

## SCHEDULES

### SCHEDULE 16

Section 105

#### STAMP DUTY LAND TAX: TRUSTS AND POWERS

##### *Meaning of “settlement” and “bare trust”*

- 1 (1) In this Part “settlement” means a trust that is not a bare trust.
- (2) In this Part a “bare trust” means a trust under which property is held by a person as trustee—
  - (a) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability, or
  - (b) for two or more persons who are or would be jointly so entitled,and includes a case in which a person holds property as nominee for another.
- (3) In sub-paragraph (2)(a) and (b) the references to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee, to resort to the property for payment of duty, taxes, costs or other outgoings or to direct how the property is to be dealt with.
- (4) In sub-paragraph (2) “minor”, in relation to Scotland, means a person under legal disability by reason of nonage.

##### *Interests of beneficiaries under certain trusts*

- 2 Where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property—
  - (a) that beneficiary shall be treated for the purposes of this Part as having such an interest notwithstanding that no such interest is recognised by the law of Scotland or, as the case may be, the country or territory outside the United Kingdom, and
  - (b) an acquisition of the interest of a beneficiary under the trust shall accordingly be treated as involving the acquisition of an interest in the trust property.

##### *Acquisition etc by bare trustee attributed to beneficial owner*

- 3 Where a person acquires a chargeable interest as bare trustee, this Part applies as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee.

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*Status: This is the original version (as it was originally enacted).*

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*Acquisition by trustees of settlement*

- 4 Where persons acquire a chargeable interest as trustees of a settlement, they are treated for the purposes of this Part, as it applies in relation to that acquisition, as purchasers of the whole of the interest acquired (including the beneficial interest).

*Responsibility of trustees of settlement*

- 5 (1) Where the trustees of a settlement are liable—
- (a) to make a payment of tax or interest on unpaid tax,
  - (b) to make a payment in accordance with an assessment under paragraph 29 of Schedule 10 (recovery of excessive repayment), or
  - (c) to a penalty under this Part or to interest on such a penalty,
- the payment, penalty or interest may be recovered (but only once) from any one or more of the responsible trustees.
- (2) No amount may be recovered by virtue of sub-paragraph (1)(c) from a person who did not become a responsible trustee until after the relevant time.
- (3) The responsible trustees, in relation to a land transaction, are the persons who are trustees at the effective date of the transaction and any person who subsequently becomes a trustee.
- (4) The relevant time for this purpose is—
- (a) in relation to so much of a penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day;
  - (b) in relation to any other penalty, or interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable.

*Relevant trustees for purposes of return etc*

- 6 (1) A return or self-certificate in relation to a land transaction may be made or given by any one or more of the trustees who are the responsible trustees in relation to the transaction.
- The trustees by whom such a return or self-certificate is made are referred to below as “the relevant trustees”.
- (2) The declaration required by paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is complete and correct) must be made by all the relevant trustees.
- (3) If the Inland Revenue give notice of an enquiry into the return or self-certificate—
- (a) the notice must be given to each of the relevant trustees,
  - (b) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the relevant trustees,
  - (c) any of the relevant trustees may apply for a direction that a closure notice be given (and all of them are entitled to appear and be heard on the application), and
  - (d) the closure notice must be given to each of the relevant trustees.

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Provided that a notice is not invalidated by virtue of paragraph (a) or (d) if it is given to each of the relevant trustees whose identity is known to the Inland Revenue.

- (4) A Revenue determination or discovery assessment relating to the transaction must be made against all of the relevant trustees and is not effective against any of them unless notice of it is given to each of them whose identity is known to the Inland Revenue.
- (5) In the case of an appeal arising from proceedings under this Part relating to the transaction—
- (a) the appeal may be brought by any of the relevant trustees,
  - (b) notice of the appeal must be given to any of them by whom it is not brought,
  - (c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
  - (d) if it is not settled, any of them are entitled to appear and be heard, and
  - (e) the decision on the appeal binds all of them.

*Consideration for exercise of power of appointment or discretion*

- 7 Where a chargeable interest is acquired by virtue of—
- (a) the exercise of a power of appointment, or
  - (b) the exercise of a discretion vested in trustees of a settlement,
- there shall be treated as consideration for the acquisition of the interest or right by virtue of the exercise of the power or discretion any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion.