

SCHEDULES

SCHEDULE 10

SETTLEMENTS: ANTI-AVOIDANCE ETC

PART 1

CAPITAL GAINS TAX

TCGA 1992

1 (1) In TCGA 1992, after section 87C insert—

“87D Sections 87 and 87A: disregard of capital payments to non-residents

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement, no account is to be taken of a capital payment (or a part of a capital payment) within subsection (2), but this—
 - (a) is subject to subsection (3) and section 87E, and
 - (b) does not affect the operation of sections 87I to 87L (see, in particular, sections 87K(2) and 87L(2) which apply sections 87 and 87A by reference to the payment mentioned in section 87I(1)(a)).
- (2) A capital payment is within this subsection if (and to the extent that) it is in a tax year received from the trustees of the settlement by a beneficiary who at all times in that year is not resident in the United Kingdom, but this is subject to section 87F.
- (3) Subsection (1) does not apply in relation to a capital payment (or a part of a capital payment) if—
 - (a) the recipient beneficiary is a close member of the settlor’s family (see section 87H) when the beneficiary receives (or is treated as receiving) the payment (or part),
 - (b) the payment (or part) is received on or after 6 April 2018, and
 - (c) the settlor is resident in the United Kingdom in the tax year in which the payment (or part) is received.

87E Sections 87 and 87A: disregarded payments to temporary non-resident

- (1) If—
 - (a) as a result of section 87D, no account is taken of a capital payment (or a part of a capital payment) for the purposes of sections 87 and 87A,
 - (b) the recipient beneficiary is an individual who is temporarily non-resident, and

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- (c) the payment (or part) is received in the beneficiary's temporary period of non-residence,

the payment (or part) is treated for the purposes of sections 87 and 87A as received (by the beneficiary) in the beneficiary's period of return, and account is to be taken of it accordingly for those purposes.

- (2) Part 4 of Schedule 45 to FA 2013 explains—
 - (a) when an individual is to be regarded as “temporarily non-resident”, and
 - (b) what “the temporary period of residence” and “the period of return” mean.

87F Sections 87 and 87A: disregarded payments in year settlement ends

- (1) This section applies in relation to a settlement if—
 - (a) in a particular tax year, the settlement ceases to exist,
 - (b) two or more beneficiaries (“the recipients”) in the year receive capital payments from the trustees, and
 - (c) at least one of the recipients is, and at least one is not, a non-resident beneficiary.
- (2) Those capital payments, so far as received by such of the recipients as are non-resident beneficiaries, are not within section 87D(2).
- (3) In this section “non-resident beneficiary” means a beneficiary who at all times in the year is not resident in the United Kingdom.

87G Settlor liable if capital payment received by close family member

- (1) Subsection (2) applies if in the case of a settlement—
 - (a) a beneficiary of the settlement receives a capital payment from the trustees in a tax year,
 - (b) the settlor is resident in the United Kingdom at any time in that year, and
 - (c) the beneficiary (“the original recipient”) is a close member of the settlor's family (see section 87H) at the time of receipt.
- (2) Sections 87 and 87A have effect as if the capital payment—
 - (a) was received from the trustees by the settlor—
 - (i) as a beneficiary of the settlement (whether or not the settlor is otherwise a beneficiary of the settlement), and
 - (ii) at the time it was received by the original recipient, and
 - (b) was not received by the original recipient.
- (3) Where any tax is chargeable on the settlor as a result of subsection (2) and is paid, the settlor is entitled to recover the full amount of the tax from the original recipient.
- (4) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
 - (a) the amount of tax paid, and
 - (b) the amount of the gains on which the tax is paid,

and any such certificate is conclusive evidence of the facts stated in it.

