

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 16. (See end of Document for details)

SCHEDULES

SCHEDULE 16

Section 89.

SETTLEMENTS: SETTLORS

Conditions for the charge

- 1 (1) This paragraph applies where the following conditions are fulfilled as regards a settlement in a particular year of assessment—
- (a) the settlement is a qualifying settlement in the year;
 - (b) the trustees of the settlement fulfil the condition as to residence specified in sub-paragraph (2) below;
 - (c) a person who is a settlor in relation to the settlement (the settlor) is domiciled in the United Kingdom at some time in the year and is either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year;
 - (d) at any time during the year the settlor has an interest in the settlement;
 - (e) by virtue of disposals of any of the settled property originating from the settlor, there is an amount on which the trustees would be chargeable to tax for the year under section 4(1) of the ^{M1}Capital Gains Tax Act 1979 if the assumption as to residence specified in sub-paragraph (3) below were made;
 - (f) paragraph 5, 6 or 7 below does not prevent this paragraph applying.
- (2) The condition as to residence is that—
- (a) the trustees are not resident or ordinarily resident in the United Kingdom during any part of the year, or
 - (b) the trustees are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, but at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (3) Where sub-paragraph (2)(a) above applies, the assumption as to residence is that the trustees are resident or ordinarily resident in the United Kingdom throughout the year; and where sub-paragraph (2)(b) above applies, the assumption as to residence is that the double taxation relief arrangements do not apply.
- (4) In this paragraph “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 ^{M2}Capital Gains Tax Act 1979).

Marginal Citations

M1 1979 c. 14.

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M2 1979 c. 14.

The charge

- 2 Where paragraph 1 above applies—
- (a) chargeable gains of an amount equal to that referred to in paragraph 1(1)(e) above shall be treated as accruing to the settlor in the year, and
 - (b) those gains shall be treated as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

Construction of paragraph 1(1)(e)

- 3 (1) In construing paragraph 1(1)(e) above as regards a particular year of assessment, the effect of the following provisions shall be ignored—
- (a) section 5 of the Capital Gains Tax Act 1979 (annual exemption);
 - (b) Schedule 10 to the ^{M3}Finance Act 1988 (settlor chargeable instead of trustees in certain circumstances).
- (2) In construing paragraph 1(1)(e) above as regards a particular year of assessment—
- (a) any deductions provided for by section 4(1) of the Capital Gains Tax Act 1979 shall be made in respect of disposals of any of the settled property originating from the settlor, and
 - (b) section 29(3) of that Act (losses accruing to non-residents not to be allowable losses) shall be assumed not to prevent losses accruing to trustees in one year of assessment from being allowed as a deduction from chargeable gains accruing in a later year of assessment (so far as not previously set against gains).
- (3) In a case where—
- (a) the trustees hold shares in a company which originate from the settlor, and
 - (b) under section 15 of the Capital Gains Tax Act 1979 gains or losses would be treated as accruing to the trustees in a particular year of assessment by virtue of the shares if the assumption as to residence specified in paragraph 1(3) above were made,
- the gains or losses shall be taken into account in construing paragraph 1(1)(e) above as regards that year as if they had accrued by virtue of disposals of settled property originating from the settlor.
- (4) Where, as regards a particular year of assessment, there would be an amount under paragraph 1(1)(e) above (apart from this sub-paragraph) and the trustees fall within paragraph 1(2)(b) above, the following rules shall apply—
- (a) assume that the references in paragraph 1(1)(e) and sub-paragraphs (2)(a) and (3) above to settled property originating from the settlor were to such of it as constitutes protected assets;
 - (b) assume that the reference in sub-paragraph (3)(a) above to shares originating from the settlor were to such of them as constitute protected assets;
 - (c) find the amount (if any) which would be arrived at under paragraph 1(1)(e) on those assumptions;

