

SCHEDULES

SCHEDULE 12

SETTLEMENTS: AMENDMENT OF TCGA 1992 ETC

PART 2

SUB-FUND SETTLEMENTS

- 6 (1) After section 69 of TCGA 1992 insert—

“69A Sub-fund settlements

Schedule 4ZA (which makes provision about sub-fund settlements) shall have effect.”

- (2) After Schedule 4 to TCGA 1992 insert—

“SCHEDULE
4ZA

SUB-FUND SETTLEMENTS

Making a sub-fund election

- 1 The trustees of a settlement (the “principal settlement”) may elect that a fund or other specified portion of the settled property (the “sub-fund”) be treated, unless the context otherwise requires, as a separate settlement (the “sub-fund settlement”) for the purposes of this Act, and the election shall have effect.
- 2 (1) An election under paragraph 1 (a “sub-fund election”) must specify the date on which it is to be treated as having taken effect, which must not be later than the date on which it is made.
(2) The election shall be treated as having taken effect—
 - (a) at the beginning of the specified date, or
 - (b) if there is a deemed disposal of an asset by the trustees of the principal settlement under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)), on the specified date immediately after the deemed disposal.
- 3 Trustees may make a sub-fund election only if—
 - (a) Conditions 1 to 4 are satisfied when the election is made, and
 - (b) Conditions 2 to 4 were satisfied throughout the period beginning with the time when the election is to be treated as having taken effect and ending immediately before the election is made.

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- 4 Condition 1 is that the principal settlement is not itself a sub-fund settlement.
- 5 Condition 2 is that the sub-fund is not the whole of the property comprised in the principal settlement.
- 6 Condition 3 is that, if the sub-fund election had taken effect, the sub-fund settlement would not consist of or include an interest in an asset any other interest in which would be comprised in the principal settlement.
- 7 For the purpose of Condition 3—
- (a) sections 104(1) and 109(2)(a) shall not have effect, and
 - (b) “interest”, in relation to any asset, means an interest as a co-owner of the asset (whether the asset is owned jointly or in common and whether or not the interests of the co-owners are equal).
- 8 Condition 4 is that, if the sub-fund election had taken effect, no person would be a beneficiary under both the sub-fund settlement and the principal settlement.
- 9 (1) For the purpose of Condition 4 a person is a beneficiary under a settlement—
- (a) if—
 - (i) any property which is or may at any time be comprised in the settlement, or
 - (ii) any derived property,is, or will or may become, payable to him or applicable for his benefit in any circumstances whatsoever, or
 - (b) if he enjoys a benefit deriving directly or indirectly from—
 - (i) any property which is comprised in the settlement, or
 - (ii) any derived property.
- (2) But for the purpose of Condition 4 a person is not to be regarded as a beneficiary under a settlement if property comprised in the settlement, or any derived property, will or may become payable to him or applicable for his benefit by reason only of—
- (a) his marrying, or entering into a civil partnership with, a beneficiary under the settlement,
 - (b) the death of a beneficiary under the settlement,
 - (c) the exercise by the trustees of the settlement of—
 - (i) a power conferred by section 32 of the Trustee Act 1925 (c. 19) or section 33 of the Trustee Act (Northern Ireland) 1958 (c. 23 (N.I.)) (powers of advancement),
 - (ii) a power conferred by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in subparagraph (i), or
 - (iii) a power of advancement which is conferred by the instrument creating the principal settlement, or by another instrument made in accordance with the terms of the principal settlement, and which is subject to the

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- same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925, or
- (d) the failure or determination of trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts).
- (3) In this paragraph “derived property”, in relation to any property, means—
- (a) income from that property,
- (b) property directly or indirectly representing—
- (i) proceeds of that property, or
- (ii) proceeds of income from that property, or
- (c) income from property which is derived property by virtue of paragraph (b).

