



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—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2005, Section 34. (See end of Document for details)

- (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\(3\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2005, Section 34.