

**Q** Where trustees of a pre 19 March 1991 settlement in exercise of a wide "Bond v Pickford" power advance funds on or after 19 March 1991 into a new settlement which they have created in circumstances where the new settlement is regarded for capital gains tax purposes as subsisting entirely independently from the old settlement do the Revenue regard the new settlement as being a pre 19 March 1991 settlement or a post 18 March 1991 settlement?

A An entirely independent settlement for capital gains tax purposes created through the exercise of a power in the wider form on or after 19 March 1991 would be regarded as a post 18 March 1991 settlement.

#### Own Share Purchases

**Q** What is the Revenue's view as to the relevance of ICTA 1988, s703 where a company effects an unapproved buy back of its own shares from a discretionary trust?

A The possible application of ICTA 1988 Sections 703 to 709 to any transaction involving the purchase by a company of its own shares will depend entirely upon the particular circumstances of the vendor at the time of the transaction in question. It is not therefore possible for me to offer any general guidance on this issue which might usefully form the basis for an item in Tax Bulletin. I am sorry not to be able to be more helpful but I can only suggest that any of your members who wish to obtain guidance on the possible application of Sections 703-9 to the specific purchase by a company of its own shares from a discretionary trust should follow the statutory clearance procedure at Section 707. Any applications for clearance should be made to the S 703 Group at Inland Revenue, 3rd Floor, South West Wing, Bush House, Strand, London WC2B 4QN and accompanied by full details of the proposed transactions and of the proposed parties thereto.

#### Financial Instruments

**Q** The financial instruments legislation provides that index-linked (consumer price) derivatives are only within the new rules if hedging an index-linked liability. If such a liability is not within the new rules, how is it to be treated for tax purposes?

A Whether a Financial Instrument of the sort you describe is indeed subject to the financial instruments' legislation is very much dependent on the facts of a particular case and particularly the terms of the agreement governing the derivative in question. However, as you state, there are circumstances when this can be the case - further detail is given on page 29 of the explanatory statement, 'Exchange gains and Losses and Financial Instruments' published 20 December 1994. Where such an instrument is not covered by the Financial Instrument legislation then it may be subject to the provisions of TCGA 1992 Section 143.

## Settlor's statutory right to reimbursement

The following exchange of correspondence, between the chairman of the Institute's capital taxes sub-committee and the Inland Revenue, took place during 1995.

#### Letter from the Institute

I would be grateful if you could provide some clarification on certain matters arising in respect of the settlor's right to reimbursement of tax charged on him where the anti-avoidance provisions in Part XV ICTA 1988 and Schedule 5 to TCGA 1992 apply.

The first matter concerns Part XV alone. There is a helpful statement in the *Tax Bulletin* for August 1993, page 82, relating to life interest trusts, which says that because the whole income of the trust is in any event that of the life tenant for tax purposes, he cannot be regarded as adding any property to the settlement for the purpose of Section 86 TCGA 1992 if he fails to exercise his rights of reimbursement. This seems to recognise that any such attempt would be pointless because the trustees are obliged to distribute all the income to him in any event.

Unfortunately, there seems to be no explicit practice regarding discretionary trusts where the whole of the income has been distributed, either to the settlor or other beneficiaries. In our view, the position should be the same if all the income has been distributed to the settlor, because in such a case he is in the same position as a life tenant.

Indeed, if the whole of the income has been distributed to other persons (possibly including the settlor), the same position should arguably obtain, on the basis that the trustees have no income out of which they can satisfy any claim by the settlor.

Would the Revenue be prepared to expand on the August 1993 statement and indicate whether you would regard property as added, for the purpose of Section 86, where all the income of the year has been distributed either to the settlor or others, by discretionary trustees, if the settlor does not go through the motions of attempting to exercise his right of reimbursement?

With regard to both Part XV and Schedule 5 to TCGA 1992, it would also be helpful if the Revenue could confirm that if the trustees do in fact make a payment to the settlor in response to a request for reimbursement, either under Part XV ICTA 1988 or under paragraph 6 of Schedule 5 to TCGA 1992, such a payment would not be regarded as:

- (a) A capital payment for Section 87 TCGA 1992 purposes;
- (b) Taken into account for Section 740 (1) ICTA 1988 purposes;
- (c) Income of the settlor for Case V Schedule D purposes.

#### The Revenue's reply

Referring to the third paragraph of letter of 22 December 1994, the problem in relation to discretionary trusts is that the position can alter from year to year as the trustees cannot bind themselves as to how they will exercise their discretionary powers ("*nunc pro tunc*"). Each case has therefore to be looked at in the light of its own particular facts.

On the fourth paragraph, I cannot agree your comments because the trustees will have extra income to pay to beneficiaries if the settlor does not exercise his right to reimbursement. He has effectively provided that extra income and the trust is therefore "tainted".

Because of the reasons given above, the Revenue would not be prepared to expand on the August 1993 statement.

Using your lettering in penultimate paragraph:

(a) already partly covered by paragraph 8 of SP 5/92;

(b) it will reduce the relevant income if paid out of income but will not be a payment

(c) confirmed.

## Loan relationships changes

CIOT/TIR/6/96

Changes to the new Loan Relationships (gilts and bonds) legislation in the Finance Bill were tabled in Parliament on 23 February, and generally published on 26 February. These changes go a long way to meet the Chartered Institute of Taxation's criticism of the original Clauses and as such are to be welcomed.

Concern is, however, expressed as to the method by which a satisfactory package is achieved. Following the original consultative document in May 1995 and subsequent announcement that reforms would proceed in July 1995, no further consultations took place until after Budget Day. As a result months of valuable time in which sensible deliberation on the detail of the legislation could have been debated were lost. Now over 160 amendments are proposed at minimal notice - they are to be debated on 29 February and 5 March. Whilst it seems a satisfactory result is being reached, the timing allows no proper analysis of the changes.

John Whiting, Technical Committee Chairman, said: "We are pleased to see the Inland Revenue and the Government meeting so many of our concerns and congratulate them on listening well to the points we and other bodies made. But there is such a volume of amendments it will take time to do a proper analysis of them. We have had welcome assurances that our main concerns have been met but some points remain. One can only say that whilst the end result may be satisfactory, we have reached it by an unsatisfactory route - surely this strengthens our calls for proper consultation on all tax proposals.