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SCHEDULES

SCHEDULE 12

Section 88

SETTLEMENTS: AMENDMENT OF TCGA 1992 ETC

PART 1

SETTLORS, TRUSTEES AND SETTLEMENTS

Basic trust concepts

- 1 (1) In section 68 of TCGA 1992 for the definition of “settled property” substitute “
“settled property” means any property held in trust other than property to which
section 60 applies (and references, however expressed, to property comprised in a
settlement are references to settled property). ”

- (2) After section 68 of TCGA 1992 insert—

“68A Meaning of “settlor”

- (1) In this Act, unless the context otherwise requires—
- (a) “settlor” in relation to a settlement means the person, or any of the persons, who has made, or is treated for the purposes of this Act as having made, the settlement, and
 - (b) a person is a settlor of property which—
 - (i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or
 - (ii) derives from property to which sub-paragraph (i) applies.
- (2) A person is treated for the purposes of this Act as having made a settlement if—
- (a) he has made or entered into the settlement, directly or indirectly, or
 - (b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death, and the settlement arose on his death, whether by will, on his intestacy, or otherwise.
- (3) A person is, in particular, treated for the purposes of this Act as having made a settlement if—
- (a) he has provided property directly or indirectly for the purposes of the settlement, or
 - (b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.

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- (4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of this Act—
 - (a) B shall be treated as having made the settlement, and
 - (b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.
- (5) In subsection (2)(b) “property of which he was competent to dispose immediately before his death” shall be construed in accordance with section 62(10) (reading each reference to “assets” as a reference to “property”).
- (6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of this Act as having ceased to be a settlor in relation to the settlement if—
 - (a) no property of which he is a settlor is comprised in the settlement,
 - (b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and
 - (c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.
- (7) For the purpose of this section and sections 68B and 68C property is derived from other property—
 - (a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and
 - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.
- (8) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

68B Transfer between settlements: identification of settlor

- (1) This section applies in relation to a transfer of property from the trustees of one settlement (“Settlement 1”) to the trustees of another (“Settlement 2”) otherwise than—
 - (a) for full consideration, or
 - (b) by way of a bargain made at arm's length.
- (2) In this section “transfer of property” means—
 - (a) a disposal of property by the trustees of Settlement 1, and
 - (b) the acquisition by the trustees of Settlement 2 of—
 - (i) property disposed of by the trustees of Settlement 1, or
 - (ii) property created by the disposal;
 and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.
- (3) For the purposes of this Act, except where the context otherwise requires—
 - (a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and

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- (b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.
- (4) For the purposes of this Act, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.
- (5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2 —
 - (a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and
 - (b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.
- (6) But subsections (3) and (4) do not apply in relation to a transfer of property—
 - (a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,
 - (b) which occurs by reason only of the exercise of a general power of appointment, or
 - (c) to which section 68C(6) applies.
- (7) In determining whether this section applies in relation to a transfer of property between settlements, section 18(2) shall be disregarded.

68C Variation of will or intestacy, etc: identification of settlor

- (1) This section applies where—
 - (a) a disposition of property following a person's death is varied, and
 - (b) section 62(6) applies in respect of the variation.
- (2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of this Act, except where the context otherwise requires—
 - (a) as having made the settlement, and
 - (b) as having provided the property for the purposes of the settlement.
- (3) Those persons are—
 - (a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,
 - (b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,

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- (c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and
 - (d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.
- (4) In subsection (3) references to a person being entitled to property absolutely as legatee shall be construed in accordance with section 64(3) (reading the references to “an asset” and “any asset” as references to “property”).
- (5) Where—
 - (a) property would have become comprised in a settlement—
 - (i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise), or
 - (ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but
 - (b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (6) Where—
 - (a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and
 - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of this Act, except where the context otherwise requires, as having made the other settlement.
- (7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of this Act he shall be treated as having made the settlement immediately before his death.
- (8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.”
- (3) The amendment of section 68 made by sub-paragraph (1) shall come into force on 6th April 2006 (in relation to settlements whenever created).
- (4) Sections 68A and 68B (as inserted by sub-paragraph (2)) shall come into force on 6th April 2006 (in relation to settlements whenever created).
- (5) Section 68C (as inserted by sub-paragraph (2)) shall have effect in respect of variations occurring on or after 6th April 2006 (irrespective of the date on which the deceased person died).
- 2 (1) For section 69(1) and (2) of TCGA 1992 (residence of trustees, etc) substitute—
 - “(1) For the purposes of this Act the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person

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(distinct from the persons who are trustees of the settlement from time to time).

