



# Inheritance Tax Act 1984

## 1984 CHAPTER 51

### PART V

#### MISCELLANEOUS RELIEFS

#### CHAPTER I

#### BUSINESS PROPERTY

**Modifications etc. (not altering text)**

**C1** Pt. V Ch. I (ss. 103-114) modified (16.7.1992) by [Finance \(No.2\) Act 1992 \(c. 48\)](#), s. 73, [Sch. 14](#), para. 9(4).

**103**

- (1) In this Chapter references to a transfer of value include references to an occasion on which tax is chargeable under Chapter III of Part III of this Act (apart from section 79), and
  - (a) references to the value transferred by a transfer of value include references to the amount on which tax is then chargeable, and
  - (b) references to the transferor include references to the trustees of the settlement concerned.
- (2) For the purposes of this Chapter a company and all its subsidiaries are members of a group, and “holding company” and “subsidiary” have [<sup>F1</sup>the meaning given by section 736 of] the [<sup>F2M1</sup>Companies Act 1985]
- (3) In this Chapter “business” includes a business carried on in the exercise of a profession or vocation, but does not include a business carried on otherwise than for gain.

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#### Textual Amendments

- F1** Companies Act 1989 s. 144(4) and Sch. 18 para. 30(3) with effect from the appointed day—on and after 1 November 1990 (S.I. 1990 No. 1392). Originally “the same meanings as in”.
- F2** Companies Consolidation (Consequential Provisions) Act 1985 (c. 9, SIF 27), Sch. 2, with effect from 1 July 1985.

#### Marginal Citations

- M1** 1985 c. 6

### 104 The relief.

- (1) Where the whole or part of the value transferred by a transfer of value is attributable to the value of any relevant business property, the whole or that part of the value transferred shall be treated as reduced—
- (a) in the case of property falling within section 105(1)(a) or [F3(b) or (bb)] below by [F4 100 per cent];
  - (b) in the case of other relevant business property, by [F5 50 per cent];
- but subject to the following provisions of this Chapter.
- (2) For the purposes of this section, the value transferred by a transfer of value shall be calculated as a value on which no tax is chargeable.

#### Textual Amendments

- F3** Finance Act 1987 Sch. 8, para. 4, with effect from 17 March 1987. Originally “or (b)”.
- F4** Words in s. 104(1)(a) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 1(a), 8, 9.
- F5** Words in s. 104(1)(b) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 1(b), 8, 9.

#### Modifications etc. (not altering text)

- C2** S. 104 excluded (1.11.2004 with effect as mentioned in reg. 1 of the amending S.I.) by The Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543), reg. 4(7)
- C3** Ss. 104, 116 excluded (6.4.2008) by The Inheritance Tax (Delivery of Accounts) (Excepted Transfers and Excepted Terminations) Regulations 2008 (S.I. 2008/605), reg. 4(4)  
Ss. 104, 116 excluded (6.4.2008) by The Inheritance Tax (Delivery of Accounts) (Excepted Transfers and Excepted Terminations) Regulations 2008 (S.I. 2008/605), reg. 5(5)

### 105 Relevant business property.

- (1) Subject to the following provisions of this section and to sections 106, 108, F6 . . . , 112(3) and 113 below, in this Chapter “relevant business property” means, in relation to any transfer of value,—
- (a) property consisting of a business or interest in a business;
  - (b) F7 . . . securities of a company which [F8 are unquoted and which] (either by themselves or together with other such [F9 securities owned by the transferor

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and any unquoted shares so owned]) gave the transferor control of the company immediately before the transfer;

[<sup>F10</sup>(bb) any unquoted shares in a company;]

(c) .....

[<sup>F11</sup>(cc) shares in or securities of a company which are quoted and which (either by themselves or together with other such shares or securities owned by the transferor) gave the transferor control of the company immediately before the transfer;]

(d) any land or building, machinery or plant which, immediately before the transfer, was used wholly or mainly for the purposes of a business carried on by a company of which the transferor then had control or by a partnership of which he then was a partner; and

(e) any land or building, machinery or plant which, immediately before the transfer, was used wholly or mainly for the purposes of a business carried on by the transferor and was settled property in which he was then beneficially entitled to an interest in possession.

<sup>F12</sup>(1A) .....

<sup>F12</sup>(1B) .....

[<sup>F13</sup>(1ZA) In subsection (1) above “quoted”, in relation to any shares or securities, means [<sup>F14</sup>listed]] on a recognised stock exchange and “unquoted”, in relation to any shares or securities, means not so [listed].

(2) Shares in or securities of a company do not fall within subsection (1) <sup>F15</sup> . . . [<sup>F16F15</sup> . . . (cc)] above if—

(a) they would not have been sufficient, without other property, to give the transferor control of the company immediately before the transfer, and

(b) their value is taken by virtue of section 176 below to be less than the value previously determined.

<sup>F17</sup>(2A) .....

(3) A business or interest in a business, or shares in or securities of a company, are not relevant business property if the business or, as the case may be, the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments.

(4) Subsection (3) above—

[<sup>F18</sup>(a) does not apply to any property if the business concerned is wholly that of a market maker or is that of a discount house and (in either case) is carried on in the United Kingdom, and]

(b) does not apply to shares in or securities of a company if the business of the company consists wholly or mainly in being a holding company of one or more companies whose business does not fall within that subsection.

(5) Shares in or securities of a company are not relevant business property in relation to a transfer of value if at the time of the transfer a winding-up order has been made in respect of the company or the company has passed a resolution for voluntary winding-up or is otherwise in process of liquidation, unless the business of the company is to continue to be carried on after a reconstruction or amalgamation and the reconstruction

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or amalgamation either is the purpose of the winding-up or liquidation or takes place not later than one year after the transfer of value.

- (6) Land, a building, machinery or plant owned by the transferor and used wholly or mainly for the purposes of a business carried on as mentioned in subsection (1) (d) or (e) above is not relevant business property in relation to a transfer of value, unless the business or the transferor's interest in it is, or shares or securities of the company carrying on the business immediately before the transfer are, relevant business property in relation to the transfer.

[<sup>F19</sup>(7) In this section “market maker” means a person who—

- (a) holds himself out at all normal times in compliance with the rules of The Stock Exchange as willing to buy and sell securities, stocks or shares at a price specified by him, and
- (b) is recognised as doing so by the Council of The Stock Exchange.]

#### Textual Amendments

- F6** Words in s. 105(1) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VI** note 1
- F7** Words in s. 105(1)(b) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, ss. 184(2)(a)(i), 205, **Sch. 41 Pt. VI**, note 1
- F8** Words in s. 105(1)(b) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 2(2), 8, 9.
- F9** Words in s. 105(1)(b) substituted (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 184(2)(a)(ii)
- F10** S. 105(1)(bb) substituted (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 184(2)(b)
- F11** S. 105(1)(cc) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 2(3), 8, 9.
- F12** S. 105(1A)(1B) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VI** note 1
- F13** S. 105(1ZA) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 2(4), 8, 9.
- F14** Words in s. 105(1ZA) substituted (29.4.1996 with effect as mentioned in Sch. 38 para. 2(2) of the amending Act) by 1996 c. 8, s. 199, **Sch. 38 para. 2(1)(a)**
- F15** Words in s. 105(2) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VI** note 1
- F16** Words in s. 105(2) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 2(5), 8, 9.
- F17** S. 105(2A) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VI**, note 1
- F18** Finance Act 1986 s. 106(1), 25 *in relation to events on or after 27 October 1986 “the day of the Stock Exchange reforms”*—(as defined in s.106(8)). Originally “(a) does not apply to any property if the business concerned is that of a jobber (as defined in section 477 of the Taxes Act) or discount house and is carried on in the United Kingdom, and”.
- F19** Finance Act 1986 s. 106(2), *in relation to events on or after 27 October 1986*—“the day of The Stock Exchange reforms”—(as defined in s.106(8)).

#### Modifications etc. (not altering text)

- C4** S. 105(7) amended (6.1.1993) by S.I. 1992/3181, **reg. 4** as amended (1.12.2001) by S.I. 2001/3629, **art. 135**

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## 106 Minimum period of ownership.

Property is not relevant business property in relation to a transfer of value unless it was owned by the transferor throughout the two years immediately preceding the transfer.

## 107 Replacements.

- (1) Property shall be treated as satisfying the condition in section 106 above if—
  - (a) it replaced other property and it, that other property and any property directly or indirectly replaced by that other property were owned by the transferor for periods which together comprised at least two years falling within the five years immediately preceding the transfer of value, and
  - (b) any other property concerned was such that, had the transfer of value been made immediately before it was replaced, it would (apart from section 106) have been relevant business property in relation to the transfer.
- (2) In a case falling within subsection (1) above relief under this Chapter shall not exceed what it would have been had the replacement or any one or more of the replacements not been made.
- (3) For the purposes of subsection (2) above changes resulting from the formation, alteration or dissolution of a partnership, or from the acquisition of a business by a company controlled by the former owner of the business, shall be disregarded.
- <sup>F20</sup>(4) Without prejudice to subsection (1) above, where any shares falling within section 105(1)(bb) above which are] owned by the transferor immediately before the transfer would under any of the provisions of sections <sup>F21</sup>126 to 136 of the 1992 Act] be identified with other shares previously owned by him his period of ownership of the first-mentioned shares shall be treated for the purposes of section 106 above <sup>F22</sup>. . . as including his period of ownership of the other shares.

### Textual Amendments

- F20** Words in s. 107(4) and “(4)” substituted (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 184(3)
- F21** Words in s. 107(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 8(5) (with ss. 60, 101(1), 201(3)).
- F22** Words in s. 107(4) repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. VI note 1

## 108 Successions.

For the purposes of sections 106 and 107 above, where the transferor became entitled to any property on the death of another person—

- (a) he shall be deemed to have owned it from the date of the death, and
- (b) if that other person was his spouse <sup>F23</sup>or civil partner] he shall also be deemed to have owned it for any period during which the spouse <sup>F23</sup>or civil partner] owned it.

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**Textual Amendments**

**F23** Words in s. 108(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1(1)**, {19};

**109 Successive transfers.**

(1) Where—

- (a) the whole or part of the value transferred by a transfer of value (in this section referred to as the earlier transfer) was eligible for relief under this Chapter (or would have been so eligible if such relief had been capable of being given in respect of transfers of value made at that time), and
- (b) the whole or part of the property which, in relation to the earlier transfer, was relevant business property became, through the earlier transfer, the property of the person or of the spouse [<sup>F24</sup>or civil partner] of the person who is the transferor in relation to a subsequent transfer of value, and
- (c) that property or part, or any property directly or indirectly replacing it, would (apart from section 106 above) have been relevant business property in relation to the subsequent transfer of value, and
- (d) either the earlier transfer was, or the subsequent transfer of value is, a transfer made on the death of the transferor,

the property which would have been relevant business property but for section 106 above shall be relevant business property notwithstanding that section.

(2) Where the property which, by virtue of subsection (1) above, is relevant business property replaced the property or part referred to in paragraph (c) of that subsection, relief under this Chapter shall not exceed what it would have been had the replacement or any one or more of the replacements not been made, but section 107(3) above shall apply with the necessary modifications for the purposes of this subsection.

(3) Where, under the earlier transfer, the amount of the value transferred which was attributable to the property or part referred to in subsection (1)(c) above was part only of its value, a like part only of the value which (apart from this subsection) would fall to be reduced under this Chapter by virtue of this section shall be so reduced.

**Textual Amendments**

**F24** Words in s. 109(1)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), **regs. 1(1)**, **20**

<sup>F25</sup>**109A**.....

**Textual Amendments**

**F25** **S. 109A** repealed (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VI** note 1

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## **110 Value of business.**

For the purposes of this Chapter—

- (a) the value of a business or of an interest in a business shall be taken to be its net value;
- (b) the net value of a business is the value of the assets used in the business (including goodwill) reduced by the aggregate amount of any liabilities incurred for the purposes of the business;
- (c) in ascertaining the net value of an interest in a business, no regard shall be had to assets or liabilities other than those by reference to which the net value of the entire business would fall to be ascertained.

## **111 Value of certain shares and securities.**

Where a company is a member of a group and the business of any other company which is a member of the group falls within section 105(3) above, then, unless either—

- (a) that business also falls within section 105(4), or
- (b) that business consists wholly or mainly in the holding of land or buildings wholly or mainly occupied by members of the group whose business either does not fall within section 105(3) or falls within both section 105(3) and section 105(4),

the value of shares in or securities of the company shall be taken for the purposes of this Chapter to be what it would be if that other company were not a member of the group.

## **112 Exclusion of value of excepted assets.**

- (1) In determining for the purposes of this Chapter what part of the value transferred by a transfer of value is attributable to the value of any relevant business property so much of the last-mentioned value as is attributable to any excepted assets within the meaning of subsection (2) below shall be left out of account.
- (2) An asset is an excepted asset in relation to any relevant business property if it was neither—
  - (a) used wholly or mainly for the purposes of the business concerned throughout the whole or the last two years of the relevant period defined in subsection (5) below, nor
  - (b) required at the time of the transfer for future use for those purposes;but where the business concerned is carried on by a company which is a member of a group, the use of an asset for the purposes of a business carried on by another company which at the time of the use and immediately before the transfer was also a member of that group shall be treated as use for the purposes of the business concerned, unless that other company's membership of the group falls to be disregarded under section 111 above.
- (3) Subsection (2) above does not apply in relation to an asset which is relevant business property by virtue only of section 105(1)(d) above, and an asset is not relevant business property by virtue only of that provision unless either—
  - (a) it was used as mentioned in that provision throughout the two years immediately preceding the transfer of value, or

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- (b) it replaced another asset so used and it and the other asset and any asset directly or indirectly replaced by that other asset were so used for periods which together comprised at least two years falling within the five years immediately preceding the transfer of value;
- but in a case where section 109 above applies this condition shall be treated as satisfied if the asset (or it and the asset or assets replaced by it) was or were so used throughout the period between the earlier and the subsequent transfer mentioned in that section (or throughout the part of that period during which it or they were owned by the transferor or the transferor's spouse [<sup>F26</sup>or civil partner]).
- (4) Where part but not the whole of any land or building is used exclusively for the purposes of any business and the land or building would, but for this subsection, be an excepted asset, or, as the case may be, prevented by subsection (3) above from being relevant business property, the part so used and the remainder shall for the purposes of this section be treated as separate assets, and the value of the part so used shall (if it would otherwise be less) be taken to be such proportion of the value of the whole as may be just.
- (5) For the purposes of this section the relevant period, in relation to any asset, is the period immediately preceding the transfer of value during which the asset (or, if the relevant business property is an interest in a business, a corresponding interest in the asset) was owned by the transferor or, if the business concerned is that of a company, was owned by that company or any other company which immediately before the transfer of value was a member of the same group.
- (6) For the purposes of this section an asset shall be deemed not to have been used wholly or mainly for the purposes of the business concerned at any time when it was used wholly or mainly for the personal benefit of the transferor or of a person connected with him.

