

SCHEDULES

SCHEDULE 22

Section 131.

TRANSITIONAL PROVISION AND CONSEQUENTIAL AMENDMENTS FOR SECTION 131

Introductory

1 The ^{M1}Taxation of Chargeable Gains Act 1992 shall be amended as follows.

Marginal Citations

M1 1992 c. 12.

Transitional for settlements created before 17th March 1998

- 2 (1) In the words at the end of sub-paragraph (1) of paragraph 2 of Schedule 5 (which specifies the provisions to which that sub-paragraph is subject), after “(4) to (6)” there shall be inserted “ and paragraph 2A ”.
- (2) After that paragraph there shall be inserted the following paragraph—

“ Settlements created before 17th March 1998

- 2A (1) In determining for the purposes of section 86(1)(d) whether the settlor has an interest at any time during any year of assessment in a settlement created before 17th March 1998, paragraphs (da) and (db) of paragraph 2(3) above, and the reference to those paragraphs in paragraph 2(3)(e), shall be disregarded unless—
- (a) that year is a year in which one of the four conditions set out in the following provisions of this paragraph becomes fulfilled as regards the settlement; or
 - (b) one of those conditions became fulfilled as regards that settlement in any previous year of assessment ending on or after 5th April 1998.
- (2) The first condition is (subject to sub-paragraph (3) below) that on or after 17th March 1998 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.
- (3) For the purposes of the first condition, where 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 if the value of the property or income so provided

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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 17th March 1998 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 17th March 1998 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (5) The third condition is that on or after 17th March 1998 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 17th March 1998 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 17th March 1998) 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) any grandchild of the settlor or of the settlor's spouse;
 - (b) the spouse of any such grandchild;
 - (c) a company controlled by a person or persons falling within paragraph (a) or (b) above;
 - (d) a company controlled by any such person or persons together with any person or persons (not so falling) each of whom is for the purposes of paragraph 2(1) above a defined person in relation to the settlement;
 - (e) a company associated with a company falling within paragraph (c) or (d) above.
- (8) 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 of the Taxes Act; 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 (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; 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 this paragraph—
'child' includes a step-child;

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1998, SCHEDULE 22. (See end of Document for details)

'grandchild' means a child of a child;
'participator' has the meaning given by section 417(1) of the Taxes Act."

- (3) In construing section 86(1)(e) as regards any year of assessment and in relation to a settlement which—
- (a) was created before 17th March 1998, and
 - (b) is a settlement in which the settlor has an interest during that year by virtue only of the fulfilment for the purposes of the paragraph inserted by sub-paragraph (2) above of one of the conditions set out in that paragraph,
- no account shall be taken of disposals made before the relevant day (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (4) In sub-paragraph (3) above "the relevant day" means—
- (a) for the year 1997-98, 17th March 1998; and
 - (b) for any other year of assessment, the 6th April which is the first day of that year.

Consequential amendments of paragraphs 4 and 5 of Schedule 5 to the 1992 Act

- 3
- (1) In paragraphs 4(1)(a) and 5(1)(a) of Schedule 5 (disapplication of section 86 in certain cases where beneficiaries die), for "(d)" there shall be substituted "(db)".
- (2) In paragraph 4(4) of that Schedule (disapplication of section 86 in certain cases where a beneficiary ceases to be married)—
- (a) in paragraph (b), for "or (d)" there shall be substituted ", (d) or (db)"; and
 - (b) for "or child" there shall be substituted ", child or grandchild".

Consequential amendment of paragraph 9 of Schedule 5 to the 1992 Act

- 4
- (1) In sub-paragraph (7) of paragraph 9 of Schedule 5 (persons listed for the purpose of the conditions the fulfilment of which makes a pre-19th March 1991 settlement a qualifying settlement)—
- (a) after paragraph (d) there shall be inserted the following paragraphs—
 - "(da) any grandchild of a settlor or of a settlor's spouse;
 - (db) the spouse of any such grandchild;" and
 - (b) in paragraph (e), for "(d)" there shall be substituted "(db)".
- (2) For sub-paragraph (11) of that paragraph there shall be substituted the following sub-paragraph—
- "(11) In this paragraph—
- 'child' includes a step-child;
 - 'grandchild' means a child of a child;
 - 'participator' has the meaning given by section 417(1) of the Taxes Act."

(3) Sub-paragraph (1) above shall be disregarded for the purpose of determining whether either of the conditions set out in sub-paragraphs (5) and (6) of that paragraph became fulfilled at any time before 17th March 1998.

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Consequential amendment of Schedule 5A

- 5 (1) In paragraph 2(1) of Schedule 5A (returns in relation to dealings involving settlements created before 19th March 1991), in paragraph (a) for “19th March 1991” there shall be substituted “ 17th March 1998 ”.
- (2) This paragraph has effect in relation to transfers on or after 17th March 1998.

Changes to legislation:

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