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## SCHEDULES

### SCHEDULE 4

Section 10

#### INHERITANCE TAX: TRANSFER OF NIL-RATE BAND ETC

##### *Amendments of IHTA 1984*

- 1 IHTA 1984 is amended as follows.
- 2 After section 8 insert—

#### **“8A Transfer of unused nil-rate band between spouses and civil partners**

- (1) This section applies where—
  - (a) immediately before the death of a person (a “deceased person”), the deceased person had a spouse or civil partner (“the survivor”), and
  - (b) the deceased person had unused nil-rate band on death.
- (2) A person has unused nil-rate band on death if—

$$M > VT$$

where—

M is the maximum amount that could be transferred by a chargeable transfer made (under section 4 above) on the person's death if it were to be wholly chargeable to tax at the rate of nil per cent. (assuming, if necessary, that the value of the person's estate were sufficient but otherwise having regard to the circumstances of the person); and  
VT is the value actually transferred by the chargeable transfer so made (or nil if no chargeable transfer is so made).

- (3) Where a claim is made under this section, the nil-rate band maximum at the time of the survivor's death is to be treated for the purposes of the charge to tax on the death of the survivor as increased by the percentage specified in subsection (4) below (but subject to subsection (5) and section 8C below).
- (4) That percentage is—

$$\frac{E}{\text{NRBMD}} \times 100$$

where—

E is the amount by which M is greater than VT in the case of the deceased person; and  
NRBMD is the nil-rate band maximum at the time of the deceased person's death.

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- (5) If (apart from this subsection) the amount of the increase in the nil-rate band maximum at the time of the survivor's death effected by this section would exceed the amount of that nil-rate band maximum, the amount of the increase is limited to the amount of that nil-rate band maximum.
- (6) Subsection (5) above may apply either—
- (a) because the percentage mentioned in subsection (4) above (as reduced under section 8C below where that section applies) is more than 100 because of the amount by which M is greater than VT in the case of one deceased person, or
  - (b) because this section applies in relation to the survivor by reference to the death of more than one person who had unused nil-rate band on death.
- (7) In this Act “nil-rate band maximum” means the amount shown in the second column in the first row of the Table in Schedule 1 to this Act (upper limit of portion of value charged at rate of nil per cent.) and in the first column in the second row of that Table (lower limit of portion charged at next rate).

### **8B Claims under section 8A**

- (1) A claim under section 8A above may be made—
- (a) by the personal representatives of the survivor within the permitted period, or
  - (b) (if no claim is so made) by any other person liable to the tax chargeable on the survivor's death within such later period as an officer of Revenue and Customs may in the particular case allow.
- (2) If no claim under section 8A above has been made in relation to a person (P) by reference to whose death that section applies in relation to the survivor, the claim under that section in relation to the survivor may include a claim under that section in relation to P if that does not affect the tax chargeable on the value transferred by the chargeable transfer of value made on P's death.
- (3) In subsection (1)(a) above “the permitted period” means—
- (a) the period of two years from the end of the month in which the survivor dies or (if it ends later) the period of three months beginning with the date on which the personal representatives first act as such, or
  - (b) such longer period as an officer of Revenue and Customs may in the particular case allow.
- (4) A claim made within either of the periods mentioned in subsection (3)(a) above may be withdrawn no later than one month after the end of the period concerned.

### **8C Section 8A and subsequent charges**

- (1) This section applies where—
- (a) the conditions in subsection (1)(a) and (b) of section 8A above are met, and

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- (b) after the death of the deceased person, tax is charged on an amount under any of sections 32, 32A and 126 below by reference to the rate or rates that would have been applicable to the amount if it were included in the value transferred by the chargeable transfer made (under section 4 above) on the deceased person's death.
- (2) If the tax is charged before the death of the survivor, the percentage referred to in subsection (3) of section 8A above is (instead of that specified in subsection (4) of that section)—

$$\left( \frac{E}{\text{NRBMD}} - \frac{TA}{\text{NRBME}} \right) \times 100$$

where—

E and NRBMD have the same meaning as in subsection (4) of that section; TA is the amount on which tax is charged; and NRBME is the nil-rate band maximum at the time of the event occasioning the charge.

