

## SCHEDULES

### SCHEDULE 10

#### SETTLEMENTS: ANTI-AVOIDANCE ETC

#### PART 2

#### INCOME TAX

#### ITTOIA 2005

- 3 (1) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor) is amended as follows.
- (2) In the Chapter heading, after “settlor” insert “ or family ”.
- 4 In section 619(1) (list of provisions in the Chapter charging tax)—
- (a) omit the “and” at the end of paragraph (c), and
  - (b) after paragraph (d) insert—
    - “(e) benefits whose amount or value is treated as income of the settlor or a close family member as a result of section 643A (benefits provided out of protected foreign-source income), and
    - (f) amounts treated as income of the settlor or a close family member by section 643J or 643L (gifts provided out of benefits).”
- 5 In section 621 (income charged under the Chapter), for “income and capital sums” substitute “ income, capital sums and benefits ”.
- 6 In section 622 (person liable), at the end insert “ , but this is subject to sections 643A and 643I to 643M. ”
- 7 In section 623 (deductions and reliefs allowed when calculating liability under the Chapter)—
- (a) for “a settlor” substitute “ an individual ”, and
  - (b) for “the settlor”, in both places it occurs, substitute “ the individual ”.
- 8 In section 635 (amount of available income for section 633 purposes)—
- (a) in subsection (3)(d)(i) (tax on certain income to be deducted when calculating available amount), before “income” insert “ unprotected ”, and
  - (b) in subsection (5) (meaning of “unprotected income”), for “subsection (2)” substitute “ this section and sections 636 and 637 ”.
- 9 In section 636 (amount of unprotected income that is undistributed for section 635 purposes)—
- (a) in subsection (2) (deducting payments that are or would be taxable as recipients' income)—

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- (i) in the words before paragraph (a) omit “such”,
  - (ii) in those words, for “as” substitute “ that are payments of unprotected income, or sums treated as representing unprotected income, and that ”, and
  - (iii) in paragraph (b), for “so treated” substitute “ treated as mentioned in paragraph (a) ”,
  - (b) in subsection (4) (deducting expenses properly chargeable to income), before “income” insert “ unprotected ”, and
  - (c) in subsection (6) (deducting amounts in respect of exempt income), in the definition of “A”, before “income” insert “ unprotected ”.
- 10 In section 637 (qualifications to section 636)—
- (a) in subsections (2), (3) and (4) (extent to which interest treated as deductible trust expenses), before “interest” insert “ relevant ”,
  - (b) in subsection (5) (the relevant fraction), in the definition of “A”, before “income” insert “ unprotected ”, and
  - (c) after subsection (7) insert—
- “(7A) In this section “relevant interest” means interest which, in the absence of any express provision of the settlement, would be properly chargeable to unprotected income.”
- 11 After section 643 insert—

*“Benefits matched with protected foreign-source income*

#### **643A Deemed income because of benefits for settlor or close family member**

- (1) If an individual has an untaxed benefits total for a settlement for a tax year (see section 643B), an amount equal to so much of that total as does not exceed the settlement's available protected income up to the end of the year (see section 643C) is—
  - (a) where the individual is UK resident for the year, treated for income tax purposes as income of the individual for the year, subject to subsections (2) to (5), and
  - (b) where the individual is non-UK resident for the year, treated for the purposes of subsection (2) and sections 643I to 643L (but no other purpose) as income of the individual for the year, subject to subsection (5).
- (2) Subsections (3) and (4) apply if—
  - (a) an amount (“the deemed income”) is treated by subsection (1), before the application of subsections (3) and (4), as income of an individual for a tax year,
  - (b) the individual is not the settlor,
  - (c) either—
    - (i) the individual is non-UK resident for the year, or
    - (ii) the individual is UK resident for the year and one of sections 809B, 809D and 809E of ITA 2007 (remittance basis) applies to the individual for the year,
  - (d) the settlor is UK resident for the year,

