

EXPLANATORY NOTE

**CLAUSE 23 SCHEDULE 7: TRUSTS & OFFSHORE
INCOME GAINS: AMENDMENTS 402A TO 462**

SUMMARY

1. Amendments 402A to 462 revise and extend the provisions relating to offshore income gains and trusts that were published in Part 2 of Schedule 7 to the Finance Bill. Many of the amendments clarify the legislation and a number of more substantive amendments are also made following discussions with external bodies.
2. Firstly, the interaction between offshore income gains with trusts and the transfer of assets abroad code has been amended to maintain broadly the existing relationships ahead of the new regulations to be introduced for offshore funds next year.
3. Secondly, the rebasing rules for trustees have been amended and the scope extended to cater for various types of transactions, particularly in relation to underlying companies in which trustees have an interest.

4. A number of transitional provisions, particularly in relation to Schedule 4C to TCGA, are introduced.

DETAILS OF THE AMENDMENTS

5. Amendment 402A inserts a new sub-paragraph (1A) into paragraph 88 of Schedule 7 to the Finance Bill (“Schedule 7”). Paragraph 88 is the paragraph which amends section 762 of Income and Corporation Taxes Act 1970 (ICTA) generally.
6. The new sub-paragraph (1A) itself inserts into section 762(1) ICTA a new paragraph (aa). This provides that any reference in section 13 Taxation of Chargeable Gains Act 1992 (TCGA) (chargeable gains of non-resident companies treated as accruing to participants) to anything that is “accruing” is changed to be a reference to its “arising”. This change is made because the concept of “accruing” is specific to the provisions of TCGA 1992 whereas in Chapter 5 Part 17 of ICTA (dealing generally with offshore funds) and in particular the charge to tax in section 761 ICTA, the term used is “arising”.
7. Related terms like “accrues” or “accrued” are to be read as their “arising” equivalents.

8. Section 761(1) ICTA already modifies section 13 TCGA by substituting a reference to “offshore income gain” for any references to “chargeable gain” and substitutes references to “income tax or corporation tax” for “capital gains tax”. It also provides for particular parts of section 13 to be omitted as they have no relevance for offshore income gains.
9. Amendment 403 modifies paragraph 88(2) of Schedule 7. It simply substitutes a reference to subsection (5) (of section 762 ICTA) for the existing reference to subsection (4), because amendment 3 makes a wider substitution than does paragraph 88(2) Schedule 7 in the Bill as published.
10. Amendment 404 makes that substitution by inserting new subsections (2) to (5) of section 762 for the existing subsections (2) to (6).
11. New section 762(3) is the main operative provision. It provides that sections 87 to 90 and 96 to 98 of TCGA (apart from section 87B) together with certain paragraphs of Schedule 4C to TCGA (the “relevant NR trust CG provisions”) apply in the same way to “OIG amounts” as they apply to what those sections refer to as “section 2(2) amounts” (the chargeable

gains made by the trustees that would be chargeable to capital gains tax if the trustees were resident in the United Kingdom, also known as “trust gains”) but with a number of modifications.

12. The modifications are that –
- any reference in the relevant NR trust CG provisions to “section 2(2) amounts” are treated as references to “OIG amounts”. But this does not apply in paragraph 7B of Schedule 4C since the references there to chargeable gains merely seek to identify whether a settlement is a settlement to which section 87 applies.
 - references in the relevant NR trust CG provisions to “chargeable gains” are read as references to “offshore income gains”. Again, this does not apply in relation to paragraph 1(5) of Schedule 4C because that reference is to a transfer to which Schedule 4B applies and that is not relevant for this purpose.
 - references in the relevant NR trust CG provisions to anything “accruing” are, as with section 761(1) and section 13 TCGA amended to be references to things “arising”. Other expressions based on the

verb “accrue” are also modified to be expressions based on the verb “arise”.