#### **Textual Amendments**

**F26** Words in s. 112(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 21

### **113 Contracts for sale.**

Where any property would be relevant business property in relation to a transfer of value but a binding contract for its sale has been entered into at the time of the transfer, it is not relevant business property in relation to the transfer unless—

- (a) the property is a business or interest in a business and the sale is to a company which is to carry on the business and is made in consideration wholly or mainly of shares in or securities of that company, or
- (b) the property is shares in or securities of a company and the sale is made for the purpose of reconstruction or amalgamation.

### **[<sup>F27</sup>113A Transfers within seven years before death of transferor.**

- (1) Where any part of the value transferred by a potentially exempt transfer which proves to be a chargeable transfer would (apart from this section) be reduced in accordance with the preceding provisions of this Chapter, it shall not be so reduced unless the conditions in subsection (3) below are satisfied.



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- (2) Where—
- (a) any part of the value transferred by any chargeable transfer, other than a potentially exempt transfer, is reduced in accordance with the preceding provisions of this Chapter, and
  - (b) the transfer is made within seven years of the death of the transferor,
- then, unless the conditions in subsection (3) below are satisfied, the additional tax chargeable by reason of the death shall be calculated as if the value transferred had not been so reduced.
- (3) The conditions referred to in subsections (1) and (2) above are—
- (a) that the original property was owned by the transferee throughout the period beginning with the date of the chargeable transfer and ending with the death of the transferor; and
  - (b) <sup>F28</sup>except to the extent that the original property consists of shares or securities to which subsection (3A) below applies] that, in relation to a notional transfer of value made by the transferee immediately before the death, the original property would (apart from section 106 above) be relevant business property.
- [ This subsection applies to shares or securities—
- <sup>F28</sup>(3A) (a) which were quoted at the time of the chargeable transfer referred to in subsection (1) or subsection (2) above; or
- (b) which fell within paragraph (b) <sup>F29</sup>or (bb)] of section 105(1) above in relation to that transfer and were unquoted throughout the period referred to in subsection (3)(a) above.]

[ In subsection (3A) above “quoted”, in relation to any shares or securities, means

<sup>F30</sup>(3B) <sup>F31</sup>listed] on a recognised stock exchange and “unquoted”, in relation to any shares or securities, means not so <sup>F31</sup>listed].

(4) If the transferee has died before the transferor, the reference in subsection (3) above to the death of the transferor shall have effect as a reference to the death of the transferee.

(5) If the conditions in subsection (3) above are satisfied only with respect to part of the original property, then,—

    - (a) in a case falling within subsection (1) above, only a proportionate part of so much of the value transferred as is attributable to the original property shall be reduced in accordance with the preceding provisions of this Chapter, and
    - (b) in a case falling within subsection (2) above, the additional tax shall be calculated as if only a proportionate part of so much of the value transferred as was attributable to the original property had been so reduced.

(6) Where any shares owned by the transferee immediately before the death in question—

    - (a) would under any of the provisions of sections <sup>F32</sup>126 to 136 of the 1992 Act] be identified with the original property (or part of it), or
    - (b) were issued to him in consideration of the transfer of a business or interest in a business consisting of the original property (or part of it),

they shall be treated for the purposes of this section as if they were the original property (or that part of it).

(7) This section has effect subject to section 113B below.

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[ The provisions of this Chapter for the reduction of value transferred shall be <sup>F33</sup>(7A) disregarded in any determination for the purposes of this section of whether there is a potentially exempt or chargeable transfer in any case.]

(8) In this section—

“the original property” means the property which was relevant business property in relation to the chargeable transfer referred to in subsection (1) or subsection (2) above; and

“the transferee” means the person whose property the original property became on that chargeable transfer or, where on the transfer the original property became or remained settled property in which no qualifying interest in possession (within the meaning of Chapter III of Part III of this Act) subsists, the trustees of the settlement.]

#### Textual Amendments

- F27** Finance Act 1986 Sch. 19, para. 21, *with respect to transfers of value made, and other events occurring, on or after 18 March 1986.*
- F28** Finance Act 1987 Sch. 8, para. 8, *in relation to transfers of value made on or after 17 March 1987.*
- F29** Words in s. 113A(3A)(b) inserted (29.4.1996 with effect as mentioned in s. 184(6)(b) of the amending Act) by 1996 c. 8, s. 184(4)
- F30** S. 113A(3A)(b) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 paras. 3, 8, 9.
- F31** Words in s. 113A(3B) substituted (29.4.1996 with effect as mentioned in Sch. 38 para. 2(2) of the amending Act) by 1996 c. 8, s. 199, Sch. 38 para. 2(1)(a)
- F32** Words in s. 113A(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch. 10 para. 8(5) (with ss. 60, 101(1), 201(3)).
- F33** S. 113A(7A) inserted (29.4.1996 with effect as mentioned in s. 184(6)(a) of the amending Act) by 1996 c. 8, s. 184(5)

#### Modifications etc. (not altering text)

- C5** S. 113A amended (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 para. 9(2)(4) (with Sch. 14 para. 8).

#### <sup>F34</sup>113B Application of section 113A to replacement property.

(1) Subject to subsection (2) below, this section applies where—

- (a) the transferee has disposed of all or part of the original property before the death of the transferor; and
- (b) the whole of the consideration received by him for the disposal has been applied by him in acquiring other property (in this section referred to as “the replacement property”).

(2) This section does not apply unless—

- (a) the replacement property is acquired, or a binding contract for its acquisition is entered into, within [<sup>F35</sup>the allowed period] after the disposal of the original property (or, as the case may be, the part concerned); and
- (b) the disposal and acquisition are both made in transactions at arm’s length or on terms such as might be expected to be included in a transaction at arm’s length.

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- (3) Where this section applies, the conditions in section 113A(3) above shall be taken to be satisfied in relation to the original property (or, as the case may be, the part concerned) if—
- (a) the replacement property is owned by the transferee immediately before the death of the transferor; and
  - (b) throughout the period beginning with the date of the chargeable transfer and ending with the death (disregarding any period between the disposal and acquisition) either the original property or the replacement property was owned by transferee; and
  - (c) in relation to a notional transfer of value made by the transferee immediately before the death, the replacement property would (apart from section 106 above) be relevant business property.
- (4) If the transferee has died before the transferor, any reference in subsections (1) to (3) above to the death of the transferor shall have effect as a reference to the death of the transferee.
- (5) In any case where—
- (a) all or part of the original property has been disposed of before the death of the transferor or is excluded by section 113 above from being relevant business property in relation to the notional transfer of value referred to in section 113A(3)(b) above, and
  - (b) the replacement property is acquired, or a binding contract for its acquisition is entered into, after the death of the transferor but within [<sup>F35</sup>the allowed period] after the disposal of the original property or part, and
  - (c) the transferor dies before the transferee,
- subsection (3) above shall have effect with the omission of paragraph (a), and as if any reference to a time immediately before the death of the transferor or to the death were a reference to the time when the replacement property is acquired.
- (6) Section 113A(6) above shall have effect in relation to the replacement property as it has effect in relation to the original property.
- (7) Where a binding contract for the disposal of any property is entered into at any time before the disposal of the property, the disposal shall be regarded for the purposes of subsections (2)(a) and (5)(b) above as taking place at that time.
- (8) In this section “the original property” and “the transferee” have the same meaning as in section 113A above [<sup>F36</sup>and “allowed period” means the period of three years or such longer period as the Board may allow].]

#### Textual Amendments

**F34** Finance Act 1986 Sch. 19, para. 21, *with respect to transfers of value made, and other events occurring, on or after 18 March 1986.*

**F35** Words in s. 113B(2)(a)(5)(b) substituted (3.5.1994 with effect in relation to transfers of value made, and other events occurring, on or after 30.11.1993) by 1994 c. 9, s. 247(1)(a)(3)

**F36** Words in s. 113B(8) added (3.5.1994 with effect in relation to transfers of value made, and other events occurring, on or after 30.11.1993) by 1994 c. 9, s. 247(1)(b)(3)

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**Modifications etc. (not altering text)**

- C6 S. 113B amended (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 73, Sch. 14 para. 9(2)(4) (with Sch. 14 para. 8).

**114 Avoidance of double relief.**

- (1) Where any part of the value transferred by a transfer of value is reduced under Chapter II of this Part of this Act by reference to the agricultural value of any property, or would be so reduced but for section 121(3), such part of the value transferred as is or would be so reduced under that Chapter shall not be reduced under this Chapter.
- (2) Where the value transferred by a transfer of value is reduced under section 129 below by reference to the tax chargeable on the disposal of any trees or underwood, the value to be reduced under section 104 above shall be the value as reduced under section 129 (but subject to section 104(2) above).

## CHAPTER II

### AGRICULTURAL PROPERTY

**Modifications etc. (not altering text)**

- C7 See Part II of this volume—Finance Act 1975 Sch. 8—for the transitional relief provisions under Finance Act 1981 s. 96 and Sch. 14.

**115 Preliminary.**

- (1) In this Chapter references to a transfer of value include references to an occasion on which tax is chargeable under Chapter III of Part III of this Act (apart from section 79) and—
  - (a) references to the value transferred by a transfer of value include references to the amount on which tax is then chargeable, and
  - (b) references to the transferor include references to the trustees of the settlement concerned.
- (2) In this Chapter “agricultural property” means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.
- (3) For the purposes of this Chapter the agricultural value of any agricultural property shall be taken to be the value which would be the value of the property if the property were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property.
- (4) For the purposes of this Chapter the breeding and rearing of horses on a stud farm and the grazing of horses in connection with those activities shall be taken to be agriculture and any buildings used in connection with those activities to be farm buildings.

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- (5) This Chapter applies to agricultural property only if it is in the United Kingdom, the Channel Islands or the Isle of Man.

## 116 The relief.

- (1) Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage, but subject to the following provisions of this Chapter.

- (2) The appropriate percentage is [<sup>F37</sup>100 per cent]. if <sup>F38</sup> . . . —
- (a) the interest of the transferor in the property immediately before the transfer carries the right to vacant possession or the right to obtain it within the next twelve months, or
  - (b) the transferor has been beneficially entitled to that interest since before 10th March 1981 and the conditions set out in subsection (3) below are satisfied; [<sup>F39</sup>or
  - <sup>F39</sup>(c) the interest of the transferor in the property immediately before the transfer does not carry either of the rights mentioned in paragraph (a) above because the property is let on a tenancy beginning on or after 1st September 1995;]
- and, subject to subsection (4) below, it is [<sup>F40</sup>50 per cent]. in any other case.

<sup>F41</sup>(2A) . . . . .

- (3) The conditions referred to in subsection (2)(b) above are—
- (a) that if the transferor had disposed of his interest by a transfer of value immediately before 10th March 1981 and duly made a claim under paragraph 1 of Schedule 8 to the <sup>M2</sup>Finance Act 1975, the value transferred would have been computed in accordance with paragraph 2 of that Schedule and relief would not have been limited by paragraph 5 of that Schedule (restriction to £250,000 or one thousand acres); and
  - (b) that the transferor's interest did not at any time during the period beginning with 10th March 1981 and ending with the date of the transfer carry a right mentioned in subsection (2)(a) above, and did not fail to do so by reason of any act or deliberate omission of the transferor during that period.
- (4) Where the appropriate percentage would be [<sup>F37</sup>100 per cent]. but for a limitation on relief that would have been imposed (as mentioned in subsection (3)(a) above) by paragraph 5 of Schedule 8 to the Finance Act 1975, the appropriate percentage shall be [<sup>F37</sup>100 per cent]. in relation to a part of the value transferred equal to the amount which would have attracted relief under that Schedule and [<sup>F40</sup>50 per cent]. in relation to the remainder.
- (5) In determining for the purposes of subsections (3)(a) and (4) above whether or to what extent relief under Schedule 8 to the Finance Act 1975 would have been limited by paragraph 5 of that Schedule, that paragraph shall be construed as if references to relief given under that Schedule in respect of previous chargeable transfers included references to—
- (a) relief given under this Chapter by virtue of subsection (2)(b) or (4) above, and
  - (b) relief given under Schedule 14 to the <sup>M3</sup>Finance Act 1981 by virtue of paragraph 2(2)(b) or (4) of that Schedule,
- in respect of previous chargeable transfers made on or after 10th March 1981.

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[<sup>F42</sup>(5A) Where, in consequence of the death on or after 1st September 1995 of the tenant or, as the case may be, the last surviving tenant of any property, the tenancy—

- (a) becomes vested in a person, as a result of his being a person beneficially entitled under the deceased tenant's will or other testamentary writing or on his intestacy, and
- (b) is or becomes binding on the landlord and that person as landlord and tenant respectively,

subsection (2)(c) above shall have effect as if the tenancy so vested had been a tenancy beginning on the date of the death.

(5B) Where in consequence of the death on or after 1st September 1995 of the tenant or, as the case may be, the last surviving tenant of any property, a tenancy of the property or of any property comprising the whole or part of it—

- (a) is obtained by a person under or by virtue of an enactment, or
- (b) is granted to a person in circumstances such that he is already entitled under or by virtue of an enactment to obtain such a tenancy, but one which takes effect on a later date, or
- (c) is granted to a person who is or has become the only or only remaining applicant, or the only or only remaining person eligible to apply, under a particular enactment for such a tenancy in the particular case,

subsection (2)(c) above shall have effect as if the tenancy so obtained or granted had been a tenancy beginning on the date of the death.

(5C) Subsection (5B) above does not apply in relation to property situate in Scotland.