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- (d) if no amount is so found there shall be deemed to be no amount for the purposes of paragraph 1(1)(e);
 - (e) if an amount is found under paragraph (c) above it must be compared with the amount arrived at under paragraph 1(1)(e) apart from this sub-paragraph, and the smaller of the two shall be taken to be the amount arrived at under paragraph 1(1)(e).
- (5) Sub-paragraphs (2) to (4) above shall have effect subject to sub-paragraphs (6) and (7) below.
- (6) The following rules shall apply in construing paragraph 1(1)(e) above as regards a particular year of assessment (the year concerned) in a case where the trustees fall within paragraph 1(2)(a) above—
- (a) if the conditions mentioned in paragraph 1(1) above are not fulfilled as regards the settlement in any year of assessment falling before the year concerned, no deductions shall be made in respect of losses accruing before the year concerned;
 - (b) if the conditions mentioned in paragraph 1(1) above are fulfilled as regards the settlement in any year or years of assessment falling before the year concerned, no deductions shall be made in respect of losses accruing before that year (or the first of those years) so falling;
- but nothing in the preceding provisions of this sub-paragraph shall prevent deductions being made in respect of losses accruing in a year of assessment in which the conditions mentioned in paragraph 1(1)(a) to (d) and (f) above are fulfilled as regards the settlement.
- (7) In construing paragraph 1(1)(e) above as regards a particular year of assessment and in relation to a settlement created before 19th March 1991, no account shall be taken of disposals made before 19th March 1991 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (8) For the purposes of sub-paragraph (4) above assets are protected assets if—
- (a) they are of a description specified in the arrangements mentioned in paragraph 1(2)(b) above, and
 - (b) were the trustees to dispose of them at any 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.
- (9) For the purposes of sub-paragraph (8) above—
- (a) the assumption as to residence specified in paragraph 1(3) above shall be ignored;
 - (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
 - (c) if different assets are identified by reference to different relevant times, all of them are protected assets.

Marginal Citations

M3 1988 c. 39.

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Test whether settlor has interest

- 4 (1) For the purposes of paragraph 1(1)(d) above a settlor has an interest in a settlement if—
- (a) any relevant property which is or may at any time be comprised in the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever,
 - (b) any relevant income which arises or may arise under the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever, or
 - (c) any defined person enjoys a benefit directly or indirectly from any relevant property which is comprised in the settlement or any relevant income arising under the settlement;
- but this sub-paragraph is subject to sub-paragraphs (4) to (6) below.
- (2) For the purposes of sub-paragraph (1) above—
- (a) relevant property is property originating from the settlor;
 - (b) relevant income is income originating from the settlor.
- (3) For the purposes of sub-paragraph (1) above each of the following is a defined person—
- (a) the settlor;
 - (b) the settlor’s spouse;
 - (c) any child of the settlor or of the settlor’s spouse;
 - (d) the spouse of any such child;
 - (e) a company controlled by a person or persons falling within paragraphs (a) to (d) above;
 - (f) a company associated with a company falling within paragraph (e) above.
- (4) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of—
- (a) the bankruptcy of some person who is or may become beneficially entitled to the property,
 - (b) any assignment of or charge on the property being made or given by some such person,
 - (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 25 or some lower age of some person who would be beneficially entitled to the property on attaining that age.
- (5) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when some person is alive and under the age of 25 if during that person’s life none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of that person becoming bankrupt or assigning or charging his interest in the property concerned.
- (6) Sub-paragraphs (4) and (5) above apply for the purposes of paragraph (b) of sub-paragraph (1) above as they apply for the purposes of paragraph (a), reading “income for “property.

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- (7) In sub-paragraph (3) above “child includes a stepchild.
- (8) For the purposes of sub-paragraph (3) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act 1988; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (9) For the purposes of sub-paragraph (3) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act 1988; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) In sub-paragraphs (8) and (9) above “participator has the meaning given by section 417(1) of the Taxes Act 1988.

Exceptions to charge

- 5 Paragraph 1 above does not apply if the settlor dies in the year.
- 6
 - (1) This paragraph applies where for the purposes of paragraph 1(1)(d) above the settlor has no interest in the settlement at any time in the year except for one of the following reasons, namely, that—
 - (a) property is, or will or may become, applicable for the benefit of or payable to one of the persons falling within paragraph 4(3)(b) to (d) above,
 - (b) income is, or will or may become, applicable for the benefit of or payable to one of those persons, or
 - (c) one of those persons enjoys a benefit from property or income.
 - (2) This paragraph also applies where sub-paragraph (1) above is fulfilled by virtue of two or all of paragraphs (a) to (c) being satisfied by reference to the same person.
 - (3) Where this paragraph applies, paragraph 1 above does not apply if the person concerned dies in the year.
 - (4) In a case where—
 - (a) this paragraph applies, and
 - (b) the person concerned falls within paragraph 4(3)(b) or (d) above,paragraph 1 above does not apply if during the year the person concerned ceases to be married to the settlor or child concerned (as the case may be).
- 7
 - (1) This paragraph applies where for the purposes of paragraph 1(1)(d) above the settlor has no interest in the settlement at any time in the year except for the reason that there are two or more persons, each of whom—
 - (a) falls within paragraph 4(3)(b) to (d) above, and
 - (b) stands to gain for the reason stated in sub-paragraph (2) below.
 - (2) The reason is that—