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- (e) there is no time in the year when the settlor is domiciled in the United Kingdom, and
  - (f) there is no time in the year when the settlor is regarded for the purposes of section 809B(1)(b) of ITA 2007 as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of Condition A in that section being met.
- (3) If the case is one—
- (a) where the condition in subsection (2)(c)(i) is met, or
  - (b) where the condition in subsection (2)(c)(ii) is met and none of the deemed income is remitted to the United Kingdom in the year,
- the deemed income is to be treated for income tax purposes as income of the settlor for the year and, in a case within paragraph (b), not as income of the individual for the year.
- (4) If the case is one—
- (a) where the condition in subsection (2)(c)(ii) is met, and
  - (b) part only of the deemed income is remitted to the United Kingdom in the year,
- the remainder of the deemed income is to be treated for income tax purposes not as income of the individual for the year but as income of the settlor for the year.
- (5) If there is a choice about the individuals in whose case income is to be treated as arising by subsection (1) (before the application of subsections (3) and (4))—
- (a) income is to be treated as arising to such one or more of them as appears to an officer of Revenue and Customs to be just and reasonable, and
  - (b) if more than one, in such respective proportions as appears to the officer to be just and reasonable.
- (6) Sections 809L to 809Z6 of ITA 2007 (remittance basis: rules about when income is remitted) apply for the purposes of this section.
- (7) If—
- (a) an enactment other than this section contains a reference (however expressed) to—
    - (i) income treated as arising by this section, or
    - (ii) an amount treated as income by this section, and
  - (b) the reference mentions this section without mentioning any particular provision of this section,
- the reference is (in accordance with subsection (1)(b)) to be read as not including amounts treated as income by subsection (1)(b) except so far as they are treated as income of the settlor of a settlement by subsection (3) or (4).

#### **643B Meaning of “untaxed benefits total” in section 643A**

- (1) For the purposes of section 643A, whether an individual has an untaxed benefits total for a settlement for a tax year (“the current year”), and (if so) its amount, are determined as follows—

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*Step 1* If the individual is the settlor, identify each benefit provided by the trustees to the individual at a time—

- (a) when the individual is not relevantly domiciled, and
- (b) in a tax year that is the current year or an earlier tax year.

If the individual is not the settlor, identify each benefit provided by the trustees to the individual at a time—

- (a) when the individual is a close member of the settlor's family (see section 643H), and
- (b) in a tax year that is the current year or an earlier tax year.

*Step 2* Identify the amount or value of each benefit identified in the individual's case at Step 1, and calculate the total of those amounts and values.

*Step 3* Take the total calculated at Step 2 and deduct from it the following—

- (a) any part of it on which the individual is liable to income tax otherwise than under section 643A,
- (b) any income treated by section 643A, 643J or 643L as arising, to a person for a tax year earlier than the current year, by reference to any of the benefits identified in the individual's case at Step 1,
- (c) where the whole or part of a benefit identified in the individual's case at Step 1 is taken into account in charging income tax under Chapter 2 of Part 13 of ITA 2007, the amount or value of so much of the benefit as is taken into account in doing that, and
- (d) any amount required to be deducted by section 643D(2) (gains treated as accruing in a year before the current year).

*Step 4* If the result of the calculation at Step 3 is an amount greater than nil, that amount is the individual's untaxed benefits total for the settlement for the current year.

- (2) For the purposes of Step 1 in subsection (1), an individual is “relevantly domiciled” at any time if at that time—
  - (a) the individual is domiciled in the United Kingdom, or
  - (b) the individual is regarded for the purposes of section 809(1)(b) of ITA 2007 as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of Condition A in that section being met.
- (3) Sections 742C to 742E of ITA 2007 (value of certain benefits) apply for the purpose of calculating the value of a benefit for the purposes of this section as they apply for the purpose of calculating an income tax charge under Chapter 2 of Part 13 of ITA 2007.
- (4) In this section and sections 643C to 643M, a reference to a benefit provided by trustees of a settlement is to—
  - (a) a benefit treated by subsection (6) as provided by the trustees, or
  - (b) any other benefit if it is provided by the trustees directly, or indirectly, out of—
    - (i) property comprised in the settlement, or

