



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XV

SETTLEMENTS

CHAPTER III

REVOCABLE SETTLEMENTS ETC.

671 Revocable settlements allowing release of obligation

- (1) If and so long as the terms of any settlement (wherever made) are such that—
- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof and, in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may cease to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement; or
 - (b) the settlor or the wife or husband of the settlor may, whether immediately or in the future, cease, on the payment of a penalty, to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement,

any sums payable by the settlor or the wife or husband of the settlor by virtue or in consequence of that provision of the settlement in any year of assessment shall 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 any such power as is referred to in subsection (1)(a) above cannot be exercised—
- (a) in the case of a covenanted payment to charity (as defined by section 660(3)), within the period of three years, or
 - (b) in any other case, within the period of six years,

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from the time when the first of the annual payments so referred to becomes payable, and the like annual payments are payable in each year throughout that period, subsection (1)(a) above shall not apply so long as that power cannot be exercised.

(3) In subsections (1) and (2) above—

- (a) the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof and to any power to diminish the amount of any annual payments which the settlor or the wife or husband of the settlor is or may be liable to make by virtue or in consequence of any provision of the settlement;
- (b) the references to the settlor or the wife or husband of the settlor ceasing to be liable to make any annual payments payable by virtue or in consequence of any provision of the settlement shall be deemed to include references to a diminution of the amount of any such annual payments which the settlor or the wife or husband of the settlor is or may be liable to make;

but the sums to be treated under subsections (1) and (2) above as the income of the settlor for any year of assessment and not as the income of any other person shall, where those subsections would not apply but for paragraph (b) above, be such part only of the sums payable as mentioned in that paragraph by the settlor or the wife or husband of the settlor in that year as corresponds to the diminution mentioned in that paragraph.

672 Revocable settlements allowing reversion of property

(1) If and so long as the terms of any settlement (wherever made) are such that—

- (a) any person has or may have power, whether immediately or in the future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and
- (b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement or of the income arising from the whole or any part of the property so comprised,

any income arising under the settlement from the property comprised in the settlement in any year of assessment or from a corresponding part of that property, or a corresponding part of any such income, as the case may be, shall, subject to subsection (2) below, 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 any such power cannot be exercised within six years from the time when any particular property first becomes comprised in the settlement, subsection (1) above shall not apply to income arising under the settlement from that property, or from property representing that property, so long as the power cannot be exercised.

(3) In subsection (1) above the references to a power to revoke or otherwise determine a settlement or any provision thereof shall be deemed to include references to—

- (a) any power to diminish the property comprised in the settlement; and
- (b) any power to diminish the amount of any payments which are or may be payable under the settlement or any provision thereof to any person other than the settlor and the wife or husband of the settlor.

673 Settlements where settlor retains an interest

- (1) If and so long as the settlor has an interest in any income arising under or property comprised in a settlement (wherever made), any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, 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 except that—
 - (a) if and so long as that interest is an interest neither in the whole of the income arising under the settlement nor in the whole of the property comprised in the settlement, the amount of income to be treated as the income of the settlor by virtue of this subsection shall be such part of the income which, but for this paragraph, would be so treated as is proportionate to the extent of that interest; and
 - (b) where it is shown that any amount of the income which is not distributed in any year of assessment consists of income which falls to be treated as the income of the settlor for that year by virtue of section 671 or 672, that amount shall be deducted from the amount of income which, but for this paragraph, would be treated as his for that year by virtue of this subsection.
- (2) Subject to subsection (3) below, the settlor shall, for the purpose of subsection (1) above, be deemed to have an interest in income arising under or property comprised in a settlement if any income or property which may at any time arise under or be comprised in that settlement is, or will or may become, payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever.
- (3) The settlor shall not be deemed to have an interest in any income arising under or property comprised in a settlement—
 - (a) if and so long as that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of—
 - (i) the bankruptcy of some person who is or may become beneficially entitled to that income or property; or
 - (ii) any assignment of or charge on that income or property being made or given by some such person; or
 - (iii) in the case of a marriage settlement, the death of both the parties to the marriage and of all or any of the children of the marriage; or
 - (iv) the death under the age of 25 or some lower age of some person who would be beneficially entitled to that income or property on attaining that age; or
 - (b) if and so long as some person is alive and under the age of 25 during whose life that income or property cannot become payable or applicable as mentioned in subsection (2) above except in the event of that person becoming bankrupt or assigning or charging his interest in that income or property.