(5D) If, in a case where the transferor dies on or after 1st September 1995,—

- (a) the tenant of any property has, before the death, given notice of intention to retire in favour of a new tenant, and
- (b) the tenant's retirement in favour of the new tenant takes place after the death but not more than thirty months after the giving of the notice,

subsection (2)(c) above shall have effect as if the tenancy granted or assigned to the new tenant had been a tenancy beginning immediately before the transfer of value which the transferor is treated by section 4(1) above as making immediately before his death.

(5E) In subsection (5D) above and this subsection—

“the new tenant” means—

- (a) the person or persons identified in a notice of intention to retire in favour of a new tenant as the person or persons who it is desired should become the tenant of the property to which that notice relates; or
- (b) the survivor or survivors of the persons so identified, whether alone or with any other person or persons;

“notice of intention to retire in favour of a new tenant” means, in the case of any property, a notice or other written intimation given to the landlord by the tenant, or (in the case of a joint tenancy or tenancy in common) all of the tenants, of the property indicating, in whatever terms, his or their wish that one or more persons identified in the notice or intimation should become the tenant of the property;

“the retiring tenant's tenancy” means the tenancy of the person or persons giving the notice of intention to retire in favour of a new tenant;

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“the tenant’s retirement in favour of the new tenant” means—

- (a) the assignment, or (in Scotland) assignation, of the retiring tenant’s tenancy to the new tenant in circumstances such that the tenancy is or becomes binding on the landlord and the new tenant as landlord and tenant respectively; or
- (b) the grant of a tenancy of the property which is the subject of the retiring tenant’s tenancy, or of any property comprising the whole or part of that property, to the new tenant and the acceptance of that tenancy by him;

and, except in Scotland, “grant” and “acceptance” in paragraph (b) above respectively include the deemed grant, and the deemed acceptance, of a tenancy under or by virtue of any enactment.]

- (6) For the purposes of this Chapter the interest of one of two or more joint tenants or tenants in common (or, in Scotland, joint owners or owners in common) shall be taken to carry a right referred to in subsection (2)(a) above if the interests of all of them together carry that right.
- (7) For the purposes of this section, the value transferred by a transfer of value shall be calculated as a value on which no tax is chargeable.

#### Textual Amendments

- F37** Words in s. 116(2)(4) substituted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 73, Sch. 14 paras. 4\(a\), 8, 9](#).
- F38** Word in s. 116(2) repealed (1.5.1995 with effect in relation to transfers of value made, and other events occurring, on or after 1.9.1995) by [1995 c. 4, ss. 155\(1\)\(3\), 162, Sch. 29 Pt. XI](#)
- F39** [S. 116\(2\)\(c\)](#) and preceding “or” inserted (1.5.1995 with effect in relation to transfers of value made, and other events occurring, on or after 1.9.1995) by [1995 c. 4, s. 155\(1\)\(3\)](#)
- F40** Words in s. 116(2)(4) substituted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\), s. 73, Sch. 14 paras. 4\(b\), 8, 9](#).
- F41** [S. 116\(2A\)](#) repealed (29.4.1996 with effect as mentioned in [s. 185\(6\)](#) of the amending Act) by [1996 c. 8, ss. 185\(3\), 205, Sch. 41 Pt. VI](#) note 2
- F42** [S. 116\(5A\)-\(5E\)](#) inserted (29.4.1996 with effect as mentioned in [s. 185\(5\)](#) of the amending Act) by [1996 c. 8, s. 185\(2\)](#)

#### Modifications etc. (not altering text)

- C8** [S. 116](#) excluded (1.11.2004 with effect as mentioned in reg. 1 of the amending S.I.) by [The Inheritance Tax \(Delivery of Accounts\) \(Excepted Estates\) Regulations 2004 \(S.I. 2004/2543\), reg. 4\(7\)](#)
- C9** [Ss. 104, 116](#) excluded (6.4.2008) by [The Inheritance Tax \(Delivery of Accounts\) \(Excepted Transfers and Excepted Terminations\) Regulations 2008 \(S.I. 2008/605\), reg. 4\(4\)](#)  
[Ss. 104, 116](#) excluded (6.4.2008) by [The Inheritance Tax \(Delivery of Accounts\) \(Excepted Transfers and Excepted Terminations\) Regulations 2008 \(S.I. 2008/605\), reg. 5\(5\)](#)

#### Marginal Citations

- M2** [1975 c.7](#).
- M3** [1981 c.35](#).

## 117 Minimum period of occupation or ownership.

Subject to the following provisions of this Chapter, section 116 above does not apply to any agricultural property unless—

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- (a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer, or
- (b) it was owned by him throughout the period of seven years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture.

### **118 Replacements.**

- (1) Where the agricultural property occupied by the transferor on the date of the transfer replaced other agricultural property, the condition stated in section 117(a) above shall be treated as satisfied if it, the other property and any agricultural property directly or indirectly replaced by the other property were occupied by the transferor for the purposes of agriculture for periods which together comprised at least two years falling within the five years ending with that date.
- (2) Where the agricultural property owned by the transferor on the date of the transfer replaced other agricultural property, the condition stated in section 117(b) above shall be treated as satisfied if it, the other property and any agricultural property directly or indirectly replaced by the other property were, for periods which together comprised at least seven years falling within the ten years ending with that date, both owned by the transferor and occupied (by him or another) for the purposes of agriculture.
- (3) In a case falling within subsection (1) or (2) above relief under this Chapter shall not exceed what it would have been had the replacement or any one or more of the replacements not been made.
- (4) For the purposes of subsection (3) above changes resulting from the formation, alteration or dissolution of a partnership shall be disregarded.

### **119 Occupation by company or partnership.**

- (1) For the purposes of sections 117 and 118 above, occupation by a company which is controlled by the transferor shall be treated as occupation by the transferor.
- (2) For the purposes of sections 117 and 118 above, occupation of any property by a Scottish partnership shall, notwithstanding section 4(2) of the <sup>M4</sup>Partnership Act 1890, be treated as occupation of it by the partners.

#### **Marginal Citations**

**M4** 1890 c.39.

### **120 Successions.**

- (1) For the purposes of section 117 above, where the transferor became entitled to any property on the death another person—
  - (a) he shall be deemed to have owned it (and, if he subsequently occupies it, to have occupied it) from the date of the death, and
  - (b) if that other person was his spouse [<sup>F43</sup>or civil partner] he shall also be deemed to have occupied it for the purposes of agriculture for any period for which it was so occupied by his spouse [<sup>F43</sup>or civil partner] , and to have owned it for any period for which his spouse [<sup>F43</sup>or civil partner] owned it.



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- (2) Where the transferor became entitled to his interest on the death of his spouse [<sup>F43</sup>or civil partner] on or after 10th March 1981—
- (a) he shall for the purposes of section 116(2)(b) above be deemed to have been beneficially entitled to it for any period for which his spouse [<sup>F43</sup>or civil partner] was beneficially entitled to it;
  - (b) the condition set out in section 116(3)(a) shall be taken to be satisfied if and only if it is satisfied in relation to his spouse [<sup>F43</sup>or civil partner]; and
  - (c) the condition set out in section 116(3)(b) shall be taken to be satisfied only if it is satisfied both in relation to him and in relation to his spouse [<sup>F43</sup>or civil partner].

#### Textual Amendments

**F43** Words in s. 120(1)(b)(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 22

## 121 Successive transfers.

- (1) Where—
- (a) the whole or part of the value transferred by a transfer of value (in this section referred to as the earlier transfer) was eligible for relief under this Chapter (or would have been so eligible if such relief had been capable of being given in respect of transfers of value made at that time), and
  - (b) the whole or part of the property which, in relation to the earlier transfer, was or would have been eligible for relief became, through the earlier transfer, the property of the person (or of the spouse [<sup>F44</sup>or civil partner] of the person) who is the transferor in relation to a subsequent transfer of value and is at the time of the subsequent transfer occupied for the purposes of agriculture either by that person or by the personal representative of the transferor in relation to the earlier transfer, and
  - (c) that property or part or any property directly or indirectly replacing it would (apart from section 117 above) have been eligible for relief in relation to the subsequent transfer of value, and
  - (d) either the earlier transfer was, or the subsequent transfer of value is, a transfer made on the death of the transferor,
- the property which would have been eligible for relief but for section 117 above shall be eligible for relief notwithstanding that section.
- (2) Where the property which, by virtue of subsection (1) above, is eligible for relief replaced the property or part referred to in paragraph (c) of that subsection, relief under this Chapter shall not exceed what it would have been had the replacement or any one or more of the replacements not been made, but section 118(4) above shall apply for the purposes of this subsection as it applies for the purposes of section 118(3).
- (3) Where, under the earlier transfer the amount of the value transferred which was attributable to the property or part referred to in subsection (1)(c) above was part only of its value, a like part only of the value which (apart from this subsection) would fall to be reduced under this Chapter by virtue of this section shall be so reduced.

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### Textual Amendments

**F44** Words in s. 121(1)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 23

## 122 Agricultural property of companies.

- (1) Where the whole or part of the value transferred is attributable to the value of shares in or securities of a company it shall be taken for the purposes of this Chapter to be attributable (so far as appropriate) to the agricultural value of agricultural property if and only if—
  - (a) the agricultural property forms part of the company’s assets and part of the value of the shares or securities can be attributed to the agricultural value of the agricultural property, and
  - (b) the shares or securities gave the transferor control of the company immediately before the transfer.
- (2) Shares or securities shall not be regarded for the purposes of subsection (1)(b) above as giving the transferor control of a company if—
  - (a) they would not have been sufficient, without other property, to give him control of the company immediately before the transfer, and
  - (b) their value is taken by virtue of section 176 below to be less than the value previously determined.
- (3) Where subsection (1) above applies—
  - (a) the references in section 116(2)(a) and (3)(b) above to the transferor’s interest shall be construed as references to the company’s interest, and
  - (b) section 123(1) below shall apply instead of section 117 above.

## 123 Provisions supplementary to section 122.

- (1) Section 116 above shall not apply by virtue of section 122(1) above unless—
  - (a) the agricultural property—
    - (i) was occupied by the company for the purposes of agriculture throughout the period of two years ending with the date of the transfer, or
    - (ii) was owned by the company throughout the period of seven years ending with that date and was throughout that period occupied (by the company or another) for the purposes of agriculture, and
  - (b) the shares or securities were owned by the transferor—
    - (i) in a case within paragraph (a)(i) above, throughout the period there mentioned, or
    - (ii) in a case within paragraph (a)(ii) above, throughout the period there mentioned.
- (2) Subsections (1) and (2) of section 118 above shall apply in relation to the conditions stated in subsection (1)(a) above as they apply in relation to the conditions stated in section 117 taking references to the transferor as references to the company.
- (3) Where the shares or securities owned by the transferor on the date of the transfer replaced other eligible property (that is to say, agricultural property or shares or

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securities the value of which is wholly or partly attributable to the value of such property) the condition stated in subsection (1)(b) above shall be treated as satisfied if the shares or securities, the other eligible property which they replaced and any eligible property directly or indirectly replaced by the other eligible property were owned by the transferor for periods which together comprised—

- (a) in a case within subsection (1)(a)(i) above, at least two years falling within the five years ending with that date, or
  - (b) in a case within subsection (1)(a)(ii) above, at least seven years falling within the ten years ending with that date.
- (4) Subsections (3) and (4) of section 118 above shall have effect in relation to a case falling within subsections (2) and (3) above as they have effect in relation to a case falling within subsections (1) and (2) of that section.
- (5) For the purposes of subsection (1) above, a company shall be treated as having occupied the agricultural property at any time when it was occupied by a person who subsequently controls the company.

#### **124 Contracts for sale.**

- (1) Section 116 above shall not apply to agricultural property if at the time of the transfer the transferor has entered into a binding contract for its sale, except where the sale is to a company and is made wholly or mainly in consideration of shares in or securities of the company which will give the transferor control of the company.
- (2) Section 116 above shall not apply by virtue of section 122(1) above if at the time of the transfer the transferor has entered into a binding contract for the sale of the shares or securities concerned, except where the sale is made for the purpose of reconstruction or amalgamation.

#### **[<sup>F45</sup>124A Transfers within seven years before death of transferor.**

- (1) Where any part of the value transferred by a potentially exempt transfer which proves to be a chargeable transfer would (apart from this section) be reduced in accordance with the preceding provisions of this Chapter, it shall not be so reduced unless the conditions in subsection (3) below are satisfied.
- (2) Where—
  - (a) any part of the value transferred by any chargeable transfer, other than a potentially exempt transfer, is reduced in accordance with the preceding provisions of this Chapter, and
  - (b) the transfer is made within seven years of the death of the transferor,then, unless the conditions in subsection (3) below are satisfied, the additional tax chargeable by reason of the death shall be calculated as if the value transferred had not been so reduced.
- (3) The conditions referred to in subsections (1) and (2) above are—
  - (a) that the original property was owned by the transferee throughout the period beginning with the date of the chargeable transfer and ending with the death of the transferor (in this subsection referred to as “the relevant period”) and it is not at the time of the death subject to a binding contract for sale; and
  - (b) except in a case falling within paragraph (c) below, that the original property is agricultural property immediately before the death and has been occupied

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- (by the transferee or another) for the purposes of agriculture throughout the relevant period; and
- (c) where the original property consists of shares in or securities of a company, that throughout the relevant period the agricultural property to which section 116 above applied by virtue of section 122(1) above on the chargeable transfer was owned by the company and occupied (by the company or another) for the purposes of agriculture.
- (4) If the transferee has died before the transferor, the reference in subsection (3) above to the death of the transferor shall have effect as a reference to the death of the transferee.
- (5) If the conditions in subsection (3) above are satisfied only with respect to part of the original property, then,—
- (a) in a case falling within subsection (1) above, only a proportionate part of so much of the value transferred as is attributable to the original property shall be reduced in accordance with the preceding provisions of this Chapter, and
- (b) in a case falling within subsection (2) above, the additional tax shall be calculated as if only a proportionate part of so much of the value transferred as was attributable to the original property had been so reduced.
- (6) Where any shares owned by the transferee immediately before the death in question—
- (a) would under any of the provisions of sections [F<sup>46</sup>126 to 136 of the 1992 Act] be identified with the original property (or part of it), or
- (b) were issued to him in consideration of the transfer of agricultural property consisting of the original property (or part of it),
- [F<sup>47</sup>his period of ownership of the original property shall be treated as including his period of ownership of the shares.]
- (7) This section has effect subject to section 124B below.
- [ The provisions of this Chapter for the reduction of value transferred shall be
- <sup>F48</sup>(7A) disregarded in any determination for the purposes of this section of whether there is a potentially exempt or chargeable transfer in any case.]
- (8) In this section—
- “the original property” means the property which, in relation to the chargeable transfer referred to in subsection (1) or subsection (2) above, was either agricultural property to which section 116 above applied or shares or securities of a company owning agricultural property to which that section applied by virtue of section 122(1) above; and
- “the transferee” means the person whose property the original property became on that chargeable transfer or, where on the transfer the original property became or remained settled property in which no qualifying interest in possession (within the meaning of Chapter III of Part III of this Act) subsists, the trustees of the settlement.]