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- (ii) income arising under the settlement.
- (5) In this section and sections 643C to 643M, a reference to a benefit provided by trustees of a settlement to an individual is to—
- (a) a benefit treated by subsection (6) as provided by the trustees to the individual, or
  - (b) any other benefit if it is provided by the trustees to the individual directly, or indirectly, out of—
    - (i) property comprised in the settlement, or
    - (ii) income arising under the settlement.
- (6) Where—
- (a) income arises under a settlement, and
  - (b) the income, before being distributed, is the income of a person other than the trustees,
- a benefit is for the purposes of subsection (4)(a) treated as provided by the trustees and is for the purposes of subsection (5)(a) treated as provided by the trustees to the person.
- (7) A benefit treated as provided by subsection (6) is treated—
- (a) as consisting of the income mentioned in that subsection, but after any reduction in accordance with Chapter 8 of Part 9 of ITA 2007 for trustees' expenses, and
  - (b) as provided at the time that income arises.

#### **643C Meaning of “available protected income” in section 643A**

- (1) For the purposes of the application of section 643A(1) in the case of an individual and a settlement, the settlement has available protected income up to the end of a tax year if—

$$\text{PFSI} - \text{TOAA} > \text{TI}$$

and, if the settlement has available protected income up to the end of a tax year, its amount is given by—

$$\text{PFSI} - \text{TOAA} - \text{TI}$$

- (2) In this section—
- PFSI is the total of—
- (a) any protected foreign-source income—
    - (i) arising under the settlement in the year or in any earlier tax year,
    - (ii) that would be treated under section 624 as income of the settlor but for section 628A,
    - (iii) that can be used directly or indirectly to provide benefits for the individual, and
    - (iv) on which the individual is not liable to income tax (ignoring for this purpose any liability under section 643A), and

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- (b) any protected foreign-source income—
  - (i) arising under the settlement in the year or in any earlier tax year,
  - (ii) that would be treated under section 629 as income of the settlor but for section 630A, and
  - (iii) on which the relevant child concerned (see section 629) is not liable to income tax (ignoring for this purpose any liability under section 643A),

TOAA is so much of PFSI as is, in respect of benefits provided by the trustees in the year or in an earlier tax year, taken into account in charging income tax under Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) for the year or any earlier tax year, and

TI is the total of—

- (a) so much of PFSI as is, by reference to benefits provided by the trustees to the individual, treated by section 643A, 643J or 643L as income for any earlier tax year, and
- (b) so much of PFSI as is, by reference to benefits provided by the trustees to other individuals, treated by section 643A, 643J or 643L as income for the year or any earlier tax year.

- (3) As regards the definition of PFSI in subsection (2)—
  - (a) section 648(3) to (5) (relevant foreign income treated as arising under settlement only if and when remitted) do not apply for the purposes of that definition,
  - (b) that definition has effect as if section 648(3) to (5) do not apply for the purposes of sections 624 and 629, and
  - (c) in that definition “protected foreign-source income” has the meaning given by sections 628A(2) to (13) and 628B.

#### **643D Reduction in section 643A income: previous capital gains tax charge**

- (1) Subsection (2) applies if—
  - (a) in the case of a settlement, benefits provided to an individual as mentioned at Step 1 in section 643B(1) are received in a tax year, and
  - (b) chargeable gains are treated by section 87, 87K, 87L or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 as accruing to a person in that or a subsequent tax year by reference (direct or indirect) to the whole or part of any benefits so provided.
- (2) In the calculation under section 643B of the individual's untaxed benefits total for the settlement for any tax year after the one in which such chargeable gains are so treated, the amounts to be deducted at Step 3(d) of that calculation include the amount of those gains.
- (3) References in this section to chargeable gains treated as accruing to an individual include offshore gains treated as arising to the individual (see regulations 20 and 22 to 24 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001)).

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### **643E Reimbursement of tax paid by settlor because of section 643A**

- (1) Where any tax for which the settlor of a settlement is liable as a result of section 643A(3) or (4) is paid, the settlor is entitled to recover the amount of the tax from the individual concerned.
- (2) 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.