674 Settlements: discretionary power for benefit of settlor etc

- (1) This section applies to any settlement (wherever made) if and so long as the terms of the settlement are such that any person has or may have power, exercisable at his discretion, whether immediately or in the future, and whether with or without the consent of any person—

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- (a) to pay or apply to or for the benefit of the settlor or the wife or husband of the settlor the whole or any part of the income or property which may at any time arise under or be comprised in the settlement; or
 - (b) to secure the payment or application to or for the benefit of the settlor or the wife or husband of the settlor of the whole or any part of that income or property.
- (2) Subject to subsections (3) and (4) below, any income arising in any year of assessment under a settlement to which this section applies or, as the case may be, any income so arising from the property comprised in any such settlement or from a corresponding part of that property, or a corresponding part of any such income, shall (so far as it is not so treated apart from this section) 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.
- (3) Where the power mentioned in subsection (1) of this section cannot be exercised within six years from the time when any income or class of income first arises under the settlement or from the time when any particular property first becomes comprised in the settlement, then, so long as the power cannot be exercised, subsection (2) above shall not apply to any income arising under the settlement or, as the case may be, any income of that class or income from that property or property representing that property.
- (4) Where, under section 673(3), the settlor is not deemed to have an interest in any income arising under or property comprised in the settlement, subsection (2) above shall not apply to that income or, as the case may be, to income arising from that property.

675 Provisions supplementary to sections 671 to 674

- (1) Tax chargeable by virtue of section 671, 672, 673 or 674 shall be charged under Case VI of Schedule D.
- (2) In computing the liability to income tax of a settlor chargeable by virtue of any of those sections the same deductions and reliefs shall be allowed as would have been allowed if the income treated as his by virtue of that section had been received by him.
- (3) Where, by virtue of any of those sections, any income tax becomes chargeable on and is paid by a settlor, he shall be entitled—
 - (a) to recover from any trustee, or other person to whom income arises under 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 tax so paid.

Any certificate so furnished shall be conclusive evidence of the facts stated therein.

- (4) 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 section 671, 672, 673 or 674, have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom income arises under the settlement, or, where there are two or more such persons, shall be apportioned among those persons as the case may require.

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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.

- (5) Subject to section 833(3), any income which is treated by virtue of section 671, 672, 673 or 674 as income of a settlor shall be deemed for the purpose of this section to be the highest part of his income.

676 Disallowance of deduction from total income of certain sums paid by settlor

- (1) Where, by virtue or in consequence of any settlement to which this section applies, the settlor pays directly or indirectly in any year of assessment to the trustees of the settlement any sums which would, but for this subsection, be allowable as deductions in computing his total income for that year, those sums shall not be so allowable to the extent to which the aggregate amount thereof falls within the amount of income arising under the settlement in that year which has not been distributed, less—
- (a) so much of any income arising under the settlement in that year which has not been distributed as is shown to consist of income which has been treated as the income of the settlor by virtue of section 671, 672 or 674, and
 - (b) the amount of income so arising in that year which is treated as the income of the settlor by virtue of section 673.
- (2) For the purposes of subsection (1) above, any sum paid in any year of assessment by the settlor to any body corporate connected with the settlement in that year shall be treated as if it had been paid to the trustees of the settlement in that year by virtue or in consequence of the settlement.
- (3) No relief shall be given under any of the provisions of the Income Tax Acts on account of tax paid in respect of so much of any income arising under a settlement in any year of assessment as is equal to the aggregate amount of any sums paid by the settlor in that year which are not allowable as deductions by virtue of this section.
- (4) This section shall apply to any settlement (wherever made) made after 26th April 1938, and where income arising under any settlement (wherever made) made on or before that date is treated as the income of the settlor by virtue of section 671 or 672 but ceases to be so treated by reason of any variation of the terms of the settlement made after that date, or would have been so treated but for such a variation, this section shall apply to that settlement as from the date when the variation takes effect.
- (5) In this section, references to sums paid by a settlor include references to sums paid by the wife or husband of the settlor.

