

SCHEDULES

SCHEDULE 12

SETTLEMENTS: AMENDMENT OF TCGA 1992 ETC

PART 3

CONSEQUENTIAL AND MINOR AMENDMENTS

Introduction

7 Paragraphs 8 to 45 amend TCGA 1992.

General

- 8 (1) In section 13(10) (participants in non-resident companies) for “trustees who are participants” substitute “the trustees of a settlement who are participants”.
- (2) This paragraph shall have effect in relation to gains accruing on or after 6th April 2006.
- 9 For section 21(1)(b) (definition of “asset”) substitute—
- “(b) currency, with the exception (subject to express provision to the contrary) of sterling.”
- 10 (1) In section 60(1) (nominees and bare trustees) in each place for “assets” substitute “property”.
- (2) In section 60(2) (interpretation: property held for person absolutely entitled) in each place for “asset” substitute “property”.
- (3) This paragraph shall have effect from 6th April 2006.
- 11 (1) In section 63 (death: application of law in Scotland)—
- (a) in subsection (1) omit the words “an heir of entail in possession of any property in Scotland subject to an entail, whether sui juris or not, or of”, and
- (b) in subsection (2)—
- (i) omit the words “For the purposes of this Act,”
- (ii) omit the words “heir or” before “liferenter”, and
- (iii) omit the words “the heir of entail next entitled to the entailed property under the entail or, as the case may be,”.
- (2) After section 63 insert—

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“63A Death: application of law in Northern Ireland

- (1) The provisions of this Act, so far as relating to the consequences of the death of a person to whom property in Northern Ireland stands limited for life (“the deceased”), shall have effect subject to the provisions of this section.
- (2) A person who acquires property in fee simple absolute or fee tail in possession as a consequence of the deceased’s death shall be deemed to have acquired all the assets forming part of the property at the date of the deceased’s death for a consideration equal to their market value at that date.”
- (3) The provisions of this paragraph shall have effect in relation to a death occurring on or after 6th April 2006.
- 12 (1) In section 64(1) (expenses in administration)—
- (a) for the words from “an asset” to the beginning of paragraph (a) substitute “an asset held by another person as trustee, or as a personal representative of a deceased person, to which he became absolutely entitled as legatee or as against the trustee”, and
- (b) in paragraphs (a) and (b) for “personal representatives or trustees” substitute “personal representative or trustee”.
- (2) This paragraph shall have effect in relation to disposals made on or after 6th April 2006.
- 13 (1) In section 77(1) (charge on settlor with interest in settlement), in the words following paragraph (c), after “those” insert “gains”.
- (2) For section 77(8) (meaning of “derived property”) substitute—
- “(8) 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.”
- (3) This paragraph shall be deemed always to have had effect.
- 14 (1) In section 79B(1) (attribution to trustees of gains of non-resident company) before “trustees of a settlement” insert “the”.
- (2) This paragraph shall have effect in relation to gains accruing on or after 6th April 2006.
- 15 (1) In section 97(7) (supplementary provisions for offshore settlements: interpretation)
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- (a) omit “the preceding provisions of”,
- (b) for the definition of “settlement” and “settlor” substitute—
- ““settlement” has the meaning given by section 620 of ITTOIA 2005, and

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“settled property” and references (however expressed) to property comprised in a settlement shall be construed accordingly.”

