

SCHEDULES

SCHEDULE 21

Section 116

CHARGEABLE GAINS: RESTRICTION OF GIFTS RELIEF ETC

Penalties for failure to furnish particulars etc

- 1 (1) Section 98 of the Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In the first column of the Table, insert at the appropriate place—
“Section 169G(2) of the 1992 Act.”.

Charge on settlor with interest in settlement etc: supplementary provisions

- 2 (1) Section 79 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (5) insert—
“(5A) In subsection (5) above “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.
- (3) In subsection (6) (power of inspector to require information for purposes of sections 77, 78 and 79) for “inspector” substitute “officer of the Board”.

Relief for gifts of business assets

- 3 (1) Section 165 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In subsection (1) (circumstances in which subsection (4) applies, subject to certain provisions) for “and 169” substitute “, 169, 169B and 169C”.
- (3) In subsection (3) (relief not to apply to disposal in certain cases) after paragraph (b) insert—
“(ba) in the case of a disposal of shares or securities, the transferee is a company,”.
- (4) In subsection (8) (definitions) for paragraph (aa) substitute—
“(aa) “holding company” has the meaning given by paragraph 22(1), “trading company” has the meaning given by paragraph 22A, and “trading group” has the meaning given by paragraph 22B, of Schedule A1; and”.
- (5) In subsection (10) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) for “after 13th March 1989, in respect of which a claim is made under this section,” substitute “in relation to which subsection (4) above applies”.

Gifts relief not to be available on certain transfers to settlor-interested settlements etc

4 After section 169A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

“Gifts to settlor-interested settlements etc

169B Gifts to settlor-interested settlements etc

- (1) Neither section 165(4) nor section 260(3) shall apply in relation to a disposal (“the relevant disposal”)—
 - (a) made by a person (“the transferor”) to the trustees of a settlement, and
 - (b) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, immediately after the making of the relevant disposal,—
 - (a) there is a settlor (see section 169E) who has an interest in the settlement (see section 169F), or
 - (b) an arrangement (see section 169G) subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
 - (a) a chargeable gain would (assuming that neither section 165(4) nor section 260(3) applied in relation to the relevant disposal) accrue to the transferor on that disposal,
 - (b) in computing the gain, the allowable expenditure would to any extent fall to be reduced in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
 - (c) immediately after the making of the relevant disposal,—
 - (i) that individual has an interest in the settlement, or
 - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) This section is subject to section 169D (exception for maintenance funds for historic buildings and certain settlements for disabled persons).

169C Clawback of relief if settlement becomes settlor-interested etc

- (1) This section applies in relation to a disposal (“the relevant disposal”)—
 - (a) made by a person (“the transferor”) to the trustees of a settlement,
 - (b) in relation to which section 165(4) or 260(3) applies, or would apart from this section apply, and
 - (c) in respect of which Condition 1 or Condition 2 below is satisfied.
- (2) Condition 1 is that, at any time during the clawback period,—
 - (a) there is a settlor who has an interest in the settlement, or
 - (b) an arrangement subsists under which such an interest will or may be acquired by a settlor.
- (3) Condition 2 is that—
 - (a) in computing the chargeable gain which would (assuming that neither section 165(4) nor section 260(3) applied in relation to

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- the relevant disposal) accrue to the transferor on that disposal, the allowable expenditure would fall to be reduced,
- (b) that reduction would to any extent fall to be made in consequence, directly or indirectly, of a claim under section 165 or 260 in respect of an earlier disposal made by an individual (whether or not to the transferor), and
 - (c) at any time during the clawback period,—
 - (i) that individual has an interest in the settlement, or
 - (ii) an arrangement subsists under which such an interest will or may be acquired by him.
- (4) If no claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time, neither section 165(4) nor section 260(3) shall apply in relation to that disposal.
- (5) Subsections (7) to (9) below apply if a claim for relief under section 165 or 260 in respect of the relevant disposal is made before the material time.
- (6) But those subsections do not apply if—
- (a) the transferor is an individual, and
 - (b) he dies before the material time.
- (7) A chargeable gain, of an amount equal to the amount of the held-over gain (within the meaning of section 165 or 260) on the relevant disposal, shall be treated for the purposes of tax in respect of chargeable gains as accruing to the transferor at the material time.
- (8) For any chargeable period ending after the making of the relevant disposal, the chargeable gains and allowable losses of—
- (a) the trustees of the settlement, or
 - (b) any person whose title to any property to any extent derives, directly or indirectly, from them,
- shall be determined on the assumption that neither section 165(4)(b) nor section 260(3)(b) ever applied in relation to that disposal.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to subsection (8) above (notwithstanding any limitation on the time within which any adjustment may be made).
- (10) If a claim for relief under section 165 or 260 in respect of the relevant disposal is revoked, this section shall apply as if the claim had never been made.
- (11) In this section “the clawback period” means the period—
- (a) beginning immediately after the making of the relevant disposal, and
 - (b) ending six years after the end of the year of assessment in which that disposal was made.
- (12) In this section “the material time” means the time at which subsection (1)(c) above first becomes satisfied.
- (13) This section is subject to section 169D.