677 Sums paid to settlor otherwise than as income

- (1) Any capital sum paid directly or indirectly in any year of assessment by the trustees of a settlement to which this section applies to the settlor shall—
- (a) to the extent to which the amount of that sum falls within the amount of income available up to the end of that year, be treated for all the purposes of the Income Tax Acts as the income of the settlor for that year;
 - (b) to the extent to which the amount of that sum is not by virtue of this subsection treated as his income for that year and falls within the amount of the income available up to the end of the next following year, be treated for those purposes as the income of the settlor for the next following year;

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and so on for each subsequent year up to a maximum of ten subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

- (2) For the purposes of subsection (1) above, the amount of income available up to the end of any year shall, in relation to any capital sum paid as mentioned in that subsection, be taken to be the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less—
- (a) the amount of that income taken into account under that subsection in relation to that sum in any previous year or years; and
 - (b) the amount of any other capital sums paid to the settlor in any year before that sum was paid; and
 - (c) so much of any income arising under the settlement in that year and any previous year which has not been distributed as is shown to consist of income which has been treated as income of the settlor by virtue of section 671, 672, 674 or 683; and
 - (d) any income arising under the settlement in that year and any previous year which has been treated as the income of the settlor by virtue of section 673; and
 - (e) any sums paid by virtue or in consequence of the settlement, to the extent that they are not allowable, by virtue of section 676, as deductions in computing the settlor's income for that year or any previous year; and
 - (f) any sums paid by virtue or in consequence of the settlement in that year or any previous year which have been treated as the income of the settlor by virtue of section 664(2)(b); and
 - (g) any sums included in the income arising under the settlement as amounts which have been or could have been apportioned to a beneficiary as mentioned in section 681(1)(b); and
 - (h) an amount equal to the sum of tax at the basic rate and tax at the additional rate on—
 - (i) the aggregate amount of income arising under the settlement in that year and any previous year which has not been distributed, less
 - (ii) the aggregate amount of the income and sums referred to in paragraphs (c), (d), (e), (f) and (g) above.
- (3) Where any amount is included in a person's income by virtue of section 421 in respect of any loan or advance, there shall be a corresponding reduction in the amount (if any) afterwards falling to be so included in respect of it by virtue of this section.
- (4) Where the capital sum paid to the settlor is a sum paid by way of loan, then—
- (a) if the whole of it is repaid, no part of that sum shall by virtue of subsection (1) above be treated as the settlor's income for any year of assessment after that in which the repayment occurs; and
 - (b) if one or more capital sums have previously been paid to him by way of loan and wholly repaid, the amount of that capital sum shall be treated as equal to its excess, if any, over so much of the sum or sums previously paid as has already fallen to be treated as his income by virtue of that subsection.
- (5) Where the capital sum paid to the settlor is a sum paid by way of complete repayment of a loan, then, if an amount not less than that sum is thereafter lent by the settlor to the trustees of the settlement, no part of that sum shall by virtue of subsection (1) above

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- be treated as his income for any year of assessment after that in which the further loan is made.
- (6) Where the whole or any part of any sum is treated by virtue of this section as income of the settlor for any year, it shall be treated as income of such an amount as, after deduction of both tax at the basic rate and tax at the additional rate for that year, would be equal to that sum or that part of that sum.
- (7) Tax chargeable by virtue of this section shall be charged under Case VI of Schedule D; and there shall be set off against the tax charged on any amount treated by virtue of this section as income of the settlor for any year an amount equal to—
- (a) the sum of tax at the basic rate and tax at the additional rate for that year on the amount so treated as his income; or
 - (b) so much of that sum as is equal to the tax charged,
- whichever is the less.
- (8) In computing the liability to income tax of a settlor chargeable by virtue of this section, the same deductions and reliefs shall be allowed as would have been allowed if the amount treated as his income by virtue of this section had been received by him as income.
- (9) This section applies to any settlement wherever made, and whether made before or after the passing of this Act, and in this section—
- (a) “capital sum” means, subject to subsection (10) below—
 - (i) any sum paid by way of loan or repayment of a loan; and
 - (ii) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money’s worth, but does not include any sum which could not have become payable to the settlor except in one of the events specified in section 673(3); and
 - (b) references to sums paid to the settlor include references to sums paid to the wife or husband of the settlor or to the settlor (or the husband or wife of the settlor) jointly with another person.
- (10) For the purposes of this section there shall be treated as a capital sum paid to the settlor by the trustees of the settlement any sum which—
- (a) is paid by them to a third party at the settlor’s direction or by virtue of the assignment by him of his right to receive it where the direction or assignment was given or made on or after 6th April 1981; or
 - (b) is otherwise paid or applied by them for the benefit of the settlor,
- and which would not apart from this subsection be treated as a capital sum paid to him.

