

## SCHEDULE 20

Section 102.

### GIFTS WITH RESERVATION

#### *Interpretation and application*

- 1 (1) In this Schedule—
- “the material date”, in relation to any property means, in the case of property falling within subsection (3) of the principal section, the date of the donor’s death and, in the case of property falling within subsection (4) of that section, the date on which the property ceases to be a property subject to a reservation;
  - “the principal section” means section 102 of this Act; and
  - “property subject to reservation” has the same meaning as in the principal section.
- (2) Any reference in this Schedule to a disposal by way of gift is a reference to such a disposal which is made on or after 18th March 1986.
- (3) This Schedule has effect for the purposes of the principal section and the 1984 Act.
- 2 (1) Where the disposal by way of gift and, at any time before the material date, the donee ceases to have possession and enjoyment of any of the property comprised in the gift, then on and after that time the principal section and the following provisions of this Schedule shall apply as if the property, if any, received by the donee in substitution for that property had been comprised in the gift instead of that property (but in addition to any other property comprised in the gift).
- (2) This paragraph does not apply if the property disposed of by the gift—
- (a) becomes settled property by virtue of the gift; or
  - (b) is a sum of money in sterling or any other currency.
- (3) In sub-paragraph (1) above the reference to the property received by the donee in substitution for property comprised in the gift includes in particular—
- (a) in relation to property sold, exchanged or otherwise disposed of by the donee, any benefit received by him by way of consideration for the sale, exchange or other disposition; and
  - (b) in relation to a debt or security, any benefit received by the donee in or towards the satisfaction or redemption thereof; and
  - (c) in relation to any right to acquire property, any property acquired in pursuance of that right.
- (4) Where, at a time before the material date, the donee makes a gift of property comprised in the gift to him, or otherwise voluntarily divests himself of such property otherwise than for a consideration in money or money’s worth not less than the value of the property at that time, then, unless he does so in favour of the donor, he shall be treated for the purposes of the principal section and sub-paragraph (1) above as continuing to have possession and enjoyment of that property.
- (5) For the purposes of sub-paragraph (4) above—
- (a) a disposition made by the donee by agreement shall not be deemed to be made voluntarily if it is made to any authority who, when the agreement is made, is authorised by, or is or can be authorised under, any enactment to acquire the property compulsorily; and

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- (b) a donee shall be treated as divesting himself, voluntarily and without consideration, of any interest in property which merges or is extinguished in another interest held or acquired by him in the same property.
- (6) Where any shares in or debentures of a body corporate are comprised in a gift and the donee is, as the holder of those shares or debentures, issued with shares in or debentures of the same or any other body corporate, or granted any right to acquire any such shares or debentures, then, unless the issue or grant is made by way of exchange for the first-mentioned shares or debentures, the shares or debentures so issued, or the right granted, shall be treated for the purposes of the principal section and this Schedule as having been comprised in the gift in addition to any other property so comprised.
  - (7) In sub-paragraph (6) above the reference to an issue being made or right being granted to the donee as the holder of shares or debentures shall be taken to include any case in which an issue or grant is made to him as having been the holder of those shares or debentures, or is made to him in pursuance of an offer or invitation made to him as being or having been the holder of those shares or debentures, or of an offer or invitation in connection with which any preference is given to him as being or having been the holder thereof.
- 3 (1) Where either sub-paragraph (3)(c) or sub-paragraph (6) of paragraph 2 above applies to determine, for the purposes of the principal section, the property comprised in a gift made by the donor—
- (a) the value of any consideration in money or money's worth given by the donee for the acquisition in pursuance of the right referred to in the said sub-paragraph (3)(c) or for the issue or grant referred to in the said sub-paragraph (6), as the case may be, shall be allowed as a deduction in valuing the property comprised in the gift at any time after the consideration is given, but
  - (b) if any part (not being a sum of money) of that consideration consists of property comprised in the same as another gift from the donor and treated for the purposes of the 1984 Act as forming part of the donor's estate immediately before his death or as being attributable to the value transferred by a potentially exempt transfer made by him, no deduction shall be made in respect of it under this sub-paragraph.
- (2) For the purposes of sub-paragraph (1) above, there shall be left out of account so much (if any) of the consideration for any shares in debentures of a body corporate, or for the grant of any right to be issued with any shares or debentures, as consists in the capitalisation of reserves of that body corporate, or in the retention by that body corporate, by way of set-off or otherwise, of any property distributable by it, or otherwise provided directly or indirectly out of the assets or at the expenses of that or any associated body corporate.
- (3) For the purposes of sub-paragraph (2) above, two bodies corporate shall be deemed to be associated as if one has control of the other or if another person has control of both.