- (2) After section 97(7) insert—
- “(7A) In this section, sections 86A to 96 and Schedule 4C “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this subsection, means any person in whom the settled property or its management is for the time being vested (and a person who is treated as a trustee of the settlement by virtue of this subsection shall be treated as a trustee of the settlement for the purposes of section 69).”
- (3) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).
- 16 (1) In section 98(2) (information: application of section 745 of ICTA)—
- (a) for “(2) to (5)” substitute “(2) to (6)”,
 - (b) omit “and” at the end of paragraph (a), and
 - (c) omit paragraph (b).
- (2) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).
- 17 (1) In section 104(1) (share pooling) after “for the purposes of this Act” insert “(subject to express provision to the contrary)”.
- (2) This paragraph shall come into force on 6th April 2006.
- 18 (1) In section 109(2)(a) (share pooling: pre-1982 holdings) after “for the purposes of this Act” insert “(subject to express provision to the contrary)”.
- (2) This paragraph shall come into force on 6th April 2006.
- 19 (1) In section 169D(5) after “(3)” insert “and to an individual’s dependent child in section 169F(2A)”.
- (2) This paragraph shall come into force on 6th April 2006.
- 20 (1) In section 217 (building societies: successor companies)—
- (a) in subsection (3)(a)—
 - (i) for “trustees” substitute “the trustees of a settlement”, and
 - (ii) omit the word “and” at the end of the paragraph,
 - (b) omit subsection (3)(b), and
 - (c) in subsection (5) for “arising” substitute “accruing”.
- (2) This paragraph shall have effect in relation to a transfer falling within section 216(1) which is effected on or after 6th April 2006.
- 21 (1) In section 227(2) (employee share ownership trusts: conditions for roll-over relief) for “the trustees of a trust” substitute “the trustees of a settlement”.
- (2) This paragraph shall have effect in relation to disposals made on or after 6th April 2006.
- 22 (1) In section 228(5)(b) (employee share ownership trusts: unauthorised arrangement) for “a beneficiary under the trust” substitute “a beneficiary under the settlement”.

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- (2) In section 228(7) (qualifying employee share ownership trust) for “whether a trust is” substitute “whether a settlement is”.
- (3) Sub-paragraph (1) shall have effect in relation to arrangements which allow an acquisition to be made on or after 6th April 2006 (irrespective of when the arrangements were made).
- (4) Sub-paragraph (2) shall have effect for the purposes of determining what constitutes a qualifying share ownership trust for the purpose of section 227 on or after 6th April 2006.
- 23 (1) In section 251(5) (debts: trustee creditors)—
- (a) for “Where the original creditor is a trustee and the debt, when created, is settled property” substitute “Where the trustees of a settlement are the original creditor”, and
- (b) for “as against the trustee” substitute “as against the trustees”.
- (2) This paragraph shall have effect in relation to debts created on or after 6th April 2006.
- 24 (1) In section 283(4) (repayment supplements)—
- (a) for “a trust or,” substitute “the trustees of a settlement or”, and
- (b) omit “as such (within the meaning of section 701(4) of that Act)”.
- (2) Sub-paragraph (1)(a) shall have effect in relation to a repayment made on or after 6th April 2006.
- (3) Sub-paragraph (1)(b) shall have effect in relation to a repayment made on or after 6th April 2006 (irrespective of the date on which the deceased person died).
- 25 (1) In section 286(3) (connected persons: trustees) omit the words following paragraph (c).
- (2) After section 286(3) insert—
- “(3ZA) For the purpose of subsection (3) above—
- (a) “settlement” has the same meaning as in section 620 of ITTOIA 2005, and
- (b) “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this paragraph, means any person in whom the settled property or its management is for the time being vested.”
- (3) This paragraph shall come into force (in relation to settlements whenever created) on 6th April 2006.
- 26 (1) In section 288(8) (interpretation) at the appropriate places insert—

““Principal settlement”... ..

Sch.4ZA para. 1”,

““Settlor”

S.68A”,

““Settlor of property”... ..

S.68A”,

““Sub-fund”... ..

