



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XVI

SETTLEMENTS

CHAPTER III

REVOCABLE SETTLEMENTS, ETC

445 Revocable settlements allowing release of obligation

- (1) If and so long as the terms of any settlement (where-ever made) are such that—
- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or
 - (b) the settlor or the wife or husband of the settlor may, whether immediately or in the future, cease, on the payment of a penalty, to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement,

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:

Provided that, where any such power as is referred to in paragraph (a) of this subsection cannot be exercised within the period of six years from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, the said paragraph (a) shall not apply so long as the said power cannot be exercised.

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(2) In subsection (1) above—

- (a) the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof and to any power to diminish the amount of any annual payments which the settlor or the wife or husband of the settlor is or may be liable to make by virtue or in consequence of any provision of the settlement ;
- (b) the references to the settlor or the wife or husband of the settlor ceasing to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement shall be deemed to include references to a diminution of the amount of any such annual payments which the settlor or the wife or husband of the settlor is or may be liable to make;

but the sums to be treated under the said subsection (1) as the income of the settlor for any year of assessment and not as the income of any other person shall, where that subsection would not apply but for paragraph (b) of this subsection, be such part only of the sums payable as aforesaid by the settlor or the wife or husband of the settlor in that year as corresponds to the diminution mentioned in that paragraph.

(3) Where, in the case of any settlement made before 16th April 1958, any sums payable by the settlor or by the wife or husband of the settlor would, by virtue of subsection (2) above, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from that subsection, the sums shall not be so treated if—

- (a) no power by reason of which they would fall to be so treated has been exercised after 15th April 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow, and
- (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection,

or if the settlement was entered into in connection with any judicial separation or any agreement between spouses to live separate and apart, or with the dissolution or annulment of a marriage.

446 Revocable settlements allowing reversion of property

(1) If and so long as the terms of any settlement (wherever made) are such that—

- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and
- (b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised,

any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:

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Provided that, where any such power as aforesaid cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, this subsection shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.

- (2) In subsection (1) above the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to—
 - (a) any power to diminish the property comprised in the settlement; and
 - (b) any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof to any person other than the settlor and the wife or husband of the settlor.
- (3) Where, in the case of any settlement made before 16th April 1958, any income arising under the settlement would, by virtue of subsection (2) above, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from that subsection, the income shall not be so treated if—
 - (a) no power by reason of which it would fall to be so treated has been exercised after 15th April 1958 or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and
 - (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection.

447 Settlements where settlor retains an interest

- (1) If and so long as the settlor has an interest in any income arising under or property comprised in a settlement (wherever made), any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person:

Provided that—

- (a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this proviso, would be so treated as is proportionate to the extent of that interest; and
 - (b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of section 445 or 446 above, that amount shall be deducted from the amount of income which, but for this proviso, would be treated as his for that year by virtue of this subsection.
- (2) For the purpose of subsection (1) of this section, the settlor shall be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever:

Provided that the settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—

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- (a) if and so long as that income or property cannot become payable or applicable as aforesaid except in the event of—
 - (i) the bankruptcy of some person who is or may become beneficially entitled to that income or property ; or
 - (ii) any assignment of or charge on that income or property being made or given by some such person ; or
 - (iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
 - (iv) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or
- (b) if and so long as some person is alive and under the age of twenty-five during whose life that income or property cannot become payable or applicable as aforesaid except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

448 Settlements: discretionary power for benefit of settlor, etc.

- (1) If and so long as the terms of any settlement (wherever made) are such that any person has or may have power, whether immediately or in the future, and whether with or without the consent of any person—
 - (a) to pay or apply to or for the benefit of the settlor or the wife or husband of the settlor the whole or any part of the income or property which may at any time arise under or be comprised in the settlement; or
 - (b) to secure the payment or application to or for the benefit of the settlor or the wife or husband of the settlor of the whole or any part of that income or property,
 being a power exercisable at his discretion, any income arising under the settlement in any year of assessment or, as the case may be, any income so arising from the property comprised in the settlement or from a corresponding part of that property, or a corresponding part of any such income, shall (so far as it is not so treated apart from this section) be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person, subject however to the following provisions of this section.
- (2) Where the power mentioned in subsection (1) of this section cannot be exercised within six years from the time when any income or class of income first arises under the settlement or from the time when any particular property first becomes comprised in the settlement, then, so long as the power cannot be exercised, that subsection shall not apply to any income arising under the settlement or, as the case may be, any income of that class or income from that property or property representing that property.
- (3) Where, under the proviso to section 447(2) above, the settlor is not deemed to have an interest in any income arising under or property comprised in the settlement, subsection (1) of this section shall not apply to that income or, as the case may be, to income arising from that property.
- (4) Where, in the case of any settlement made before 9th July 1958, any income arising under the settlement would, by virtue of the preceding provisions of this section, fall to be treated as the income of the settlor and not as the income of any other person, but would not fall to be so treated apart from those provisions, it shall not be so treated if—