- certain parts of relevant NR trust CG provisions are treated as omitted. This is because those sections deal with matters which do not apply to offshore income gains, such as “allowable losses” and in the case of Schedule 4C deal with Schedule 4B transfers.
13. The overall effect of new section 762(3) is that if a settlement (trust) has an OIG amount for the year, the relevant NR trust CG provisions, as modified, apply in relation to that amount. So, for example, section 87 TCGA provides for a charge to tax under section 761(1) ICTA when a beneficiary of the settlement receives a capital payment which is matched under section 87A TCGA with an OIG amount.
14. New section 762(2) explains that an OIG amount for a settlement for any year is the amount of the offshore income gains which arise to the trustees in that year in any case where section 87 of TCGA applies to that settlement.
15. New section 762(4) provides that the matching rules in section 87A TCGA (inserted by paragraph 97 of Schedule 7 to the Bill) applies to an OIG amount

before it applies to a section 2(2) amount, so that the
OIG charge under section 761(1) ICTA always has
priority over the TCGA charge.

16. New section 762(5) ensures that section 761(1), the
main charging section in Chapter 5 Part 17 ICTA,
applies properly where an offshore income gain is
treated as arising to a person other than the person
actually disposing of the asset (e.g. participants in a
non-resident company or a beneficiary of a non-
resident settlement), by treating the person to whom
the offshore income gain is treated as arising as
having disposed of the asset; so ensuring that
section 761(1) has proper effect.
17. Amendment 405 makes consequential amendments
to subsection (6) of section 762 ICTA.
18. Amendment 406 substitutes a new section 762ZA
and renumbers the original section 762ZA introduced
by paragraph 89 of Schedule 7 of the Finance Bill as
published as section 762ZB.
19. New section 762ZA(1) and 762ZA(2) treat the
offshore income gains of a person who is not
resident or ordinarily resident in the UK as foreign
income becoming payable to that person where the

transfer of assets abroad code in Chapter 2 of Part 13 Income Tax Act 2007 (ITA) applies.

20. New section 762ZA(3) excludes from the application of subsection (1) gains treated as arising to a person resident or ordinarily resident in the UK to whom section 762(1) applies.
21. New section 762ZA(4) applies subsections (5) and (6) where an offshore income gain is a relevant offshore income gain within section 762(2).
22. New section 762ZA(5) provides that the transfer of assets abroad code in Chapter 2 of Part 13 ITA does not apply where the offshore income gain is treated as arising to a UK resident or ordinarily resident person and the gain is chargeable under sections 87 or 89(2) of, or Schedule 4C to, TCGA.
23. New section 762ZA(6) provides that offshore income gains that are treated as income for the purposes of Chapter 2 of Part 13 ITA are excluded from the OIG amount for the purposes of sections 87 and 89(2) of, and Schedule 4C to, TCGA. This provision ensures that an offshore income gain is not taxed twice.
24. Amendment 407 omits subsections (2) and (3) of the original section 762ZA (now section 762ZB) and

inserts new subsection (2) which provides that an offshore income gain treated as arising under section 761(1) ICTA are treated as relevant foreign income of a non domiciled individual to whom the remittance basis applies.

25. Amendment 408 substitutes wording to clarify references to the new remittance basis rules in Chapter A1 Part 14 ITA.
26. Amendment 409 introduces two new paragraphs 90A and 90B.
27. New paragraph 90A inserts a new paragraph in section 830(4) of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) to include offshore income gains within within the meaning of new section 762ZB relevant foreign income.
28. New paragraph 90B inserts new subsection (5) in section 734 ITA which provides that benefits are not charged to income tax where they have been treated as chargeable gains under sections 87 or 89(2) of, or Schedule 4C to, TCGA. This amendment modifies section 734 to ensure it has the same impact in relation to offshore income gains.

