



# Finance Act 1991

## 1991 CHAPTER 31

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### CAPITAL GAINS

##### *Settlements*

#### **83 Trustees ceasing to be resident in U.K.**

- (1) This section applies if the trustees of a settlement become at any time (the relevant time) neither resident nor ordinarily resident in the United Kingdom.
- (2) The trustees shall be deemed for all purposes of the <sup>M1</sup>Capital Gains Tax Act 1979—
  - (a) to have disposed of the defined assets immediately before the relevant time, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.
- (4) If immediately after the relevant time—
  - (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, the assets falling within paragraph (b) above shall not be defined assets.
- (5) Assets shall not be defined assets if—

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- (a) they are of a description specified in any double taxation relief arrangements, and
  - (b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (6) Section 115 of the <sup>M2</sup>Capital Gains Tax Act 1979 (roll-over relief) shall not apply where the trustees—
- (a) have disposed of the old assets, or their interest in them, before the relevant time, and
  - (b) acquire the new assets, or their interest in them, after that time,
- unless the new assets are excepted from this subsection by subsection (7) below.
- (7) If at the time when the new assets are acquired—
- (a) the trustees carry on a trade in the United Kingdom through a branch or agency, and
  - (b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,
- the assets falling within paragraph (b) above shall be excepted from subsection (6) above.
- (8) In this section—
- “double taxation relief arrangements means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979);
- “the old assets and “the new assets have the same meanings as in section 115 of the Capital Gains Tax Act 1979.
- (9) This section applies where the relevant time falls on or after 19th March 1991.

**Marginal Citations**

- M1** 1979 c. 14.  
**M2** 1979 c. 14.

**84 Death of trustee: special rules.**

- (1) Subsection (2) below applies where—
- (a) section 83 above applies as a result of the death of a trustee of the settlement, and
  - (b) within the period of six months beginning with the death, the trustees of the settlement become resident and ordinarily resident in the United Kingdom.
- (2) That section shall apply as if the defined assets were restricted to such assets (if any) as—
- (a) would be defined assets apart from this section, and
  - (b) fall within subsection (3) or (4) below.
- (3) Assets fall within this subsection if they were disposed of by the trustees in the period which—
- (a) begins with the death, and

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- (b) ends when the trustees become resident and ordinarily resident in the United Kingdom.
- (4) Assets fall within this subsection if—
  - (a) they are of a description specified in any double taxation relief arrangements,
  - (b) they constitute settled property of the settlement at the time immediately after the trustees become resident and ordinarily resident in the United Kingdom, and
  - (c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (5) Subsection (6) below applies where—
  - (a) at any time (whether occurring before or on or after 19th March 1991) the trustees of a settlement become resident and ordinarily resident in the United Kingdom as a result of the death of a trustee of the settlement, and
  - (b) section 83 above applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of six months beginning with the death.
- (6) That section shall apply as if the defined assets were restricted to such assets (if any) as—
  - (a) would be defined assets apart from this section, and
  - (b) fall within subsection (7) below.
- (7) Assets fall within this subsection if—
  - (a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and
  - (b) they acquired them as a result of a disposal in respect of which relief is given under section 126 of the <sup>M3</sup>Capital Gains Tax Act 1979 or in relation to which section 147A(3) of that Act applies.
- (8) In this section “double taxation relief arrangements means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979).

#### **Marginal Citations**

**M3** 1979 c. 14.

### **85 Past trustees: liability for tax.**

- (1) This section applies where—
  - (a) section 83 above applies as regards the trustees of a settlement (the migrating trustees), and
  - (b) any capital gains tax which is payable by the migrating trustees by virtue of section 83(2) above is not paid within six months from the time when it became payable.
- (2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—

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- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;
  - (b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;
  - (c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within thirty days of the service of the notice.
- (3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—
- (a) he ceased to be a trustee of the settlement before the end of the relevant period, and
  - (b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating trustees.
- (5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (6) For the purposes of this section—
- (a) where the relevant time (within the meaning of section 83 above) falls within the period of twelve months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;
  - (b) in any other case, the relevant period is the period of twelve months ending with the relevant time.

## **86 Trustees ceasing to be liable to U.K. tax.**

- (1) This section applies if the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the time concerned) trustees who fall to be regarded for the purposes of any double taxation relief arrangements—
- (a) as resident in a territory outside the United Kingdom, and
  - (b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets (relevant assets) which constitute settled property of the settlement and fall within descriptions specified in the arrangements.
- (2) The trustees shall be deemed for all purposes of the <sup>M4</sup>Capital Gains Tax Act 1979—
- (a) to have disposed of their relevant assets immediately before the time concerned, and
  - (b) immediately to have reacquired them, at their market value at that time.
- (3) In this section “double taxation relief arrangements means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979).
- (4) This section applies where the time concerned falls on or after 19th March 1991.

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**Marginal Citations**

M4 1979 c. 14.

