



Inheritance Tax Act 1984

1984 CHAPTER 51

PART V

MISCELLANEOUS RELIEFS

CHAPTER V

MISCELLANEOUS

Changes in distribution of deceased's estate, etc.

147 Scotland; legitim. [^{F1} etc.]

- (1) Where a testator dies leaving a surviving spouse [^{F2} or civil partner] and a person under the age of 18 entitled to claim legitim [^{F3} 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 [^{F2} 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 [^{F4} 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 [^{F5} or civil partner] did not include any amount in respect of legitim [^{F6} or section 131 rights] , but if within the period mentioned in subsection (6) below the person or persons concerned renounce their claim to legitim [^{F6} or section 131 rights] , tax shall be repaid to the estate calculated on the basis that the disposition to the spouse [^{F5} 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 [^{F7} or civil partner] had taken effect, but where the person or persons concerned claim legitim

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[^{F8}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 before any claim has been made) [^{F9}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 [^{F8}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 [^{F10}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 [^{F11}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.
- [^{F12}(10) Where the application of subsection (4) in relation to the estate of a person means that too great an increase has been made under subsection (3) of section 8A above in the case of another person, the claim under that section in that case may be amended accordingly by the Commissioners for Her Majesty's Revenue and Customs.]

Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**

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- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)**
- F11** 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)**
- F12** S. 147(10) inserted (with effect as mentioned in Sch. 4 para. 9(1) of the amending Act) by Finance Act 2008 (c. 9), s. 10, **Sch. 4 para. 3**

Changes to legislation:

There are currently no known outstanding effects for the Inheritance Tax Act 1984, Section 147.