Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 4

TRUSTS WITH VULNERABLE BENEFICIARY

Introductory

23 Introduction

(1) This Chapter contains tax provision in connection with—

(a) income arising to [[F1]the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person, and

(b) chargeable gains accruing to [[F2]the trustees of a settlement] from the disposal of such property.

(2) Section 24 contains provision as to the making of claims for special tax treatment under this Chapter.

(3) Sections 25 to 29 contain provision relating to income tax.

(4) Sections 30 to [[F3]32] contain provision relating to capital gains tax.

(5) Sections 34 to 36 apply for the purpose of determining whether trusts on which property is held for the benefit of a vulnerable person are qualifying trusts.

(6) In this Chapter “vulnerable person election” means an election under section 37.

(7) In this Chapter “vulnerable person” means—

(a) a disabled person (see section 38), or

(b) a relevant minor (see section 39).

Textual Amendments

F1 Words in s. 23(1)(a) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(a)**(7)

F2 Words in s. 23(1)(b) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(a)**(7)

F3 Word in s. 23(4) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 12**

24 Entitlement to make claim for special tax treatment

A claim for special tax treatment under this Chapter for a tax year may be made by [F4the trustees of a settlement] if—

(a) in the tax year they hold property on qualifying trusts for the benefit of a vulnerable person, and

(b) a vulnerable person election has effect for all or part of the tax year in relation to those trusts and that person.

Textual Amendments

F4 Words in s. 24(1) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(b)**(7)

Income tax

25 Qualifying trusts income: special income tax treatment

(1) This section has effect in relation to a tax year if—

(a) in the tax year income arises (or is treated as arising) to [F5the trustees of a settlement] from property held on qualifying trusts for the benefit of a vulnerable person ("qualifying trusts income"), and

(b) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.

(2) Special income tax treatment applies for the tax year in accordance with sections 26 to 29.

(3) But this section does not have effect in relation to the tax year if the property from which the qualifying trusts income arises (or is treated as arising) is property in which a person who is a settlor (within the meaning given by [F6section 620(1) of ITTOIA 2005]) is regarded as having an interest for the purposes of [F7sections 624 and 625 of that Act] (income arising under settlement where settlor retains an interest).

Textual Amendments

F5 Words in s. 25(1)(a) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(c)**(7)

F6 Words in s. 25(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(3)(a)**(7)

F7 Words in s. 25(3) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(3)(b)**(7)

26 Amount of relief

[F8(1)**]** The trustees' liability to income tax for the tax year is to be reduced by an amount equal to—

$$\mathrm{TQTI} - \mathrm{VQTI}$$

where—

TQTI is an amount determined in accordance with section 27 (income tax liability of trustees in respect of qualifying trusts income), and

VQTI is an amount determined in accordance with section 28 (extra **[**F9 income**]** tax to which vulnerable person would be liable if qualifying trusts income were income of his).

[F10(2) The tax reduction is given effect at Step 6 of the calculation in section 23 of ITA 2007.**]**

Textual Amendments

F8 S. 26(1) renumbered (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 594** (with Sch. 2)

F9 Word in s. 26(1) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 13**

F10 S. 26(2) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 594** (with Sch. 2)

27 Trustees' liability: TQTI

(1) For the purposes of section 26, TQTI is the amount of income tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year (or to which they would be so liable if their liability were computed in accordance with subsection (2) in a case to which that subsection applies).

(2) In a case where—

(a) income arising (or treated as arising) to the trustees in the tax year ("total income") includes income ("other income") which is not qualifying trusts income, and

(b) the trustees have **[**F11allowable expenses**]**,

there shall be disregarded, in computing the income tax liability of the trustees for the tax year in respect of the qualifying trusts income arising (or treated as arising) to them in that year, such part of the **[**F12allowable**]** expenses as bears the same proportion to all those expenses as other income bears to total income.

