



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART XVI

SETTLEMENTS

CHAPTER I

DISPOSITIONS FOR SHORT PERIODS

434 Disposition for period which cannot exceed six years

- (1) Any income which, by virtue or in consequence of any disposition made, directly or indirectly, by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person for a period which cannot exceed six years shall be deemed for all the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made, and not to be the income of any other person.
- (2) In this Chapter, unless the context otherwise requires, "disposition" includes any trust, covenant, agreement or arrangement.

435 Adjustments between disponent and trustees

- (1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a disposition was made, that person shall be entitled—
 - (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition 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 the income in respect of which he has so paid tax and the amount of the tax so paid,and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (2) 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 the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, 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.

- (3) Subject to section 529 of this Act, any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

436 Application of Chapter I to dispositions where there is more than one disponent

- (1) In the case of any disposition where there is more than one person who made the disposition, this Chapter shall, subject to the provisions of this section, have effect in relation to each person who made the disposition as if he were the only person who had made it.
- (2) In the case of any such disposition, references in this Chapter to income payable or applicable by virtue or in consequence of the disposition include, in relation to any person making the disposition, only—
- (a) income from property which that person has provided directly or indirectly for the purposes of the disposition ; and
 - (b) income from property representing that property; and
 - (c) income from 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; and
 - (d) income provided directly or indirectly by that person.
- (3) In this section references to property which represents other property include references to property which represents accumulated income from that other property.

CHAPTER II

SETTLEMENTS ON CHILDREN

437 The general rule

- (1) Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and—
- (a) had not attained the age of eighteen, or
 - (b) had attained that age but had not attained the age of twenty-one and was not working regularly,
- 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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (2) This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 18 of Schedule 14 to this Act shall have effect as respects certain earlier settlements on children.

- (3) Subsection (1) above shall not have effect in relation to a child who has not attained the age of eighteen for any year of assessment for which his aggregate income, so far as it would fall within subsection (1) above or within section 43(1) of this Act (aggregation of income of parent and child) but for this exception and the corresponding exception in subsection (3) of the said section 43, does not exceed £5.
- (4) Without prejudice to subsection (3) above, income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the child is over the age of eighteen if the aggregate amount of the income paid to or for the benefit of the child which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.
- (5) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

438 Accumulation settlements

- (1) Subject to the provisions of this section, for the purposes of this Chapter—
- (a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
 - (b) any income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.
- (2) Where any income is dealt with as mentioned in subsection (1) of this section by virtue or in consequence of a settlement to which this Chapter applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—
- (a) the provisions of subsection (1) of this section shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which are allowable as deductions in computing his total income; and
 - (b) any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above, shall be deemed for the purposes of that section to be paid as income, unless and except

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

to the extent that the sum so paid together with any other sums previously so paid (whether to that child or to any other child who, at the relevant time, was unmarried and within the said subsection (1)(a) or subsection (1)(b)) exceeds the aggregate amount of the income which, by virtue or in consequence of the settlement, has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (1) of this section, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

- (3) In subsection (2)(b) above " the relevant time " means—
- (a) in relation to a payment made after the year 1957-58, except a payment made in the year 1958-59 to or for the benefit of a child born after 6th April 1958, and so made by virtue or in consequence of a settlement made before 9th July 1958, the date when the payment was made,
 - (b) in relation to a payment made in or before the year 1957-58, or a payment made in the year 1958-59 and excepted from paragraph (a) above, the commencement of the year of assessment in which the payment was made.

439 Meaning of "irrevocable"

- (1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if the terms thereof provide—
- (a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement ; or
 - (b) for the determination of the settlement by the act or on the default of any person ; or
 - (c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement:

Provided that a settlement shall not be deemed to be revocable by reason only—

- (i) that it contains a provision under which any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of any such child as is mentioned in paragraph (a) of this subsection or in the event of an assignment of or charge on that income or those assets being executed by such a child; or
- (ii) that it provides for the determination of the settlement as aforesaid in such a manner that the determination will not, during the lifetime of any such child as aforesaid, benefit the settlor or the wife or husband of the settlor; or
- (iii) in the case of a settlement to which section 33 of the Trustee Act 1925 applies, that it directs income to be held for the benefit of such a child as aforesaid on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive the income or part thereof.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (2) In applying section 438(2)(b) above to a settlement subsisting on 6th April 1958 which would have been revocable if, in paragraph (ii) above, in place of the words " the settlor or the wife or husband of the settlor " (which were inserted by section 20(5) of the Finance Act 1958) there stood " any person other than such a child, or the wife, husband or issue of such a child " the date when it became irrevocable shall be taken as 6th April 1958.