(2) The deemed person referred to in subsection (1) shall be treated for the purposes of this Act as resident and ordinarily resident in the United Kingdom at any time when a condition in subsection (2A) or (2B) is satisfied.

(2A) Condition 1 is that all the trustees are resident in the United Kingdom.

(2B) Condition 2 is that—

- (a) at least one trustee is resident in the United Kingdom,
- (b) at least one is not resident in the United Kingdom, and
- (c) a settlor in relation to the settlement was resident, ordinarily resident or domiciled in the United Kingdom at a time which is a relevant time in relation to him.

(2C) In subsection (2B)(c) “relevant time” in relation to a settlor—

- (a) means, where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and
- (b) in any other case, means a time when the settlor made the settlement (or was treated for the purposes of this Act as making the settlement);

and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 68B applies, “relevant time” in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.

(2D) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (2A) and (2B) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.

(2E) If the deemed person referred to in subsection (1) is not treated for the purposes of this Act as resident and ordinarily resident in the United Kingdom, then for the purposes of this Act it shall be treated as neither resident nor ordinarily resident in the United Kingdom.”

(2) This paragraph shall have effect—

- (a) for the purposes of determining the residence status of the trustees of a settlement (whenever created), from 6th April 2007, and
- (b) for any other purpose (in relation to settlements whenever created), from 6th April 2006.

Interests in settlements

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Textual Amendments

F1 Sch. 12 para. 3 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 21(j)**

- 4 (1) In section 169F of TCGA 1992 (meaning of “interest in a settlement” for purposes of sections 169B to 169D)—
- (a) in subsection (1) for “or (3)” substitute “, (3) or (3A)”,
 - (b) in subsection (2)(a) after “any property which” insert “ is or ”,
 - (c) after subsection (3) insert—
 - “(3A) This subsection applies if—
 - (a) any property which is or may at any time be comprised in the settlement, or any derived property, is, or will or may become, payable to or applicable for the benefit of a child of the individual, at a time when that child is a dependent child of his, in any circumstances whatsoever, or
 - (b) a dependent child of the individual enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.”, and
 - (d) after subsection (4) insert—
 - “(4A) In this section—
 - (a) “dependent child” means a child who—
 - (i) is under the age of 18 years,
 - (ii) is unmarried, and
 - (iii) does not have a civil partner, and
 - (b) “child” includes a stepchild.
- (4B) For the purposes of subsection (3A) above no account shall be taken of a term of a settlement relating to dependent children of an individual in respect of any time at which he has no dependent child.”
- (2) Sub-paragraph (1) shall have effect for the purpose of determining whether for the purposes of sections 169B to 169D and 169F an individual is to be regarded as having an interest in a settlement (whenever created) on or after 6th April 2006.
- (3) But sub-paragraph (1) shall not have effect in relation to section 169C if the relevant disposal (within the meaning of section 169C(1)) is made on or before 5th April 2006.
- 5 (1) In paragraph 7(5) of Schedule 4A to TCGA 1992 (disposal of interest in settled property)—
- (a) leave out “or” at the end of paragraph (a), and
 - (b) after paragraph (b) insert—
 - “, or
 - (c) in a case where the settlor is regarded as having an interest in a settlement by reason only of—
 - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of a dependent child of his, or

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(ii) the fact that a benefit is enjoyed by such a child, where the settlor ceases during the year to have (and does not in that year subsequently come to have) any dependent child in relation to whom section 77(2A)(a) or (b) applies.”

- (2) Sub-paragraph (1) shall have effect for the purpose of determining whether a settlor is regarded as having an interest in a settlement (whenever created) for the purposes of Schedule 4A to TCGA 1992 on or after 6th April 2006.

PART 2

SUB-FUND SETTLEMENTS

- 6 (1) After section 69 of TCGA 1992 insert—

“69A Sub-fund settlements

Schedule 4ZA (which makes provision about sub-fund settlements) shall have effect.”