[F13(2A) References in subsection (2) to allowable expenses are to expenses which can be set against the total income in accordance with Chapter 4 of Part 9 of ITA 2007.**]**

(3) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

Textual Amendments

F11 Words in s. 27(2)(b) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 595(2)(a)** (with Sch. 2)

F12 Word in s. 27(2) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 595(2)(b)** (with Sch. 2)

F13 S. 27(2A) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 595(3)** (with Sch. 2)

28 Vulnerable person's liability: VQTI

(1) For the purposes of section 26, VQTI is an amount equal to—

$$TLV1 - TLV2$$

where—

TLV2 is an amount determined in accordance with subsection (2) (and subsection (4) where it applies) (total **[**F14 income**]** tax liability of vulnerable person), and

TLV1 is an amount determined in accordance with subsection (3) (and subsection (4) where it applies) (what total **[**F14 income**]** tax liability of vulnerable person would be if his income included qualifying trusts income).

(2) TLV2 is the total amount of income tax F15... to which the vulnerable person would be liable for the tax year if his income tax liability were computed in accordance with subsections (5) and (6).

(3) TLV1 is what TLV2 would be if the qualifying trusts income arising (or treated as arising) to the trustees in the tax year in respect of which the trustees are liable to income tax were income of the vulnerable person for the tax year.

[F16(4) Where the vulnerable person is non-UK resident for the tax year, his or her income tax liability for the purposes of determining TLV1 and TLV2 is to be computed in accordance with the Income Tax Acts on the assumption that—

(a) he or she is UK resident for the tax year,

(b) that year is not, as respects him or her, a split year within the meaning of Part 3 of Schedule 45 to FA 2013, and

(c) he or she is domiciled in the United Kingdom throughout that year.**]**

(5) For the purposes of this section, in a case where income which has arisen to the trustees (whenever it arose) is distributed to the vulnerable person in the tax year, that income is to be disregarded in computing income tax to which he would be liable for the tax year for the purposes of determining TLV1 and TLV2.

(6) For the purposes of this section, in computing income tax to which the vulnerable person would be liable for the tax year for the purposes of determining TLV1 and TLV2, there is to be disregarded any relief which is given by way of a reduction in

the amount of income tax to which the vulnerable person would be liable apart from that relief.

(7) For the purposes of this section—

(a) whether or not a vulnerable person is non-UK resident is to be determined in accordance with section 41(2), and

F17(b) . . . .

(8) This section is subject to section 29 (vulnerable person election having effect for only part of tax year).

Textual Amendments

F14 Word in s. 28(1) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 14(2)**

F15 Words in s. 28(2) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 14(3)**

F16 S. 28(4) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 151(2)**

F17 S. 28(7)(b) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 14(5)**

[F18 28A Disapplication of section 629 of ITTOIA 2005

(1) In a case where this section applies, section 629(1) of ITTOIA 2005 shall not apply in respect of a payment by the trustees of a settlement to a beneficiary under the settlement.

(2) This section applies if in a year of assessment—

(a) the trustees make a payment to a vulnerable person,

(b) the payment is made out of qualifying trusts income,

(c) the vulnerable person is a relevant child (within the meaning given by section 629 of ITTOIA 2005) of a settlor in relation to the settlement, and

(d) the trustees have made a successful claim for special income tax treatment under section 25.]

Textual Amendments

F18 S. 28A inserted (with effect in accordance with Sch. 13 para. 36(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 36(1)**

29 Part years

(1) Where the vulnerable person election has effect for only part of the tax year ("the elected part of the tax year") sections 26, 27 and 28 apply with the modifications in subsection (2).

(2) Those modifications are—

(a) that references to the qualifying trusts income arising (or treated as arising) to the trustees in the tax year are to be treated as references to the qualifying trusts income arising (or treated as arising) to them in the elected part of the tax year, and

(b) that the references in section 27(2) to income arising (or treated as arising) to the trustees in the tax year and expenses of the trustees in the tax year are to be treated as (respectively) references to income arising (or treated as arising) to the trustees in the elected part of the tax year and expenses of the trustees in that part of the tax year.