- (3) If this section has applied by reason of a previous event or events, the reference in subsection (2) to the fraction

$$\frac{TA}{\text{NRBME}}$$

is to the aggregate of that fraction in respect of the current event and the previous event (or each of the previous events).

- (4) If the tax is charged after the death of the survivor, it is charged as if the personal nil-rate band maximum of the deceased person were appropriately reduced.
- (5) In subsection (4) above—

“the personal nil-rate band maximum of the deceased person” is the nil rate band maximum which is treated by Schedule 2 to this Act as applying in relation to the deceased person's death, increased in accordance with section 8A above where that section effected an increase in that nil-rate band maximum in the case of the deceased person (as 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 deceased person.”

- 3 In section 147 (Scotland: legitim etc), insert at the end—

“(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.”

- 4 (1) Section 151BA (rates of charge under section 151B) is amended as follows.

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(2) In subsection (5), for “had been in force at the time of the member's death” substitute “ (“the applicable Table”) had been in force at the time of the member's death, but subject to subsections (6) and (9) below. ”

(3) After that subsection insert—

“(6) 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 member's death.

(7) For the purposes of subsection (6) 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; and

NRBM is the nil-rate band maximum at the time of the member's death.”

(4) After subsection (7) insert—

“(8) The following provisions apply where—

- (a) tax is charged under section 151B above, and
- (b) immediately before the member's death, the member had a spouse or civil partner (“the survivor”).

(9) If the survivor died before the event giving rise to the charge, tax is charged as if the personal nil-rate band maximum of the member were appropriately reduced.

(10) In subsection (9) above—

“the personal nil-rate band maximum of the member” 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 (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.

(11) If the survivor did not die before the event giving rise to the charge, 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 were that specified in subsection (12) below.

(12) That percentage is—

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

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 if—

(a) the taxable amount were included in the value transferred by the chargeable transfer made on the member's death, and

(b) the nil-rate band maximum at the time of the member's 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 (6) above where that subsection applies).”

5 In section 239(4) (certificates of discharge: cases where further tax not affected), after paragraph (a) (but before the “or”) insert—

“(aa) that may afterwards be shown to be payable by reason of too great an increase having been made under section 8A(3) above,”.

6 In section 247(2) (tax-gear penalty), after “liable” insert “, or for which any other person is liable by virtue of the operation of section 8A above,”.

7 In section 272 (general interpretation), insert at the appropriate place—

““nil-rate band maximum” has the meaning given by section 8A(7);”.

#### *Amendment of TCGA 1992*

8 In section 274 of TCGA 1992 (value determined for inheritance tax), for “that tax” substitute “ the application of that tax to the estate ”.

#### *Commencement*

9 (1) The amendments made by paragraphs 2, 3 and 4(4) have effect in relation to cases where the survivor's death occurs on or after 9 October 2007.

(2) The amendments made by paragraphs 4(2) and (3) have effect in relation to deaths, cases where scheme administrators become aware of deaths and cessations of dependency occurring on or after 6 April 2008.

(3) The amendments made by paragraphs 5 and 7 are to be treated as having come into force on 9 October 2007.

(4) The amendment made by paragraph 8 has effect in relation to any ascertainment of value made on or after 6 April 2008.

#### *Modifications for cases where deceased person died before 25 July 1986*

10 (1) Section 8A of IHTA 1984 (as inserted by paragraph 2) has effect in relation to cases where the deceased person died before 25 July 1986 (and the survivor dies on or after 9 October 2007) subject as follows.

