



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 9

#### SPECIAL RULES ABOUT SETTLEMENTS AND TRUSTEES

#### CHAPTER 1

#### INTRODUCTION

#### 462 Overview of Part

- (1) This Part sets out special rules about settlements and trustees.
- (2) Chapter 2 contains general provision about settlements and trustees, for example, definitions of expressions relating to settlements.
- (3) Chapter 3 provides for income tax to be charged at the dividend trust rate or at the trust rate on certain amounts included in the net income of the trustees of a settlement.
- (4) Chapter 4 provides—
  - (a) for expenses of the trustees of a settlement to be set against the trustees' trust rate income (see section 463(2)), and
  - (b) consequentially, for the amount of the trust rate income to be reduced.
- (5) Chapter 5 qualifies section 479 (which is in Chapter 3) in the case of the trustees of [F1a Schedule 2] share incentive plan.
- (6) Chapter 6 provides that the first slice of the trust rate income of the trustees of a settlement is not to be charged at the dividend trust rate or at the trust rate.
- (7) Chapter 7 deals with the treatment of payments made by the trustees of a settlement in the exercise of a discretion.

This affects the way the trustees and the recipients of such payments are taxed.

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- (8) Chapter 8 deals with the treatment of expenses of the trustees of a settlement where income arising to the trustees is, before being distributed, the income of a person other than the trustees themselves.

This affects the way that other person is taxed on that income.

<sup>F2</sup>(9) .....

- (10) Chapter 10 deals with heritage maintenance settlements.
- (11) See also Part 10 for special rules about charitable trusts [<sup>F3</sup> and section 838A for special provision about asbestos compensation settlements] .
- (12) See also Chapter 4 of Part 2 of FA 2005 for provision about trusts with vulnerable beneficiaries.

#### Textual Amendments

- F1** Words in s. 462(5) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 69, 89](#) (with [Sch. 8 paras. 90-96](#))
- F2** S. 462(9) omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\), 37\(5\)](#) (with [reg. 32](#))
- F3** Words in s. 462(11) inserted (16.12.2010 with effect in accordance with Sch. 14 para. 3(4) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 14 para. 3\(2\)](#)

### 463 Interpretation of Part

- (1) In this Part—
- “other income” means income which is neither dividend income nor savings income, and
- “the trustees of a settlement” does not include personal representatives.
- (2) References in this Part to the trust rate income for a tax year of the trustees of a settlement are references to the trustees' net income for the tax year so far as it includes amounts on which income tax is charged at the dividend trust rate or at the trust rate (ignoring Chapters 4 and 6).

### 464 Scottish trusts

- (1) This section applies if—
- (a) income arises to trustees under a trust having effect under the law of Scotland,
  - (b) the trustees are UK resident, and
  - (c) a beneficiary under the trust (“B”) would have an equitable right in possession to the income if the trust had effect under the law of England and Wales.
- (2) B is treated for income tax purposes as having an equitable right in possession to the income (even though B has no such right under the law of Scotland).

*Status: Point in time view as at 30/11/2017.*

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## CHAPTER 2

### GENERAL PROVISION ABOUT SETTLEMENTS AND TRUSTEES

#### Modifications etc. (not altering text)

- C1** Pt. 9 Ch. 2 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 1169\(1\), 1184\(1\)](#) (with [Sch. 2](#))

#### Overview

#### 465 Overview of Chapter and interpretation

- (1) This Chapter contains general provision about settlements and trustees.
- (2) Section 466 explains what is meant by references to settled property.
- (3) Sections 467 to 473 explain what is meant by references to a settlor in relation to a settlement.
- (4) Sections 474 to 476 treat the trustees of a settlement as a single and distinct person and set out rules in relation to the residence <sup>F4</sup>... of that person.
- (5) Section 477 relates to sub-fund elections under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (6) Section 478 is about references to settled property etc in regulations.
- (7) For the purposes of this Chapter property is derived from other property if—
  - (a) it derives (directly or indirectly and wholly or partly) from that other property or any part of that other property, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that other property or any part of that other property.
- (8) In this Chapter “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### Textual Amendments

- F4** Words in s. 465(4) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 55](#)

#### Settled property

#### 466 Meaning of “settled property” etc

- (1) This section applies for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) “Settled property” means any property held in trust other than property excluded by subsection (3).

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- (3) Property is excluded for the purposes of subsection (2) if—
  - (a) it is held by a person as nominee for another person,
  - (b) it is held by a person as trustee for another person who is absolutely entitled to the property as against the trustee, or
  - (c) it is held by a person as trustee for another person who would be absolutely entitled to the property as against the trustee if that other person were not an infant or otherwise lacking legal capacity.
- (4) References, however expressed, to property comprised in a settlement are references to settled property.
- (5) A person is absolutely entitled to property as against a trustee if the person has the exclusive right to direct how the property is to be dealt with (subject to the trustees' right to use the property for the payment of duty, taxes, costs or other outgoings).
- (6) References to a person who is or would be so entitled include references to two or more persons who are or would be jointly absolutely entitled as against the trustee.

**Modifications etc. (not altering text)**

- C2** S. 466(4) excluded (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 1123\(3\)\(b\)](#), 1184(1) (with [Sch. 2](#))

### *Settlors*

#### **467 Meaning of “settlor” etc**

- (1) In the Income Tax Acts (except where the context otherwise requires) “settlor”, in relation to a settlement, means the person, or any of the persons, who has made the settlement.
- (2) In the Income Tax Acts (except where the context otherwise requires) a person is a settlor of property if—
  - (a) the property is settled property because of—
    - (i) the person's having made the settlement, or
    - (ii) an event which leads to the person being treated by this Chapter as having made the settlement, or
  - (b) the property derives from settled property within paragraph (a).
- (3) A person (“S”) is treated for the purposes of the Income Tax Acts as having made a settlement if—
  - (a) S has made or entered into the settlement (directly or indirectly), or
  - (b) the settled property, or property from which the settled property derives, is or includes property within subsection (4).
- (4) Property is within this subsection if—
  - (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
  - (b) immediately before S's death, the property was property of S—
    - (i) which was disposable property (see section 468), or

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- (ii) which represented S's severable share in any property to which S was beneficially entitled as joint tenant.
- (5) In particular, S is treated for the purposes of the Income Tax Acts as having made a settlement if—
- (a) S has provided property for the purposes of the settlement (directly or indirectly), or
  - (b) S has undertaken to do that.
- (6) If a person (“A”) makes or enters into a settlement in accordance with reciprocal arrangements with another person (“B”)—
- (a) B is treated for the purposes of the Income Tax Acts as having made the settlement, and
  - (b) A is not to be treated for the purposes of the Income Tax Acts as having made the settlement just because of the reciprocal arrangements.
- (7) This section needs to be read with sections 469 to 473.
- (8) This section and sections 469 to 473 do not apply for the purposes of Chapter 5 of Part 5 of ITTOIA 2005 (amounts treated as income of settlors).

#### **468 Meaning of “disposable property”**

- (1) This section applies for the purposes of section 467(4)(b)(i).
- (2) Property is disposable if S could have disposed of it by S's will.
- (3) In working out whether any property could have been so disposed of—
- (a) make the assumptions mentioned in subsection (4), and
  - (b) ignore the powers mentioned in subsection (5).
- (4) Assume that—
- (a) S is of full age and capacity,
  - (b) the property is situated in England and Wales, and
  - (c) if S is not domiciled in the United Kingdom, S is domiciled in England and Wales.
- (5) The powers to be ignored are—
- (a) any power of appointment giving S the right to dispose of the property, and
  - (b) any testamentary power conferred by statute to dispose of entailed interests.

