

## SCHEDULES

### SCHEDULE 12

#### 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*

3 (1) In section 77 of TCGA 1992 (charge on settlor with interest in settlement)—

- (a) in subsection (2)(a) after “any property which” insert “is or”,
- (b) after subsection (2) insert—

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- “(2A) A settlor shall also be regarded as having an interest in a settlement (subject to the following provisions of this section) 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 settlor, at a time when that child is a dependent child of his, in any circumstances whatsoever, or
  - (b) a dependent child of the settlor enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.”
- (c) after subsection (3) insert—
- “(3A) 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.
- (3B) For the purposes of subsection (2A) above no account shall be taken of a term of a settlement relating to dependent children of a settlor in respect of any time at which he has no dependent child.”
- (d) in subsection (6)—
- (i) omit “or” at the end of paragraph (a), and
  - (ii) 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
    - (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 subsection (2A)(a) or (b) above applies.”, and
- (e) after subsection (8) insert—
- “(9) This section shall have effect subject to the provisions of section 30 of the Finance Act 2005.”
- (2) Sub-paragraph (1) shall have effect for the purpose of determining whether for the purposes of section 77 a settlor is regarded as having an interest in a settlement (whenever created) on or after 6th April 2006.
- 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”,

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(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
  - (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.