a) money or any other asset is lent to them, or
- (b) an asset is transferred to them and in connection with the transfer the trustees assume a contractual obligation (whether absolute or conditional) to restore or transfer to any person that or any other asset.

In the following provisions of this Schedule “loan obligation” includes any such obligation as is mentioned in paragraph (b).

- (2) The amount borrowed (the “proceeds” of the borrowing) is taken to be—
 - (a) in the case of a loan, the market value of the asset;
 - (b) in the case of a transfer, the market value of the asset reduced by the amount or value of any consideration received for it.
- (3) References in this paragraph to the market value of an asset are to its market value immediately before the loan is made, or the transfer is effectively completed, unless the asset does not exist before that time in which case its market value immediately after that time shall be taken.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

Transfer of value linked with trustee borrowing

- 5 (1) For the purposes of this Schedule a transfer of value by trustees is treated as linked with trustee borrowing if at the material time there is outstanding trustee borrowing.
- (2) For the purposes of this Schedule there is outstanding trustee borrowing at any time to the extent that—
 - (a) any loan obligation is outstanding, and
 - (b) there are proceeds of trustee borrowing that have not been either—
 - (i) applied for normal trust purposes, or
 - (ii) taken into account under this Schedule in relation to an earlier transfer of value.
- (3) An amount of trustee borrowing is “taken into account” under this Schedule in relation to a transfer of value if the transfer of value is in accordance with this Schedule treated as linked with trustee borrowing.

The amount so taken into account is—

- (a) the amount of the value transferred by that transfer of value, or
- (b) if less, the amount of outstanding trustee borrowing at the material time in relation to that transfer of value.

Application of proceeds of borrowing for normal trust purposes

- 6 (1) For the purposes of this Schedule the proceeds of trustee borrowing are applied for normal trust purposes in the following circumstances, and not otherwise.
- (2) They are applied for normal trust purposes if they are applied by the trustees in making a payment in respect of an ordinary trust asset and the following conditions are met—
 - (a) the payment is made under a transaction at arm’s length or is not more than the payment that would be made if the transaction were at arm’s length;

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- (b) the asset forms part of the settled property immediately after the material time or, if it does not do so, the alternative condition in paragraph 8 below is met; and
 - (c) the sum paid is (or but for section 17 or 39 would be) allowable under section 38 as a deduction in computing a gain accruing to the trustees on a disposal of the asset.
- (3) They are applied for normal trust purposes if—
- (a) they are applied by the trustees in wholly or partly discharging a loan obligation of the trustees, and
 - (b) the whole of the proceeds of the borrowing connected with that obligation (or all but an insignificant amount) have been applied by the trustees for normal trust purposes.
- (4) They are applied for normal trust purposes if they are applied by the trustees in making payments to meet bona fide current expenses incurred by them in administering the settlement or any of the settled property.

Ordinary trust assets

- 7 (1) The following are “ordinary trust assets” for the purposes of this Schedule—
- (a) shares or securities;
 - (b) tangible property, whether movable or immovable, or a lease of such property;
 - (c) property not within paragraph (a) or (b) which is used for the purposes of a trade, profession or vocation carried on—
 - (i) by the trustees, or
 - (ii) by a beneficiary who has an interest in possession in the settled property;
 - (d) any right in or over, or any interest in, property of a description within paragraph (b) or (c).
- (2) In sub-paragraph (1)(a) “securities” has the same meaning as in section 132.

The alternative condition for assets no longer part of the settled property

- 8 (1) The alternative condition referred to in paragraph 6(2)(b) in relation to an asset which no longer forms part of the settled property is that—
- (a) the asset is treated as having been disposed of by virtue of section 24(1), or
 - (b) one or more ordinary trust assets which taken together directly or indirectly represent the asset—
 - (i) form part of the settled property immediately after the material time, or
 - (ii) are treated as having been disposed of by virtue of section 24(1).
- (2) Where there has been a part disposal of the asset, the condition in paragraph 6(2)(b) and the provisions of sub-paragraph (1) above may be applied in any combination in relation to the subject matter of the part disposal and what remains.
- (3) References in this paragraph to an asset include part of an asset.