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- (a) no power by reason of which it would fall to be so treated has been exercised after 8th July 1958, or is or can become exercisable after 5th April 1959, or such later date as the Board may in any particular case allow; and
- (b) neither the settlor nor the wife or husband of the settlor has received or is entitled to any consideration or benefit in connection with the fulfilment of the condition set out in paragraph (a) of this subsection.

449 Provisions supplemental to preceding provisions of Chapter III

- (1) Tax chargeable at the standard rate by virtue of the preceding provisions of this Chapter shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of a settlor chargeable by virtue of any of the said preceding provisions, the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that provision had been received by him.
- (3) Where, by virtue of any of the said preceding provisions, any income tax becomes chargeable on and is paid by a settlor, he shall be entitled—
 - (a) to recover from any trustee, or other person to whom income arises under the settlement, the amount of the tax so paid ; and
 - (b) for that purpose to require the Board or, in relation to tax at the standard rate, an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of tax so paid.

Any certificate so furnished shall be conclusive evidence of the facts stated therein.

- (4) Where any person obtains, in respect of any allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for any of the said preceding provisions, have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom income arises under the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

- (5) Subject to section 529 of this Act, any income which is treated by virtue of any of the said preceding provisions as income of a settlor shall be deemed for the purpose of this section to be the highest part of his income.

450 Disallowance of deduction from total income of certain sums paid by settlor

- (1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year for the purposes of surtax, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount, of income arising under the settlement in that year which has not been distributed, less—
 - (a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of section 445, 446 or 448 above, and

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- (b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of section 447 above.
- (2) For the purposes of subsection (1) of this section, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.
- (3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.
- (4) This section shall apply to any settlement (wherever made) made after 26th April 1938, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of section 445 or 446 above but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.
- (5) In this section, references to sums paid by a settlor include references to sums paid by the wife or husband of the settlor.

451 Sums paid to settlor otherwise than as income

- (1) Any capital sum paid directly or indirectly in any relevant year of assessment by the trustees of a settlement to which this section applies to the settlor shall—
 - (a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;
 - (b) to the extent to which the amount of that sum exceeds the amount of income available up to the end of that year but falls within the amount of the income available up to the end of the next following year, be treated for the purposes aforesaid as the income of the settlor for the next following year,
 and so on.
- (2) For the purposes of subsection (1) of this section, the amount of income available up to the end of any year shall, in relation to any capital sum paid as aforesaid, be taken to be the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less—
 - (a) the amount of any other capital sums paid to the settlor in any relevant year before that sum was paid, and
 - (b) so much of any income arising under the settlement in that year and any previous relevant year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 445, 446 or 448 above, and
 - (c) any income arising under the settlement in that year and any previous relevant year which has been treated as the income of the settlor by virtue of section 447 above, and
 - (d) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 450 above, as deductions in computing the settlor's income for that year or any previous relevant year, and
 - (e) an amount equal to tax at the standard rate on—

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- (i) the aggregate amount of income arising under the settlement in that year and any previous relevant year which has not been distributed, less
 - (ii) the aggregate amount of the income and sums referred to in paragraphs (b), (c) and (d) of this subsection.
- (3) Where any amount is included in a person's income by virtue of section 287 of this Act (assessment in respect of loan from close company) in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.
- (4) For the purpose of this section, any capital sum paid to the settlor in any year of assessment by any body corporate connected with the settlement in that year shall be treated as having been paid by the trustees of the settlement in that year.
- (5) Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of tax at the standard rate for that year, would be equal to that sum or that part thereof.
- (6) Tax chargeable at the standard rate by virtue of this section shall be charged under Case VI of Schedule D.
- (7) In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.
- (8) This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—
 - " capital sum " means—
 - (i) any sum paid by way of loan or repayment of a loan; and
 - (ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money's worth, but does not include any sum which could not have become payable to the settlor except in one of the events specified in the proviso to section 447(2) above, and
 - " relevant year " means any year of assessment after the year 1937-38, and references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor.