- (2) After Schedule 4 to TCGA 1992 insert—

“SCHEDULE 4ZA

SUB-FUND SETTLEMENTS

Making a sub-fund election

- 1 The trustees of a settlement (the “principal settlement”) may elect that a fund or other specified portion of the settled property (the “sub-fund”) be treated, unless the context otherwise requires, as a separate settlement (the “sub-fund settlement”) for the purposes of this Act, and the election shall have effect.
- 2 (1) An election under paragraph 1 (a “sub-fund election”) must specify the date on which it is to be treated as having taken effect, which must not be later than the date on which it is made.
(2) The election shall be treated as having taken effect—
 - (a) at the beginning of the specified date, or
 - (b) if there is a deemed disposal of an asset by the trustees of the principal settlement under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)), on the specified date immediately after the deemed disposal.
- 3 Trustees may make a sub-fund election only if—
 - (a) Conditions 1 to 4 are satisfied when the election is made, and
 - (b) Conditions 2 to 4 were satisfied throughout the period beginning with the time when the election is to be treated as having taken effect and ending immediately before the election is made.
- 4 Condition 1 is that the principal settlement is not itself a sub-fund settlement.

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- 5 Condition 2 is that the sub-fund is not the whole of the property comprised in the principal settlement.
- 6 Condition 3 is that, if the sub-fund election had taken effect, the sub-fund settlement would not consist of or include an interest in an asset any other interest in which would be comprised in the principal settlement.
- 7 For the purpose of Condition 3—
 - (a) sections 104(1) and 109(2)(a) shall not have effect, and
 - (b) “interest”, in relation to any asset, means an interest as a co-owner of the asset (whether the asset is owned jointly or in common and whether or not the interests of the co-owners are equal).
- 8 Condition 4 is that, if the sub-fund election had taken effect, no person would be a beneficiary under both the sub-fund settlement and the principal settlement.
- 9 (1) For the purpose of Condition 4 a person is a beneficiary under a settlement—
 - (a) if—
 - (i) any property which is or may at any time be comprised in the settlement, or
 - (ii) any derived property,is, or will or may become, payable to him or applicable for his benefit in any circumstances whatsoever, or
 - (b) if he enjoys a benefit deriving directly or indirectly from—
 - (i) any property which is comprised in the settlement, or
 - (ii) any derived property.
- (2) But for the purpose of Condition 4 a person is not to be regarded as a beneficiary under a settlement if property comprised in the settlement, or any derived property, will or may become payable to him or applicable for his benefit by reason only of—
 - (a) his marrying, or entering into a civil partnership with, a beneficiary under the settlement,
 - (b) the death of a beneficiary under the settlement,
 - (c) the exercise by the trustees of the settlement of—
 - (i) a power conferred by section 32 of the Trustee Act 1925 (c. 19) or section 33 of the Trustee Act (Northern Ireland) 1958 (c. 23 (N.I.)) (powers of advancement),
 - (ii) a power conferred by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in subparagraph (i), or
 - (iii) a power of advancement which is conferred by the instrument creating the principal settlement, or by another instrument made in accordance with the terms of the principal settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925, or
 - (d) the failure or determination of trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts).

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- (3) In this paragraph “derived property”, in relation to any property, means—
- (a) income from that property,
 - (b) property directly or indirectly representing—
 - (i) proceeds of that property, or
 - (ii) proceeds of income from that property, or
 - (c) income from property which is derived property by virtue of paragraph (b).

Sub-fund elections: procedure

- 10 A sub-fund election must be made—
- (a) by notice to an officer of Revenue and Customs, and
 - (b) in such form as the Commissioners for Her Majesty's Revenue and Customs may require.
- 11 A sub-fund election may not be made after the second 31st January after the year of assessment in which the date on which the election is to be treated as having taken effect falls.
- 12 A sub-fund election must contain—
- (a) a declaration by each trustee of the principal settlement that he consents to the election,
 - (b) a statement by the trustees of the principal settlement that the requirement in paragraph 3 is satisfied,
 - (c) such information as the Commissioners for Her Majesty's Revenue and Customs may require in relation to the principal settlement (which may, in particular, include information relating to the trustees, the trusts, property which is or has been comprised in the settlement, the settlors or the beneficiaries),
 - (d) a declaration by the trustees of the principal settlement that the information given in the election is correct, to the best of their knowledge and belief, and
 - (e) such other declarations as the Commissioners for Her Majesty's Revenue and Customs may require.
- 13 A sub-fund election may not be revoked.

