

Changes to legislation: Finance Act 2003, SCHEDULE 16 is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 16

Section 105

STAMP DUTY LAND TAX: TRUSTS AND POWERS

Meaning of “settlement” and “bare trust”

- 1 (1) In this Part “settlement” means a trust that is not a bare trust.
- (2) In this Part a “bare trust” means a trust under which property is held by a person as trustee—
- (a) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability, or
 - (b) for two or more persons who are or would be jointly so entitled,
- and includes a case in which a person holds property as nominee for another.
- (3) In sub-paragraph (2)(a) and (b) the references to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee, to resort to the property for payment of duty, taxes, costs or other outgoings or to direct how the property is to be dealt with.
- (4) In sub-paragraph (2) “minor”, in relation to Scotland, means a person under legal disability by reason of nonage.

Interests of beneficiaries under certain trusts

- 2 Where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property—
- (a) that beneficiary shall be treated for the purposes of this Part as having such an interest notwithstanding that no such interest is recognised by the law of Scotland or, as the case may be, the country or territory outside the United Kingdom, and
 - (b) an acquisition of the interest of a beneficiary under the trust shall accordingly be treated as involving the acquisition of an interest in the trust property.

f¹ Bare trustee

Textual Amendments

- F1** Sch. 16 para. 3 and cross-heading substituted (with effect in accordance with Sch. 10 para. 16(4)(6)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 10 para. 11](#)

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- 3 (1) Subject to sub-paragraph (2), where a person acquires a chargeable interest [^{F2} or an interest in a partnership] as bare trustee, this Part applies as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee.
- (2) Sub-paragraph (1) does not apply in relation to the grant of a lease.
- (3) Where a lease is granted to a person as bare trustee, he is treated for the purposes of this Part, as it applies in relation to the grant of the lease, as purchaser of the whole of the interest acquired.
- (4) Where a lease is granted by a person as bare trustee, he is to be treated for the purposes of this Part, as it applies in relation to the grant of the lease, as vendor of the whole of the interest disposed of.]

Textual Amendments

F2 Words in Sch. 16 para. 3(1) inserted (with effect in accordance with s. 72(13) of the amending Act) by Finance Act 2007 (c. 11), s. 72(12)(a) (with s. 72(2)(16)(17))

Acquisition by trustees of settlement

- 4 Where persons acquire a chargeable interest as trustees of a settlement, they are treated for the purposes of this Part, as it applies in relation to that acquisition, as purchasers of the whole of the interest acquired (including the beneficial interest).

Responsibility of trustees of settlement

- 5 (1) Where the trustees of a settlement are liable—
- to make a payment of tax or interest on unpaid tax,
 - to make a payment in accordance with an assessment under paragraph 29 of Schedule 10 (recovery of excessive repayment), or
 - to a penalty under this Part or to interest on such a penalty,
- the payment, penalty or interest may be recovered (but only once) from any one or more of the responsible trustees.
- (2) No amount may be recovered by virtue of sub-paragraph (1)(c) from a person who did not become a responsible trustee until after the relevant time.
- (3) The responsible trustees, in relation to a land transaction, are the persons who are trustees at the effective date of the transaction and any person who subsequently becomes a trustee.
- (4) The relevant time for this purpose is—
- in relation to so much of a penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day;
 - in relation to any other penalty, or interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable.

Relevant trustees for purposes of return etc

- 6 (1) A return ^{F3} ... in relation to a land transaction may be made or given by any one or more of the trustees who are the responsible trustees in relation to the transaction.

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The trustees by whom such a return ^{F3} ... is made are referred to below as “the relevant trustees”.

- (2) The declaration required by paragraph 1(1)(c) of Schedule 10 ^{F4} ... (declaration that return ^{F4} ... is complete and correct) must be made by all the relevant trustees.
- (3) If the Inland Revenue give notice of an enquiry into the return ^{F5} ...—
 - (a) the notice must be given to each of the relevant trustees,
 - (b) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the relevant trustees,
 - (c) any of the relevant trustees may apply for a direction that a closure notice be given (and all of them are entitled to appear and be heard on the application), and
 - (d) the closure notice must be given to each of the relevant trustees.Provided that a notice is not invalidated by virtue of paragraph (a) or (d) if it is given to each of the relevant trustees whose identity is known to the Inland Revenue.
- (4) A Revenue determination or discovery assessment relating to the transaction must be made against all of the relevant trustees and is not effective against any of them unless notice of it is given to each of them whose identity is known to the Inland Revenue.
- (5) In the case of an appeal arising from proceedings under this Part relating to the transaction—
 - (a) the appeal may be brought by any of the relevant trustees,
 - (b) notice of the appeal must be given to any of them by whom it is not brought,
 - (c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
 - (d) if it is not settled, any of them are entitled to appear and be heard, and
 - (e) the decision on the appeal binds all of them.

Textual Amendments

- F3** Words in Sch. 16 para. 6(1) omitted (with effect in accordance with s. 94(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 30 para. 13\(2\)](#)
- F4** Words in Sch. 16 para. 6(2) omitted (with effect in accordance with s. 94(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 30 para. 13\(3\)](#)
- F5** Words in Sch. 16 para. 6(3) omitted (with effect in accordance with s. 94(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 30 para. 13\(2\)](#)

Consideration for exercise of power of appointment or discretion

- 7 Where a chargeable interest is acquired by virtue of—
- (a) the exercise of a power of appointment, or
 - (b) the exercise of a discretion vested in trustees of a settlement,
- there shall be treated as consideration for the acquisition of the interest or right by virtue of the exercise of the power or discretion any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion.

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Reallocation of trust property as between beneficiaries

[^{F6}8

Where—

- (a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and
- (b) the beneficiary consents to ceasing to have an interest in that other property, the fact that he gives consent does not mean that there is chargeable consideration for the acquisition.]

Textual Amendments

- F6** Sch. 16 para. 8 and cross-heading inserted (with effect in accordance with s. 165(2) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 165\(1\)](#)

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Changes and effects yet to be applied to :

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by [S.I. 2019/110 reg. 5](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 57(3) inserted by [2011 c. 11 Sch. 22 para. 4](#)
- s. 87(3)(a)(ia) inserted by [S.I. 2003/2760 Sch. para. 3\(4\)\(a\)](#) (This amendment not applied to legislation.gov.uk. The affecting S.I. is revoked and superseded by [S.I. 2003/2816](#))
- Sch. 12 para. 3(2)(aa) inserted by [2007 asp 3 Sch. 5 para. 32](#) (This effect was superseded by the repeal of Sch. 12 para. 3 by Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 16)
- Sch. 12 para. 1A inserted by [2007 c. 15 Sch. 13 para. 147\(2\)](#) (The amending provision was repealed before coming into force.)
- Sch. 12 para. 1A omitted by [2008 c. 9 Sch. 43 para. 9](#) (The amending provision was repealed before coming into force.)