

SCHEDULES

SCHEDULE 26

Section 92(4).

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

PART I

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

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

“SCHEDULE 4C

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

Introduction

- 1 (1) This Schedule applies where in any year of assessment a chargeable gain or allowable loss accrues by virtue of Schedule 4B to trustees of a settlement within section 87.

For this purpose a settlement is “within section 87” for a year of assessment if in that year the conditions specified in section 87(1) or section 88(1) are met in relation to the trustees of the settlement.

- (2) The provisions of this Schedule have effect in relation to any such chargeable gain or allowable loss as is mentioned in sub-paragraph (1) above in place of the provisions of sections 86A to 95.
- (3) No account shall be taken—
- (a) of any such chargeable gain or allowable loss in computing the trust gains for a year of assessment in accordance with sections 87 to 89; or
 - (b) of any chargeable gain or allowable loss to which those sections apply in computing the Schedule 4B trust gains in accordance with this Schedule.

General scheme of this Schedule

- 2 The general scheme of this Schedule is that—
- (a) Schedule 4B trust gains are attributed to beneficiaries—
 - (i) of the transferor settlement, or
 - (ii) of any transferee settlement,who have received capital payments from the trustees; and

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- (b) any allowable loss accruing by virtue of Schedule 4B may only be set against a chargeable gain so accruing.

Computation of Schedule 4B trust gains

- 3 (1) This paragraph explains what is meant for the purposes of this Schedule by “Schedule 4B trust gains”.
- (2) The Schedule 4B trust gains are computed in relation to each transfer of value to which that Schedule applies.
- (3) In relation to a transfer of value the amount of the Schedule 4B trust gains for the purposes of this Schedule is given by—

$$CA - SG - AL$$

where—

CA is the chargeable amount computed under paragraph 4 or 5 below,

SG is the amount of any gains attributed to the settlor that fall to be deducted under paragraph 6 below, and

AL is the amount of any allowable losses that may be deducted under paragraph 7 below.

Chargeable amount: non-resident settlement

- 4 (1) If the transfer of value is made in a year of assessment during which the trustees of the transferor settlement are at no time resident or ordinarily resident in the United Kingdom the chargeable amount is computed under this paragraph.
- (2) Where this paragraph applies the chargeable amount is the amount on which the trustees would have been chargeable to tax under section 2(2) by virtue of Schedule 4B if they had been resident or ordinarily resident in the United Kingdom in the year.

Chargeable amount: dual resident settlement

- 5 (1) If the transfer of value is made in a year of assessment where—
- (a) the trustees of the transferor settlement are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, and
- (b) at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
- the chargeable amount is computed under this paragraph.
- (2) Where this paragraph applies the chargeable amount is the lesser of—
- (a) the amount on which the trustees would be chargeable to tax under section 2(2) by virtue of Schedule 4B on the assumption that the double taxation relief arrangements did not apply, and

- (b) the amount on which the trustees would be so chargeable to tax by virtue of disposals of protected assets.
- (3) For this purpose “protected assets” has the meaning given by section 88(4).

Gains attributed to settlor

- 6
- (1) For the purposes of this Schedule the chargeable amount in relation to a transfer of value shall be reduced by the amount of any chargeable gains arising by virtue of that transfer of value that—
- (a) are by virtue of section 86(4) treated as accruing to the settlor, or
 - (b) where section 10A applies, are treated by virtue of that section (as it has effect subject to paragraph 12 below) as accruing to the settlor in the year of return.
- (2) In determining for the purposes of sub-paragraph (1)(a) the amount of chargeable gains arising by virtue of a transfer of value that are treated as accruing to the settlor, there shall be disregarded any losses which arise otherwise than by virtue of Schedule 4B.
- (3) In computing the chargeable amount in relation to a transfer of value the effect of sections 77 to 79 shall be ignored.

Reduction for allowable losses

- 7
- (1) An allowable loss arising under Schedule 4B in relation to a transfer of value by the trustees of a settlement may be taken into account in accordance with this paragraph to reduce for the purposes of this Schedule the chargeable amount in relation to another transfer of value by those trustees.
- (2) Any such allowable loss goes first to reduce chargeable amounts arising from other transfers of value made in the same year of assessment.
- If there is more than one chargeable amount and the aggregate amount of the allowable losses is less than the aggregate of the chargeable amounts, each of the chargeable amounts is reduced proportionately.
- (3) If in any year of assessment the aggregate amount of the allowable losses exceeds the aggregate of the chargeable amounts, the excess shall be carried forward to the next year of assessment and treated for the purposes of this paragraph as if it were an allowable loss arising in relation to a transfer of value made in that year.
- (4) Any reduction of a chargeable amount under this paragraph is made after any deduction under paragraph 6.

Attribution of gains to beneficiaries

- 8
- (1) The Schedule 4B trust gains relating to a transfer of value shall be treated as chargeable gains accruing to beneficiaries—
- (a) of the transferor settlement, and
 - (b) of any transferee settlement,

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in accordance with the following rules.

- (2) The Schedule 4B trust gains shall be treated as chargeable gains accruing to beneficiaries who—
 - (a) receive capital payments from the trustees in the year of assessment in which the transfer of value is made, or
 - (b) have received such payments in any earlier year,
 to the extent that such payments exceed the amount of any gains attributed to the beneficiaries under section 87(4) or 89(2).
- (3) Any Schedule 4B trust gains remaining after the application of sub-paragraph (2) in relation to the year of assessment in which the transfer of value was made shall be carried forward to the following year of assessment and treated for the purposes of this paragraph as if they were gains from a transfer of value made in that year.
- (4) The attribution of chargeable gains to beneficiaries under this paragraph shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.

