

Status: Point in time view as at 25/07/1991.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 17. (See end of Document for details)

SCHEDULES

SCHEDULE 17

Section 90.

SETTLEMENTS: BENEFICIARIES

Introduction

- 1 In this Schedule—
- (a) references to sections are to sections of the ^{M1}Finance Act 1981 (provisions about gains of non-resident settlements);
 - (b) references to trust gains for a year shall be construed in accordance with section 80;
 - (c) “capital payment has the same meaning as in sections 80 to 82A.

Marginal Citations

M1 1981 c. 35.

Qualifying amounts

- 2 (1) This paragraph applies for the purposes of this Schedule.
- (2) If section 80 applies to a settlement for the year 1990-91 the settlement shall have a qualifying amount for the year, and the amount shall be the amount constituting the trust gains for the year less so much of them as are by virtue of section 80 treated as chargeable gains accruing in that year to beneficiaries.
- (3) If section 80 applies to a settlement for the year 1991-92 or a subsequent year of assessment the settlement shall have a qualifying amount for the year, and the amount shall be the amount computed for the settlement in respect of the year concerned under section 80(2).
- (4) Sub-paragraph (5) below applies where—
- (a) there is a period (a non-resident period) of one or more years of assessment for each of which section 80 applies to a settlement and each of which falls before the year 1990-91,
 - (b) section 80 does not apply to the settlement for the year 1990-91, and
 - (c) there are trust gains for the last year of the non-resident period which have not (or have not wholly) been treated by virtue of section 80 or section 81(2) as chargeable gains accruing to beneficiaries before the year 1990-91.
- (5) In such a case the settlement shall have a qualifying amount for the year 1990-91, and the amount shall be the amount constituting the trust gains mentioned in sub-

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paragraph (4)(c) above (or the outstanding part of them) less so much of them as are by virtue of section 81(2) treated as chargeable gains accruing in that year to beneficiaries.

Modifications etc. (not altering text)

- C1** Sch. 17 para. 2 applied (for the year 1990-91 or 1991-92) by [Taxation of Chargeable Gains Act 1992](#) (c. 12, SIF 63:2), **s. 92(2)(3)** (with ss. 60, 101(1), 201(3))

Matching capital payments

- 3 (1) This paragraph applies where—
- (a) capital payments are made by the trustees of a settlement on or after 6th April 1991, and
 - (b) the payments are made in a year or years of assessment for which section 80 applies to the settlement or in circumstances where section 81(2) treats chargeable gains as accruing in respect of the payments.
- (2) For the purposes of this Schedule the payments shall be matched with qualifying amounts of the settlement for the year 1990-91 and subsequent years of assessment (so far as the amounts are not already matched with payments by virtue of this paragraph).
- (3) In applying this paragraph—
- (a) earlier payments shall be matched with earlier amounts;
 - (b) payments shall be carried forward to be matched with future amounts (so far as not matched with past amounts);
 - (c) a payment which is less than an unmatched amount (or part) shall be matched to the extent of the payment;
 - (d) a payment which is more than an unmatched amount (or part) shall be matched, as to the excess, with other unmatched amounts.
- (4) Where part only of a capital payment is taxable, the part which is not taxable shall not fall to be matched until taxable parts of other capital payments (if any) made in the same year of assessment have been matched; and the preceding provisions of this paragraph shall have effect accordingly.
- (5) For the purposes of sub-paragraph (4) above a part of a capital payment is taxable if the part results in chargeable gains accruing under section 80 or 81(2).

Increased tax: the main rule

- 4 (1) This paragraph applies where—
- (a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,
 - (b) the payment is made in a year of assessment for which section 80 applies to the settlement or in circumstances where section 81(2) treats chargeable gains as accruing in respect of the payment,

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- (c) the whole payment is matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, and
 - (d) a beneficiary is charged to tax in respect of the payment by virtue of section 80 or 81(2).
- (2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under sub-paragraph (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.
- (3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this paragraph) carried interest for the chargeable period at the rate of 10 per cent. per annum.
- (4) The chargeable period is the period which—
 - (a) begins with the later of the two days specified in sub-paragraph (5) below, and
 - (b) ends with 30th November in the year of assessment following that in which the capital payment is made.
- (5) The two days are—
 - (a) 1st December in the year of assessment following that for which the qualifying amount mentioned in sub-paragraph (1)(c) above is the qualifying amount, and
 - (b) 1st December falling six years before 1st December in the year of assessment following that in which the capital payment is made.
- (6) The Treasury may by order substitute for the percentage specified in sub-paragraph (3) above (whether as originally enacted or as amended at any time under this sub-paragraph) such other percentage as they think fit.
- (7) An order under sub-paragraph (6) above may provide that an alteration of the percentage is to have effect for periods beginning on or after a day specified in the order in relation to interest running for chargeable periods beginning before that day (as well as interest running for chargeable periods beginning on or after that day).
- (8) An order under sub-paragraph (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

