SCHEDULES

SCHEDULE 10

SETTLEMENTS: ANTI-AVOIDANCE ETC

PART 2

INCOME TAX

ITA 2007

16 After section 733A insert—

"**733B Recipients of onward gifts**

(1) Sections 733C to 733E apply if—

(a) an amount of income is treated as arising under section 732 to an individual ("the original beneficiary") in a tax year ("the arising year") but neither by section 733C nor by section 733E,

(b) under section 735A (if it applied also for this purpose) that amount would be matched—

(i) with an amount of relevant income that is protected income for the purposes of section 733A(1)(b)(i) (see sections 721(3BA) and 728(1B)), and

(ii) with the whole or part of a benefit received by the original beneficiary,

(c) at the time that benefit is received by the original beneficiary ("the distribution time")—

(i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole or part of that benefit to another person, and

(ii) it is reasonable to expect that, in the event of the whole or part of that benefit being passed on to another person as envisaged by the arrangements or intention, that other person will be UK resident when they receive at least part of what is passed on to them,

(d) the original beneficiary makes, directly or indirectly, a gift ("the onward payment") to a person ("the subsequent recipient")—

(i) at the distribution time, or at any later time in the 3 years beginning with the start time, or

(ii) at any time before the distribution time and, it is reasonable to assume, in anticipation of receipt of the benefit mentioned in paragraph (b)(ii),

(e) the gift is of or includes—

(i) the whole or part of the benefit mentioned in paragraph (b)(ii),

(ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of that benefit, or

(iii) any other property, but only if the benefit mentioned in paragraph (b)(ii) is provided with a view to enabling or facilitating, or otherwise in connection with, the making of the gift of the property to the subsequent recipient,

(f) except where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in paragraph (a), either—

(i) the original beneficiary is non-UK resident for the arising year, or

(ii) section 809B or 809D or 809E (remittance basis) applies to the original beneficiary for the arising year and none of the amount mentioned in paragraph (a) is relevantly remitted before the end of the charging year, and

(g) where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in paragraph (a), section 809B or 809D or 809E applies to that individual for the arising year and none of the amount mentioned in paragraph (a) is relevantly remitted before the end of the charging year.

(2) If—

(a) the amount mentioned in subsection (1)(a) is not treated as arising by section 733D (and neither by section 733C nor by section 733E),

(b) except where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on that amount, section 809B or 809D or 809E applies to the original beneficiary for the arising year,

(c) where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on that amount, section 809B or 809D or 809E applies to that individual for the arising year, and

(d) part only of that amount is relevantly remitted before the end of the charging year,

subsection (1)(a) is to be treated as referring instead only to the remainder of that amount.

(3) The original beneficiary is not liable to tax for any year after the charging year on so much of the amount mentioned in subsection (1)(a) as is—

(a) treated as arising to the subsequent recipient by section 733C, or

(b) treated as arising to the settlor by section 733E;

and the settlor is not is liable under section 733A(2) or (3) to tax for any year after the charging year on so much of the amount mentioned in subsection (1)(a) as is treated as arising to the subsequent recipient by section 733C.

(4) For the purposes of subsection (1)(d)(i)—

(a) if the amount mentioned in subsection (1)(a) is not one that is treated as arising by section 733D, "the start time" is the time the

benefit mentioned in subsection (1)(b) is provided to the original beneficiary, and

(b) if the amount mentioned in subsection (1)(a) is one that is treated as arising by section 733D in connection with the operation of this section on a previous occasion, "the start time" is the time given by this subsection as the start time on that occasion.

(5) Where the onward payment is made as mentioned in subsection (1)(d)(ii), the onward payment is to be treated—

(a) for the purposes of the provisions of this section following subsection (1)(d), and

(b) for the purposes of sections 733C to 733E,

as made immediately after, and in the tax year containing, the distribution time.

(6) Where subsection (1)(d) and (e) are met in any case, it is to be presumed (unless the contrary is shown) that subsection (1)(c) is also met in that case.

(7) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"the charging year" means the gift year or, if later, the matching year,

"gift" includes any benefit,

"the gift year" means the tax year in which the onward payment is made, but see subsection (5),

"make", in relation to a gift that is a benefit, means provide,

"the matching year" means the first tax year in which the matching mentioned in subsection (1)(b) would occur,

"relevantly remitted" means remitted to the United Kingdom in a tax year for which the original beneficiary is UK resident but, where an individual is liable as a result of section 733A(2) or (3) for the tax charged under section 731 on the amount mentioned in subsection (1)(a), means remitted to the United Kingdom in a tax year for which that individual is UK resident, and

"the settlor" means the settlor of the settlement, mentioned in section 721A(3) or (4) or 729A(3) or (4), which because of subsection (1)(b)(i) is the settlement concerned.

(8) Sections 742C to 742E (value of benefit provided to a person) apply in relation to the onward payment as if references in those sections to a benefit provided were references to a gift made.

(9) Sections 809L to 809Z6 (remittance basis: rules about when income is remitted, including rule treating pre-arising remittances of deemed income as made when the income arises)—

(a) apply for the purposes of this section and sections 733C to 733E, and

(b) apply for those purposes in relation to references to remittance of the onward payment as if the onward payment were relevant foreign income of the subsequent recipient.

733C Cases where income treated as arising to recipient of onward gift

(1) Subsection (3) applies if—

(a) this section applies (see section 733B(1)), and

(b) the subsequent recipient is UK resident for the gift year, and

(c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and

(d) none of sections 809B, 809D and 809E applies to the subsequent recipient for the charging year.