### **643F Income attributed by section 643A to user of remittance basis**

- (1) This section applies where—
  - (a) in the case of a settlement, income (“the deemed income”) is treated by section 643A as arising to an individual for a tax year, and
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.
- (2) The deemed income is treated as relevant foreign income of the individual.
- (3) In the application of section 832 to the deemed income, subsection (2) of that section has effect with the omission of paragraph (b).
- (4) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat a benefit, or any protected income, that relates to any part of the deemed income as deriving from that part of the deemed income.
- (5) In subsection (4) “relates” has the meaning given by section 643G.
- (6) In this section and section 643G—

“protected income” means the income that forms PFSI in the calculation of the settlement’s available protected income in the case of the relevant individual for the year, and

“the relevant individual”—

  - (a) where the deemed income is treated as income of an individual by section 643A(1)(a) both before and after the application of section 643A(3) and (4), means that individual, and
  - (b) where the deemed income is treated as income of the settlor by section 643A(3) or (4) after having been treated as income of another individual by section 643A(1), means that other individual.

### **643G Section 643F(4): benefits and income “relating” to deemed income**

- (1) In this section—
  - (a) references to a step are to a step under section 643B(1) as it applies in the case of the settlement, the year and the relevant individual,
  - (b) “protected income” and “the relevant individual” have the meaning given by section 643F(6), and

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- (c) “the settlement” and “the year” mean, respectively, the settlement and tax year mentioned in section 643F.
- (2) For the purposes of section 643F(4)—
- (a) place the benefits identified at Step 1 in the order in which they were received by the relevant individual (starting with the earliest benefit received),
  - (b) where a deduction is allowed by any of paragraphs (a), (c) and (d) of Step 3 by reference to the whole or part of any of those benefits, reduce the benefit by the amount of the deduction,
  - (c) place the protected income in the order in which it arose (starting with the earliest income to arise),
  - (d) where the whole or part of an item of the protected income is, in respect of benefits provided by the trustees in the year or in any earlier tax year, taken into account in charging income tax under Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) for the year or any earlier tax year, reduce the item by so much of itself as is so taken into account,
  - (e) where the whole or part of an item of the protected income is, by reference to benefits provided by the trustees to individuals other than the relevant individual, treated by section 643A or 643J or 643L as income for the year or any earlier tax year, reduce the item by so much of itself as is so treated,”
  - (f) place the income treated by section 643A(1) (before the application of section 643A(3) and (4)) as arising to the relevant individual in respect of the benefits referred to in paragraph (a) in the order in which it is treated as arising (starting with the earliest income treated as having arisen), and
  - (g) treat the income mentioned in paragraph (f) as related to—
    - (i) the benefits referred to in paragraph (a), and
    - (ii) the protected income,
 by matching the income mentioned in paragraph (f) with those benefits and the protected income (in the orders mentioned in paragraphs (a), (c) and (f)).
- (3) For the purposes of subsection (2)(d), the whole or part of an item of the protected income is to be treated as taken into account in respect of a benefit so far as the item or part—
- (a) is matched under section 735A of ITA 2007 with notional income with which the benefit is matched under that section, or
  - (b) would be matched under that section (if it applied also for this purpose) with notional income with which the benefit would be matched under that section (if it applied also for this purpose),
- and here “notional income” means income which is treated as arising under section 732 of ITA 2007.

#### **643H Meaning of close member of settlor's family in sections 643B to 643M**

- (1) For the purposes of sections 643B to 643M, a person is a close member of the family of the settlor of a settlement at any time if the settlor is living at that time and—

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- (a) the person is the settlor's spouse or civil partner at that time, or
  - (b) the person—
    - (i) is a child of the settlor, or of a person who at that time is the settlor's spouse or civil partner, and
    - (ii) at that time has not reached the age of 18.
- (2) For the purposes of subsection (1)—
- (a) two people living together as if they were spouses of each other are treated as if they were spouses of each other, and
  - (b) two people of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