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169D Exceptions to sections 169B and 169C

- (1) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement in a year of assessment if the trustees have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc) shall have effect in the case of—
 - (a) the settlement, or
 - (b) any part of the settlement,in relation to that year of assessment.
- (2) Sections 169B and 169C shall not apply in relation to a disposal to the trustees of a settlement if the following conditions are satisfied.
- (3) The first condition is that, immediately after the making of the disposal,—
 - (a) the settled property is held on trusts which secure that, during the lifetime of a disabled person, not less than half of the property which is applied is applied for the benefit of that person, and
 - (b) the settled property is held on trusts—
 - (i) which secure that, during his lifetime, he is entitled to not less than half of the income arising from the property,
 - (ii) which secure that, during his lifetime, no such income may be applied for the benefit of any other person, or
 - (iii) under which, during his lifetime, no interest in possession in the settled property subsists.
- (4) The second condition is that if, immediately after the making of the disposal, one or more settlors is an interested settlor, each such settlor must at that time be a disabled beneficiary.
- (5) For the purposes of subsection (4) above a settlor is an “interested settlor” in relation to a settlement if—
 - (a) he has an interest in the settlement, or
 - (b) an arrangement subsists under which such an interest will or may be acquired by him;and for this purpose, the references to an individual’s spouse in section 169F(2) and (3) shall be disregarded.
- (6) In subsection (4) above “disabled beneficiary”, in relation to a settlement, means a disabled person who—
 - (a) is a beneficiary under the settlement, or
 - (b) would be such a beneficiary if he had the interest in the settlement by virtue of which subsection (5)(b) above applies in relation to him.
- (7) In this section “disabled person” means—
 - (a) a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of administering his property or managing his affairs; or
 - (b) a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate.

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- (8) In this section “attendance allowance” means an allowance under—
- (a) section 64 of the Social Security Contributions and Benefits Act 1992, or
 - (b) section 64 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (9) In this section “disability living allowance” means a disability living allowance under—
- (a) section 71 of the Social Security Contributions and Benefits Act 1992, or
 - (b) section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (10) The trusts on which settled property is held shall not be treated as falling outside subsection (3) above by reason only of the powers conferred on the trustees by—
- (a) section 32 of the Trustee Act 1925, or
 - (b) section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement).
- (11) The references in subsection (3) above to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), be construed as references to the period during which the income is held on trust for him.

169E Meaning of “settlor” in sections 169B to 169D and 169G

- (1) For the purposes of this section, sections 169B to 169D and section 169G, a person is a settlor in relation to a settlement if—
- (a) he is an individual, and
 - (b) the settled property consists of, or includes, property originating from him.
- (2) In subsection (1) above, the reference to property originating from a settlor is a reference to—
- (a) property which that settlor has provided directly or indirectly for the purposes of the settlement, and
 - (b) property which wholly or partly represents that property or any part of it.
- (3) In subsection (2) above, the references to property which a settlor has provided directly or indirectly—
- (a) include references to property which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but
 - (b) do not include references to property which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person.

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- (4) In subsection (2) above, the reference to property which represents other property includes a reference to property which represents accumulated income from that other property.

169F Meaning of “interest in a settlement” in sections 169B to 169D

- (1) For the purposes of this section and sections 169B to 169D, an individual is to be regarded as having an interest in a settlement if subsection (2) or (3) below applies.
- (2) This subsection applies if—
- (a) any property which may at any time be comprised in the settlement, or
 - (b) any derived property,
- is, or will or may become, payable to or applicable for the benefit of the individual or his spouse in any circumstances whatsoever.
- (3) This subsection applies if the individual or his spouse enjoys a benefit deriving directly or indirectly from—
- (a) any property which is comprised in the settlement, or
 - (b) any derived property.
- (4) The references in subsections (2) and (3) above to the spouse of the individual do not include—
- (a) a spouse from whom the individual is separated—
 - (i) under an order of a court,
 - (ii) under a separation agreement, or
 - (iii) in such circumstances that the separation is likely to be permanent, or
 - (b) the widow or widower of the individual.
- (5) An individual is not to be regarded as having an interest in a settlement by virtue of subsection (2) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—
- (a) 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
 - (b) the death of a child of the individual where the child had become beneficially entitled to the property or any derived property at an age not exceeding 25.
- (6) In this section “derived property”, in relation to any property, means—
- (a) income from that property,
 - (b) property directly or indirectly representing—
 - (i) proceeds of that property, or
 - (ii) proceeds of income from that property, or
 - (c) income from property which is derived property by virtue of paragraph (b) above.