Sub-fund elections: procedure

- 10 A sub-fund election must be made—
- (a) by notice to an officer of Revenue and Customs, and
- (b) in such form as the Commissioners for Her Majesty’s Revenue and Customs may require.
- 11 A sub-fund election may not be made after the second 31st January after the year of assessment in which the date on which the election is to be treated as having taken effect falls.
- 12 A sub-fund election must contain—
- (a) a declaration by each trustee of the principal settlement that he consents to the election,
- (b) a statement by the trustees of the principal settlement that the requirement in paragraph 3 is satisfied,
- (c) such information as the Commissioners for Her Majesty’s Revenue and Customs may require in relation to the principal settlement (which may, in particular, include information relating to the trustees, the trusts, property which is or has been comprised in the settlement, the settlors or the beneficiaries),
- (d) a declaration by the trustees of the principal settlement that the information given in the election is correct, to the best of their knowledge and belief, and
- (e) such other declarations as the Commissioners for Her Majesty’s Revenue and Customs may require.
- 13 A sub-fund election may not be revoked.

Power to make enquiries

- 14 Where a sub-fund election has been made, an officer of Revenue and Customs may by notice require a person specified in paragraph 16 to supply information for the purposes of determining whether paragraph 3 was satisfied.
- 15 The notice shall specify a period of not less than 60 days within which the information must be supplied.

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- 16 (1) The persons mentioned in paragraph 14 are—
- (a) a person who is or has been a trustee of a relevant settlement;
 - (b) a person who is or has been a beneficiary under a relevant settlement;
 - (c) a person who is or has been a settlor in relation to a relevant settlement.
- (2) For the purposes of sub-paragraph (1) a settlement is a relevant settlement if it is—
- (a) the sub-fund settlement, or
 - (b) the principal settlement.

Consequences of a sub-fund election

- 17 The sub-fund settlement shall be treated, for the purposes of this Act, as having been created at the time when the sub-fund election is treated as having taken effect.
- 18 (1) Each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement for the purposes of this Act.
- (2) A person who is a trustee of the sub-fund settlement shall be treated for the purposes of this Act, from the time when the election is treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held.
- (3) A person who is a trustee of the principal settlement shall not be treated for the purposes of this Act as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- 19 The trustees of the sub-fund settlement shall be treated for the purposes of this Act as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.
- 20 (1) A deemed disposal by the trustees of the principal settlement of an asset under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)) shall be treated as having been made at the beginning of the date on which the sub-fund election is treated as having taken effect.
- (2) If the trustees of the sub-fund settlement have acquired an asset of which the trustees of the principal settlement are deemed to have disposed under section 71(1) (by virtue of paragraph 19), they shall be deemed to have acquired it at the time when the election is treated as having taken effect.
- (3) The trustees of the principal settlement shall not be treated as having disposed of an asset under section 80(2) by virtue of paragraph 18(2) if they are treated as having disposed of the same asset under section 71(1) by virtue of paragraph 19.

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- 21 If the trustees of the sub-fund settlement are treated by virtue of paragraph 19 as having become absolutely entitled to money expressed in sterling, for the purposes of this Act—
- (a) the trustees of the principal settlement shall be treated as having disposed of the money at the beginning of the day on which the sub-fund election is treated as having taken effect, and
 - (b) the trustees of the sub-fund settlement shall be treated as having acquired the money at the time when the election is treated as having taken effect.
- 22 (1) If the trustees of the principal settlement are deemed to have disposed of an asset under section 71(1) (by virtue of paragraph 19), the trustees of the principal settlement shall be treated for the purposes of sections 90 and 94 as having transferred the asset to the trustees of the sub-fund settlement.
- (2) Sub-paragraph (1) also applies where the trustees of the principal settlement would be deemed to have disposed of money expressed in sterling under subsection (1) of section 71 if in that subsection—
- (a) the reference to “assets” were a reference to “property”, and
 - (b) for “their” there were substituted “its”.
- (3) This paragraph shall have effect in relation to years of assessment beginning on or after 6th April 2006 (but a sub-fund election may not be treated as having taken effect before 6th April 2006).