



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XV

SETTLEMENTS

CHAPTER IV

LIABILITY TO HIGHER RATE AND ADDITIONAL RATE TAX

Liability of settlors

683 Settlements made after 6th April 1965

- (1) Where, during the life of the settlor, income arising under a settlement made after 6th April 1965 is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income either—
- (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or
 - (b) is excluded by subsection (3), (6) or (9) below; or
 - (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or
 - (d) is income from property of which the settlor has divested himself absolutely by the settlement; or

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- (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;
the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.
- (2) In subsection (1) above “excess liability” means the excess of liability to income tax over what it would be if all income tax were charged at the basic rate to the exclusion of any higher rate.
- (3) Subject to subsection (4) below, subsection (1) above shall not apply to so much of an individual’s income as consists of covenanted payments to charity.
- (4) If at least £1,000 of an individual’s income for any year of assessment consists of covenanted payments to charity which, in the hands of the charities receiving them, constitute income for which, by virtue of subsection (3) of section 505, relief is not available under subsection (1) of that section, so much of the individual’s income as consists of those payments shall not be excluded from the operation of subsection (1) above by virtue of subsection (3) above.
- (5) If, for any chargeable period of a charity—
- (a) the income of the charity includes two or more covenanted payments to charity; and
 - (b) only a part of the aggregate of those payments constitutes income for which, by virtue of subsection (3) of section 505 relief is not available under subsection (1) of that section,
- each of the payments which make up the aggregate shall be treated for the purposes of subsection (4) above as apportioned rateably between the part of the aggregate referred to in paragraph (b) above and the remainder.
- (6) Subsection (1) above shall not apply to income consisting of annual payments made by an individual, in connection with the acquisition by him of the whole or part of a business—
- (a) to or for the benefit of the individual from whom it is acquired or, if he is dead, to or for the benefit of his widow or dependants, or
 - (b) if the acquisition was from a partnership, to or for the benefit of a former member, or the widow or dependants of a deceased former member, of that or any preceding partnership, or to or for the benefit of an individual from whom the business or part was acquired by that or any preceding partnership or, if he is dead, to or for the benefit of the widow or dependants of such an individual;
- being payments made under a liability incurred for full consideration.
- (7) Payments made in respect of any individual under a liability incurred in connection with an acquisition from a partnership shall only be excluded from the operation of subsection (1) above by virtue of subsection (6)(b) above if, and to the extent that, they are made in substitution for, or matched by reductions in, other payments which would themselves be excluded from its operation.
- (8) Where the right of a former member of a partnership to payments falling due not more than ten years after he ceased to be a member of that partnership has devolved on his death, subsections (1)(a) and (6) above shall apply to the payments as they would apply if he had not died.

- (9) Where for any year of assessment there is made to or for the benefit of a former member, or the widow or a dependant of a deceased former member, of a partnership an annual payment which—
- (a) is excluded from the operation of subsection (1) above by virtue of paragraph (a) of that subsection or by virtue of subsection (6) above; and
 - (b) falls short of the limit applying for that year under section 628;
- any additional annual payment made to or for the benefit of that person shall, notwithstanding that it is not made under a liability incurred for full consideration, be excluded from the operation of subsection (1) above to the extent to which it makes good that shortfall.
- (10) For the purposes of this section—
- (a) “former member”, in relation to a partnership, means an individual who has ceased to be a member of that partnership on retirement or death;
 - (b) a partnership becomes a “preceding partnership” of another if it transfers its business or part of its business to another and one or more individuals are members of both, and any preceding partnership of the transferor by reference to any part of the business transferred shall also become a preceding partnership of the transferee;
 - (c) “covenanted payments to charity” has the meaning given by section 660(3).