678 Capital sums paid by body connected with settlement

- (1) Where—
- (a) a capital sum is paid after 5th April 1981 to the settlor in a year of assessment by any body corporate connected with the settlement in that year; and
 - (b) an associated payment has been or is made directly or indirectly to that body by the trustees of the settlement,
- the capital sum shall, in accordance with subsection (2) below, be treated for the purposes of section 677 as having been paid to the settlor by the trustees of the settlement.

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- (2) A capital sum to which subsection (1) above applies shall—
- (a) to the extent to which the amount of that sum falls within the total of the associated payment or payments made up to the end of the year of assessment in which it is paid, be treated as having been paid to the settlor in that year;
 - (b) to the extent to which the amount of that sum is not treated as paid to the settlor in that year and falls within the total of the associated payment or payments made up to the end of the next following year (less what was taken into account under this subsection in relation to that sum in the previous year), be treated as having been paid to the settlor in the next following year,
- and so on for each subsequent year, taking the references in paragraph (b) to the year mentioned in paragraph (a) as references to that and any other year before the subsequent year in question.
- (3) In this section “associated payment”, in relation to any capital sum paid to the settlor by a body corporate, means—
- (a) any capital sum paid to that body by the trustees of the settlement; and
 - (b) any other sum paid or asset transferred to that body by those trustees which is not paid or transferred for full consideration in money or money’s worth,
- being a sum paid or asset transferred in the five years ending or beginning with the date on which the capital sum is paid to the settlor.
- (4) For the purposes of this section any capital sum paid by a body corporate, and any associated payment made to a body corporate, at a time when it is, within the meaning of section 416, associated with another body corporate may be treated as paid by or made to that other body corporate.
- (5) In this section “capital sum” has the same meaning as in section 677; and any question whether a capital sum has been paid to the settlor by a body corporate or to a body corporate by the trustees shall be determined in the same way as any question under that section whether a capital sum has been paid to the settlor by the trustees.
- (6) Subsection (1) above does not apply to any sum paid to the settlor by way of loan or repayment of a loan if—
- (a) the whole of the loan is repaid within 12 months of the date on which it was made; and
 - (b) the period for which amounts are outstanding in respect of loans made to the settlor by that or any other body corporate connected with the settlement, or by him to that or any other such body, in any period of five years does not exceed 12 months.
- (7) Where a capital sum is paid to the settlor in a year of assessment by a body corporate connected with the settlement in that year it shall be assumed until the contrary is shown that an associated payment of an amount not less than that of the capital sum has been made to that body by the trustees of the settlement.

679 Application of Chapter III 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 this Chapter—

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- (a) references to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor, and
 - (b) references to income arising under the settlement include, in relation to any settlor, only income originating from that settlor.
- (3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income.
- (4) References in sections 671(1) and 676 to sums payable by virtue or in consequence of any provision of the settlement or sums paid by virtue or in consequence of the settlement include, in relation to any settlor, only sums payable or paid by that settlor.
- (5) 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 so provided and other property as, on a just apportionment, represents the property so provided.
- (6) References in this section to income originating from a settlor are references to—
- (a) income from property originating from that settlor; and
 - (b) so much of any such income of a body corporate as is mentioned in section 681(1)(b) as corresponds to property originating from the settlor which is comprised in the settlement; and
 - (c) income provided directly or indirectly by that settlor.
- (7) In subsections (5) and (6) 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.