More than one qualifying amount

- 5
- (1) This paragraph applies where—
 - (a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,
 - (b) the payment is made in a year of assessment for which section 80 applies to the settlement or in circumstances where section 81(2) treats chargeable gains as accruing in respect of the payment,
 - (c) the whole payment is matched with qualifying amounts of the settlement for different years of assessment, each falling at some time before that immediately preceding the one in which the payment is made, and

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- (d) a beneficiary is charged to tax in respect of the payment by virtue of section 80 or 81(2).
- (2) For the purposes of this Schedule—
- (a) the capital payment (the main payment) shall be treated as being as many payments (subsidiary payments) as there are qualifying amounts,
 - (b) a qualifying amount shall be attributed to each subsidiary payment and each payment shall be quantified accordingly, and
 - (c) the tax in respect of the main payment shall be divided up and attributed to the subsidiary payments on the basis of a just and reasonable apportionment.
- (3) Paragraph 4 above shall apply in the case of each subsidiary payment, the qualifying amount attributed to it and the tax attributed to it.

Payment partly ignored

- 6
- (1) This paragraph applies where—
- (a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,
 - (b) the payment is made in a year of assessment for which section 80 applies to the settlement or in circumstances where section 81(2) treats chargeable gains as accruing in respect of the payment,
 - (c) part of the payment is matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, or with qualifying amounts of the settlement for different years of assessment each so falling, and
 - (d) a beneficiary is charged to tax in respect of the payment by virtue of section 80 or 81(2).
- (2) For the purposes of this Schedule—
- (a) only tax in respect of so much of the payment as is matched as mentioned in sub-paragraph (1)(c) above shall be taken into account, and references below to the tax shall be construed accordingly,
 - (b) the capital payment shall be divided into two, the first part representing so much as is matched as mentioned in sub-paragraph (1)(c) above and the second so much as is not,
 - (c) the second part shall be ignored, and
 - (d) the first part shall be treated as a capital payment, the whole of which is matched with the qualifying amount or amounts mentioned in sub-paragraph (1)(c) above, and the whole of which is charged to the tax.
- (3) Paragraph 4 above or paragraphs 4 and 5 above (as the case may be) shall apply in the case of the capital payment arrived at under sub-paragraph (2) above, the qualifying amount or amounts, and the tax.

Parts of amounts matched

- 7
- Paragraphs 4 to 6 above shall apply (with appropriate modifications) where a payment or part of a payment is to any extent matched with part of an amount.

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Transfers between settlements

- 8 (1) This paragraph applies if—
- (a) in the year 1990-91 or a subsequent year of assessment the trustees of a settlement (the transferor settlement) transfer all or part of the settled property to the trustees of another settlement (the transferee settlement), and
 - (b) looking at the state of affairs at the end of the year of assessment in which the transfer is made, there is a qualifying amount of the transferor settlement for a particular year of assessment (the year concerned) and the amount is not (or not wholly) matched with capital payments.
- (2) If the whole of the settled property is transferred, for the purposes of this Schedule—
- (a) the transferor settlement's qualifying amount for the year concerned shall be treated as reduced by so much of it as is not matched, and
 - (b) so much of that amount as is not matched shall be treated as (or as an addition to) the transferee settlement's qualifying amount for the year concerned.
- (3) If part of the settled property is transferred, for the purposes of this Schedule—
- (a) so much of the transferor settlement's qualifying amount for the year concerned as is not matched shall be apportioned on such basis as is just and reasonable, part being attributed to the transferred property and part to the property not transferred,
 - (b) the transferor settlement's qualifying amount for the year concerned shall be treated as reduced by the part attributed to the transferred property, and
 - (c) that part shall be treated as (or as an addition to) the transferee settlement's qualifying amount for the year concerned.
- (4) If the transferee settlement did not in fact exist in the year concerned, for the purposes of this Schedule it shall be treated as having been made at the beginning of that year.
- (5) If the transferee settlement did in fact exist in the year concerned, this paragraph shall apply whether or not section 80 applies to the settlement for that year or for any year of assessment falling before that year.

Matching after transfer

- 9 (1) This paragraph applies as regards the transferee settlement in a case where paragraph 8 above applies.
- (2) Matching shall be made under paragraph 3 above by reference to the state of affairs existing immediately before the beginning of the year of assessment in which the transfer is made, and the transfer shall not affect matching so made.
- (3) Subject to sub-paragraph (2) above, payments shall be matched with amounts in accordance with paragraph 3 above and by reference to amounts arrived at under paragraph 8 above.

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