



# Income and Corporation Taxes Act 1970

## 1970 CHAPTER 10

### PART XVI

#### SETTLEMENTS

#### CHAPTER II

##### SETTLEMENTS ON CHILDREN

#### 437 The general rule

- (1) Where, by virtue or in consequence of any settlement to which this Chapter applies and during the life of the settlor, any income is paid to or for the benefit of a child of the settlor in any year of assessment, the income shall, if at the time of the payment the child was unmarried and—
  - (a) had not attained the age of eighteen, or
  - (b) had attained that age but had not attained the age of twenty-one and was not working regularly,

be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person.

- (2) This Chapter applies to every settlement, wheresoever it was made or entered into, and whether it was made or entered into before or after the passing of this Act, except a settlement made or entered into before 22nd April 1936 which immediately before that date was irrevocable.

Paragraph 18 of Schedule 14 to this Act shall have effect as respects certain earlier settlements on children.

- (3) Subsection (1) above shall not have effect in relation to a child who has not attained the age of eighteen for any year of assessment for which his aggregate income, so far as it would fall within subsection (1) above or within section 43(1) of this Act (aggregation

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of income of parent and child) but for this exception and the corresponding exception in subsection (3) of the said section 43, does not exceed £5.

- (4) Without prejudice to subsection (3) above, income paid to or for the benefit of a child of a settlor shall not be treated as provided in subsection (1) above for any year of assessment in which the child is over the age of eighteen if the aggregate amount of the income paid to or for the benefit of the child which, but for this subsection, would be so treated by virtue of subsection (1) above, does not exceed £5.
- (5) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the United Kingdom, and references in this Chapter to income shall be construed accordingly.

#### **438 Accumulation settlements**

- (1) Subject to the provisions of this section, for the purposes of this Chapter—
- (a) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it, or assets representing it, will or may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition, or the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
  - (b) any income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.
- (2) Where any income is dealt with as mentioned in subsection (1) of this section by virtue or in consequence of a settlement to which this Chapter applies, being a settlement which, at the time when the income is so dealt with, is an irrevocable settlement—
- (a) the provisions of subsection (1) of this section shall not apply to that income unless and except to the extent that that income consists of, or represents directly or indirectly, sums paid by the settlor which are allowable as deductions in computing his total income; and
  - (b) any sum whatsoever paid thereafter by virtue or in consequence of the settlement, or any enactment relating thereto, to or for the benefit of a child of the settlor, being a child who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above, shall be deemed for the purposes of that section to be paid as income, unless and except to the extent that the sum so paid together with any other sums previously so paid (whether to that child or to any other child who, at the relevant time, was unmarried and within the said subsection (1)(a) or subsection (1)(b)) exceeds the aggregate amount of the income which, by virtue or in consequence of the settlement, has been paid to or for the benefit of a child of the settlor, or dealt with as mentioned in subsection (1) of this section, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.
- (3) In subsection (2)(b) above " the relevant time " means—

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- (a) in relation to a payment made after the year 1957-58, except a payment made in the year 1958-59 to or for the benefit of a child born after 6th April 1958, and so made by virtue or in consequence of a settlement made before 9th July 1958, the date when the payment was made,
- (b) in relation to a payment made in or before the year 1957-58, or a payment made in the year 1958-59 and excepted from paragraph (a) above, the commencement of the year of assessment in which the payment was made.

#### **439 Meaning of "irrevocable"**

- (1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if the terms thereof provide—
- (a) for the payment to the settlor or, during the life of the settlor, to the wife or husband of the settlor for his or her benefit, or for the application for the benefit of the settlor or, during the life of the settlor, of the wife or husband of the settlor, of any income or assets in any circumstances whatsoever during the life of any child of the settlor to or for the benefit of whom any income, or assets representing it, is or are or may be payable or applicable by virtue or in consequence of the settlement ; or
  - (b) for the determination of the settlement by the act or on the default of any person ; or
  - (c) for the payment of any penalty by the settlor in the event of his failing to comply with the provisions of the settlement:

Provided that a settlement shall not be deemed to be revocable by reason only—

- (i) that it contains a provision under which any income or assets will or may become payable to or applicable for the benefit of the settlor, or the wife or husband of the settlor, on the bankruptcy of any such child as is mentioned in paragraph (a) of this subsection or in the event of an assignment of or charge on that income or those assets being executed by such a child; or
  - (ii) that it provides for the determination of the settlement as aforesaid in such a manner that the determination will not, during the lifetime of any such child as aforesaid, benefit the settlor or the wife or husband of the settlor; or
  - (iii) in the case of a settlement to which section 33 of the Trustee Act 1925 applies, that it directs income to be held for the benefit of such a child as aforesaid on protective trusts, unless the trust period is a period less than the life of the child or the settlement specifies some event on the happening of which the child would, if the income were payable during the trust period to him absolutely during that period, be deprived of the right to receive the income or part thereof.
- (2) In applying section 438(2)(b) above to a settlement subsisting on 6th April 1958 which would have been revocable if, in paragraph (ii) above, in place of the words " the settlor or the wife or husband of the settlor " (which were inserted by section 20(5) of the Finance Act 1958) there stood " any person other than such a child, or the wife, husband or issue of such a child " the date when it became irrevocable shall be taken as 6th April 1958.