### **643I Recipients of onward gifts**

- (1) Sections 643J to 643L apply if—
- (a) in the case of a settlement, an amount—
    - (i) is treated by section 643A(1)(a), both before and after the application of section 643A(3) and (4), as income of an individual (“the original beneficiary”) for a tax year (“the matching year”), or
    - (ii) having been treated by section 643A(1) before the application of section 643A(3) and (4) as income of an individual (“the original beneficiary”) for a tax year (“the matching year”), is treated by section 643A(3) or (4) as income of the settlor for the matching year, or
    - (iii) is treated by section 643A(1)(b), before the application of section 643A(3) and (4), as income of an individual (“the original beneficiary”) for a tax year (“the matching year”) but is not treated by section 643A(3), and is not treated by section 643A(4), as income of the settlor for the matching year,
  - (b) under section 643G (if it applied also for this purpose) the amount would be matched with a benefit provided in the matching year, or an earlier tax year, to the original beneficiary,
  - (c) at the time the benefit is provided to the original beneficiary—
    - (i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole, or part, of the benefit to another person, and
    - (ii) it is reasonable to expect that, in the event of the whole or part of the 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 time the benefit is provided to the original beneficiary, or at any later time in the 3 years beginning with the day containing the start time, or

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- (ii) at any time before the benefit is provided to the original beneficiary and, it is reasonable to assume, in anticipation of the benefit being provided,
  - (e) the gift is of or includes—
    - (i) the whole or part of the benefit,
    - (ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of the benefit, or
    - (iii) any other property, but only if the benefit 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) in a case within paragraph (a)(i), either—
    - (i) the original beneficiary is non-UK resident for the matching year, or
    - (ii) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the original beneficiary for the matching year and none of the amount is relevantly remitted in the matching year or in any tax year later than the matching year but not later than the tax year in which the onward payment is made,
  - (g) in a case within paragraph (a)(ii), section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the settlor for the matching year and none of the amount is relevantly remitted in the matching year or in any tax year later than the matching year but not later than the tax year in which the onward payment is made, and
  - (h) the subsequent recipient—
    - (i) is the settlor, or
    - (ii) is a close member of the settlor's family (see section 643H) at the time the onward payment is made or, where that time is given by subsection (4), at either or both of the time so given and the actual time the onward payment is made.
- (2) Where, in a case within subsection (1)(a)(i) and by reference to the amount mentioned in subsection (1)(a), income is treated by section 643J or 643L as arising to a person for a tax year, the original beneficiary is not liable to tax for any later tax year on so much of the amount mentioned in subsection (1)(a) as is equal to that income; and where, in a case within subsection (1)(a)(ii) and by reference to the amount mentioned in subsection (1)(a), income is treated by section 643J as arising to a person for a tax year, the settlor is not liable to tax for any later tax year on so much of the amount mentioned in subsection (1)(a) as is equal to that income.
- (3) The amount mentioned in subsection (1)(a) need not be—
- (a) the whole amount that in the case of the settlement is treated by section 643A(1), before the application of section 643A(3) and (4), as income of the original beneficiary for the matching year;
  - (b) the whole amount that would be matched with the benefit mentioned in subsection (1)(b).
- (4) Where the onward payment is made as mentioned in subsection (1)(d)(ii), the onward payment is to be treated—

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- (a) for the purposes of the provisions of this section following subsection (1)(d), and
  - (b) for the purposes of sections 643J to 643L,  
as made immediately after, and in the tax year in which, the benefit is provided to the original beneficiary.
- (5) 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 643K, “the start time”—
    - (i) is the time the benefit mentioned in subsection (1)(b) is provided to the original beneficiary, or
    - (ii) where that benefit is one that section 643M(3) treats as provided, is the time the original benefit in that case (see section 643M(1)(a)) is provided, and
  - (b) if the amount mentioned in subsection (1)(a) is one that is treated as arising by section 643K in connection with the operation of this section and section 643K on a previous occasion, “the start time” is the time given by this subsection as the start time on that occasion.
- (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 (and sections 643J to 643L)—
  - “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 (4)),
  - “make”, in relation to a gift that is a benefit, means confer, and
  - “relevantly remitted” means remitted to the United Kingdom in a tax year for which the original beneficiary is UK resident but, in a case within subsection (1)(a)(ii), means remitted to the United Kingdom in a tax year for which the settlor is UK resident.
- (8) Sections 742C to 742E of ITA 2007 (value of certain benefits)—
  - (a) apply for the purpose of calculating the value of the onward payment for the purposes of sections 643J to 643L as they apply for the purpose of calculating an income tax charge under Chapter 2 of Part 13 of ITA 2007, and
  - (b) apply for that purpose as if their references to a benefit provided were references to a gift made.
- (9) Sections 809L to 809Z6 of ITA 2007 (remittance basis: rules about when income is remitted)—
  - (a) apply for the purposes of this section and sections 643J to 643L, 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.

