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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2013, Cross Heading: Taxation of Chargeable Gains Act 1992. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 44

#### TRUSTS WITH VULNERABLE BENEFICIARY

##### *Taxation of Chargeable Gains Act 1992*

- 11 TCGA 1992 is amended as follows.
- 12 (1) Section 169D (exceptions to rules on gifts to settlor-interested settlements etc) is amended as follows.
- (2) For subsection (3) substitute—
- “(3) The first condition is that, immediately after the making of the disposal, the settled property is held on trusts which secure that, during the lifetime of a disabled person—
- (a) if any of the property is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit, and
- (b) either—
- (i) the disabled person is entitled to all of the income (if there is any) arising from any of the property, or
- (ii) if any such income is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit.”
- (3) After subsection (4) insert—
- “(4A) Where the income arising from the settled property is held on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), subsection (3) has effect as if the reference to the lifetime of a disabled person were a reference to the period during which the income is held on trust for the disabled person.
- (4B) The trusts on which the settled property is held are not to be treated as falling outside subsection (3) by reason only of—
- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
- (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
- (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
- (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),

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- (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
  - (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).
- (4C) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—
- (a) £3,000, and
  - (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.
- (4D) The Treasury may by order—
- (a) specify circumstances in which subsection (4B)(a) is, or is not, to apply in relation to a trust, and
  - (b) amend the definition of “the annual limit” in subsection (4C).
- (4E) An order under subsection (4D) may—
- (a) make different provision for different cases, and
  - (b) contain transitional and saving provision.
- (4F) A statutory instrument containing an order under subsection (4D) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”
- (4) For subsections (7) to (9) substitute—
- “(7) In this section “disabled person” has the meaning given by Schedule 1A to the Finance Act 2005.”
- (5) Omit subsection (10).
- (6) The amendments made by this paragraph have effect in relation to disposals to the trustees of a settlement on or after 8 April 2013.
- (7) But if the settlement is a relevant settlement, nothing in this paragraph is to be read as preventing section 169D(2) of TCGA 1992 from applying in relation to the disposal.
- 13 (1) Paragraph 1 of Schedule 1 (application of exempt amount and reporting limits in cases involving settled property) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “mentally disabled person or a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate” substitute “ disabled person ”, and
  - (b) for paragraphs (a) and (b) substitute—
    - “(a) if any of the property is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit, and
    - (b) either—
      - (i) the disabled person is entitled to all of the income (if there is any) arising from any of the property, or

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(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the disabled person's benefit.”.

(3) After that sub-paragraph insert—

“(1A) The trusts on which settled property is held are not to be treated as falling outside sub-paragraph (1) by reason only of—

- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
- (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
- (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
- (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
- (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1) (a) of that section, or
- (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).

(1B) For the purposes of this paragraph, the “annual limit” for a tax year is whichever is the lower of the following amounts—

- (a) £3,000, and
- (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.

(1C) The Treasury may by order—

- (a) specify circumstances in which sub-paragraph (1A)(a) is, or is not, to apply in relation to a trust, and
- (b) amend the definition of “the annual limit” in sub-paragraph (1B).

(1D) An order under sub-paragraph (1C) may—

- (a) make different provision for different cases, and
- (b) contain transitional and saving provision.

(1E) A statutory instrument containing an order under sub-paragraph (1C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”

(4) In sub-paragraph (2), for the words from the beginning to “that sub-paragraph” substitute “ The reference in sub-paragraph (1) ”.

(5) In sub-paragraph (6), for the definitions of “mentally disabled person”, “attendance allowance” and “disability living allowance” substitute—

““disabled person” has the meaning given by Schedule 1A to the Finance Act 2005; and”.

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- (6) The amendments made by this paragraph have effect in relation to the tax year 2013-14 and subsequent tax years.
- (7) But if the settlement is a relevant settlement, nothing in this paragraph is to be read as preventing sections 3(1) to (5C) and 3A of TCGA 1992 from applying in relation to the settlement as provided by paragraph 1(1) of Schedule 1 to that Act.

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