Power to make enquiries

- 14 Where a sub-fund election has been made, an officer of Revenue and Customs may by notice require a person specified in paragraph 16 to supply information for the purposes of determining whether paragraph 3 was satisfied.
- 15 The notice shall specify a period of not less than 60 days within which the information must be supplied.
- 16 (1) The persons mentioned in paragraph 14 are—
- (a) a person who is or has been a trustee of a relevant settlement;
 - (b) a person who is or has been a beneficiary under a relevant settlement;
 - (c) a person who is or has been a settlor in relation to a relevant settlement.

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- (2) For the purposes of sub-paragraph (1) a settlement is a relevant settlement if it is—
- (a) the sub-fund settlement, or
 - (b) the principal settlement.

Consequences of a sub-fund election

- 17 The sub-fund settlement shall be treated, for the purposes of this Act, as having been created at the time when the sub-fund election is treated as having taken effect.
- 18 (1) Each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement for the purposes of this Act.
- (2) A person who is a trustee of the sub-fund settlement shall be treated for the purposes of this Act, from the time when the election is treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held.
- (3) A person who is a trustee of the principal settlement shall not be treated for the purposes of this Act as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- 19 The trustees of the sub-fund settlement shall be treated for the purposes of this Act as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.
- 20 (1) A deemed disposal by the trustees of the principal settlement of an asset under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)) shall be treated as having been made at the beginning of the date on which the sub-fund election is treated as having taken effect.
- (2) If the trustees of the sub-fund settlement have acquired an asset of which the trustees of the principal settlement are deemed to have disposed under section 71(1) (by virtue of paragraph 19), they shall be deemed to have acquired it at the time when the election is treated as having taken effect.
- (3) The trustees of the principal settlement shall not be treated as having disposed of an asset under section 80(2) by virtue of paragraph 18(2) if they are treated as having disposed of the same asset under section 71(1) by virtue of paragraph 19.
- 21 If the trustees of the sub-fund settlement are treated by virtue of paragraph 19 as having become absolutely entitled to money expressed in sterling, for the purposes of this Act—
- (a) the trustees of the principal settlement shall be treated as having disposed of the money at the beginning of the day on which the sub-fund election is treated as having taken effect, and
 - (b) the trustees of the sub-fund settlement shall be treated as having acquired the money at the time when the election is treated as having taken effect.

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- 22 (1) If the trustees of the principal settlement are deemed to have disposed of an asset under section 71(1) (by virtue of paragraph 19), the trustees of the principal settlement shall be treated for the purposes of sections 90 and 94 as having transferred the asset to the trustees of the sub-fund settlement.
- (2) Sub-paragraph (1) also applies where the trustees of the principal settlement would be deemed to have disposed of money expressed in sterling under subsection (1) of section 71 if in that subsection—
- (a) the reference to “assets” were a reference to “property”, and
 - (b) for “their” there were substituted “ its ”.
- (3) This paragraph shall have effect in relation to years of assessment beginning on or after 6th April 2006 (but a sub-fund election may not be treated as having taken effect before 6th April 2006).

PART 3

CONSEQUENTIAL AND MINOR AMENDMENTS

Introduction

- 7 Paragraphs 8 to 45 amend TCGA 1992.

General

- 8 (1) In section 13(10) (participants in non-resident companies) for “trustees who are participants” substitute “ the trustees of a settlement who are participants ”.
- (2) This paragraph shall have effect in relation to gains accruing on or after 6th April 2006.
- 9 For section 21(1)(b) (definition of “asset”) substitute—
- “(b) currency, with the exception (subject to express provision to the contrary) of sterling,”.
- 10 (1) In section 60(1) (nominees and bare trustees) in each place for “assets” substitute “ property ”.
- (2) In section 60(2) (interpretation: property held for person absolutely entitled) in each place for “asset” substitute “ property ”.
- (3) This paragraph shall have effect from 6th April 2006.
- 11 (1) In section 63 (death: application of law in Scotland)—
- (a) in subsection (1) omit the words “an heir of entail in possession of any property in Scotland subject to an entail, whether sui juris or not, or of”, and
 - (b) in subsection (2)—
 - (i) omit the words “For the purposes of this Act,”,
 - (ii) omit the words “heir or” before “liferenter”, and
 - (iii) omit the words “the heir of entail next entitled to the entailed property under the entail or, as the case may be,”.
- (2) After section 63 insert—

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“63A Death: application of law in Northern Ireland

