



Finance Act 1998

1998 CHAPTER 36

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

TAXATION OF CHARGEABLE GAINS

Non-residents etc.

132 Charge on settlors of pre-19th March 1991 settlements

- (1) In paragraph 9 of Schedule 5 to the Taxation of Chargeable Gains Act 1992 (which sets out when a settlement is a qualifying settlement for the purposes of the attribution of gains to the settlor), after sub-paragraph (1) there shall be inserted the following sub-paragraphs—

“(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—

- (a) the year 1999-00, and
- (b) subsequent years of assessment.

(1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—

- (a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or
- (b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.”

Status: This is the original version (as it was originally enacted).

- (2) Sub-paragraph (2) of that paragraph shall not have effect for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment.
- (3) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraph—
- “(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.”
- (4) After sub-paragraph (10) of that paragraph there shall be inserted the following sub-paragraphs—
- “(10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—
- (a) children of a settlor or of a spouse of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;
 - (b) unborn children of a settlor, of a spouse of a settlor, or of a future spouse of a settlor;
 - (c) future spouses of any children or future children of a settlor, a spouse of a settlor or any future spouse of a settlor;
 - (d) a future spouse of a settlor;
 - (e) persons outside the defined categories.
- (10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.
- (10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—
- (a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
 - (b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;
 - (c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.
- (10D) In sub-paragraph (10C) above—
- “relevant property” means property originating from a settlor;
and
“relevant income” means income originating from a settlor.”
- (5) In construing section 86(1)(e) of the Taxation of Chargeable Gains Act 1992 (which specifies the amount by reference to which a charge arises under that section) as regards a particular year of assessment and in relation to a settlement created before 19th March 1991 which—

- (a) is a qualifying settlement in the year 1999-00, but
 - (b) was not a qualifying settlement in any earlier year of assessment,
- no account shall be taken of disposals made before 6th April 1999 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (6) Schedule 23 (which makes transitional provision in connection with the coming into force of this section) shall have effect.