*Donee predeceasing the material date*

- 4 Where there is a disposal by way of gift and the donee dies before the date which is the material date in relation to any property comprised in the gift, paragraphs 2 and 3 above shall apply as if—

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- (a) he had not dies and the acts of his personal representatives were his acts; and
- (b) property taken by another person under his testamentary dispositions or his intestacy (or partial intestacy) were taken under a gift made by him at the time of his death.

*[<sup>F1</sup>Termination of interests in possession*

**Textual Amendments**

**F1** Sch. 20 para. 4A and cross-heading inserted (retrospective to 22.3.2006) by Finance Act 2006 (c. 25), Sch. 20 para. 33(3)(4) (with Sch. 20 para. 33(4))

- 4A (1) This paragraph applies where—
- (a) under section 102ZA of this Act, an individual (“D”) is taken to dispose of property by way of gift, and
  - (b) the property continues to be settled property immediately after the disposal.
- (2) Paragraphs 2 to 4 above shall not apply but, subject to the following provisions of this paragraph, the principal section and the following provisions of this Schedule shall apply as if the property comprised in the gift consisted of the property comprised in the settlement on the material date, except in so far as that property neither is, nor represents, nor is derived from, property originally comprised in the gift.
- (3) Any property which—
- (a) on the material date is comprised in the settlement, and
  - (b) is derived, directly or indirectly, from a loan made by D to the trustees of the settlement,
- shall be treated for the purposes of sub-paragraph (2) above as derived from property originally comprised in the gift.
- (4) If the settlement comes to an end at some time before the material date as respects all or any of the property which, if D had died immediately before that time, would be treated as comprised in the gift,—
- (a) the property in question, other than property to which D then becomes absolutely and beneficially entitled in possession, and
  - (b) any consideration (not consisting of rights under the settlement) given by D for any of the property to which D so becomes entitled,
- shall be treated as comprised in the gift (in addition to any other property so comprised).
- (5) Where, under any trust or power relating to settled property, income arising from that property after the material date is accumulated, the accumulations shall not be treated for the purposes of sub-paragraph (2) above as derived from that property.]

*Settled gifts*

- 5 (1) Where there is a disposal by way of gift and the property comprised in the gift becomes settled property by virtue of the gift, paragraphs 2 to 4 above shall not apply but, subject to the following provisions of this paragraph, the principal section and the following provisions of this Schedule shall apply as if the property comprised in the

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gift consisted of the property comprised in the settlement on the material date, except in so far as that property neither is, nor represents, nor is derived from, property originally comprised in the gift.