87H Meaning of “close member of the settlor’s family”

- (1) For the purposes of sections 87D, 87G and 87L as they apply in relation to a settlement, a person is a close member of the settlor’s family at any time if the settlor is living at that time and—
- (a) the person is the settlor’s spouse or civil partner at that time, or
 - (b) the person—
 - (i) is a child of the settlor, or of a person who at that time is the settlor’s spouse or civil partner, and
 - (ii) at that time has not reached the age of 18.
- (2) For the purposes of subsection (1)—
- (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and
 - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

87I Non-UK resident settlements: recipients of onward gifts

- (1) Sections 87J and 87K apply if in the case of a settlement—
- (a) a capital payment (“the original payment”) is received in a tax year (“the payment year”) by a person (“the original beneficiary”) from the trustees of the settlement,
 - (b) at the time of receipt—
 - (i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole or part of the original payment, and
 - (ii) it is reasonable to expect that, in the event of the whole or part of the original payment being passed on to another person as envisaged by the arrangements or intention, that other person will be resident in the United Kingdom when they receive at least part of what is passed on to them,
 - (c) the original beneficiary makes, directly or indirectly, a gift (“the onward payment”) to a person (“the subsequent recipient”)—
 - (i) at the time the original payment is received, or at any later time in the 3 years beginning with the day containing the start time, or
 - (ii) at any time before the original payment is received and, it is reasonable to assume, in anticipation of receipt of the original payment,
 - (d) the gift is of or includes—
 - (i) the whole or part of the original payment,
 - (ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of the original payment, or
 - (iii) any other property, but only if the original payment is made with a view to enabling or facilitating, or otherwise in

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- connection with, the making of the gift of the property to the subsequent recipient,
- (e) the subsequent recipient is resident in the United Kingdom in the tax year in which the onward payment is received by the subsequent recipient (“the gift year”, but see subsection (4)), and
 - (f) in the period beginning with the start of the payment year and ending with the end of the gift year, there is at least one tax year—
 - (i) for which the otherwise-liable person is not resident in the United Kingdom, or
 - (ii) for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the otherwise-liable person.
- (2) Where—
- (a) there is a series of two or more gifts,
 - (b) the first gift in the series is made, directly or indirectly, by the original beneficiary—
 - (i) at the time the original payment is received, or at any later time in the 3 years beginning with the day containing the start time, or
 - (ii) at any time before the original payment is received and, it is reasonable to assume, in anticipation of receipt of the original payment,
 - (c) the recipient of a gift in the series is the person who makes, directly or indirectly, the next gift in the series,
 - (d) the recipient of the last gift in the series is resident in the United Kingdom in the tax year in which that gift is received,
 - (e) as regards each earlier gift in the series, its recipient is not resident in the United Kingdom at any time in the tax year in which it is received, and
 - (f) the condition in subsection (1)(d) is met in relation to each gift in the series,
- the last gift in the series is treated for the purposes of subsection (1)(c) as if its maker were the original beneficiary (and not its actual maker).
- (3) For the purposes of subsections (1)(c)(i) and (2)(b)(i)—
- (a) if the original payment is a capital payment other than one that is treated as received by section 87M, “the start time” is the time the original payment is received, and
 - (b) if the original payment is a capital payment that is treated as received by section 87M in connection with the operation of this section, and sections 87J and 87K, on a previous occasion, “the start time” is the time given by this subsection as the start time on that occasion
- (4) Where the onward payment is made as mentioned in subsection (1)(c)(ii), the onward payment is to be treated—
- (a) for the purposes of the provisions of this section following subsection (1)(c), and
 - (b) for the purposes of sections 87K to 87M,
- as made and received immediately after the original payment is received (and in the payment year).