684 Settlements made before 7th April 1965 but after 9th April 1946

- (1) Where, during the life of the settlor, income arising under a settlement made before 7th April 1965, but after 9th April 1946, is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless under the settlement and in those events, the income either—
- (a) is payable to an individual for his own use; or
 - (b) is applicable for the benefit of an individual named in that behalf in the settlement or of two or more individuals so named; or
 - (c) is applicable for the benefit of a child or children of an individual named in that behalf in the settlement; or
 - (d) is income from property of which the settlor has divested himself absolutely by the settlement; or
 - (e) is income which, by virtue of some provision of the Income Tax Acts not contained in this Chapter, is to be treated for the purposes of those Acts as income of the settlor;
- the income shall, for the purposes of excess liability, be treated as the income of the settlor and not as the income of any other person.
- (2) In subsection (1) above “excess liability” means the excess of liability to income tax over what it would be if all income tax were charged at the basic rate to the exclusion of any higher rate.
- (3) The exceptions provided for by paragraphs (a), (b) and (c) of subsection (1) above shall not apply where the named individual or individuals or, in the case of paragraph (c), either the named individual or the child or any of the children in question, is in the service of the settlor or accustomed to act as the solicitor or agent of the settlor.

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685 Provisions supplementary to sections 683 and 684

- (1) For the purposes of sections 683 and 684, the settlor shall not be deemed to have divested himself absolutely of any property if that property or any derived property is, or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the settlor or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor.
- (2) For those purposes, the settlor shall not be deemed not to have divested himself absolutely of any property by reason only that the property or any derived property may become payable to or applicable for the benefit of the settlor, or, in the case of a settlement made after 6th April 1965, the wife or husband of the settlor, in the event of—
 - (a) the bankruptcy of some person who is or may become beneficially entitled to the property or any of the derived property; or
 - (b) an assignment of or charge on the property or any of the derived property being made or given by some such person; or
 - (c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage; or
 - (d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property or the derived property on attaining that age.
- (3) In subsections (1) and (2) above “derived property”, in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or any income therefrom.
- (4) In sections 683 and 684 and this section “income arising under a settlement”, “settlement” and “settlor” have the meanings assigned to them for the purposes of Chapter III of this Part by section 681.
- (5) Section 679 shall have effect in relation to sections 683 and 684 and this section as it has effect in relation to Chapter III of this Part.

Liability of trustees

686 Liability to additional rate tax of certain income of discretionary trusts

- (1) So far as income arising to trustees is income to which this section applies it shall, in addition to being chargeable to income tax at the basic rate, be chargeable at the additional rate.
- (2) This section applies to income arising to trustees in any year of assessment so far as it—
 - (a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person (whether or not the trustees have power to accumulate it); and
 - (b) is neither (before being distributed) the income of any person other than the trustees nor treated for any of the purposes of the Income Tax Acts as the income of a settlor; and
 - (c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a

fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; and

- (d) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income (or would be so chargeable but for any express provisions of the trust).
- (3) This section also applies to sums apportioned to the trustees under section 423 and treated, under 426(2) as applied by subsection (4) below, as income received by the trustees.
- (4) Sections 426(1) and (2), 427 and 428 shall, with the omission in section 426(2)(a) of the words following “the apportionment relates”, the substitution of “income” for “total income” and all other necessary modifications, apply to a sum apportioned to trustees as they apply to sums apportioned to an individual; and section 429 shall apply accordingly.
- (5) For the purposes of this section sums paid or credited to trustees in any year of assessment in respect of dividends or interest payable in respect of shares in or deposits with or loans to a building society being sums in respect of which the society is required to account for and pay an amount in accordance with regulations under section 476(1) shall be treated as income for that year received by the trustees after deduction of income tax from a corresponding gross amount.

In this subsection expressions used in section 476 have the same meanings as in that section.

- (6) In this section “trustees” does not include personal representatives; but where personal representatives, on or before the completion of the administration of the estate, pay to trustees any sum representing income which, if personal representatives were trustees within the meaning of this section, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the basic rate.

This subsection shall be construed as if it were contained in Part XVI.

