Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 4

TRUSTS WITH VULNERABLE BENEFICIARY

Income tax

25 Qualifying trusts income: special income tax treatment

(1) This section has effect in relation to a tax year if—

(a) in the tax year income arises (or is treated as arising) to **[**F1the trustees of a settlement**]** from property held on qualifying trusts for the benefit of a vulnerable person ("qualifying trusts income"), and

(b) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.

(2) Special income tax treatment applies for the tax year in accordance with sections 26 to 29.

(3) But this section does not have effect in relation to the tax year if the property from which the qualifying trusts income arises (or is treated as arising) is property in which a person who is a settlor (within the meaning given by **[**F2section 620(1) of ITTOIA 2005**]**) is regarded as having an interest for the purposes of **[**F3sections 624 and 625 of that Act**]** (income arising under settlement where settlor retains an interest).

Textual Amendments

F1 Words in s. 25(1)(a) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(c)**(7)

F2 Words in s. 25(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(3)(a)**(7)

F3 Words in s. 25(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(3)(b)**(7)

26 Amount of relief

The trustees' liability to income tax for the tax year is to be reduced by an amount equal to—

$$TQTI - VQTI$$

where—

TQTI is an amount determined in accordance with section 27 (income tax liability of trustees in respect of qualifying trusts income), and

VQTI is an amount determined in accordance with section 28 (extra tax to which vulnerable person would be liable if qualifying trusts income were income of his).

27 Trustees' liability: TQTI

(1) For the purposes of section 26, TQTI is the amount of income tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year (or to which they would be so liable if their liability were computed in accordance with subsection (2) in a case to which that subsection applies).

(2) In a case where—

(a) income arising (or treated as arising) to the trustees in the tax year ("total income") includes income ("other income") which is not qualifying trusts income, and

(b) the trustees have any expenses in the tax year ("the management expenses") which are properly chargeable to [F4income] or would be so chargeable but for any express provisions of the trusts,

there shall be disregarded, in computing the income tax liability of the trustees for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year, such part of the management expenses as bears the same proportion to all those expenses as other income bears to total income.

(3) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

Textual Amendments

F4 Word in s. 27(2)(b) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(4)**(7)

28 Vulnerable person's liability: VQTI

(1) For the purposes of section 26, VQTI is an amount equal to—

$$TLV1 - TLV2$$

where—

TLV2 is an amount determined in accordance with subsection (2) (and subsection (4) where it applies) (total tax liability of vulnerable person), and

TLV1 is an amount determined in accordance with subsection (3) (and subsection (4) where it applies) (what total tax liability of vulnerable person would be if his income included qualifying trusts income).

(2) TLV2 is the total amount of income tax and capital gains tax to which the vulnerable person would be liable for the tax year if his income tax liability were computed in accordance with subsections (5) and (6).

(3) TLV1 is what TLV2 would be if the qualifying trusts income arising (or treated as arising) to the trustees in the tax year in respect of which the trustees are liable to income tax were income of the vulnerable person for the tax year.

(4) Where the vulnerable person is non-UK resident during the tax year—

(a) his income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that he is resident and domiciled in the United Kingdom throughout the tax year, and

(b) his capital gains tax liability for the purposes of determining TLV1 and TLV2 is to be computed on the assumption that his taxable amount for the purposes of section 3 of TCGA 1992 is equal to his deemed CGT taxable amount.

(5) For the purposes of this section, in a case where income which has arisen to the trustees (whenever it arose) is distributed to the vulnerable person in the tax year, that income is to be disregarded in computing income tax to which he would be liable for the tax year for the purposes of determining TLV1 and TLV2.

(6) For the purposes of this section, in computing income tax to which the vulnerable person would be liable for the tax year for the purposes of determining TLV1 and TLV2, there is to be disregarded any relief which is given by way of a reduction in the amount of income tax to which the vulnerable person would be liable apart from that relief.

(7) For the purposes of this section—

(a) whether or not a vulnerable person is non-UK resident is to be determined in accordance with section 41(2), and

(b) a non-UK resident vulnerable person's deemed CGT taxable amount is to be determined in accordance with paragraph 3 of Schedule 1.

(8) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

[F5 28A Disapplication of section 629 of ITTOIA 2005

(1) In a case where this section applies, section 629(1) of ITTOIA 2005 shall not apply in respect of a payment by the trustees of a settlement to a beneficiary under the settlement.

(2) This section applies if in a year of assessment—

(a) the trustees make a payment to a vulnerable person,

(b) the payment is made out of qualifying trusts income,

(c) the vulnerable person is a relevant child (within the meaning given by section 629 of ITTOIA 2005) of a settlor in relation to the settlement, and

(d) the trustees have made a successful claim for special income tax treatment under section 25.**]**

Textual Amendments

F5 S. 28A inserted (with effect in accordance with Sch. 13 para. 36(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 36(1)**

29 Part years

(1) Where the vulnerable person election has effect for only part of the tax year ("the elected part of the tax year") sections 26, 27 and 28 apply with the modifications in subsection (2).

(2) Those modifications are—

(a) that references to the qualifying trusts income arising (or treated as arising) to the trustees in the tax year are to be treated as references to the qualifying trusts income arising (or treated as arising) to them in the elected part of the tax year, and

(b) that the references in section 27(2) to income arising (or treated as arising) to the trustees in the tax year and expenses of the trustees in the tax year are to be treated as (respectively) references to income arising (or treated as arising) to the trustees in the elected part of the tax year and expenses of the trustees in that part of the tax year.