#### Textual Amendments

**F45** Finance Act 1986 Sch. 19, para. 22, *with respect to transfers of value made, and other events occurring, on or after 18 March 1986.*

**F46** Words in s. 124A(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, **Sch. 10 para. 8(5)** (with ss. 60, 101(1), 201(3)).

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- F47** Finance Act 1987 Sch. 8, para. 9, with effect from 17 March 1987. Originally “they shall be treated for the purposes of this section as if they were the original property (or that part of it)”.
- F48** S. 124A(7A) inserted (29.4.1996 with effect in relation to any transfer of value on or after 28.11.1995) by 1996 c. 8, s. 185(4)(7)

#### [<sup>F49</sup>124B Application of section 124A to replacement property.

- (1) Subject to subsection (2) below, this section applies where—
- the transferee has disposed of all or part of the original property before the death of the transferor; and
  - the whole of the consideration received by him for the disposal has been applied by him in acquiring other property (in this section referred to as “the replacement property”).
- (2) This section does not apply unless—
- the replacement property is acquired, or a binding contract for its acquisition is entered into, within [<sup>F50</sup>the allowed period] after the disposal of the original property (or, as the case may be, the part concerned); and
  - the disposal and acquisition are both made in transactions at arm’s length or on terms such as might be expected to be included in a transaction at arm’s length.
- (3) Where this section applies, the conditions in section 124A(3) above shall be taken to be satisfied in relation to the original property (or, as the case may be, the part concerned) if—
- the replacement property is owned by the transferee immediately before the death of the transferor and is not at that time subject to a binding contract for sale; and
  - throughout the period beginning with the date of the chargeable transfer and ending with the disposal, the original property was owned by the transferee and occupied (by the transferee or another) for the purposes of agriculture; and
  - throughout the period beginning with the date when the transferee acquired the replacement property and ending with the death, the replacement property was owned by the transferee and occupied (by the transferee or another) for the purposes of agriculture; and
  - the replacement property is agricultural property immediately before the death.
- (4) If the transferee has died before the transferor, any reference in subsections (1) to (3) above to the death of the transferor shall have effect as a reference to the death of the transferee.
- (5) In any case where—
- all or part of the original property has been disposed of before the death of the transferor or is subject to a binding contract for sale at the time of the death, and
  - the replacement property is acquired, or a binding contract for its acquisition is entered into, after the death of the transferor but within [<sup>F50</sup>the allowed period] after the disposal of the original property or part, and
  - the transferor dies before the transferee,

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- subsection (3) above shall have effect with the omission of paragraphs (a) and (c), and as if any reference to a time immediately before the death of the transferor were a reference to the time when the replacement property is acquired.
- (6) Section 124A(6) above shall have effect in relation to the replacement property as it has effect in relation to the original property.
- (7) Where a binding contract for the disposal of any property is entered into at any time before the disposal of the property, the disposal shall be regarded for the purposes of subsections (2)(a) and (5)(b) above as taking place at that time.
- (8) In this section “the original property” and “the transferee” have the same meaning as in section 124A above [<sup>F51</sup>and “allowed period” means the period of three years or such longer period as the Board may allow].]

#### **Textual Amendments**

- F49** Finance Act 1986 Sch. 19, para. 22, *with respect to transfers of value made, and other events occurring, on or after 18 March 1986.*
- F50** Words in s. 124B(2)(a)(5)(b) substituted (3.5.1994 with effect in relation to transfers of value made, and other events occurring, on or after 30.11.1993) by 1994 c. 9, s. 247(2)(a)(3)
- F51** Words in s. 124B(8) added (3.5.1994 with effect in relation to transfers of value made, and other events occurring, on or after 30.11.1993) by 1994 c. 9, s. 247(2)(b)(3)

#### **[<sup>F52</sup>124C Land in habitat schemes.**

- (1) For the purposes of this Chapter, where any land is in a habitat scheme—
- (a) the land shall be regarded as agricultural land;
  - (b) the management of the land in accordance with the requirements of the scheme shall be regarded as agriculture; and
  - (c) buildings used in connection with such management shall be regarded as farm buildings.
- (2) For the purposes of this section land is in a habitat scheme at any time if—
- (a) an application for aid under one of the enactments listed in subsection (3) below has been accepted in respect of the land; and
  - (b) the undertakings to which the acceptance relates have neither been terminated by the expiry of the period to which they relate nor been treated as terminated.
- (3) Those enactments are—
- (a) regulation 3(1) of the <sup>M5</sup>Habitat (Water Fringe) Regulations 1994;
  - (b) the <sup>M6</sup>Habitat (Former Set-Aside Land) Regulations 1994;
  - (c) the <sup>M7</sup>Habitat (Salt-Marsh) Regulations 1994;
  - (d) the <sup>M8</sup>Habitats (Scotland) Regulations 1994, if undertakings in respect of the land have been given under regulation 3(2)(a) of those Regulations;
  - (e) the <sup>M9</sup>Habitat Improvement Regulations (Northern Ireland) 1995, if an undertaking in respect of the land has been given under regulation 3(1)(a) of those Regulations.
- (4) The Treasury may by order made by statutory instrument amend the list of enactments in subsection (3) above.

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- (5) The power to make an order under subsection (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (6) This section has effect—
- (a) in relation to any transfer of value made on or after 26th November 1996; and
  - (b) in relation to transfers of value made before that date, for the purposes of any charge to tax, or to extra tax, which arises by reason of an event occurring on or after 26th November 1996.]

#### Textual Amendments

**F52** S. 124C inserted (19.3.1997) by 1997 c. 16, s. 94

#### Marginal Citations

**M5** S.I. 1994/1291.  
**M6** S.I. 1994/1292.  
**M7** S.I. 1994/1293.  
**M8** S.I. 1994/2710 (S.138).  
**M9** S.R. (N.I.) 1995 No.134.

## CHAPTER III

### WOODLANDS

#### 125 The relief.

- (1) This section applies where—
- (a) part of the value of a person's estate immediately before his death is attributable to the value of land in the United Kingdom on which trees or underwood are growing but which is not agricultural property within the meaning of Chapter II of this Part of this Act, and
  - (b) either he was beneficially entitled to the land throughout the five years immediately preceding his death, or he became beneficially entitled to it otherwise than for a consideration in money or money's worth.
- (2) Where this section applies and the person liable for the whole or part of the tax so elects—
- (a) the value of the trees or underwood shall be left out of account in determining the value transferred on the death, but
  - (b) tax shall be charged in the circumstances mentioned in section 126 below.
- (3) An election under this section must be made by notice in writing to the Board within two years of the death or such longer time as the Board may allow.

#### 126 Charge to tax on disposal of trees or underwood.

- (1) Where under section 125 above the value of any trees or underwood has been left out of account in determining the value transferred on the death of any person, and the whole or any part of the trees or underwood is disposed of (whether together with or

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apart from the land on which they were growing) then, if the disposal occurs before any part of the value transferred on the death of any other person is attributable to the value of that land, tax shall be charged in accordance with sections 127 and 128 below.

- (2) Subsection (1) above shall not apply to a disposal made by any person to his spouse [<sup>F53</sup>or civil partner] .
- (3) Where tax has been charged under this section on the disposal of any trees or underwood tax shall not again be charged in relation to the same death on a further disposal of the same trees or underwood.

#### **Textual Amendments**

**F53** Words in s. 126(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), reg. 1(1), 24

#### **127 Amount subject to charge.**

- (1) The amount on which tax is charged under section 126 above on a disposal of trees or underwood shall be—
  - (a) if the disposal is a sale for full consideration in money or money's worth, an amount equal to the net proceeds of the sale, and
  - (b) in any other case, an amount equal to the net value of the trees or underwood at the time of the disposal.
- (2) Where, if the value of the trees or underwood had not been left out of account in determining the value transferred on the death of the person in question—
  - (a) it would have been taken into account in determining the value of any relevant business property for the purposes of relief under Chapter I of this Part of this Act in relation to the transfer of value made on his death, or
  - (b) it would have been so taken into account if this Act had then been in force, the amount on which tax is charged under section 126 above shall be reduced by 50 per cent.

#### **128 Rate of charge.**

Tax charged under section 126 above on an amount determined under section 127 above shall be charged at the rate or rates at which it would have been charged on the death first mentioned in section 126 if—

- (a) that amount, and any amount on which tax was previously charged under section 126 in relation to that death, had been included in the value transferred on death, and
- (b) the amount on which the tax is charged had formed the highest part of that value.

#### **129 Credit for tax charged.**

Where a disposal on which tax is chargeable under section 126 above is a chargeable transfer, the value transferred by it shall be calculated as if the value of the trees or underwood had been reduced by the tax chargeable under that section.



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### 130 Interpretation.

- (1) In this Chapter—
- (a) references to the value transferred on a death are references to the value transferred by the chargeable transfer made on that death;
  - (b) references to the net proceeds of sale or the net value of any trees or underwood are references to the proceeds of sale or value after deduction of any expenses allowable under this Chapter so far as those expenses are not allowable for the purposes of income tax; and
  - (c) references to the disposal of any trees or underwood include references to the disposal of any interest in the trees or underwood (and references to a disposal of the same trees or underwood shall, where the case so requires, be construed as referring to a disposal of the same interest).
- (2) The expenses allowable under this Chapter are, in relation to any trees or underwood the value of which has been left out of account on any death,—
- (a) the expenses incurred in disposing of the trees or underwood; and
  - (b) the expenses incurred in replanting within three years of a disposal (or such longer time as the Board may allow) to replace the trees or underwood disposed of; and
  - (c) the expenses incurred in replanting to replace trees or underwood previously disposed of, so far as not allowable on the previous disposal.

## CHAPTER IV

### TRANSFERS WITHIN THREE YEARS BEFORE DEATH

#### 131 The relief.

- (1) Subject to section 132 below, this section applies where <sup>[F54]</sup>because of the transferor's death within seven years of the transfer, tax becomes chargeable in respect of the value transferred by a potentially exempt transfer or (by virtue of section 7(4) above) additional tax becomes chargeable in respect of the value transferred by any other chargeable transfer and (in either case) all or part of the value transferred is attributable to the value of property (“the transferred property”) which—
- (a) is, at the date of the death, the property of the person (“the transferee”) whose property it became on the transfer or of his spouse <sup>[F55]</sup>or civil partner], or
  - (b) has, before that date, been sold by the transferee or his spouse <sup>[F55]</sup>or civil partner] by a qualifying sale;
- and in the following provisions of this section “the relevant date” means, in a case within paragraph (a) above, the date of the death, and in a case within paragraph (b), the date of the qualifying sale.
- (2) If—
- (a) the market value of the transferred property at the time of the chargeable transfer exceeds its market value on the relevant date, and
  - (b) a claim is made by a person liable to pay the whole or part of <sup>[F56]</sup>the tax or, as the case may be, additional tax],
- <sup>[F56]</sup>the tax or, as the case may be, additional tax] shall be calculated as if the value transferred were reduced by the amount of the excess.

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- [<sup>F57</sup>(2A) Where so much of the value transferred as is attributable to the value, or agricultural value, of the transferred property is reduced by any percentage (in this subsection referred to as “the appropriate percentage”), in accordance with Chapter I or Chapter II of this Part of this Act, references in subsection (2) above to the market value of the transferred property at any time shall have effect—
- (a) in a case within Chapter I, as references to that market value reduced by the appropriate percentage; and
  - (b) in a case within Chapter II, as references to that market value less the appropriate percentage of the agricultural value of the transferred property at that time.]
- (3) A sale is a qualifying sale for the purposes of this section if—
- (a) it is at arm’s length for a price freely negotiated at the time of the sale, and
  - (b) no person concerned as vendor (or as having an interest in the proceeds of the sale) is the same as or connected with any person concerned as purchaser (or as having an interest in the purchase), and
  - (c) no provision is made, in or in connection with the agreement for the sale, that the vendor (or any person having an interest in the proceeds of sale) is to have any right to acquire some or all of the property sold or some interest in or created out of it.

#### Textual Amendments

- F54** Finance Act 1986 Sch. 19, para. 23(1), *with effect from 18 March 1986. Originally* “(by virtue of section 7(2) above) additional tax becomes chargeable in respect of the value transferred by a chargeable transfer because of the transferor’s death within three years of the transfer and”.
- F55** Words in s. 131(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **25**
- F56** Finance Act 1986 Sch. 19, para. 23(2), *with effect from 18 March 1986. Originally* “the additional tax”.
- F57** Finance Act 1986 Sch. 19, para. 23(3), *with effect from 18 March 1986.*

### 132 Wasting assets.

- (1) Section 131 above shall not apply if the transferred property is tangible movable property that is a wasting asset.
- (2) The transferred property is a wasting asset for the purposes of this section if, immediately before the chargeable transfer, it had a predictable useful life not exceeding fifty years, having regard to the purpose for which it was held by the transferor; and plant and machinery shall in every case be regarded as having a predictable useful life of less than fifty years.

### 133 Shares—capital receipts.

- (1) If the transferred property consists of shares and at any time before the relevant date the transferee or his spouse [<sup>F58</sup>or civil partner] becomes entitled to a capital payment in respect of them, then for the purposes of section 131 above the market value of the transferred property on the relevant date shall (except where apart from this section it reflects a right to the payment) be taken to be increased by an amount equal to the payment.

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- (2) If at any time before the relevant date the transferee or his spouse [<sup>F58</sup>or civil partner] receives or becomes entitled to receive in respect of the transferred property a provisional allotment of shares and disposes of the rights, the amount of the consideration for the disposal shall be treated for the purposes of this section as a capital payment in respect of the transferred property.
- (3) In this section “capital payment” means any money or money’s worth which does not constitute income for the purposes of income tax.

