

SCHEDULES

SCHEDULE 17

Section 74.

SETTLEMENTS: LIABILITY OF SETTLOR

PART I

THE NEW PROVISIONS

- 1 In Part XV of the Taxes Act 1988 (settlements) the following provisions are inserted (in place of sections 660 to 676 and 683 to 685) as Chapter IA—

“CHAPTER IA

LIABILITY OF SETTLOR

Main provisions

660A Income arising under settlement where settlor retains an interest.

- (1) Income arising under a settlement during the life of the settlor shall be treated for all purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person unless the income arises from property in which the settlor has no interest.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in property if that property or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever.
- (3) The reference in subsection (2) above to the spouse of the settlor does not include—
 - (a) a person to whom the settlor is not for the time being married but may later marry, or
 - (b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or
 - (c) the widow or widower of the settlor.
- (4) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as none of that property, and no derived property, can become payable or applicable as mentioned in that subsection except in the event of—
 - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or

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- (b) an assignment of or charge on the property or any derived property 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 of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (5) A settlor shall not be regarded as having an interest in property by virtue of subsection (2) above if and so long as some person is alive and under the age of 25 during whose life that property, or any derived property, cannot become payable or applicable as mentioned in that subsection except in the event of that person becoming bankrupt or assigning or charging his interest in the property or any derived property.
- (6) The reference in subsection (1) above to a settlement does not include an outright gift by one spouse to the other of property from which income arises, unless—
- (a) the gift does not carry a right to the whole of that income, or
 - (b) the property given is wholly or substantially a right to income.
- For this purpose a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.
- (7) The reference in subsection (1) above to a settlement does not include an irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).
- (8) Subsection (1) above does not apply to income arising under a settlement made by one party to a marriage by way of provision for the other—
- (a) after the dissolution or annulment of the marriage, or
 - (b) 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.
- (9) Subsection (1) above does not apply to income consisting of—
- (a) annual payments made by an individual for bona fide commercial reasons in connection with his trade, profession or vocation; or
 - (b) covenanted payments to charity (as defined by section 347A(7)).
- (10) In this section “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.

660B Payments to unmarried minor children of settlor.

- (1) Income arising under a settlement which does not fall to be treated as income of the settlor under section 660A but which during the life of the settlor is paid to or for the benefit of an unmarried minor child of the settlor in any

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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.

- (2) Where income arising under a settlement is retained or accumulated by the trustees, any payment whatsoever made thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of an unmarried minor child of the settlor shall be deemed for the purposes of subsection (1) above to be a payment of income if or to the extent that there is available retained or accumulated income.
- (3) There shall be taken to be available retained or accumulated income at any time when the aggregate amount of the income which has arisen under the settlement since it was made or entered into exceeds the aggregate amount of income so arising which has been—
 - (a) treated as income of the settlor or a beneficiary, or
 - (b) paid (whether as income or capital) to or for the benefit of a beneficiary other than an unmarried minor child of the settlor, or
 - (c) applied in defraying expenses of the trustees which were properly chargeable to income (or would have been so chargeable but for any express provisions of the trust).
- (4) Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a trustee holding them for a person who would be absolutely entitled as against the trustee but for being a minor, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this section be deemed to be paid to that person.
- (5) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for a year of assessment in which the aggregate amount paid to or for the benefit of that child which but for this subsection would be so treated does not exceed £100.
- (6) In this section—
 - (a) “child” includes a stepchild and an illegitimate child;
 - (b) “minor” means a person under the age of 18 years, and “minor child” shall be construed accordingly; and
 - (c) references to payments include payments in money or money’s worth.

660C Nature of charge on settlor.

- (1) Tax chargeable by virtue 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 this Chapter the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of this Chapter had been received by him.
- (3) Subject to section 833(3), income which is treated by virtue of this Chapter as income of a settlor shall be deemed for the purposes of this section to be the highest part of his income.

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660D Adjustments between settlor and trustees, &c.

