



Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 4

TRUSTS WITH VULNERABLE BENEFICIARY

Qualifying trusts

34 Disabled persons

- (1) For the purposes of this Chapter where property is held on trusts for the benefit of a disabled person those trusts are qualifying trusts if they secure that the conditions in subsection (2) are met—
- (a) during the lifetime of the disabled person, or
 - (b) until the termination of the trusts (if that occurs before his death).
- (2) Those conditions are—
- (a) that if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person, and
 - [^{F1}(b) either—
 - (i) that the disabled person is entitled to all the income (if there is any) arising from any of the property, or
 - (ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person.]
- [^{F2}(3) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of—

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- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
- (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
- (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
- (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
- (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or
- (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).]

[^{F2}(3B) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—

- (a) £3,000, and
- (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.

(3C) The Treasury may by order made by statutory instrument—

- (a) specify circumstances in which subsection (3)(a) is, or is not, to apply in relation to a trust, and
- (b) amend the definition of “the annual limit” in subsection (3B).

(3D) An order under subsection (3C) may—

- (a) make different provision for different cases, and
- (b) contain transitional and saving provision.

(3E) A statutory instrument containing an order under subsection (3C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

(4) The reference in subsection (1) to the lifetime of the disabled person is, where property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), to be construed as a reference to the period during which such property is held on trust for him.

Textual Amendments

- F1** S. 34(2)(b) substituted (with effect in accordance with Sch. 44 para. 18 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 44 para. 15\(2\)](#)
- F2** S. 34(3)-(3E) substituted for s. 34(3) (with effect in accordance with Sch. 44 para. 18 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 44 para. 15\(3\)](#)

35 Relevant minors

(1) For the purposes of this Chapter where property is held on trusts for the benefit of a relevant minor those trusts are qualifying trusts if they are—

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- (a) statutory trusts for the relevant minor under sections 46 and 47(1) of the Administration of Estates Act 1925 (c. 23) (succession on intestacy and statutory trusts in favour of relatives of intestate), or
 - (b) trusts to which subsection (2) below applies.
- (2) This subsection applies to trusts—
- (a) established under the will of a deceased parent of the relevant minor, or
 - (b) established under the Criminal Injuries Compensation Scheme, [^{F3} or
 - (c) established under the Victims of Overseas Terrorism Compensation Scheme,]
- which secure that the conditions in subsection (3) are met.
- (3) Those conditions are—
- (a) that the relevant minor will, on attaining the age of 18, become absolutely entitled to the property, any income arising from it and any income that has arisen from property held on the trusts for his benefit and been accumulated before that time,
 - (b) that, until that time, for so long as the relevant minor is living, if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor, and
 - (c) that, until that time, for so long as the relevant minor is living, either—
 - (i) the relevant minor is entitled to all the income (if there is any) arising from any of the property, or
 - [^{F4}(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor.]
- [^{F5}(4) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of—
- (a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the relevant minor amounts (whether consisting of income or capital, or both) not exceeding the annual limit,
 - (b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),
 - (c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,
 - (d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),
 - (e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or
 - (f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).]
- [^{F5}(4B) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—
- (a) £3,000, and
 - (b) 3% of the amount that is the maximum value of the settled property during the tax year in question.
- (4C) The Treasury may by order made by statutory instrument—
- (a) specify circumstances in which subsection (4)(a) is, or is not, to apply in relation to a trust, and

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- (b) amend the definition of “the annual limit” in subsection (4B).
- (4D) An order under subsection (4C) may—
 - (a) make different provision for different cases, and
 - (b) contain transitional and saving provision.
- (4E) A statutory instrument containing an order under subsection (4C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]
- (5) In this section “the Criminal Injuries Compensation Scheme” means—
 - (a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995 (c. 53),
 - (b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, or
 - (c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I. 1)).

Textual Amendments

- F3** S. 35(2)(c) and word inserted (8.4.2010) by [Crime and Security Act 2010 \(c. 17\)](#), s. 59(2), **Sch. 2 para. 4**
- F4** S. 35(3)(c)(ii) substituted (with effect in accordance with Sch. 44 para. 18 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 44 para. 16(2)**
- F5** S. 35(4)-(4E) substituted for s. 35(4) (with effect in accordance with Sch. 44 para. 18 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 44 para. 16(3)**

36 Parts of assets

For the purposes of this Chapter references to property being held on trusts include references to a part of an asset being held on trusts if—

- (a) that part of the asset, and
- (b) any income arising from it (or treated as arising from it),

can be identified for the purpose of determining whether the trusts on which it is held are qualifying trusts.

Changes to legislation:

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