169G Meaning of “arrangement” in sections 169B to 169E and information power

- (1) In sections 169B to 169E “arrangement” or “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- (2) An officer of the Board may by notice require any person to whom subsection (3) or (4) below applies to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of sections 169B to 169F.
- (3) This subsection applies to a person who is or has been—
 - (a) a trustee of a settlement,
 - (b) a beneficiary under a settlement, or
 - (c) a settlor in relation to a settlement.
- (4) This subsection applies to a person who—
 - (a) is the spouse of a settlor in relation to a settlement, or
 - (b) has at any time on or after the making of the relevant disposal been the spouse of such a settlor.
- (5) In subsection (4) above “relevant disposal” means the disposal—
 - (a) to which section 169B(1), 169C (1) or 169D (1) or (2) applies or may apply, and
 - (b) in connection with which the notice is given.”.

Gifts on which inheritance tax is chargeable etc

- 5 (1) Section 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
 - (2) In subsection (1) (circumstances in which subsection (3) applies, subject to certain provisions) after “169” insert “, 169B, 169C”.
 - (3) Omit subsection (6A) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5B).
 - (4) Omit subsection (6B) (unnecessary provision for preventing reduction in case of disposal which is chargeable event for purposes of Schedule 5C).
 - (5) In subsection (7) (deduction to be allowed in computing chargeable gain on subsequent disposal by transferee, where disposal by transferor is chargeable transfer for inheritance tax purposes) after “subsection (2)(a) above” insert “(whether or not subsection (3) above applies in relation to it)”.

Payment by instalments of tax on gifts

- 6 (1) Section 281 of the Taxation of Chargeable Gains Act 1992 is amended as follows.
 - (2) In subsection (2) (option to pay capital gains tax by instalments by giving notice to inspector) for “the inspector” substitute “an officer of the Board”.
 - (3) After subsection (7) insert—

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- “(8) Subsection (2) above applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a gain accruing to a person on a disposal if—
- (a) the relevant disposal (within the meaning of section 169C) in question was a disposal of the whole or any part of any assets to which this section applies, and
 - (b) at the material time (within the meaning of that section), no part of the subject-matter of that relevant disposal has been disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).
- (9) Where subsection (2) above so applies, subsections (4) to (7) above apply accordingly but as if for paragraphs (a) and (b) of subsection (7) there were substituted “any part of the subject-matter of the relevant disposal in question is disposed of for valuable consideration under a subsequent disposal (whether made by the trustees to whom that relevant disposal was made or by some other person).”.

Recovery of tax from donee

- 7 (1) Section 282 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (4) insert—
- “(5) This section applies in relation to a chargeable gain accruing to a transferor under section 169C(7) (clawback of relief under section 165 or 260 if settlement becomes settlor-interested etc) as it applies in relation to a chargeable gain accruing to a person on the disposal of an asset by way of gift.
- (6) For the purposes of this section as applied by subsection (5) above—
- (a) the transferor shall be taken to be the donor, and
 - (b) the trustees to whom the relevant disposal (within the meaning of section 169C) in question was made shall be taken to be the donee.”.

Application of taper relief

- 8 (1) Schedule A1 to the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 16 (special rules for postponed gains) in sub-paragraph (2) (list of enactments involving postponed gains) after paragraph (d) insert—
- “(da) section 169C(7).”.

Relief for gifts of business assets

- 9 (1) Schedule 7 to the Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In paragraph 2 (1) (circumstances in which section 165(4) applies, subject to certain provisions, in relation to disposals by trustees of settlement) for “and 169” substitute “, 169, 169B and 169C”.

Commencement

- 10 (1) The amendment in paragraph 1(2) of this Schedule has effect in relation to any notice given—
- (a) after the passing of this Act, and
 - (b) in respect of the year 2003-04 or any subsequent year of assessment.
- (2) The amendment in paragraph 2(2) of this Schedule has effect in relation to the provision of property on or after 10th December 2003.
- (3) The amendments in paragraphs 2(3) and 6(2) of this Schedule have effect in relation to any notice given in respect of the year 2004-05 or any subsequent year of assessment.
- (4) The amendments in paragraphs 3(2), 4, 5(2), 6(3), 7(2), 8(2) and 9(2) of this Schedule have effect in relation to disposals on or after 10th December 2003 (whenever any earlier disposal as mentioned in section 169B(3)(b) or 169C(3)(b) was made).
- (5) The amendment in paragraph 3(3) of this Schedule has effect in relation to disposals on or after 21st October 2003.
- (6) The amendment in paragraph 3(4) of this Schedule has effect in relation to the year 2004-05 and subsequent years of assessment.
- (7) The amendment in paragraph 3(5) of this Schedule has effect in relation to disposals on or after 10th December 2003.
- (8) The amendments in paragraph 5(3) and (4) of this Schedule have effect in relation to gains accruing on or after 6th April 2004.
- (9) The amendment in paragraph 5(5) of this Schedule has effect in relation to disposals on or after 6th April 2004.