452 Application of Chapter III to settlements where there is more than one settlor

- (1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.
- (2) References in this Chapter to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor and references in this Chapter to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.
- (3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed,

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any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.

- (4) References in sections 445(1) and 450 above to sums payable by virtue or in consequence of any provision of the settlement or sums paid by virtue or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.
- (5) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement; and
 - (b) property representing that property ; and
 - (c) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
 - (b) so much of any such income of a body corporate as is mentioned in section 454(1)(b) below as corresponds to property originating from the settlor which is comprised in the settlement; and
 - (c) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) of this section—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
 - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

453 Power to obtain information for purposes of Chapter III

The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any person, being a party to a settlement, to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of any of the provisions of this Chapter.

454 Interpretation of Chapter III

- (1) In this Chapter, " income arising under a settlement " includes—
- (a) any income chargeable to income tax by deduction or otherwise, and any income which would have been so chargeable if it had been received in the United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom; and
 - (b) where the amount of the income of any body corporate has been apportioned under section 296 of this Act (close companies), or (as respects income arising before the year 1966-67) under Chapter III of Part IX of the Income Tax Act

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1952, for any year or period, or could have been so apportioned if the body corporate were incorporated in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement,

but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

- (2) For the purpose of adapting the definition in subsection (1) above in relation to Case VII of Schedule D, references in that definition to income shall include the amount of any gains arising from the acquisition and disposal of chargeable assets subject to the like deduction for losses so arising as would be made under Case VII; but that amount shall be left out of account under section 450 above.
- (3) In this Chapter, "settlement" includes any disposition, trust, covenant, agreement or arrangement, and " settlor ", in relation to a settlement, means any person by whom the settlement was made ; and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular but without prejudice to the generality of the preceding words) if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.
- (4) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if it is at any time in the year a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of or a beneficiary under the settlement.
- (5) In relation to income arising before the year 1966-67 subsection (4) above shall not apply and, for the purposes of this Chapter, a body corporate shall be deemed to have been connected with a settlement in any year of assessment if any of the income thereof for any year or period ending in that year of assessment—
 - (a) has been apportioned to the trustees of or a beneficiary under the settlement under Chapter III of Part IX of the Income Tax Act 1952, or could have been so apportioned if the body corporate had been incorporated in the United Kingdom, or
 - (b) could have been so apportioned if the income of the body corporate for that year or period had not been distributed to the members thereof and, in the case of a body corporate incorporated outside the United Kingdom, if the body corporate had been incorporated in the United Kingdom.
- (6) The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act.

455 Ascertainment of undistributed income

For the purposes of this Chapter, income arising under a settlement in any year of assessment shall be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—

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- (a) the sums, excluding all payments of interest, paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of section 451 above, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them therein, and
- (b) subject to section 456 below, any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, in so far as such expenses are not included in the sums mentioned in paragraph (a) of this section, and
- (c) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section 360 of this Act exceeds the aggregate amount of any such sums or expenses as aforesaid paid in that year which are properly chargeable to that income.

456 Ascertainment of undistributed income: interest paid by trustees

- (1) Paragraph (b) of section 455 above shall apply to any interest paid by the trustees of the settlement subject to the provisions of this section.
- (2) If no sums within paragraph (a) of that section were paid to any person other than the settlor, or the wife or husband of the settlor, the whole of the interest shall be excluded from the said paragraph (b).
- (3) If any sum was so paid, there shall be excluded from the said paragraph (b) a fraction

$$\frac{A-B}{A}$$

of the interest where—

A is the whole of the income arising under the settlement in the year of assessment, less the sums referred to in the said paragraph (b) apart from this section, and

B is so much of the sums within the said paragraph (a) as is paid to persons other than the settlor, or the wife or husband of the settlor.

- (4) This section shall not apply to interest in respect of which relief from tax at the standard rate is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).
- (5) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.