#### Textual Amendments

**F58** Words in s. 133(1)(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 26

### 134 Payments of calls.

If the transferred property consists of shares and at any time before the relevant date the transferee or his spouse [<sup>F59</sup>or civil partner] becomes liable to make a payment in pursuance of a call in respect of them, then for the purposes of section 131 above the market value of the transferred property on the relevant date shall (except where apart from this section it reflects the liability) be taken to be reduced by an amount equal to the payment.

#### Textual Amendments

**F59** Words in s. 134 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 27

### 135 Reorganisation of share capital, etc.

- (1) This section has effect where the transferred property consists of shares in relation to which there occurs before the relevant date a transaction to which [<sup>F60</sup>127 of the 1992 Act] applies or would apply but for section [<sup>F61</sup>134] of that Act, that is to say—
- a reorganisation within the meaning of section [<sup>F61</sup>126(1)] of that Act,
  - the conversion of securities within the meaning of section [<sup>F61</sup>132] of that Act,
  - the issue by a company of shares in exchange for shares in another company in such circumstances that section [<sup>F61</sup>135] of that Act applies, or
  - the issue by a company of shares under such an arrangement as is referred to in section [<sup>F61</sup>136] of that Act,
- or any transaction relating to a unit trust scheme which corresponds to any of the transactions referred to in paragraph (a) to (d) above and to which section [<sup>F61</sup>127] of that Act applies by virtue of section [<sup>F61</sup>99] of that Act.
- (2) In the following provisions of this section “the original shares” and “the new holding” shall be construed in accordance with section [<sup>F61</sup>126(1)].
- (3) Where this section has effect the original shares and the new holding shall be treated as the same property for the purposes of this Chapter.
- (4) Where this section has effect and, as part of or in connection with the transaction concerned, the transferee or his spouse [<sup>F62</sup>or civil partner] becomes liable to give any

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consideration for the new holding or any part of it, then for the purposes of section 131 above the market value of the transferred property on the relevant date shall (except where apart from this section it reflects the liability) be taken to be reduced by an amount equal to that consideration.

- (5) For the purposes of subsection (4) above, there shall not be treated as consideration given for the new holding or any part of it—
- (a) any surrender, cancellation or other alteration of any of the original shares or of the rights attached thereto, or
  - (b) any consideration consisting of any application, in paying up the new holding or any part of it, of assets of the company concerned or of any dividend or other distribution declared out of those assets but not made.

#### Textual Amendments

- F60** S. 135: "127 of the 1992 Act" substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) for "section 78 of the Capital Gains Tax Act 1979" by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 8\(6\)](#) (with ss. 60, 101(1), 201(3)).
- F61** Words in s. 135 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\), ss. 289, 290, Sch. 10 para. 8\(6\)](#) (with ss. 60, 101(1), 201(3)).
- F62** Words in s. 135(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 28

### 136 Transactions of close companies.

- (1) This section applies where the transferred property consists of shares in a close company and at any time after the chargeable transfer and before the relevant date there is a relevant transaction in relation to the shares; and for this purpose "relevant transaction" means a transaction which is—
- (a) the making of a transfer of value by the company, or
  - (b) an alteration in so much of the company's share or loan capital as does not consist of [<sup>F63</sup>quoted shares] or an alteration in any rights attaching to [<sup>F64</sup>unquoted shares in or unquoted debentures of the company],
- but which does not give rise to an adjustment, under any of the preceding sections of this Chapter, in the market value of the transferred property on the relevant date.
- (2) Subject to subsections (3) and (4) below, where this section applies the market value of the transferred property on the relevant date shall for the purposes of section 131 above be taken to be increased by an amount equal to the difference between—
- (a) the market value of the transferred property at the time of the chargeable transfer, and
  - (b) what that value would have been if the relevant transaction had occurred before rather than after that time.
- (3) Where the relevant transaction is the making by the company of a transfer of value by which the value of the estate of the person who made the chargeable transfer or, if his spouse [<sup>F65</sup>or civil partner] is domiciled in the United Kingdom, his spouse [<sup>F65</sup>or civil partner] is increased by any amount, the increase provided for by subsection (2) above shall be reduced by that amount.

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- (4) Where the market value of the transferred property at the time of the chargeable transfer is less than it would have been as mentioned in subsection (2) above, that subsection shall apply as if, instead of providing for an increase, it provided for the market value on the relevant date to be reduced to what it would have been if the relevant transaction had not occurred.

#### Textual Amendments

- F63** Finance Act 1987 Sch. 8, para. 10, with effect from 17 March 1987. Originally “shares quoted on a recognised stock exchange”.
- F64** Finance Act 1987 Sch. 8, para. 10, with effect from 17 March 1987. Originally “shares in or debentures of the company which are not so quoted”.
- F65** Words in s. 136(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 29

### 137 Interests in land.

- (1) Where the transferred property is an interest in land in relation to which the conditions mentioned in subsection (2) below are not satisfied, then, subject to subsections (3) and (4) below, the market value of the transferred property on the relevant date shall for the purposes of section 131 above be taken to be increased by an amount equal to the difference between—
- the market value of the interest at the time of the chargeable transfer, and
  - what that market value would have been if the circumstances prevailing on the relevant date and by reason of which the conditions are not satisfied had prevailed at the time of the chargeable transfer.
- (2) The conditions referred to in subsection (1) above are—
- that the interest was the same in all respects and with the same incidents at the time of the chargeable transfer and on the relevant date, and
  - that the land in which the interest subsists was in the same state and with the same incidents at the time of the chargeable transfer and on the relevant date.
- (3) If after the date of the chargeable transfer but before the relevant date compensation becomes payable under any enactment to the transferee or his spouse [<sup>F66</sup>or civil partner]—
- because of the imposition of a restriction on the use or development of the land in which the interest subsists, or
  - because the value of the interest is reduced for any other reason,
- the imposition of the restriction or the other cause of the reduction in value shall be ignored for the purposes of subsections (1) and (2) above, but the market value of the interest on the relevant date shall be taken to be increased by an amount equal to the amount of the compensation.
- (4) Where the market value of the interest at the time of the chargeable transfer is less than it would have been as mentioned in subsection (1) above, that subsection shall apply as if, instead of providing for an increase, it provided for the market value on the relevant date to be reduced to what it would have been if the change in circumstances by reason of which the conditions mentioned in subsection (2) above are not satisfied had not occurred.

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#### Textual Amendments

**F66** Words in s. 137(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 30

### 138 Leases.

- (1) Where the transferred property is the interest of a lessee under a lease the duration of which at the time of the chargeable transfer does not exceed fifty years, then for the purposes of section 131 above the market value of the interest on the relevant date shall be taken to be increased by an amount equal to the appropriate fraction of the market value of the interest at the time of the chargeable transfer.
- (2) In subsection (1) above, “the appropriate fraction” means the fraction—

$$\frac{P(1) - P(2)}{P(1)}$$

where

P(1) is the percentage that would be derived from the Table in paragraph 1 of Schedule [F678 to the 1992 Act] for the duration of the lease at the time of the chargeable transfer, and

P(2) is the percentage that would be so derived for the duration of the lease on the relevant date.

#### Textual Amendments

**F67** Words in s. 138 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), ss. 289, 290, [Sch. 10 para. 8\(7\)](#) (with ss. 60, 101(1), 201(3)).

### 139 Other property.

- (1) Where the transferred property is neither shares nor an interest in land and the condition mentioned in subsection (2) below is not satisfied in relation to it, then, subject to subsections (3) and (4) below, the market value of the property on the relevant date shall for the purposes of section 131 above be taken to be increased by an amount equal to the difference between—
  - (a) the market value of the property at the time of the chargeable transfer, and
  - (b) what that value would have been if the circumstances prevailing at the relevant date and by reason of which the condition is not satisfied had prevailed at the time of the chargeable transfer.
- (2) The condition referred to in subsection (1) above is that the transferred property was the same in all respects at the time of the chargeable transfer and on the relevant date.
- (3) Where the market value of the transferred property at the time of the chargeable transfer is less than it would have been as mentioned in subsection (1) above, that subsection shall apply as if, instead of providing for an increase, it provided for the

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market value on the relevant date to be reduced to what it would have been if the property had remained the same in all respects as it was at the time of the chargeable transfer.

- (4) Where the transferred property is neither shares nor an interest in land and during the period between the time of the chargeable transfer and the relevant date benefits in money or money's worth are derived from it which exceed a reasonable return on its market value at the time of the chargeable transfer, then—
- (a) any effect of the benefits on the transferred property shall be ignored for the purposes of the preceding provisions of this section, but
  - (b) the market value of the transferred property on the relevant date shall be taken for the purposes of section 131 above to be increased by an amount equal to the said excess.

#### 140 Interpretation.

- (1) In this Chapter—

“close company” has the same meaning as in Part IV of this Act;

“interest in land” does not include any estate, interest or right by way of mortgage or other security;

“shares” includes securities;

and “the relevant date”, “the transferee” and “the transferred property” shall be construed in accordance with section 131(1) above.

- (2) For the purposes of this Chapter the market value at any time of any property is the price which the property might reasonably be expected to fetch if sold in the open market at that time; but—
- (a) that price shall not be assumed to be reduced on the ground that the whole property is on the market at one and the same time, and
  - (b) in the case of [<sup>F68</sup>unquoted shares], it shall be assumed that in that market there is available to any prospective purchaser of the shares all the information which a prudent prospective purchaser might reasonably require if he were proposing to purchase them from a willing vendor by private treaty and at arm's length.

#### Textual Amendments

**F68** Finance Act 1987 Sch. 8, para. 11, with effect from 17 March 1987. Originally “shares not quoted on a recognised stock exchange”.

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## CHAPTER V

### MISCELLANEOUS

#### *Successive charges*

#### **141 Two or more transfers within five years.**

- (1) Where the value of a person's estate was increased by a chargeable transfer ("the first transfer") made not more than five years before—
  - (a) his death, or
  - (b) a chargeable transfer which is made by him otherwise than on his death and as to which the conditions specified in subsection (2) below are satisfied,

the tax chargeable on the value transferred by the transfer made on his death or, as the case may be, referred to in paragraph (b) above ("the later transfer") shall be reduced by an amount calculated in accordance with subsection (3) below.
- (2) The conditions referred to in subsection (1)(b) above are—
  - (a) that the value transferred by the later transfer falls to be determined by reference to the value of settled property in which there subsists an interest in possession to which the transferor is entitled;
  - (b) that the value transferred by the first transfer also fell to be determined by reference to the value of that property; and
  - (c) that the first transfer either was or included the making of the settlement or was made after the making of the settlement.
- (3) The amount referred to in subsection (1) above is a percentage of the tax charged on so much of the value transferred by the first transfer as is attributable to the increase mentioned in that subsection; and the percentage is—
  - (a) 100 per cent. if the period beginning with the date of the first transfer and ending with the date of the later does not exceed one year;
  - (b) 80 per cent. if it exceeds one year but does not exceed two years;
  - (c) 60 per cent. if it exceeds two years but does not exceed three years;
  - (d) 40 per cent. if it exceeds three years but does not exceed four years; and
  - (e) 20 per cent. if it exceeds four years.
- (4) Where in relation to the first transfer there is more than one later transfer, the reduction provided for by this section shall be given only in respect of the earliest of them, unless the reduction represents less than the whole of the tax charged as mentioned in subsection (3) above; and in that case a reduction may be made in respect of subsequent transfers (in chronological order) until reductions representing the whole of that tax have been made.
- (5) For the purposes of subsection (4) above, a reduction made in accordance with paragraph (a) of subsection (3) above represents an equivalent amount of tax, a reduction made in accordance with paragraph (b) represents the amount of tax of which it is 80 per cent., and so on.
- (6) In determining for the purposes of this section whether or to what extent the value of the transferor's estate was increased by a chargeable transfer, there shall be disregarded any excluded property consisting of a reversionary interest to which he became entitled on the occasion of or before the chargeable transfer.



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*Changes to legislation:* There are currently no known outstanding effects for the Inheritance Tax Act 1984, PART V. (See end of Document for details)

(7) Where—

- (a) the value of the transferor's estate was increased in consequence of—
  - (i) a gift inter vivos, or
  - (ii) a disposition or determination of a beneficial interest in possession in property comprised in a settlement, and
- (b) tax under section 22(5) of the <sup>M10</sup>Finance Act 1975 was by reason of the gift or interest payable on a subsequent death,

this section shall apply as if the increase had been by the chargeable transfer made on the occasion of the death.

#### Marginal Citations

M10 1975 c. 7.

*Changes in distribution of deceased's estate, etc.*

## 142 Alteration of dispositions taking effect on death.

(1) Where within the period of two years after a person's death—

- (a) any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property comprised in his estate immediately before his death are varied, or
- (b) the benefit conferred by any of those dispositions is disclaimed,

by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions, this Act shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.

[<sup>F69</sup>(2) Subsection (1) above shall not apply to a variation unless the instrument contains a statement, made by all the relevant persons, to the effect that they intend the subsection to apply to the variation.

(2A) For the purposes of subsection (2) above the relevant persons are—

- (a) the person or persons making the instrument, and
- (b) where the variation results in additional tax being payable, the personal representatives.

Personal representatives may decline to make a statement under subsection (2) above only if no, or no sufficient, assets are held by them in that capacity for discharging the additional tax.]

(3) Subsection (1) above shall not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making, in respect of another of the dispositions, of a variation or disclaimer to which that subsection applies.

(4) Where a variation to which subsection (1) above applies results in property being held in trust for a person for a period which ends not more than two years after the death, this Act shall apply as if the disposition of the property that takes effect at the end of the period had had effect from the beginning of the period; but this subsection shall

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not affect the application of this Act in relation to any distribution or application of property occurring before that disposition takes effect.

- (5) For the purposes of subsection (1) above the property comprised in a person's estate includes any excluded property but not any property to which he is treated as entitled by virtue of section 49(1) above [<sup>F70</sup>or section 102 of the Finance Act 1986].
- (6) Subsection (1) above applies whether or not the administration of the estate is complete or the property concerned has been distributed in accordance with the original dispositions.
- (7) In the application of subsection (4) above to Scotland, property which is subject to a proper liferent shall be deemed to be held in trust for the liferenter.