- (1) Where by virtue of this Chapter income tax becomes chargeable on and is paid by a settlor, he is entitled—
 - (a) to recover from any trustee, or any 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 an officer of the Board 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.

A certificate so furnished is conclusive evidence of the facts stated therein.

- (2) Where a person obtains, in respect of an allowance or relief, a repayment of income tax in excess of the amount of the repayment to which he would, but for 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 a payment or as to an apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision shall be final.

- (3) Nothing in this Chapter shall be construed as excluding a charge to tax on the trustees as persons by whom any income is received.

Supplementary provisions

660E Application to settlements by two or more settlors.

- (1) In the case of a settlement where there is more than one settlor, this Chapter shall have effect in relation to each settlor as if he were the only settlor, as follows.
- (2) In this Chapter, in relation to a settlor—
 - (a) references to the property comprised in a settlement include only property originating from that settlor, and
 - (b) references to income arising under the settlement include only income originating from that settlor.
- (3) For the purposes of section 660B there shall be taken into account, in relation to a settlor, as income paid to or for the benefit of a child of the settlor only—
 - (a) income originating from that settlor, and
 - (b) in a case in which section 660B(2) applies, payments which are under that provision (as adapted by subsection (4) below) to be deemed to be payments of income.
- (4) In applying section 660B(2) to a settlor—
 - (a) the reference to income arising under the settlement includes only income originating from that settlor; and

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- (b) the reference to any payment made by virtue or in consequence of the settlement or any enactment relating thereto includes only a payment made out of property originating from that settlor or income originating from 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 so provided and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
 - (b) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) above—
- (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.

660F Power to obtain information.

An officer of the Board may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

660G Meaning of “settlement” and related expressions.

- (1) In this Chapter—
- “settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets, and
 - “settlor”, in relation to a settlement, means any person by whom the settlement was made.
- (2) 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.

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- (3) References in this Chapter to income arising under a settlement include, subject to subsection (4) below, 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.
- (4) Where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in a year of assessment, references in this Chapter to income arising under a settlement do 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.

But where such income is remitted to the United Kingdom in circumstances such that, if the settlor were actually entitled to that income when remitted, he would be chargeable to income tax by reason of his residence in the United Kingdom, it shall be treated for the purposes of this Chapter as arising under the settlement in the year in which it is remitted.”

PART II

MINOR AND CONSEQUENTIAL AMENDMENTS OF THE TAXES ACT 1988

- 2 In section 125(3)(a) of the Taxes Act 1988, for the words from “subsection (1)(a)” to the end substitute “section 660A(8) or (9)(a)”.
- 3 In section 339(1)(a) of the Taxes Act 1988, for “section 660(3)” substitute “section 347A(7)”.
- 4 (1) Section 347A of the Taxes Act 1988 (annual payments not a charge on the income of the payer) applies to a payment which is treated by virtue of Chapter IA of Part XV of the Taxes Act 1988 as income of the payer notwithstanding that it is made in pursuance of an obligation which is an existing obligation within the meaning of section 36(3) of the Finance Act 1988.
- (2) In section 347A of the Taxes Act 1988, after subsection (6) add—
- “(7) In subsection (2)(b) above “a covenanted payment to charity” means a payment made under a covenant made otherwise than for consideration in money or money’s worth in favour of a body of persons or trust established for charitable purposes only whereby the like annual payments (of which the payment in question is one) become payable for a period which may exceed three years and is not capable of earlier termination under any power exercisable without the consent of the persons for the time being entitled to the payments.
- (8) For the purposes of subsection (7) above the bodies mentioned in section 507 shall each be treated as a body of persons established for charitable purposes only.”
- 5 In section 360A(2)(b) of the Taxes Act 1988, for “section 681(4)” substitute “Chapter IA of Part XV (see section 660G(1) and (2))”.

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- 6 In section 417(3)(b) of the Taxes Act 1988, for “section 681(4)” substitute “Chapter IA of Part XV (see section 660G(1) and (2))”.
- 7 In section 505(6) of the Taxes Act 1988, for “section 660(3)” substitute “section 347A(7)”.
- 8 Before section 677 of the Taxes Act 1988 insert the heading—
“Chapter IB

Provisions as to capital sums paid to settlor”.