687 Payments under discretionary trusts

- (1) Where, in any year of assessment, trustees make a payment to any person in the exercise of a discretion exercisable by them or any person other than the trustees, then, if the sum paid is for all the purposes of the Income Tax Acts income of the person to whom it is paid (but would not be his income apart from the payment), the following provisions of this section shall apply with respect to the payment in lieu of section 348 or 349(1).
- (2) The payment shall be treated as a net amount corresponding to a gross amount from which tax has been deducted at a rate equal to the sum of the basic rate and the additional rate in force for the year in which the payment is made; and the sum treated as so deducted shall be treated—
- (a) as income tax paid by the person to whom the payment is made; and
 - (b) so far as not set off under the following provisions of this section, as income tax assessable on the trustees.
- (3) The following amounts, so far as not previously allowed, shall be set against the amount assessable (apart from this subsection) on the trustees in pursuance of subsection (2)(b) above—

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- (a) the amount of any tax on income arising to the trustees and charged at the additional as well as at the basic rate in pursuance of section 686;
- (b) the amount of tax at the additional rate on any sum treated, under section 426(2) as applied by section 686(4) or under section 249(6), as income of the trustees;
- (c) the amount of tax at the basic rate on any amount taken for the purposes of sections 426 to 428 as applied by section 686(4) to be the amount to be excluded from the income of the trustees in accordance with section 427(4);
- (d) an amount of tax in respect of income found on a claim made by the trustees to have been available to them for distribution at the end of the year 1972-73, which shall be taken to be two-thirds of the net amount of that income;
- (e) the amount of any tax on income arising to the trustees by virtue of section 761(1) and charged at a rate equal to the sum of the basic rate and the additional rate by virtue of section 764; and
- (f) the amount of any tax on annual profits or gains treated as received by trustees by virtue of section 714(2) or 716(3) of this Act or paragraph 2(2) or (3) of Schedule 22 to the Finance Act 1985 and charged at a rate equal to the sum of the basic rate and the additional rate by virtue of section 720(5) of this Act or paragraph 8(1) of Schedule 23 to that Act;
- (g) the amount of any tax on income which arose to the trustees by virtue of section 38(2) of the Finance Act 1974 (development gains) and charged at a rate equal to the basic rate and the additional rate in pursuance of section 43(1) of that Act;

but tax on any income represented by amounts paid or credited as mentioned in section 686(5) shall be taken into account under paragraph (a) above only on production of a certificate from the building society concerned specifying those amounts and stating that an amount representing income tax on that income calculated at the basic rate has been or will be accounted for.

- (4) In this section “trustees” does not include personal representatives within the meaning of section 701(4).

688 Schemes for employees and directors to acquire shares

Where under a scheme set up to comply with section 153(4)(b) of the Companies Act 1985 or Article 163(4)(b) of the Companies (Northern Ireland) Order 1986 (financial assistance for company employees and salaried directors acquiring shares) trustees receive interest from such employees or directors then, if and so far as the scheme requires an equivalent amount to be paid by way of interest by the trustees to the company, the trustees shall be exempt from tax under Case III of Schedule D on that interest received by them.

689 Recovery from trustees of discretionary trusts of higher rate tax due from beneficiaries

- (1) The provisions of this section shall have effect in relation to the excess amount of the income tax due from any person (“the beneficiary”) to whom, or for whose benefit, any income or any capital may in the discretion of some other person be paid or applied under a trust.

- (2) In this section “the excess amount” means so much of the income tax payable in respect of the beneficiary’s income as exceeds what would be the amount thereof if all income tax were chargeable at the basic rate to the exclusion of any higher rate.
- (3) If the whole or part of the excess amount of the income tax charged in respect of the income of the beneficiary is not paid before the expiry of six months from the date when it became due and payable, the Board may at any time thereafter, so long as the excess amount or any part thereof remains unpaid, cause to be served on the trustees of the trust a notice that the excess amount or any part thereof remains unpaid.
- (4) Where such a notice is served in accordance with the provisions of this section on the trustees of the trust, it shall be the duty of the trustees, as soon as may be, and if necessary from time to time, to pay to the Board in or towards satisfaction of the excess amount or any part thereof from time to time remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.
- (5) Any payments made out of income by trustees on account of tax in respect of which a notice under this section has been served shall be deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.
- (6) Any sum which the trustees are liable to pay by virtue of this section shall be recoverable from them as a debt due to the Crown.
- (7) Where there are two or more trustees under the trust, a notice under this section shall be deemed to have been validly served upon the trustees if served upon any one of them, but nothing in this section shall render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served.