#### **Textual Amendments**

- F69** S. 142(2)(2A) substituted for s. 142(2) (24.7.2002 with application as mentioned in s. 120(4) of the amending Act) by 2002 c. 23, s. 120(1)(4)
- F70** Finance Act 1986 Sch. 19, para. 24, with effect from 18 March 1986.

### **143 Compliance with testator's request.**

Where a testator expresses a wish that property bequeathed by his will should be transferred by the legatee to other persons, and the legatee transfers any of the property in accordance with that wish within the period of two years after the death of the testator, this Act shall have effect as if the property transferred had been bequeathed by the will to the transferee.

### **144 Distribution etc. from property settled by will.**

- (1) This section applies where property comprised in a person's estate immediately before his death is settled by his will and, within the period of two years after his death and before any interest in possession has subsisted in the property, there occurs—
  - (a) an event on which tax would (apart from this section) be chargeable under any provision, other than section 64 or 79, of Chapter III of Part III of this Act, or
  - (b) an event on which tax would be so chargeable but for section 75 or 76 above or paragraph 16(1) of Schedule 4 to this Act.
- (2) Where this section applies by virtue of an event within paragraph (a) of subsection (1) above, tax shall not be charged under the provision in question on that event; and in every case in which this section applies in relation to an event, this Act shall have effect as if the will had provided that on the testator's death the property should be held as it is held after the event.

### **145 Redemption of surviving spouse's [<sup>F71</sup>or civil partner's] life interest.**

Where an election is made by a surviving spouse [<sup>F72</sup>or civil partner] under section 47A of the Administration of <sup>M11</sup>Estates Act 1925, this Act shall have effect as if the surviving spouse [<sup>F72</sup>or civil partner], instead of being entitled to the life interest, had been entitled to a sum equal to the capital value mentioned in that section.

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#### Textual Amendments

- F71** Words in s. 145 sidenote inserted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **31(3)**
- F72** Words in s. 145 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **31(2)**

#### Marginal Citations

- M11** 1925 c. 23.

### 146 Inheritance (Provision for Family and Dependants) Act 1975.

- (1) Where an order is made under section 2 of the <sup>M12</sup>Inheritance (Provision for Family and Dependants) Act 1975 (“the 1975 Act”) in relation to any property forming part of the net estate of a deceased person, then, without prejudice to section 19(1) of that Act, the property shall for the purposes of this Act be treated as if it had on his death devolved subject to the provisions of the order.
- (2) Where an order is made under section 10 of the 1975 Act requiring a person to provide any money or other property by reason of a disposition made by the deceased, then—
  - (a) if that disposition was a chargeable transfer and the personal representatives of the deceased make a claim for the purpose—
    - (i) tax paid or payable on the value transferred by that chargeable transfer (whether or not by the claimants) shall be repaid to them by the Board or, as the case may be, shall not be payable, and
    - (ii) the rate or rates of tax applicable to the transfer of value made by the deceased on his death shall be determined as if the values previously transferred by chargeable transfers made by him were reduced by that value;
  - (b) the money or property shall be included in the deceased’s estate for the purpose of the transfer of value made by him on his death.
- (3) Where the money or other property ordered to be provided under section 10 of the 1975 Act is less than the maximum permitted by that section, subsection (2)(a) above shall have effect in relation to such part of the value there mentioned as is appropriate.
- (4) The adjustment in consequence of the provisions of this section or of section 19(1) of the 1975 Act of the tax payable in respect of the transfer of value made by the deceased on his death shall not affect—
  - (a) the amount of any deduction to be made under section 8 of that Act in respect of tax borne by the person mentioned in subsection (3) of that section, or
  - (b) the amount of tax to which regard is to be had under section 9(2) of that Act; and where a person is ordered under that Act to make a payment or transfer property by reason of his holding property treated as part of the deceased’s net estate under section 8 or 9 and tax borne by him is taken into account for the purposes of the order, any repayment of that tax shall be made to the personal representatives of the deceased and not to that person.
- (5) Tax repaid under paragraph (a)(i) of subsection (2) above shall be included in the deceased’s estate for the purposes of the transfer of value made by him on his death;

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and tax repaid under that paragraph or under subsection (4) above shall form part of the deceased's net estate for the purposes of the 1975 Act.

- (6) Anything which is done in compliance with an order under the 1975 Act or occurs on the coming into force of such an order, and which would (apart from this subsection) constitute an occasion on which tax is chargeable under any provision, other than section 79, of Chapter III of Part III of this Act, shall not constitute such an occasion; and where an order under the 1975 Act provides for property to be settled or for the variation of a settlement, and (apart from this subsection) tax would be charged under section 52(1) above on the coming into force of the order, section 52(1) shall not apply.
- (7) In subsections (2)(a) and (5) above references to tax include references to interest on tax.
- (8) Where an order is made staying or dismissing proceedings under the 1975 Act on terms set out in or scheduled to the order, this section shall have effect as if any of those terms which could have been included in an order under section 2 or 10 of that Act were provisions of such an order.
- (9) In this section any reference to, or to any provision of, the 1975 Act includes a reference to, or to the corresponding provision of, the <sup>M13</sup>Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979.

#### **Marginal Citations**

**M12** 1975 c. 63.

**M13** S.I. 1979/924 (N.I. 8.).

#### **147 Scotland; legitim. [<sup>F73</sup>etc.]**

- (1) Where a testator dies leaving a surviving spouse [<sup>F74</sup>or civil partner] and a person under the age of 18 entitled to claim legitim [<sup>F75</sup> or rights under section 131 of the Civil Partnership Act 2004 (“section 131 rights”)], and provision is made in his will or other testamentary document for a disposition to his spouse [<sup>F74</sup>or civil partner] which, if it could take effect, would leave insufficient property in the estate to satisfy the entitlement of that person in respect of legitim [<sup>F76</sup>or to section 131 rights] , the following provisions of this section shall apply.
- (2) Subject to subsections (3) and (4) below, tax shall be charged at the testator's death as if the disposition to the spouse [<sup>F77</sup>or civil partner] did not include any amount in respect of legitim [<sup>F78</sup>or section 131 rights] , but if within the period mentioned in subsection (6) below the person or persons concerned renounce their claim to legitim [<sup>F78</sup>or section 131 rights] , tax shall be repaid to the estate calculated on the basis that the disposition to the spouse [<sup>F77</sup>or civil partner] did include the amount renounced.
- (3) The executors or judicial factor of the testator may, in accordance with the provisions of this section, elect that subsection (2) above shall not apply but that subsection (4) below shall apply.
- (4) Tax shall be charged at the testator's death as if the disposition to the spouse [<sup>F79</sup>or civil partner] had taken effect, but where the person or persons concerned claim legitim [<sup>F80</sup>or section 131 rights] within the period mentioned in subsection (6) below, tax shall be charged on the amount so claimed calculated on the basis that the legitim fund had been paid out in full at the testator's death (excluding any part of the fund renounced

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- before any claim has been made) [<sup>F81</sup>or on the basis that all section 131 rights had been claimed in full at the testator's death (excluding any rights renounced before any claim has been made)] and the tax chargeable thereon had been apportioned rateably among the persons entitled to claim legitim [<sup>F80</sup>or section 131 rights](excluding any who have renounced as aforesaid).
- (5) Where the executors or judicial factor of the testator decide to make an election under subsection (3) above they shall give notice in writing of that election to the Board within two years from the date of death of the testator or such longer period as the Board may permit.
- (6) For the purposes of subsections (2) and (4) above, a person shall be treated as having claimed legitim [<sup>F82</sup>or section 131 rights] unless he has renounced his claim before attaining the age of 18 or he renounces his claim within two years of his attaining that age or such longer period as the Board may permit.
- (7) Where a person dies before attaining the age of 18 or before making a renunciation under subsection (6) above the provisions of this section shall apply in relation to that person's executors or judicial factor as they would have applied in relation to that person if that person had attained the age of 18 with the substitution of the date of death of that person for the date on which a person attained that age; but where the executors or factor renounce a claim to legitim [<sup>F83</sup>or section 131 rights] in respect of a person the amount renounced shall not be treated as part of that person's estate.
- (8) Where subsection (2) above applies in relation to any estate, then notwithstanding anything in section 241 below the Board may repay tax under that subsection without limit of time.
- (9) Where subsection (4) above applies in relation to any estate, then notwithstanding anything in section 239 below a certificate of discharge may be given under that section in respect of the whole estate, and notwithstanding anything in section 240 below the giving of the certificate shall not preclude the Board from claiming tax under subsection (4) above without limit of time.

#### Textual Amendments

- F73** Word in s. 147 sidenote inserted (5.12.2005) by virtue of [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(7)**
- F74** Words in s. 147(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(2)(a)**
- F75** Words in s. 147(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(2)(b)**
- F76** Words in s. 147(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(2)(c)**
- F77** Words in s. 147(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(3)(a)**
- F78** Words in s. 147(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(3)(b)**
- F79** Words in s. 147(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(4)(a)**
- F80** Words in s. 147(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(4)(b)**
- F81** Words in s. 147(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **32(4)(c)**

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- F82** Words in s. 147(6) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **32(5)**
- F83** Words in s. 147(7) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **32(6)**

### *Mutual and voidable transfers*

148, ..... <sup>F84</sup>  
149.

#### **Textual Amendments**

- F84** Finance Act 1986 s. 101(3), Sch. 19, para. 25, and Sch. 23, Part X, *repealed* ss.148 and 149 (*exemption for mutual transfers*) where the donee's transfer is made on or after 18 March 1986.

#### **150 Voidable transfers.**

- (1) Where on a claim made for the purpose it is shown that the whole or any part of a chargeable transfer (“the relevant transfer”) has by virtue of any enactment or rule of law been set aside as voidable or otherwise defeasible—
- (a) tax paid or payable by the claimant (in respect of the relevant transfer or any other chargeable transfer made before the claim) that would not have been payable if the relevant transfer had been void ab initio shall be repaid to him by the Board, or as the case may be shall not be payable, and
  - (b) the rate or rates of tax applicable to any chargeable transfer made after the claim by the person who made the relevant transfer shall be determined as if that transfer or that part of it had been void as aforesaid.
- (2) In subsection (1)(a) above the reference to tax includes a reference to interest on tax.

### *Pension schemes, etc*

#### **151 Treatment of pension rights, etc.**

- (1) This section applies to any fund to which section [<sup>F85</sup>615(3) of the Taxes Act 1988] applies, to any scheme approved under section [<sup>F86</sup>620 or 621] of that Act, to any exempt approved scheme or statutory scheme as defined in Chapter [<sup>F87</sup>I of Part XIV of that Act] and to any other sponsored superannuation scheme as defined in section [<sup>F88</sup>624 of that Act].
- [<sup>F89</sup>(1A) This section also applies to approved personal pension arrangements within the meaning of Chapter [<sup>F90</sup>IV of Part XIV of the Taxes Act 1988]; and references in the following provisions of this section to a scheme shall be construed accordingly.]
- (2) An interest in or under a fund or scheme to which this section applies which comes to an end on the death of the person entitled to it shall be left out of account in determining for the purposes of this Act the value of his estate immediately before his death, if the interest—
- (a) is, or is a right to, a pension or annuity, and

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- (b) is not an interest resulting (whether by virtue of the instrument establishing the fund or scheme or otherwise) from the application of any benefit provided under the fund or scheme otherwise than by way of a pension or annuity.
- (3) Sections 49 to 53 above shall not apply in relation to an interest satisfying the conditions of paragraphs (a) and (b) of subsection (2) above.
- (4) In relation to an interest in or under a fund or scheme to which this section applies, section 5(2) above shall apply as if the words “other than settled property” were omitted (in both places).
- (5) Where a benefit has become payable under a fund or scheme to which this section applies, and the benefit becomes comprised in a settlement made by a person other than the person entitled to the benefit, the settlement shall for the purposes of this Act be treated as made by the person so entitled.

#### Textual Amendments

- F85** *Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29, para. 32. Originally “218 of the Taxes Act”.*
- F86** *Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29, para. 32. Originally “226 or 226A”.*
- F87** *Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29, para. 32. Originally “II of Part II of the Finance Act 1970”.*
- F88** *Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29, para. 32. Originally “226(11) of the Taxes Act”.*
- F89** *Finance Act 1987 (No.2) s. 98(4), with effect from 23 July 1987.*
- F90** *Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), Sch. 29, para. 32. Originally “II of Part I of the Finance (No.2) Act 1987”.*

VALID FROM 06/04/2006

#### 151A Person dying with alternatively secured pension fund

- (1) This section applies where a member of a registered pension scheme has an alternatively secured pension fund in respect of an arrangement under the pension scheme immediately before his death.
- (2) In determining for the purposes of this Act the value of his estate immediately before his death he shall be treated as if he had been beneficially entitled to property with a value equal to the relevant amount.
- (3) The relevant amount is—
  - (a) the aggregate of the amount of the sums and the value of the assets forming part of the member's alternatively secured pension fund immediately before his death, less
  - (b) the aggregate of the amount of the sums and the value of the assets expended on dependants' benefits within the period of six months beginning with the end of the month in which his death occurs.
- (4) For this purpose sums or assets are expended on dependants' benefits at any time if they (or sums or assets directly or indirectly deriving from them) are at that time—

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- (a) applied towards the provision of a dependants' scheme pension for a relevant dependant,
- (b) applied towards the provision of a dependants' annuity for a relevant dependant,
- (c) designated as available for the payment of dependants' unsecured pension to a relevant dependant, or
- (d) designated as available for the payment of dependants' alternatively secured pension to a relevant dependant,

or if the sums (or sums directly or indirectly deriving from the sums or assets) are at that time paid as a charity lump sum death benefit.

(5) In this section—

“alternatively secured pension fund” has the same meaning as in Part 4 of the Finance Act 2004 (see paragraph 11 of Schedule 28 to that Act);

“charity lump sum death benefit” has the meaning given by paragraph 18 of Schedule 29 to that Act;

“dependants' alternatively secured pension” has the meaning given by paragraph 19 of Schedule 28 to that Act;

“dependants' annuity” has the same meaning as in Part 4 of that Act (see paragraph 17 of that Schedule);

“dependants' scheme pension” has the same meaning as in that Part of that Act (see paragraph 16 of that Schedule);

“dependants' unsecured pension” has the meaning given by paragraph 18 of that Schedule; and

“relevant dependant”, in relation to a member of a registered pension scheme who dies, means a dependant (within the meaning of paragraph 15 of that Schedule) who—

- (a) is the person's spouse or civil partner immediately before his death; or
- (b) is financially dependent on the person at that time.

