

SCHEDULE 8

(as introduced by section 42(1))

TRUSTS

Overview

- 1 (1) This Schedule makes provision about the application of this Act and TCMA in relation to trusts.
- (2) This Schedule is arranged as follows—
 - (a) paragraph 2 defines key terms;
 - (b) paragraph 3 makes provision about transactions involving bare trusts;
 - (c) paragraphs 4 to 10 make provision about transactions involving settlements and the responsibilities of trustees of a settlement;
 - (d) paragraph 11 makes provision about the treatment of the interests of beneficiaries under certain trusts.

Key terms

- 2 (1) In this Schedule, 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 aged under 18 or lacking capacity (within the meaning of the [Mental Capacity Act 2005 \(c. 9\)](#)) to administer and manage the person’s property and affairs, 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.
- (2) The reference in sub-paragraph (1) to a person being absolutely entitled as against the trustee is a reference to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—
 - (a) to resort to the property for payment of duty, taxes, costs or other outgoings, or
 - (b) to direct how the property is to be dealt with.
- (3) In this Schedule, a “settlement” means a trust that is not a bare trust.

Bare trusts

- 3 (1) Where a person (“T”) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of, the person or persons for whom T is trustee.
- (2) But 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, that person is to be treated for the purposes of this Act, as it applies in relation to the grant of the lease, as buyer of the whole of the interest acquired.
- (4) Where a lease is granted by a person as bare trustee, that person is to be treated for the purposes of this Act, as it applies in relation to the grant of the lease, as seller of the whole of the interest disposed of.

Acquisition by trustees of settlement

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

Consideration for exercise of power of appointment or discretion

- 5 (1) Sub-paragraph (2) applies 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.
- (2) 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 is to be treated as consideration for the acquisition of the interest.

Reallocation of trust property as between beneficiaries

- 6 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 the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

Responsibility of trustees of settlement

- 7 (1) Where the trustees of a settlement are liable to pay—
- (a) tax or late payment interest on that tax,
 - (b) an amount under section 55 of TCMA (recovery of excessive repayment) or late payment interest on that amount, or
 - (c) a penalty under Part 5 of TCMA or late payment interest on that 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 is—
- (a) in relation to so much of a penalty as is payable in respect of any day, or to late payment interest on so much of a penalty as is so payable, the beginning of that day;
 - (b) in relation to any other penalty, or to late payment interest on the penalty, the time when the act or omission occurred that caused the penalty to become payable.

Status: This is the original version (as it was originally enacted).

- (5) In this paragraph, “late payment interest” means late payment interest under Part 6 of TCMA.

Relevant trustees for purposes of return etc.

- 8 (1) A return 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.
- (2) The trustees by whom such a return is made are referred to in this Schedule as “the relevant trustees”.
- (3) The declaration required by section 53 (declaration that return is complete and correct) must be made by all the relevant trustees.

Relevant trustees: enquiries and assessments

- 9 (1) If WRA issues a notice of enquiry under section 43 of TCMA into the return—
- (a) the notice must be issued to each of the relevant trustees whose identity is known to WRA;
 - (b) the powers of WRA under Part 4 of TCMA to require information and documents 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 under section 51 of TCMA for a direction that a closure notice be issued (and all of them are entitled to be parties to the application);
 - (d) any closure notice under section 50 of TCMA must be issued to each of the relevant trustees whose identity is known to WRA.
- (2) A WRA determination under section 52 of TCMA 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 WRA.
- (3) A WRA assessment under section 54 or 55 of TCMA relating to the transaction must be made in respect of all of the relevant trustees and is not effective in respect of any of them unless notice of it is issued under section 61 of TCMA to each of them whose identity is known to WRA.

Relevant trustees: appeals and reviews

- 10 (1) The agreement of all the relevant trustees is required if a settlement agreement relating to the transaction is to be entered into under section 184 of TCMA.
- (2) A notice of request under section 173 of TCMA may be given by any of the relevant trustees.
- (3) Where WRA undertakes a review of an appealable decision relating to the transaction following such a request made by some (but not all) of the relevant trustees—
- (a) notice of the review must be issued by WRA to each of the other relevant trustees whose identity is known to WRA;
 - (b) any of the other relevant trustees may be a party to the review if they notify WRA in writing;
 - (c) notice of WRA’s conclusions under section 176(5), (6) or (7) of TCMA must be issued to each of the relevant trustees whose identity is known to WRA;

- (d) section 177 of TCMA (effect of conclusions of review) applies in relation to all of the relevant trustees.
- (4) In the case of an appeal under Part 8 of TCMA relating to the transaction—
- (a) the appeal may be brought by any of the relevant trustees;
 - (b) notice of the appeal must be issued by WRA to each of the relevant trustees who are not bringing the appeal and whose identity is known to WRA;
 - (c) any of the relevant trustees are entitled to be parties to the appeal;
 - (d) the tribunal's determination under section 181 of TCMA binds all the relevant trustees.

Interests of beneficiaries under certain trusts

- 11 (1) Sub-paragraphs (2) and (3) apply 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.
- (2) The beneficiary is to be treated for the purpose of this Act as having an equitable interest in the trust property despite the fact 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.
- (3) An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.