Sch.4ZA para. 1”,

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| ““Sub-fund election”... .. | Sch.4ZA para. 2”, |
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| ““Sub-fund settlement” ... | Sch.4ZA para. 1”. |
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- (2) This paragraph shall come into force on 6th April 2006 (in relation to settlements whenever created).
- 27 (1) For paragraph 17(4) of Schedule A1 (taper relief: meaning of “derived property”) substitute—
- “(4) In this paragraph “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.”
- (2) In paragraph 17(5) of Schedule A1 (property settled by company) for “section” substitute “paragraph”.
- (3) Paragraph 17(6) of Schedule A1 (meaning of “settlor”) shall cease to have effect.
- (4) In paragraph 20(2) of Schedule A1 (application of section 79 to paragraph 20(1)) for “Subsections (1) to (5)” substitute “Subsections (1) to (5A)”.
- (5) Sub-paragraphs (1) and (3) shall have effect for the purpose of determining whether a company which is a settlor in relation to a settlement (whenever created) is to be regarded as having an interest in the settlement for the purposes of paragraph 17(1) of Schedule A1 on or after 6th April 2006.
- (6) Sub-paragraph (4) shall have effect to determine any question arising on or after 6th April 2006 as to whether, for the purposes of Schedule A1, settled property in relation to a settlement (whenever created) originated from more than one settlor (irrespective of when the property was provided).
- 28 (1) In paragraph 1(6) of Schedule 1 (exempt amount: interpretation) for the words ““settlor” and “excluded settlement” have the same meanings” substitute ““excluded settlement” has the same meaning”.
- (2) In paragraph 2(7) of that Schedule (meaning of “settlor” and “excluded settlement”) omit the words from “settlor” to “intestate and”.
- (3) This paragraph shall have effect for the purposes of determining, for the purposes of Schedule 1, whether a person is a settlor in relation to a settlement (whenever created) on or after 6th April 2006.
- 29 (1) In paragraph 12 of Schedule 4A (meaning of “settlor”) for “(3) to (5)” substitute “(3) to (5A)”.
- (2) This paragraph shall have effect to determine any question arising on or after 6th April 2006 as to whether, for the purposes of Schedule 4A, a person is a settlor in relation to a settlement (whenever created).

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Residence of trustees

- 30 (1) In each of the provisions set out in sub-paragraph (2) for “not resident or ordinarily resident in the United Kingdom” substitute “neither resident nor ordinarily resident in the United Kingdom”.
- (2) Those provisions are—
- (a) section 76(1B)(a) (disposal of interest in settled property),
 - (b) section 86(2)(a) (attribution of gains to settlors: residence condition), and
 - (c) paragraphs 2(1)(c), 3(1)(a) and 4(1)(a) of Schedule 5A (settlements with foreign element).
- (3) In paragraph (2)(1)(d) of Schedule 5A for “resident or ordinarily resident” substitute “resident and ordinarily resident”.
- (4) The amendments to sections 76(1B)(a) and 86(2)(a) shall come into force on 6th April 2007 (in relation to settlements whenever created).
- (5) The amendments to paragraph 2(1)(c) and (d) of Schedule 5A shall have effect in relation to transfers of property made on or after 6th April 2007 (in relation to settlements whenever created).
- (6) The amendments to paragraphs 3(1)(a) and 4(1)(a) of Schedule 5A shall have effect in relation to settlements created on or after 6th April 2007.
- 31 In section 77(7) (settlor with interest in settlement) for “the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year” substitute “—
- (a) the settlor is either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, and
 - (b) the trustees are resident and ordinarily resident in the United Kingdom during any part of the year.”
- 32 In section 83A(3) (trustee residence: split years)—
- (a) in paragraph (a)—
 - (i) after “resident” insert “and ordinarily resident”, and
 - (ii) at the end omit “or”, and
 - (b) omit paragraph (b).
- 33 Paragraphs 31 and 32 shall come into force on 6th April 2007 (in relation to settlements whenever created).
- 34 (1) In each of the provisions set out in sub-paragraph (2) for “resident or ordinarily resident in the United Kingdom” substitute “resident and ordinarily resident in the United Kingdom”.
- (2) Those provisions are—
- (a) section 83A(4)(b) (trustees to be treated as non-resident),
 - (b) section 85A(3) (attribution of gains to beneficiaries on transfer of value to trustees),
 - (c) section 86(3) (assumption as to residence),
 - (d) section 87(2) (computation of gains),
 - (e) paragraph 5(2) of Schedule 4A (dual resident trustees),