#### **469 Person ceasing to be a settlor**

- (1) A person (“S”) who is a settlor in relation to a settlement ceases to be so when the following condition is met.
- (2) The condition is that—
- (a) no property of which S is the settlor is comprised in the settlement,
  - (b) S has not undertaken to provide property (directly or indirectly) for the purposes of the settlement in the future, and
  - (c) S has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

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#### **470 Transfers between settlements**

- (1) Section 471 applies in relation to a transfer of property from the trustees of one settlement (“settlement 1”) to the trustees of another settlement (“settlement 2”) if the transfer—
  - (a) is not for full consideration,
  - (b) is not by way of a bargain made at arm's length, and
  - (c) is not excluded by subsection (2).
- (2) A transfer of property is excluded for the purposes of subsection (1) if—
  - (a) it occurs only because of the assignment by a beneficiary under settlement 1 of an interest in that settlement to the trustees of settlement 2,
  - (b) it occurs only because of the exercise of a general power of appointment, or
  - (c) section 473(4) applies in relation to it.
- (3) In this section “transfer of property” means—
  - (a) a disposal of property by the trustees of settlement 1, and
  - (b) the acquisition by the trustees of settlement 2 of—
    - (i) property disposed of by the trustees of settlement 1, or
    - (ii) property created by the disposal.
- (4) For the purposes of subsection (3) there is an acquisition or disposal of property if there would be an acquisition or disposal of property for the purposes of TCGA 1992.

#### **471 Identification of settlor following transfer covered by section 470**

- (1) If there is a transfer of property in relation to which this section applies, then the following subsections apply for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) The settlor (or each settlor) of the property disposed of by the trustees of settlement 1 (“the disposed property”) is treated from the time of the disposal as having made settlement 2.
- (3) If there is more than one settlor of the disposed property, each of them is treated in relation to settlement 2 as the settlor of a proportionate part of the property acquired by the trustees of settlement 2 on the disposal.
- (4) So far as the disposed property—
  - (a) was provided for the purposes of settlement 1, or
  - (b) was derived from property so provided,
 the property acquired by the trustees of settlement 2 on the disposal is treated from the time of the disposal as having been provided for the purposes of settlement 2.
- (5) If as a result of subsection (4), property (“the transferred property”) is treated as having been provided for the purposes of settlement 2—
  - (a) the person who provided the disposed property, or the property from which it was derived, for the purposes of settlement 1 is treated as having provided the transferred property for the purposes of settlement 2, and
  - (b) if more than one person provided the disposed property, or the property from which it was derived, for the purposes of settlement 1, each of them is treated as having provided a proportionate part of the transferred property for the purposes of settlement 2.

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#### **472 Settlor where property becomes settled because of variation of will etc**

- (1) This section applies if—
  - (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.
- (2) If property becomes settled property because of the variation (and would not, but for the variation, have become settled property), a person within subsection (3) is treated for the purposes of the Income Tax Acts (except where the context otherwise requires)—
  - (a) as having made the settlement, and
  - (b) as having provided the property for the purposes of the settlement.
- (3) The persons within this subsection are—
  - (a) a person who immediately before the variation was entitled to the property, or to property from which it derived, absolutely as legatee,
  - (b) a person who immediately before the variation would have been so entitled if that person had not been an infant or otherwise lacking legal capacity,
  - (c) a person who, but for the variation, would have become so entitled, and
  - (d) a person who, but for the variation, would have become so entitled if that person had not been an infant or otherwise lacking legal capacity.
- (4) For the purposes of subsection (3)—
  - (a) “legatee” includes a person taking property—
    - (i) under a testamentary disposition or on an intestacy or partial intestacy, whether beneficially or as trustee, or
    - (ii) under a donatio mortis causa, and
  - (b) a person who is a legatee as a result of paragraph (a)(ii) is treated as acquiring the property when the donor dies.
- (5) For the purposes of subsection (4)(a) property taken under a testamentary disposition or on an intestacy or partial intestacy includes any property appropriated by the personal representatives in or towards satisfaction of—
  - (a) a pecuniary legacy, or
  - (b) any other interest or share in the property devolving under the disposition or intestacy.

#### **473 Deceased person as settlor where variation of will etc**

- (1) This section applies if—
  - (a) a disposition of property following the death of a person (“D”) is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.
- (2) If—
  - (a) property would have become comprised in a settlement within subsection (3), but
  - (b) as a result of the variation, the property, or property derived from it, becomes comprised in another settlement,

D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.
- (3) A settlement is within this subsection if—

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- (a) it arose on D's death (whether by D's will or on D's intestacy or in any other way), or
  - (b) it was in existence immediately before D's death (whether or not D was a settlor in relation to it).
- (4) If—
- (a) immediately before the variation property is comprised in a settlement and is property of which D is a settlor, and
  - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,
- D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.
- (5) A settlement treated as made by D as a result of this section is treated for the purposes of the Income Tax Acts as made by D immediately before D's death.
- (6) But subsection (5) does not apply in relation to a settlement which arose on D's death.

### *Trustees*

#### **474 Trustees of settlement to be treated as a single and distinct person**

- (1) For the purposes of the Income Tax Acts (except where the context otherwise requires), the trustees of a settlement are together treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).
- (2) If different parts of the settled property in relation to a settlement are vested in different bodies of trustees, subsection (1) and sections 475 and 476 apply in relation to the different bodies as if they were all one body.
- (3) The cases covered by subsection (2) include cases where settled land (within the meaning of the Settled Land Act 1925 (c. 18)) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement.

#### **475 Residence of trustees**

- <sup>F5</sup>(1) This section applies for income tax purposes and explains how to work out, in relation to the trustees of a settlement, whether or not the single person mentioned in section 474(1) is UK resident.]
- (2) If at a time either condition A or condition B is met, then at that time the single person is <sup>F6</sup>UK resident].
  - (3) If at a time neither condition A nor condition B is met, then at that time the single person is <sup>F7</sup>non-UK resident].
  - (4) Condition A is met at a time if, at that time, all the persons who are trustees of the settlement are UK resident.
  - (5) Condition B is met at a time if at that time—
    - (a) at least one person who is a trustee of the settlement is UK resident and at least one such person is non-UK resident, and
    - (b) a settlor in relation to the settlement meets condition C (see section 476).



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(6) If at a time a person (“T”) who is a trustee of the settlement acts as trustee in the course of a business which T carries on in the United Kingdom through a branch, agency or permanent establishment there, then for the purposes of subsections (4) and (5) assume that T is UK resident at that time.

[<sup>F8</sup>(7) Subsection (8) applies if—

- (a) an individual becomes or ceases to be a trustee of the settlement during a tax year,
- (b) that year is a split year as respects the individual, and
- (c) the only period in that year when the individual is a trustee of the settlement falls wholly within the overseas part of the year.

(8) The individual is to be treated for the purposes of subsections (4) and (5) as if he or she had been non-UK resident for the year (and hence for the period in that year when he or she was a trustee of the settlement).

(9) But subsection (8) is subject to subsection (6) and, accordingly, an individual who is treated under subsection (8) as having been non-UK resident is, in spite of that, to be treated as UK resident whenever the individual acts as mentioned in subsection (6).]

#### Textual Amendments

- F5** S. 475(1) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 56\(2\)](#)
- F6** Words in s. 475(2) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 56\(3\)](#)
- F7** Words in s. 475(3) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 56\(4\)](#)
- F8** S. 475(7)-(9) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 103](#)

#### 476 How to work out whether settlor meets condition C

(1) This section applies for the purpose of working out whether a settlor (“S”) in relation to a settlement meets condition C at a time.