- (1) The provisions of this Act, so far as relating to the consequences of the death of a person to whom property in Northern Ireland stands limited for life (“the deceased”), shall have effect subject to the provisions of this section.
 - (2) A person who acquires property in fee simple absolute or fee tail in possession as a consequence of the deceased's death shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.”
 - (3) The provisions of this paragraph shall have effect in relation to a death occurring on or after 6th April 2006.
- 12 (1) In section 64(1) (expenses in administration)—
- (a) for the words from “an asset” to the beginning of paragraph (a) substitute “an asset held by another person as trustee, or as a personal representative of a deceased person, to which he became absolutely entitled as legatee or as against the trustee”, and
 - (b) in paragraphs (a) and (b) for “personal representatives or trustees” substitute “personal representative or trustee”.
- (2) This paragraph shall have effect in relation to disposals made on or after 6th April 2006.

^{F2}13

Textual Amendments

F2 Sch. 12 para. 13 omitted (with effect in accordance with [Sch. 2 para. 22](#) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 paras. 21\(j\)](#), [55\(h\)](#)

- 14 (1) In section 79B(1) (attribution to trustees of gains of non-resident company) before “trustees of a settlement” insert “the”.
- (2) This paragraph shall have effect in relation to gains accruing on or after 6th April 2006.
- 15 (1) In section 97(7) (supplementary provisions for offshore settlements: interpretation)—
- (a) omit “the preceding provisions of”,
 - (b) for the definition of “settlement” and “settlor” substitute—

““settlement” has the meaning given by section 620 of ITTOIA 2005, and

“settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly.”
- (2) After section 97(7) insert—
- “(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as

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a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).”

- (3) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).
- 16 (1) In section 98(2) (information: application of section 745 of ICTA)—
- (a) for “(2) to (5)” substitute “ (2) to (6) ”,
 - (b) omit “and” at the end of paragraph (a), and
 - (c) omit paragraph (b).
- (2) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).
- 17 (1) In section 104(1) (share pooling) after “for the purposes of this Act” insert “ (subject to express provision to the contrary) ”.
- (2) This paragraph shall come into force on 6th April 2006.
- 18 (1) In section 109(2)(a) (share pooling: pre-1982 holdings) after “for the purposes of this Act” insert “ (subject to express provision to the contrary) ”.
- (2) This paragraph shall come into force on 6th April 2006.
- 19 (1) In section 169D(5) after “(3)” insert “ and to an individual's dependent child in section 169F(2A) ”.
- (2) This paragraph shall come into force on 6th April 2006.
- 20 (1) In section 217 (building societies: successor companies)—
- (a) in subsection (3)(a)—
 - (i) for “trustees” substitute “ the trustees of a settlement ”, and
 - (ii) omit the word “and” at the end of the paragraph,
 - (b) omit subsection (3)(b), and
 - (c) in subsection (5) for “arising” substitute “ accruing ”.
- (2) This paragraph shall have effect in relation to a transfer falling within section 216(1) which is effected on or after 6th April 2006.
- 21 (1) In section 227(2) (employee share ownership trusts: conditions for roll-over relief) for “the trustees of a trust” substitute “ the trustees of a settlement ”.
- (2) This paragraph shall have effect in relation to disposals made on or after 6th April 2006.
- 22 (1) In section 228(5)(b) (employee share ownership trusts: unauthorised arrangement) for “a beneficiary under the trust” substitute “ a beneficiary under the settlement ”.
- (2) In section 228(7) (qualifying employee share ownership trust) for “whether a trust is” substitute “ whether a settlement is ”.
- (3) Sub-paragraph (1) shall have effect in relation to arrangements which allow an acquisition to be made on or after 6th April 2006 (irrespective of when the arrangements were made).
- (4) Sub-paragraph (2) shall have effect for the purposes of determining what constitutes a qualifying share ownership trust for the purpose of section 227 on or after 6th April 2006.