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- (f) paragraphs 4(2) and 10(1) and (3) of Schedule 4C (trustees: chargeable amount and residence), and
 - (g) paragraphs 3(1)(b) and 4(1)(b) of Schedule 5A (settlement with foreign element: information).
- (3) The amendments to sections 83A(4)(b), 85A(3), 86(3) and 87(2), paragraph 5(2) of Schedule 4A and paragraphs 4(2) and 10(1) and (3) of Schedule 4C shall come into force on 6th April 2007 (in relation to settlements whenever created).
- (4) The amendments to paragraphs 3(1)(b) and 4(1)(b) of Schedule 5A shall have effect in relation to settlements created on or after 6th April 2007.
- 35 (1) In each of the provisions set out in sub-paragraph (2)—
- (a) for “resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year” substitute “resident and ordinarily resident in the United Kingdom during any part of the year”, and
 - (b) for “such residence or ordinary residence” substitute “such residence and ordinary residence”.
- (2) Those provisions are—
- (a) section 86(2)(b) (trustees resident outside United Kingdom),
 - (b) section 88(1) (gains of dual resident settlements), and
 - (c) paragraph 5(1) of Schedule 4C (chargeable amount: dual resident settlement).
- (3) Sub-paragraph (2)(c) shall have effect in relation to a transfer of value made on or after 6th April 2007 (in relation to settlements whenever created).
- 36 (1) In each of the provisions set out in sub-paragraph (2) for “at no time resident or ordinarily resident in the United Kingdom” substitute “at no time resident and ordinarily resident in the United Kingdom”.
- (2) Those provisions are—
- (a) section 87(1) (attribution of gains to beneficiaries), and
 - (b) paragraph 4(1) of Schedule 4C (chargeable amount: non-resident settlement).
- (3) Sub-paragraph (2)(b) shall have effect in relation to a transfer of value made on or after 6th April 2007 (in relation to settlements whenever created).
- 37 (1) In section 169(3)(a) (availability of hold-over relief)—
- (a) for “fall to be treated, under section 69, as” substitute “are”, and
 - (b) omit the words from “, although” to the end of the paragraph.
- (2) In section 169(3)(b)(ii) (notional disposal) for “arising” substitute “accruing”.
- (3) This paragraph shall have effect in relation to relevant disposals (within the meaning given by section 169(2)) made on or after 6th April 2007 (in relation to settlements whenever created).
- 38 In paragraph 2(7)(a) of Schedule 1 (meaning of “excluded settlement”) omit “treated under section 69(1) as”.
- 39 In paragraph 5(1) of Schedule 4A (residence of trustees) for the words from “either” to the end of the sub-paragraph substitute “resident and ordinarily resident in the United Kingdom during any part of the year”.

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- 40 In paragraph 10(2) of Schedule 4C (capital payments received by beneficiaries when trustees resident in United Kingdom) for paragraphs (a) and (b) substitute “during the whole of which the trustees are resident and ordinarily resident in the United Kingdom”.
- 41 Paragraphs 35 to 40 shall, unless otherwise expressly provided, come into force on 6th April 2007 (in relation to settlements whenever created).