(2) If—

- (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
- (b) immediately before S's death, S was UK resident <sup>F9</sup>... or domiciled in the United Kingdom,

then S meets condition C from the time of S's death until S ceases to be a settlor in relation to the settlement.

(3) If—

- (a) the settlement is not within subsection (2)(a), and
- (b) at a time when S made the settlement (or is treated for the purposes of the Income Tax Acts as making the settlement), S was UK resident <sup>F10</sup>... or domiciled in the United Kingdom,

then S meets condition C from that time until S ceases to be a settlor in relation to the settlement.

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[<sup>F11</sup>(3A) Section 835BA (deemed domicile) applies for the purposes of subsections (2)(b) and (3)(b).]

(4) Further, if—

- (a) there is a transfer of property in relation to which section 471 applies,
- (b) S is a settlor in relation to settlement 2 as a result of that section, and
- (c) immediately before the disposal by the trustees of settlement 1, S meets condition C as a settlor in relation to settlement 1 as a result of subsection (2) or (3) or this subsection,

then S meets condition C as a settlor in relation to settlement 2 from the time S becomes such a settlor until S ceases to be such a settlor.

(5) “Settlement 1” and “settlement 2” are to be read in accordance with section 470(1).

#### **Textual Amendments**

- F9** Words in s. 476(2)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 57\(2\)](#) (with [Sch. 46 para. 57\(4\)](#))
- F10** Words in s. 476(3)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 57\(3\)](#) (with [Sch. 46 para. 57\(5\)](#))
- F11** [S. 476\(3A\)](#) inserted (with effect in accordance with Sch. 8 para. 12(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 8 para. 12\(1\)](#)

### *Sub-funds*

#### **477 Sub-fund elections under Schedule 4ZA to TCGA 1992**

- (1) This section applies for the purposes of the Income Tax Acts (except so far as, in those Acts, the context otherwise requires) if the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (2) The sub-fund settlement is treated as a settlement that is created at the relevant time.
- (3) Each trustee of the trusts on which property comprised in the sub-fund settlement is held is treated as a trustee of the sub-fund settlement.
- (4) A person (“T”) who is a trustee of the sub-fund settlement is treated, from the relevant time, as having ceased to be a trustee of the principal settlement unless T is also a trustee of trusts on which property comprised in the principal settlement is held.
- (5) A person (“T”) who is a trustee of the principal settlement is not to be treated as a trustee of the sub-fund settlement unless T is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- (6) The trustees of the sub-fund settlement are treated as having become, at the relevant time, absolutely entitled to the property comprised in that settlement as against the trustees of the principal settlement.
- (7) In this section—
 

“principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,

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“the relevant time” means the time when the sub-fund election is treated as having taken effect under paragraph 2 of that Schedule,

“sub-fund election” has the meaning given by paragraph 2 of that Schedule, and

“sub-fund settlement” has the meaning given by paragraph 1 of that Schedule.

### *Regulations*

#### **478 References to settled property etc in regulations**

For the purposes of regulations (whenever made) made under a provision of the Income Tax Acts—

- (a) references to settled property, a settlor or trustees are to be read in accordance with this Chapter, and
- (b) references to the trustees of a trust are to be read as references to the trustees of a settlement.

## **CHAPTER 3**

### **SPECIAL RATES FOR TRUSTEES' INCOME**

#### **479 Trustees' accumulated or discretionary income to be charged at special rates**

- (1) This section applies if—
  - (a) accumulated or discretionary income arises to the trustees of a settlement, and
  - (b) the income does not arise under a [<sup>F12</sup>charitable trust].
- (2) Income tax is charged on the income at the rates referred to in this section instead of at the rates which would otherwise apply (for which see Chapter 2 of Part 2 (rates at which income tax is charged)).
- (3) Income tax is charged on the income at the dividend trust rate so far as the income is dividend income.
- (4) Otherwise, income tax is charged on the income at the trust rate.
- (5) Section 488 disapplies this section in cases relating to [<sup>F13</sup>Schedule 2] share incentive plans.

#### **Textual Amendments**

**F12** Words in s. 479(1)(b) substituted (8.3.2012) (with effect in accordance with art. 17 of the commencing S.I.) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 23\(2\), 34\(2\)](#); S.I. 2012/736, art. 17

**F13** Words in s. 479(5) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 70, 89](#) (with [Sch. 8 paras. 90-96](#))

#### **Modifications etc. (not altering text)**

**C3** S. 479 excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\), 12\(3\)\(d\)](#)

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#### **480 Meaning of “accumulated or discretionary income”**

- (1) Income is accumulated or discretionary income so far as—
    - (a) it must be accumulated, or
    - (b) it is payable at the discretion of the trustees or any other person, and it is not excluded by subsection (3).
  - (2) The cases covered by subsection (1)(b) include cases where the trustees have, or any other person has, any discretion over one or more of the following matters—
    - (a) whether, or the extent to which, the income is to be accumulated,
    - (b) the persons to whom the income is to be paid, and
    - (c) how much of the income is to be paid to any person.
  - (3) Income is excluded for the purposes of subsection (1) so far as—
    - (a) before being distributed, it is the income of any person other than the trustees,
    - (b) it is income from property within subsection (4), or
    - (c) it is income from service charges [<sup>F14</sup>which are paid in respect of dwellings in the United Kingdom and are held on trust.]
  - (4) Property is within this subsection if it—
    - (a) is held for the purposes of a superannuation fund to which section 615(3) of ICTA (superannuation funds relating to undertakings outside the UK) applies, but
    - (b) is not held as a member of a property investment LLP.
- [<sup>F15</sup>(5) In subsection (3)(c) “service charges” has the meaning given by section 18 of the Landlord and Tenant Act 1985 (but as if that section also applied in relation to dwellings in Scotland and Northern Ireland).]

#### **Textual Amendments**

**F14** Words in s. 480(3)(c) substituted (with effect in accordance with s. 65(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 65\(2\)](#)

**F15** S. 480(5) substituted for s. 480(5)(6) (with effect in accordance with s. 65(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 65\(3\)](#)

#### **481 Other amounts to be charged at special rates for trustees**

- (1) This section applies if—
  - (a) the trustees of a settlement are liable for income tax on an amount of a type set out in section 482,
  - (b) the trustees are not trustees of a unit trust scheme, and
  - (c) the amount is not income arising under a [<sup>F16</sup>charitable trust].
- (2) Income tax is charged on the amount at one of the rates referred to in this section instead of at the rate which would otherwise apply (for which see Chapter 2 of Part 2 (rates at which income tax is charged)).

This is subject to subsection (5).

- (3) If the amount is within Type 1 [<sup>F17</sup>or Type 12] as set out in section 482, income tax is charged on the amount at the dividend trust rate.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (4) Otherwise, income tax is charged on the amount at the trust rate.
- (5) Income tax is not to be charged as mentioned in subsection (2) so far as the amount—
  - (a) is accumulated or discretionary income,
  - (b) would be accumulated or discretionary income apart from section 480(3)(a) or (c), or
  - (c) is income from property within subsection (6).
- (6) Property is within this subsection if it is held for the purposes of a superannuation fund to which section 615(3) of ICTA (superannuation funds relating to undertakings outside the UK) applies.

