

SCHEDULES

SCHEDULE 15

Section 41.

SPECIAL CHARGE: TRUSTS

Income out of capital, etc.

- 1 (1) The investment income of an individual arising under a trust shall be ascertained without regard to any part of it shown to the satisfaction of the Board to be attributable to payments duly made otherwise than out of the income of the trust.
- (2) For the purposes of this paragraph the income of a trust shall be ascertained without regard to—
- (a) income or deductions of any description which, under section 42 of this Act, are to be left out of account in ascertaining aggregate investment income, or
 - (b) income from another trust which is shown to the satisfaction of the Board to be attributable to payments duly made otherwise than out of the income of that trust,
- and no deduction shall be made in respect of any payment made to a beneficiary under the trust or to any person claiming under such a beneficiary.

Recovery of charge from trustees

- 2 (1) If the person originally chargeable has not paid the special charge or any part of it, and so elects as respects any trust—
- (a) his liability to the special charge shall be reduced by the amount, if any, attributable to the trust, and
 - (b) the amount so attributable shall be chargeable on the person answerable for the trust.
- (2) If the person originally chargeable has paid part only of the special charge he may nevertheless make an election in accordance with sub-paragraph (1) above, but the reduction under sub-paragraph (1)(a) above in respect of the trust, or, if more than one, of all the trusts together, shall not exceed the amount remaining unpaid.
- (3) An election under this paragraph shall be made by notice in writing to the Board within thirty days from the date of the notice of assessment to the special charge or such longer time as the Board may allow, and shall not be effective unless the notice contains, to the satisfaction of the Board, sufficient particulars of the trust, the names and addresses of the persons answerable for the trust, and the amount of investment income arising under the trust to the person making the election.
- (4) In this and the four next following paragraphs "trust" does not include a foreign trust.
- 3 (1) If the person originally Chargeable has paid the whole of the special charge he may recover from the person answerable for a trust the amount, if any, attributable to that trust.

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- (2) If the person originally chargeable has paid the part of the special charge which is not attributable to any trust, and any additional amount, he may recover from the person answerable for a trust the amount, if any, attributable to that trust, but so that the total amount recoverable, and the amount recoverable from any one trust, shall not exceed that additional amount.
- 4 If at any time after the expiration of thirty days from the date when the special charge became due, all or any part of the special charge remains due from the person originally chargeable, then, without prejudice to the powers of recovery from that person, the amount attributable to any trust may be charged on the person answerable for the trust, but not so as to charge more than is unpaid.
- 5 The amount with which a person answerable for a trust is chargeable under paragraph 2 or paragraph 4 above shall be due and payable by him on the issue to him of a notice of charge by the Board, and an appeal shall lie against the notice of charge in the same way as an appeal lies against an assessment to the special charge.

Income derived from another trust

- 6 (1) This paragraph has effect where all or part of an individual's investment income arising under a trust (in this paragraph called " the first trust") derives from another trust (in this paragraph called " the second trust").
- (2) If—
- (a) the person originally chargeable has made an election under paragraph 2 above as respects the first trust, or
 - (b) any amount has become chargeable on the person answerable for the first trust in accordance with paragraph 4 above,
- the person answerable for the first trust may elect that for all the purposes of this Schedule the individual's investment income deriving from the second trust shall be treated as arising under that trust, and not under the first trust, and then any election under paragraph 2 above as respects the first trust shall take effect also as an election as respects the second trust.
- An election under this sub-paragraph shall be made by notice in writing to the Board within thirty days from the date of the notice of charge on the person answerable for the first trust, or such longer time as the Board may allow, and shall not be effective unless the notice contains, to the satisfaction of the Board, sufficient particulars of the second trust, the names and addresses of the persons answerable for that trust, and the amount of the individual's investment income deriving from that trust.
- (3) If the person originally chargeable has made a claim for recovery of any amount under paragraph 3 above from the person answerable for the first trust, the person answerable for the first trust may by notice in writing to the person originally chargeable require that, as respects his rights of recovery, the individual's investment income deriving from the second trust shall be treated as arising under that trust, and not under the first trust.
- A notice under this sub-paragraph shall give particulars of the names and addresses of the persons answerable for the second trust, and of the amount of the individual's investment income deriving from the second trust.
- (4) Where income arising under the second trust derives from a third trust, the person answerable for the second trust shall have the rights conferred by this paragraph as

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respects that income, and so on for any further trust, and in such a case references in this paragraph to the first and second trust shall be construed accordingly.

- (5) For the purposes of this paragraph the amount of the individual's income which derives from the second trust shall be that fraction of his income arising under the first trust of which—
- (a) the numerator is the income arising under the second trust to the trustees of the first trust, ascertained in accordance with paragraph 1(1) above,
 - (b) the denominator is the total income of the first trust, ascertained in accordance with paragraph 1(2) above.

