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OF A

BILL

TO

Amend the law relating to capital and income in trusts.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Disapplication of apportionment etc. rules

(1) Any entitlement to income under a trust created or arising after this section comes into force is to income as it arises (and accordingly section 2 of the Apportionment Act 1870 (c. 35), which provides for income to accrue from day to day, does not apply in relation to the trust).

(2) The following do not apply in relation to a trust created or arising after this section comes into force—

(a) the first part of the rule known as the rule in *Howe* v. *Earl of Dartmouth* (which requires certain residuary personal estate to be sold);

(b) the second part of that rule (which withholds from a life tenant income arising from certain investments and compensates the life tenant with payments of interest);

(c) the rule known as the rule in *Re Earl of Chesterfield's Trusts* (which requires the proceeds of the conversion of certain investments to be apportioned between capital and income);

(d) the rule known as the rule in *Allhusen* v. *Whittell* (which requires a contribution to be made from income for the purpose of paying a deceased person's debts, legacies and annuities);

(e) the rules known as the rule in *Re Atkinson* and the rule in *Re Bird* (which require losses on certain investments to be apportioned between capital and income).

(3) Trustees have power to sell any property which (but for subsection (2)(a)) they would have been under a duty to sell.

(4) In a case where there is a trust instrument, subsections (1) to (3) have effect subject to any contrary provision in the instrument.

2 Classification of certain corporate distributions as capital

(1) A receipt consisting of a tax-exempt corporate distribution is to be treated for the purposes of any trust, whether created or arising before or after this section comes into force, as a receipt of capital (even if it would otherwise be treated for those purposes as a receipt of income).

(2) In a case where there is a trust instrument, subsection (1) has effect subject to any contrary provision in the instrument.

(3) The following are tax-exempt corporate distributions for the purposes of this section and section 3—

(a) a distribution that is an exempt distribution by virtue of section 213(2) or 213A of the Income and Corporation Taxes Act 1988 (c. 1), and

(b) any other distribution of assets (in any form) by a body corporate, where the distribution is of a description specified by an order made by the Secretary of State by statutory instrument.

(4) An order under subsection (3)(b) may specify a description of distribution only if neither income tax nor capital gains tax is chargeable in respect of a distribution of that description.

(5) The making of an order under subsection (3)(b) requires the consent of the Treasury.

(6) A statutory instrument containing an order under subsection (3)(b) is subject to annulment in pursuance of a resolution of either House of Parliament.

3 Power to compensate income beneficiary

(1) Subsection (2) applies in any case where—

(a) by virtue of section 2 a tax-exempt corporate distribution made by a body corporate is treated for the purposes of a trust as a receipt of capital, and

(b) the trustees are satisfied that it is likely that, but for the distribution, there would have been a receipt from the body corporate that would have been a receipt of income for the purposes of the trust.

(2) Where this subsection applies, the trustees may make a payment out of the capital funds of the trust, or transfer any property of the trust, to an income beneficiary with a view to placing the beneficiary (so far as practicable) in the position in which the beneficiary would have been had there been the receipt of income mentioned in subsection (1)(b).

(3) In subsection (2) "income beneficiary", in relation to a trust, means a person entitled to income arising under the trust, or for whose benefit such income may be applied.

4 Total return investment by charities

After section 75B of the Charities Act 1993 (c. 10) insert—

"75BA Investment of endowment fund on total return basis

(1) This section applies to any available endowment fund of a charity which is not a company or other body corporate.

(2) Where the following conditions are met, the charity trustees may resolve for the purposes of this section that the fund, or a portion of it, ought to be freed from the restrictions with respect to expenditure of capital that apply to it.

(3) The first condition is that the charity trustees are satisfied that it is likely that the total return from the fund or portion would be greater if it could be invested without the need to maintain a balance between capital and income returns.

(4) The second condition is that the charity trustees are satisfied that it is in the interests of the charity that the fund or portion, and income arising from it, should be subject to regulations under section 75BB(1)(b).

(5) While a resolution under subsection (2) has effect—

(a) the fund or portion is not subject to the restrictions mentioned in that subsection, but

(b) the fund or portion, and income arising from it, is subject to regulations under section 75BB(1)(b).

(6) In this section "available endowment fund" has the same meaning as in section 75.

75BB Total return investment: regulations

(1) The Commission may by regulations make provision about—

(a) resolutions under section 75BA(2), and

(b) the investment of a relevant fund without the need to maintain a balance between capital and income returns, and expenditure from such a fund.

(2) Regulations under subsection (1)(a) may, in particular—

(a) specify steps that must be taken by charity trustees before passing a resolution under section 75BA(2),

(b) make provision about the variation and revocation of such a resolution,

(c) require charity trustees to notify the Commission of the passing, variation or revocation of such a resolution, and

(d) specify circumstances in which such a resolution is to cease to have effect.

(3) Regulations under subsection (1)(b) may, in particular—

(a) make provision about the taking of advice by charity trustees in connection with the investment of, and expenditure from, a relevant fund,

(b) specify circumstances in which expenditure from a relevant fund requires the Commission's consent, and

(c) require charity trustees to report to the Commission on the investment of, and expenditure from, a relevant fund.

(4) Any regulations made by the Commission under this section must be published by the Commission in such manner as it thinks fit.

(5) In this section—

(a) "relevant fund" means a fund, or portion of a fund, in respect of which a resolution under section 75BA(2) has effect, and

(b) references to expenditure from a relevant fund include references to expenditure of income arising from such a fund.”

5 Short title, commencement and extent

(1) This Act may be cited as the Trusts (Capital and Income) Act 2009.

(2) This section comes into force on the day on which this Act is passed, but otherwise this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(3) An order under subsection (2) may—

(a) appoint different days for different purposes;

(b) make such provision as the Secretary of State considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(4) This Act extends to England and Wales only.