#### Textual Amendments

- F16** Words in s. 481(1)(c) substituted (8.3.2012) (with effect in accordance with art. 17 of the commencing S.I.) by [Finance Act 2010 \(c. 13\)](#), [Sch. 6 paras. 23\(3\), 34\(2\)](#); [S.I. 2012/736, art. 17](#)
- F17** Words in s. 481(3) inserted (with effect in accordance with s. 19(10) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 19\(7\)](#)

## 482 Types of amount to be charged at special rates for trustees

The types of amount referred to in section 481 are as follows. *Type 1*

A payment—

- (a) which is made to the trustees or to which the trustees are entitled, and
- (b) which is made [<sup>F18</sup>by way of <sup>F19</sup>... distribution] by a company on the redemption, repayment or purchase of shares in the company or on the purchase of rights to acquire such shares.

*Type 2*

Accrued income profits treated as made by the trustees under section 628(5) or 630(2).

*Type 3*

Income treated as arising to the trustees under [<sup>F20</sup>regulation 17 of the Offshore Funds (Tax) Regulations 2009 ([S.I. 2009/3001](#))].

*Type 4*

Income which the trustees are treated as receiving under section 68(2) or 71(4) of FA 1989 (which relate to employee share ownership trusts).

*Type 5*

A sum to which Chapter 4 of Part 3 of ITTOIA 2005 (which provides for certain amounts to be treated as receipts of a property business) applies.

*Type 6*

A profit in relation to which the trustees are liable for income tax under section 429 of ITTOIA 2005 (profits from deeply discounted securities).

*Type 7*

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

A gain in relation to which the trustees are liable for income tax under section 467 of ITTOIA 2005 (gains from contracts for life insurance etc), other than a gain to which subsection (7) of that section applies.

*Type 8*

A profit or gain in relation to which the trustees are liable for income tax under section 554 of ITTOIA 2005 (transactions in deposits).

*Type 9*

A profit or gain—

- (a) in relation to which the trustees are liable for income tax under section 557 of ITTOIA 2005 (disposals of futures and options), and
- (b) which does not meet any of conditions A to C in section 568 of ITTOIA 2005.

*Type 10*

Proceeds in relation to which the trustees are liable for income tax under section 573 of ITTOIA 2005 (sales of foreign dividend coupons).

*Type 11*

Income treated as arising to the trustees under [<sup>F21</sup>Part 9A of this Act (transactions in land)].

[<sup>F22</sup>*Type 12*

Income treated as arising to the trustees under section 396A of ITTOIA 2005 (arrangements offering a choice of income or capital return).]

#### **Textual Amendments**

- F18** Words in s. 482 inserted (with effect in accordance with s. 55(3) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 55\(2\)](#)
- F19** Word in s. 482 omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\), Sch. 1 para. 63\(5\)](#)
- F20** Words in s. 482 substituted (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by [The Offshore Funds \(Tax\) Regulations 2009 \(S.I. 2009/3001\), regs. 1\(1\), 129\(3\)](#)
- F21** Words in s. 482 substituted (with effect in accordance with s. 82 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 79\(3\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F22** Words in s. 482 inserted (with effect in accordance with s. 19(10) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 19\(8\)](#)

#### **483 Sums paid by personal representatives to trustees**

- (1) This section applies if, during or at the end of the administration period for an estate—
  - (a) the personal representatives pay the trustees of a settlement a sum representing income of the personal representatives, and
  - (b) if this Chapter had applied to personal representatives, income tax would have been charged on that income at the dividend trust rate or at the trust rate.
- (2) The sum is treated as—

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*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

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- (a) being paid as income, and
  - (b) having borne income tax at the applicable rate.
- (3) In this section—
- “administration period” has the meaning given by section 653 of ITTOIA 2005, and
  - “the applicable rate” means the rate referred to in section 663(1) of ITTOIA 2005 (the applicable rate for grossing up basic amounts of estate income).

## CHAPTER 4

### TRUSTEES' EXPENSES AND SPECIAL RATES FOR TRUSTEES

#### **484 Trustees' expenses to be set against trustees' trust rate income**

- (1) This section applies if the trustees of a settlement incur allowable expenses in a tax year (“the current tax year”).
- (2) The allowable expenses are to be set against the trustees' trust rate income for the current tax year in accordance with section 486.
- (3) That is to be done before working out whether section 491 applies in relation to the trustees for the current tax year.
- (4) So far as any of the trustees' trust rate income has an amount set against it in accordance with section 486, income tax is charged on it at the rate or rates which would apply apart from Chapter 3 (see Chapter 2 of Part 2).
- (5) Expenses are allowable for the purposes of this Chapter only so far as—
  - (a) they are expenses of the trustees, and
  - (b) they are properly chargeable to income, ignoring the express terms of the settlement.
- (6) Expenses are not allowable for the purposes of this Chapter if they are expenses which (apart from this section) have fallen, or may fall, to be taken into account for the purpose of calculating the trustees' liability to income tax for any tax year.

#### **485 Carry forward of unused expenses**

- (1) This section applies if (apart from this section) the trustees incur an allowable expense in a tax year prior to the current tax year (“the earlier tax year”).
- (2) For the purposes of this Chapter the trustees are treated as having incurred the allowable expense in the current tax year so far as conditions A and B are met in relation to the expense.
- (3) Condition A is that the allowable expense could not be set against the trustees' trust rate income for the earlier tax year only because the trustees' trust rate income was insufficient or they had no trust rate income.
- (4) Condition B is that the allowable expense has not been set against the trustees' trust rate income for a tax year prior to the current tax year as a result of this section.

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*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

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## **486 How allowable expenses are to be set against trust rate income**

- (1) Take the following steps to determine how the allowable expenses are to be set against the trustees' trust rate income for the current tax year.

### *Step 1*

Reduce the allowable expenses by the proportion of those expenses (if any) which is excluded in accordance with section 487.

References at Steps 3 to 6 below to the allowable expenses are references to the expenses as so reduced.

### *Step 2*

Identify the type or types of income which make up the trust rate income.

The possible types are dividend income, savings income and other income.

### *Step 3*

If there is dividend income within subsection (2)—

- (a) gross up by reference to the dividend ordinary rate so much of the allowable expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough allowable expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the dividend income within subsection (2).

### *Step 4*

If there are remaining expenses and there is dividend income not within subsection (2)—

- (a) gross up by reference to the dividend ordinary rate so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the dividend income not within subsection (2).

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3.

### *Step 5*

If there are remaining expenses and there is savings income—

- (a) gross up by reference to the [<sup>F23</sup>basic rate] so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the savings income.

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3 or 4.

### *Step 6*



*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

If there are remaining expenses and there is other income—

- (a) gross up by reference to the basic rate so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the other income.

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3, 4 or 5.

- (2) Income is within this subsection so far as it is—
  - (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
  - (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
  - (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company).
- (3) If income tax would, apart from Chapter 3, be charged on any income mentioned at Steps 3 to 6 at a rate different to the rate mentioned at the step in question, for the purpose of setting any expenses against that income, gross up the expenses by reference to the different rate instead of at the rate mentioned.