- (2) If the settlement comes to an end at some time before the material date as respects all or any of the property which, if the donor had died immediately before that time, would be treated as comprised in the gift,—
- (a) the property in question other than property to which the donor then becomes absolutely and beneficially entitled in possession, and
  - (b) any consideration (not consisting of rights under the settlement) given by the donor for any purposes of the property to which he so becomes entitled,
- shall be treated as comprised in the gift (in addition to any other property so comprised).
- (3) Where property comprised in a gift does not become settled property by virtue of the gift, but is before the material date settled by the donee, sub-paragraphs (1) and (2) above shall apply in relation to property comprised in the settlement as if the settlement had been made by the gift; and for this purpose property which becomes settled property under any testamentary disposition of the donee or on his intestacy (or partial intestacy) shall be treated as settled by him.
- (4) Where property comprised in a gift becomes settled property either by virtue of the gift or as mentioned in sub-paragraph (3) above, any property which—
- (a) on the material date is comprised in the settlement, and
  - (b) is derived, directly or indirectly, from a loan made by the donor to the trustees of the settlement,
- shall be treated for the purposes of sub-paragraph (1) above as derived from property originally comprised in the gift.
- (5) Where, under any trust or power relating to settled property, income arising from that property after the material date is accumulated, the accumulations shall not be treated for the purposes of sub-paragraph (1) above as derived from that property.

#### *Exclusion of benefit*

- 6 (1) In determining whether any property which is disposed of by way of gift is enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor and of any benefit to him by contract or otherwise—
- (a) in the case of property which is an interest in land or a chattel, retention or assumption by the donor of actual occupation of the land or actual enjoyment of an incorporeal right over the land, or actual possession of the chattel shall be disregarded if it is for full consideration in money or money's worth;
  - (b) in the case of property which is an interest in land, any occupation by the donor of the whole or any part of the land shall be disregarded if—
    - (i) it results from a change in circumstances of the donor since the time of the gift, being a change which was unforeseen at the time and was not brought about by the donor to receive the benefit of this provision; and
    - (ii) it occurs at a time when the donor has become unable to maintain himself through old age, infirmity or otherwise; and
    - (iii) it represents a reasonable provision by the donee for the care and maintenance of the donor; and

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- (iv) the donee is a relative of the donor or his spouse [<sup>F2</sup>or civil partner];
- (c) a benefit which the donor obtained by virtue of any associated operations (as defined in section 268 of the 1984 Act) of which the disposal by way of gift is one shall be treated as a benefit to him by contract or otherwise.
- (2) Any question whether any property comprised in a gift was at any time enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor and of the benefit to him shall (so far as that question depends upon the identity of the property) be determined by reference to the property which is at that time treated as property comprised in the gift.
- (3) In the application of this paragraph to Scotland, references to a chattel shall be construed as references to a corporeal moveable.

#### Textual Amendments

**F2** Words in Sch. 20 para. 6(1)(b)(iv) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 46

- 7 (1) Where arrangements are entered into under which—
- (a) there is a disposal by way of gift which consists of or includes, or is made in connection with, a policy of insurance on the life of the donor or his spouse [<sup>F3</sup>or civil partner] or on their joint lives, and
- (b) the benefits which will or may accrue to the donee as a result of the gift vary by reference to benefits accruing to the donor or his spouse [<sup>F3</sup>or civil partner] (or both of them) under that policy or under another policy (whether issued before, at the same time as or after that referred to in paragraph (a) above),
- the property comprised in the gift shall be treated for the purposes of the principal section as not enjoyed to the entire exclusion, or virtually to the entire exclusion, of the donor.
- (2) In sub-paragraph (1) above—
- (a) the reference in paragraph (a) to a policy on the joint lives of the donor and his spouse [<sup>F4</sup>or civil partner] includes a reference to a policy on their joint lives and on the life of the survivor; and
- (b) the reference in paragraph (b) to the benefits accruing to the donor or his spouse [<sup>F4</sup>or civil partner] (or both of them) includes a reference to benefits which accrue by virtue of the exercise of rights conferred on either or both of them.

#### Textual Amendments

**F3** Words in Sch. 20 para. 7(1) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 46

**F4** Words in Sch. 20 para. 7(2) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), 46

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*Agricultural property and business property*

- 8 (1) [<sup>F5</sup>This paragraph applies where] there is a disposal by way of gift of property which, in relation to the donor, is at that time—
- (a) relevant business property within the meaning of Chapter I of Part V of the 1984 Act, or
  - (b) agricultural property, within the meaning of Chapter II of that Part, to which section 116 of that Act applies, or
  - (c) shares or securities to which section 122(1) of that Act applies (agricultural property of companies),
- and that property is property subject to a reservation <sup>F6</sup> . . .