680 Power to obtain information for purposes of Chapter III

An inspector may by notice require any person, being a 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 any of the provisions of this Chapter.

681 Interpretation of Chapter III

- (1) In this Chapter, “income arising under a settlement” includes—
- (a) 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

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United Kingdom by a person domiciled, resident and ordinarily resident in the United Kingdom; and

- (b) where the amount of the income of any body corporate has been apportioned under section 423 for any year or period, or could have been so apportioned if the body corporate were incorporated and resident in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement,

but, where the settlor is not domiciled, or not resident, or not ordinarily resident, in the United Kingdom in any year of assessment, does not include income arising under the settlement in that year in respect of which the settlor, if he were actually entitled thereto, would not be chargeable to income tax by deduction or otherwise by reason of his not being so domiciled, resident or ordinarily resident.

- (2) Where the income of a body corporate has been, or could have been, apportioned under section 423 any amount of that income which by virtue of subsection (1)(b) above is to be included in the income arising under a settlement shall be increased by such proportion thereof as corresponds to the rate of advance corporation tax applicable to a distribution made at the end of the accounting period to which the apportionment relates.
- (3) In subsections (1) and (2) above references to income that could have been apportioned to a person if a body corporate were incorporated and resident in any part of the United Kingdom include references to income that could have been apportioned to that person indirectly through any other body corporate if that other body had also been so incorporated and resident.
- (4) In this Chapter—
“settlement” includes any disposition, trust, covenant, agreement or arrangement, and
“settlor”, in relation to a settlement, means any person by whom the settlement was made;
and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and, in particular, but without prejudice to the generality of the preceding words, if he 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.
- (5) For the purposes of this Chapter, a body corporate shall be deemed to be connected with a settlement in any year of assessment if at any time in that year—
(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators then include the trustees of the settlement; or
(b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.
- (6) The provisions of this Chapter shall be in addition to and not in derogation of any other provisions of this Act.

682 Ascertainment of undistributed income

- (1) For the purposes of this Chapter, income arising under a settlement in any year of assessment shall be deemed not to have been distributed if and to the extent that it exceeds the aggregate amount of—
- (a) the sums, excluding all payments of interest, paid in that year by the trustees of the settlement to any persons (not being a body corporate connected with the settlement and not being the trustees of another settlement made by the settlor or the trustees of the settlement) in such manner that they fall to be treated in that year, otherwise than by virtue of section 677, as the income of those persons for the purposes of income tax, or would fall to be so treated if those persons were domiciled, resident and ordinarily resident in the United Kingdom and the sums had been paid to them there, and
 - (b) subject to subsections (2) to (5) below, 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, in so far as such expenses are not included in the sums mentioned in paragraph (a) above, and
 - (c) in a case where the trustees of the settlement are trustees for charitable purposes, the amount by which any income arising under the settlement in that year in respect of which exemption from tax may be granted under section 505 exceeds the aggregate amount of any such sums or expenses as are mentioned in paragraphs (a) and (b) above paid in that year which are properly chargeable to that income.
- (2) Subsection (1)(b) above shall apply to any interest paid by the trustees of the settlement subject to subsections (3) to (6) below.
- (3) If no sums within subsection (1)(a) were paid to any person other than the settlor, or the wife or husband of the settlor, the whole of any interest paid by the trustees of the settlement shall be excluded from subsection (1)(b) above.
- (4) If any sum was so paid, there shall be excluded from subsection (1)(b) above a fraction—

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

of any interest paid by the trustees of the settlement where—

A is the whole of the income arising under the settlement in the year of assessment, less the sums referred to in subsection (1)(b) above apart from subsections (2), (3) and (5) of this section; and

B is so much of the sums within subsection (1)(a) above as is paid to persons other than the settlor, or the wife or husband of the settlor.

- (5) Subsections (2) to (4) above 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.
- (6) Nothing in subsections (2) to (5) above shall be construed as affecting the liability to tax of the person receiving or entitled to the interest.