

## SCHEDULES

### SCHEDULE 18

Section 91.

#### SETTLEMENTS: BENEFICIARIES (MISCELLANEOUS)

##### *Computation rules*

1 In section 80 of the Finance Act 1981 (gains of non-resident settlements) the following subsection shall be inserted after subsection (6)—

“(6A) In computing an amount under subsection (2) above in respect of the year 1991-92 or a subsequent year of assessment, the effect of Schedule 10 to the Finance Act 1988 (settlor chargeable instead of trustees in certain circumstances) shall be ignored.”

##### *Dual-resident settlements*

2 The following section shall be inserted after section 80 of that Act—

#### “80A Gains of dual-resident settlements

(1) Section 80 above also applies to a settlement for any year of assessment beginning on or after 6th April 1991 if—

- (a) the trustees are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year,
- (b) at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and
- (c) the settlor or one of the settlors is at any time during that year, or was when he made his settlement, domiciled and either resident or ordinarily resident in the United Kingdom;

and “double taxation relief arrangements” here means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the Capital Gains Tax Act 1979).

(2) In respect of every year of assessment for which section 80 above applies by virtue of this section, section 80 shall have effect as if the amount to be computed under section 80(2) were the assumed chargeable amount; and the reference in section 80(2) to the corresponding amount in respect of an earlier year shall be construed as a reference to the amount computed under section 80(2) apart from this section or (as the case may be) the amount computed under section 80(2) by virtue of this section.

(3) For the purposes of subsection (2) above the assumed chargeable amount in respect of a year of assessment is the lesser of the following two amounts—

- (a) the amount on which the trustees would be chargeable to tax for the year under section 4(1) of the Capital Gains Tax Act 1979 on

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the assumption that the double taxation relief arrangements did not apply;

- (b) the amount on which, by virtue of disposals of protected assets, the trustees would be chargeable to tax for the year under section 4(1) of that Act on the assumption that those arrangements did not apply.

(4) For the purposes of subsection (3)(b) above assets are protected assets if—

- (a) they are of a description specified in the double taxation relief arrangements, and
- (b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(5) For the purposes of subsection (4) above—

- (a) the assumption specified in subsection (3)(b) above shall be ignored;
- (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
- (c) if different assets are identified by reference to different relevant times, all of them are protected assets.

(6) In computing the assumed chargeable amount in respect of a particular year of assessment, the effect of Schedule 10 to the Finance Act 1988 (settlor chargeable instead of trustees in certain circumstances) shall be ignored.

(7) For the purposes of section 80 above as it applies by virtue of this section, capital payments received before 6th April 1991 shall be disregarded.”

3 In section 81 of that Act (migrant settlements) in subsection (1) for the words “in each of which the trustees were at some time resident or ordinarily resident in the United Kingdom” there shall be substituted “for each of which section 80 above does not apply to the settlement”.

#### *Payments by and to companies*

4 The following section shall be inserted after section 82 of that Act—

#### “82A Payments by and to companies

- (1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 80 to 82 above it shall be treated as received from the trustees.
- (2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 80 to 82 above.
- (3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person.

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- (4) If the company is controlled by two or more persons (taking each one separately) at the time the payment is received, then—
  - (a) if one of them is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person;
  - (b) if two or more of them are then resident or ordinarily resident in the United Kingdom (the residents) it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.
- (5) If the company is controlled by two or more persons (taking them together) at the time the payment is received and each of them is then resident or ordinarily resident in the United Kingdom—
  - (a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and
  - (b) each such participator (whatever his residence or ordinary residence) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment.
- (6) But where (by virtue of subsection (5) above and apart from this subsection) a participator would be treated as receiving less than one twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of subsection (5) above.
- (7) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (8) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (9) below.
- (9) A person falls within this subsection if—
  - (a) he is a settlor in relation to the settlement, or
  - (b) he is connected with a person falling within paragraph (a) above.
- (10) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.
- (11) For the purposes of this section the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act 1988; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (12) In this section “participator” has the meaning given by section 417(1) of the Taxes Act 1988.
- (13) This section shall apply to payments received on or after 19th March 1991.”

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### *Beneficiaries*

5 In section 83 of that Act (supplementary provisions) the following subsections shall be inserted after subsection (7)—

“(8) In a case where—

- (a) at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 82A(1) above,
- (b) it is received by a person, or treated as received by a person by virtue of section 82A(2) to (6) above,
- (c) at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and
- (d) subsection (9) or (10) below does not prevent this subsection applying,

for the purposes of sections 80 to 82 above the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.

(9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.

(10) Subsection (8) above shall not apply so as to treat—

- (a) the trustees of the settlement referred to in that subsection, or
- (b) the trustees of any other settlement,

as beneficiaries of the settlement referred to in that subsection.

(11) In subsection (8) above “capital payment” has the same meaning as in sections 80 to 82A above.”

### *Other amendments*

6 (1) Section 83 of that Act shall also be amended as follows.

(2) In subsection (1)—

- (a) for “82” there shall be substituted “82A”, and
- (b) for “beneficiary” (in each place) there shall be substituted “recipient”.

(3) The following subsection shall be inserted after subsection (1)—

“(1A) But in sections 80 to 82A above “capital payment” does not include a payment under a transaction entered into at arm’s length.”

(4) In subsection (2) for “subsection (1)” there shall be substituted “subsections (1) and (1A)”.

(5) In subsections (3)(a), (4) and (7) for “82” there shall be substituted “82A”.

(6) This paragraph shall apply in relation to payments received, transfers made, benefits conferred, or occasions arising, on or after 19th March 1991.