[<sup>F7</sup>(1A) Where this paragraph applies—

- (a) any question whether, on the material transfer of value, any shares or securities fall [<sup>F8</sup>within paragraph (b), (bb) or (cc) of section 105(1) of the 1984 Act (certain shares or securities qualifying for relief)] shall be determined, subject to the following provisions of this paragraph, as if the shares or securities were owned by the donor and had been owned by him since the disposal by way of gift; and
- (b) subject to paragraph (a), any question whether, on the material transfer of value, relief is available by virtue of Chapter I or Chapter II of Part V of the 1984 Act and, if relief is available by virtue of Chapter II, what is the appropriate percentage of that relief, shall be determined, subject to the following provisions of this paragraph, as if, so far as it is attributable to the property comprised in the gift, that transfer were a transfer of value by the donee.]

- (2) For the purpose only of determining whether, on the transfer of value which, by virtue of sub-paragraph [<sup>F9</sup>(1A)(b)] above, the donee is assumed to make, the requirement of section 106 or, as the case may be, section 117 of the 1984 Act (minimum period of ownership or occupation) is fulfilled,—

- (a) ownership by the donor prior to the disposal by way of gift shall be treated as ownership by the donee; and
- (b) occupation by the donor prior to the disposal and any occupation by him after that disposal shall be treated as occupation by the donee.

- (3) Where the property disposed of by way of gift consists of shares or securities falling within paragraph (c) of sub-paragraph (1) above, [<sup>F10</sup>relief shall not be available by virtue of Chapter II of Part V of the 1984 Act on the material transfer of value] unless—

- (a) section 116 of the 1984 Act applies in relation to the value transferred by the disposal, and
- (b) throughout the period beginning with the disposal and ending on the material date, the shares or securities are owned by the donee,

and for the purposes only of determining whether, on the transfer of value which, [<sup>F11</sup>by virtue of sub-paragraph (1A)(b) above], the donee is assumed to make, the requirements of subsection (1) of section 123 of the 1984 Act are fulfilled, it shall be assumed that the requirement in paragraph (b) of that subsection (as to ownership of the shares or securities) is fulfilled.

- (4) In this paragraph, “the material transfer of value” means, as the case may require,—

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- (a) the transfer of value under section 4 of the 1984 Act on the death of the donor; or
  - (b) the transfer of value under subsection (4) of the principal section on the property concerned ceasing to be subject to a reservation.
- (5) If the donee dies before the material transfer of value, then, as respects any time after his death, any reference to his personal representatives or, as the case may require, the person (if any) by whom the property, shares or securities concerned were taken under a testamentary disposition made by the donee or under his intestacy (or partial intestacy).

#### Textual Amendments

- F5** Words substituted by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), [Sch. 8, para. 18\(2\)](#), with effect from 17 March 1987.
- F6** Words repealed by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), s. 58 and [Sch. 8, para. 18\(2\)](#), with effect from 17 March 1987.
- F7** Para. 8(1A) inserted by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), [Sch. 8, para. 18\(3\)](#), with effect from 17 March 1987.
- F8** Words in Sch. 20 para. 8(1A)(a) substituted (in relation to transfers of value made on or after 10.3.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 73, [Sch. 14 paras. 7, 8, 9](#).
- F9** Words substituted by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), [Sch. 8, para. 18\(4\)](#), with effect from 17 March 1987.
- F10** Words substituted by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), [Sch. 8, para. 18\(5\)\(a\)](#), with effect from 17 March 1987.
- F11** Words substituted by [Finance Act 1987 \(c. 16, SIF 63:1\)](#), [Sch. 8, para. 18\(5\)\(b\)](#), with effect from 17 March 1987.

**Changes to legislation:**

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