Notice to persons answerable for a trust

- 7 (1) The person originally chargeable shall not be entitled to exercise his right under paragraph 3 above unless, not later than six months after his payment of, or of the part of, the special charge or after the making of the assessment, whichever is the later, he gave notice in writing to the person answerable for the trust of his intention to exercise any right available to him under paragraph 3 above.
- (2) If notice is so given, the person answerable for the trust shall not be entitled to give a notice under paragraph 6(3) above unless, not later than one month after the receipt of the notice under this paragraph, he has given notice in writing of its receipt to the person answerable for the second trust.
- (3) If an application is made to the Board in accordance with the following provisions of this paragraph, showing to their satisfaction the amount of an individual's investment income which arises under a trust, the Board shall give to the person originally chargeable, and to the person answerable for the trust, a certificate stating the amount of the special charge attributable to the trust, and, if less, the amount recoverable from the person answerable for the trust.
- (4) An application under sub-paragraph (3) above—
- (a) may be made by the person originally chargeable, if he has paid the whole of the special charge, or the part of the special charge which is not attributable to any trust together with an additional amount, but shall be made not later than six months after the payment, or after the making of the assessment, whichever is the later,
 - (b) may be made by the person answerable for the trust not later than one month after receipt of a notice under sub-paragraph (1) above, or as the case may be, of a notice under sub-paragraph (2) above.

Application of trust property in payment of charge

- 8 (1) The powers of a trustee or tenant for life (whether arising under the Settled Land Act 1925 or that Act as applied by section 28 of the Law of Property Act 1925, or otherwise) shall include a power to apply or direct the application of capital money, and to raise money by mortgage, for the purpose of paying the special charge, or interest on the special charge, of making payments in advance of assessment in or towards the special charge, and of discharging any liability arising under the preceding provisions of this Schedule.
- (2) As between the persons interested (whether in income or capital) under a trust, the law relating to the ultimate incidence of estate duty shall apply to any amount falling

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to be paid under the preceding provisions of this Schedule in respect of income derived from property subject to the trust as if—

- (a) that amount were estate duty charged on that property,
- (b) estate duty was so charged on the cesser of a life interest in the property, occurring at the end of the year 1967-68, being an interest not subject to any interest in the property in fact existing under the trust, and
- (c) that amount were charged as on property not passing to the executor as such :

Provided that as between any annuity, other than one by reason of which the said amount or any part thereof fell to be paid, and other interests, the amount shall be borne by the other interests to the exoneration of the annuity.

- (3) Where the income derived from property referred to in sub-paragraph (2) above was a share only of income from the property, whether or not subject to other interests, that sub-paragraph shall apply as if the income so derived had been derived from a corresponding share of the property.
- (4) This paragraph shall, in its application to Scotland, have effect as if for sub-paragraph (1) there were substituted the following sub-paragraph:—
 - “(1) For the purpose of paying the special charge, of making payments in advance of assessment in or towards the special charge, and of discharging any liability arising under the preceding provisions of this Schedule, a trustee, a liferenter or an heir of entail in possession shall have power to expend capital money and to sell, or to borrow money on the security of, the estate or any part thereof, heritable as well as moveable.”
- (5) In the application of sub-paragraph (1) above to Northern Ireland, for the first reference to the Settled Land Act 1925 there shall be substituted a reference to the Settled Land Acts 1882 to 1890, and the reference to the said Act of 1925 as applied by the Law of Property Act 1925 shall be omitted.

Foreign trusts

- 9 (1) If it is shown to the satisfaction of the Board—
 - (a) that any part of the special charge in respect of an individual's aggregate investment income is directly or indirectly attributable to a foreign trust, and
 - (b) that neither the individual or his wife nor, if different, the person chargeable, nor the trustee of any intermediate trust which is not a foreign trust, was absolutely entitled, as against the trustees, to the capital of the trust, or to a part of the capital of the trust of an amount or value not less than the amount of the special charge so attributable, and
 - (c) that the income in question does not arise under a settlement in relation to which the individual or his wife is a settlor under any of the provisions of Part XVIII of the Income Tax Act 1952,

the Board shall relieve all persons of liability to that part of the special charge, by discharge or by repayment, and, as between the person originally chargeable and any person answerable for a trust any amount recovered in respect of that part of the special charge shall be repaid.
- (2) For the purposes of this paragraph part of the special charge is directly or indirectly attributable to a foreign trust—
 - (a) if, in accordance with this Schedule, it is attributable to that trust, or

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- (b) if income of a trust which is not a foreign trust derives from the foreign trust, and part of the special charge would be attributable to the foreign trust if it were not a foreign trust and if an election were made under paragraph 6 of this Schedule.
- (3) For the purposes of this paragraph—
- (a) a trust is, in relation to a foreign trust, an intermediate trust if any part of the investment income arising under the trust derives, directly or indirectly, from the foreign trust,
 - (b) where a person has any rights or powers which could be exercised so as to make him absolutely entitled, as against the trustees, to the capital of the trust or any part of it, he shall be treated as absolutely entitled, as against the trustees, to the capital or that part of it.