Capital gains tax

30 Qualifying trusts gains: special capital gains tax treatment

(1) This section has effect in relation to a tax year if—

(a) in the tax year chargeable gains accrue to the trustees of a settlement from the disposal of settled property which is held on qualifying trusts for the benefit of a vulnerable person ("the qualifying trusts gains"),

(b) the trustees would (apart from this Chapter) be chargeable to capital gains tax in respect of those gains,

[[F19](c) the trustees are resident in the United Kingdom during any part of the tax year, and**]**

(d) a claim for special tax treatment under this Chapter for the tax year is made by the trustees.

[F20](1A) . . . .

(2) Special capital gains tax treatment applies for the tax year in accordance with—

(a) section 31 (vulnerable person UK resident **[**[F21]for**]** the tax year), or

(b) section 32 (vulnerable person non-UK resident **[**[F21]for**]** the tax year).

(3) But this section does not have effect in relation to the tax year if the vulnerable person dies during that year.

[F22](3A) . . . .

(4) The reference in subsection (1)(a) to chargeable gains accruing to the trustees from the disposal of settled property includes a reference to chargeable gains treated as accruing to them under section 13 of TCGA 1992 (attribution of gains to members of non-resident companies).

[F23](5) . . . .

Textual Amendments

F19 S. 30(1)(c) substituted (with effect in accordance with Sch. 46 para. 133(2) of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 133(1)**

F20 S. 30(1A) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 15**

F21 Word in s. 30(2)(a)(b) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 151(3)(a)**

F22 S. 30(3A) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 15**

F23 S. 30(5) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 45 para. 151(3)(b)**

31 UK resident vulnerable persons: [F24amount of relief]

(1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is UK resident [F25for] the tax year.

[F26(2) The trustees' liability to capital gains tax for the tax year is to be reduced by an amount equal to—

$$\text{AdjustedOldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$$

where—
TQTG is the amount of capital gains tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trust gains, and
VQTG is the amount arrived at under subsection (3).

(3) That amount is—

$$\text{OldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$$

where—
TLVB is the total amount of capital gains tax to which the vulnerable person is liable for the tax year, and
TLVA is what TLVB would be if the qualifying trust gains accrued to the vulnerable person (instead of to the trustees) and no allowable losses were deducted from the qualifying trust gains.]

Textual Amendments

F24 Words in s. 31 heading substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 16(3)**

F25 Word in s. 31(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 151(4)**

F26 S. 31(2)(3) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 16(2)**

32 Non-UK resident vulnerable persons: amount of relief

(1) Special capital gains tax treatment applies for the tax year in accordance with this section if the vulnerable person is non-UK resident [F27for] the tax year.

(2) The trustees' liability to capital gains tax for the tax year is to be reduced by an amount equal to—

$$\text{TQTG} - \text{VQTG}$$

where—

TQTG is the amount of capital gains tax to which the trustees would (apart from this Chapter) be liable for the tax year in respect of the qualifying trusts gains, and

[[F28]VQTG is the amount arrived at under subsection (3). **]**

[[F29](3) That amount is—

$$\text{PreviousDebits} - \text{PreviousCredits}$$

where—
TLVB is the total amount of capital gains tax to which the vulnerable person would be liable for the tax year if the vulnerable person's taxable amount for the tax year [F30]... were equal to the vulnerable person's deemed CGT taxable amount for the tax year (if any), and
TLVA is what TLVB would be if the vulnerable person's taxable amount for the tax year [F30]... were equal to the aggregate of the vulnerable person's deemed CGT taxable amount for the tax year (if any) and the amount of the qualifying trust gains.