29. Amendment 410 makes a consequential amendment to a reference in paragraph 91.
30. Amendment 411 inserts new paragraphs 91A to 91D.
31. New paragraph 91A provides that paragraphs 108 and 108A apply to offshore income gains with the appropriate modifications.
32. New paragraph 91B provides an equivalent provision to paragraph 110 in relation to capital payments made to non-domiciled beneficiaries that are matched to offshore income gains under section 87 or 89(2) TCGA. In cases where:
- the capital payment was made before 6 April 2008 and matched to a later OIG amount; or
 - a capital payment made after 5 April 2008 is matched with an OIG amount for 2007-08 or earlier;
- no tax will be chargeable.
33. New paragraph 91C provides for appropriate modifications to be made to the rebasing rules to apply where the trustees of the settlement have made an election under paragraph 112 in cases where

offshore income gains fall within section 87 TCGA as modified by section 762 ICTA.

34. New paragraph 91D provides for appropriate modifications to be made to the rebasing rules in paragraph 113 for transfers of property between settlements under section 90 TCGA in cases where offshore income gains fall within section 87 TCGA as modified by section 762 ICTA.
35. Amendments 412 to 414 amend new section 87 TCGA as inserted by paragraph 97.
36. Amendments 412 and 413 insert into new section 87(4) TCGA references to the settlement and the tax year in respect of which the trust gains (or “section 2(2) amount”) are to be determined.
37. Amendment 414 inserts two further new subsections into new section 87 TCGA.
38. New subsection (5) specifies that where section 87 TCGA does not apply for a tax year the trust gains are taken to be nil. This subsection feeds into, and streamlines, a number of later provisions in TCGA and Part 2 of Schedule 7.

39. New subsection (6) is derived from the existing section 87(9) TCGA and ensures that section 87 applies to a settlement under a will or intestacy from the date of the death of the testator. Without this provision an estate under administration may otherwise fall outside the scope of section 87.
40. Amendment 415 substitutes new words into Step 5 of section 87A TCGA which provides the rules on matching capital payments to trust gains in order to determine the chargeable gains to be treated as accruing to a beneficiary of a settlement. The effect of the wording is the same as before but the new wording is more streamlined because it uses the concept introduced by new subsection (5) of new section 87 TCGA (see paragraph 38 (amendment 414) above).
41. Amendment 416 deletes words from subsection (3) of section 87A TCGA which are superfluous following the insertion of new subsection (5) of new section 87 TCGA (see paragraph 37 (amendment 414) above).
42. Amendment 417 substitutes new, shorter, wording in subsection (4) taking into account the insertion of new subsection (5) of the Section 87 TCGA (see paragraph (amendment 414) above).

43. Amendment 418 amends new section 87B TCGA to ensure that the remittance basis in respect of trust gains treated as accruing to a beneficiary applies only where the beneficiary is entitled to use the remittance basis under section 809B, 809C or 809D ITA.
44. Amendments 419 and 420 omit words which were to be inserted into section 89 TCGA (migrant settlements) and section 90 TCGA (Sections 87 and 89(2): transfers between settlements). The wording is not required as a consequence of new subsection (5) of new section 87 TCGA (see paragraph (amendment 414) above).
45. Amendment 421 substitutes a revised subsection (9) into section 90 TCGA. The revised subsection (9) ensures that the value of the property transferred by one settlement to another settlement is reduced by the amount of any loan associated with the property, where the loan is also transferred to the other settlement. The content of the first version of new subsection (9) of section 90 in the Finance Bill is moved to a new section, section 90A TCGA.
46. Amendment 422 inserts that new section 90A TCGA. The section is an expanded version of new

subsection (9) of section 90 TCGA in Schedule 7 as published which is omitted by amendment 421.

47. Subsection (1) of Section 90A excludes from the application of section 90 TCGA transfers of property where the trustees of the transferee settlement pay the trustees of the transferor settlement at least the market value of the property transferred. In such a case trust gains will accrue to the transferor settlement on the disposal of the property and no trust gains will be transferred to the transferee settlement.
48. Subsection (2) of section 90A applies new rules in subsections (3) and (4) where the trustees of the transferee settlement pay some consideration for the transferred property, but less than the market value. The consideration paid is taken into account when determining the amount of trust gains transferred under section 90 TCGA.
49. Amendment 423 omits section 130(1) and (4) of the Finance Act (FA) 1998. The provisions are moved to new paragraph 106A (see amendment 425).
50. Amendment 424 omits sub-paragraph (a) of paragraph 105. The wording is not required as a

consequence of new subsection (5) of new section 87 TCGA (see paragraph (amendment 414) above).