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- (5) Where this section provides for section 87K to apply in relation to two or more gifts received from the original beneficiary in the gift year by reference to the original payment—
- (a) treat that section as applying in relation to a single gift equal in amount to the total of the amount or value of each of the gifts (and as not applying in relation to each gift separately), and
 - (b) apportion between the gifts (in proportion to their amounts or values)—
 - (i) any capital payments given by section 87K(2), and
 - (ii) any gains given by section 87K(3),as a result of applying section 87K in accordance with paragraph (a).
- (6) Where this section provides for sections 87J and 87K to apply in relation to a gift received in a tax year—
- (a) take the steps required by section 87J before applying section 87K in relation to the gift, but
 - (b) in taking the steps required by section 87J, have regard to the application of section 87K in relation to gifts made in earlier tax years.
- (7) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
 - “gift” includes any benefit,
 - “make”, in relation to a gift that is a benefit, means confer, and
 - “the otherwise-liable person” means the original beneficiary unless section 87G(2) applies in relation to the original payment in which event the settlor is “the otherwise-liable person”.
- (8) Where subsection (1)(c) and (d) are met in any case, it is to be presumed (unless the contrary is shown) that subsection (1)(b) is also met in that case.

87J Relevant parts of payment from which onward gift derived

- (1) Where this section applies (see section 87I), for the purposes of section 87K treat the original payment as divided into slices as follows—
- (a) a slice consisting of the taxed part (if any) of each matched amount (if any),
 - (b) a slice (“U”) consisting of the untaxed part (if any) of each matched amount (if any), and
 - (c) a slice (“R”) consisting of the rest (if any) of the original payment.
- (2) For the purposes of this section, if all or part of the original payment is, in a tax year (“the matching year”) not later than the gift year, matched under section 87A with the section 2(2) amount for the matching year or any earlier tax year, so much of the original payment as is so matched is a “matched amount”.
- (3) For the purposes of subsection (1), if—

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- (a) as a result of there being a matched amount, gains are treated by section 87 as accruing to the otherwise-liable person,
 - (b) the otherwise-liable person is resident in the United Kingdom for the matching year, and
 - (c) none of sections 809B, 809D and 809E of ITA 2007 applies to the otherwise-liable person for the matching year,
- the whole of the matched amount is its “taxed part” (and it has no “untaxed part”).
- (4) For the purposes of subsection (1), if—
- (a) as a result of there being a matched amount, gains are treated by section 87 as accruing to the otherwise-liable person,
 - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the otherwise-liable person for the matching year, and
 - (c) the whole or part of those gains is remitted to the United Kingdom in a tax year—
 - (i) that is not later than the gift year, and
 - (ii) in which the otherwise-liable person is resident in the United Kingdom,
 so much of the matched amount as is equal to so much of the gains as is remitted as mentioned in paragraph (c) is the matched amount’s “taxed part”, and the rest of the matched amount is its “untaxed part”.
- (5) For the purposes of subsection (1), if all or part of the original payment is in a tax year (“the pool-matching year”) not later than the gift year matched, under section 87A as applied by paragraph 8 of Schedule 4C, with the section 2(2) amount in the Schedule 4C pool for the pool-matching year or any earlier tax year—
- (a) so much of the original payment as is so matched is a “matched amount”, and
 - (b) the whole of the matched amount is its “taxed part” (and it has no “untaxed part”).

87K Attribution of gains or payments to recipient of onward gift

- (1) Where this section applies (see section 87I), G is—
- (a) the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 87I(1)(d), or
 - (b) if lower, the amount of the original payment.
- (For the meaning of R and U, see section 87J.)
- (2) If R is greater than nil, sections 87 and 87A have effect for the gift year and later tax years—
- (a) as if a capital payment was received from the trustees by the subsequent recipient—
 - (i) as a beneficiary of the settlement (whether or not the subsequent recipient is otherwise a beneficiary of the settlement), and
 - (ii) at the time the subsequent recipient received the onward payment,