440 Interest paid by trustees

- (1) Where interest is paid by the trustees of a settlement to which this Chapter applies there shall be deemed for the purposes of this Chapter to be paid to or for the benefit of a child of the settlor who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above (in addition to any other amount deemed to be so paid) an amount equal to a fraction

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

of the interest, where—

A is the whole of the income arising under the settlement in the year of assessment, less 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, and

B is such part of A as is paid to or for the benefit of any child of the settlor who is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above.

- (2) 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).
- (3) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.
- (4) For the purpose of this section—
- " income arising under the settlement " has the meaning given by section 454 below, which for that purpose shall be deemed to apply in relation to settlements to which this Chapter applies as it applies in relation to settlements to which Chapter III below applies, and
- the reference to the trustees' expenses excludes sums mentioned in section 455(a) below (sums distributed to beneficiaries).

441 Adjustments between disponor and trustees

- (1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a settlement was made or entered into, that person shall be entitled—
- (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of 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 the tax so paid,

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

- (2) 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 the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of 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.

- (3) Subject to section 529 of this Act, any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

442 Application of Chapter II to settlements with 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) In the case of any such settlement as aforesaid, only the following can, for the purposes of this Chapter, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say—
- (a) income originating from that settlor; and
 - (b) in a case in which paragraph (b) of subsection (2) of section 438 of this Act applies, any sums which are under that paragraph to be deemed to be paid as income:

Provided that in applying the said paragraph (b) to any settlor—

- (i) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor; and
 - (ii) the reference to income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in subsection (1) of that section includes only income originating from that settlor.
- (3) 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.
- (4) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
 - (b) income provided directly or indirectly by that settlor.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

(5) In subsections (3) and (4) 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.

443 Power to obtain information under Chapter II

The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any 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 this Chapter.

444 Interpretation of Chapter II

(1) In this Chapter "child" includes a stepchild, an adopted child and an illegitimate child, and a child is to be treated as working regularly if, and only if, he or she is engaged in a full-time occupation, not being one entered into during an interval not exceeding fifteen months between two periods of full-time education, and intends to be regularly engaged in it or another such occupation.

In this subsection " occupation" means any office, employment, trade, profession or vocation.

(2) In this Chapter—

" settlement " includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

" settlor ", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the preceding words of this definition) includes any person who 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;

" income ", except in the phrase (occurring in section 437(1) above) " 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 ", includes 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 resident and ordinarily resident in the United Kingdom.

(3) For the purpose of adapting the definition of " income " in subsection (2) above in relation to Case VII of Schedule D, that definition shall apply in relation to gains arising from the acquisition and disposal of chargeable assets as it would apply if the gains were profits from a trade of dealing in the assets, and any such gains shall be treated as payable in the first instance to the person to whom they accrue.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (4) In the case of settled property as defined for the purposes of Case VII of Schedule D, section 438(1)(a) above shall have effect in relation to gains so arising from the settled property only in so far as they exceed losses so arising from them.

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.

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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:

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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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—

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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—
 - (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—

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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
 - (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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—
 - (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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, 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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (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 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

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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—

- (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.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

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

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.