#### **440 Interest paid by trustees**

- (1) Where interest is paid by the trustees of a settlement to which this Chapter applies there shall be deemed for the purposes of this Chapter to be paid to or for the benefit

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of a child of the settlor who at the time of the payment is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above (in addition to any other amount deemed to be so paid) an amount equal to a fraction

$$\frac{B}{A}$$

of the interest, where—

A is the whole of the income arising under the settlement in the year of assessment, less any expenses of the trustees of the settlement paid in that year which, in the absence of any express provision of the settlement, would be properly chargeable to income, and

B is such part of A as is paid to or for the benefit of any child of the settlor who is unmarried and within subsection (1)(a) or subsection (1)(b) of section 437 above.

- (2) This section shall not apply to interest in respect of which relief from tax at the standard rate is allowable under any provision of the Income Tax Acts or to interest payable to the settlor or the wife or husband of the settlor (if living with the settlor).
- (3) Nothing in this section shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.
- (4) For the purpose of this section—

" income arising under the settlement " has the meaning given by section 454 below, which for that purpose shall be deemed to apply in relation to settlements to which this Chapter applies as it applies in relation to settlements to which Chapter III below applies, and

the reference to the trustees' expenses excludes sums mentioned in section 455(a) below (sums distributed to beneficiaries).

#### **441 Adjustments between disponor and trustees**

- (1) Where, by virtue of this Chapter, any income tax becomes chargeable on and is paid by the person by whom a settlement was made or entered into, that person shall be entitled—
  - (a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and
  - (b) for that purpose to require the Board or, in relation to tax at the standard rate, an inspector to furnish to him a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid,
 and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.
- (2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which he would but for the provisions of this Chapter have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

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- (3) Subject to section 529 of this Act, any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of his income.

#### **442 Application of Chapter II to settlements with more than one settlor**

- (1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor.
- (2) In the case of any such settlement as aforesaid, only the following can, for the purposes of this Chapter, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor, that is to say—
- (a) income originating from that settlor; and
  - (b) in a case in which paragraph (b) of subsection (2) of section 438 of this Act applies, any sums which are under that paragraph to be deemed to be paid as income:

Provided that in applying the said paragraph (b) to any settlor—

- (i) the references to sums paid by virtue or in consequence of the settlement or any enactment relating thereto include only sums paid out of property originating from that settlor or income originating from that settlor ; and
  - (ii) the reference to income which by virtue or in consequence of the settlement has been paid to or for the benefit of a child of the settlor or dealt with as mentioned in subsection (1) of that section includes only income originating from that settlor.
- (3) References in this section to property originating from a settlor are references to—
- (a) property which that settlor has provided directly or in directly for the purposes of the settlement; and
  - (b) property representing that property; and
  - (c) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.
- (4) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
  - (b) income provided directly or indirectly by that settlor.
- (5) In subsections (3) and (4) of this section—
- (a) references to property or income which a settlor has provided directly or indirectly include references to property or income which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor but do not include references to property or income which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person; and
  - (b) references to property which represents other property include references to property which represents accumulated income from that other property.

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#### **443 Power to obtain information under Chapter II**

The Board or, for the purpose of charging tax at the standard rate, an inspector may by notice in writing require any party to a settlement to furnish them within such time as they may direct (not being less than twenty-eight days) with such particulars as they think necessary for the purposes of this Chapter.

#### **444 Interpretation of Chapter II**

- (1) In this Chapter "child" includes a stepchild, an adopted child and an illegitimate child, and a child is to be treated as working regularly if, and only if, he or she is engaged in a full-time occupation, not being one entered into during an interval not exceeding fifteen months between two periods of full-time education, and intends to be regularly engaged in it or another such occupation.

In this subsection " occupation" means any office, employment, trade, profession or vocation.

- (2) In this Chapter—

" settlement " includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

" settlor ", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the preceding words of this definition) includes any person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement;

" income ", except in the phrase (occurring in section 437(1) above) " be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year and not as the income of any other person ", includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the United Kingdom by a person resident and ordinarily resident in the United Kingdom.

- (3) For the purpose of adapting the definition of " income " in subsection (2) above in relation to Case VII of Schedule D, that definition shall apply in relation to gains arising from the acquisition and disposal of chargeable assets as it would apply if the gains were profits from a trade of dealing in the assets, and any such gains shall be treated as payable in the first instance to the person to whom they accrue.
- (4) In the case of settled property as defined for the purposes of Case VII of Schedule D, section 438(1)(a) above shall have effect in relation to gains so arising from the settled property only in so far as they exceed losses so arising from them.