#### Textual Amendments

- F23** Words in s. 486(1) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 1 para. 21](#)

#### 487 Non-UK resident trustees

- (1) This section applies if a proportion of the income arising to the trustees in the current tax year is untaxed income.
- (2) A proportion of the allowable expenses is excluded for the purposes of section 486.
- (3) That proportion is the same as the proportion of the income arising to the trustees which is untaxed income.
- (4) For the purposes of this section the income arising to the trustees is untaxed income so far as they are not liable to income tax on it wholly or partly because they—
  - (a) have been non-UK resident, or
  - (b) have been treated as resident in a territory outside the United Kingdom under double taxation arrangements.
- (5) If the income tax charged on the income arising to the trustees is limited under Chapter 1 of Part 14 (limits on liability to income tax of non-UK residents), the untaxed income includes so much of the income so arising which is disregarded income (within the meaning of that Chapter) except so far as the disregarded income is within subsection (6).
- (6) The disregarded income is within this subsection so far as—
  - (a) sums representing income tax have been deducted from the income, [<sup>F24</sup>or]

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (b) sums representing income tax have been treated as deducted from or paid in respect of the income, <sup>F25</sup>...
- <sup>F25</sup>(c) .....

#### Textual Amendments

- F24** Word in s. 487(6) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(6\)\(a\)](#)
- F25** S. 487(6)(c) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 63\(6\)\(b\)](#)

## CHAPTER 5

### SHARE INCENTIVE PLANS

#### 488 Application of section 479 to trustees of [<sup>F26</sup>Schedule 2] share incentive plans

- (1) This section applies if—
- (a) income arises to the trustees of [<sup>F27</sup>a Schedule 2] share incentive plan, and
  - (b) the income consists of dividends or other distributions in respect of shares held by the trustees in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (<sup>F28</sup>... share incentive plans: types of shares that may be awarded) are met.
- (2) Section 479 applies in relation to the income only if and when condition A or condition B has been met.
- (3) Condition A is that—
- (a) the applicable period in relation to the shares has ended, and
  - (b) that period came to an end without the shares being awarded to a participant in accordance with the plan.
- (4) Condition B is that the trustees disposed of the shares before the end of the applicable period in relation to the shares.
- (5) For the purpose of determining whether shares are awarded to a participant within the applicable period in relation to them, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) References in this section to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.

#### Textual Amendments

- F26** Words in s. 488 heading substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 71\(2\)](#), 89 (with [Sch. 8 paras. 90-96](#))
- F27** Words in s. 488(1)(a) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 71\(3\)\(a\)](#), 89 (with [Sch. 8 paras. 90-96](#))
- F28** Word in s. 488(1)(b) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 71\(3\)\(b\)](#), 89 (with [Sch. 8 paras. 90-96](#))

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

#### **489 “The applicable period” in relation to shares**

- (1) This section sets out how the applicable period in relation to any shares (“the relevant shares”) is determined for the purposes of section 488.
- (2) The length of the applicable period depends on whether any shares in the relevant company were readily convertible assets at the time the relevant shares were acquired by the trustees.
- (3) If any were, the applicable period is the period of two years beginning with the acquisition date.
- (4) If none were, the applicable period is—
  - (a) the period of 5 years beginning with the acquisition date, or
  - (b) if within that period any shares in the relevant company become readily convertible assets, the period of two years beginning with the date on which they did so,whichever ends first.
- (5) Subsections (2) to (4) are subject to subsection (6).
- (6) If the relevant shares were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under [F29]section 989 of CTA 2009] (deduction for contribution to plan trust), the applicable period is the period of 10 years beginning with the acquisition date.
- (7) In this section—

“the acquisition date” means the date on which the trustees acquired the relevant shares,

“readily convertible assets” has, subject to subsection (8), the meaning given by sections 701 and 702 of ITEPA 2003, and

“the relevant company” means the company in which the relevant shares are shares.
- (8) In determining for the purposes of this section whether shares are readily convertible assets, ignore any market for the shares that—
  - (a) is created by virtue of the trustees acquiring shares for the purposes of the [F30]Schedule 2] share incentive plan, and
  - (b) exists solely for the purposes of that plan.

#### **Textual Amendments**

**F29** Words in s. 489(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 702** (with Sch. 2 Pts. 1, 2)

**F30** Words in s. 489(8)(a) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 72, 89** (with Sch. 8 paras. 90-96)

#### **490 Interpretation of Chapter**

- (1) This Chapter forms part of the SIP code (see section 488 of ITEPA 2003 (F31 ... share incentive plans)).

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects  
for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (2) Therefore expressions used in this Chapter and contained in the index at the end of Schedule 2 to ITEPA 2003 have the meaning indicated by that index.
- (3) For the purposes of this Chapter shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.

#### **Textual Amendments**

**F31** Word in s. 490(1) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 73, 89](#) (with [Sch. 8 paras. 90-96](#))

## **CHAPTER 6**

### TRUSTEES' FIRST SLICE OF TRUST RATE INCOME

#### **491 Special rates not to apply to first slice of trustees' trust rate income**

- (1) If the trust rate income for a tax year of the trustees of a settlement is £1,000 or less, income tax is not charged on it at the dividend trust rate or at the trust rate.
- (2) If the trustees' trust rate income is more than £1,000, income tax is not charged on the first £1,000 of it at the dividend trust rate or at the trust rate.
- (3) Instead, income tax is charged on the trustees' trust rate income or the first £1,000 of it (as the case may be) at the rate or rates which would apply apart from Chapter 3 (see Chapter 2 of Part 2).
- (4) For the purposes of subsection (2) apply the following rules in determining the type or types of income that make up the first £1,000 of the trustees' trust rate income.

##### *Rule 1*

If the trustees' trust rate income includes amounts on which income tax would be charged at the basic rate apart from Chapter 3, treat those amounts as the lowest part of the trust rate income.

##### *Rule 2*

If the trustees' trust rate income includes amounts on which income tax would be charged at the dividend ordinary rate apart from Chapter 3, treat those amounts as the highest part of the trust rate income.

- (5) For the purposes of this section gains chargeable under Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life assurance etc) are treated as if they were savings income.
- (6) Amounts on which income tax is not to be charged at the dividend trust rate or at the trust rate as a result of Chapter 4 are excluded from the trustees' trust rate income for the purposes of this section.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

## 492 Cases where settlor has made more than one settlement

- (1) The application of section 491 in relation to the trustees of a settlement (“the relevant settlement”) for a tax year is modified in accordance with subsection (2) if the settlor in relation to the relevant settlement has made one or more other current settlements.
- (2) References to £1,000 are to be read as references to—
  - (a) £200, or
  - (b) if greater, the settlor's threshold amount.
- (3) The settlor's threshold amount is the amount calculated by dividing £1,000 by the number of current settlements (including the relevant settlement) made by the settlor.
- (4) If there is more than one settlor in relation to the relevant settlement—
  - (a) calculate the threshold amount of each of them, and
  - (b) use the lowest of those threshold amounts for the purposes of subsection (2) (b).
- (5) A settlement is current if it is in existence at a time during the tax year.

## CHAPTER 7

### DISCRETIONARY PAYMENTS

*[<sup>F32</sup>Payments constituting income of beneficiary (other than employment income)]*

#### Textual Amendments

**F32** S. 493 cross-heading inserted (with effect in accordance with art. 3(9) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(2)** (with art. 3(10))

## 493 Discretionary payments by trustees

- (1) Sections 494 and 495 apply for income tax purposes if—
  - (a) in a tax year the trustees of a settlement make an annual payment to a person (“the beneficiary”) in the exercise of a discretion (whether exercisable by the trustees or any other person),
  - (b) the trustees are UK resident for the tax year, and
  - (c) condition A or condition B is met.
- (2) Condition A is that what is paid to the beneficiary is, only because of the payment, income of the beneficiary for income tax or corporation tax purposes.

“Income” does not include employment income.
- (3) Condition B is that the payment is treated for income tax purposes as the income of a settlor under section 629 of ITTOIA 2005 (income paid to relevant children of settlor).