[[F31](3A) For the purposes of this section "the vulnerable person's taxable amount for the tax year" means the amount on which that person would be chargeable to capital gains tax for the tax year if no account were taken of section 1K of TCGA 1992.**]**

(4) For the purposes of this section the vulnerable person's deemed CGT taxable amount for the tax year is to be determined in accordance with Schedule 1.**]**

Textual Amendments

F27 Word in s. 32(1) substituted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 151(5)**

F28 Words in s. 32(2) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 17(2)**

F29 S. 32(3)(4) inserted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 17(3)**

F30 Words in s. 32(3) omitted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by virtue of Finance Act 2019 (c. 1), **Sch. 1 para. 97(2)**

F31 S. 32(3A) inserted (with effect in accordance with Sch. 1 paras. 120, 123 of the amending Act) by Finance Act 2019 (c. 1), **Sch. 1 para. 97(3)**

[F32]33 Vulnerable person's liability: VQTG

. . . .

Textual Amendments

F32 S. 33 omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 18**

Qualifying trusts

34 Disabled persons

(1) For the purposes of this Chapter where property is held on trusts for the benefit of a disabled person those trusts are qualifying trusts if they secure that the conditions in subsection (2) are met—

(a) during the lifetime of the disabled person, or

(b) until the termination of the trusts (if that occurs before his death).

(2) Those conditions are—

(a) that if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person, and

[F33(b) either—

(i) that the disabled person is entitled to all the income (if there is any) arising from any of the property, or

(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the disabled person.]

[F34(3) The trusts on which property is held are not to be treated as failing to secure that the conditions in subsection (2) are met by reason only of—

(a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the disabled person amounts (whether consisting of income or capital, or both) not exceeding the annual limit,

(b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),

(c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,

(d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),

(e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or

(f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).]

[F34(3B) For the purposes of this section, the “annual limit” for a tax year is whichever is the lower of the following amounts—

(a) £3,000, and

(b) 3% of the amount that is the maximum value of the settled property during the tax year in question.

(3C) The Treasury may by order made by statutory instrument—

(a) specify circumstances in which subsection (3)(a) is, or is not, to apply in relation to a trust, and

(b) amend the definition of “the annual limit” in subsection (3B).

(3D) An order under subsection (3C) may—

(a) make different provision for different cases, and

(b) contain transitional and saving provision.

(3E) A statutory instrument containing an order under subsection (3C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.]

(4) The reference in subsection (1) to the lifetime of the disabled person is, where property is held for his benefit on trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts), to be construed as a reference to the period during which such property is held on trust for him.

Textual Amendments

F33 S. 34(2)(b) substituted (with effect in accordance with Sch. 44 para. 18 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 15(2)**

F34 S. 34(3)-(3E) substituted for s. 34(3) (with effect in accordance with Sch. 44 para. 18 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 15(3)**

35 Relevant minors

(1) For the purposes of this Chapter where property is held on trusts for the benefit of a relevant minor those trusts are qualifying trusts if they are—

(a) statutory trusts for the relevant minor under sections 46 and 47(1) of the Administration of Estates Act 1925 (c. 23) (succession on intestacy and statutory trusts in favour of relatives of intestate), or

(b) trusts to which subsection (2) below applies.

(2) This subsection applies to trusts—

(a) established under the will of a deceased parent of the relevant minor, or

(b) established under the Criminal Injuries Compensation Scheme, [F35 or

(c) established under the Victims of Overseas Terrorism Compensation Scheme,]

which secure that the conditions in subsection (3) are met.

(3) Those conditions are—

(a) that the relevant minor will, on attaining the age of 18, become absolutely entitled to the property, any income arising from it and any income that has arisen from property held on the trusts for his benefit and been accumulated before that time,

(b) that, until that time, for so long as the relevant minor is living, if any of the property is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor, and

(c) that, until that time, for so long as the relevant minor is living, either—

(i) the relevant minor is entitled to all the income (if there is any) arising from any of the property, or

[F36(ii) if any such income is applied for the benefit of a beneficiary, it is applied for the benefit of the relevant minor.]