- 9 (1) Section 677 of the Taxes Act 1988 is amended as follows.
- (2) In subsection (2)(b) after “the amount of” insert “that income taken into account under that subsection in relation to”.
- (3) After subsection (2)(f) insert—
“(fa) any income arising under the settlement in that year or any previous year which has been treated as income of the settlor by virtue of section 660A or 660B; and”.
- (4) In subsection (9) after “one of the events specified in section 673(3)” insert “or, in the case of a sum paid on or after 6th April 1995, in one of the events specified in section 660A(4) or on the death under the age of 25 of any such person as is mentioned in section 660A(5)”.
- 10 In section 678 of the Taxes Act 1988, omit subsection (7).
- 11 After section 682 of the Taxes Act 1988 insert—

“682A Supplementary provisions.

- (1) The provisions of sections 660E to 660G apply for the purposes of this Chapter as they apply for the purposes of Chapter IA.
- (2) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—
(a) it is 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 the settlement; or
(b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.”
- 12 For the heading before section 686 of the Taxes Act 1988 substitute—
“Chapter IC

Liability of trustees”.

- 13 In section 686 of the Taxes Act 1988 (liability to income tax at rate applicable to trusts), in subsection (2) (income to which the section applies) for paragraph (b) substitute—
“(b) is not, before being distributed, either—
(i) the income of any person other than the trustees, or
(ii) treated for any of the purposes of the Income Tax Acts as the income of a settlor; and”.

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- 14 (1) Section 687 of the Taxes Act 1988 (payments under discretionary trusts) is amended as follows.
- (2) For subsection (1) (cases in which the section applies) substitute—
- “(1) Where in any year of assessment trustees make a payment to any person in the exercise of a discretion, whether a discretion exercisable by them or by any other person, then if the payment—
- (a) is for all the purposes of the Income Tax Acts income of the person to whom it is made (but would not be his income if it were not made to him), or
- (b) is treated for those purposes as the income of the settlor by virtue of section 660B,
- the following provisions of this section apply with respect to the payment in lieu of section 348 or 349(1).”.
- (3) In subsection (2)(a) (person credited with having paid tax) after “to whom the payment is made” insert “or, as the case may be, the settlor”.
- (4) After subsection (4) add—
- “(5) References in this section to payments include payments in money or money’s worth.”.
- 15 Omit section 689 of the Taxes Act 1988 (recovery from trustees of discretionary trusts of higher rate tax due from beneficiaries).
- 16 In section 694(3) of the Taxes Act 1988, for “Chapters I to IV” substitute “Chapter IA”.
- 17 (1) Section 720 of the Taxes Act 1988 is amended as follows.
- (2) In subsection (6)—
- (a) for “Chapters II to IV” substitute “Chapters IA, IB and IC”; and
- (b) for the words from “(within Chapter II)” to the end substitute “arising under the settlement”.
- (3) In subsection (7) for “Chapters II to IV” substitute “Chapters IA, IB and IC”.
- (4) In subsection (8)(a) for “Chapter II, III or IV of Part XV (as the case may be)” substitute “Chapter IA of Part XV (see section 660G(1) and (2))”.
- 18 In section 745(6) of the Taxes Act 1988, for “section 681(4)” substitute “section 660G(1) and (2)”.
- 19 In section 783(10)(b) of the Taxes Act 1988, for “section 670(2)” substitute “section 660G(1) and (2)”.
- 20 In section 839(3) of the Taxes Act 1988, for subsection (3) substitute—
- “(3) A person, in his capacity as trustee of a settlement, is connected with—
- (a) any individual who in relation to the settlement is a settlor,
- (b) any person who is connected with such an individual, and
- (c) any body corporate which is connected with that settlement.
- In this subsection “settlement” and “settlor” have the same meaning as in Chapter IA of Part XV (see section 660G(1) and (2)).

