

## SCHEDULES

### SCHEDULE 18

#### SETTLEMENTS: BENEFICIARIES (MISCELLANEOUS)

##### *Payments by and to companies*

4 The following section shall be inserted after section 82 of that Act—

##### **“82A Payments by and to companies**

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 80 to 82 above it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 80 to 82 above.
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person.
- (4) If the company is controlled by two or more persons (taking each one separately) at the time the payment is received, then—
  - (a) if one of them is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person;
  - (b) if two or more of them are then resident or ordinarily resident in the United Kingdom (the residents) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.
- (5) If the company is controlled by two or more persons (taking them together) at the time the payment is received and each of them is then resident or ordinarily resident in the United Kingdom—
  - (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
  - (b) each such participator (whatever his residence or ordinary residence) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment.
- (6) But where (by virtue of subsection (5) above and apart from this subsection) a participator would be treated as receiving less than one twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of subsection (5) above.

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*Status: This is the original version (as it was originally enacted).*

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- (7) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (8) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (9) below.
- (9) A person falls within this subsection if—
  - (a) he is a settlor in relation to the settlement, or
  - (b) he is connected with a person falling within paragraph (a) above.
- (10) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- (11) For the purposes of this section the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act 1988; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (12) In this section “participator” has the meaning given by section 417(1) of the Taxes Act 1988.
- (13) This section shall apply to payments received on or after 19th March 1991.”