[F37(4) Trusts to which subsection (2) applies are not to be treated as failing to secure that the conditions in subsection (3) are met by reason only of—

(a) the trustees' having powers that enable them to apply in any tax year otherwise than for the benefit of the relevant minor amounts (whether consisting of income or capital, or both) not exceeding the annual limit,

(b) the trustees' having the powers conferred by section 32 of the Trustee Act 1925 (powers of advancement),

(c) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by proviso (a) of subsection (1) of that section,

(d) the trustees' having the powers conferred by section 33 of the Trustee Act (Northern Ireland) 1958 (corresponding provision for Northern Ireland),

(e) the trustees' having those powers but free from, or subject to a less restrictive limitation than, the limitation imposed by subsection (1)(a) of that section, or

(f) the trustees' having powers to the like effect as the powers mentioned in any of paragraphs (b) to (e).**]**

[[F37](4B) For the purposes of this section, the "annual limit" for a tax year is whichever is the lower of the following amounts—

(a) £3,000, and

(b) 3% of the amount that is the maximum value of the settled property during the tax year in question.

(4C) The Treasury may by order made by statutory instrument—

(a) specify circumstances in which subsection (4)(a) is, or is not, to apply in relation to a trust, and

(b) amend the definition of "the annual limit" in subsection (4B).

(4D) An order under subsection (4C) may—

(a) make different provision for different cases, and

(b) contain transitional and saving provision.

(4E) A statutory instrument containing an order under subsection (4C) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

(5) In this section "the Criminal Injuries Compensation Scheme" means—

(a) the schemes established by arrangements made under the Criminal Injuries Compensation Act 1995 (c. 53),

(b) arrangements made by the Secretary of State for compensation for criminal injuries in operation before the commencement of those schemes, or

(c) the scheme established under the Criminal Injuries (Northern Ireland) Order 2002 (S.I. 2002/796 (N.I. 1)).

Textual Amendments

F35 S. 35(2)(c) and word inserted (8.4.2010) by Crime and Security Act 2010 (c. 17), s. 59(2), **Sch. 2 para. 4**

F36 S. 35(3)(c)(ii) substituted (with effect in accordance with Sch. 44 para. 18 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 16(2)**

F37 S. 35(4)-(4E) substituted for s. 35(4) (with effect in accordance with Sch. 44 para. 18 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 16(3)**

36 Parts of assets

For the purposes of this Chapter references to property being held on trusts include references to a part of an asset being held on trusts if—

(a) that part of the asset, and

(b) any income arising from it (or treated as arising from it),

can be identified for the purpose of determining whether the trusts on which it is held are qualifying trusts.

Vulnerable persons

37 Vulnerable person election

(1) Where [[F38]the trustees of a settlement] hold property on trusts for the benefit of a person, the trustees and that person may jointly make a vulnerable person election in relation to those trusts and that person if—

(a) the person in relation to whom the election is made is a vulnerable person, and

(b) the trusts in relation to which the election is made are qualifying trusts.

(2) A vulnerable person election is an election in such form as the Board of Inland Revenue may require—

(a) specifying the date from which it is to have effect ("the effective date"),

(b) made by notice to the Inland Revenue no later than 12 months after 31st January next following the tax year in which the effective date falls, or within such further time, if any, as the Board of Inland Revenue may by notice have allowed, and

(c) containing the items specified in subsection (3).

(3) Those items are—

(a) such information as the Board of Inland Revenue may require, including in particular information relating to the trusts, the trustees, the vulnerable person and his entitlement under the trusts and any other person connected with the trusts,

(b) a statement that the trusts in relation to which the election is made are qualifying trusts,

(c) a declaration that all the information contained in the election is correct to the best of the knowledge and belief of the trustees and vulnerable person,

(d) a declaration by the vulnerable person that he authorises the trustees to make any claim under this Chapter for any tax year as they consider appropriate, and

(e) such other declarations as the Board of Inland Revenue may reasonably require.

