

SCHEDULES

SCHEDULE 11

Section 51

CHARGEABLE GAINS: DEDUCTION OF PERSONAL LOSSES FROM GAINS TREATED AS ACCRUING TO SETTLORS

Introduction

- 1 The Taxation of Chargeable Gains Act 1992 (c. 12) is amended in accordance with paragraphs 2 to 6.

Section 2

- 2 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.
- (2) In subsection (5) (computation of tax in cases where gains treated as accruing to settlor etc in respect of trust gains), for the word “and” at the end of paragraph (a) substitute—
- “(aa) every amount which is treated by virtue of sections 77 and 86 as an amount of chargeable gains accruing to the person in question for that year, reduced as follows—
- (i) first, by making the deductions for which subsection (2) provides in respect of any allowable losses accruing to that person;
 - (ii) then, where taper relief would be deductible by the trustees of the settlement in question but for section 77(1)(b)(i) or 86(1)(e)(ii), by applying reductions in respect of taper relief under section 2A at the rates that would be applicable in the case of the trustees;
- and”.
- (3) In paragraph (b) of that subsection, omit “77, 86,”.
- (4) After that subsection insert—
- “(6) Allowable losses must (notwithstanding section 2A(6)) be deducted under paragraph (a)(i) of subsection (5) above before any may be deducted under paragraph (aa)(i) of that subsection.
- (7) Where in any year of assessment—
- (a) there are amounts treated as accruing to a person by virtue of section 77 or 86,
 - (b) two or more of those amounts, or elements of them—
 - (i) relate to different settlements, and
 - (ii) attract taper relief (by virtue of subsection (5)(aa)(ii) above) at the same rate, or are not eligible for taper relief, and

- (c) losses are deductible from the amounts or elements mentioned in paragraph (b) above (“the equal-tapered amounts”) but are not enough to exhaust them all,

the deduction applicable to each of the equal-tapered amounts shall be the appropriate proportion of the aggregate of those losses.

The “appropriate proportion” is that given by dividing the equal-tapered amount in question by the total of the equal-tapered amounts.

- (8) The references to section 86 in subsection (5)(aa) above (in the opening words) and subsection (7)(a) above include references to that section read with section 10A.”.

Section 77

- 3 In section 77 (charge on settlor with interest in settlement), in subsection (1)(b) (amount by reference to which settlor is charged), for the words from “would” to the end substitute—

“would be chargeable to tax for the year in respect of those gains if—

- (i) the gains were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied), and
- (ii) section 3 were disregarded,

and”.

Section 86

- 4 In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), in subsection (1)(e) (amount by reference to which settlor is charged), for the words from “if” to the end substitute “if—

- (i) the assumption as to residence specified in subsection (3) below were made, and
- (ii) any chargeable gains on the disposals were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied);”.

Section 86A

- 5 (1) Section 86A (attribution of gains to settlor in section 10A cases) is amended as follows.

- (2) In subsection (2) (reduction in amounts attributed to settlor in accordance with section 10A by reference to chargeable amounts paid to beneficiaries during his period of non-residence)—

- (a) in paragraph (a), for “the amount falling within section 86(1)(e)” substitute “the tapered section 86(1)(e) amount”;
- (b) in paragraph (b), for “the amounts falling within section 86(1)(e)” substitute “the tapered section 86(1)(e) amounts”.

- (3) After that subsection insert—

“(2A) In subsection (2) above “tapered section 86(1)(e) amount” means an amount falling within section 86(1)(e) as it would apply with the omission of sub-paragraph (ii).

(2B) Where subsection (2) above has effect to reduce an amount that is treated by virtue of section 86 as accruing to the settlor for a year of assessment—

- (a) the reduced amount shall be treated as falling within paragraph (b) of section 2(5) and not paragraph (aa);
- (b) section 86(1)(e) shall have effect in relation to that amount with the omission of sub-paragraph (ii).”.

(4) In subsection (7) (reduction in gains available for attribution to beneficiaries by amounts attributed to settlor in accordance with section 10A), for the words from “the amount or” to “so attributed” substitute “the tapered section 10A amount”.

(5) After that subsection insert—

“(7A) In subsection (7) above “the tapered section 10A amount” means the amount, or aggregate of the amounts, falling to be attributed as mentioned in that subsection, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).

Where section 86A(2) has effect to reduce that amount or aggregate, the words from “minus” to “section 86(1)(e)(ii)” above do not apply.”.

Section 87

6 (1) Section 87 of that Act (attribution of gains to beneficiaries) is amended as follows.

(2) In subsection (3) (reduction in gains available for attribution to beneficiaries by amounts attributed to settlor under section 86), for the words from “reduced by the amount” to the end substitute “reduced by the tapered section 86(4) amount”.

(3) After that subsection insert—

“(3A) In subsection (3) above “the tapered section 86(4) amount” means the amount, or aggregate of the amounts, treated as accruing as mentioned in subsection (3)(a) above, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).”.

Commencement

7 This Schedule applies in relation to chargeable gains treated as accruing to a person by virtue of section 77 or 86 (read, where appropriate, with section 10A) of the Taxation of Chargeable Gains Act 1992 (c. 12) in the year 2003-04 and subsequent years of assessment.

Election for Schedule to apply for years earlier than 2003-04

8 (1) This Schedule also applies, if the person so elects, in relation to chargeable gains so accruing to a person in any of the years of assessment 2000-01, 2001-02 and 2002-03.

(2) An election under this paragraph—

- (a) must be made by a notice given to an officer of the Board no later than 31st January 2005;
 - (b) where chargeable gains are treated as accruing in respect of two or more settlements, may be restricted to those treated as accruing in respect of the settlement or settlements specified in the election.
- (3) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this paragraph.
- (4) Where—
- (a) a person makes an election under this paragraph for any one or more of the years of assessment 2000-01, 2001-02 and 2002-03, and
 - (b) the effect of the election, or (as the case may be) both or all of them taken together, is to increase the total amount of tax that the person is entitled to recover from the trustees of a particular settlement for those three years under section 78(1)(a) of the Taxation of Chargeable Gains Act 1992 or paragraph 6 of Schedule 5 to that Act,
- the trustees of that settlement must join in the election, or (as the case may be) each of them that has that effect or contributes to it.