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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2017, SCHEDULE 9. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 9

Section 31

#### SETTLEMENTS AND TRANSFER OF ASSETS ABROAD: VALUE OF BENEFITS

##### *Capital gains tax: settlements: value of benefit conferred by certain capital payments*

- 1 (1) In section 97(4) of TCGA 1992 (supplementary provisions in relation to settlements), at the end insert “ (see sections 97A to 97C for the value of benefits conferred by a capital payment made by way of loan or by way of making movable property or land available) ”.
- (2) After section 97 of TCGA 1992 insert—

##### **“97A Value of benefit conferred by capital payment made by way of loan**

- (1) For the purposes of section 97(4), the value of the benefit conferred on a person (P) by a capital payment made by way of loan to P is, for each tax year in which the loan is outstanding, the amount (if any) by which—
- (a) the amount of interest that would have been payable in that year on the loan if interest had been payable on the loan at the official rate, exceeds
  - (b) the amount of interest (if any) actually paid by P in that year on the loan.
- (2) In this section and section 97B the “official rate”, in relation to interest, means the rate applicable from time to time under section 178 of the Finance Act 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003.

##### **97B Value of benefit conferred by capital payment made by way of making movable property available**

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making movable property available, without any transfer of the property in it, to a person (P) is, for each tax year in which the benefit is conferred on P—

$$\left( \frac{CC \times R \times D}{Y} \right) - T$$

where—

CC is the capital cost of the movable property on the date when the property is first made available to P in the tax year,

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D is the number of days in the tax year on which the property is made available to P (the relevant period),

R is the official rate of interest for the relevant period (but see subsection (3)),

T is the total of the amounts (if any) paid in the tax year by P—

- (a) to the person conferring the benefit, in respect of the availability of the movable property, or
- (b) so far as not within paragraph (a), in respect of the repair, insurance, maintenance or storage of the movable property, and

Y is the number of days in the tax year.

- (2) In subsection (1), in the meaning of CC, the “capital cost” of movable property means an amount equal to the total of—
  - (a) the amount which is the greater of—
    - (i) the amount or value of the consideration given for the acquisition of the movable property by, or on behalf of, the person (A) conferring the benefit, and
    - (ii) its market value at the time of that acquisition, and
  - (b) the amount of any expenditure wholly and exclusively incurred by, or on behalf of, A for the purpose of enhancing the value of the movable property.
- (3) If the official rate of interest changes during the relevant period, then in subsection (1) R is the average official rate of interest for the period calculated as follows.
  - Step 1* Multiply each official rate of interest in force during the relevant period by the number of days when it is in force.
  - Step 2* Add together the products found in Step 1.
  - Step 3* Divide the total found in Step 2 by the number of days in the relevant period.
- (4) In subsections (1) and (2), “movable property” means any tangible movable property other than money.

### **97C Value of benefit conferred by capital payment made by way of making land available**

- (1) For the purposes of section 97(4), the value of the benefit conferred by a capital payment consisting of making land available for the use of a person (P) is, for each tax year in which the benefit is conferred on P, the amount by which—
  - (a) the rental value of the land for the period of the tax year during which the land is made available to P, exceeds
  - (b) the total of the amounts (if any) paid in the tax year by P—
    - (i) to the person conferring the benefit, in respect of the availability of the land, or
    - (ii) so far as not within sub-paragraph (i), in respect of costs of repair, insurance or maintenance relating to the land.

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- (2) Subsection (1) does not apply in the case where the person conferring the benefit transfers the whole of the person's interest in the land to P.
- (3) In subsection (1) “the rental value” of the land for a period means the rent which would have been payable for the period if the land had been let to P at an annual rent equal to the annual value.
- (4) For the purposes of subsection (3) “the annual value” of land is the rent that might reasonably be expected to be obtained on a letting from year to year if—
  - (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (5) For the purposes of subsection (4) that rent—
  - (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the costs to the landlord of providing any relevant services.
- (6) In subsection (5) “relevant service” means a service other than the repair, insurance or maintenance of the property.”