(2) Subsection (3) also applies if—

(a) this section applies (see section 733B(1)), and

(b) the subsequent recipient is UK resident for the gift year, and

(c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and

(d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year, and

(e) the whole, or part only, of the onward payment is remitted to the United Kingdom in the charging year.

(3) Section 731 has effect—

(a) as if the subsequent recipient were an individual to whom income is treated as arising under section 732 for the charging year, and

(b) as if, subject to subsection (4), the amount of that income—

(i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e), or

(ii) were, where this subsection applies because of subsection (2) and part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of that part.

(4) The amount given by subsection (3) (before adjustment under this subsection) is to be adjusted as follows—

(a) deduct any part of the amount on which the subsequent recipient is liable to income tax otherwise than under this section, and

(b) if following any adjustment under paragraph (a) the amount exceeds the amount mentioned in section 733B(1)(a), deduct the excess.

733D Cases where deemed income attributed to recipient of onward gift

(1) Subsection (3) applies if this section applies (see section 733B(1)) and—

(a) the subsequent recipient is non-UK resident for the gift year, or

(b) the matching year is later than the gift year and the subsequent recipient is UK resident for the gift year but non-UK resident for the matching year.

(2) Subsection (3) also applies if—

(a) this section applies (see section 733B(1)), and

(b) the subsequent recipient is UK resident for the gift year, and

(c) the subsequent recipient is UK resident for the matching year if that is later than the gift year, and

(d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year, and

(e) none, or part only, of the onward payment is remitted to the United Kingdom in the charging year.

(3) Section 733B(1)(a) has effect—

(a) as if the subsequent recipient were an individual to whom income is treated as arising under section 732 for the charging year, and

(b) as if, subject to subsection (4), the amount of that income—

(i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e) and is not treated as arising to someone other than the subsequent recipient as a result of the operation of section 733E, or

(ii) were, where this subsection applies because of subsection (2) and part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of the remainder of that much of the onward payment.

(4) The amount given by subsection (3) (before adjustment under this subsection) is to be adjusted as follows: if that amount exceeds the amount mentioned in section 733B(1)(a) in the case of the original beneficiary, deduct the excess.

(5) Where the amount mentioned in section 733B(1)(a) is one treated as arising by this section in connection with the operation of section 733B and this section on a previous occasion, section 733B(1) has effect—

(a) with the omission of its paragraphs (b) and (c),

(b) as if the reference in its paragraph (d) to the benefit mentioned in its paragraph (b)(ii) were, instead, to what was the onward payment on that previous occasion,

(c) as if the references in its paragraph (d) to the distribution time were, instead, to the time when that onward payment was made, and

(d) as if the references in its paragraph (e) to the benefit mentioned in its paragraph (b)(ii) were, instead, to so much of that onward payment as was on that previous occasion within any of sub-paragraphs (i) to (iii) of its paragraph (e).

733E Cases where settlor liable following onward gift

(1) Subsection (3) applies if—

(a) this section applies (see section 733B(1)),

(b) the subsequent recipient is a close member of the settlor's family when the onward payment is made,

(c) the subsequent recipient is UK resident for the charging year,

(d) section 809B, 809D or 809E applies to the subsequent recipient for the charging year,

(e) none, or part only, of the onward payment is remitted to the United Kingdom in the charging year,

(f) there is a time in the charging year when the settlor is UK resident,

(g) there is no time in the charging year when the settlor is domiciled in the United Kingdom, and

(h) there is no time in the charging year when the settlor is regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.

(2) Subsection (3) also applies if—

(a) this section applies (see section 733B(1)),

(b) the subsequent recipient is a close member of the settlor's family when the onward payment is made,

(c) the subsequent recipient is non-UK resident for the charging year,

(d) there is a time in the charging year when the settlor is UK resident,

(e) there is no time in the charging year when the settlor is domiciled in the United Kingdom, and

(f) there is no time in the charging year when the settlor is regarded for the purposes of section 718(1)(b) as domiciled in the United Kingdom as a result of section 835BA having effect because of Condition A in that section being met.

(3) Section 731 applies—

(a) as if the settlor were an individual to whom income is treated as arising under section 732 for the charging year, and

(b) as if, subject to subsection (4), the amount of that income—

(i) were equal to the amount or value of so much of the onward payment as is within any of sub-paragraphs (i) to (iii) of section 733B(1)(e), or

(ii) were, where this subsection applies because of subsection (1) in a case where part only of that much of the onward payment is remitted to the United Kingdom in the charging year, equal to the amount or value of the remainder of that much of the onward payment.

(4) The amount given by subsection (3)(b) (before adjustment under this subsection) is to be adjusted as follows—

(a) deduct any part of the amount on which the settlor is liable to income tax otherwise than under this section, and

(b) if following any adjustment under paragraph (a) the amount exceeds the amount mentioned in section 733B(1)(a), deduct the excess.

(5) Where any tax for which the settlor is liable as a result of subsections (3) and (4) is paid, the settlor is entitled to recover the amount of the tax from the subsequent recipient.

(6) For the purpose of recovering that amount, the settlor is entitled to require an officer of Revenue and Customs to give the settlor a certificate specifying—

(a) the amount of the income concerned, and

(b) the amount of tax paid,

and any such certificate is conclusive evidence of the facts stated in it.

(7) In this section—

(a) "the settlor" means the settlor of the settlement, mentioned in section 721A(3) or (4) or 729A(3) or (4), which because of section 733B(1)(b)(i) is the settlement concerned, and

(b) "close member", in relation to the family of the settlor, is to be read in accordance with section 733A(7) and (8)."