Limitation of liability of trustees

- 10 (1) Where on a claim against a trustee or tenant for life made in pursuance of this Schedule by the Board or some other person it is shown to the satisfaction of the Board that the rights of indemnification of the trustee or tenant for life out of the trust estate are, otherwise than by negligence or default on his part, insufficient to provide for his reimbursement, the Board shall give such directions for the limitation or release of his liability as appear just and equitable.
- (2) Sub-paragraph (1) above shall not apply to a claim against a trustee for any amount in respect of which the trustee could have made an election or given a notice under paragraph 6 of this Schedule.
- (3) Where a person who has paid any part of the special charge proves to the satisfaction of the Board that by reason of directions under sub-paragraph (1) above he is deprived of the right to recover any amount in respect thereof, the Board shall repay that amount to him.

Interpretation

- 11 (1) The following provisions have effect for the interpretation of this Schedule in a case where the special charge falls to be made in respect of an individual's aggregate investment income and that income includes any amount arising under a trust.
- (2) For the purposes of this Schedule the amount of the special charge attributable to the trust shall be the fraction of the special charge of which—
- (a) the numerator is the individual's investment income arising under the trust, and
 - (b) the denominator is the individual's aggregate investment income, ascertained before making any deduction under section 42(7) of this Act.
- (3) Where credit for foreign tax falls to be allowed against the special charge, the amount of the special charge attributable to the trust shall be ascertained—
- (a) by applying the fraction in sub-paragraph (2) above to the special charge without allowing the credit against the amount of the special charge, and
 - (b) by deducting from the resulting amount so much of the credit, if any, as is allowable in respect of income arising from the trust.

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- (4) For the said purposes " the person originally chargeable" means die individual or other person liable to pay the special charge apart from the provisions of this Schedule.
- 12 (1) For the said purposes "the person answerable" for a trust is—
- (a) in the case of a subsisting settlement within the meaning of the Settled Land Act 1925, or in Northern Ireland the Settled Land Acts 1882 to 1890, the tenant for life,
 - (b) in the case of any other subsisting trust, the trustees.
- (2) Where the trust has come to an end, " the person answerable " for the trust is the person who immediately after the trust came to an end was entitled in law to the trust property, either beneficially or as the trustee of property settled under another trust, and if more than one person was then so entitled, those persons shall be severally liable as persons answerable for the trust in proportion to the value of their interests therein.
- (3) In applying sub-paragraph (2) above a person becoming entitled by virtue of a mortgage or charge, or in Scotland by virtue of the exercise of a power of sale contained in a bond and disposition in security, shall be disregarded, and sub-paragraph (2) above shall apply to the person or persons who would have been entitled in law to the trust property but for the mortgage or charge, or the exercise of the power of sale.
- (4) For the purposes of this paragraph a trust shall be deemed to have come to an end when any person has become entitled thereunder to capital and the trust property has in consequence thereof become vested in that person or an assignee of his interest, and where part of the trust property has become so vested a proportionate part of die amount recoverable from the person answerable for the trust shall be recoverable from the person described in sub-paragraphs (2) and (3) above, and the remainder from the person described in sub-paragraph (1) above, and " subsisting" in relation to a settlement or trust shall be construed accordingly.
- 13 (1) In this Schedule, unless the context otherwise requires—
- a trust is a " foreign trust" if and only if the general administration of the trust is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom,
 - " tenant for life " means, in relation to any settlement, any person who has the powers of a tenant for life under the Settled Land Act 1925 or in Northern Ireland under the Settled Land Acts 1882 to 1890,
 - " trustee " includes a personal representative and " trust " shall be construed accordingly,
- and references to a trust do not include references to a trust constituted in pursuance of a unit trust scheme as defined in section 26(1) of the Prevention of Fraud (Investments) Act 1958 or section 22 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940.
- (2) In this Schedule references to income of an individual arising under a trust include references to income from property subject to the trust which is treated as the income of that individual for income tax purposes generally, or for surtax.
- (3) Where any property or fund is held as to different parts thereof on different trusts, this Schedule shall apply separately to each part.