Changes to legislation: Finance Act 2006, SCHEDULE 12 is up to date with all changes known to be in force on or before 19 January 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

- 23 (1) In section 251(5) (debts: trustee creditors)—
- (a) for “Where the original creditor is a trustee and the debt, when created, is settled property” substitute “ Where the trustees of a settlement are the original creditor ”, and
 - (b) for “as against the trustee” substitute “ as against the trustees ”.
- (2) This paragraph shall have effect in relation to debts created on or after 6th April 2006.
- 24 (1) In section 283(4) (repayment supplements)—
- (a) for “a trust or,” substitute “ the trustees of a settlement or ”, and
 - (b) omit “as such (within the meaning of section 701(4) of that Act)”.
- (2) Sub-paragraph (1)(a) shall have effect in relation to a repayment made on or after 6th April 2006.
- (3) Sub-paragraph (1)(b) shall have effect in relation to a repayment made on or after 6th April 2006 (irrespective of the date on which the deceased person died).
- 25 (1) In section 286(3) (connected persons: trustees) omit the words following paragraph (c).
- (2) After section 286(3) insert—
- “(3ZA) For the purpose of subsection (3) above—
- (a) “settlement” has the same meaning as in section 620 of ITTOIA 2005, and
 - (b) “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this paragraph, means any person in whom the settled property or its management is for the time being vested.”
- (3) This paragraph shall come into force (in relation to settlements whenever created) on 6th April 2006.
- 26 (1) In section 288(8) (interpretation) at the appropriate places insert—

““Principal settlement”... ..	Sch.4ZA para. 1”,
““Settlor”	S.68A”,
““Settlor of property”... ..	S.68A”,
““Sub-fund”... ..	Sch.4ZA para. 1”,
““Sub-fund election”... ..	Sch.4ZA para. 2”,
““Sub-fund settlement” ...	Sch.4ZA para. 1”.

- (2) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).

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Textual Amendments

F3 Sch. 12 para. 27 omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 55(h)

- 28
- (1) In paragraph 1(6) of Schedule 1 (exempt amount: interpretation) for the words “settlor” and “excluded settlement” have the same meanings” substitute “ “excluded settlement” has the same meaning ”.

(2) In paragraph 2(7) of that Schedule (meaning of “settlor” and “excluded settlement”) omit the words from “settlor” to “intestate and”.

(3) This paragraph shall have effect for the purposes of determining, for the purposes of Schedule 1, whether a person is a settlor in relation to a settlement (whenever created) on or after 6th April 2006.

F429

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Textual Amendments

F4 Sch. 12 para. 29 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 21(j)

Residence of trustees

- 30
- (1) In each of the provisions set out in sub-paragraph (2) for “not resident or ordinarily resident in the United Kingdom” substitute “ neither resident nor ordinarily resident in the United Kingdom ”.

(2) Those provisions are—

(a) section 76(1B)(a) (disposal of interest in settled property),

(b) section 86(2)(a) (attribution of gains to settlors: residence condition), and

(c) paragraphs 2(1)(c), 3(1)(a) and 4(1)(a) of Schedule 5A (settlements with foreign element).

(3) In paragraph (2)(1)(d) of Schedule 5A for “resident or ordinarily resident” substitute “ resident and ordinarily resident ”.

(4) The amendments to sections 76(1B)(a) and 86(2)(a) shall come into force on 6th April 2007 (in relation to settlements whenever created).

(5) The amendments to paragraph 2(1)(c) and (d) of Schedule 5A shall have effect in relation to transfers of property made on or after 6th April 2007 (in relation to settlements whenever created).

(6) The amendments to paragraphs 3(1)(a) and 4(1)(a) of Schedule 5A shall have effect in relation to settlements created on or after 6th April 2007.

F531

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Changes to legislation: Finance Act 2006, SCHEDULE 12 is up to date with all changes known to be in force on or before 19 January 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

Textual Amendments

F5 Sch. 12 para. 31 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 21\(j\)](#)

- 32 In section 83A(3) (trustee residence: split years)—
- (a) in paragraph (a)—
 - (i) after “resident” insert “ and ordinarily resident ”, and
 - (ii) at the end omit “or”, and
 - (b) omit paragraph (b).
- 33 Paragraphs 31 and 32 shall come into force on 6th April 2007 (in relation to settlements whenever created).
- 34 (1) In each of the provisions set out in sub-paragraph (2) for “resident or ordinarily resident in the United Kingdom” substitute “ resident and ordinarily resident in the United Kingdom ”.
- (2) Those provisions are—
- (a) section 83A(4)(b) (trustees to be treated as non-resident),
 - (b) section 85A(3) (attribution of gains to beneficiaries on transfer of value to trustees),
 - (c) section 86(3) (assumption as to residence),
 - ^{F6}(d)
 - (e) paragraph 5(2) of Schedule 4A (dual resident trustees),
 - (f) paragraphs 4(2) and 10(1) and (3) of Schedule 4C (trustees: chargeable amount and residence), and
 - (g) paragraphs 3(1)(b) and 4(1)(b) of Schedule 5A (settlement with foreign element: information).
- (3) The amendments to sections 83A(4)(b), 85A(3), 86(3) and 87(2), paragraph 5(2) of Schedule 4A and paragraphs 4(2) and 10(1) and (3) of Schedule 4C shall come into force on 6th April 2007 (in relation to settlements whenever created).
- (4) The amendments to paragraphs 3(1)(b) and 4(1)(b) of Schedule 5A shall have effect in relation to settlements created on or after 6th April 2007.