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### **643J Cases where income treated as arising to recipient of onward gift**

- (1) Subsection (3) applies if—
  - (a) this section applies (see section 643I(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 of ITA 2007 (remittance basis) applies to the subsequent recipient for the charging year.
  
- (2) Subsection (3) also applies if—
  - (a) this section applies (see section 643I(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 of ITA 2007 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) For income tax purposes, an amount of income—
  - (a) 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 643I(1)(e), or
  - (b) 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,
 is treated as income of the subsequent recipient for the charging year, subject to subsection (4).
  
- (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 643I(1)(a), deduct the excess.

### **643K Cases where deemed income attributed to recipient of onward gift**

- (1) Subsection (3) applies if this section applies (see section 643I(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 643I(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

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- (d) section 809B, 809D or 809E of ITA 2007 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 643I(1)(a) has effect—
- (a) as if the subsequent recipient were an individual to whom, in the case of the settlement, income is treated by section 643A(1)(a), both before and after the application of section 643A(3) and (4), as arising 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 643I(1)(e) and is not treated as arising to the settlor as a result of the operation of section 643L, 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 643I(1)(a) in the case of the original beneficiary, deduct the excess.
- (5) Where the amount mentioned in section 643I(1)(a) is treated as arising by this section in connection with the operation of section 643I and this section on a previous occasion, section 643I(1) has effect—
- (a) with the omission of its paragraphs (b) and (c),
  - (b) as if the references in its paragraph (d) to the benefit mentioned in its paragraph (b) were, instead, to what was the onward payment on that previous occasion,
  - (c) as if the references in its paragraph (d) to when that benefit is provided were, instead, to when that onward payment was made, and
  - (d) as if the references in its paragraph (e) to that benefit were, instead, to so much of that onward payment as was on that previous occasion within any of sub-paragraphs (i) to (iii) of that paragraph.

### **643L Cases where settlor liable following onward gift**

- (1) Subsection (3) applies if—
- (a) this section applies (see section 643I(1)),
  - (b) the subsequent recipient is a close member of the settlor's family (see section 643H) when the onward payment is made,
  - (c) the subsequent recipient is UK resident for the charging year,
  - (d) section 809B, 809D or 809E of ITA 2007 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,

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- (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 809B(1)(b) of ITA 2007 as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of Condition A in that section being met.
- (2) Subsection (3) also applies if—
- (a) this section applies (see section 643I(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 809B(1)(b) of ITA 2007 as domiciled in the United Kingdom as a result of section 835BA of ITA 2007 having effect because of Condition A in that section being met.
- (3) For income tax purposes, an amount of income—
- (a) 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 643I(1)(e), or
  - (b) 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,
- is treated as arising to the settlor for the charging year, subject to subsection (4).
- (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 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 643I(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.