*Income tax: transfer of assets abroad: value of certain benefits*

2 After section 742A of ITA 2007 insert—

*“Value of certain benefits*

#### **742B Value of certain benefits**

Sections 742C to 742E apply where it is necessary, for the purpose of calculating a charge to income tax under the preceding provisions of this Chapter, to determine the value of a benefit provided to a person by way of—

- (a) a payment by way of loan (see section 742C),
- (b) making available movable property without any transfer of the property in it (see section 742D), or
- (c) making available land for use without transferring the whole interest in it (see section 742E).

#### **742C Value of benefit provided by a payment by way of loan**

- (1) The value of the benefit provided to a person (P) by a payment by way of loan to P is, for each tax year in which the loan is outstanding, the amount (if any) by which—
  - (a) the amount of interest that would have been payable in that year on the loan if interest had been payable on the loan at the official rate, exceeds

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- (b) the amount of interest (if any) actually paid by P in that year on the loan.
- (2) In this section and section 742D the “official rate”, in relation to interest, means the rate applicable from time to time under section 178 of the Finance Act 1989 for the purposes of Chapter 7 of Part 3 of ITEPA 2003.

**742D Value of benefit provided by making movable property available**

- (1) The value of the benefit provided by making movable property available, without any transfer of the property in it, to a person (P) is, for each tax year in which the benefit is provided to P—

$$\left( \frac{CC \times R \times D}{Y} \right) - T$$

where—

CC is the capital cost of the movable property on the date when the property is first made available to P in the tax year,

D is the number of days in the tax year on which the property is made available to P (the relevant period),

R is the official rate of interest for the relevant period (but see subsection (3)),

T is the total of the amounts (if any) paid in the tax year by P—

- (a) to the person providing the benefit, in respect of the availability of the movable property, or
- (b) so far as not within paragraph (a), in respect of the repair, insurance, maintenance or storage of the movable property, and

Y is the number of days in the tax year.

- (2) In subsection (1), in the meaning of CC, the “capital cost” of the movable property means an amount equal to the total of—
- (a) the amount which is the greater of—
- (i) the amount or value of the consideration given for the acquisition of the movable property by, or on behalf of, the person (A) providing the benefit, and
- (ii) its market value at the time of that acquisition, and
- (b) the amount of any expenditure wholly and exclusively incurred by, or on behalf of, A for the purpose of enhancing the value of the movable property.
- (3) If the official rate of interest changes during the relevant period, then in subsection (1) R is the average official rate of interest for the period calculated as follows.

*Step 1* Multiply each official rate of interest in force during the relevant period by the number of days when it is in force.

*Step 2* Add together the products found in Step 1.

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*Step 3* Divide the total found in Step 2 by the number of days in the relevant period.

- (4) In subsections (1) and (2), “movable property” means any tangible movable property other than money.

#### **742E Value of benefit provided by making land available**

- (1) The value of the benefit provided by making land available for the use of a person (P) is, for each tax year in which the benefit is provided to P, the amount by which—
- (a) the rental value of the land for the period of the tax year during which the land is made available to P, exceeds
  - (b) the total of the amounts (if any) paid in the tax year by P—
    - (i) to the person providing the benefit, in respect of the availability of the land, or
    - (ii) so far as not within sub-paragraph (i), in respect of costs of repair, insurance or maintenance relating to the land.
- (2) Subsection (1) does not apply in the case where the person providing the benefit transfers the whole of the person's interest in the land to P.
- (3) In subsection (1) “the rental value” of the land for a period means the rent which would have been payable for the period if the land had been let to P at an annual rent equal to the annual value.
- (4) For the purposes of subsection (3) “the annual value” of land is the rent that might reasonably be expected to be obtained on a letting from year to year if—
- (a) the tenant undertook to pay all taxes, rates and charges usually paid by a tenant, and
  - (b) the landlord undertook to bear the costs of the repairs and insurance and the other expenses (if any) necessary for maintaining the property in a state to command that rent.
- (5) For the purposes of subsection (4) that rent—
- (a) is to be taken to be the amount that might reasonably be expected to be so obtained in respect of a letting of the land, and
  - (b) is to be calculated on the basis that the only amounts that may be deducted in respect of services provided by the landlord are amounts in respect of the costs to the landlord of providing any relevant services.
- (6) In subsection (5) “relevant service” means a service other than the repair, insurance or maintenance of the property.”

#### *Commencement*

- 3 The amendments made by this Schedule have effect in relation to capital payments or benefits received in the tax year 2017-18 and subsequent tax years.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 2017, SCHEDULE 9.