VALID FROM 06/04/2006

### **151B Relevant dependant with pension fund inherited from member over 75**

(1) This section applies where—

- (a) a relevant dependant of a person who, immediately before his death, was a member of a registered pension scheme has a dependant's unsecured pension fund, or a dependant's alternatively secured pension fund, in respect of an arrangement under the pension scheme immediately before his death or immediately before ceasing to be a relevant dependant of the member,
- (b) the member had reached the age of 75 at the time of his death and had an alternatively secured pension fund in respect of an arrangement under the pension scheme immediately before his death, and
- (c) sums or assets forming part of that fund were designated as available for the payment of dependants' unsecured pension, or dependants' alternatively secured pension, to the relevant dependant within the period of six months beginning with the end of the month in which the member's death occurs.

(2) Where this section applies tax shall be charged under this section.



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- (3) The amount on which tax is charged under this section shall be the aggregate of the amount of the sums and the value of the assets forming part of the dependant's unsecured pension fund, or the dependant's alternatively secured pension fund, in respect of the arrangement immediately before the relevant dependant died or ceased to be a relevant dependant of the member.
- (4) But where tax is chargeable under this section by reason of the death of the relevant dependant, that amount is reduced by so much of sums forming part of the dependant's unsecured pension fund, or the dependant's alternatively secured pension fund, (or sums directly or indirectly deriving from sums or assets forming part of that fund) as are paid to a charity within the period of six months beginning with the end of the month in which his death occurs.
- (5) Tax charged under this section shall be charged at the rate or rates at which it would have been charged on the death of the member if—
- (a) the amount mentioned in subsection (3) above (as reduced under subsection (4) above) had been included in the value transferred by the chargeable transfer made on his death, and
  - (b) the amount on which the tax is charged had formed the highest part of that value.
- (6) In this section—
- “alternatively secured pension fund” has the same meaning as in Part 4 of the Finance Act 2004 (see paragraph 11 of Schedule 28 to that Act);
  - “dependants' alternatively secured pension” has the meaning given by paragraph 19 of that Schedule;
  - “dependant's alternatively secured pension fund” has the same meaning as in that Part of that Act (see paragraph 25 of that Schedule);
  - “dependants' unsecured pension” has the meaning given by paragraph 18 of that Schedule;
  - “dependant's unsecured pension fund” has the same meaning as in that Part of that Act (see paragraph 22 of that Schedule); and
  - “relevant dependant”, in relation to a member of a registered pension scheme who dies, means a dependant (within the meaning of paragraph 15 of that Schedule) who—
    - (a) is the person's spouse or civil partner immediately before his death; or
    - (b) is financially dependent on the person at that time.

VALID FROM 19/07/2007

**[<sup>F91</sup>151B] Rate or rates of charge under section 151B**

- (1) Tax charged under section 151B above shall be charged at the rate or rates at which it would be charged on the death of the member if the amount mentioned in subsection (3) of that section (as reduced under subsection (4) of that section) (“the taxable amount”) had been included in the aggregate mentioned in section 151A(3)(a) above (but subject as follows).
- (2) The rate or rates at which tax is charged on the taxable amount shall be determined as if the taxable amount had formed the very highest part of the value of the member's

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estate immediately before the member's death (above any amount which is part of that value apart from this section).

- (3) The rate or rates at which tax is charged on the taxable amount shall be determined on the assumptions that—
  - (a) subsection (3)(b) of section 151A above were omitted, and
  - (b) the references in subsections (4A) and (5) of that section to the time when tax is charged on the transfer treated as made by the member on death were to the time when tax is charged under this section.
- (4) Subsection (5) below applies where, before the time when the dependant dies or ceases to be a relevant dependant, there have been one or more reductions of tax by virtue of the coming into force of a substitution of a new Table in Schedule 1 to this Act since the member's death.
- (5) The rate or rates at which tax is charged under section 151B above is to be determined as if the new Table effecting the reduction of tax (or the most recent reduction of tax) had been in force at the time of the member's death.]

#### Textual Amendments

- F91** [S. 151BA](#) inserted (with effect as mentioned in [Sch. 19 para. 29\(8\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), s. 69, [Sch. 19 para. 22](#)

VALID FROM 06/04/2006

#### **151C Dependant dying with other pension fund**

- (1) This section applies where—
  - (a) a dependant of a member of a registered pension scheme has a dependant's alternatively secured pension fund in respect of an arrangement under the pension scheme immediately before his death, and
  - (b) section 151B above does not apply.
- (2) In determining for the purposes of this Act the value of the dependant's estate immediately before his death he shall be treated as if he had been beneficially entitled to property with a value equal to the relevant amount.
- (3) The relevant amount is—
  - (a) the aggregate of the amount of the sums and the value of the assets forming part of the dependant's alternatively secured pension fund immediately before his death, less
  - (b) so much of sums forming part of the dependant's alternatively secured pension fund (or sums directly or indirectly deriving from sums or assets forming part of that fund) as are paid as a charity lump sum death benefit within the period of six months beginning with the end of the month in which his death occurs.
- (4) In this section—

“charity lump sum death benefit” has the meaning given by paragraph 18 of Schedule 29 to the Finance Act 2004;

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*Changes to legislation: There are currently no known outstanding effects for the Inheritance Tax Act 1984, PART V. (See end of Document for details)*

“dependant” has the meaning given by paragraph 15 of that Schedule 28 to that Act; and

“dependant's alternatively secured pension fund” has the same meaning as in Part 4 of that Act (see paragraph 25 of Schedule 28 to that Act).

VALID FROM 21/07/2008

### [<sup>F92</sup>151D] **Unauthorised payment where person dies over 75 with pension or annuity**

(1) This section applies where—

- (a) a member of a registered pension scheme, or a dependant of such a member, dies after reaching the age of 75;
- (b) immediately before death the member or dependant has under the pension scheme an actual right to payments under a relevant pension or relevant annuity or a prospective right to payments under a relevant pension; and
- (c) at any time after the death a relevant unauthorised payment is made by the pension scheme.

(2) Where this section applies tax shall be charged under this section.

(3) The amount on which tax is charged under this section shall be the difference between—

- (a) the amount of the relevant unauthorised payment; and
- (b) the amount of any liability to income tax which has arisen under Part 4 of the Finance Act 2004 by virtue of the making of the relevant unauthorised payment.

(4) In this section—

“dependant” has the meaning given by paragraph 15 of Schedule 28 to the Finance Act 2004;

“dependants' annuity” has the same meaning as in that Part of that Act (see paragraph 17 of that Schedule);

“dependants' scheme pension” has the same meaning as in that Part of that Act (see paragraph 16 of that Schedule);

“lifetime annuity” has the same meaning as in that Part of that Act (see paragraph 3 of that Schedule);

“relevant annuity” means a lifetime annuity or dependants' annuity purchased by the application of sums or assets held for the purposes of the pension scheme;

“relevant pension” means a scheme pension or dependants' scheme pension provided by the scheme administrator or as a result of the application of sums or assets held for the purposes of the pension scheme;

“relevant unauthorised payment” means an unauthorised payment (within the meaning of Part 4 of the Finance Act 2004: see section 160(5) of that Act) which—

- (a) consists of the payment of a lump sum in respect of the dead member or dependant; or
- (b) is treated as made by virtue of the operation of section 172B of that Act by reason of the death; and

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“scheme pension” has the same meaning as in Part 4 of that Act (see paragraph 2 of Schedule 28 to that Act).]

### Textual Amendments

**F92** Ss. 151D, 151E inserted (with effect as mentioned in Sch. 28 para. 15(3) of the amending Act) by Finance Act 2008 (c. 9), s. 91, Sch. 28 para. 10

VALID FROM 21/07/2008

### [<sup>F92</sup>151E Rate or rates of charge under section 151D

- (1) Tax charged under section 151D above shall be charged at the rate or rates at which it would be charged if the amount on which it is charged, and any amount on which tax was previously charged under that section in relation to the death of the member or dependant, were part of the value transferred by the transfer of value made on the death of the member or dependant.
- (2) The rate or rates at which tax is charged on that amount shall be determined as if that amount had formed the highest part of that value.
- (3) Subsection (4) below applies where, before the time when the unauthorised payment is made, there have been one or more reductions of tax by virtue of the coming into force of a substitution of a new Table in Schedule 1 to this Act since the death of the member or dependant.
- (4) The rate or rates at which tax is charged under section 151D above is to be determined as if the new Table effecting the reduction of tax (or the most recent reduction of tax) (“the applicable Table”) had been in force at the time of the death of the member or dependant, but subject to subsections (5) and (8) below.
- (5) The nil-rate band maximum in the applicable Table is to be treated for the purposes of this section as reduced by the used-up percentage of the difference between—
  - (a) that nil-rate band maximum, and
  - (b) the nil-rate band maximum which was actually in force at the time of the death of the member or dependant.
- (6) For the purposes of subsection (5) above “the used-up percentage” is—

$$100 - \left( \frac{E}{\text{NRBM}} \times 100 \right)$$

where—

E is the amount by which M is greater than VT under section 8A(2) above in the case of the member or dependant; and

NRBM is the nil-rate band maximum at the time of the death of the member or dependant.

- (7) The following provisions apply where—

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- (a) tax is charged under section 151D above, and
- (b) immediately before the death of the member or dependant, the member or dependant had a spouse or civil partner (“the survivor”).
- (8) If the survivor died before the time when the unauthorised payment is made, tax is charged as if the personal nil-rate band maximum of the member or dependant were appropriately reduced.
- (9) In subsection (8) above—
- “the personal nil-rate band maximum of the member or dependant” is the nil rate band maximum in the applicable Table, increased in accordance with section 8A above where that section effected an increase in that nil-rate band maximum in the case of the member or dependant (as a survivor of another deceased person), and
- “appropriately reduced” means reduced by the amount (if any) by which the amount on which tax was charged at the rate of nil per cent. on the death of the survivor was increased by reason of the operation of section 8A above by virtue of the position of the member or dependant.
- (10) If the survivor did not die before the time when the unauthorised payment is made, tax is to be charged on the death of the survivor as if the percentage referred to in section 8A(3) above in the case of the member or dependant were that specified in subsection (11) below.
- (11) That percentage is—

$$\frac{AE}{ANRBM} \times 100$$

where—

AE is the adjusted excess, that is the amount by which M would be greater than VT under section 8A(2) above in the case of the member or dependant if—

- (a) the amount on which tax is charged under section 151D above were included in the value transferred by the chargeable value made on the death of the member or dependant, and
- (b) the nil-rate band maximum at the time of the death were ANRBM; and

ANRBM is the adjusted nil-rate band maximum, that is the nil-rate band maximum in the applicable Table (as reduced under subsection (5) above where that subsection applies.)]

#### Textual Amendments

**F92** Ss. 151D, 151E inserted (with effect as mentioned in [Sch. 28 para. 15\(3\)](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), s. 91, [Sch. 28 para. 10](#)

## 152 Cash options.

Where—

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- [<sup>F93</sup>(a) under approved personal pension arrangements within the meaning of Chapter [<sup>F94</sup>IV of Part XIV of the Taxes Act 1988], or
- (b) under a contract or trust scheme approved by the Board under section [<sup>F95</sup>620 or 621 of the Taxes Act 1988] or (before [<sup>F96</sup>6th April 1970] under section 22 of the <sup>M14</sup>Finance Act 1956]

an annuity becomes payable on a person's death to a widow, widower [<sup>F97</sup>, surviving civil partner] or dependant of that person, and under the terms of the contract or scheme a sum of money might at his option have become payable instead to his personal representatives, he shall not, by virtue of section 5(2) above, be treated as having been beneficially entitled to that sum.

#### Textual Amendments

- F93** [Finance Act 1987 \(No.2\)](#) s. 98(5), with effect from 23 July 1987. Originally “under a contract or trust scheme approved by the Board under section 226 or 226A of the Taxes Act or (before the commencement of that Act) under section 22 of the Finance Act 1956 (retirement annuities)”.
- F94** [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29, para. 32](#). Originally “II of Part I of the Finance (No. 2) Act 1987”.
- F95** [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29, para. 32](#). Originally “226 or 226A of the Taxes Act”.
- F96** [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29, para. 32](#). Originally “The commencement of that Act”.
- F97** Words in s. 152 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [33](#)

#### Marginal Citations

- M14** [1956 c. 54](#).

### 153 Overseas pensions.

- (1) In determining for the purposes of this Act the value of a person's estate immediately before his death there shall be left out of account any pension payable under the regulations or rules relating to any fund vested in Commissioners under section 273 of the <sup>M15</sup>Government of India Act 1935 or to any fund administered under a scheme made under section 2 of the <sup>M16</sup>Overseas Pensions Act 1973 which is certified by the Secretary of State for the purpose of this section to correspond to an Order in Council under subsection (1) of the said section 273.
- (2) For the purposes of this Act—
  - (a) a pension paid under the authority of a scheme made under section 2 of the Overseas Pensions Act 1973 which is constituted by the <sup>M17</sup>Pensions (India, Pakistan and Burma) Act 1955 or is certified by the Secretary of State for the purposes of this section to correspond to the said Act of 1955 shall be treated as if it had been paid by the Government of India or the Government of Pakistan (according as the arrangements in pursuance of which the pension was first paid under the said Act of 1955 were made with the one or the other Government);
  - (b) a pension paid out of any fund established in the United Kingdom by the Government of any country which, at the time when the fund was established, was, or formed part of, a colony, protectorate, protected state or United

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Kingdom trust territory shall, if the fund was established for the sole purpose of providing pensions, whether contributory or not, payable in respect of service under the Government be treated as if it had been paid by the Government by which the fund was established;

- (c) a pension paid out of the Central African Pension Fund established by section 24 of the <sup>M18</sup>Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 shall be treated as if it had been paid by the Government of a territory outside the United Kingdom; and
- (d) so much of any pension paid to or in respect of any person under—
  - (i) the scheme which by virtue of subsection (3) of section 2 of the Overseas Pensions Act 1973 is constituted under that section by section 2 or subsection (2) of section 4 of the <sup>M19</sup>Overseas Service Act 1958, or
  - (ii) such other scheme made under section 2 of the Overseas Pensions Act 1973 as is certified by the Secretary of State for the purposes of the Taxes Act to correspond to section 2 or subsection (2) of section 4 of the Overseas Service Act 1958,

as is certified by the Secretary of State to be attributable to service under the Government of an overseas territory shall be treated as if it had been paid by the Government of that territory.