Textual Amendments

F6 Sch. 12 para. 34(2)(d) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 114\(d\)](#)

- 35 (1) In each of the provisions set out in sub-paragraph (2)—
- (a) for “resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year” substitute “ resident and ordinarily resident in the United Kingdom during any part of the year ”, and
 - (b) for “such residence or ordinary residence” substitute “ such residence and ordinary residence ”.
- (2) Those provisions are—
- (a) section 86(2)(b) (trustees resident outside United Kingdom),

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- (b) section 88(1) (gains of dual resident settlements), and
- (c) paragraph 5(1) of Schedule 4C (chargeable amount: dual resident settlement).

(3) Sub-paragraph (2)(c) shall have effect in relation to a transfer of value made on or after 6th April 2007 (in relation to settlements whenever created).

Commencement Information

I1 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

36 (1) In each of the provisions set out in sub-paragraph (2) for “at no time resident or ordinarily resident in the United Kingdom” substitute “ at no time resident and ordinarily resident in the United Kingdom ”.

(2) Those provisions are—

^{F7}(a)

(b) paragraph 4(1) of Schedule 4C (chargeable amount: non-resident settlement).

(3) Sub-paragraph (2)(b) shall have effect in relation to a transfer of value made on or after 6th April 2007 (in relation to settlements whenever created).

Textual Amendments

F7 Sch. 12 para. 36(2)(a) omitted (with effect in accordance with Sch. 7 para. 115 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 114\(d\)](#)

Commencement Information

I2 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

37 (1) In section 169(3)(a) (availability of hold-over relief)—

- (a) for “fall to be treated, under section 69, as” substitute “ are ”, and
- (b) omit the words from “, although” to the end of the paragraph.

(2) In section 169(3)(b)(ii) (notional disposal) for “arising” substitute “ accruing ”.

(3) This paragraph shall have effect in relation to relevant disposals (within the meaning given by section 169(2)) made on or after 6th April 2007 (in relation to settlements whenever created).

Commencement Information

I3 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

38 In paragraph 2(7)(a) of Schedule 1 (meaning of “excluded settlement”) omit “treated under section 69(1) as”.

Commencement Information

I4 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

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- 39 In paragraph 5(1) of Schedule 4A (residence of trustees) for the words from “either” to the end of the sub-paragraph substitute “ resident and ordinarily resident in the United Kingdom during any part of the year ”.

Commencement Information

I5 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

- 40 In paragraph 10(2) of Schedule 4C (capital payments received by beneficiaries when trustees resident in United Kingdom) for paragraphs (a) and (b) substitute “ during the whole of which the trustees are resident and ordinarily resident in the United Kingdom ”.

Commencement Information

I6 Sch. 12 paras. 35-40 in force at 6.4.2007 unless otherwise expressly provided see Sch. 12 para. 41

- 41 Paragraphs 35 to 40 shall, unless otherwise expressly provided, come into force on 6th April 2007 (in relation to settlements whenever created).

Sub-fund settlements

- 42 After section 73(1) of TCGA 1992 (death of life tenant: exclusion of chargeable gain) insert—

“(1A) Subsection (1)(b) above shall be treated as having effect in relation to a sub-fund settlement if the property does not revert to the trustees of the principal settlement in relation to that sub-fund settlement by reason only that—

- (a) a sub-fund election is or has been made in respect of another sub-fund of the principal settlement, and
- (b) the property becomes comprised in that other sub-fund settlement on the death of the person entitled to the interest in possession.”

- 43 In section 286(3) of TCGA 1992 (connected persons: trustees)—

- (a) omit “and” at the end of paragraph (b), and
- (b) after paragraph (c) insert—
 - “(d) if the settlement is the principal settlement in relation to one or more sub-fund settlements, the trustees of the sub-fund settlements, and
 - (e) if the settlement is a sub-fund settlement in relation to a principal settlement, the trustees of any other sub-fund settlements in relation to the principal settlement.”