(4) A vulnerable person election is irrevocable.

(5) A vulnerable person election has effect from the effective date until one of the following events occurs—

(a) the person in relation to whom the election is made ceases to be a vulnerable person,

(b) the trusts in relation to which the election is made cease to be qualifying trusts, and

(c) the trusts are terminated.

(6) If the trustees become aware that an event mentioned in subsection (5) has occurred—
(a) they must inform the Inland Revenue that the vulnerable person election has ceased to have effect, and
(b) they must do so by giving notice containing particulars of the event within the period of 90 days beginning on the date on which they first become aware that the event has occurred.

[F39(7) Where—
(a) a vulnerable person election has effect in relation to qualifying trusts,
(b) the property held on those trusts is treated for the purposes of TCGA 1992 and of the Tax Acts as comprised in a sub-fund settlement, and
(c) the vulnerable person election was not made by the trustees of the sub-fund settlement,

the vulnerable person election shall have effect, in relation to the trusts mentioned in paragraph (a), in respect of matters arising at or after the time when the sub-fund election is treated as having taken effect, as if it had been made by the trustees of the sub-fund settlement and the vulnerable person.

(8) In relation to matters arising before the time when the sub-fund election is treated as having taken effect, nothing in subsection (7)—
(a) relieves the trustees of the settlement which is the principal settlement in relation to the sub-fund settlement of their obligation under subsection (6), or
(b) prevents a notice from being given to those trustees under section 40(1) or (3).

(9) In this section—
(a) "principal settlement" has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
(b) "sub-fund election" has the meaning given by paragraph 2 of that Schedule,
(c) "sub-fund settlement" has the meaning given by paragraph 1 of that Schedule, and
(d) the time when a sub-fund election is treated as having taken effect shall be the time when it is treated as having taken effect under paragraph 2 of that Schedule.**]**

Textual Amendments

F38 Words in s. 37(1) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(2)(d)**(7)

F39 S. 37(7)-(9) inserted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 12 para. 48(4)**(5)

[F40 38 Meaning of "disabled person"

In this Chapter "disabled person" has the meaning given by Schedule 1A.**]**

Textual Amendments

F40 S. 38 substituted (with effect in accordance with Sch. 44 para. 18 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 44 para. 17**

39 Meaning of "relevant minor"

For the purposes of this Chapter a person is a "relevant minor" if—

(a) he has not yet attained the age of 18, and

(b) at least one of his parents has died.

Miscellaneous and supplementary

40 Power to make enquiries

(1) Where a vulnerable person election has been made the Inland Revenue may by notice require the trustees or the vulnerable person by whom the election was made to furnish them with such particulars as they may reasonably require for the purposes of determining—

(a) whether the requirements mentioned in subsection (1)(a) and (b) of section 37 were met at the time the election was made, and

(b) whether an event mentioned in subsection (5) of that section has occurred since the effective date.

(2) The notice must specify the time within which the information must be furnished (not being less than 60 days).

(3) If the Board of Inland Revenue determine—

(a) that either or both of the requirements mentioned in subsection (1)(a) and (b) of section 37 were not met at the time the election was made, or

(b) that an event mentioned in subsection (5) of that section has occurred since the effective date of the election,

they may give notice to the trustees and the person in relation to whom the vulnerable person election was made that the election never had effect or ceased to have effect from a date specified in the notice.

(4) A person aggrieved by a determination of the Board of Inland Revenue under subsection (3) may by notice appeal [F41]....

(5) The notice of appeal must be given to the Board of Inland Revenue within 30 days after the notice of the determination was given under subsection (3).

(6) 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 a determination under subsection (3) (despite any limitation on the time within which any adjustment may be made).

(7) In subsection (6) "tax" means income tax or capital gains tax.

Textual Amendments

F41 Words in s. 40(4) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 445**

41 Interpretation etc.

(1) In this Chapter—

"the Board of Inland Revenue" means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)),

"the Inland Revenue" means any officer of the Board of Inland Revenue,

[[F42]"non-UK resident" means not resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 45 to FA 2013,**]**

"notice" means notice in writing, and

[F43]...

