



Capital Transfer Tax Act 1984

1984 CHAPTER 51

PART V

MISCELLANEOUS RELIEFS

CHAPTER IV

TRANSFERS WITHIN THREE YEARS BEFORE DEATH

131 The relief

(1) Subject to section 132 below, this section applies where (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 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, or
- (b) has, before that date, been sold by the transferee or his spouse 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 the additional tax, the additional tax shall be calculated as if the value transferred were reduced by the amount of the excess.

(3) A sale is a qualifying sale for the purposes of this section if—

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- (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.

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 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.
- (2) If at any time before the relevant date the transferee or his spouse 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.

134 Payments of calls

If the transferred property consists of shares and at any time before the relevant date the transferee or his spouse 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.

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 section 78 of the Capital Gains Tax Act 1979 applies or would apply but for section 84 of that Act, that is to say—
 - (a) a reorganisation within the meaning of section 77(1) of that Act,

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- (b) the conversion of securities within the meaning of section 82 of that Act,
 - (c) the issue by a company of shares in exchange for shares in another company in such circumstances that section 85 of that Act applies, or
 - (d) the issue by a company of shares under such an arrangement as is referred to in section 86 of that Act,
- or any transaction relating to a unit trust scheme which corresponds to any of the transactions referred to in paragraph (d) to (d) above and to which section 78 of that Act applies by virtue of section 93 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 77(1) of the Capital Gains Tax Act 1979.
 - (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 becomes liable to give any 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.

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 shares quoted on a recognised stock exchange or an alteration in any rights attaching to shares in or debentures of the company which are not so quoted,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.

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- (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 is domiciled in the United Kingdom, his spouse is increased by any amount, the increase provided for by subsection (2) above shall be reduced by that amount.
- (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.

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—
 - (a) the market value of the interest at the time of the chargeable transfer, and
 - (b) 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—
 - (a) 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
 - (b) 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—
 - (a) because of the imposition of a restriction on the use or development of the land in which the interest subsists, or
 - (b) 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.

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 3 to the Capital Gains Tax Act 1979 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.

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 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 ;

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" 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 shares not quoted on a recognised stock exchange, 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.