**87 Acquisition by dual resident trustees.**

(1) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply where—

- (a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,
- (b) at the time of the acquisition the trustees are resident and ordinarily resident in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
- (c) the assets are of a description specified in the arrangements, and
- (d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(2) In this section—

“double taxation relief arrangements means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the <sup>M5</sup>Capital Gains Tax Act 1979);

“the new assets has the same meaning as in section 115 of the Capital Gains Tax Act 1979.

(3) This section applies where the new assets are, or the interest in them is, acquired on or after 19th March 1991.

**Marginal Citations**

M5 1979 c. 14.

**88 Disposal of settled interest.**

(1) Subject to subsections (3) and (8) below, subsection (2) below applies where—

- (a) section 83 above applies as regards the trustees of a settlement,
- (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that section 88(1) of the <sup>M6</sup>Finance Act 1981 prevents section 58(1) of the Capital Gains Tax Act 1979 applying, and
- (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.

(2) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—

- (a) disposed of it immediately before the relevant time, and
- (b) immediately reacquired it,

at its market value at that time.

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- (3) Subsection (2) above shall not apply if section 86 above applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.
- (4) Subsection (6) below applies where—
- (a) section 83 above applies as regards the trustees of a settlement,
  - (b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that section 88(1) of the Finance Act 1981 prevents section 58(1) of the Capital Gains Tax Act 1979 applying,
  - (c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and
  - (d) section 86 above applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.
- (5) The relevant period is the period which—
- (a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and
  - (b) ends with the relevant time.
- (6) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—
- (a) disposed of it immediately before the time found under subsection (7) below, and
  - (b) immediately reacquired it, at its market value at that time.
- (7) The time is—
- (a) the time concerned (where there is only one such time), or
  - (b) the earliest time concerned (where there is more than one because section 86 above applied more than once).
- (8) Subsection (2) above shall not apply where subsection (6) above applies.

**Marginal Citations**

**M6** 1981 c. 35.

**89 Non-resident settlements where settlor has an interest.**

- (1) Schedule 16 to this Act (which relates to certain settlements in which the settlor has an interest) shall have effect; and accordingly the amendments in subsections (2) and (3) below shall have effect.
- (2) In section 80 of the <sup>M7</sup>Finance Act 1981 (gains of non-resident settlements chargeable on beneficiaries) the following subsection shall be inserted after subsection (2)—
- “(2A) Where as regards the same settlement and for the same year of assessment—
- (a) chargeable gains, whether of one amount or of two or more amounts, are treated as accruing by virtue of paragraph 2 of Schedule 16 to the

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Finance Act 1991 (gains of non-resident settlements chargeable on settlor), and

(b) an amount falls to be computed under subsection (2) above, the amount so computed shall be treated as reduced by the amount, or aggregate of the amounts, mentioned in paragraph (a) above.”

(3) In Schedule 10 to the <sup>M8</sup>Finance Act 1988 (settlor chargeable instead of trustees in certain circumstances) in paragraph 5 (right of recovery) the following sub-paragraph shall be inserted after sub-paragraph (2)—

“(3) In a case where—

(a) gains are treated as accruing to a person in a year under paragraph 2 of Schedule 16 to the Finance Act 1991, and

(b) gains are treated as accruing to the same person under paragraph 1 above in the same year,

sub-paragraph (2) above shall have effect subject to paragraph 2(b) of that Schedule (gains treated as forming highest part of chargeable gains).”

#### Marginal Citations

M7 1981 c. 35.

M8 1988 c. 39.

#### 90 Settlements: beneficiaries charged on capital payments.

Schedule 17 to this Act (which relates to settlements whose beneficiaries are charged to tax in respect of capital payments) shall have effect.

#### 91 Settlements: further provisions about beneficiaries.

Schedule 18 to this Act (which contains further provisions about beneficiaries under settlements) shall have effect.

#### 92 Settlements with foreign element: miscellaneous.

(1) Section 126C of the <sup>M9</sup>Capital Gains Tax Act 1979 (relief for gifts of business assets: emigration of controlling trustees) shall cease to have effect.

(2) In section 79 of the <sup>M10</sup>Finance Act 1981 (emigration of donee) in subsection (1) (a) for the words from “or the to “any disposal there shall be substituted “or under section 147A of that Act in respect of a disposal to an individual ”.

(3) In section 88 of the Finance Act 1981 (disposal of interests in non-resident settlements) subsections (2) to (6) shall cease to have effect.

(4) In section 58 of the <sup>M11</sup>Finance Act 1986 (gifts into dual resident trusts) subsection (5) shall cease to have effect.

(5) Subsections (1) and (3) above apply where the trustees become neither resident nor ordinarily resident in the United Kingdom on or after 19th March 1991.

(6) Subsection (2) above applies where the transferee becomes neither resident nor ordinarily resident in the United Kingdom on or after 19th March 1991.

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- (7) Subsection (4) above applies where the time subsequent to the relevant disposal, and referred to in section 58(5)(b) of the Finance Act 1986, falls on or after 19th March 1991.

**Marginal Citations**

**M9** 1979 c. 14.

**M10** 1981 c. 35.

**M11** 1986 c. 41.



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