“Settlor” is to be read in accordance with section 620 of ITTOIA 2005.
- (4) The payment is referred to in sections 494 and 495 as “the discretionary payment”.
- (5) In this Chapter “payment” includes payment in money's worth.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

#### 494 Grossing up of discretionary payment and payment of income tax

- (1) The discretionary payment is treated as if it were made after the deduction of a sum representing income tax at the trust rate on the grossed up amount of the discretionary payment.
- (2) The grossed up amount of the discretionary payment is the actual amount of the discretionary payment grossed up by reference to the trust rate.
- (3) The person mentioned in subsection (4) is treated as having paid income tax of an amount equal to the sum deducted as mentioned in subsection (1).
- (4) That person is—
  - (a) if condition A in section 493 is met, the beneficiary, and
  - (b) if condition B in section 493 is met, the settlor.

##### **Modifications etc. (not altering text)**

- C4 S. 494 excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(4)**

#### 495 Statement about deduction of income tax

- (1) If the person who is treated as having paid income tax requests it in writing, the trustees must provide that person with a statement showing—
  - (a) the grossed up amount of the discretionary payment,
  - (b) the sum deducted as mentioned in section 494(1), and
  - (c) the actual amount of the discretionary payment.
- (2) A statement under this section must be in writing.
- (3) The duty to comply with a request under this section is enforceable by the person who made it.

##### **Modifications etc. (not altering text)**

- C5 S. 495 excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), regs. 1(3), **12(4)**

#### 496 Income tax charged on trustees

- (1) Income tax is charged for a tax year if—
  - (a) in the tax year the trustees of a settlement make payments as a result of which income tax is treated as having been paid under section 494, and
  - (b) amount A is greater than amount B.
- (2) Amount A is the total amount of the income tax treated under section 494 as having been paid.
- (3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497).

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (4) The amount of the tax charged under this section is equal to the difference between amounts A and B.
- (5) The trustees are liable for the tax.

*f<sup>F33</sup> Payments constituting employment income of beneficiary*

**Textual Amendments**

**F33** Ss. 496A, 496B and cross-heading inserted (with effect in accordance with art. 3(7) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(3)** (with art. 3(10))

**496A Discretionary payments by trustees: employment income**

- (1) Section 496B applies if—
  - (a) in a tax year the trustees of a settlement make a discretionary employment income payment, and
  - (b) the trustees are UK resident for the tax year.
- (2) In this section and section 496B, “discretionary employment income payment” means a payment to a person (“the beneficiary”) that—
  - (a) is made in the exercise of a discretion (whether exercisable by the trustees or any other person),
  - (b) is made out of income, and
  - (c) meets conditions A and B.
- (3) Condition A is that what is paid to the beneficiary—
  - (a) is, only because of the payment, employment income of the beneficiary, but
  - (b) is not exempt income (as defined in section 8 of ITEPA 2003).
- (4) Condition B is that the payment is made at a time when the settlement is an employee benefit settlement.
- (5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—
  - (a) for the benefit of persons of one or more relevant classes, or
  - (b) for the benefit of such persons and for charitable purposes.
- (6) “Relevant class” means a class defined by reference to one or more of the following—
  - (a) employment in a particular trade or profession,
  - (b) employment by, or holding office with, a body carrying on a trade, profession or undertaking, or
  - (c) marriage to or civil partnership with, or relationship to, or dependence on, persons of a class mentioned in paragraph (a) or (b).
- (7) Where the trusts on which the settled property is held do not permit the settled property to be applied otherwise than as described in subsection (5) during a period (however defined), the settlement is an employee benefit settlement during (and only during) that period.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

## 496B Relief for trustees

- (1) The trustees of a settlement are entitled (on making a claim in respect of a tax year) to repayment of an amount of income tax equal to the lesser of amount A and amount B.
- (2) Amount A is—
 
$$\text{TEI} \times \text{TR}$$
 where—
  - TEI is the total of the amounts that are employment income of beneficiaries of the settlement because of discretionary employment income payments made in the tax year by the trustees, and
  - TR is the trust rate in force for the tax year.
- (3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497) reduced (but not so that it goes below nil) by the total amount of income tax (if any) treated under section 494 as having been paid as a result of payments made by the trustees in the tax year.
- (4) A claim under this section may not be made before the end of the tax year to which it relates.]

### Modifications etc. (not altering text)

- C6** S. 496B excluded (6.4.2014) by [The Unauthorised Unit Trusts \(Tax\) Regulations 2013](#) (S.I. 2013/2819), regs. 1(3), **12(4)**

[<sup>F34</sup>Tax pool]

### Textual Amendments

- F34** S. 497 cross-heading inserted (with effect in accordance with art. 3(7) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010](#) (S.I. 2010/157), arts. 1, **3(4)** (with art. 3(10))

## 497 Calculation of trustees' tax pool

- (1) Take the following steps to calculate the amount of the trustees' tax pool available for a tax year (“the current tax year”).

This is subject to subsections (2) and (3).

### Step 1

Take the amount of the trustees' tax pool available for the previous tax year and deduct from that amount (but not so that it goes below nil)<sup>F35</sup>—

- (a) the total amount of income tax treated under section 494 as having been paid as a result of payments made by the trustees in the previous tax year<sup>F36</sup>, and
- (b) the amount to which the trustees are entitled under section 496B in respect of the previous tax year.]

### Step 2



*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

Add together all amounts of income tax for which the trustees are liable for the current tax year and which are of a type set out in section 498.

*Step 3*

Add the sum calculated at Step 2 to the amount resulting from Step 1.

- (2) If the trustees were non-UK resident for the previous tax year, references in subsection (1) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.
- (3) If—
- (a) the current tax year is the tax year during which the settlement is established, or
  - (b) the trustees have been UK resident for no tax year prior to the current tax year, ignore Steps 1 and 3 and, accordingly, the trustees' tax pool available for the current tax year is the sum calculated at Step 2.

**Textual Amendments**

- F35** Word in s. 497(1) inserted (with effect in accordance with art. 3(8) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(5)(a)** (with art. 3(10))
- F36** Words in s. 497(1) inserted (with effect in accordance with art. 3(8) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2010 \(S.I. 2010/157\)](#), arts. 1, **3(5)(b)** (with art. 3(10))

**498 Types of income tax for the purposes of section 497**

- (1) The types of amount referred to at Step 2 in section 497 are as follows.

*Type 1*

The amount of any tax on income (other than income of a kind mentioned below in relation to Type <sup>F37</sup>[<sup>F38</sup> ... 3A]) charged at the dividend trust rate or at the trust rate.

<sup>F39</sup> ...

<sup>F39</sup> ...

<sup>F40</sup>*Type 3A*

The amount of tax at the nominal rate on any amount in respect of which—

- (a) the trustees are liable to income tax under section 467 of ITTOIA 2005 (gains from contracts for life insurance etc),
- (b) the trustees are liable to income tax at the trust rate by virtue of section 482 above, and
- (c) tax at the [<sup>F41</sup>basic rate] is treated as having been paid by virtue of section 530 of ITTOIA 2005 (life insurance).]

*Type 4*

The amount of any tax on income on which tax is charged <sup>F42</sup>... <sup>F43</sup>... as a result of section 491.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

### Type 5

The amount of tax on any income determined in accordance with section 26 of FA 2005 (special tax treatment for trusts for the benefit of vulnerable persons).

<sup>F44</sup>(2) .....

[<sup>F45</sup>(2A) In relation to Type 3A, the reference to the nominal rate is a reference to a rate equal to the difference between the trust rate and the [<sup>F46</sup>basic rate] .]

