



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XV

SETTLEMENTS

CHAPTER II

SETTLEMENTS ON CHILDREN

663 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 below the age of 18, 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) Where an offshore income gain (within the meaning of Chapter V of Part XVII) accrues in respect of a disposal of assets made by a person holding them as trustee for a person who would be absolutely entitled as against the trustee but for being an infant, the income which by virtue of section 761(1) is treated as arising by reference to that gain shall for the purposes of this Chapter be deemed to be paid to the infant; and in this subsection, in relation to Scotland, “infant” means pupil or minor.
- (3) 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 10 of Schedule 30 shall have effect as respects certain earlier settlements on children.

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- (4) 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 aggregate amount of the income paid to or for the benefit of that 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.

664 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 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 so dealt with 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) above 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) subsection (1) above 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) subject to subsection (3) below, 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 below the age of 18, shall be deemed for the purposes of section 663 to be paid as income.
- (3) Subsection (2)(b) above shall not apply if and to the extent that the sum paid as mentioned in that paragraph together with any other sums previously so paid (whether to that child or to any other child who, at the time of the payment, was unmarried and below the age of 18) 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) above, since the date when the settlement took effect or the date when it became irrevocable, whichever is the later.

665 Meaning of “irrevocable”

- (1) For the purposes of this Chapter, a settlement shall not be deemed to be irrevocable if its terms provide—

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- (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 the settlor's child; 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.

In this section "the settlor's child", in relation to any settlement, means 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.

- (2) For the purposes of this Chapter, a settlement shall not be deemed to be revocable by reason only—
 - (a) 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 the settlor's child or in the event of an assignment of or charge on that income or those assets being executed by the settlor's child; or
 - (b) that it provides for the determination of the settlement by the act or on the default of any person in such a manner that the determination will not, during the lifetime of the settlor's child, benefit the settlor or the wife or husband of the settlor; or
 - (c) 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 the settlor's child 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 all or part of the income.

666 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 of a child of the settlor who at the time of the payment is unmarried and below the age of 18 (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 below the age of 18.

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- (2) This section shall not apply to interest in respect of which relief from tax 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 681, 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 of this Part applies.
- (5) In this section the reference to the trustees' expenses excludes sums mentioned in section 682(1)(a).

667 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 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.
- (3) Subject to section 833(3), 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.

668 Application of Chapter II to settlements by two or more settlors

- (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, 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

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- (b) in a case in which section 664(2)(b) applies, any sums which are under that paragraph to be deemed to be paid as income.
- (3) In applying section 664(2)(b) to any settlor—
 - (a) 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
 - (b) 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 section 664(1) includes only income originating from that settlor.
- (4) References in this section to property originating from a settlor are references to—
 - (a) property which that settlor has provided directly or indirectly 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 mentioned in paragraph (a) above and other property as, on a just apportionment, represents the property so provided.
- (5) 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.
- (6) In subsections (4) and (5) above—
 - (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.

669 Power to obtain information under Chapter II

An inspector may by notice require any party to a settlement to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Chapter.

670 Interpretation of Chapter II

In this Chapter—

“child” includes a stepchild and an illegitimate child;

“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

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person a reciprocal arrangement for that other person to make or enter into the settlement;

“income”, except in the phrase (occurring in section 663(1)) “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.