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Normal trust purposes: power to make provision by regulations

- 9 (1) The Treasury may make provision by regulations as to the circumstances in which the proceeds of trustee borrowing are to be treated for the purposes of this Schedule as applied for normal trust purposes.
- (2) The regulations may—
- (a) add to, amend or repeal any of the provisions of paragraphs 6 to 8 above,
 - (b) make different provision for different cases, and
 - (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

Deemed disposal of remaining chargeable assets

- 10 (1) Where in accordance with this Schedule a transfer of value by trustees is treated as linked with trustee borrowing, the trustees are treated for all purposes of this Act—
- (a) as having at the material time disposed of, and
 - (b) as having immediately reacquired,
- the whole or a proportion (see paragraph 11) of each of the chargeable assets that form part of the settled property immediately after the material time (“the remaining chargeable assets”).
- (2) The deemed disposal and reacquisition shall be taken—
- (a) to be for a consideration equal to the whole or, as the case may be, a proportion of the market value of each of those assets, and
 - (b) to be under a bargain at arm’s length.
- (3) For the purposes of sub-paragraph (1) an asset is a chargeable asset if a gain on a disposal of the asset by the trustees at the material time would be a chargeable gain.

Whether deemed disposal is of whole or a proportion of the assets

- 11 (1) This paragraph provides for determining whether the deemed disposal and reacquisition is of the whole or a proportion of each of the remaining chargeable assets.
- (2) If the amount of value transferred—
- (a) is less than the amount of outstanding trustee borrowing, and
 - (b) is also less than the effective value of the remaining chargeable assets,
- the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{VT}{EV}$$

where—

VT is the amount of value transferred, and

EV is the effective value of the remaining chargeable assets.

- (3) If the amount of value transferred—
- (a) is not less than the amount of outstanding trustee borrowing, but

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(b) is less than the effective value of the remaining chargeable assets, the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{TB}{EV}$$

where—

TB is the amount of outstanding trustee borrowing, and

EV is the effective value of the remaining chargeable assets.

- (4) In any other case the deemed disposal and reacquisition is of the whole of each of the remaining chargeable assets.
- (5) For the purposes of this paragraph the effective value of the remaining chargeable assets means the aggregate market value of those assets reduced by so much of that value as is attributable to trustee borrowing.
- (6) References in this paragraph to amounts or values, except in relation to the amount of value transferred, are to amounts or values immediately after the material time.

Value attributable to trustee borrowing

- 12 (1) For the purposes of this Schedule the value of an asset is attributable to trustee borrowing to the extent determined in accordance with the following rules.
 - (2) Where the asset itself has been borrowed by trustees, the value of the asset is attributable to trustee borrowing to the extent that the proceeds of that borrowing have not been applied for normal trust purposes.

This is in addition to any extent to which the value of the asset may be attributable to trustee borrowing by virtue of sub-paragraph (3).
 - (3) The value of any asset is attributable to trustee borrowing to the extent that—
 - (a) the trustees have applied the proceeds of trustee borrowing in acquiring or enhancing the value of the asset, or
 - (b) the asset represents directly or indirectly an asset whose value was attributable to the trustees having so applied the proceeds of trustee borrowing.
 - (4) For the purposes of this paragraph an amount is applied by the trustees in acquiring or enhancing the value of an asset if it is applied wholly and exclusively by them—
 - (a) as consideration in money or money's worth for the acquisition of the asset,
 - (b) for the purpose of enhancing the value of the asset in a way that is reflected in the state or nature of the asset,
 - (c) in establishing, preserving or defending their title to, or to a right over, the asset, or
 - (d) where the asset is a holding of shares or securities that is treated as a single asset, by way of consideration in money or money's worth for additional shares or securities forming part of the same holding.

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- (5) Trustees are treated as applying the proceeds of borrowing as mentioned in sub-paragraph (4) if and to the extent that at the time the expenditure is incurred there is outstanding trustee borrowing.
- (6) In sub-paragraph (4)(d) “securities” has the same meaning as in section 132.

Assets and transfers

- 13 (1) In this Schedule any reference to an asset includes money expressed in sterling.
References to the value or market value of such an asset are to its amount.
- (2) Subject to sub-paragraph (3), references in this Schedule to the transfer of an asset include anything that is or is treated as a disposal of the asset for the purposes of this Act, or would be if sub-paragraph (1) above applied generally for the purposes of this Act.
- (3) References in this Schedule to a transfer of an asset do not include a transfer of an asset that is created by the part disposal of another asset.”

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