51. Amendment 425 inserts new paragraph 106A into Schedule 7. It carries over the transitional provisions from section 130 FA 1998 which exclude trust gains or losses accruing to the trustees before 17 March 1998 or capital payments made before that date, from the application of section 87 where the settlement meets certain conditions.
52. Amendments 426 to 432 make amendments to paragraph 108 which provides transitional rules for matching pre 6-April 2008 trust gains and capital payments.
53. Amendment 426 substitutes new wording in paragraph 108(1). The old wording is superfluous as a consequence of new subsection (5) of new section 87 TCGA (see paragraph (amendment 414) above).
54. Amendment 427 substitutes new wording in paragraph 108(2). The new wording makes it clear that the Steps set out in sub-paragraph (2) to match pre-2008-09 capital payments and trust gains are to be applied for all relevant tax years up to and including 2007-08.

55. Amendments 428 to 431 substitute new wording in Steps 1, 3 and 5 of paragraph 108(2). The matching effect of the Steps remains the same but new, shorter, form of wording is inserted as a consequence of new subsection (5) of new section 87 TCGA (see paragraph (amendment 414) above).
56. Amendment 432 inserts two new sub-paragraphs (3) and (4) into paragraph 108 and new paragraph 108A into Schedule 7.
57. Sub-paragraph (3) of paragraph 108 provides that the method of matching pre-6 April 2008 trust gains and capital payments in sub-paragraph (2) should be applied for the purposes of Schedule 4C to TCGA where a transfer of value between settlements within Schedule 4B to that Act took place before 6 April 2008.
58. Sub-paragraph (4) of paragraph 108 excludes from the provisions of paragraph 108 cases where there was a transfer of property between settlements before 6 April 2008 to which section 90 TCGA applied.
59. New paragraph 108A provides transitional rules for matching pre 6 April 2008 trust gains and capital

payments where there was a transfer of property between settlements before 6 April 2008 to which section 90 TCGA applied. The rules are needed to allocate the amount of unmatched trust gains at 5 April 2008 between the settlements for the purpose of the section 91 TCGA tax charge.

60. Sub-paragraph 108A(3) applies the steps for matching in paragraph 108(2) to both the transferor and transferee settlements and determine what amount of the transferor's trust gains are to be treated as the transferee's trust gains.
61. Sub-paragraphs (4) and (6) apply the provisions of sub-paragraph (2) to cases where there was more than one transfer between settlements before 6 April 2008 and to cases where a transfer of value between settlements within Schedule 4B TCGA took place before 6 April 2008.
62. Amendment 433 deletes sub-paragraph (1) of paragraph 109. The sub-paragraph was superfluous.
63. Amendment 434 extends sub-paragraph 109(4) to capital payments within Schedule 4C to TCGA. Where capital payments made before 6 April 2008 were treated as accruing to a beneficiary under

Schedule 4C to TCGA and the amount of the capital payments was greater than the amount of gains under Schedule 4C to TCGA (“Schedule 4C gains”), earlier capital payments are treated as being matched to Schedule 4C gains before later capital payments.

64. Amendment 435 inserts two new sub-paragraphs (5) and (6) to paragraph 109 and inserts new paragraphs 109A and 109B to Schedule 7.
65. New sub-paragraphs (5) and (6) of paragraph 109 apply the provisions of paragraph 109 to offshore income gains.
66. Paragraph 109A ensures that section 89 TCGA applies to trusts that became resident in the UK before 6 April 2008.
67. Paragraph 109B ensures that section 90 TCGA applies to transfers between settlements after 5 April 2008 where the transferor trust became resident in the UK before 6 April 2008.
68. Amendments 436 to 440 amend the rebasing rules in paragraph 112.
69. Amendment 436 substitutes new wording in paragraph 112(1) to ensure that the time limit for

trustees to make a rebasing election applies in the case where the trustees transfer the whole of the settled property.