(2) Where the deceased person died on or after 1 January 1985—

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- (a) the references in subsection (2) to a chargeable transfer made under section 4 of IHTA 1984 are to a chargeable transfer made under section 4 of CTTA 1984, and
  - (b) the reference in subsection (4) to the nil-rate band maximum is to the amount shown in the second column of the first row, and the first column of the second row, of the First Table in Schedule 1 to that Act.
- (3) Where the deceased person died on or after 13 March 1975 and before 1 January 1985—
- (a) the references in subsection (2) to a chargeable transfer made under section 4 of IHTA 1984 are to a chargeable transfer made under section 22 of FA 1975, and
  - (b) the reference in subsection (4) to the nil-rate band maximum is to the amount shown in the second column of the first row, and in the first column of the second row, of the First Table in section 37 of that Act.
- (4) Where the deceased person died on or after 16 April 1969 and before 13 March 1975, section 8A applies as if—
- (a) M were the amount specified in paragraph (a) in Part 1 of Schedule 17 to FA 1969 at the time of the deceased person's death,
  - (b) VT were the aggregate principal value of all property comprised in the estate of the deceased person for the purposes of estate duty, and
  - (c) the reference in subsection (4) to the nil-rate band maximum were to the amount mentioned in paragraph (a).
- (5) Where the deceased person died before 16 April 1969, section 8A applies as if—
- (a) M were the amount specified as the higher figure in the first line, and the lower figure in the second line, in the first column of the scale in section 17 of FA 1894 at the time of the deceased person's death,
  - (b) VT were the principal value of the estate of the deceased person for the purposes of estate duty, and
  - (c) the reference in subsection (4) to the nil-rate band maximum were to the figure mentioned in paragraph (a).
- 11 (1) Section 8C of IHTA 1984 (as inserted by paragraph 2) has effect in relation to cases where the deceased person died before 25 July 1986 but on or after 13 March 1975 (and the survivor dies on or after 9 October 2007) subject as follows.
- (2) Where the deceased person died on or after 1 January 1985—
- (a) the reference in subsection (1) to sections 32, 32A and 126 of IHTA 1984 includes sections 32, 32A and 126 of CTTA 1984,
  - (b) the reference in that subsection to section 4 of IHTA 1984 is to section 4 of CTTA 1984,
  - (c) the reference in subsection (2) to the nil-rate band maximum includes the amount shown in the second column of the first row, and the first column of the second row, of the First Table in Schedule 1 to that Act,
  - (d) the first reference in subsection (5) to the nil-rate band maximum is to that amount, and
  - (e) the reference in subsection (5) to Schedule 2 to IHTA 1984 includes Schedule 2 to CTTA 1984.
- (3) Where the deceased person died on or after 7 April 1976 and before 1 January 1985—

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- (a) the reference in subsection (1) to sections 32, 32A and 126 of IHTA 1984 includes sections 32, 32A and 126 of CTTA 1984, section 78 of FA 1976 and paragraph 2 of Schedule 9 to FA 1975,
- (b) the reference in that subsection to section 4 of IHTA is to section 22 of FA 1975,
- (c) the reference in subsection (2) to the nil-rate band maximum includes the amount shown in the second column of the first row, and the first column of the second row, of the First Table in Schedule 1 to CTTA 1984 and the amount shown in the second column of the first row, and in the first column of the second row, of the First Table in section 37 of FA 1975,
- (d) the first reference in subsection (5) to the nil-rate band maximum is to that amount, and
- (e) the reference in subsection (5) to Schedule 2 to IHTA 1984 includes Schedule 2 to CTTA 1984, Schedule 15 to FA 1980 and section 62 of FA 1978;

but, if the event occasioning the charge occurred before 27 October 1977, the reference in subsection (4) to the personal nil-rate band maximum is to the amount shown in the second column of the first row, and in the first column of the second row, of the First Table in section 37 of FA 1975 at the time of the deceased person's death.

- (4) Where the deceased person died on or after 13 March 1975 and before 7 April 1976—
  - (a) the reference in subsection (1) to sections 32, 32A and 126 of IHTA 1984 includes paragraph 1 of Schedule 5 to that Act, section 126 of CTTA 1984 and paragraph 2 of Schedule 9 to FA 1975,
  - (b) the reference in that subsection to section 4 of IHTA is to section 22 of FA 1975,
  - (c) the reference in subsection (2) to the nil-rate band maximum includes the amount shown in the second column of the first row, and the first column of the second row, of the First Table in Schedule 1 to CTTA 1984 and the amount shown in the second column of the first row, and in the first column of the second row, of the First Table in section 37 of FA 1975, and
  - (d) the reference in subsection (4) to the personal nil-rate band maximum is to the amount shown in the second column of the first row, and in the first column of the second row, of the First Table in section 37 of FA 1975 at the time of the deceased person's death.

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