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- (a) property is, or will or may become, applicable for his benefit or payable to him,
 - (b) income is, or will or may become, applicable for his benefit or payable to him,
 - (c) he enjoys a benefit from property or income, or
 - (d) two or all of paragraphs (a) to (c) above apply in his case.
- (3) Where this paragraph applies, paragraph 1 above does not apply if each of the persons concerned dies in the year.

Right of recovery

- 8 (1) This paragraph applies where any tax becomes chargeable on, and is paid by, a person in respect of gains treated as accruing to him in a year under paragraph 2 above.
- (2) The person shall be entitled to recover the amount of the tax from any person who is a trustee of the settlement.
- (3) For the purposes of recovering that amount, the person shall also be entitled to require an inspector to give him a certificate specifying—
- (a) the amount of the gains concerned, and
 - (b) the amount of tax paid,
- and any such certificate shall be conclusive evidence of the facts stated in it.

Meaning of “settlor”

- 9 For the purposes of this Schedule a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.

Meaning of “originating”

- 10 (1) References in this Schedule to property originating from a person are references to—
- (a) property provided by that person;
 - (b) property representing property falling within paragraph (a) above;
 - (c) so much of any property representing both property falling within paragraph (a) above and other property as, on a just apportionment, can be taken to represent property so falling.
- (2) References in this Schedule to income originating from a person are references to—
- (a) income from property originating from that person;
 - (b) income provided by that person.
- (3) Where a person who is a settlor in relation to a settlement makes reciprocal arrangements with another person for the provision of property or income, for the purposes of this paragraph—
- (a) property or income provided by the other person in pursuance of the arrangements shall be treated as provided by the settlor, but

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- (b) property or income provided by the settlor in pursuance of the arrangements shall be treated as provided by the other person (and not by the settlor).
- (4) For the purposes of this paragraph—
- (a) where property is provided by a qualifying company controlled by one person alone at the time it is provided, that person shall be taken to provide it;
 - (b) where property is provided by a qualifying company controlled by two or more persons (taking each one separately) at the time it is provided, those persons shall be taken to provide the property and each one shall be taken to provide an equal share of it;
 - (c) where property is provided by a qualifying company controlled by two or more persons (taking them together) at the time it is provided, the persons who are participators in the company at the time it is provided shall be taken to provide it and each one shall be taken to provide so much of it as is attributed to him on the basis of a just apportionment.
- (5) But where a person would be taken to provide less than one twentieth of any property by virtue of sub-paragraph (4)(c) above and apart from this sub-paragraph, he shall not be taken to provide any of it by virtue of sub-paragraph (4)(c) above.
- (6) For the purposes of sub-paragraph (4) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (7) For the purposes of this paragraph references to property representing other property include references to property representing accumulated income from that other property.
- (8) For the purposes of this paragraph property or income is provided by a person if it is provided directly or indirectly by the person.
- (9) For the purposes of this paragraph the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act 1988; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) In this paragraph “participator has the meaning given by section 417(1) of the Taxes Act 1988.
- (11) The preceding provisions of this paragraph shall apply to determine whether shares originate from the settlor for the purposes of paragraph 3(3)(a) above as they apply to determine whether property of any kind originates from a person.

Qualifying settlements, and commencement

- 11 (1) A settlement created on or after 19th March 1991 is a qualifying settlement for the purposes of this Schedule in—
- (a) the year of assessment in which it is created, and
 - (b) subsequent years of assessment.