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- (b) as if that capital payment consisted of—
 - (i) R, if G is greater than R, or
 - (ii) so much of R as is equal to G, if G is not greater than R, and
 - (c) as if so much of the original payment as is equal to that capital payment was not received by the otherwise-liable person.
- (3) If G is greater than R, and if U is greater than nil—
- (a) chargeable gains are treated as accruing to the subsequent recipient in the gift year (but see section 87L(3) and (4)),
 - (b) the amount of those gains is—
 - (i) U, if $(G - R)$ is greater than U, or
 - (ii) so much of U as is equal to $(G - R)$, if $(G - R)$ is not greater than U, and
 - (c) the chargeable gains treated by section 87 as accruing to the otherwise-liable person by reason of the original payment are treated as from the end of the gift year as reduced by that amount, with that reduction being made from so much of those gains as has not by then been remitted to the United Kingdom in a tax year in which the otherwise-liable person is resident in the United Kingdom.
- (4) If this section applies by reference to the original payment also in relation to a gift received from the original beneficiary in a tax year earlier than the gift year, this section applies in relation to the onward payment as if—
- (a) the amount given by section 87J for R were reduced by the amount of any capital payment given by subsection (2) in relation to that earlier year, and
 - (b) the amount given by section 87J for U were reduced by the amount of any gains given by subsection (3) in relation to that earlier year.

87L Cases where settlor liable following onward gift

- (1) Subsection (2) applies where—
- (a) ignoring this section and section 87M, a person is treated by section 87K(2) as receiving a capital payment from the trustees of a settlement at a time (“the time of receipt”) in a tax year,
 - (b) the settlor is resident in the United Kingdom at any time in that year, and
 - (c) the person mentioned in paragraph (a) is a close member of the settlor’s family (see section 87H) at the time of receipt.
- (2) Sections 87 and 87A have effect for that year, and later tax years, as if the capital payment—
- (a) was received from the trustees by the settlor—
 - (i) as a beneficiary of the settlement (whether or not the settlor is otherwise a beneficiary of the settlement), and
 - (ii) at the time of receipt, and
 - (b) was not received by the person mentioned in subsection (1)(a).
- (3) Subsection (4) applies where—

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- (a) in the case of a settlement, chargeable gains are (ignoring this section and section 87M) treated by section 87K(3) as accruing to a person in a tax year (“the subsequent recipient”),
 - (b) the settlor is resident in the United Kingdom at any time in that year, and
 - (c) the subsequent recipient is a close member of the settlor’s family when the subsequent recipient receives the onward payment (see section 87I(1)(c)) by reference to which the chargeable gains are treated as accruing.
- (4) Section 87K(3)(a) has effect as if its reference to the subsequent recipient were a reference to the settlor, and references (however expressed) to chargeable gains treated as accruing by this section are to chargeable gains treated by section 87K(3)(a) as accruing to the settlor as a result of the operation of this subsection.
- (5) Where, in the case of a settlement, any tax is chargeable on the settlor as a result of this section and is paid, the settlor is entitled to recover the full amount of the tax from the person mentioned in subsection (1)(a) or (3)(a), as the case may be.
- (6) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—
- (a) the amount of tax paid, and
 - (b) the amount of the gains on which the tax is paid,
- and any such certificate is conclusive evidence of the facts stated in it.

87M Cases where recipient of onward gift is user of remittance basis

- (1) Subsection (2) applies where—
- (a) ignoring this section, a person is treated by section 87K(2) as receiving a capital payment from the trustees of a settlement at a time (“the time of receipt”) in a tax year,
 - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the person for that tax year, and
 - (c) the payment is not treated by section 87L(2) as received by the settlor.
- (2) Section 87I(1)(a) has effect as if the capital payment were received from the trustees by the person at the time of receipt, and section 87K(2)(a) and (b) do not have effect for the purposes of sections 87 and 87A in the case of the payment.
- (3) The rules in subsection (4) apply where—
- (a) in the case of a settlement, chargeable gains are (ignoring this section) treated by section 87K(3), but not as a result of the operation of section 87L(4), as accruing to a person in a tax year by reference to a gift within section 87I(1)(d) made to the person,
 - (b) section 809B, 809D or 809E of ITA 2007 applies to the person for that tax year, and
 - (c) none, or part only, of the gains is remitted to the United Kingdom in that tax year.