(3) In relation to Types 1 to 4, references to income do not include income the tax on which is reduced in accordance with section 26 of FA 2005.

#### Textual Amendments

- F37** Words in s. 498(1) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(7)(a)(i)**
- F38** Words in s. 498(1) substituted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **s. 56(2)(a)**
- F39** Words in s. 498(1) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(7)(a)(ii)**
- F40** Words in s. 498(1) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **s. 56(2)(b)**
- F41** Words in s. 498(1) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 1 para. 22(2)**
- F42** Words in s. 498(1) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(7)(a)(iii)**
- F43** Words in s. 498(1) omitted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 1 para. 22(3)**
- F44** S. 498(2) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(7)(b)**
- F45** S. 498(2A) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **s. 56(3)**
- F46** Words in s. 498(2A) substituted (21.7.2008 with effect in accordance with Sch. 1 para. 65 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 1 para. 22(4)**

## CHAPTER 8

### TRUSTEES' EXPENSES AND BENEFICIARY'S INCOME

#### 499 Application of Chapter

- (1) This Chapter applies if—
- (a) in a tax year (“the current tax year”) income arises to the trustees of a settlement, and
  - (b) before being distributed, some or all of that income is income of another person (“the beneficiary”).
- (2) It contains provision about how the beneficiary's income mentioned in subsection (1) (b) (“the beneficiary's income”) can be reduced for income tax purposes by reference to expenses of the trustees.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

## **500 Restrictions on use of trustees' expenses to reduce the beneficiary's income**

- (1) Expenses of the trustees can be used to reduce the beneficiary's income for income tax purposes only so far as—
  - (a) the expenses are incurred by the trustees in the current tax year or in an earlier tax year, and
  - (b) as a result of the expenses being chargeable to income as mentioned in subsection (2) or (3), the beneficiary's entitlement to the beneficiary's income is reduced by reference to the expenses.
- (2) Expenses are chargeable to income for the purposes of subsection (1)(b) if they are chargeable to income by the trustees under a term of the settlement (subject to any overriding law which prevents the expenses from being so chargeable).
- (3) Expenses are also chargeable to income for the purposes of subsection (1)(b) if they—
  - (a) are not chargeable to income by the trustees under a term of the settlement, but
  - (b) are chargeable to income by the trustees in accordance with any law (subject to any overriding term of the settlement which prevents the expenses from being so chargeable).
- (4) Expenses cannot be used to reduce the beneficiary's income for income tax purposes so far as they are expenses which have fallen, or may fall, to be taken into account for the purpose of calculating the trustees' liability to income tax for any tax year.

### **Modifications etc. (not altering text)**

- C7** S. 500 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 611\(2\), 1184\(1\)](#) (with [Sch. 2](#))

## **501 Non-UK resident beneficiaries**

- (1) This section applies if—
  - (a) expenses of the trustees are to be used to reduce the beneficiary's income for income tax purposes, and
  - (b) a proportion of the beneficiary's income is untaxed income (see section 502).
- (2) A proportion of those expenses is not to be so used.
- (3) That proportion is the same as the proportion of the beneficiary's income which is untaxed income.
- (4) In subsection (3) the references to the beneficiary's income and untaxed income do not, in either case, include so much (if any) of that income as is equal to the amount of income tax, or of any foreign tax, for which the trustees are liable on that income.
- (5) “Foreign tax” means any tax which—
  - (a) is of a similar character to income tax, and
  - (b) is imposed by the laws of a territory outside the United Kingdom.

## **502 Meaning of “untaxed income” in section 501**

- (1) For the purposes of section 501 the beneficiary's income is untaxed income so far as the beneficiary is not liable to income tax on it wholly or partly because the beneficiary—

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (a) has been non-UK resident, or
  - (b) has been treated as resident in a territory outside the United Kingdom under double taxation arrangements.
- (2) If the income tax charged on the beneficiary for the beneficiary's income is limited under Chapter 1 of Part 14 (limits on liability to income tax of non-UK residents), the untaxed income includes so much of the beneficiary's income which is disregarded income (within the meaning of that Chapter) except so far as the disregarded income is within subsection (3).
- (3) The disregarded income is within this subsection so far as—
- (a) sums representing income tax have been deducted from the income, [<sup>F47</sup>or]
  - (b) sums representing income tax have been treated as deducted from or paid in respect of the income, <sup>F48</sup>...
  - <sup>F48</sup>(c) .....

#### **Textual Amendments**

**F47** Word in s. 502(3) inserted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(8)(a)**

**F48** S. 502(3)(c) and word omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), **Sch. 1 para. 63(8)(b)**

### **503 How beneficiary's income is reduced**

- (1) This section applies if the beneficiary's income is to be reduced for income tax purposes by expenses of the trustees.
- (2) The beneficiary's income is to be reduced in the following order—
  - first, reduce dividend income within subsection (3) (if any),
  - second, reduce dividend income not within that subsection (if any),
  - third, reduce savings income (if any), and
  - fourth, reduce other income (if any).
- (3) Income is within this subsection so far as it is—
  - (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
  - (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
  - (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company).
- (4) If the trustees are liable for income tax charged on a component of the beneficiary's income at a particular rate, then any reduction of that component is to be made in accordance with the steps set out in subsection (5).
- (5) Here are the steps.

#### *Step 1*

Deduct from the component the amount of income tax charged on it at the particular rate for which the trustees are liable.

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

*Step 2*

Take the result from Step 1 and reduce it (but not below nil) by the amount of the trustees' expenses so far as they have not already been used to reduce other components of the beneficiary's income.

*Step 3*

Take the result from Step 2 and gross it up by reference to the particular rate.

The result is the reduced amount of the component of the beneficiary's income.

**Modifications etc. (not altering text)**

**C8** S. 503 applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), **ss. 611(2), 1184(1)** (with [Sch. 2](#))

**CHAPTER 9**

UNAUTHORISED UNIT TRUSTS

**<sup>F49</sup>504 Treatment of income of unauthorised unit trust**

.....

**Textual Amendments**

**F49** Ss. 504-505 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\), 37\(6\)](#) (with [reg. 32](#))

**<sup>F49</sup>504A.Treatment of capital expenditure of unauthorised unit trust**

.....

**Textual Amendments**

**F49** Ss. 504-505 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\), 37\(6\)](#) (with [reg. 32](#))

**<sup>F49</sup>505 Relief for trustees of unauthorised unit trust**

.....

**Textual Amendments**

**F49** Ss. 504-505 omitted (6.4.2014) by virtue of [The Unauthorised Unit Trusts \(Tax\) Regulations 2013 \(S.I. 2013/2819\)](#), [regs. 1\(3\), 37\(6\)](#) (with [reg. 32](#))

*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

**F50 506 Special rules for trustees affected by section 733 of ICTA**

.....

**Textual Amendments**

**F50** S. 506 omitted (21.7.2008 with effect in accordance with s. 66(8) of the amending Act) by virtue of Finance Act 2008 (c. 9), s. 66(4)(I)(vii)

**CHAPTER 10**

HERITAGE MAINTENANCE SETTLEMENTS

*Introduction*

**507 Overview of Chapter**

- (1) This Chapter makes provision about income arising from heritage maintenance property comprised in a heritage maintenance settlement.
- (2) In this Chapter—
  - “heritage body” means a body or charity of a kind mentioned in paragraph 3(1)(a)(ii) of Schedule 4 to IHTA 1984 (maintenance funds for historic buildings etc),
  - “heritage direction” means a direction under paragraph 1 of that Schedule,
  - “heritage maintenance property” means any property in respect of which a heritage direction has effect,
  - “heritage maintenance settlement” means a settlement which comprises heritage maintenance property, and
  - “property maintenance purpose” means any of the purposes mentioned in paragraph 3(1)(a)(i) of that Schedule.
- (3) If a settlement comprises both heritage maintenance property and other property, the heritage maintenance property and the other property are treated as comprised in separate settlements for the purposes of Chapters 2 to 8 of this Part and the following provisions—
  - (a) sections 64 to 66 and sections 75 to 79 (trade loss relief against general income),
  - (b) sections 83 to 88 (carry-forward trade loss relief), and
  - (c) Chapter 5 of Part 5 of ITTOIA 2005.