Attribution of gains to beneficiaries: supplementary

- 9 (1) A capital payment shall be left out of account—
 - (a) for the purposes of paragraph 8, to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient in an earlier year of assessment; and
 - (b) for the purposes of sections 87(4) and (5) and 89(2), to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient under paragraph 8.
- (2) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of paragraph 8 as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.
- (3) For the purposes of paragraph 8 capital payments received—
 - (a) before 21st March 2000, or
 - (b) before the year of assessment preceding the year of assessment in which the transfer of value is made,
 shall be disregarded.

Residence of trustees from whom capital payment received

- 10 (1) Subject to sub-paragraph (2) below, it is immaterial for the purposes of paragraph 8 that the trustees of the transferor settlement, or any transferee settlement, are or have at any time been resident or ordinarily resident in the United Kingdom.
- (2) A capital payment received by a beneficiary of a settlement from the trustees in a year of assessment—
 - (a) during the whole of which the trustees are resident in the United Kingdom, or
 - (b) in which the trustees are ordinarily resident in the United Kingdom,

shall be disregarded for the purposes of paragraph 8 if it was made before, but was not made in anticipation of, chargeable gains accruing under Schedule 4B or of a transfer of value being made to which that Schedule applies.

- (3) For the purposes of sub-paragraph (2) the trustees of a settlement 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.

Taper relief

- 11 Without prejudice to so much of this Schedule as requires section 2A to be applied in the computation of the amount of Schedule 4B trust gains, chargeable gains that are treated as accruing to beneficiaries under this Schedule shall not be eligible for taper relief.

Attribution of gains to settlor in section 10A cases

- 12 (1) This paragraph applies where by virtue of section 10A an amount of gains—
- (a) arising under Schedule 4B in an intervening year, and
 - (b) falling within section 86(1)(e),
- would (apart from this Schedule) be treated as accruing to a person (“the settlor”) in the year of return.
- (2) Where this paragraph applies, only so much (if any) of the Schedule 4B trust gains falling within section 86(1)(e) as exceeds the amount charged to beneficiaries shall fall in accordance with section 10A to be attributed to the settlor for the year of return.
- (3) The “amount charged to beneficiaries” means, subject to sub-paragraph (4) below, the total of the amounts on which beneficiaries of the transferor or transferee settlements are charged to tax under this Schedule by reference to those gains for all the intervening years.
- (4) Where the property comprised in the transferor settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment taken into account for the purposes of paragraph 8 above as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account in computing the amount charged to beneficiaries.
- (5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in sub-paragraph (4) above to property originating from the settlor as it applies for the purposes of that Schedule.

Increase in tax payable under this Schedule

- 13 (1) This paragraph applies where—

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- (a) a capital payment is made by the trustees of a settlement,
 - (b) the payment is made in circumstances where paragraph 8 above treats chargeable gains as accruing in respect of the payment, and
 - (c) a beneficiary is charged to tax in respect of the payment by virtue of that paragraph.
- (2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under sub-paragraph (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 paragraph) carried interest for the chargeable period at the specified rate.

The “specified rate” means the rate for the time being specified in section 91(3).

- (4) The chargeable period is the period which—
- (a) begins with the later of the 2 days specified in sub-paragraph (5) below, and
 - (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 year of assessment following that in which the transfer of value was made, and
 - (b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.

Interpretation

- 14 (1) In this Schedule—
- (a) “transfer of value” has the same meaning as in Schedule 4B; and
 - (b) references to the time at which a transfer of value was made are to the time which is the material time for the purposes of that Schedule.
- (2) In this Schedule, in relation to a transfer of value—
- (a) references to the transferor settlement are to the settlement the trustees of which made the transfer of value; and
 - (b) references to a transferee settlement are to any settlement of which the settled property includes property representing, directly or indirectly, the proceeds of the transfer of value.
- (3) References in this Schedule to beneficiaries of a settlement include—
- (a) persons who have ceased to be beneficiaries by the time the chargeable gains accrue, and
 - (b) persons who were beneficiaries of the settlement before it ceased to exist,

but who were beneficiaries of the settlement at a time in a previous year of assessment when a capital payment was made to them.”.

PART II

CONSEQUENTIAL AMENDMENTS

Taxation of Chargeable Gains Act 1992 (c. 12)

2 In section 90 of the Taxation of Chargeable Gains Act 1992 (transfers between settlements), after subsection (4) add—

“(5) This section shall not apply—

- (a) to a transfer to the extent that it is in accordance with Schedule 4B treated as linked with trustee borrowing; or
- (b) to any chargeable gains arising by virtue of that Schedule.”.

3 In section 96 of the Taxation of Chargeable Gains Act 1992 (payments by and to companies), in subsections (1) and (2) after “sections 87 to 90” insert “and Schedule 4C”

4 In section 97 of the Taxation of Chargeable Gains Act 1992 (supplementary provisions)—

- (a) in subsections (1), (3)(a), (4) and (7), after “sections 86A to 96”, and
- (b) in subsections (5) and (8), after “sections 86A to 90”,

insert “and Schedule 4C”.

5 In section 98 of the Taxation of Chargeable Gains Act 1992, after subsection (2) add—

“(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.”.

Taxes Act 1988

6 In section 740(6) of the Taxes Act 1988 (income tax charge in case of transfer of assets to non-resident: exclusion of benefit giving rise to charge to capital gains tax)—

- (a) for “within the meaning of section 87 or 89(2) of the 1992 Act” substitute “to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, the 1992 Act applies”;
- (b) for “non-resident and migrant settlements” substitute “gains attributed to beneficiaries”; and
- (c) after “either of those sections” insert “, or that paragraph,”.