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- (4) The rules are—
- (a) section 87I(1)(a) has effect—
 - (i) as if a capital payment were received from the trustees by the person at the time the gift is made, and
 - (ii) as if the capital payment were equal in amount to so much of the gains as is not remitted in the tax year mentioned in subsection (3)(a) of this section,
 - (b) for the purposes of section 87J—
 - (i) the whole of the capital payment is a “matched amount”, and
 - (ii) the whole of the matched amount is its “untaxed part” (and the matched amount has no “taxed part”), and
 - (c) the amount of the gains treated by section 87K(3)(a) and (b) as accruing to the person by reference to the gift is reduced by the amount of the capital payment.
- (5) Where the capital payment mentioned in section 87I(1)(a) is one treated as received by subsection (2) or (4) of this section in connection with the operation of sections 87I to 87K on a previous occasion, section 87I(1) has effect—
- (a) with the omission of its paragraph (b),
 - (b) as if the reference in its paragraph (c) to the original payment were, instead, to what was the onward payment on that previous occasion, and
 - (c) as if the references in its paragraph (d) to the original payment were, instead, to so much of that onward payment as was on that previous occasion within any of sub-paragraphs (i) to (iii) of that paragraph.
- (6) Section 87I(4) and (7) (interpretation of references to gifts and their making) apply also for the purposes of subsections (3) and (4) of this section.

87N Sections 87 and 87A: disregard of payments to migrating beneficiary

- (1) For the purposes of sections 87 and 87A as they apply in relation to a settlement for a particular tax year, no account is to be taken of a capital payment (or part of a capital payment) within subsection (2), but this is subject to section 87P.
- (2) A capital payment is within this subsection—
- (a) if it is received by a beneficiary of the settlement before the particular tax year,
 - (b) if the relevant person is resident in the United Kingdom in the tax year in which it is received,
 - (c) if the relevant person is not resident in the United Kingdom in the particular tax year, and
 - (d) so far as it has not been matched (under section 87A as it applies for tax years before the particular tax year) with—
 - (i) the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2018-19, in which the relevant person is resident in the United Kingdom, or

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(ii) the section 2(2) amount for any tax year earlier than the tax year 2018-19.

(3) For the purposes of subsection (2), the beneficiary is “the relevant person” unless section 87G(2) applies in relation to the capital payment in which event the settlor is “the relevant person”.

87P Sections 87 and 87A: temporary migration after payment disregarded

(1) If—

- (a) as a result of section 87N, no account is taken of a capital payment (or a part of a capital payment) for the purposes of sections 87 and 87A as they apply in relation to a settlement for a particular tax year,
- (b) the recipient beneficiary (where section 87G(2) does not apply in relation to the capital payment), or the settlor (where section 87G(2) does apply in relation to the capital payment), is an individual who is temporarily non-resident,
- (c) the whole or part of the particular tax year constitutes, or forms part of, that individual’s temporary period of non-residence,
- (d) either—
 - (i) that individual’s temporary period of non-residence begins with the start of a tax year and the payment (or part) is received before that tax year, or
 - (ii) that individual’s temporary period of non-residence begins otherwise than at the start of a tax year and the payment (or part) is received before, or at any time in, the tax year in which that individual’s temporary period of non-residence begins, and
- (e) the payment (or part) has not been matched (under section 87A as it applies for tax years before the particular tax year) with—
 - (i) the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2018-19, in which that individual is resident in the United Kingdom, or
 - (ii) the section 2(2) amount for any tax year earlier than the tax year 2018-19,

the payment (or part) is treated for the purposes of sections 87 and 87A as received (by that individual) in that individual’s period of return, and account is to be taken of it accordingly for those purposes.

(2) Part 4 of Schedule 45 to FA 2013 explains—

- (a) when an individual is to be regarded as “temporarily non-resident”, and
- (b) what “the temporary period of residence” and “the period of return” mean.”