Sub-fund settlements

- 42 After section 73(1) of TCGA 1992 (death of life tenant: exclusion of chargeable gain) insert—
- “(1A) Subsection (1)(b) above shall be treated as having effect in relation to a sub-fund settlement if the property does not revert to the trustees of the principal settlement in relation to that sub-fund settlement by reason only that—
- (a) a sub-fund election is or has been made in respect of another sub-fund of the principal settlement, and
- (b) the property becomes comprised in that other sub-fund settlement on the death of the person entitled to the interest in possession.”
- 43 In section 286(3) of TCGA 1992 (connected persons: trustees)—
- (a) omit “and” at the end of paragraph (b), and
- (b) after paragraph (c) insert—
- “(d) if the settlement is the principal settlement in relation to one or more sub-fund settlements, the trustees of the sub-fund settlements, and
- (e) if the settlement is a sub-fund settlement in relation to a principal settlement, the trustees of any other sub-fund settlements in relation to the principal settlement.”
- 44 (1) At the beginning of Schedule 1 to TCGA 1992 (trustees: exempt amount, etc) insert—
- “A1 (1) In determining the exempt amount available to the trustees of a settlement in relation to a year of assessment—
- (a) a principal settlement and its sub-fund settlements shall be treated, for the purposes of paragraphs 1 and 2 below, as if no sub-fund elections had been made, and
- (b) paragraph 3 below shall apply for the purposes of determining the exempt amount available to each member of the class consisting of a principal settlement and its sub-fund settlements.
- (2) The reference in sub-paragraph (1) above to a principal settlement and its sub-fund settlements means a principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.”
- (2) After paragraph 2 of Schedule 1 to TCGA 1992 insert—
- “3 (1) The exempt amount available in relation to a year of assessment to the trustees of each settlement in the class consisting of a principal settlement and its sub-fund settlements shall be the exempt amount available to the trustees of the principal settlement in relation to the year, determined in accordance with paragraph 1 or 2 above as if no sub-fund elections had been made.

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(2) But if there are two or more non-excluded settlements in the class consisting of a principal settlement and its sub-fund settlements, the exempt amount available to the trustees of each settlement in the class in relation to the year shall be the amount specified in sub-paragraph (1) above divided by the number of non-excluded settlements in the class.

(3) In this paragraph—

“excluded settlement” has the meaning given by paragraph 2(7) above, and

references to a settlement having sub-fund settlements, and similar expressions, are references to a settlement being the principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.”

45 Paragraphs 42 to 44 shall have effect in relation to years of assessment beginning on or after 6th April 2006.

Amendments of other Acts

46 (1) In the first column of the table in section 98 of TMA 1970 (failure to make required returns, etc) insert at the appropriate place—

“paragraph 14 of Schedule 4ZA to the 1992 Act”.

(2) In the second column of the table in section 98 of TMA 1970 insert at the appropriate place—

“paragraph 12 of Schedule 4ZA to the 1992 Act”.

(3) This paragraph shall come into force on 6th April 2006.

47 (1) For section 761(7)(b) of ICTA (offshore income gain: trustee residence condition) substitute—

“(b) at the time of the disposal referred to in paragraph (a) above the trustees of the settlement are neither resident nor ordinarily resident in the United Kingdom for the purposes of the 1992 Act.”.

(2) This paragraph shall have effect in relation to disposals made on or after 6th April 2007 (in relation to settlements whenever created).

48 (1) In section 30 of FA 2005 (trusts for vulnerable persons: capital gains)—

(a) after subsection (1) insert—

“(1A) For the purposes of subsection (1)(b) the effect of section 77(1) of TCGA 1992 shall be disregarded if the settlor is treated as having an interest in the settlement by reason only of the application of section 77(2A) of that Act.”, and

(b) after subsection (3) insert—

“(3A) If this section has effect in relation to chargeable gains accruing to the trustees of a settlement in a tax year, section 77 of TCGA 1992 shall not have effect in relation to the gains, (but this subsection shall not affect the operation of section 31(2)).”

(2) In section 34(3) of that Act (disabled persons) for the words from “the powers” to the end of the subsection substitute “—

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- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement),
 - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
 - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).”
- (3) In section 35(4) of that Act (relevant minors) for the words from “the powers” to the end of the subsection substitute “—
- (a) a power conferred on the trustees by section 32 of the Trustee Act 1925 or section 33 of the Trustee Act (Northern Ireland) 1958 (powers of advancement),
 - (b) a power conferred on the trustees by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in paragraph (a), or
 - (c) a power of advancement which is conferred on the trustees by the instrument creating the settlement, or by another instrument made in accordance with the terms of the settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925 (c. 19).”
- (4) After section 37(6) of that Act (vulnerable person election) insert—
- “(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,

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- (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.”
- (5) This paragraph shall come into force on 6th April 2006 (in relation to vulnerable person elections whenever made).