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- (2) A settlement created before 19th March 1991, and as regards which any of the four conditions set out in sub-paragraphs (3) to (6) below becomes fulfilled, is a qualifying settlement for the purposes of this Schedule in—
- (a) the year of assessment in which any of those conditions becomes fulfilled, and
 - (b) subsequent years of assessment.
- (3) The first condition is that on or after 19th March 1991 property or income is provided directly or indirectly for the purposes of the settlement—
- (a) otherwise than under a transaction entered into at arm's length, and
 - (b) otherwise than in pursuance of a liability incurred by any person before that date;
- but if the settlement's expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored for the purposes of this condition if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement's income for the year.
- (4) The second condition is that—
- (a) the trustees become on or after 19th March 1991 neither resident nor ordinarily resident in the United Kingdom, or
 - (b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 19th March 1991 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;
- and here "double taxation relief arrangements" has the meaning given by paragraph 1(4) above.
- (5) The third condition is that on or after 19th March 1991 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.
- (6) The fourth condition is that—
- (a) on or after 19th March 1991 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and
 - (b) the person concerned is not one who (looking only at the terms of the settlement immediately before 19th March 1991) would be capable of enjoying a benefit from the settlement on or after that date.
- (7) Each of the following persons falls within this sub-paragraph—
- (a) a settlor;
 - (b) the spouse of a settlor;
 - (c) any child of a settlor or of a settlor's spouse;
 - (d) the spouse of any such child;
 - (e) a company controlled by a person or persons falling within paragraphs (a) to (d) above;
 - (f) a company associated with a company falling within paragraph (e) above.
- (8) In sub-paragraph (7) above "child" includes a stepchild.
- (9) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416

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of the Taxes Act 1988; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

- (10) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act 1988; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (11) In sub-paragraphs (9) and (10) above “participator has the meaning given by section 417(1) of the Taxes Act 1988.

Information

- 12 An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct (which must not be less than 28 days beginning with the day the notice is given) such particulars as he thinks necessary for the purposes of this Schedule and specifies in the notice.
- 13 (1) This paragraph applies if—
- (a) a settlement is created before 19th March 1991,
 - (b) on or after that date a person transfers property to the trustees otherwise than under a transaction entered into at arm’s length and otherwise than in pursuance of a liability incurred by any person before that date,
 - (c) the trustees are not resident or ordinarily resident in the United Kingdom at the time the property is transferred, and
 - (d) the transferor knows, or has reason to believe, that the trustees are not so resident or ordinarily resident.
- (2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—
- (a) identifies the settlement, and
 - (b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the later of—
- (a) the day on which the transfer is made, and
 - (b) the day on which this Act is passed.
- 14 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—
- (a) the trustees are not resident or ordinarily resident in the United Kingdom, or
 - (b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;

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and here “double taxation relief arrangements has the meaning given by paragraph 1(4) above.

- (2) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created, and
 - (b) at that time fulfils the condition mentioned in sub-paragraph (4) below,
- shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (5) below.
- (3) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created,
 - (b) at that time does not fulfil the condition mentioned in sub-paragraph (4) below, and
 - (c) fulfils that condition at a later time,
- shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (5) below.
- (4) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (5) The particulars are—
- (a) the day on which the settlement was created;
 - (b) the name and address of the person delivering the return;
 - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (6) For the purposes of sub-paragraph (2) above the relevant day is the later of—
- (a) the day on which the settlement is created, and
 - (b) the day on which this Act is passed.
- (7) For the purposes of sub-paragraph (3) above the relevant day is the later of—
- (a) the day on which the person first fulfils the condition after the settlement is created, and
 - (b) the day on which this Act is passed.
- 15 (1) This paragraph applies if—
- (a) the trustees of a settlement become at any time (the relevant time) on or after 19th March 1991 neither resident nor ordinarily resident in the United Kingdom, or
 - (b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after 19th March 1991 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;

and “double taxation relief arrangements here has the meaning given by paragraph 1(4) above.

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- (2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—
- (a) the day on which the settlement was created,
 - (b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and
 - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the later of—
- (a) the day when the relevant time falls, and
 - (b) the day on which this Act is passed.
- 16 (1) Nothing in paragraph 13, 14 or 15 above shall require information to be contained in the return concerned to the extent that—
- (a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
 - (b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.
- (2) Nothing in paragraph 13, 14 or 15 above shall require a return to be delivered if—
- (a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
 - (b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.
- 17 (1) In the Table in section 98 of the ^{M4}Taxes Management Act 1970 (penalties) at the end of the first column there shall be inserted—
- “ Paragraph 12 of Schedule 16 to the Finance Act 1991. ”
- (2) In that Table, at the end of the second column there shall be inserted—
- “ Paragraphs 13 to 16 of Schedule 16 to the Finance Act 1991. ”

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