CHAPTER IV

SURTAX LIABILITY OF SETTLORS IN CERTAIN CASES

457 Settlements made on or after 7th April 1965

- (1) Where, during the life of the settlor, income arising under a settlement made on or after 7th April 1965 is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in the said events, the income either—
 - (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration, or
 - (b) is excluded by subsection (2) below, or
 - (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party, or
 - (d) is income from property of which the settlor has divested himself absolutely by the settlement, or

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor,
the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person.
- (2) Subsection (1) above shall not apply to income consisting of annual payments made by an individual, in connection with the acquisition by him of the whole or part of a business—
- (a) to or for the benefit of the individual from whom it is acquired or, if he is dead, to or for the benefit of his widow or dependants, or
- (b) if the acquisition was from a partnership, to or for the benefit of a former member, or the widow or dependants of a deceased former member, of that or any preceding partnership, or to or for the benefit of an individual from whom the business or part was acquired by that or any preceding partnership or, if he is dead, to or for the benefit of the widow or dependants of such an individual,
being payments made under a liability incurred for full consideration.
- (3) Payments made in respect of any individual under a liability incurred in connection with an acquisition from a partnership shall only be excluded from the operation of subsection (1) above by virtue of subsection (2)(b) above if, and to the extent that, they are made in substitution for, or matched by reductions in, other payments which would themselves be excluded from its operation.
- (4) Where the right of a former member of a partnership to payments falling due not more than ten years after he ceased to be a member of that partnership has devolved on his death, subsections (1)(a) and (2) above shall apply to the payments as they would apply if he had not died.
- (5) For the purposes of this section—
- (a) " former member ", in relation to a partnership, means an individual who has ceased to be a member of that partnership on retirement or death,
- (b) a partnership becomes a " preceding partnership " of another if it transfers its business or part of its business to another and one or more individuals are members of both, and any preceding partnership of the transferor by reference to any part of the business transferred shall also become a preceding partnership of the transferee.
- (6) The settlor shall not be deemed for the purposes of this section to have divested himself absolutely of any property if that property or any income therefrom or any property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom 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 a settlor shall not be deemed not to have divested himself absolutely of any property by reason only that that property or income therefrom or any such other property or income as aforesaid may become payable or applicable as aforesaid in the event of—

- (a) the bankruptcy of some person who is or may become beneficially entitled to any such property or income; or
- (b) an assignment of or charge on any such property or income being made or given by some such person; or

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage ; or
- (d) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.

458 Settlements made before 7th April 1965, but on or after 10th April 1946

- (1) Where, during the life of the settlor, income arising under a settlement made before 7th April 1965, but on or after 10th April 1946, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless under the settlement and in the said events, the income either—
- (a) is payable to an individual for his own use, or
 - (b) is applicable for the benefit of an individual named in that behalf in the settlement or of two or more individuals named in that behalf therein, or
 - (c) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement, or
 - (d) is income from property of which the settlor has divested himself absolutely by the settlement, or
 - (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor,

the income shall be treated for the purposes of surtax as the income of the settlor and not as the income of any other person :

Provided that the exceptions provided for by paragraphs (a), (b) and (c) of this subsection shall not apply where the named individual or individuals or, in the case of the said paragraph (c) , either the named individual or the child or any of the children in question, is in the service of the settlor or accustomed to act as the solicitor or agent of the settlor.

- (2) The settlor shall not be deemed for the purposes of this section to have divested himself absolutely of any property if that property or any income therefrom or any property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom is, or will or may become, payable to him or applicable for his benefit in any circumstances whatsoever:

Provided that a settlor shall not be deemed not to have divested himself absolutely of any property by reason only that that property or income therefrom or any such other property or income as aforesaid may become payable to him or applicable for his benefit in the event of—

- (a) the bankruptcy of some person who is or may become beneficially entitled to any such property or income, or
- (b) an assignment of or charge on any such property or income being made or given by some such person, or
- (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or
- (d) the death under the age of twenty-five or some lower age of some person who would be beneficially entitled to that property or income on attaining that age.

*Status: This is the original version (as it was originally enacted). This
item of legislation is currently only available in its original format.*

459 Supplemental provisions for Chapter IV

- (1) In this Chapter " income arising under a settlement ", " settlement" and " settlor" have the meanings assigned to them for the purposes of Chapter III above by section 454 above.
- (2) Section 452 above shall have effect in relation to this Chapter as it has effect in relation to Chapter III above.