- (3) Subsection (1) above shall be construed as if contained in section 273 of the <sup>M20</sup>Government of India Act 1935; and for the purposes of subsection (2) above—
  - (a) “pension” includes a gratuity and any sum payable on or in respect of death, and a return of contributions with or without interest thereon or any other addition thereto;
  - (b) “United Kingdom trust territory” means a territory administered by the Government of the United Kingdom under the trusteeship system of the United Nations;
  - (c) “overseas territory” means any country or territory outside the United Kingdom;
  - (d) references to the Government of any such country or territory as is mentioned in paragraph (b) or (d) of that subsection include a Government constituted for two or more such countries or territories and any authority established for the purpose of providing or administering services which are common to, or relate to matters of common interest to, two or more such countries or territories.
- (4) If, by reason of Her Majesty’s Government in the United Kingdom having assumed responsibility for a pension, allowance or gratuity within the meaning of section 1 of the <sup>M21</sup>Overseas Pensions Act 1973, payments in respect of it are made under that section, this section shall apply in relation to the pension, allowance or gratuity, exclusive of so much (if any) of it as is paid by virtue of the application to it of any provisions of the <sup>M22</sup>Pensions (Increase) Act 1971 or any enactment repealed by that Act, as if it continued to be paid by the Government or other body or fund which had responsibility for it before that responsibility was assumed by Her Majesty’s Government in the United Kingdom.

#### Marginal Citations

**M15** 1935 c. 2.

**M16** 1973 c. 21.

**M17** 1955 c. 22.

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- M18** S.I. 1963/2085.
- M19** 1958 c. 14.
- M20** 1935 c. 2.
- M21** 1973 c. 21.
- M22** 1971 c. 56.

### *Armed forces*

#### **154 Death on active service, etc.**

- (1) Section 4 above shall not apply in relation to the death of a person in whose case it is certified by the Defence Council or the Secretary of State—
  - (a) that he died from a wound inflicted, accident occurring or disease contracted at a time when the conditions specified in subsection (2) below were satisfied, or
  - (b) that he died from a disease contracted at some previous time, the death being due to or hastened by the aggravation of the disease during a period when those conditions were satisfied.
- (2) The conditions referred to in subsection (1) above are that the deceased was a member of any of the armed forces of the Crown or (not being a member of any of those forces) was subject to the law governing any of those forces by reason of association with or accompanying any body of those forces and (in any case) was either—
  - (a) on active service against an enemy, or
  - (b) on other service of a warlike nature or which in the opinion of the Treasury involved the same risks as service of a warlike nature.
- (3) In relation to any time before 28th July 1981 (the date of the passing of the <sup>M23</sup>Armed Forces Act 1981), the reference in subsection (2) above to membership of the armed forces of the Crown shall include a reference to employment as a person of any of the descriptions specified in paragraph 1(3) of Schedule 7 to the <sup>M24</sup>Finance Act 1975 (women's services).

#### **Marginal Citations**

- M23** 1981 c. 55.
- M24** 1975 c. 7.

#### **155 Visiting forces, etc.**

- (1) Section 6(4) above applies to—
  - (a) the emoluments paid by the Government of any designated country to a member of a visiting force of that country, not being a British citizen, a British Dependent Territories citizen, [<sup>F98</sup>a British National (Overseas)] or a British Overseas citizen, and
  - (b) any tangible movable property the presence of which in the United Kingdom is due solely to the presence in the United Kingdom of such a person while serving as a member of the force.
- (2) A period during which any such member of a visiting force as is referred to in subsection (1) above is in the United Kingdom by reason solely of his being such a



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member shall not be treated for the purposes of this Act as a period of residence in the United Kingdom or as creating a change of his residence or domicile.

- (3) References in subsections (1) and (2) above to a visiting force shall apply to a civilian component of a visiting force as they apply to the force itself, and those subsections shall be construed as one with Part I of the <sup>M25</sup>Visiting Forces Act 1952, but so that for the purposes of this section references to a designated country shall be substituted in that Act for references to a country to which a provision of that Act applies.
- (4) For the purpose of conferring on persons attached to any designated allied headquarters the like benefits as are conferred by subsections (1) and (2) above on members of a visiting force or civilian component, any members of the armed forces of a designated country shall, while attached to any such headquarters, be deemed to constitute a visiting force of that country, and there shall be a corresponding extension of the class of persons who may be treated as members of a civilian component of such a visiting force.
- (5) In the case of persons of any category for the time being agreed between Her Majesty's Government in the United Kingdom and the other members of the North Atlantic Council, employment by a designated allied headquarters shall be treated for the purposes of subsections (1)(b) and (2) above as if it were service as a member of a visiting force of a designated country.
- (6) For the purposes of this section—
  - “allied headquarters” means any international military headquarters established under the North Atlantic Council;
  - “designated” means designated for the purpose in question by or under any Order in Council made for giving effect to any international agreement.
- (7) Any Order in Council made under section 73 of the <sup>M26</sup>Finance Act 1960 which is in force immediately before the passing of this Act shall have effect for the purposes of this section as if it had also been made under this section, and may be varied or revoked accordingly.

#### Textual Amendments

**F98** Hong Kong (British National) Order 1986, S.I. 1986/948 (*not reproduced*) with effect from 1 July 1986.

#### Marginal Citations

**M25** 1952 c. 67.

**M26** 1960 c.44

### *Apsley House and Chevening Estate*

#### **156 Apsley House and Chevening Estate.**

This Act shall not apply in respect of—

- (a) the rights conferred by section 3 of the <sup>M27</sup>Wellington Museum Act 1947, or
- (b) property held on the trusts of the trust instrument set out in the Schedule to the <sup>M28</sup>Chevening Estate Act 1959.

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**Marginal Citations**

**M27** 1947 c.46

**M28** 1959 c.49

*Non-residents' bank accounts*

**157 Non-residents' bank accounts.**

- (1) In determining for the purposes of this Act the value of the estate immediately before his death of a person to whom this section applies there shall be left out of account the balance on—
  - (a) any qualifying foreign currency account of his, and
  - (b) subject to subsection (3) below, any qualifying foreign currency account of the trustees of settled property in which he is beneficially entitled to an interest in possession.
- (2) This section applies to a person who is not domiciled in the United Kingdom immediately before his death, and is neither resident nor ordinarily resident at that time.
- (3) Subsection (1)(b) above does not apply in relation to settled property if the settlor was domiciled in the United Kingdom when he made the settlement, or if the trustees are domiciled, resident or ordinarily resident in the United Kingdom immediately before the beneficiary's death.
- (4) For the purposes of this section—
  - (a) the question whether a person is resident or ordinarily resident in the United Kingdom shall, subject to paragraph (b) below, be determined as for the purposes of income tax; but
  - (b) the trustees of a settlement shall be regarded as not resident or ordinarily resident in the United Kingdom unless the general administration of the settlement is ordinarily carried on in the United Kingdom and the trustees or a majority of them (and, where there is more than one class of trustees, a majority of each class) are resident and ordinarily resident there.
- (5) In this section “qualifying foreign currency account” means a foreign currency account with [<sup>F99</sup>a bank <sup>F100</sup> . . .]; and for this purpose—
  - (a) “foreign currency account” means any account other than one denominated in sterling, <sup>F101</sup> . . .
  - <sup>F101</sup>(b) . . . . .

[<sup>F102</sup>(6) In this section “bank” has the meaning given by section 840A of the Taxes Act 1988.]

**Textual Amendments**

**F99** Words in s. 157(5) substituted (29.4.1996 with effect in relation to deaths occurring on or after 29.4.1996) by 1996 c. 8, s. 198, **Sch. 37 para. 12(1)(3)**

**F100** Words in s. 157(5) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(4))

**F101** S. 157(5)(b) and the preceding “and” repealed (29.4.1996 with effect as mentioned in **Sch. 37** of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. VIII(2)**, note

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**F102** S. 157(6) inserted (29.4.1996 with effect in relation to deaths occurring on or after 29.4.1996) by 1996 c. 8, s. 198, Sch. 37 para. 12(2)(3)

### *Double taxation relief*

#### **158 Double taxation conventions.**

(1) If Her Majesty by Order in Council declares—

(a) that arrangements specified in the Order have been made with the government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to [<sup>F103</sup>inheritance tax] payable under the laws of the United Kingdom and any tax imposed under the laws of that territory which is of a similar character or is chargeable on or by reference to death or gifts inter vivos, and

(b) that it is expedient that those arrangements should have effect;

the arrangements shall, notwithstanding anything in this Act, have effect so far as they provide for relief from [<sup>F104</sup>inheritance tax], or for determining the place where any property is to be treated as situated for the purposes of the tax.

[<sup>F105</sup>(1ZA) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.

(1ZB) Arrangements to which effect is given under this section may include provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.]

[<sup>F106</sup>(1A) Without prejudice to the generality of subsection (1) above, if it appears to Her Majesty to be appropriate, the arrangements specified in an Order in Council under this section may include provisions with respect to the exchange of information [<sup>F107</sup>foreseeably relevant to the administration or enforcement of] the domestic laws of the United Kingdom and the laws of the territory to which the arrangements relate concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and where arrangements do include any such provisions, the declaration in the Order in Council shall state that fact.]

(2) Any arrangements to which effect is given under this section may include provision for relief in cases occurring before the making of the arrangements and provisions as to property which is not itself subject to double taxation.

(3) Any Order in Council under this section which revokes an earlier Order may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(4) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of it has been laid before, and approved by resolution of, the House of Commons.

(5) Where any arrangements have effect by virtue of this section, no obligation as to secrecy shall prevent the Board or an authorised officer of the Board from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.

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- (6) Where arrangements with the government of any territory outside the United Kingdom are specified under any Order in Council which—
- (a) was made, or has effect as made, under section 54 of the <sup>M29</sup>Finance (No.2) Act 1945 or section 2 of the <sup>M30</sup>Finance Act (Northern Ireland) 1946, and
  - (b) had effect immediately before the passing of this Act,
- the Order shall notwithstanding the repeal of that section by the <sup>M31</sup>Finance Act 1975, remain in force and have effect as if any provision made by those arrangements in relation to estate duty extended to [<sup>F108</sup>inheritance tax] chargeable by virtue of section 4 above; but the Order may be amended or revoked by an Order in Council made under this section.

#### Textual Amendments

- F103** See Finance Act 1986 s. 100(1) and (2)—for any liability to tax arising on and after 25 July 1986 any reference in the legislation to capital transfer tax has effect as a reference to inheritance tax.
- F104** See Finance Act 1986 s. 100(1) and (2)—for any liability to tax arising on and after 25 July 1986 any reference in the legislation to capital transfer tax has effect as a reference to inheritance tax.
- F105** S. 158(1ZA)(1ZB) inserted (retrospectively and with application in accordance with s. 32(6)) by [Finance Act 2018 \(c. 3\), s. 32\(3\)\(4\)](#)
- F106** Finance Act 1987 s. 70(2), with effect from 15 May 1987.
- F107** Words in s. 158(1A) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\), s. 198\(1\)\(2\)](#)
- F108** See Finance Act 1986 s. 100(1) and (2)—for any liability to tax arising on and after 25 July 1986 any reference in the legislation to capital transfer tax has effect as a reference to inheritance tax.

#### Marginal Citations

- M29** 1945 c.13.  
**M30** 1946 c.1 (N.I.).  
**M31** 1975 c.7.

### 159 Unilateral relief.

- (1) Where the Board are satisfied that in any territory outside the United Kingdom (an “overseas territory”) any amount of tax imposed by reason of any disposition or other event is attributable to the value of any property, then, if—
- (a) that tax is of a character similar to that of [<sup>F109</sup>inheritance tax] or is chargeable on or by reference to death or gifts inter vivos, and
  - (b) any [<sup>F109</sup>inheritance tax] chargeable by reference to the same disposition or other event is also attributable to the value of that property,
- they shall allow a credit in respect of that amount (“the overseas tax”) against that [<sup>F109</sup>inheritance tax] in accordance with the following provisions.
- (2) Where the property is situated in the overseas territory and not in the United Kingdom, the credit shall be of an amount equal to the overseas tax.
- (3) Where the property—
- (a) is situated neither in the United Kingdom nor in the overseas territory, or
  - (b) is situated both in the United Kingdom and in the overseas territory,
- the credit shall be of an amount calculated in accordance with the following formula—

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$$\frac{A}{A+B} \times C$$

where A is the amount of the [<sup>F109</sup>inheritance tax], B is the overseas tax and C is whichever of A and B is the smaller.

- (4) Where tax is imposed in two or more overseas territories in respect of property which—
- (a) is situated neither in the United Kingdom nor in any of those territories, or
  - (b) is situated both in the United Kingdom and in each of those territories,
- subsection (3) above shall apply as if, in the formula there set out, B were the aggregate of the overseas tax imposed in each of those territories and C were the aggregate of all, except the largest, of A and the overseas tax imposed in each of them.
- (5) Where credit is allowed under subsection (2) above or section 158 above in respect of overseas tax imposed in one overseas territory, any credit under subsection (3) above in respect of overseas tax imposed in another shall be calculated as if the [<sup>F110</sup>inheritance tax] were reduced by the credit allowed under subsection (2) or section 158; and where, in the case of any overseas territory mentioned in subsection (3) or (4) above, credit is allowed against the overseas tax for tax charged in a territory in which the property is situated, the overseas tax shall be treated for the purposes of those provisions as reduced by the credit.
- (6) In this section references to tax imposed in an overseas territory are references to tax chargeable under the law of that territory and paid by the person liable to pay it.
- (7) Where relief can be given both under this section and under section 158 above, relief shall be given under whichever section provides the greater relief.

#### **Textual Amendments**

**F109** See Finance Act 1986 s. 100(1) and (2)—for any liability to tax arising on and after 25 July 1986 any reference in the legislation to capital transfer tax has effect as a reference to inheritance tax.

**F110** See Finance Act 1986 s. 100(1) and (2)—for any liability to tax arising on and after 25 July 1986 any reference in the legislation to capital transfer tax has effect as a reference to inheritance tax.

**Status:**

Point in time view as at 05/12/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Inheritance Tax Act 1984, PART V.