- 44 (1) At the beginning of Schedule 1 to TCGA 1992 (trustees: exempt amount, etc) insert—

“A1 (1) In determining the exempt amount available to the trustees of a settlement in relation to a year of assessment—

- (a) a principal settlement and its sub-fund settlements shall be treated, for the purposes of paragraphs 1 and 2 below, as if no sub-fund elections had been made, and

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- (b) paragraph 3 below shall apply for the purposes of determining the exempt amount available to each member of the class consisting of a principal settlement and its sub-fund settlements.
- (2) The reference in sub-paragraph (1) above to a principal settlement and its sub-fund settlements means a principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.”
- (2) After paragraph 2 of Schedule 1 to TCGA 1992 insert—
- “3 (1) The exempt amount available in relation to a year of assessment to the trustees of each settlement in the class consisting of a principal settlement and its sub-fund settlements shall be the exempt amount available to the trustees of the principal settlement in relation to the year, determined in accordance with paragraph 1 or 2 above as if no sub-fund elections had been made.
- (2) But if there are two or more non-excluded settlements in the class consisting of a principal settlement and its sub-fund settlements, the exempt amount available to the trustees of each settlement in the class in relation to the year shall be the amount specified in sub-paragraph (1) above divided by the number of non-excluded settlements in the class.
- (3) In this paragraph—
- “excluded settlement” has the meaning given by paragraph 2(7) above, and
- references to a settlement having sub-fund settlements, and similar expressions, are references to a settlement being the principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.”
- 45 Paragraphs 42 to 44 shall have effect in relation to years of assessment beginning on or after 6th April 2006.

Amendments of other Acts

- 46 ^{F8}(1)
- (2) In the second column of the table in section 98 of TMA 1970 insert at the appropriate place— “ paragraph 12 of Schedule 4ZA to the 1992 Act ”.
- (3) This paragraph shall come into force on 6th April 2006.

Textual Amendments

F8 Sch. 12 para. 46(1) omitted (13.8.2009) by virtue of Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), art. 1, Sch. para. 60(m)

^{F9}47

Textual Amendments

F9 Sch. 12 para. 47 repealed (with effect in accordance with art. 1(2)(3) Sch. 1 of the amending S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), reg. 1(1), Sch. 2

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48 ^{F10}(1)

(2) In section 34(3) of that Act (disabled persons) for the words from “the powers” to the end of the subsection substitute “—

- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
- (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
- (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).”

(3) In section 35(4) of that Act (relevant minors) for the words from “the powers” to the end of the subsection substitute “—

- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958) (powers of advancement),
- (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
- (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).”

(4) After section 37(6) of that Act (vulnerable person election) insert—

“(7) Where—

- (a) a vulnerable person election has effect in relation to qualifying trusts,
- (b) the property held on those trusts is treated for the purposes of TCGA 1992 and of the Tax Acts as comprised in a sub-fund settlement, and
- (c) the vulnerable person election was not made by the trustees of the sub-fund settlement,

the vulnerable person election shall have effect, in relation to the trusts mentioned in paragraph (a), in respect of matters arising at or after the time when the sub-fund election is treated as having taken effect, as if it had been made by the trustees of the sub-fund settlement and the vulnerable person.

(8) In relation to matters arising before the time when the sub-fund election is treated as having taken effect, nothing in subsection (7)—

- (a) relieves the trustees of the settlement which is the principal settlement in relation to the sub-fund settlement of their obligation under subsection (6), or
- (b) prevents a notice from being given to those trustees under section 40(1) or (3).

(9) In this section—

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- (a) “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
- (b) “sub-fund election” has the meaning given by paragraph 2 of that Schedule,
- (c) “sub-fund settlement” has the meaning given by paragraph 1 of that Schedule, and
- (d) the time when a sub-fund election is treated as having taken effect shall be the time when it is treated as having taken effect under paragraph 2 of that Schedule.”

(5) This paragraph shall come into force on 6th April 2006 (in relation to vulnerable person elections whenever made).

Textual Amendments

F10 Sch. 12 para. 48(1) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 21\(j\)](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- Sch. 12 para. 47(1) omitted by [2008 c. 9 s. 41\(7\)\(j\)](#)