70. Amendment 437 inserts two new sub-paragraphs (2A) and (2B) into paragraph 112. The effect of the sub-paragraphs is to include the receipt of a capital payment from a relevant settlement by a beneficiary of a settlement with a Schedule 4C pool as one of the trigger events in determining the deadline for making a rebasing election.
71. Amendment 438 inserts a reference to Schedule 4C to TCGA into sub-paragraph (5). The effect of the amendment is to extend the rebasing provisions to chargeable gains treated as accruing to a beneficiary under Schedule 4C to TCGA.
72. Amendment 439 substitutes some words in sub-paragraph (9)(c) of paragraph 112. It removes the restriction of the application of the rebasing provisions in the case of companies held by trustees to those cases where the trustees' interest in the company had remained the same or increased since 6 April 2008 to the date of disposal of the asset by the company. The rebasing provisions will therefore apply to cases where the trustees' interest in the

company has decreased up to the date of disposal of the asset by the company (and see amendment 440 below).

73. Amendment 440 introduces six new sub-paragraphs to paragraph 112, sub-paragraphs (11) to (16), dealing with chargeable gains accruing to the trustees from underlying companies within section 13 TCGA.
74. Sub-paragraph (11) extends the definition of a “relevant asset” to which the rebasing provisions apply to an asset disposed of by an underlying company where the asset is not itself a relevant asset but derived from one, wholly or in part.
75. Sub-paragraph (12) extends the definition of a “relevant asset” to which the rebasing provisions apply to an asset which was held by a company at 6 April 2008 but which was subsequently transferred to one or more other companies within the same group of companies before it was finally disposed of outside the group.
76. Sub-paragraph (13)(a) provides that, where sub-paragraph (12) applies, the chargeable gain attributed to the trustees on disposal of the asset is treated as though the gain had accrued to the company that held

the asset as at 6 April 2008, not the company which made the actual disposal. Without this provision, the proportion of gains that are treated as relating to the period from 6 April 2008, and on which a non-UK domiciled beneficiary is chargeable to tax, may be distorted, depending on what other gains and losses within section 13 had accrued to the company that makes the disposal outside the group.

77. Sub-paragraph (13)(b) provides that where there has been an intra-group transfer of an asset held at 6 April 2008 to which sub-paragraph (12) applies the gain attributed to the trustees is apportioned under section 13 in accordance with the trustees' interest in the company that makes the disposal of the asset outside the group.
78. Sub-paragraphs (14) to (16) provide that, where the trustees' interest in a company has changed between 6 April 2008 and the date of disposal of the asset, the gain on the asset to which the rebasing rules apply will be reduced in proportion to the lowest amount of the trustees' interest in the company in the period from 6 April 2008 to the date of disposal of the asset.

79. Amendments 441 to 447 amend paragraph 113 which applies rebasing rules to transfers of companies within section 13 TCGA between settlements under section 90 TCGA.
80. Amendment 441 inserts a reference to Schedule 4C to TCGA into sub-paragraph (1)(d) of paragraph 113. The effect of the amendment is to extend the rebasing provisions in relation to companies within section 13 TCGA in paragraph 113 to chargeable gains treated as accruing to a beneficiary under Schedule 4C to TCGA.
81. Amendment 442 inserts new sub-paragraph (1A) into paragraph 113. It ensures that where a company has been transferred to a settlement under section 90, and a claim to rebasing has been made, the transferee settlement will get the benefit of rebasing on the transferred asset.
82. Amendment 443 inserts new words at the beginning of sub-paragraph (2) of paragraph 113 to ensure that even where the trustees of the transferee settlement have not made an election for rebasing but the trustees of the transferor settlement had, the gain on disposal of an asset by the company will be rebased.