### **643M Onward gift to settlor or close family member by other recipient**

- (1) Subsection (3) applies if—

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- (a) the trustees of a settlement provide a benefit (“the original benefit”) to an individual (“the original recipient”),
  - (b) the original recipient is not the settlor,
  - (c) at the time the original benefit is provided, the original recipient is not a close member of the settlor's family (see section 643H),
  - (d) the original recipient is not taxed on the original benefit (see subsection (7)),
  - (e) at the time the original benefit is provided—
    - (i) there are arrangements, or there is an intention, as regards the (direct or indirect) passing-on of the whole, or part, of the original benefit to another person, and
    - (ii) it is reasonable to expect that, in the event of the whole or part of the original 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,
  - (f) the original recipient makes, directly or indirectly, a gift (“the onward payment”) to a person (“the subsequent recipient”)—
    - (i) at the time the original benefit is provided to the original recipient, or at any later time in the 3 years beginning with the day containing that time, or
    - (ii) at any time before the original benefit is provided to the original recipient and, it is reasonable to assume, in anticipation of the original benefit being provided,
  - (g) the gift is of or includes—
    - (i) the whole or part of the original benefit,
    - (ii) anything that (wholly or in part, and directly or indirectly) derives from, or represents, the whole or part of the original benefit, or
    - (iii) any other property, but only if the original benefit 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, and
  - (h) the subsequent recipient—
    - (i) is the settlor, or
    - (ii) is a close member of the settlor's family at the time the onward payment is made or, where that time is given by subsection (4), at either or both of the time so given and the actual time the onward payment is made.
- (2) Where—
- (a) there is a series of two or more gifts,
  - (b) the first gift in the series is made, directly or indirectly, by the original recipient—
    - (i) at the time the original benefit is provided, or at any later time in the 3 years beginning with the day containing that time, or
    - (ii) at any time before the original benefit is provided and, it is reasonable to assume, in anticipation of the original benefit being provided,

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- (c) the recipient of a gift in the series is the person who makes, directly or indirectly, the next gift in the series,
  - (d) the recipient of the last gift in the series is the settlor or, at the time that last gift is made, is a close member of the settlor's family,
  - (e) as regards any earlier gift in the series, its recipient—
    - (i) is not the settlor, and
    - (ii) is not, at the time that earlier gift is made, a close member of the settlor's family, and
  - (f) the condition in subsection (1)(g) is met in relation to each gift in the series,
- the last gift in the series is to be treated for the purposes of subsection (1)(f) as if its maker were the original recipient (and not its actual maker).
- (3) So much of the onward payment as is within any of sub-paragraphs (i) to (iii) of subsection (1)(g) is treated for the purposes of Step 1 in section 643B(1) as a benefit provided by the trustees to the subsequent recipient at the time the onward payment is made.
  - (4) Where the onward payment is made as mentioned in subsection (1)(f)(ii), the onward payment is to be treated, for the purposes of subsections (1)(h) and (3), as made immediately after, and in the tax year in which, the original benefit is provided to the original recipient.
  - (5) Where subsection (1)(f) to (h) are met in any case, it is to be presumed (unless the contrary is shown) that subsection (1)(e) is also met in that case.
  - (6) Where the benefit mentioned in section 643I(1)(b) is one that subsection (3) of this section treats as provided, section 643I(1) has effect with the omission of its paragraph (c).
  - (7) For the purposes of subsection (1)(d), the original recipient is taxed on the original benefit if the original recipient is liable to income tax, or capital gains tax, by reference to the amount or value of the original benefit; and where the original recipient is so liable by reference to the amount or value of part only of the original benefit, this section applies as if the two parts of the original benefit were separate benefits.
  - (8) In this section—
    - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
    - “gift” includes any benefit, and
    - “make”, in relation to a gift that is a benefit, means confer,
 and see also section 643B(4) to (7) (interpretation of references to provision of benefits by trustees).

#### **643N Person liable under section 643J or 643L and remittance basis applies**

- (1) This section applies in relation to income if—
  - (a) the income is treated as arising to an individual for a tax year—
    - (i) by section 643J(3) and (4) where section 643J(3) applies because of section 643J(2), or

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- (ii) by section 643L, and
  - (b) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year.
- (2) The income is treated as relevant foreign income of the individual.
- (3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis) treat the onward payment, or (as the case may be) the part of it whose amount or value is equal to the amount of the income, as deriving from the income.
- (4) In the application of section 832 in relation to the income, subsection (2) of that section has effect with the omission of its paragraph (b).”

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2018, Cross Heading: ITTOIA 2005.