*Trustees' election in respect of income etc*

**508 Election by trustees**

- (1) The trustees of a heritage maintenance settlement may elect for this section to have effect for a tax year.
- (2) If an election under subsection (1) has effect for a tax year, the rules in subsections (3) and (4) apply.

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- (3) Income arising in the year from the heritage maintenance property comprised in the settlement, which would otherwise be treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005, is not to be so treated.
- (4) Any sum applied out of the heritage maintenance property in the year for a property maintenance purpose, which would otherwise be treated for income tax purposes as the income of a person—
  - (a) because of the person's interest in (or occupation of) the property in respect of which the sum is applied, or
  - (b) under section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement),is not to be so treated.
- (5) An election under subsection (1) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

#### **509 Change of circumstances during a tax year**

- (1) If a change of circumstances arises during a tax year—
  - (a) the part of the year before the change and the part of the year after the change are to be treated as separate tax years for the purposes of section 508, this section and section 510, and
  - (b) separate elections under section 508(1) may be made for each part.
- (2) A change of circumstances arises if conditions A and B are met.
- (3) Condition A is that for any part of the tax year—
  - (a) a heritage direction has effect, and
  - (b) income arising from the heritage maintenance property comprised in the settlement is treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005.
- (4) Condition B is that for the remaining part of the year one or both of the following paragraphs applies—
  - (a) no heritage direction has effect, and
  - (b) no income arising from property comprised in the settlement is treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005.

*Absence of election and income treated as income of settlor: special rules*

#### **510 Sums applied for property maintenance purposes**

- (1) This section applies if—
  - (a) income arises from the heritage maintenance property comprised in a heritage maintenance settlement in a tax year in respect of which no election is made under section 508,
  - (b) the income is treated under Chapter 5 of Part 5 of ITTOIA 2005 as income of the settlor, and
  - (c) a sum in excess of the income is applied for a property maintenance purpose in the year.

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*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (2) Any such sum which is so applied in that year, which would otherwise be treated for income tax purposes as the income of a person—
- (a) because of the person's interest in (or occupation of) the property in respect of which the sum is applied, or
  - (b) under section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement),
- is not to be so treated.

### **511 Prevention of double taxation: reimbursement of settlor**

- (1) This section applies to income arising from heritage maintenance property if—
- (a) the income is treated under Chapter 5 of Part 5 of ITTOIA 2005 as income of the settlor,
  - (b) the income is applied in reimbursing the settlor for expenditure incurred by the settlor for a property maintenance purpose, and
  - (c) the expenditure is deductible in calculating the profits of—
    - (i) a trade, or
    - (ii) a UK property business,
 carried on by the settlor.
- (2) Any such income—
- (a) is not to be brought into account as a receipt in calculating the profits of that trade or business, and
  - (b) is not to be treated as income of the settlor otherwise than under Chapter 5 of Part 5 of ITTOIA 2005.

*Application of property for non-heritage purposes: charge to tax*

### **512 Charge to tax on some settlements**

- (1) Income tax is charged in respect of a heritage maintenance settlement on any of the occasions described in cases A to D, subject to sections 516 and 517.
- (2) Case A is where any of the property comprised in the settlement (whether capital or income) is applied otherwise than—
  - (a) for a property maintenance purpose, or
  - (b) as respects income not so applied and not accumulated, for the benefit of a heritage body.
- (3) Case B is where any of that property, on ceasing to be comprised in the settlement, devolves otherwise than on a heritage body.
- (4) Case C is where the heritage direction ceases to have effect in respect of the settlement.
- (5) Case D is where any of the property comprised in the settlement, on ceasing at any time to be comprised in the settlement—
  - (a) devolves on a heritage body, and
  - (b) at or before that time an interest under the settlement is or has been acquired for a consideration in money or money's worth by that or another such body.



*Status: Point in time view as at 30/11/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Income Tax Act 2007, Part 9. (See end of Document for details)*

- (6) For the purposes of subsection (5)(b) any acquisition from another such body is to be ignored.

### **513 Income charged**

- (1) Tax is charged under section 512 on the whole of the income—
- (a) which has arisen in the relevant period from the property comprised in the settlement, and
  - (b) which has not been applied (whether or not it has been first accumulated) for a property maintenance purpose or for the benefit of a heritage body.
- (2) In this section “relevant period” means—
- (a) if tax has become chargeable under section 512 in respect of the settlement on a previous occasion, the period since the last occasion, and
  - (b) in any other case, the period since the settlement took effect.
- (3) Tax charged under section 512 is in addition to any tax otherwise chargeable.
- (4) All the provisions of the Income Tax Acts relating to assessments and to the collection and recovery of income tax (so far as applicable) are to apply to that charge.

### **514 Persons liable**

The persons liable for any tax charged under section 512 are the trustees of the settlement.

### **515 Rate of tax**

Tax is charged under section 512 at the rate found by—

- (a) taking the [<sup>F51</sup>additional rate] for the tax year during which the charge arises, and
- (b) reducing it by the trust rate for that year.

#### **Textual Amendments**

- F51** Words in s. 515(a) substituted (with effect in accordance with Sch. 2 para. 25 of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 2 para. 7](#)

### **516 Transfer of property between settlements**

- (1) This section applies if the whole of the property comprised in a settlement becomes comprised in another settlement because of a tax-free transfer.
- (2) The occasion of charge under section 512, which would otherwise occur at the time of transfer, occurs when tax first becomes chargeable under that section in respect of any settlement comprising the transferred property (“the chargeable settlement”).
- (3) For the purposes of section 513(1) as it applies to the chargeable settlement, the relevant period is adjusted so that it begins—
- (a) on the occasion when tax last became chargeable under section 512 in respect of any previous settlement from which the property was transferred, or

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*Changes to legislation: There are currently no known outstanding effects  
for the Income Tax Act 2007, Part 9. (See end of Document for details)*

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- (b) if there has been no such occasion, when such previous settlement (or the first of them) took effect.
- (4) In this section “tax-free transfer” means a transfer of property from one settlement into another in either of the following cases—
- (a) where paragraph 9(1) of Schedule 4 to IHTA 1984 provides (or, but for paragraph 9(4) of that Schedule, would provide) an exception from charge in respect of the property, or
  - (b) where, both immediately before and immediately after the transfer, the property is heritage maintenance property.

### **517 Exemption for income treated as income of settlor**

- (1) Tax is not chargeable under section 512 in respect of income which is treated under section 624 or 629 of ITTOIA 2005 as income of the settlor.
- (2) If such income arises in a tax year, any sums applied in the year—
  - (a) for a property maintenance purpose, or
  - (b) for the benefit of a heritage body,are to be treated as paid first out of that income and, so far as there is any excess, out of income that does not fall within subsection (1).

**Status:**

Point in time view as at 30/11/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax Act 2007, Part 9.