83. Amendments 444 and 445 make minor adjustments to sub-paragraphs (2) and (4) of paragraph 113.
84. Amendment 446 is the equivalent amendment in paragraph 113 to amendment 439 which modifies paragraph 112. It removes the restriction of the application of the rebasing provisions in the case of companies held by trustees to those cases where the trustees' interest in the company had remained the same or increased since 6 April 2008 to the date of disposal of the asset by the company. The rebasing provisions will therefore apply to cases where the trustees' interest in the company has decreased up to the date of disposal of the asset by the company.
85. Amendment 447 introduces new sub-paragraph (6) into paragraph 113. It applies the provisions of sub-paragraphs (11) to (16) of paragraph 112 for the purposes of transfers between settlements falling within paragraph 113 (see paragraphs 73 to 78 above).
86. Amendment 448 amends paragraph 115 by inserting a new subsection (2A) into section 85A TCGA. The new subsection makes clear that trust gains within a Schedule 4C pool are not to be taken into account when determining the trust gains under sections 87

and 89(2) TCGA, in order to eliminate double counting of gains or losses.

87. Amendment 449 amends paragraph 116 by inserting a new sub-paragraph (5) into paragraph 3 of Schedule 4B TCGA (transfers of value by trustees linked with trustee borrowing: settlements). The effect of the sub-paragraph is to apply the new rules in Schedule 4B TCGA to offshore income gains.
88. Amendment 450 amends paragraph 118 to provide more clarity to the new sub-paragraph (3) of paragraph 1 of Schedule 4C to TCGA.
89. Amendments 451 and 452 amend paragraph 119 which amends Schedule 4C to TCGA to provide rules for determining the trust gains that are transferred into a Schedule 4C pool on a transfer of value under Schedule 4B to TCGA.
90. Amendment 451 substitutes new, shorter and clearer wording in paragraph 1A of Schedule 4C to TCGA. There is no change in the effect of the paragraph.
91. Amendment 452 inserts new sub-paragraph (1A) into paragraph 1A of Schedule 4C to TCGA. The new sub-paragraph makes provision for transfers between settlements under section 90 in determining the trust

gains that are to be transferred into the Schedule 4C pool.

92. Amendment 453 inserts two new paragraphs 119A and 119B into Schedule 7 to the Finance Bill as published. The new paragraphs insert wording into paragraphs 4(2) and 5(2) respectively of Schedule 4C to TCGA. Without the new wording the chargeable amount in relation to the transfer of value under Schedule 4B could be read as being nil.
93. Amendments 454 to 456 amend new paragraph 8 of Schedule 4C to TCGA as inserted by paragraph 122.
94. Amendments 454 and 455 omit sub-paragraphs (3)(c) and (e) respectively of new paragraph 8 of Schedule 4C to TCGA. The sub-paragraphs are superfluous as a consequence of the amendments to section 87A TCGA (see amendments 415 to 416).
95. Amendment 456 inserts new sub-paragraph (5) into new paragraph 8 TCGA. The new sub-paragraph provides that section 87A TCGA should take precedence over Schedule 4C to TCGA for matching offshore income gains.
96. Amendment 457 inserts new paragraph 122A into Schedule 7 to the Finance Bill as published. New

paragraph 122A inserts new paragraph 8AA into Schedule 4C to TCGA to provide for the remittance basis to apply to gains charged under Schedule 4C to TCGA.

97. Amendment 458 omits paragraph 124 which amended paragraph 9 of Schedule 4C to TCGA and inserts new paragraphs 124 and 124A.

98. New paragraph 124 substitutes a new paragraph 9 of Schedule 4C to TCGA. New paragraph 9 provides rules to exclude certain capital payments from being taken into account when matching capital payments to gains in the Schedule 4C pool. The payments to be disregarded are those which are made:

- in a tax year before the year in which the original transfer of value took place;
- in a year when the trustees are resident and ordinarily resident in the UK and not Treaty non-resident throughout the year, and the payment was made before any transfer of value within Schedule 4B was made and the payment was not made in anticipation of a future transfer of value;
- to a non-resident company that would be treated as a close company if it were UK resident.