(2) In sections 2(4) and (5), 16ZC(4) and 62(2A)(a) of TCGA 1992, after “87” insert “, 87K, 87L”.

(3) In section 86A(1) of TCGA 1992 (attribution of gains to settlor in temporary non-residence cases)—

- (a) in paragraph (b)—

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- (i) for “beneficiaries of the settlement” substitute “, in the case of the settlement, individuals”, and
 - (ii) after “87” insert “, 87K, 87L”, and
 - (b) in paragraph (c) omit “by the beneficiaries”.
- (4) In section 87 of TCGA 1992 (non-UK resident settlements: attribution of gains to beneficiaries)—
 - (a) after subsection (2) insert—
 - “(2A) If the relevant tax year is a split year as respects the beneficiary, the gains are treated as accruing in the UK part of that year.”, and
 - (b) omit subsection (7) (apportionment of gains where relevant year is a split year).
- (5) In section 87B of TCGA 1992 (section 87: remittance basis)—
 - (a) in subsection (1)(a), after “87” insert “, 87K or 87L”,
 - (b) in subsection (1)(b) (which refers to sections 809B, 809D and 809E of ITA 2007), after “809E” insert “of ITA 2007”, and
 - (c) in subsection (4), after “capital payment” insert “, or onward payment (see section 87I(1)(c)).”.
- (6) In section 89(3) of TCGA 1992 (application of sections 87 to 87C in relation to migrant settlements), for “87C” substitute “87P”.
- (7) In section 91 of TCGA 1992 (increase in tax payable under section 87 or 89(2))—
 - (a) in subsection (1)(a)—
 - (i) after “87” insert “, 87K, 87L”, and
 - (ii) for “a beneficiary” substitute “an individual directly, or indirectly,”, and
 - (b) in subsections (1)(b), (2) and (3), for “beneficiary” substitute “individual”.
- (8) In sections 279A(7)(b) and 279C(6)(c) of TCGA 1992, after “87” insert “, 87K, 87L”.
- (9) In paragraph 1A of Schedule 4C to TCGA 1992—
 - (a) in Step 2 in sub-paragraph (1)—
 - (i) after “applies if,” insert “directly or indirectly”
 - (ii) after “87” insert “, 87K, 87L”, and
 - (iii) for “a beneficiary” substitute “an individual”, and
 - (b) in sub-paragraph (3)—
 - (i) for “a beneficiary” substitute “an individual”, and
 - (ii) for “the beneficiary” substitute “the individual”.
- (10) In paragraph 8 of Schedule 4C to TCGA 1992, after sub-paragraph (5) insert—
 - “(6) Sections 87G(2), 87K(2) and 87L(2) (capital payment treated for purposes of sections 87 and 87A as received by someone other than actual recipient) apply also for the purposes of this paragraph, but this is subject to paragraph 9.”
- (11) In consequence of sub-paragraph (4)(b), in Schedule 45 to FA 2013 omit paragraph 101.
- (12) The new sections 87D and 87E have effect—

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- (a) except as provided by the new section 87D(3), in relation to payments received in the tax year 2018-19 or a later tax year, and
 - (b) in the tax year 2018-19 and later tax years, also in relation to payments received before the tax year 2018-19 that have not been matched under section 87A of TCGA 1992 as it applies for tax years before the tax year 2018-19.
- (13) The new sections 87F and 87G, and the amendments made by sub-paragraphs (4) and (11), have effect in relation to payments received in the tax year 2018-19 or a later tax year.
- (14) The new sections 87I to 87M have effect in relation to onward payments made on or after 6 April 2018, and do so even in cases where the original payment is received before that date.
- (15) The new sections 87N and 87P have effect where the particular tax year is the tax year 2018-19 or a later tax year.
- (16) The amendment made in section 89 has effect for the tax year 2018-19 and later tax years.