- (3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—
- (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or
 - (b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.”.

PART III

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Taxes Management Act 1970 (c. 9)

- 21 In section 27(2) of the Taxes Management Act 1970, for “section 681(4)” substitute “section 660G(1) and (2)”.
- 22 In section 31(3) of the Taxes Management Act 1970 (including that provision as proposed to be substituted by paragraph 7 of Schedule 19 to the Finance Act 1994), for “sections 660 to 685” substitute “sections 660A to 660G or 677 to 682A”.
- 23 In column 1 of the Table in section 98 of the Taxes Management Act 1970, for the references to section 669 and 680 of the Taxes Act 1988 substitute “section 660F”.

Finance Act 1989 (c. 26)

- 24 In section 59(1)(c) of the Finance Act 1989, for “section 660(3)” substitute “section 347A(7)”.
- 25 In section 60 of the Finance Act 1989, omit subsection (3) and in subsection (4) for “subsections (2) and (3)” substitute “subsection (2)”.

Finance Act 1990 (c. 29)

- 26 In section 25(12)(b) of the Finance Act 1990, for “section 660(3)” substitute “section 347A(7)”.

Taxation of Chargeable Gains Act 1992 (c. 12)

- 27 For section 77 of the Taxation of Chargeable Gains Act 1992 (charge on settlor with interest in settlement), substitute—

“77 Charge on settlor with interest in settlement.

- (1) Where in a year of assessment—
- (a) chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,
 - (b) after making any deduction provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees would, disregarding section 3, be chargeable to tax for the year in respect of those gains, and

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- (c) at any time during the year the settlor has an interest in the settlement,
the trustees shall not be chargeable to tax in respect of those but instead chargeable gains of an amount equal to that referred to in paragraph (b) shall be treated as accruing to the settlor in that year.
- (2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in a settlement if—
- (a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever, or
 - (b) the settlor or his spouse enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.
- (3) The references in subsection (2)(a) and (b) above to the spouse of the settlor do not include—
- (a) a person to whom the settlor is not for the time being married but may later marry, or
 - (b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or
 - (c) the widow or widower of the settlor.
- (4) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
- (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or
 - (b) an assignment of or charge on the property or any derived property 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 of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (5) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as some person is alive and under the age of 25 during whose life the property or any derived property cannot become payable or applicable as mentioned in that provision except in the event of that person becoming bankrupt or assigning or charging his interest in that property.
- (6) This section does not apply—
- (a) where the settlor dies during the year; or
 - (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—

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(i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or
(ii) the fact that a benefit is enjoyed by his spouse,
where the spouse dies, or the settlor and the spouse cease to be married, during the year.

(7) This section does not apply unless the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year.

(8) In this section “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.”

28 In section 78 of the Taxation of Chargeable Gains Act 1992, in subsections (1), (2) and (3), for “section 77(2)” substitute “section 77”.

29 (1) Section 79 of the Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In subsection (2) omit paragraph (b) and the word “and” preceding it.

(3) Omit subsection (4).

(4) In subsection (5)—

(a) for “subsections (3) and (4)” substitute “subsection (3)”; and

(b) in paragraph (a), omit the words “or income” wherever occurring.

30 In section 97 of the Taxation of Chargeable Gains Act 1992, in subsection (7) for “section 681(4)” substitute “section 660G(1) and (2)”.

31 In section 286 of the Taxation of Chargeable Gains Act 1992, for subsection (3) substitute—

“(3) A person, in his capacity as trustee of a settlement, is connected with—

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such an individual, and

(c) any body corporate which is connected with that settlement.

In this subsection “settlement” and “settlor” have the same meaning as in Chapter IA of Part XV of the Taxes Act (see section 660G(1) and (2) of that Act).

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or

(b) it is controlled (within the meaning of section 840 of the Taxes Act) by a company falling within paragraph (a) above.”.

32 In Schedule 1 to the Taxation of Chargeable Gains Act 1992, in paragraph 2(7), for “section 681(4)” substitute “section 660G(1) and (2)”.