99. New paragraph 124A amends paragraph 10(1) of Schedule 4C to TCGA and omits sub-paragraphs (2) and (3) of that paragraph. The material in sub-paragraphs (2) and (3) is moved into new paragraph 9(3) of Schedule 4C to TCGA.
100. Amendment 459 inserts new paragraphs 129A to 129D into Schedule 7 which provide transitional rules for the application of Schedule 4C in respect of non-domiciled beneficiaries.
101. New paragraph 129A provides the transitional rule that was in the existing paragraph 9(3)(a) Schedule 4C to TCGA, which is omitted by amendment 458.
102. New paragraph 129B overrides new paragraph 9(4) as inserted by paragraph 124 in respect of capital payments made to non-resident companies that would be treated as close companies if they were UK resident. The effect of new paragraph 129B is to preserve the existing matching rules in the case of capital payments made before 6 April 2008.
103. New paragraph 129C applies the transitional rule in paragraph 110 to Schedule 4C to TCGA. The effect is to ensure that capital payments made to non-domiciled beneficiaries before 6 April 2008 that are

matched to Schedule 4C gains are not charged to tax.

104. New paragraph 129D applies the transitional rule in paragraph 111 to Schedule 4C to TCGA. The effect is to disregard capital payments made to non-domiciled beneficiaries on or between 12 March and 5 April 2008 when matching capital payments to trust gains for the purposes of Schedule 4C to TCGA.
105. Amendments 460 and 461 make minor changes to references in paragraph 130.
106. Amendment 462 inserts new paragraphs 130A to 130C which provide additional transitional rules for Schedule 4C to TCGA.
107. New paragraph 130A ensures that where the existing Schedule 4C to TCGA rules have resulted in the reduction of a capital payment the amount of the capital payment for the purposes Schedule 4C to TCGA as amended by Schedule 7 will be treated as the reduced amount.
108. New paragraph 130B provides for the appropriate reduction in a capital payment where it is matched wholly or in part to gains in the existing Schedule 4C pool. Sub-paragraph (4) of paragraph 130B provides

matching rules on a first in, first out, basis where more than one capital payment is to be matched, and the total amount of capital payments is greater than the gains available for matching. (Note, the matching rules in the new Schedule 4C pool will be on a last in, first out, basis.)

109. New paragraph 130C provides that the amended version of Schedule 4C to TCGA applies in priority to the existing version of Schedule 4C to TCGA which in turn applies in priority over sections 87 or 89(2) TCGA. The effect of this paragraph is to ensure that capital payments made to a beneficiary by the trustees of a relevant settlement are matched firstly to the gains within the new Schedule 4C pool, then to the gains in the existing Schedule 4C pool and only after those gains are exhausted will the payment be matched with any section 87 or section 89(2) gains.

BACKGROUND NOTE

110. These amendments clarify the legislation and a number of substantive amendments are also made following discussions with representative bodies.
111. The change in approach on taxing the offshore income gains of trusts from the version published in

the Finance Bill meets concerns by external stakeholders about the unavailability of rebasing for OIGs arising to trustees except where a capital payment is matched in the same year as the OIG arises.

112. It should be noted that the provisions of section 762 ICTA, as amended by Schedule 7, as itself amended by these amendments, will be translated into regulations made under clause 38 of the Finance Bill. A copy of the draft regulations has been circulated but these, at present, merely contain a marker for the changes needed to translate section 762 into regulations.
113. Finally, Amendments 439, 440, 446 and 447 apply rebasing in relation to company assets where the trustees' interest in the company has decreased between 6 April 2008 and the date of disposal of a company asset. This responds to external stakeholders who have raised concerns that it is not always possible for a participator to control the proportion of their interest in a close company.