[[F42]"UK resident" means resident in the United Kingdom in accordance with the statutory residence test in Part 1 of Schedule 45 to FA 2013.**]**

[F44](2) . . . .

(3) Sections 30 to **[**[F45]32**]** and Schedule 1 are to be construed as one with TCGA 1992.

(4) To the extent that any provision of this Chapter would not, apart from this subsection, form part of Income Tax Acts, the provisions of the Income Tax Acts are to apply for the purposes of any references in the provision relating to income arising (or treated as arising) to a person or to the income tax liability of a person.

Textual Amendments

F42 Words in s. 41(1) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 45 para. 151(6)(a)**

F43 Words in s. 41(1) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 102(a)**

F44 S. 41(2) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), **Sch. 45 para. 151(6)(b)**

F45 Word in s. 41(3) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 19**

42 Application in relation to Scotland

(1) This Chapter applies in relation to Scotland with the following modifications.

(2) In section 23(5), for "trusts on which property is held for the benefit of a vulnerable person are qualifying trusts" substitute " property held in trust for the benefit of a vulnerable person is held in qualifying trust ".

(3) In section 31(3)(a), for "on the qualifying trusts" substitute " in qualifying trust (in the same trust as the settled property disposed of) ".

(4) In section 34—

(a) in subsection (1), for "those trusts are qualifying trusts if they" substitute " the property is held in qualifying trust if the trust purposes ", and

(b) in subsection (4), for "on trusts" substitute " in a trust ".

(5) In section 35—

(a) in subsection (1), for "those trusts are qualifying trusts if they are" substitute " the property is held in qualifying trust if the trust is ",

[F46](b) . . . .

(c) in subsection (2), before "which" insert " the purposes of ".

(6) In section 36, for "the trusts on which it is held are qualifying trusts" substitute " it is held in qualifying trust ".

(7) In section 37—

(a) in subsection (1), for paragraph (b) substitute—

“(b) property held in the trust in relation to which the election is made is held in qualifying trust.”,

(b) in subsection (3)(b), for “the trusts in relation to which the election is made are qualifying trusts” substitute “ property held in the trust in relation to which the election is made is held in qualifying trust ”, and

(c) in subsection (5), for paragraph (b) substitute—

“(b) property held in the trust in relation to which the election is made ceases to be held in qualifying trust,”.

(8) Sections 34(3) and 35(4) do not apply to Scotland

(9) Unless otherwise modified by this section, any reference to anything being held on trusts is to be construed as a reference to it being held in trust.

(10) Unless otherwise modified or disapplied by this section, any reference to trusts is to be construed as a reference to a trust or the trust (as appropriate).

Textual Amendments

F46 S. 42(5)(b) repealed (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 para. 35(5)(7), **Sch. 26 Pt. 3(15)**

43 Penalties under TMA 1970

(1) Section 98 of TMA 1970 (special returns, etc) is amended as follows.

(2) In the first column of the table insert at the appropriate place— “ section 40(1) of the Finance Act 2005 ”.

(3) In the second column of the table insert at the appropriate place— “ section 37(3) of the Finance Act 2005; ”, and “ section 37(6) of the Finance Act 2005; ”.

(4) For the purposes of that section, any information, statements or declarations given or made jointly by **[**[F47]the trustees of a settlement**]** and a vulnerable person are to be treated as given or made by the trustees.

Textual Amendments

F47 Words in s. 43(4) substituted (retrospective to 6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 35(6)**(7)

44 Consequential amendments

[F48](1) . . . .

[F49](2) . . . .

Textual Amendments

F48 S. 44(1) repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

F49 S. 44(2) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 21(i)**

45 Commencement

This Chapter has effect for the tax year beginning on 6th April 2004 and subsequent tax years.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2005, Chapter 4.